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About the UCJHR

The University of Chicago Journal of Human Rights was founded in 2016 by several board members of the University of Chicago chapter of Amnesty International to foster interdisciplinary scholarship in the field of human rights, and to encourage students to critically engage with contemporary human rights issues. Published annually, the journal brings together the work of students and professionals across the country, from within the University and beyond. Through multifaceted analysis of diverse issues, the journal seeks to promote informed debate and discussion and, ultimately, to provide the intellectual groundwork for the promotion of human well-being. The opinions of the authors expressed in this journal do not represent the beliefs of Amnesty International.

Letter From the Editors

Dear Readers,

We are incredibly excited to present to you the 2020 issue of the University of Chicago Journal of Human Rights (UCJHR). The UCJHR was founded in 2016 by members of the University of Chicago Amnesty International Chapter who aspired to create a place for students to publish scholarship in the dynamic field of human rights. This edition of the journal demonstrates the capacity and breadth of human rights, a field that often gets caught in a web of definitions but should be understood as an interdisciplinary field that ranges from the domestic to the international and from the local to the global. These issues that are framed under the umbrella of "human rights" are all intertwined with each other, even if they are not immediately obvious to the reader. The study of human rights is central to our understanding of how people, nation-states, and organizations work with each other, what issues affect these entities, and how certain treaties, conventions, laws, and institutions may have attempted to respond to these issues.

That being said, the pieces included in our fourth-annual journal highlight the diversity of human rights issues that have affected our world in the past few decades. Each of our authors illuminate important issues within the dynamic realm of human rights. Though these articles were selected because of their originality and clarity, our staff editors have spent the past year to carefully select the pieces that best represent the array of human rights issues that have provoked immense dialogue among academics and non-academics. As you will see, many of these pieces are broadly concerned with the public protest, mass organizing, unionization, and overall, the individual and what rights they should possess. Overall, the pieces featured in this edition collectively operate to illuminate the power and capacity of human rights discourses.

Chloe Hyman (The College, '20) begins our issue by taking a look at the 2011 Libya Intervention and focusing specifically on Mali, which she uses a case study to examine the consequences of the 2011 NATO Coalition, which unintentionally failed to prevent the spread of weapons that were used to violate human rights in the Middle East and North Africa. Next, **Henry Filosa** (The College, '20) examines how the United States and the Federal Republic of Germany (FRG) differ with regards to the right to unionize among military members. **Sanya Khatri** (The College, '20) looks at the history of police violence in Chicago, specifically by exploring the Jon Burge torture cases that occurred between 1972 and 1991, and how these cases clearly violated human rights norms and the 1987 United Nations Convention Against Torture. **Harini Shah** (The College, '20) moves us into a similar realm, but this time to the Pelican Bay State Prison in California; she explores how administrative segregation at this supermax facility violates the human rights of prisoners and gives rise to psychological consequences. As she notes, though the facility acknowledges that administrative segregation practices are 'torture', they continue to uphold them, thus highlighting how the California Department of Corrections and Rehabilitations intentionally interprets vague language in legal frameworks in order to continue these human rights abuses. Next, **Ekin Dursun and Arda Tirnakli** (The College, '20) offer a unique take in their policy proposal, in which they explore the issue of informal employment and its harms, such as low benefits and little compensation especially in least-developed and developing economies; they outline current approaches to alleviating the informal labor sector and their challenges, and propose their own policy to address concerns in this field. Finally, **Charlie Rollason** (The College, '20 & Harris School of Public Policy, '21) critiques the universality of current human rights frameworks–which are dominated by Western and White feminist voices–and looks at the practice of female genital cutting (FGC) in Sierra Leone as a case study; though the United Nations and other organizations view this practice as a violation of human rights, the author argues that exceptions should be made in light of cultural specificity.

Overall, we hope that you enjoy reading these articles. Some of these pieces raise unique issues that are often shifted to the margins of human rights discourses and debates, while others are at the core of these inquiries. However, all of these topics (in addition to others that were not featured in this edition) deserve to be discussed–both in-class and outside of it–in order to gain a broader understanding of the field of human rights.

Sincerely,
The UCJHR Editorial Board

2011 Libya Intervention: Unintended, Unconfined, Unresolved Consequences

Chloe Hyman

For hundreds of years, Western states have exerted physical, economic, and political pressures on the Middle East and African continent. From centuries of colonial exploitation of African countries, to the drawing of borders in the Middle East during the 1916 Sykes-Picot agreement, the regions were, and continue to be, objects of attention in Western discourse. Local populations experience the tangible impact of foreign involvement in a way that has never been true for the distanced inhabitants in Europe or across the Atlantic. Even the Islamic State, a force magnified by obtuse policies enacted during the 2003 US invasion of Iraq, has noted consequential Western interference in the Middle East by calling for the "end of Sykes-Picot."[1]

In a 2016 two-part New York Times special on Libya, Scott Shane and Jo Becker poignantly wrote:

> A cynical line would begin to circulate in Washington: In Iraq, the United States had intervened and occupied — and things had gone to hell. In Libya, the United States had intervened but not occupied — and things had gone to hell. And in Syria, the United States had neither intervened nor occupied — and things had still gone to hell.[2]

The failures of the international community to properly deal with the aftermath of their intervention in Libya had the unintended consequences of proliferating weapons used to violate human rights all over the Middle East and North Africa. The actions of a 2011 NATO coalition led to the collapse of Muammar Gaddafi's forty-year-old regime and chaos which was not confined to Libya. The NATO coalition acted negligently and will not be held accountable for its unintended, yet still significant, consequences. Efforts by the coalition before, during, and after the intervention should have done more to curb weapons proliferation, to stymie further human rights abuses, and prevent regional instability. If countries are forced to take responsibility for the repercussions of their actions, I believe that foreign intervention would have fewer destabilizing consequences, focus more on long-term success, and be less likely to "go to hell." This paper will look at Mali, a country that NATO cares very little about, as a case study of the unintended consequences of the 2011 NATO coalition.

Libya

Colonel Muammar Gaddafi came to power through a coup in 1969. For the first several decades of his leadership, Libya was an anti-imperialist, anti-colonialist, anti-Zionist, revolutionary state that was isolated by the

1 Capt. Matt Sayler, "The End of 'The End of Sykes-Picot,'" Modern War Institute, August 24, 2018, accessed November 7, 2018, https://mwi.usma.edu/end-end-sykes-picot/.

2 Scott Shane and Jo Becker, "A New Libya, With 'Very Little Time Left,'" The New York Times, February 27, 2016, sec. Politics, accessed November 7, 2018, https://www.nytimes.com/2016/02/28/us/politics/libya-isis-hillary-clinton.html.

international community. The Gaddafi regime aided insurgents and pariah governments across the African continent, perused weapons of mass destruction, and heavily funded its domestic security apparatus that spread fear and violence throughout the country.[3] By the late nineties, the impact of decades of international isolation and failed domestic economic policies put Libya's economy in a bad place. The near economic collapse motivated Gaddafi's decision to make amends with the West.[4] He began talks with President Clinton in 1999 about denuclearization and by 2003, the United Nations sanctions on Libya that had been in place since 1992 were lifted. Libya was striving to appear "committed to the reform of its economy and a reorientation of its foreign policy."[5] Gaddafi catapulted his transformation of Libya into the "New World Order" in the early 2000s.[6] Though American efforts to normalize relations with Libya had already begun, the United States' entry into Iraq was particularly frightening to Gaddafi as he feared he could be the next strongman to fall at the hands of foreign intervention. In response to the 2006 restoration of diplomatic relations between the United States and Libya, Secretary of State Condoleezza Rice praised, "Libya's continued commitment to its renunciation of terrorism and the excellent cooperation Libya has provided to the United States."[7] This unprecedented transformation of an African strongman to a friend of the West was short lived.

Protests in Libya began in February 2011 in the midst of the Arab Spring. Tunisia and Egypt were also experiencing mass protests, however, unlike the leaders of his neighboring countries, Gaddafi took an incredibly harsh stance against protesters and the casualties quickly rose.[8] UN *Resolution 1970*, passed on February 26th, 2011 condemned the violence in Libya and outlined actions the international community should be taking to inhibit the capabilities of the Gaddafi regime; these included an arms embargo, a travel ban, and a freeze on Libyan assets. In a speech given in March 2011, Gaddafi said there would be "no mercy" for the rebels in Benghazi.[9] He further gave instructions to "cleanse the city of Benghazi."[10] The perceived imminent threat of a massacre in Benghazi prompted the United Nations to issue a mandate sanctioning international humanitarian intervention; *Resolution 1973*, which passed on March 17th, 2011, gave NATO the legal basis to intervene in Libya.[11]

NATO Coalition

The preamble of Resolution 1973 condemns "the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions" in Libya.[12] In addition to establishing a no-fly zone and supplementing the regulations made in *Resolution 1970*, *Resolution*

3 Luis Martinez, The Libyan Paradox (Columbia University Press, 2007).

4 Martin S. Indyk, "The Iraq War Did Not Force Gadaffi's Hand," Brookings, November 30, 2001, accessed December 13, 2018, https://www.brookings.edu/opinions/the-iraq-war-did-not-force-gadaffis-hand/.

5 Luis Martinez, The Libyan Paradox.

6 Ibid.

7 Ibid.

8 Spencer Zifcak, "The Responsibility to Protect after Libya and Syria" (13 Melb. J. Int'l L. 59, 2012).

9 "No Let-up in Gaddafi Offensive," Al Jazeera, March 17, 2011, accessed November 7, 2018, https://www.aljazeera.com/news/africa/2011/03/2011317645549498.html.

10 James Pattison, "The Ethics of Humanitarian Intervention in Libya," Ethics & International Affairs 25, no. 3 (2011): 271–277.

11 United Nations Security Council, "Resolution 1970," February 26, 2011.

12 United Nations Security Council, "Resolution 1973," March 17, 2011.

1973 authorized states to take additional actions to protect civilians. Intervention in Libya for the sake of protecting civilians was supported throughout the international community. Even the Arab League, which had never before supported military action on a member state, supported intervening in Libya.[13]

Within the NATO coalition, members debated the most appropriate first steps. In April 2011, a Canadian news outlet reporting from a NATO meeting in Qatar, described heated arguments about how NATO should interpret UN *Resolution 1973*. The resolution had called for an immediate ceasefire and authorized "coalition members to employ any means necessary, short of foreign occupation force, to protect civilians."[14] While some coalition members insisted that Gaddafi yielded his right to remain sovereign when he began targeting civilians, other delegations promoted more reserved approaches to the handling of Gaddafi.

Anthony Cordesman, a Strategy Chair at the Center for Strategic and International Studies, noted the divergent attitudes within the coalition:

> If U.S or NATO should formally state that the real mission behind the UN 'no fly' resolution has formally become 'regime change,' there are several NATO powers that might publicly oppose this; the support of the Arab League would vanish; Russia and China might be pushed into open opposition in the UN; and the tenuous compromises that provide a UN mandate might collapse.[15]

Regime change was not in the official UN mandate, but this did not stop coalition leaders from indicating that Gaddafi must step down. Though some believed regime change was truly best for the future of the Libyan people, it was also advantageous for politicians who desired to claim responsibility for ending the brutal era of Gaddafi's violence.[16]

The NATO coalition, named Operation *Unified Protector* (OUP), began on March 31st, 2011. With the UN mandate of *Resolution 1973* to protect civilians using "all necessary measures," OUP led a seven-month air-heavy campaign against Gaddafi's forces in Libya.[17] Additionally, prior to the NATO operation, the United States and Qatar had been individually arming militia groups in Libya.[18] In October 2011, Gaddafi was forcefully dragged from a sewer pipe where he had sought refuge. He was attacked and killed by rebels who would not have reached their heightened position without the assistance of Operation *Unified Protector*.[19] The NATO mission officially ended less than two weeks later.

The uprising in Libya was initially considered one of the Arab Spring's most successful revolts.[20] Nine months after Gaddafi was killed,

13 Ranj Alaaldin, Libya & the Arab League (Oxford University Press, 2016), accessed December 14, 2018, http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198767480.001.0001/acprof-9780198767480-chapter-6.

14 Peter Goodspeed, "NATO-Led Coalition Increasingly Unwilling; Bickering over Libya Mission No Way to Fight a War," National Post (Don Mills, Ontario, April 14, 2011).

15 Ibid.

16 James Pattison, "The Ethics of Humanitarian Intervention in Libya."

17 "Reflections on Operation Unified Protector," National Defense University Press, accessed December 15, 2018, http://ndupress.ndu.edu/Media/News/News-Article-View/Article/577509/reflections-on-operation-unified-protector/.

18 Shane and Becker, "A New Libya, With 'Very Little Time Left.'"

19 Ibid

20 Neal Conan, "The Unintended Consequences Of Libya's Revolution," NPR.Org, last modified March 9, 2012, accessed December 12, 2018, https://www.npr.org/2012/05/09/152352309/

Libya had "vanished down the American memory hole."[21] The fact that Libya was out of the American spotlight was used as a sign of success by those who had encouraged the operation. Nevertheless, the coalition was naïve and negligent in thinking they could leave Libya after instigating the execution of a longtime dictator without causing serious turmoil.

After the fall of Gaddafi, the National Transitional Council (NTC) became the internationally recognized interim governing body in Libya, however, It was not supported by all Libyan rebel factions.[22] A Libyan party leader said, "It should have been clear to anyone that there were clear contradictions in the makeup of the opposition and that unity could not last."[23] The Obama administration treated ministers like they were part of a unified government, but, in reality, they "were often rivals, jockeying for power in advance of the elections."[24] Interim leaders who had garnered the trust of the NATO coalition "averted their eyes" when asked about the threat militias would present on the "Day After."[25]

Chaos Post-Coalition

The conflict duration increased six-fold, and the death toll at least seven-fold after the coalition intervened.[26] Elated and enabled by the death of Gaddafi, rebels carried out scores of reprisal killings. In a western town, 30,000 primarily black residents were forced to leave their homes. A 2012 Human Rights Watch report classified the abuses committed by rebels as "so widespread and systematic that they may amount to crimes against humanity."[27] Ethnic-based violence had not been a significant issue during Gaddafi's tenure, but became a problem for Gaddafi-free Libya. Another factor that inhibited peace was that radical Islamist groups, which had been intimated by the Gaddafi regime, gained traction in the aftermath of 2011. These groups did not respect the authority of any government and were responsible for the September 2012 assault on the United States embassy in Benghazi.

Libya received light support from the UN in the form of the United Nations Support Mission in Libya (UNSMIL).[28] UNSMIL tended to provide advisors or technical support for small-scale projects that required immediate attention. The newly-liberated country had the desire to appear "locally owned rather than choreographed by outsiders" and looked down on foreign assistance, no matter how minimal.[29] Shane and Becker wrote, "Displaying both naïveté and nationalism, the interim leaders insisted, at least in public, that they wanted no outside interference."[30] Outside support in Libya was much needed, yet was neither asked for nor sufficiently provided. By 2014, Libya was in a full-fledged civil war propagated by militias with

the-unintended-consequences-of-libyas-revolution.

21 Ross Douthat, "Opinion | Libya's Unintended Consequences," The New York Times, July 7, 2012, sec. Opinion, accessed December 12, 2018, https://www.nytimes.com/2012/07/08/opinion/sunday/libyas-unintended-consequences.html.

22 Neal Conan, "The Unintended Consequences Of Libya's Revolution."

23 Shane and Becker, "A New Libya, With 'Very Little Time Left.'"

24 Ibid.

25 Ibid.

26 Alan J. Kuperman, Lessons from Libya: How Not to Intervene, Policy brief (Belfer Center for Science and International Affairs, Harvard Kennedy School, September 2013).

27 Ibid.

28 Christopher S. Chivvis, Keith Crane, Peter Mandaville. Jeffrey Martini, Libya's Post-Qaddafi Transition: The Nation-Building Challenge (RAND Corporation, 2012), https://www.jstor.org/stable/10.7249/j.ctt2jc9ck.1.

29 Ibid.

30 Shane and Becker, "A New Libya, With 'Very Little Time Left.'"

intense tribal divisions, geographical ties, and differing levels of Islamic religiosity.[31]

Unintended Consequences

The chaos that overtook Libya after the NATO intervention had the unintended consequence of spreading instability via the large-scale proliferation of Libyan weapons. Gaddafi began building arsenals in 1969. The rise in activity of rebel groups in the years leading up to 2011 prompted Gaddafi to hide his extensive weapons' collection in undocumented public locations across the country.[32] The number of weapons given to the rebels by NATO forces did not compare to the "astonishing quantities" of weapons that were found stashed in the desert.[33] As pro-Gaddafi forces lost ground, the weapon stockpiles became vulnerable and were raided by civilians, rebel militias, and criminal organizations.[34] In addition to being used for self-protection, the contraband was easily transported out of the country through Libya's largely unguarded borders.

The American Defense Secretary, Robert Gates, gave an example of this mayhem; "There was one arsenal that we thought had 20,000 shoulder-fired, surface-to-air missiles, SA-7s, that basically just disappeared into the maw of the Middle East and North Africa."[35] Amidst the chaos, the CIA successfully managed to secure Libyan chemical weapons technologies, but the proliferation of Gaddafi's weapons was widespread and irreversible. The US Department of State and CIA collaborated with each other to ineffectively bargain with militias to get back previously donated arms. In response to these buyback programs, an interim government spokesperson said "How are you going to buy a Kalashnikov for $1,000? With a Kalashnikov, someone can make $1,000 a day kidnapping people."[36]

UN *Resolution 2017*, passed by the Security Council on October 31, 2011, acknowledged the unraveling problem of weapons proliferation throughout the Sahel, and called on member states, UN bodies, and Libyan authorities to increase their efforts to stem the flow of weapons out of Libya. This was an admirable attempt by the UN to mitigate the "risk of destabilization," but it was too little too late and, because it came from the UN, lacked enforcement mechanisms.[37]

Michael Flynn, head of the US Defense Intelligence Agency, described his reaction to a 2012 intelligence report on the proliferation of Libyan weapons; "It was like, 'Oh, my God.'"[38] Flynn continued, "We've not had that kind of proliferation of weapons since really the end of the Vietnam War." In 2013, UK's Daily Mail reported that a senior intelligence official claimed Libya "has become the Tesco [supermarket] of the world's illegal arms trade."[39] Even Al-Qaeda, a terrorist group that the US has gone to great lengths to eradicate, openly claimed to have ben-

31 Ibid.

32 Eray Basar, Report Update: Unsecured Libyan Weapons -- Regional Impact and Possible Threats (Civic Military Fusion Centre, November 2012).

33 Shane and Becker, "A New Libya, With 'Very Little Time Left.'"

34 Eray Basar, Report Update: Unsecured Libyan Weapons -- Regional Impact and Possible Threats.

35 Shane and Becker, "A New Libya, With 'Very Little Time Left.'"

36 Ibid.

37 United Nations Security Council, "Resolution 2017," October 31, 2011.

38 United Nations Security Council, "Resolution 2017," October 31, 2011.

39 Nicholas Marsh, "Brothers Came Back with Weapons: The Effects of Arms Proliferation from Libya," Institute for National Strategic Security, National Defense University 6, no. 4, The Struggle for Security in Africa (2017).

efited from Libyan weapon proliferation. A representative of al-Qaeda in the Islamic Maghreb told a Mauritanian news outlet, “We have been one of the main beneficiaries of the revolutions in the Arab world… As for our acquisition of Libyan armaments that is an absolutely natural thing.”[40]

A total of 75 Libyan arms caches were seized by the governments of Algeria, Chad, Egypt, Libya, the Sudan, and Tunisia. 50 out of 75 of the seizures happened in 2012 and 2013.[41] A 2015 United Nations Security Council report wrote, “Arms originating from Libya have significantly reinforced the military capacity of terrorist groups operating in different parts of the region, including in Algeria, Egypt, Mali, and Tunisia in particular.”[42] Significant amounts of weapons also ended up in the Middle East. Arms trafficking out of Libya slowed in 2013 as a function of minimal international assistance and increased fighting inside of Libya. More fighting in the country meant that weapons were in demand within its borders, so were less likely to be transported out.

A Tunisian official in 2015 said about Tunisia that “most military material used in terrorist attacks comes from Libya.”[43] The initial smuggling of Libyan weapons into Tunisia happened via refugees who had been loyal to Gaddafi and had been forced to flee Libya when Gaddafi’s forces lost power.

Weapons trafficked through Egypt increased in numbers and capabilities post-2011.[44] An Egyptian author noted, “It became clear that Egypt’s poorly secured western border had turned from an amateur 9-millimeter pistol market into a fully-fledged arms trafficking hub.”[45] Most of the weapons moving from Libya through Egypt were on their way to Gaza; weapons were in high demand in Gaza and the Palestinians could afford them. According to Israeli officials, Gaza “acquired antiaircraft and anti-tank rockets from Libya” and had “an influx of SA-7 antiaircraft missiles and rocket propelled grenades.”[46] Of the rockets fired into Israel in 2012, many came from Libya.

Syria, which was in the midst of a civil war during the peak period of Libyan weapons proliferation, received large amounts of weapons from Libya for two reasons: the Syrian rebels were willing to pay, and there was sympathy in Libya for the Syrian rebel cause. The types of weapons rebels received were anti-tank and anti-aircraft missiles, small arms, and light weapons. Rebels in Syria were previously granted access to these types of weapons from defecting Syrian Army soldiers and by looting Syrian military arms depots. However, the rebels faced shortages and weapons from Libya filled the void.[47]

To a lesser extent, Niger, Chad, the Sudan, and Nigeria also had weapons trafficked through their territories. In Nigeria, weapons from Libya ended up in the hands of the extremely violent militant group, Boko Haram.[48]

Case Study: Mali

In March of 2012, as a consequence of the collapse of the Gaddafi regime in nearby Libya, Mali experienced a military coup. The coup came as a shock to analysts who had previ-

40 Ibid.
41 Ibid.
42 Ibid.
43 Ibid.
44 Ibid.

45 Ibid.
46 Ibid.
47 Ibid.
48 Ibid.

ously identified Mali as a relatively stable country.[49] Mali had not had a coup since 1991 and was set to hold presidential elections in April 2012. In willing compliance with constitutional regulations, the democratically elected Malian President, Amadou T. Touré, was not seeking another term in office.

The 2012 coup was not the result of popular uprisings nor was it fueled by youth frustrated with their economic prospects. The coup leaders were low ranking officers in the Malian military and men who had voluntarily enlisted into the army. These leaders were "fed up" with the way the Malian government was handling the rebellion of Tuareg rebels in northern Mali. They claimed that soldiers were drastically under-armed and did not have effective leadership to counter the rebellion. One coup leader said that troops were not given enough resources "to defend the nation."[50] The Malian government had successfully suppressed previous rebellions in the north, but after the fall of Gaddafi, the Tuaregs received reinforcements and heightened weapons capabilities that the Malian government was not prepared to match.

In 2011, hundreds of Tuareg forces, who had been recruited to fight for Gaddafi starting in the seventies and eighties, rounded up anti-tank weapons, mortars, heavy machine guns and drove to northern Mali.[51,52] These enhanced weapons were not previously accessible to the Malian Tuaregs. The Malian Army was used to fighting temperate forces baring only Kalashnikov rifles.[53] Emboldened by their new weapons capabilities and bolstered numbers, in October 2011, the Tuaregs in Northern Mali formed the National Movement for the Liberation of Azawad (MNLA).[54] An MNLA spokesman said, "Our goal is to liberate our lands from Malian occupation."[55]

In Mali, the consequences of the Libyan collapse were twofold. Firstly, the export of advanced weapons technologies and Tuareg fighters from Libya into Mali greatly strengthened the rebel forces in Northern Mali. MNLA forcefully took over large portions of Northern Mali, including Timbuktu, and destroyed World Heritage sites in the process.[56] In reference to 2012, a Tuareg Malian rebel leader said, "The Libyan crisis shook up the order of things… a lot of our brothers have come back with weapons."[57] The Tuaregs acquired even more arms from the Malian Army which, in a similar fashion to the Libyan army post-fall of Gaddafi, left weapons unattended during their retreat.[58] The recently weaponized MNLA separatist insurgency, which is currently one of the largest active militias in Mali, will have long term destabilizing effects in the region.[59] A Malian lawmaker said, "When [Westerners] chased Gaddafi out in that barbaric fashion, [they] created 10 more Gaddafis. The

49 Adam Nossiter, "Soldiers Overthrow Mali Government," The New York Times, March 22, 2012, sec. Africa, accessed December 12, 2018, https://www.nytimes.com/2012/03/23/world/africa/mali-coup-france-calls-for-elections.html.
50 Ibid.
51 Adam Nossiter, "Qaddafi's Weapons, Taken by Old Allies, Reinvigorate an Insurgent Army in Mali," The New York Times, February 5, 2012, sec. Africa, accessed December 13, 2018, https://www.nytimes.com/2012/02/06/world/africa/tuaregs-use-qaddafis-arms-for-rebellion-in-mali.html.
52 Nicholas Marsh, "Brothers Came Back with Weapons: The Effects of Arms Proliferation from Libya."
53 Nossiter, "Qaddafi's Weapons, Taken by Old Allies, Reinvigorate an Insurgent Army in Mali."
54 "The National Movement for the Liberation of Azawad," Stratfor, accessed December 13, 2018, https://worldview.stratfor.com/article/national-movement-liberation-azawad.
55 Nossiter, "Qaddafi's Weapons, Taken by Old Allies, Reinvigorate an Insurgent Army in Mali."
56 Neal Conan, "The Unintended Consequences Of Libya's Revolution."
57 Nicholas Marsh, "Brothers Came Back with Weapons: The Effects of Arms Proliferation from Libya."
58 Ibid.
59 "The National Movement for the Liberation of Azawad."

whole Saharo-Sahelian region has become unlivable."[60] In 2013, Mali's former colonial ruler, France, sent military assistance to help defend Mali against MNLA and other insurgencies.[61]

The second consequence of the fall of Gaddafi in Mali was the subversion of the Malian government's legitimacy. As a result of frustrations with the Malian Army's persistent defeats at the hands of the fortified Tuareg rebels, the democratic government was overthrown in a military coup. Less than one month into military rule, the leaders of the coup reached a deal with the Economic Community of West African States to return the power to civilians.[62] The coup was short lived, but a humiliating sign of vulnerability for the young Malian democracy.

Human Rights

Human rights were violated in Mali, but the question of who is culpable cannot be fully captured in any human rights doctrine. The International Covenant on Civil and Political Rights (ICCPR) was ratified by the United Nations General Assembly in December 1966 and became effective in March 1976. In its preamble, the ICCPR "recognizes" the message asserted in the Universal Declaration of Human Rights that free human beings can only exist in conditions where "everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights."[63] This was neither the case in Mali when the MNLA used Libyan weapons to "liberate" Northern Mali, nor when disgruntled members of the Malian military staged a coup. Article nine, section one of the ICCPR affirms:

> Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.[64]

Also in violation of ICCPR, insurgents all across the Sahel and the Middle East came into the possession of weapons which they used without respect to any legal criterion.

UN *Resolution 2017* (October 2011), addressed the problem of proliferation of Libyan weapons. Its preamble states:

> the proliferation of all arms and related materiel of all types, in particular, an portable surface-to-air missiles, in the region could fuel terrorist activities, including those of Al-Qaida in the Islamic Maghreb…in that regard…terrorism constitutes one of the most serious threats to international peace and security...[65]

As a consequence of Operation *Unified Protector* and other actions taken by the international community, the fears of the 2011 UN Security Council were realized. The insurgents who used the Libyan weapons infringed on people's human rights. It is the nature of insurgencies to enforce their agenda using whatever means avail-

60 Nossiter, "Qaddafi's Weapons, Taken by Old Allies, Reinvigorate an Insurgent Army in Mali."
61 Nicholas Marsh, "Brothers Came Back with Weapons: The Effects of Arms Proliferation from Libya."
62 "Mali Court Meets to Choose Interim President," Al Jazeera, April 9, 2012, accessed December 13, 2018, https://www.aljazeera.com/news/africa/2012/04/20124914524561479.html.
63 General Assembly resolution 2200A (XXI), "OHCHR | International Covenant on Civil and Political Rights," accessed November 27, 2018, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.
64 Ibid.
65 United Nations Security Council, "Resolution 2017."

able to them. Irresponsible foreign interference in Libya is also at fault for giving the insurgents easy access to weapons.

Article nine, section five of the ICCPR states, "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."[66] There will be no compensation for the innocent people who were captured or detained at the hands of any of the previously mentioned rebel groups. The recipients of Libyan weapons cannot be punished by international law in the same way a country can. For example, how would the International Criminal Court ensure that Boko Haram compensate the 276 Chibok Nigerian school girls whom they captured in 2014?[67] The group cannot be collectively targeted with sanctions, nor can an individual leader be apprehended in order to bring about justice; another leader would surely take his place. Unlike insurgent groups, the NATO coalition members are states with a seat at the UN and can be held accountable for violating human rights through traditional international mechanisms.

There were unintended consequences of the NATO coalition intervention in Libya that caused human rights to be violated from Mali to Syria, yet the coalition is not compelled by any contemporary human rights doctrine to accept responsibility for these unintended consequences. NATO acted with the approval of the UN, but their actions were neglectful and allowed stockpiles of weapons to reach the hands of insurgents. The UN passed *Resolution 2017* with the aim of lessening the impact of Libyan weapons proliferation, thereby acknowledging it as a serious issue. However, the resolution did not criticize anyone for leaving Gaddafi's vast weapons caches unsecured, for abandoning Libya after the fall of Gaddafi, nor for instigating the dictator's demise. Three out of the five permanent members of the Security Council are also NATO members, so it is inconceivable that the UN would ever directly belittle Operation *Unified Protector*.

There is an astonishing lack of any legal code or doctrine relating to unintended consequences. It is a basic concept that actions have consequences that are not always intended, but always very real--especially when they infringe on people's human rights. Regime change in a volatile country is not an easy task, but it was voluntarily inherited by Operation *Unified Protector*. A Human Rights Watch representative said about the Libyan rebellion, "If you are going to carry out a military intervention to decapitate the government, you are making a commitment to the stability of that country over the long haul."[68] Unfortunately, this is an ideal and not a reality. The NATO coalition should have done more to mitigate the effects of regional weapons proliferation by preparing for the "Day After" Gaddafi, by insuring a permanent peaceful transition of government, and by securing Gaddafi's weapons caches.

Long term stability should be a top priority when engaging in conflict, but this is rarely the norm. Short sightedness – as was the case of the NATO coalition in Libya-- lead to disastrous unintended consequences. Addressing the United States, a French Diplomat said about Iraq:

66 General Assembly resolution 2200A (XXI), "OHCHR | International Covenant on Civil and Political Rights."

67 "Nigeria Says 219 Girls in Boko Haram Kidnapping Still Missing," Text.Article, Fox News, last modified March 24, 2015, accessed December 15, 2018, https://www.foxnews.com/world/nigeria-says-219-girls-in-boko-haram-kidnapping-still-missing.

68 Shane and Becker, "A New Libya, With 'Very Little Time Left.'"

> You organize elections in a country with no experience of compromise or political parties. So you have an election, and you think that everything is solved. But eventually tribal realities come back to haunt the country.[69]

This could also be said about Libya, but with an added emphasis on weapons proliferation. Holding states accountable for the unintended consequences of their actions would force countries to minimize the negative effects of military intervention. Actions that protect long term stability will in the short term make the world a more peaceful place.

69 Ibid.

Military Unions: A Soldier's Right?

Henry Filosa

It is a common starting assumption in the development of modern military ethics that upon taking up arms in the service of their nation, a soldier loses the right to live and gains the right to kill. The pragmatic realities of military life mean that further rights may be lost. Soldiers in most nations forfeit the right to unionize, a right they would hold if they were any other form of public employee. The right to unionize may seem absurd — after all, a combat zone is not a place where traditional union activities such as strikes would be appropriate. However, several nations condone or even encourage military unions. Surprisingly, the U.S came close to a unionized army in the military shakeup following Vietnam, but ultimately the United States government took a hard official stance against such an action. The development of military unionism in the Federal Republic of Germany (FRG) after the trauma of World War II offers a striking counterexample. Both nations faced a moment where the very idea of what it meant to be a soldier had to be reimagined. The United States defined their military as a "state within the state", creating an organization exempt from unionization, while Germany embraced a concept of the "citizen in uniform" with a strong military union. Comparing the different experiences of the United States and the FRG as they reevaluated the nature of their militaries demonstrates how a nation's idea of what a soldier is informs how many rights they allow them to possess.

Industrial organization is an enumerated human right, one to which soldiers appear to have equal claim to as any other person. The right to unionize is explicitly laid out in Article 23 of the Universal Declaration of Human Rights, wherein it is asserted that "everyone has the right to form and to join trade unions for the protection of his interests."[1] The right for laborers to organize is also implicitly present in the right of free association and speech which the UDHR and its promotion of liberal societies guarantees. Article 20 of the UDHR states that "everyone has the right to freedom of peaceful assembly and association", and there is no provision to distinguish between religious, political, etc. association and the free association of workers.[2] With regards to soldiers, the only justification for the abrogation of these rights under the UDHR is located under Article 29's allowance that "everyone shall be subject only to such limitations as are determined by law solely for the purpose of ... meeting the just requirements of morality, public order and the general welfare in a democratic society."[3] The vital role of defense for the protection of a nation can be used to justify limitations on soldier's article 20 and 23 rights insofar as it relates to their military preparedness and capability.

However, human rights cannot be set aside for practical reasons too lightly, lest they

1 UN General Assembly, "Universal Declaration of Human Rights," 10 December 1948, 217 A (III).
2 Ibid.
3 Ibid.

cease to have any force at all. The strength of these rights arises from their aspirational nature, often in opposition to pragmatic difficulties to their implementation. The divergent paths that nations have taken regarding the labor rights of their armed forces indicate room for interpretation between Articles 20, 23, and 29 of the Universal Declaration for Human Rights. The eventual compromise a nation reaches is informative of where they believe their soldiers fall within the framework of human rights and their place within their society.

In practice, nations which have allowed military unions do recognize some practical limitations. With the exception of Sweden, no nation allows its soldiers to strike, a right which Swedish troops have historically chosen not to exercise.[4] This does not directly contradict the UDHR as the right to strike is not explicitly enumerated. Additional restrictions, such as agreements not to voice opinions on combat decisions, not to interfere in judicial proceedings, and to remain apolitical are near universal.[5] Despite these limitations, military unions have still delivered beneficial results for their members. Union representatives can advocate for tangible benefits like increased pay, pensions, and insurance.[6] The "prestige" work that unions undertake is viewed by some soldiers as an even more important function. These programs are aimed at elevating the status of soldiering in society to a respectable career, a necessary function in many European nations where a lack of combat operations may make a military career appear pointless and undesirable.[7] Finally, the union structure gives an alternate route for grievance resolution giving soldiers more confidence to voice concerns and have an impact on their working conditions.[8] In practice, military unions are not nearly as dramatic as the connotations of their name may imply, as they deliver results for their members without the full range of tactics associated with a typical labor union.

4 Comptroller General of the United States, I*nformation on Military Unionization and Organization* (Washington, D.C: United States General Accounting Office, September 16, 1977), 33.

5 Ibid.

6 Ronald Grabler, *Military Unions: An Analysis of Unionization in Norway and Germany as It Relates to the United States* (Air Force Institute of Technology, 1971), 32.

7 Grabler, *Military Unions: An Analysis of Unionization in Norway and Germany,* 34.

8 Grabler, *Military Unions: An Analysis of Unionization in Norway and Germany*, 36.

Resistance to Military Unions in the US

In the wake of the highly unpopular draft during the Vietnam War, President Nixon decided to abolish conscription, a historic change for the United States which had relied on the practice since its very inception. The transition to the All Volunteer Force (AVF) beginning the summer of 1973 worried military authorities who feared that discipline would be degraded and the fundamental place of the soldier in society could be disruptively dislodged.[9] Mixed in with these fears were worries that the soldiers may begin demanding unions. This concern was sufficient to motivate at least three government sponsored reports on the issue in 1977 alone: *Information on Military Unionization and Organization, Unionizing the Armed, and Military Unions: U.S Trends and Issues*. The issue's prominence arose from the American Federation of Government Employees' (AFGE) successful 1976 amendment to allow the recruitment of military personnel, justified by the AFGE on the basis of their first amendment right to associate, which made a

9 Ezra Krendel, "The Issues and Precedents," in *Unionizing the Armed Forces*, eds. Bernard Samoff and Ezra Krendel (Philadelphia: University of Pennsylvania Press, 1977), 17.

widespread unionization effort possibly imminent.[10] A 1976 survey of Air Force personnel on the issue found them split roughly equally among pro-union, anti-union, and undecided camps.[11] At the same time, bills to ban military unions drafted and promoted by Senator Strom Thurmond began circulating in the Senate. The United States was at a crossroads between two equally plausible, but drastically different paths.

The American military establishment viewed unions as a dangerous force that needed to be resisted. Sixteen active-duty officers and nine West Point professors contributed to *Military Unions: U.S Trends and Issues*, which with chapters such as "Military Unions - a Hoax and Deception", makes clear the general stance on the issue.[12] These anxieties could not be justified completely on concerns that military effectiveness would be hurt. Large amounts of National Guard technicians, twenty-seven percent in 1969 and seventy-two percent by 1977, were already unionized and had engaged in collective bargaining for almost a decade by 1977.[13] This organizing produced no pushback from the Department of Defense on the basis of military effectiveness and received little notice by the public.[14] The undramatic effects of reservist unionization indicate that aversion to unionism was not wholly predicated on military effectiveness.

The root cause of union concern was the change it represented to the identity of the soldier. A counterargument utilized by the military establishment, retired Major General Cocklin, was that existing organizations such as the Association of the U.S Army (AUSA) already provide most of the possible benefits of union memberships.[15] The AUSA advocated for increased benefits for soldiers through a variety of channels, such as research, journalism, or lobbying, and was even sometimes asked to participate in the resolution of issues affecting active duty personnel.[16] In all but official recognition, proposed alternatives like the AUSA functioned essentially like existing military unions in other nations, advocating for the working conditions and social status of soldiers while staying apolitical and uninvolved in combat decisions. The driving concern of the military establishment was the framing power of the term itself. The potential for a "union" was a distillation of the potential for change that the AVF transition was creating. It was feared that such a transition would weaken the "civil supremacy" concept which had underpinned the stability of American democracy against military influence.

The concept of "civil supremacy" is the principle underlying relations between the elected government of the United States and its military. Under it, the decision-making authority of representatives such as the President and Congress is absolute and unquestionable by the armed forces.[17] The military is only to exercise thinking insofar as it considers how to accomplish goals laid out for it by the executive. This requires

10 Bernard Samoff and Ezra Krendel , eds., *Unionizing the Armed Forces* (Philadelphia: University of Pennsylvania Press, 1977), 189.

11 Alan Sabrosky, *Blue Collar Soldiers?* (Philadelphia, Pennsylvania: Foreign Policy Research Institute, 1977), 15.

12 James McCollum, "Unionizing the Armed Forces/Military Unions: U.S. Trends and Issues (Book Reviews)," ILR Review 32, no. 2 (1979): 410–11.

13 Krendel, "The Issues and Precedents," 6.

14 Ibid., 7.

15 Robert Cocklin, "A Hoax and Deception," in *Military Unions: U.S Trends and Issues* eds., Robert Lockwood, Roger Arango, and William Jr. Taylor (Beverly Hills, California: Sage Publications, 1977), 267.

16 Ibid., 268.

17 Ralph Hallenbeck, "Civil Supremacy," in *Military Unions: U.S Trends and Issues* eds., Robert Lockwood, Roger Arango, and William Jr. Taylor (Beverly Hills, California: Sage Publications, 1977), 234.

that each member put their faith in the reasoning of their superiors, no matter their personal thoughts. The goal of this arrangement is to prevent military dictatorship by precluding even the suggestion that a military member may be a better decision maker than the President. Maintaining this mindset, that "ours is not to reason why," requires a very particular framing of the motivation for enlistment.

Enlistment motivation can be understood through the *occupation*, *profession*, and *calling* model of employment. Working in an *occupation* is motivated by self-interest, receiving contractual pay and benefits in return for providing a service, while individuals are drawn to *callings* by a sense of placing a higher good before their own interests.[18] Firefighting is an example of a *calling* where many are motivated by a desire to help others. The common laborer who works any job they find as long as the pay and benefits are satisfactory would be employed in *occupations.* A *profession* falls somewhat between the two, where the self-interest being pursued is the lofty ideal of expertise and intrinsic satisfaction in one's field.[19] Skilled laborers such as engineers are often considered to be part of professional fields. Expectations of control of labor conditions increase moving from a *calling* to an *occupation*, making unions more likely in the latter.[20] This is due to self-interest playing an increasing role in motivation, making a desire for increased wages or benefits more pressing than if the individual instead prioritized their ideals, such as helping others or serving their nation.

Conscription, by connecting the danger of serving one's country with the rights of male citizenship, elevated military service to the esteem of a *calling*.[21] This is the bedrock of the civil supremacy concept, as a faith in a higher purpose of one's service encourages soldiers to accept the reasoning of leaders higher in the chain of command. Individuals who are not motivated by their self-interest will instead prioritize the interests of the institution as a whole as the aspirational nature of a *calling* justifies self-sacrifice for an ideal.[22] Any change to the motivational element of service would worry officials who entrust it with the stability of the civil supremacy concept.

The transformation of military service in the soldier's eyes from a national cause, to merely an option among a wide array of jobs by the AVF began to lower enlistment to an *occupation*. A 1972-1973 survey of 2,522 Navy personnel and 1,855 civilians found that both groups ranked "opportunity to serve their country" as the 10th most important motivation for their job.[23] In comparison, the "opportunity to control personal life" and "good pay" ranked first. Only the older generation of sailors, officers and enlistees over the age of forty-three distinguished their motivations from civilians. This older generation, who had mostly joined the service in the midst of World War II, placed a much greater emphasis on the importance of having an "opportunity to serve their country" and disvalued the "opportunity to control personal life."[24] The newer generation of navy men appeared to be more mercenary and individualistic rather than driven by a higher *calling*, such as the defense of the nation during WWII.

18 Ezra Krendel, "The United States Armed Forces," in *Unionizing the Armed Forces,* eds. Bernard Samoff and Ezra Krendel (Philadelphia: University of Pennsylvania Press, 1977), 161.

19 Ibid.

20 Ibid.

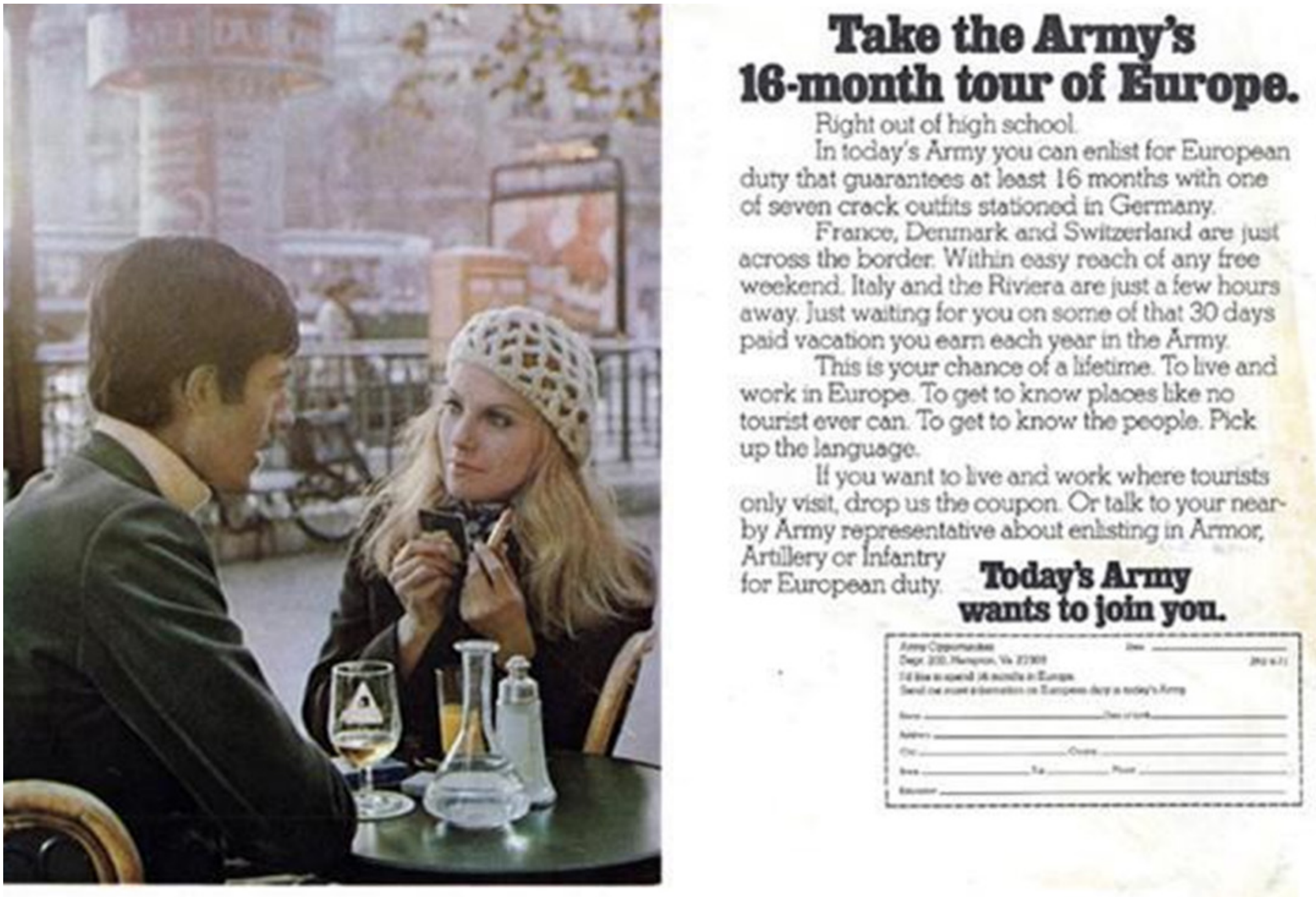
21 Sabrosky, *Blue Collar Soldiers?*, 16.

22 Hallenbeck, "Civil Supremacy," 236.

23 Krendel, "The United States Armed Forces," 163.

24 Ibid.

Figure 1: "Take the Army's 16-month tour of Europe" Advertisment



The transition towards an occupational model can be observed in the changing themes present in enlistment advertising. The 1962 army television advertisement *You Want Action?* does not present military service primarily as an opportunity to serve one's country, but rather a way for individuals to explore and define their identities. Catchy suggestions like "Pick the mechanized infantry, the fast action branch for fast action outdoor guys!" suggest that the military is not an esteemed *calling*, but simply another employer competing for the attention of a self-interested generation.[25] This indicates a shifting of the military career to a *profession*, as the work is framed as an opportunity for the development of the individual to his full capacities.

A decade later, enlistment is further presented as an *occupation* by the introduction of market rhetoric. In one untitled 1973 television advertisement, the shopping cart of a young uniformed John Travolta is loaded up with starting pay, free housing and leis for his generous paid vacation time as chipper music plays in the background.[26] The ad ends with the drawling narrator asking "what're you gonna do with that 288 dollars *every* month? You'll think of something" as Travolta drives off in a snazzy sports car. The appeal of military service is presented in entirely consumerist terms of wealth and con-

25 "Army Recruiting Commercial 'You Want Action?' circa 1962 US Army 60-Second Spot," https://www.youtube.com/watch?v=PnRQjCIdmA4.

26 "John Travolta 1973 US Army Commercial/Advert," https://www.youtube.com/watch?v=ANri2oLWjms.

sumption. Any notion of a motivating duty to one's country is absent and even the potential for self-development advertised in *You Want Action?* is gone. This is in line with the definition of an *occupation* which eschews higher principles in favor of self-interest.

By the mid-70s, even signifiers of military service such as uniforms disappear as in the print advertisement *The Army's 16-month tour of Europe* which with some minor edits could just as well be promoting a study abroad program.[27] Here, a young soldier in civilian clothes shares drinks with an attractive European, clearly taking advantage of the "chance of a lifetime. To live and work in Europe...To get to know the people" and do it all "right out of high school." This is the culmination of a shift away from the sacrificial military member of the greatest generation to the materialistically motivated employee of the neo-liberal period.

As the military became more similar to a civilian employer, a legislative drive to prohibit military unions began in the Senate led by Senator Strom Thurmond. This was justified by conservative organizations such as the Heritage Foundation on the basis of the 1974 Supreme Court case *Parker v. Levy*, which asserted that the military was a "state within a state."[28] That soldiers could be denied constitutional rights was justified in support of the civil supremacy concept, as the court reasoned that restrictions on some rights were "essential to prevent a military man on a white horse from challenging civilian control of the military."[29] Specifically, it was the soldier's first amendment rights to hold and express certain forms of personal opinions and associate to disseminate them, a specific parallel to Article 20 of the UDHR. In 1978, a bill banning any form of membership in a labor union for service members and reservists passed Congress with large majorities and was signed into law by President Carter.[30] The harsh penalties provided by the law stopped the nascent unionism movement in its tracks and the American Federation of Government Employees, the union closest to beginning the unionization process, abandoned its efforts. To date, there have been no movements towards unionization in the United States as legitimate as those of the 70s as "civilian supremacy" in matters of the labor conditions of the military has effectively been cemented into law.

Adoption of Military Units in FRG

Two decades before the United State's near pass with military unionism, the Federal Republic of Germany (FRG) also faced a crossroads concerning the nature of their armed forces and proceeded along an opposite route. After Germany's defeat in World War II, the FRG's 1949 Constitution did not allow for a military, similar to the recently finalized Japanese constitution.[31] The FRG would not have a military until a constitutional amendment five years later, as increasing Cold War tensions and the conflict in Korea made it clear that West Germany would have to assist in its own defense. However, this was not popular with German politicians across the entire political spectrum who remembered Germany's long history of a politically active

27 Appendix I.

28 William Poole, *Unionization of the Military* (S.274 - S.997) (The Heritage Foundation: June 14, 1977).

29 William Rehnquist, *Parker v. Levy* (Supreme Court: June 19, 1974).

30 "Actions - S.274 - 95th Congress (1977-1978)," https://www.congress.gov/bill/95th-congress/senate-bill/274/actions.

31 Grabler, *Military Unions: An Analysis of Unionization in Norway and Germany,* 20.

military going back all the way to Prussia, an armed force that was at various times "a state within a state" with disastrous consequences.[32] A program of unionizing the military was adopted as an official policy of keeping the new defense force in check through a vision of a "citizen in uniform."[33]

The "citizen in uniform" concept aimed to avoid a repeat of the Wehrmacht's control of society by making the soldier equal to his fellow citizens under the principle that if a soldier is to understand and support the democratic project he must be made to feel that he is a full participant in it.[34] The bedrock of this approach is "Innure Fuhrung", which roughly translates as "Inner Strength." "Innure Fuhrung" promotes the idea that soldiers should critically discuss political issues and take stances on those issues as individuals.[35] This is the direct opposite of the American civil supremacy model, where independent questioning of security issues was not viewed as beneficial, but threatening to order.[36] Officially organized on duty discussions on current affairs naturally led to many soldiers considering the possibility of their trade organizing in order to more fully participate in FRG democracy. As Germany is a historically unionized nation, with two in five workers belonging to a union during the period and a constitutional right for labor to organize, to exclude soldiers from this right would have made them feel apart from society.[37] The *Bundeswehr-Verband* (BV) was established in 1956 by the FRG parliament to serve as a union for soldiers, requiring the government to consult with the BV on any decisions affecting the military.[38]

In the decades since its creation, the BV has successfully advocated for its members without weakening the stability of German democratic institutions. The BV has brought military overtime practices and vacation time in line with the private sector and has participated in grievance resolution at all levels of the chain of command.[39] One of the most impactful BV initiatives was the integration of women into all parts of the German military, the result of a lawsuit brought before the European Court of Justice by the BV in 2000.[40] Overall, observers in Germany and the United States agreed during the U.S unionism debate that the military union has had no adverse effects on military preparedness and has even been a positive contributor to morale and discipline.[41]

Under the civil supremacy concept of military discipline, the rights of a soldier are subservient to the need to restrain the ever-present threat of military usurpation. As a result, it is only natural that the United States took such heavy handed approach in the 1970s, enforcing by statute the status of the military as a "state within the state" to be walled off from the rest of society from its influence with regards to their associational rights. To allow a soldier to retain too many rights along with their capacity for force would have the feeling of letting a fox into the henhouse. However, Germany's success with military unionization presented an alternative path, suggesting that soldiers can indeed be

32 Ibid.

33 Ibid.

34 Jean Callaghan, "Unions and the German Armed Forces," in *Military Unionism in the Post-Cold War Era*, eds. Lindy Heinecken and Richard Bartle (New York: Routledge, 2006), 169.

35 Ibid., 170.

36 Hallenbeck, "Civil Supremacy," 236.

37 Comptroller General, "Information on Military Unionization and Organization," 10.

38 Callaghan, "Unions and the German Armed Forces," 171.

39 Comptroller General, "Information on Military Unionization and Organization," 11.

40 Callaghan, "Unions and the German Armed Forces," 172.

41 Comptroller General, "Information on Military Unionization and Organization," 14.

entrusted to be almost complete participants in the democratic project and the community of human rights. Indeed, members of EUROMIL, the pan-European organization of 34 military unions, view the BV and its "inner strength" as a guiding example to be emulated.[42] If a country is capable of seeing soldiers as near equal democratic participants, as in Germany, it can successfully absorb them into the rights holding community, but if it views them as a potential threat as in the United States, they must be relegated to the periphery of human rights.

42 Callaghan, "Unions and the German Armed Forces," 173.

Chicago's History of Police Violence: A Human Rights Violation

Sanya Khatri

Introduction

The Chicago Police Department (CPD) has a long history of committing acts of violence against the people it is meant to protect, especially Chicago's Black population. These acts include the police shooting and killing of 92 people from 2010 to 2015, police beatings before arrest, acts of torture against people in police custody, and many more.[1] Many of these cases of police brutality are hard to make a case against because, to a certain degree, police are authorized to use force to their discretion in some circumstances. This means that police brutality has a vague definition that becomes difficult to argue in court. But in reality, police torture is a specific form of police brutality that has a much clearer definition and is considered to be an international crime.[2] In 1987, the United Nations General Assembly adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[3] According to this international human rights treaty, torture is defined as follows as stated in Article 1:

> For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Under this definition, the use of force such as electric shocks, Russian roulette, beatings and torture that occurred at the hands of Jon Burge and his officers in forcing false confessions from dozens of men from 1973 to 1986, is defined as torture, and is thus a human rights violation. Yet, the CPD has barely held the cops liable for their torture then and continues to ignore many cases of potential torture committed by the CPD today, such as mysterious deaths of those in police custody and the black site Homan Square where several people reported being tortured by the police. What conditions have allowed Chicago police officers to commit acts of torture against Chicago's Black population? How does the absence of effective enforcement mechanisms in international human rights law

1 Richards, Jennifer; Caputo, Angela; Lighty, Todd. "Chicago Tribune - We Are Currently Unavailable In Your Region". 2019. Chicago Tribune. https://www.chicagotribune.com/investigations/ct-chicago-police-shooting-database-met-20160826-story.html.

2 Budimir Babovic. "Police brutality or police torture," *Policing: An International Journal of Police Strategies & Management* 23, no. 3 (2000): 374-80.

3 UN General Assembly, "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," United Nations, Treaty Series, 10 December 1984, vol. 1465, p. 85, available at: https://www.refworld.org/docid/3ae6b3a94.html

relate to holding the United States government accountable for its violation of the UN Convention against Torture?

The Convention against Torture requires that each state party be responsible for making torture a crime under its law, give appropriate punishment to those committing and are complicit in torture, and prevent the occurrence of any act of torture. The CPD, however, has a culture that creates fertile ground for police torture with barely any consequences for the officers who are responsible for these acts. The many instances of torture committed at the hands of Jon Burge is a case that illustrates the flaws in the CPD's accountability system, as well as the potential and limits of change possible through invoking international human rights. The CPD has and continues to engage in a "code of silence" around most police misconduct, especially torture, which means that cases of torture are extremely difficult to corroborate. In addition, there are barely any internal accountability mechanisms within CPD that punish perpetrators of torture without a publicized complaint by the victim and external pressure from protests or federal government. Even if there is evidence or a complaint of police torture, there is a significant lack of consequences for guilty police officers. Even though organizers invoking the fact that Burge's case was a human rights violation did put more pressure on the Chicago government and CPD to hold Burge accountable, there is little power that the Convention of Torture has in holding the state party responsible for preventing and punishing acts of torture. The US has a history of not being held accountable for its human rights violations against people of color, especially its Black population, and this extends to the CPD, the city of Chicago, and the US federal government and the mishandling of police torture cases that continue to occur today.

Torture by Burge and its Harms to Survivors

The exact number of people that Jon Burge and his subordinate officers tortured is hard to determine as current estimates are based only on those victims who came forward. According to an archive put together by the Pozen Family Center for Human Rights at the University of Chicago and the People's Law Office, there were approximately 135 victims of Jon Burge's acts of torture from 1972 to 1991, but this number could be much higher. Most of these victims were Black men. According to Amnesty International, dozens of these men were sent to jail based on the false confessions that were forcefully obtained from them, and there are at least 19 potential survivors of Burge's torture who were still incarcerated as of 2014.[4] The stories of how these survivors were tortured are horrific, with the police mercilessly inducing severe physical and psychological suffering to get them to confess to crimes that they did not commit. Please beware that the stories of victims below illustrate some of the violent torture inflicted by Jon Burge and may be difficult to read.

Victim's Stories

Ronald Kitchen is a survivor of Burge's torture who wrote a striking memoir, My Midnight Years: Surviving Jon Burge's Police Torture

4 Amnesty International USA, "Introducing Amnesty's New Global Campaign Against Torture", Amnesty USA, 2014, https://www.amnestyusa.org/introducing-amnestys-new-global-campaign-against-torture/

Ring and Death Row, on his experience.[5] After being arrested by the police, he was kept in a grim room where he was asked a vague question ("Who have you been talking to?") which was followed by several blows. They proceeded to leave him in the room for hours, in the dark or blinding lights, and the officers came inside to punch and kick him while he was still handcuffed, using the n-word repeatedly. These police officers were Michael Kill and Jon Burge. Kitchen found out that he was being charged for the tragic murder of five people, two women and three children, whom he had never even heard of. The officers left him starving and thirsty, and did not let him use the toilet. They would use the nightstick to beat him in his stomach and testicles. Kitchen was terrified and having had enough, said he would do anything they want. He sat in front of a prosecutor who saw the wounds from the beating, while Kill told a false story of how and why Kitchen had committed the mass murder. The attorney merely asked Kitchen if this is how it happened, and all he said to "confess" was yes. This torture lasted for sixteen hours. This was all it took for a judge to wrongfully convict Kitchen for the mass murder and put him on death row. Though Kitchen was able to escape death row through another trial, he was still sentenced to life. He spent 21 years in prison until he was released in 2009, when the evidence that he had given a forced confession became too high to ignore. Though Kitchen is no longer in jail, he has lost much of his life and will forever live with those traumatic experiences.

Anthony Holmes, a survivor who continues to work against police torture, gave a statement to prosecutors. He described how he had bags put over his head by officers who intended to suffocate him. The officers also put him in handcuffs and attached wires from a box to the handcuffs and electrically shocked him as he suffocated while he begged for help and mercy. He was forced to give a false confession that led to him to lose several years of his life in jail.[6]

Andrew Wilson was forced to confess that he was responsible for killing two cops. He was beaten up by the cops several times, given electric shocks to his ears, genitals and his back, suffocated with a bag, and had several burns on his thighs and chest. When he emerged out of the holding, he was taken to the hospital for medical treatment, where his lawyers took photos of him in his battered state. He was sentenced to jail and appealed multiple times with the help of the People's Law Office; his case eventually became crucial to the eventual firing of Jon Burge. Andrew Wilson died in 2002 with the false label of being a cop killer.[7]

There are several more stories of similar torture committed by Burge and his subordinate officers in Area 2, many cases that never went to court, and many people who are still in jail after having suffered from such brutal treatment. The horrifying part of this was that many witnesses stated that Burge and his officers would refer to their acts of torture as "fun time," as if they enjoyed inflicting pain onto people who they already saw as guilty of crimes and less than human. Given that the police officers often stated the confessions themselves, it does not seem like they were concerned with finding out who really

5 Ronald Kitchen, *My Midnight Years: Surviving Jon Burge's Police Torture Ring and Death Row* (Chicago: Chicago Review Press, 2018).

6 Berlatsky, N. "When Chicago Tortured," The Atlantic, 2014, https://www.theatlantic.com/national/archive/2014/12/chicago-police-torture-jon-burge/383839/

7 PBS. "End of the Nightstick." PBS. 1984. https://www.pbs.org/video/the-end-of-the-nightstick-pbm6ei/

committed these terrible acts, but rather, find ways to get people who they suspected of much smaller crimes off the streets forever. It is difficult to know the motivations of police officers who perpetuate these crimes, but the culture of the CPD might have contributed to officers thinking it is acceptable to commit such violence.

Given the descriptions above and the definition of torture by the UN as "severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed," the terrifying acts that Burge committed are illegal under international law and are thus a violation of basic human rights.

The Responsibility of a State Party

The Convention against Torture includes many statements about what each state party that ratifies the treaty is required to prevent torture. Many of the treaty's articles that address how to do so are broken by the way the CPD treats its torture cases. Article 1 states that all states must take "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." Article 4 states that "all acts of torture are offences under its criminal law" and offences committed by the torturer must be "punishable by appropriate penalties which take into account their grave nature." This means that a state must have an effective system to hold its people accountable for committing act of torture, with proper criminal charges. As stated below, Jon Burge did not get jail time for his crimes of torture, he was imprisoned for lying about not having committed torture, and none of his subordinates who also committed these brutal crimes were ever prosecuted or served jail time. There are also many other articles in the Convention against Torture that will be used for this paper's analysis analysis that are listed in Appendix A.[8] The case of Jon Burge is an example of the extent to which the CPD has been in violation of its human rights responsibilities.

The CPD and the Code of Silence

The CPD has often been referred to have a "code of silence" in which police officers must remain silent when their fellow officers commit acts of torture or other misconduct. The CPD has a culture where not only the police officers are told to ignore their peers' misconduct, but face retaliation if they publicly reveal their acts of violence. The term "code of silence" has been a part of a recent case settled by the city of Chicago, in which two police officers sued the city stating that when they reported their colleagues' criminal activities, they were retaliated against by their colleagues.[9] In the wake of the footage release of the police shooting of Laquan McDonald, Mayor Rahm Emanuel broke the trend of denying the existence of the code of silence in the city. As he noted, "This problem is sometimes referred to as the Thin Blue Line. Other times it's referred to as the code of silence. It is the tendency to ignore, deny, or in some cases cover up the bad actions of a colleague or

8 PBS. "End of the Nightstick." PBS. 1984. https://www.pbs.org/video/the-end-of-the-nightstick-pbm6ei/

9 Kalven, J, "In the Chicago Police Department, If the Bosses Say It Didn't Happen, It Didn't Happen," The Intercept, 2016, https://theintercept.com/2016/10/06/in-the-chicago-police-department-if-the-bosses-say-it-didnt-happen-it-didnt-happen/

colleagues."[10] This code of silence means that when acts of torture occurred under Area 2, the district that was under Jon Burge's command, it was unlikely for police officers to report such cases to others. Police officers are well aware of the code of silence and understand the consequences of speaking against the wrongdoings of their colleagues, keeping them from doing so. This code of silence means that unless a victim of police torture makes a complaint, the issue will be completely ignored. Even if they do complain, it is extremely difficult to corroborate the evidence given by victims and their testimonies are often discredited.[11]

Andrew Wilson was part of one of the first cases of Burge's police torture to result in a civil lawsuit by the People's Law Office. His case was monumental in building a case against Burge that would eventually lead to him being fired. When Wilson's publicized trial occurred, people had a hard time believing Wilson. Moreover, Wilson's lawyers knew of only one other instance of police torture by Burge, until they received an anonymous letter from a Chicago police officer who revealed Burge's co-conspirators and other torture victims, including Melvin Jones. This anonymous letter, later revealed to be from Detective Frank Laverty of Area 2, decided to turn in street files that his fellow officers had hidden; this revelation turned the department on its head. Instead of praising Laverty for upholding the law, Internal Affairs investigated why he did not notify his superiors that he would testify against his peers. In a sworn statement, a police officer present at the time said that Burge had once pretended to shoot Laverty in the back of the head by raising his gun and saying "Bang." Burge told him one that he would be fired soon, after Laverty was moved from afternoons to night shifts. After getting his car serviced at Area 2, Laverty pulled onto the Dan Ryan Expressway and his brakes failed, because he thought the mechanic, a brother of a detective in Area 2, had tampered his brakes. After a few months, he was transferred to desk duty for which he had to collect urine samples. His fellow police officers might have tried to kill him for speaking up against police torture that led to improving the city's accountability system. Instead of being rewarded for his work by his superiors, Laverty's superiors demoted him from his job as a detective to collecting urine samples.[12]

The code of silence is not just a peer-to-peer assumption. Rather, it is a warning that if officers do not comply, everyone–including your superiors– will take serious retaliation against them. This means that people are forced to comply with acts of internal torture. This is in direct violation of Article 4 of the Convention against Torture, which states that the complicity in an act of torture should be considered a criminal act. Instead of preventing complicity, the code of silence by police officers directly forces it upon its police officers.

Silence of the City

In addition to forced silence, there has been continued silence by several officials of the city of Chicago and Cook County. For instance, in 1982, when Dr. John Raba, Medical Director of Cermak Health Services at Cook County Jail,

10 Chicago Mayor's Office, "Mayor Emanuel's Address on Police Accountability to City Council: Justice, Culture and Community," YouTube, 2018, https://www.youtube.com/watch?v=G-7GleZGTOU.

11 Budimir Babovic. "Police brutality or police torture," *Policing: An International Journal of Police Strategies & Management* 23, no. 3 (2000): 374-80.

12 Conroy, J, "The Good Cop," Chicago Reader, 2007, https://www.chicagoreader.com/chicago/the-good-cop/Content?oid=923990

saw how beat up, burned, and scarred Wilson was, he sent a letter to the Police Superintendent Richard Brzeczek describing Wilson's injuries and allegations of torture, urging for an investigation. When Brzeczek got the letter, he deferred action and instead reported it to the State Attorney at the time, Richard Daley, who would go on to become the Mayor of Chicago in 1989. Daley did not take action regarding a possible investigation just as he did not take any action for seven years when he was the State Attorney, ignoring 55 allegations of torture by Burge and his men. When the director of the Office of Professional Standards (OPS), which handles CPD discipline, informed CPD Superintendent Brzeczek of eleven cases of electric shock in police custody, including Wilson's case, neither OPS nor Superintendent Brzeczek took any action. In 1985, three years after Dr. Raba's request to investigate Wilson's torture allegations, OPS simply dismissed his complaints. While all of this was happening, from 1981 to 1988, there were 55 different allegations of police torture that Daley's office was aware of but nonetheless used the coerced evidence in trials to wrongfully convict victims of police torture to prison. It was only after anonymous letters and community pressure that OPS eventually reopened Wilson's torture allegations.[13] When the city of Chicago and Burge got sued in a civil lawsuit for Wilson's torture, the city spent millions of dollars on private lawyers to defend Burge. In the next few decades, the city paid more than $57 million in reparations to victims. The city continues to pay Burge's family $4,000 a month in pension.[14]

In over two decades, the city ignored all of these allegations of torture, allowing Burge's violence to continue and even came to his support when his cruel tactics were sued. This means that the complacency in torture extends beyond the CPD and in fact, incriminates all those involved, including the former Mayor of Chicago, Richard Daley. This is in direct violation of Articles 12, 13, and 15. The constant refusal to investigate against alleged instances of torture until there was enough political pressure is a violation of article 12 and 13, because it does not deliver on the "prompt and impartial investigation" into these possible torture cases by "competent authorities." Article 15 was also violated when the State Attorney Office refused to investigate allegations of torture against Burge and used false confessions as evidence to wrongfully convict people. That said, much of the leadership behind Chicago's criminal justice system was guilty of these human rights violations.

Lack of Consequences for Police Officers and Complacency

Even though there were several individuals on all rungs of the leadership ladder in Chicago who failed to hold any other officers accountable promptly, very few of them faced any substantial consequences, including Burge, who served less time than many of the people he wrongfully put away. The trial between Andrew Wilson and Jon Burge was highly publicized in 1989, with several people protesting Burge and standing up for the torture survivors. There was overwhelming evidence from the anonymous letters regarding Burge's torture, other victims, and the involvement of Daley and Superinten-

13 Students for Human Rights at the University of Chicago, "Timeline | Chicago Torture Archive | The University of Chicago," Chicago Torture Archive, 2018, https://chicagotorturearchive.uchicago.edu/page/timeline

14 Roberts, S, "Jon Burge, 70, Ex-Commander in Chicago Police Torture Cases, Dies," New York Times, 2018, https://www.nytimes.com/2018/09/20/obituaries/jon-burge-dead.html

dent Brzeczek in ignoring these allegations. But this evidence was not shown to the jury by the presiding judge and the trial ended because the jury could not reach a unanimous verdict. Wilson was tried again because the initial trial that sentenced him to the death penalty was a mistrial. This meant that Burge was not charged with anything at this time. But when the evidence had piled too high for the public to ignore, the OPS eventually investigated these torture allegations in the fall of 1989, five years after they had initially ignored those allegations. In late 1990, the OPS investigation revealed that Burge and two officers under his supervision should be fired for torturing Wilson, and that Area 2 had systematic use of planned torture in fifty cases of abuse. It was not until a year later after a revelation that Burge tortured a thirteen-year-old coupled with pressure from Amnesty International that Superintendent Leroy Martin submitted a request to the police board to fire Burge and the two other police officers. After a few more years of ignoring torture reports that were released by the OPS and reinvestigating their reports, the Chicago Police Board decided in 1993 to fire Burge, suspend one officer for fifteen months, and exonerate another officer. The police ignored any statements on the systematic nature of torture occurring at Area 2. Even though Burge was fired, other police officers continued to respect him, setting up a fundraiser for him. In addition, the Fraternal Order of Police, the labor union representing the police officers, tried to have a float in the St. Patrick's Day Parade in Burge's honor but could not due to community outrage.[15] Burge still received a $4,000 a month pension, which his family continues to receive to this day even though Burge passed away in September 2018.[16] This means that the city has paid Burge in some capacity nearly $1,200,000 just in pension. Even more, instead of paying for his crimes, Burge did not receive any criminal charges for several years.

In the following two decades, there have been several more cases brought forth in which it was revealed that Burge tortured more people than originally thought, bringing a total of 135 cases of torture before the council. Even though the city admitted in 1995 that Burge had tortured Andrew Wilson, there were no criminal charges brought against Burge. The city did pay out awards to Wilson, his attorneys, and settled several other cases of torture by Burge, which cost the city $6 million in legal fees defending Burge and the city. Eventually, in 2010, after several years of protests, statements by human rights organizations, investigations and re-investigations, Jon Burge was tried for obstruction of justice and perjury. Since many of the people who could have charged Jon Burge with criminal acts delayed the process or blatantly ignored allegations for almost 40 years, the statute of limitations was over. Thus, they could not charge him for committing acts of torture, but could only charge him for having falsely testified about not having committing torture in his previous trials.[17] This meant that Burge only served four and a half years in prison for the torture of 135 individuals, while many of his victims lost decades of their lives due to false confession and/or faced the death penalty. This is in complete violation of the Convention against Torture as it

15 Students for Human Rights at the University of Chicago, 2005.

16 Roberts, S, "Jon Burge, 70, Ex-Commander in Chicago Police Torture Cases, Dies," New York Times, 2018, https://www.nytimes.com/2018/09/20/obituaries/jon-burge-dead.html

17 Students for Human Rights at the University of Chicago, 2005

shows that even if torture is criminalized under US federal law, it is almost impossible to charge police torturers with criminal offenses because of the lack of accountability systems.
The discouraging part of this story is that Burge's trial was a success story. The city admitted that Burge was responsible for torturing individuals in order to elicit false confessions, and conducted investigations into his crimes, albeit much later than they had stated they would. The other officers who were involved were also considered to be criminals according to international law, but did not suffer any serious repercussions for their crimes. This lack of accountability and punishment for such grave and brutal crimes makes it seem as if torture is acceptable or excusable in the CPD. This also means that there is not proper deterrence for future officers from committing such crimes.

Invoking Human Rights, Hope, and Limitations

This paper, thus far, has listed several articles and violations of human rights that Burge and his subordinates committed, as well as the community activists, lawyers, and international and Chicago-based human rights organizations that were well aware of the crimes Burge committed that were in violation of the Convention against Torture. In 1990, when protests against Burge were heating up, one of the leaders, Lewis Myer, said that the torture was a "systematic violation of human rights in Chicago." Another protestor had a sign that said "Chicago Cops you can't hide, we charge genocide."[18] This sign is a reference to the infamous appeal that was made first in 1946 by the NAACP to the UN about the poor treatment of Black people in America from slavery to Jim Crow. Eleanor Roosevelt, who played a fundamental role in writing the Universal Declaration of Human Rights by the UN, did not support this appeal. Congress's representatives from the South and fear of criticism meant that the US brushed over its human rights abuses towards its Black people.[19] Later in 1951, a petition called We Charge Genocide was presented to the UN Genocide Convention by the Civil Rights Congress, which led to the US saying that racial inequality was exaggerated and was part of a communist scheme. Thus, the protests against Burge exist in the history of the US ignoring accusations of human rights abuses against Black people. And as history has shown, there are grave limits to how much the UN and other human rights organizations can actually hold the US accountable for its human rights violations. Yet, Black organizers and their allies tried and got closer to receiving justice than people did before them thanks to to the outcry by human rights agencies, though it is only a small step in the right direction.

Invoking human rights violations when fighting against Burge created greater media pressure on the city of Chicago to act and legitimize the concerns of the victims. In 1991, Amnesty International, a human rights organization that covers many issues including a campaign against torture, created a report after a council hearing on torture in Chicago; after the creation of the report, nothing was by the city to city investigate police torture. The council scheduled the hearing on torture on Christmas Eve,

18 PBS, 1984

19 Carol Anderson, "A "Hollow Mockery": African Americans, White Supremacy, and the Development of Human Rights in the United States," in Bringing ringing human rights home : a history of human rights in the United States, ed Cynthia Soohoo, Catherine Albisa, and Martha F. Davis (Philadelphia : University of Pennsylvania Press, 2009), Ch 3.

hoping that it would not get much attention. With the help of Amnesty International's media public release, however, these cases received more attention and legitimized protests against Burge. The Task Force to Confront Police Violence that organized in protest of Burge stated that Amnesty International's involvement in the Chicago police torture cases was critical to their movement because of its publicity power. By invoking that Chicago was perpetuating violations of human rights, the movement against torture received stronger footing and pressured the city to act out of shame.

In 2005, a Federal Appeals court judge wrote in his dissent statement on case about a torture victim that the Chicago torture blatantly ignores could be compared to Abu Ghraib facility in Iraq. The judge stated that if the allegations were proven to be true, the US would be in violation of the Convention against Torture.[20] This shaming of the US's criminal justice system broke the long-held myth of American exceptionalism, where the US is held as a beacon of democratic and moral values for the rest of the world. When talking about the acts of torture that occurred in Chicago, there was an element of shock and denial that something like that could happen in the US. In a city council meeting on reparations for the victims of Burge's torture, Alderman Proco Joe Moreno stated that the torture was "some horrific behavior that happened right here in Chicago, not in Iraq, not in Syria, right here in Chicago."[21] President Barack Obama stated that torture could "damage the United States' reputation as a force for good in the world." It seems as if the power of human rights organizations talking about torture in the US is a matter of shaming the US and questioning its position to the rest of the world.[22] y being accused of human rights violations at home, the US risks losing its powerful position it currently holds when intervening in other countries' human rights violations to hypocrisy.

In 2005, the People's Law Office, which represented multiple torture survivors for decades, sent a message to the UN Committee against Torture saying that the US had failed to comply with Article 2 of the Convention against Torture. They also stated that they had exhausted every possible local remedy to this issue, hoping that the UN committee would intervene. It is hard to tell if this had any real consequences for the US, as an investigation was filed by the committee in 2005 asking about its compliance with Article 2, but no information can be found about what the committee ruled or suggested that the US should do in response to this issue. According to the Convention against Torture, the committee has the power to ask each state party to cooperate in providing information to investigate whether the state has broken compliance with the treaty. Though the committee has formal powers to investigate, there is little it can do if they conclude a state party has committed torture except to tell the state to fix the problem. The committee can "deal with the matter" only when the state party has exhausted all domestic remedies. If the committee thinks these remedies will not be effective, all it can do is try to find a "friendly solution," which is not fully described

20 Students for Human Rights at the University of Chicago, 2005

21 CAN TV, Establishment of "Reparations for Burge Torture Victims Fund," YouTube, 2018, https://www.youtube.com/watch?v=lo4PTg_kBcY

22 Office of the Press Secretary, "Statement by the President on the International Day in Support of Victims of Torture." White House, 2016, https://obamawhitehouse.archives.gov/the-press-office/2016/06/26/statement-president-international-day-support-victims-torture

in the Convention against Torture.[23] Even if the committee had intervened in the case of Burge, could it possibly bring about any change when the torture was so embedded within the CPD? It seems as if the UN does not have much power to enforce its rulings or suggestions to state parties. Not to mention how much power the US already yields in international human rights, as one of the vice-chairpersons is from the US, in addition to other countries on the board like Morocco, Russia, and China, which all have cases of torture occurring in their own countries that the UN has not addressed.[24] How can the UN Committee against Torture hold state parties accountable for ending torture when its own members are perpetuating it?

In conclusion, it seems that invoking human rights has little substantial impact on US domestic policy except in instances when it legitimizes the campaigns of local activists and adds pressure on Chicago's officials to refrain from ignoring torture allegations and take action, like firing Burge and charge him for perjury. Eventually, in the case of Burge, the city complied with Article 14 of the Convention on Torture by giving reparations to the victims of Burge's torture.[25] Overall, it is difficult to tell whether invoking the power of international human rights organizations made it possible or was a deciding factor in the city eventually taking responsibility for this particular case of police brutality. Given that Burge and the city of Chicago was able to get away with committing and covering up acts of torture for several years, it is clear that there needs to be a serious reconsideration of how international human rights law is enforced.

23 United Nations Human Rights Office of the High Commissioner. "OHCHR | Committee against Torture." Office of The High Commissioner. 2018. https://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx

24 United Nations Human Rights Office of the High Commissioner, 2018; Amnesty International USA, "Morocco: Getting away with torture," Amnesty UK, 2018, https://www.amnesty.org.uk/morocco-getting-away-torture; Cumming-Bruce, N, "Russia Promises to End Prison Torture. U.N. Experts Are Unconvinced," New York Times, 2018, https://www.nytimes.com/2018/07/26/world/europe/un-russia-torture.html; Schmitz, R, "Ex-Detainee Describes Torture In China's Xinjiang Re-Education Camp," NPR, 2018, https://www.npr.org/2018/11/13/666287509/ex-detainee-describes-torture-in-chinas-xinjiang-re-education-camp.

25 Moore, N, "How Chicago's Survivors of Police Torture Won Reparations," The Marshall Project, 2018, https://www.themarshallproject.org/2018/10/30/payback.

Appendix A: Excerpts from the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative,

administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Case Study of the Use of Administrative Segregation as Torture at Pelican Bay State Prison

Harini Shah

Despite international recognition of solitary confinement as an act of torture, the United States uses methods to confine inmates for extended periods of time particularly within its supermax prisons. Supermax facilities are maximum security prisons and are considered to be the most secure levels of custody in the U.S. prison system. Very few countries aside from the United States contain supermax facilities to detain inmates. Considered to house the worst of the worst criminals, correctional officers within these prisons frequently violate the inmates' human right to be free from any cruel, inhumane, or degrading punishment. The concept of a supermax prison must include a conversation about human rights because many prisoners in these facilities are typically isolated for up to twenty-four hours a day. Consequently, they are deprived of the need for social contact that studies show is important to retain a healthy lifestyle. Pelican Bay State Prison in California is a notorious example of a supermax prison that employs solitary confinement to correct detainees without very much restriction.

Using Pelican Bay as a case study, I will outline why men's supermax facilities in California consistently violate the human rights of prison inmates by using administrative segregation. I will begin by categorizing the use of segregation within the context of international human rights frameworks as an act of torture then describe the history of administrative segregation in California. I will move into a discussion of psychological consequences discovered by a study on Pelican Bay State prisoners and end with an analysis of social implications of administrative segregation as well as why, knowing that this practice is torture, supermax prisons continue to use it. The conditions at Pelican Bay State Prison represents the failure of the California Department of Corrections and Rehabilitations (CDCR) to acknowledge the realities of administrative segregation: the practice is a mode of employing torture on prisoners, and it imposes severe psychological impairment on the inmate, doing nothing to help rehabilitate the individual. The failure to acknowledge such realities does not come from negligence but is an intentional consequence of vague rhetoric within legal frameworks in the United States and California.

Categorization as a Human Rights Violation

Pelican Bay State Prison is California's supermax prison, a facility within the Redwood forest that can house up to 3,319 individuals.[1] Used as a prison to house only the most difficult, high-risk, dangerous prisoners in the United States, Pelican Bay has been reported to use solitary confinement as a correctional method more frequently than any other supermax institution in the United States.[2] Solitary confinement

1 "Pelican Bay State Prison (PBSP) Fact Sheet." *California Department of Corrections and Rehabilitation*, 2017. https://www.cdcr.ca.gov/Facilities_Locator/PBSP.html.

2 Craig Haney. "Infamous punishment: The psychological

spaces manifest at Pelican Bay as individual housing units in a box of cement no larger than a common bathroom. At Pelican Bay, these isolation units are called Segregated Housing Units (SHU). As of fall 2018, 49,197 prisoners (4.6% of total inmates) were in SHU across the country.[3] In California, SHU prisoners are permitted at least one hour five times a week to fulfill their recreational goals as well as 15-minute showers three times a week.[4] This entails being escorted in full restraints to the recreation room, a 90-square-foot concrete cell that only contains a pull up bar mounted to the wall.[5]

The mechanisms of solitary confinement for adult male prisoners in supermax facilities have changed over time. Currently, the term is defined as a form of confinement where prisoners spend about 22-24 hours a day by themselves in a cell without any form of contact. The goal of this practice is to reform convicts who have committed crimes while in prison. Rather than using the term "solitary confinement," correctional officers at Pelican Bay State prison have begun to use the word "administrative segregation" to describe the practice of detaining individuals within isolated units, although both terms refer to the same practice.

In the past, it seemed to be a tactic to soften detainees, particularly before and after interrogation sessions. It became clear at a certain point that this method, rather than rehabilitating detainees, caused prisoners to become mentally ill from the sensory deprivation; however, whether its use for interrogation has been eliminated remains questionable.[6] Solitary confinement has become ingrained in prison protocol; despite the effects on prisoners, prolonged solitary confinement punishments was a widespread practice in supermax facilities by the end of the 20th century. These facilities are typically reserved for restricting the most high-risk and difficult to control prisoners.[7]

Massive amounts of evidence that shows the detrimental health effects of solitary confinement, studies have isolated two areas of concern that have made the most lasting impacts on prisoners: the length of time individuals spend in restrictive housing and the impact of mental illnesses that develop during this time. At the moment, there are no standardized methods to define and track either of these areas. According to many authors, not all correctional systems record how long prisoners stay in restrictive housing.[8] Each system had a different of categorizing and defining the notion of "serious mental illness," especially when accounting for the inmates in restrictive housing. Using each jurisdiction's definition, the ASCA-Liman Research agenda found that more than 4,000 people with serious mental illnesses were in restrictive housing in 2018.[9]

The fundamental issue behind Pelican Bay and other supermax prisons using administrative segregation to control the population, however, is the fact that many officials have turned a blind eye to the classification of solitary confinement

consequences of isolation." *The National Prison Project Journal*, Spring 1993: 3-21.

3 "Aiming to Reduce Time-In-Cell." *Association of State Correctional Administrators*. Yale Law School, 2016.

4 "What is Administrative Segregation?" *National Institute of Justice*, March 26, 2012, https://www.nij.gov/journals/269/pages/administrative-segregation.aspx.

5 Shalev, Sharon. *A sourcebook on solitary confinement*, edited by Sharon Shalev, 2008.

6 Shalev, Sharon. *A sourcebook on solitary confinement*, edited by Sharon Shalev, 2008. Page 4.

7 "Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell." *Association of State Correctional Administrators*. Yale Law School, 2018. Page 21.

8 Ibid.

9 "Aiming to Reduce Time-In-Cell." *Association of State Correctional Administrators*. Yale Law School, 2016.

as torture. Prison wardens and correctional officers, by labeling this treatment as administrative segregation, have distanced themselves from the rhetoric used by many international and regional bodies to set restrictions on such confinement. According to the UN Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, prolonged solitary confinement can be defined as torture if the individual is under isolation for 22-24 hours a day for longer than 15 days.[10] Article 7 of the International Covenant on Civil and Political Rights (ICCPR) through the UN Human Rights Committee mentions: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment…to protect the dignity and the physical and mental integrity of the individual."[11] The Universal Declaration of Human Rights in Article 5 states, once again, that "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."[12] The American Convention on Human Rights, signed in 1969, affirms this statement.[13] The UNHRC, in paragraph 6 of its General Comment No. 20, took note that prolonged solitary confinement of the detained or imprisoned person might qualify as acts that are prohibited by article 7 of the ICCPR. The UN Committee against Torture recognized the harmful physical and mental ramifications of prolonged solitary confinement and expressed concern in its use, including when it is used as a preventative measure. The Committee recommended that its use be abolished.[14] In 1990, the General Assembly adopted resolution 45/111, the Basic Principles for the Treatment of Prisoners. According to Principle 7, efforts to abolish or restrict solitary confinement as a punishment should be undertaken and encouraged.[15] UN Conventions, charters, and other nations have adopted the same standards to uphold. What these documents have in common is that they all define solitary confinement with similar or exact words: cruel, inhumane, and degrading punishment. There is a consensus that solitary confinement, and thus administrative segregation, constitutes torture, yet this consensus is not reflected by United States legal frameworks.

Despite the above definitions and surface attempts to move towards more restrictive policies, the language used by correctional and investigative bodies within the United States government such as the CIA, U.S. Department of Justice, as well as correctional officers, remains purposefully vague to allow for more freedom in the use of administrative segregation as a correctional tactic. The United Nations criticizes the U.S. for this very offense in a UN Committee against Torture report in 2014.[16]

There is variation among states with relation to how federal recommendations regarding the deployment of segregated housing are interpreted. Many states, such as Colorado, have begun to develop more restrictive policies

10 UN General Assembly. "Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment." A/66/268, 2011.

11 UN General Assembly. "International Covenant on Civil and Political Rights." *Treaty Series 999,* 1966: 171.

12 UN General Assembly. "Universal Declaration of Human Rights." *Treaty Series 217A*, 1948: III.

13 Schulz, William F. "Chapter IV, Reading 1 'Coercive Techniques'" In *The phenomenon of torture: readings and commentary*, edited by William F. Schulz, 158. Philadelphia: University of Pennsylvania, 2007, Index.

14 UN Committee against Torture. "Concluding observations on the combined third to fifth periodic reports of the United States of America." CAT/C/USA/CO/4, 2014.

15 "Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell." *Association of State Correctional Administrators*. Yale Law School, 2018, Page 21.

16 UN Committee against Torture. "Concluding observations on the combined third to fifth periodic reports of the United States of America." CAT/C/USA/CO/3-5, 2014.

towards administrative segregation, implying that officials in California are aware of the ramifications surrounding confinement but have yet to follow through with policies which support the human rights of inmates. In 1993, the Colorado Department of Corrections had completed construction of its first facility dedicated to administrative segregation, the Colorado State Penitentiary.[17] In July 2013, an offender was released from administrative segregation after several years of isolation directly into the community. He walked straight from the prison into the home of a citizen in Denver and assassinated him, and Tom Clements, the Executive Director of the Department of Corrections.[18] This event became the catalyst for administrative segregation reform in Colorado. Today, Colorado's policies for confinement in maximum security prisons remain one of the most stringent. Other U.S. supermax facilities have begun to establish clearer, tighter regulations on the use of administrative segregation, yet Pelican Bay fails to build on the momentum set by Colorado.

The loss of civilians' lives should not be what it takes for governments to begin taking steps to reform legislations restricting the use of administrative segregation. Rather than simply observing Colorado's tragedy, California must use Colorado as an example to move towards more humanitarian practices within supermax facilities, beginning with stricter limitations on the use of administrative segregation.

17 Roemsich, Rick and Kellie Wasko. "Open the Door: Segregation Reforms in Colorado." *Colorado Department of Corrections*, 2012, Page 23.

18 Schulz, William F. "Chapter IV, Reading 1 'Coercive Techniques'" In *The phenomenon of torture: readings and commentary*, edited by William F. Schulz, 158. Philadelphia: University of Pennsylvania, 2007, Index.

History of Administrative Segregation in California

The history of administrative segregation in California consists of a series of slowed attempts at reform. In 1973, The Assembly Select Committee on Prison Reform and Rehabilitation released a report on conditions during administrative segregation after an analysis of four prisons in California "reflect[ing] the Department of Correction's recognition of the problems of administrative segregation as well as the Committee's."[19] Although Pelican Bay did not exist at the time, prisons such as San Quentin State Prison, Folsom State Prison, Duel Vocational Institution, and California Institution for Men were monitored by their abilities to fulfill the basic needs of humans in the 20th century, including: medical services, exercise and recreation, and personal hygiene. The report acknowledged "the need for a unit which can separate violent, assaultive, disruptive men from the general population" but also criticized the Department for having "developed a system which not only segregates these men but oppresses and represses them as well."[20]

In fact, the report uses language that does account for the human rights of these prisoners, explicitly stating that "the Department of Corrections…cannot ignore the human needs of the individuals in lockup" and that "the basic principles of human dignity need to be observed."[21] Given this rhetoric, however, it then remains unclear why administrative segregation con-

19 California Legislature Assembly Select Committee on Prison Reform and Rehabilitation. *Administrative segregation in California's prisons report,* 1973: vii, 143, Page 7.

20 Ibid, Page 5.

21 "Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell." *Association of State Correctional Administrators*. Yale Law School, 2018, Page 21.

tinues to be used by prisons today. This report was drafted specifically as a resource for future government officers involved in regulating the use of administrative segregation in California, meaning that it likely reached many people who had the opportunity to engage in reform. Despite the spread of this knowledge, there has been very limited progress in restricting the practice today. This report also reveals that the Department of Corrections had been made aware of the fact that administrative segregation violates the human rights of prisoners—thirty-five years ago. Therefore, this report is evidence of the concerted effort of the Department of Corrections to continue confining individuals at the Department's discretion, despite knowledge that doing so goes against policy. With this report and thirty-five years of virtually no reform thereafter it is clear that a disregard of policy has been methodical and directed.

One consequence of such stagnant systems like the Department of Corrections in California is a loss of hope, among prisoners, that conditions will improve. A loss of hope, exacerbated by California prison conditions, has led to the belief that prisoners who admit to mental illness are weak.[22] This belief creates biased results when researchers use self-reported data to analyze human rights violations in the prison system. In a report on the conditions of SHU at Pelican Bay from Stanford University, researchers acknowledged that while all interviewees gave consent to participate, their stories may have been filtered versions of what happened, as prisoners may have been hesitant to disclose the full extent of psychological harm they experienced due to the stigma against mental illness at Pelican Bay.[23] Additionally, prisoners at Pelican Bay commonly view prolonged confinement as an attempt to break them down mentally. Whether Pelican Bay correctional officers do have this goal remains inconclusive and will be discussed later, but the intention inevitably does not matter because prisoners view their acknowledgment of having psychological symptoms as evidence of being "broken."[24] Inmates are thus influenced by prison power dynamics and administrative segregation into downgrading their psychological issues at Pelican Bay. This issue has not yet fully been addressed with action despite criticism.

Psychological Consequences of SHU at Pelican Bay State Prison

Despite the downplaying of symptoms by prisoners, the Stanford report took note of several mental health impairments inmates commonly acquired in SHU at Pelican Bay. Mental health ramifications after solitary confinement underscore the consequences of limiting administrative segregation.

Mood

Most interviewed prisoners expressed feelings of irritability, intense anger, anhedonia, hopelessness, and depression.[25] Almost all prisoners reported sleep difficulties, pointing to symptoms and intrusive thoughts that implied severe insomnia. Prisoners also reported experiencing excessive levels of fatigue, loss of appetite, and guilty thoughts. Several inmates reported having suicidal thoughts.[26] One pris-

22 Human Rights in Trauma Mental Health Lab. "Mental Health Consequences Following Release from Long-Term Solitary Confinement in California." *Stanford University*, 2017, Page 5.

23 Ibid, Page 6.

24 Roemsich, Rick and Kellie Wasko. "Open the Door: Segregation Reforms in Colorado." *Colorado Department of Corrections,* 2012, Page 23.

25 Ibid.

26 Human Rights in Trauma Mental Health Lab. "Mental

oner described SHU as a place to "learn impatience, learn intolerance, and learn irritability."[27] This quote is particularly striking because the purpose of SHU, to the Department of Corrections, appears to be a correctional one. Rather than reforming individuals, though, many felt as though their mindsets became even worse than before.

Anxiety

Almost all prisoners reported feeling symptoms of anxiety that lie within common diagnoses of Panic Disorder, traumatic stress disorder, and/or obsessive-compulsive disorder.[28] To work with this anxiety, prisoners reported obsessively organizing their belongings, keeping strict daily routines, and excessively cleaning their cells with the attempt to regain a sense of independence in their lives.[29]

Emotional Numbing

Many prisoners felt the need to intentionally distance their feelings so that they could cope with the experience of complete isolation. They reported removing themselves from emotions that particularly involved a certain amount of vulnerability, like sadness or fear.[30] This attempt to suppress emotions and dysregulation has been shown to continue for prisoners when they transfer out of SHU and enter back into the general prison population, pointing to signs of long-term psychological damage within Pelican Bay.

Cognition

All prisoners described their cognitive difficulties as persistent and worsening to some degree.[31] Similar to aforementioned notions of anxiety, inmates described feeling nervous and distrustful around correctional officers.[32] The feelings of mistrust that inmates develop against officers are an indication that SHU conditions are unlikely to promote the betterment or rehabilitation of the individual.

Relational Estrangement

One inmate described the lack of meaning in his life after being put in SHU: "The things that used to have meaning no longer have any meaning…SHU made me lose all my ability to trust. You can't imagine the hopelessness. If you don't find an outlet this place will make you go insane."[33] Almost all prison inmates described how they lost relationships with friends, family and other loved ones due to their isolation.[34] According to guidelines for prison control at Pelican Bay, inmates are typically only told of their family's condition if someone passes away.[35] To control this grief, prisoners reported distancing themselves from the death of that family member so that they could cope with their inability

Health Consequences Following Release from Long-Term Solitary Confinement in California." *Stanford University*, 2017, Page 7.

27 Roemsich, Rick and Kellie Wasko. "Open the Door: Segregation Reforms in Colorado."

28 UN Committee against Torture. "Concluding observations on the combined third to fifth periodic reports of the United States of America." CAT/C/USA/CO/3-5, 2014.

29 Human Rights in Trauma Mental Health Lab. "Mental Health Consequences Following Release from Long-Term Solitary Confinement in California." *Stanford University*, 2017, Page 9.

30 Ibid, Page 10.

31 California Legislature Assembly Select Committee on Prison Reform and Rehabilitation. *Administrative segregation in California's prisons report,* 1973: vii, 143, Page 5.

32 Ibid.

33 Human Rights in Trauma Mental Health Lab. "Mental Health Consequences Following Release from Long-Term Solitary Confinement in California." *Stanford University*, 2017, Page 11.

34 "Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell." *Association of State Correctional Administrators.* Yale Law School, 2018, Page 21.

35 "Pelican Bay State Prison (PBSP) Fact Sheet." *California Department of Corrections and Rehabilitation*, 2017. https://www.cdcr.ca.gov/Facilities_Locator/PBSP.html, Page 2.

to even attend funerals or communicate with other loved ones about their grief.[36]

Social Implications of SHU at Pelican Bay State Prison

The human cerebellum, the part of the brain which coordinates movement, responds to cues from the outside world and corrects motor behavior based off massive amounts of sensory information sent in from the environment. This information is then filtered into perception. It is the ability to connect with the world that allows the human brain to coordinate movements, and without this extensive array of knowledge coming in, humans cannot make a definitive interpretation of their actions. Consequently, they require a variety of social and sensory cues from others and their environment to function effectively, making them inherently social animals. Considering this fact, it is apparent that administrative segregation, in any capacity, calls into question whether the California Department of Corrections and Rehabilitation (CDCR) values the human needs of prisoners. Isolation deprives a social being from the natural ability to perceive and interpret his actions. Through administrative segregation, the CDCR has managed to strip away one of the only freedoms these prisoners have left: the opportunity for inmates to continue socializing and communicating with others. The SHU at Pelican Bay instead binds inmates to their correctional officers, who control every bit of social interaction that these inmates have with other humans on a day-to-day basis.

This loss of identity dehumanizes a prisoner in SHU, making him feel less like a social entity and more like an object placed within a concrete box. This dehumanization becomes evident from self-reported interviews of SHU prisoners at Pelican Bay: "We live in concrete and steel. The human body wasn't meant to live like that…I find it hard to find reasons to exist."[37] The fact that a human is, by definition, a social animal and needs contact with the outside world to function becomes evident through the kind of rhetoric used by inmates; the Stanford report notes, "Some of the most pronounced and enduring effects of long-term isolation appeared to have resulted from relational estrangement and social isolation; interviewees frequently reported losing, over time, the motivation to seek social connection."[38] Administrative segregation at Pelican Bay clearly results in the opposite of rehabilitation for prison inmates, qualifying as cruel and inhumane punishment.

An analysis of prison conditions in SHU has been shown to make confined inmates feel even more isolated and prone to violence within their communities after parole than before arriving to the prison. According to a study detailing the effects of SHU at Pelican Bay as a "self-fulfilling prophecy," after the experiences of solitary confinement, most inmates become highly malleable, unnaturally sensitive, and vulnerable to the influence of those who control the environment around them.[39] Placing inmates within SHU, according to the study, exacerbates any emotional, psychological, and behavioral

36 "Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell." *Association of State Correctional Administrators.* Yale Law School, 2018, Page 21.

37 Human Rights in Trauma Mental Health Lab. "Mental Health Consequences Following Release from Long-Term Solitary Confinement in California." *Stanford University*, 2017, Page 12.

38 "Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell." *Association of State Correctional Administrators*. Yale Law School, 2018, Page 21.

39 King, Kate, Benjamin Steiner, & Stephanie Ritchie Breach. "Violence in the Supermax: A Self-Fulfilling Prophecy." *The Prison Journal* 88, no. 1, 2008: 144-168, Page 161.

issues that the inmates were facing in the beginning. Additionally, when officers arrive to work at Pelican Bay, they are consistently told that they are to guard the most violent and predatory inmates housed by the CDCR. With this commentary, an implicit subculture is created of silently approving violence in the SHU due to bias coming from the correctional officer, increasing the propensity for individuals to engage in violence.[40] The study describes observations of inmates entering "a private world of madness, scream[ing] incessantly in their cell."[41] Correctional officers grow accustomed to these noises and become less likely to aid a prisoner in need, especially due to this silent approval for violence.

How do they get away with it?

Knowing very well that administrative segregation counts as an act of torture, how does Pelican Bay, along with other supermax facilities, continue to use this technique and why have the issues regarding administrative segregation not been thoroughly addressed? The answer lies in the rhetoric used to frame administrative segregation colloquially and within legislation. Firstly, the use of the term "administrative segregation" euphemizes the heavy connotations that come with solitary confinement. The latter implies a sense of oppression or imprisonment for the sole purpose of subjugating the individual. Administrative segregation, however, sounds like a way to separate an inmate that needs correction and adds the notion that this practice will serve as a form of rehabilitation. In reality, both terms refer to the nationally legalized practice of confining a supposedly dangerous criminal in his cell for 22-24 hours a day, a practice which is considered an act of torture internationally. Changing solitary confinement into a vague euphemism both reduces the chance of the government being associated with what is an act of torture and allows for the correctional administration at Pelican Bay as well as other supermax facilities to take creative liberties in determining what behavior qualifies an inmate for placement in SHU. Federal government recommendations mirror this purposeful use of unclear wording to describe solitary confinement. In January 2016, the U.S. Department of Justice released a report, highlighting recommendations concerning the use of restrictive housing.[42] Common rhetoric used in the report includes requiring correctional officers to develop "clear and specific policies" for determining under what conditions an inmate can be placed in segregation in response to a violation beforehand.[43] Aside from clarification regarding the presence of these policies, the recommendations do not mention any specific restrictions regarding the nature or length of the administrative segregation that limits supermax facilities in their judgment of what accounts for such practices. Although the recommendations acknowledge that segregation "should always serve a specific penological purpose," the Supreme Court fails to delve into any more details regarding infrastructure to monitor correctional officers aside from vaguely mentioning a multidisciplinary committee.[44] Although "correctional officers should strive to limit the use of restrictive housing," this recommendation is

40 Ibid, Page 162.
41 Ibid, Page 163.

42 U.S. Department of Justice. "Report and Recommendations Concerning the Use of Restrictive Housing." 2016, Page 5.
43 Human Rights in Trauma Mental Health Lab. "Mental Health Consequences Following Release from Long-Term Solitary Confinement in California." *Stanford University*, 2017, Page 7.
44 U.S. Department of Justice. "Report and Recommendations Concerning the Use of Restrictive Housing." 2016, Page 7.

not necessary for the establishment of successful supermax prisons.[45] From the outside, it appears that an effort was made in 2016 to address the state-specific issues regarding the unclear regulation of administrative segregation. However, this attempt becomes half-hearted when one reveals that very little detail is provided to give infrastructural recommendations for supermax facilities. The tendency of the United States to incorporate potential loopholes or vague terminology in their legislation when it comes to regulating administrative segregation has been recognized and critiqued by the United Nations several times, as aforementioned.[46]

Despite the knowledge of significant long-term, psychological impairments in inmates post-confinement, the impetus for supermax facilities to deploy administrative segregation can be elucidated by taking a look at the use of sensory deprivation by the CIA as an interrogation technique. The rhetoric used by correctional officers at Pelican Bay horrifyingly mirrors that of the CIA manual. Although removed from the contemporary manual, an older version contained guidelines for using deprivation of sensory stimuli as a method of interrogation: "the stress and anxiety becomes unbearable for most subjects…the 'questioner' becomes linked in the subject's mind with human contact and meaningful activity, [and] the anxiety lessens. The 'questioner' can take advantage of this relationship by assuming a benevolent role."[47] In a documentary about Pelican Bay by National Geographic, reporters interviewed correctional officers stationed at SHU pods. One officer detailed the underpinnings of the prison as a melting pot for gang violence and considered it his and his peers' responsibility to find as much information as possible: "It's our job to make sure we know what's going on…we are their only connection to the world, so we make the most of it."[48] Many officers responded with similar answers when questioned. The purpose of the documentary was to highlight that Pelican Bay was a hard prison to escape, so the officers may have been mildly exaggerating their commentary. However, the documentary reveals that the behavior of correctional officers at Pelican Bay is eerily similar to interrogation techniques used by the CIA, such as the desire to use the one social connection that inmates have with other humans to find information or "make the most" of their contact. The remnants of these CIA tactics, although supposedly banned, have implicitly trickled down to the supermax facilities and result in further subjugation of SHU prisoners. Whether correctional officers realize it or not, the ramifications of this mental power they hold over prisoners leads to a kind of psychological manipulation that can be more easily practiced with the CDCR's loose regulations on administrative segregation.

Immediate Reform is Necessary

After having analyzed the ramifications due to the failure of the CDCR to heavily regulate the practice of administrative segregation in Pelican Bay, it becomes clear why human rights violations happen so frequently and obviously

45 Ibid, Page 8.

46 UN Committee against Torture. "Concluding observations on the combined third to fifth periodic reports of the United States of America." CAT/C/USA/CO/3-5, 2014.

47 Schulz, William F. "Chapter IV, Reading 1 'Coercive Techniques'" In *The phenomenon of torture: readings and commentary,* edited by William F. Schulz, 158. Philadelphia: University of Pennsylvania, 2007.

48 National Geographic Channel. "Gangland." *Lockdown: America's Hardest Prisons*, produced by Gail Mitchell, 2007.

within this sector of prison control. Aside from stringent regulations in Colorado and a few other states that have followed delineating the types of crimes for which prisoners receive administrative segregation, the use of this practice within the supermax prison population takes place across the United States without much clarity. In Pelican Bay, prisoners have recently begun to speak out against the administration. In 2012, SHU prisoners of Pelican Bay went on a hunger strike to combat the isolation of individuals strictly due to their gang-affiliations. The subsequent lawsuit after the peaceful protest, *Ashker v. Governor of California*, won in court and inmates successfully pushed for changes within the prison.[49] As a result, the CDCR is already seeing shifts in the use of administrative segregation.

In addition, inmates and their families are beginning to respond to the unfair practices of correctional officers and have started to speak out against them. With the recent criticism of prison conditions, it becomes even more necessary than before to follow through with fair and specific legal frameworks that emphasize the limited use of administrative segregation within the state prison. The CDCR must work alongside human rights activists and families of prisoners subjected to unnecessary amounts of SHU to develop more humanistic reforms in their guidelines for Pelican Bay correctional officers. With Colorado as an example, the momentum for positive change at the state-level has already started—it is up to California to raise its attention to this urgent matter.

49 "Final Notice: PBSP SHU D-Corridor Hunger Strike." *Center for Constitutional Rights*, 2012.

The Informal Sector: Policy for Progress

Ekin Dursun & Arda Tirnakli

Overview

Informal employment is officially defined as "work without legal or social protection both inside and outside informal enterprises."[1] Historically, the term only covered small enterprises. Later, the International Labor Organization (ILO) expanded the use of term to include other non-enterprise-based labor (The Informal Economy: Definitions, Theories and Policies//Martha Alter Chen).[2] We can place informal labor under two broad categories.

1) Informal self-employment and;

2) informal wage employment.[3]

Informal self-employment generally refers to employers and own-account workers in informal enterprises, and contributing family workers. Informal wage employment refers to unregulated employment relationships wherein employees are hired without social protection either by formal or informal enterprises. Some examples include employees of informal enterprises, day laborers, paid domestic workers, contract workers, and homeworkers.

Today, informal employment is more than half of non-agricultural employment in most developed regions and as high as 82% of non-agricultural employment in South Asia.[4] Figure 1 shows a distribution of informal opera-

1 ICLS (2003). See Hussmanns (2004) for statistical definition.

2 Chen, Martha Alter. 2012. "The Informal Economy: Definitions, Theories, and Policies." WIEGO Working Paper No. 1. http://www.wiego.org/publications/informal-economy-definitions-theories-and-policies

3 Ibid.

4 Vanek et al. (2014): Joann Vanek, Martha Alter Chen, Françoise Carré, James Heintz and Ralf Hussmanns. "Statistics on the Informal Economy: Definitions, Regional Estimates & Challenges." WIEGO Working Paper (Statistics) No. 2. April 2014.

Figure 1. Worldwide Distribution of Informal Operators

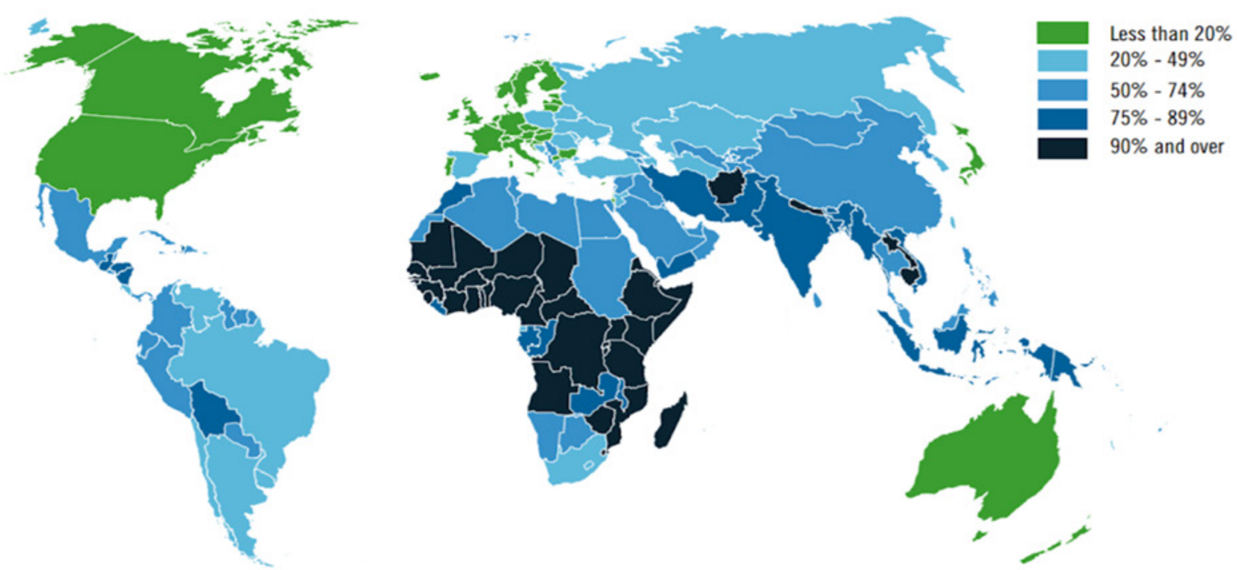
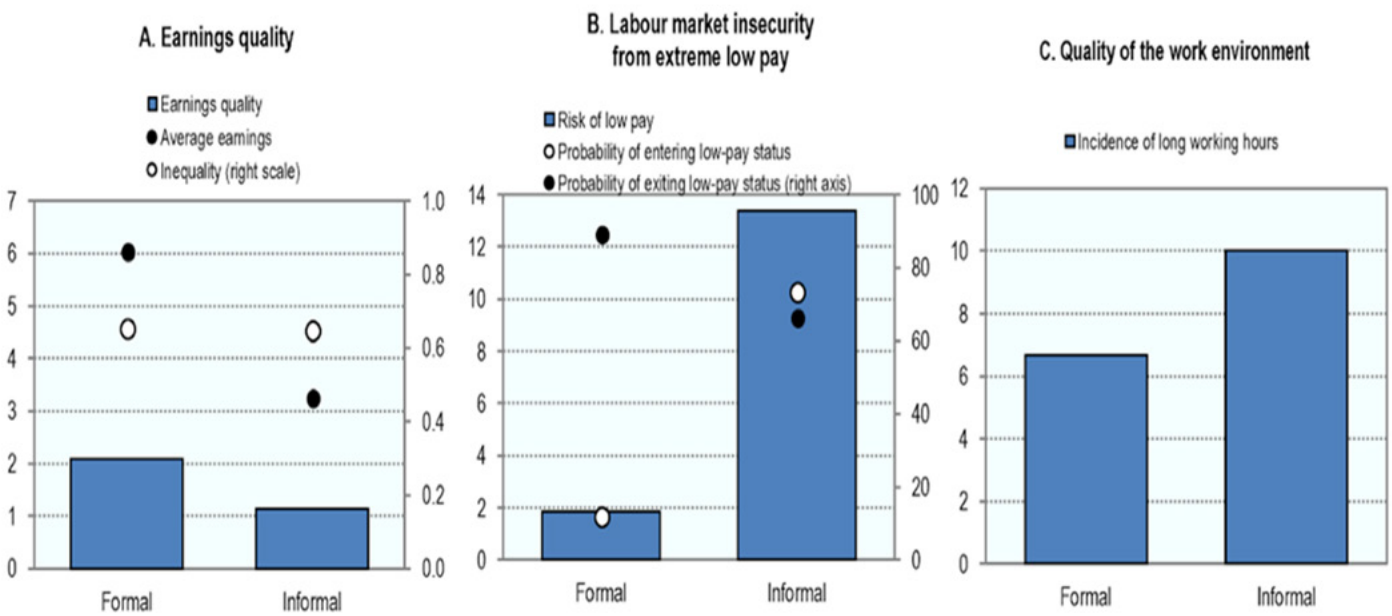


Figure 2. Comparison of Formal and Informal Job Quality



tors in 2016 across the world.[5]

In the above distribution, we can see that Africa suffers most from the informal employment problem, with more than 90% of its total employment coming from the informal economy. The regions that have only less than 20% of informal employment are mainly the United States, Europe, and Australia. This overview indicates a strong correlation between a region's level of development and the size of its informal economy. Furthermore, this inequality demonstrates that we should not isolate informality from the larger context in which it becomes a necessity: informality is a function of poverty, gender inequality, education, status in employment, corruption, and governance.

But who are these informal operators? Informal laborers are a large group of people, and they are all around us. There many visible examples: garbage collectors in Brazil, street vendors in Turkey, roadside barbers in Durban, and rickshaw pullers in Calcutta. There are also less visible laborers: workers who repair bicycles, laborers in small workshops, leather tanners, and garment producers. Of course, there are the invisible informal workers. Home-based workers, majority of them women, are not counted in official statistics, even if they are paid. There are also other types of informal workers that include day laborers in construction and agriculture, or subcontracted janitors and assemblers of electronic parts.[6]

The Harms of Informality

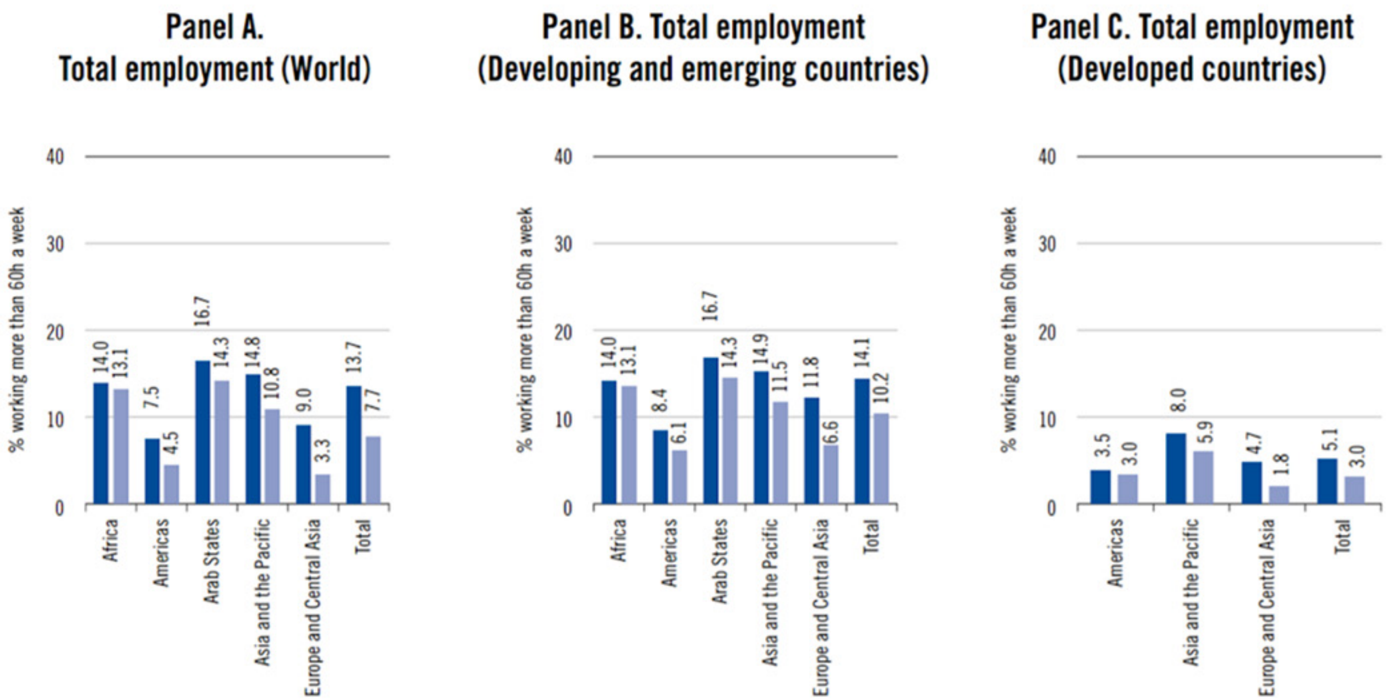
Why should we be worried about informal employment? Two billion of the world's employed population make their living in the informal economy.[7] On a global scale, 15.7%

5 ILO (2018). "Figure 5. Share of informal employment in total employment, including and excluding agriculture (percentages, 2016)." https://www.ilo.org/global/publications/books/WCMS_626831/lang--en/index.htm

6 Chen, Martha Alter.

7 International Labour Organization. 2018. "Women and Men in the Informal Economy: A Statistical Picture." 3 ed. Geneva.

Figure 3. Proportion of Workers Working More than 60 hours per Week, by Sector



of permanent full-time employees are informal workers, meaning that they have "no employment related social and labour protections."[8] On average, compared to formal workers, "informal workers have lower earnings and face higher risks, are less likely to enjoy economic opportunities and legal protections, and are less able to exercise economic rights and collective voice."[9] Figure 2 displays Organization for Economic Cooperation and Development (OECD) data from 2015 comparing job quality among formal and informal workers.[10] Data includes all emerging market countries excluding Indonesia. The data shows that informal workers generally experience lower average earnings, higher risk of low pay, and longer working hours.

Informal workers receive little to no benefits such as healthcare, childcare, pension coverage, and unemployment benefits, despite the fact that most already pay taxes to some degree (ex. VAT, or Value-Added Tax) and other small licensing fees. The issue is even more urgent in least-developed and developing economies. In most of these countries, informal enterprises such as street vendors may have to bribe police to continue to work for short periods of time, and are still regarded by the government as unofficial and undeserving of receiving benefits.[11] This engrained systemic bias likely prevents

https://www.ilo.org/global/publications/books/WCMS_626831/lang--en/index.htm

8 Ibid.

9 International Labour Organization. 2002. Women and Men in the Informal Economy: A Statistical Picture. Geneva: ILO. Written by Marty Chen and Joann Vanek using multi-country data analyzed by Jacques Charmes and country studies by Debbie Budlender, Peter Buwembo, Nozipho Shabala, Jeemol Unni, Marge Guerrero, Rodrigo Negrete, Françoise Carré, and Joaquin Herranz, Jr. Geneva: ILO.

10 OECD, 2015. "Figure 5.9. Job Quality Among Formal and Informal Workers."

11 Sibhat, Etsubdink. 2014. "Cause and Effect of Informal Sector: the case of Street Vendors in Addis Ababa, Ethiopia." M.A. Thesis. University of Nordland. https://brage.bibsys.no/xmlui/bitstream/id/247783/Sibhat.pdf

formalization alone from immediately improving the cases of informal workers. A different but analogous situation is demonstrated in Figure 3.[12] The darker blue refers to informal operators whereas the lighter blue represents formal operators. The figure shows that:

> 1) the number of informal operators working more than 60 hours per week is higher on average than formal operators but;
> 2) the number of formal operators also working more than 60 hours per week is still substantial, demonstrating that formalization alone does not necessarily translate to substantial increases in rights or welfare.

This situation makes attempts to change international labor standards challenging because it indicates that there are hidden factors to ensure safe transition from the informal to the formal economy. These factors can also include diversity of circumstances and needs of workers, specific national circumstances for the transition, and protection of human rights in the informal economy. Bearing these challenges in mind, the goal is seemingly simple: protect jobs in the formal economy and prevent informalization. However, this goal calls for a much more complex and integrated policy framework that addresses strategies for "sustainable development, legislative regulations, conducive business environment, anti-discriminatory social dialogue, taxation and minimum wage policies, and right to equal education and to collective bargaining."[13] The options chosen by policymakers depend on how they consider the root causes of the informality problem. The different understandings policymakers have about these root causes can not only determine the type of policies they favor, but also can affect whether any action is taken in the first place.

Current Approaches to Alleviating the Informal Sector

Chen summarizes the four schools of thought in approaching the informality problem, namely Dualism, Structuralism, Legalism, and Voluntarism.[14] The Dualists focus on the mismatch between people's skills and the structure of modern economic opportunities. They also express concern for the imbalance between the growth rate of population and of modern industrial employment. Taken together, they use gaps in available education and technology gap to explain the motivations of informal operators. The Structuralists argue that the nature of capitalism drives informality: "specifically, the attempts by formal firms to reduce labour costs and increase competitiveness and the reaction of formal firms to the power of organized labour, state regulation of the economy (notably, taxes and social legislation); to global competition; and to the process of industrialization (notably, offshore industries, subcontracting chains, and flexible specialization)."[15] The Legalists believe that a non-welcoming legal system pushes workers and enterprises to operate informally. Finally,

12 ILO (2018). "Figure C.2. Proportion of workers working more than 60 hours a week, depending on the formal or informal nature of their main job." https://www.ilo.org/global/publications/books/WCMS_626831/lang--en/index.htm

13 International Labour Organization. 2015. R204: "Recommendation Concerning the Transition from the Informal to the Formal Economy//ILO." Adopted: Geneva, 104th ILC Session. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204

14 Chen, Martha Alter.

15 Chen, Martha Alter.

the Voluntarists argue that informal operators choose to operate informally after carrying out a cost-benefit analysis of doing so.[16] We think that a far-sighted policy proposal should encompass a range of these perspectives rather than focusing on a particular school of thought. However, we have reason to believe that people entering the informal economy mostly do so because they have no means of earning a living in the formal economy. Viewing the informal economy as a consequence rather than a voluntary choice is a crucial step in creating meaningful results.

Regardless of prevailing beliefs about the nature of the informality problem, different kinds of global and transnational networks have been formed historically to address the concerns that informal operators face. Transnational organizing amongst informal workers is traced back to the founding of Self-Employed Women's Association (SEWA) in the 1970s and its recognition as a trade union by the International Union of Food and Allied Workers' Association (now the IUF) in 1983.[17] SEWA is an organization of self-employed women workers in India.[18] In the same decade, the multi-country regional alliance CONLACTRAHO was formed in Latin America by domestic workers' organizations.[19] In the 1990s, home-based workers organized into HomeNet International, resulting in the adoption of the Convention on HomeWork (C177) in 1996.[20] This Convention (C177) advocates for the rights of those who create products for an employer while working from their home.[21] Women in Informal Employment: Globalizing and Organizing (WIEGO) was founded in 1997 to provide research, statistics, technical, and advocacy support for SEWA and allies.[22] In late 1990s, International Labor Organization (ILO) made possible the consolidation of StreetNet International (2002), HomeNet South Asia (2000), Latin American Waste Pickers Network (RedLacre) (2005), International Domestic Workers' Network (IDWN) (2008/9) and Global Alliance of Waste pickers (2009).[23] Although these membership-based organizations represent a wide variety of informal sectors, their strategies could be categorized as follows:

1) negotiation and collective bargaining strategies with local and national governments;
2) economic development strategies;
3) market strategies necessitating negotiation approaches;
4) access to credit and social protection.
Some of them have met with a degree of success, while others ran across many challenges.

In fact, unionization of informal workers is difficult from the start because they cannot simply apply to be a member of trade unions as their formal counterparts do. The main reason for this is ideological. Historically, the initial attitude of trade unions towards informal workers was complete rejection.[24] As Bonner (2011) describes, by rejecting the issue of informalization,

16 Ibid.
17 Chen, Martha Alter, and Joann Vanek. 2013. "Informal Employment Revisited: Theories, Data & Policies." *Indian Journal of Industrial Relations* 48, no. 3 (2013): 390-401. http://www.jstor.org/stable/23510786.
18 See SEWA (Self Employed Women's Association)
19 Chen, Martha Alter, and Joann Vanek.
20 Ibid.
21 See C177 – "Home Work Convention, 1996." ILO No. 177.
22 See "WIEGO: Born in Bellagio, 1997."
23 Chen, Martha Alter, and Joann Vanek.
24 Bonner, Chris 2011. "Organizing in the Informal Economy: A Challenge for Trade Unions." *Internationale Politik*.Vol 2. 87-105. https://www.researchgate.net/publication/281468392_Organizing_in_the_informal_economy_A_challenge_for_trade_unions a

unions made clear that they would not recognize informal workers as legitimate members of their organizations. Their ideas of representation were restricted to a specific working class. However, this social norm is beginning to transform. Unions are becoming friendlier to informal workers as they shift their own perceptions of trade unions as pertaining to the interests of the broader working class. While the reasons for this transformation are diverse, it is evident that the integration of informal workers into trade unions is happening mostly in the world regions where informality is a significant issue. For example, in Africa, Asia, and Latin America, organizations that combine the characteristics of membership-based organizations (representing informal workers) and trade unions (historically representing formal workers) are much more prevalent than in North America and Europe.[25] Unionization has for informal workers has also been difficult since most labor movements never viewed informality as a priority as they fight for their own condition improvements, especially with increased competition unions as their role in society has shifted. The important takeaway is that despite these difficulties, informal workers need the organizational experience of trade unions while unions need informal workers to increase their numbers and raise their voices in issues that relate to the larger macroeconomic picture.

It is worthwhile to highlight cases of the organizations that have been successful in promoting and protecting the rights of informal operators. In Belo Horizonte, Brazil, informal workers are responsible for over 50% of all waste activities.[26] These informal waster workers are called "catadores." However, in addition to having no social and labor protections and working in very poor conditions, these "catadores" were looked down upon on a social level. When the open dump facility at which they were primarily worked was closed, a local group founded their first association: ASMARE.[27] In official records, the Public Cleansing Agency (SLU) was responsible for delivering all waste management. Through the collaborative efforts of ASMARE, the local government, and many NGOs, the SLU and ASMARE became partners in municipal waste collection in late 1990s.[28] The local government agreed to provide subsidies and infrastructure for the "catadores", in addition to incorporating informal workers in a mandatory work education program. This case study is a hopeful reminder of the benefits of social dialogue, and of joint solutions that account for the formal and the informal sectors concurrently.

Another successful example is from India. After a negotiation between street vendors and authorities in Bhubaneshwar, the local government created 52 vending zones between 2009 and 2011, with approximately 2,600 kiosks.[29] Vendors were represented by the National Association of Street Vendors of India (NASVI), which ultimately worked with the Bhubaneshwar Municipal Corporation and General Administration to create this solutions for hundreds of local informal workers.[30] They owe the success of the negotiations to political will and social dialogue.

Globalization and Barriers to

25 Ibid.
26 Ibid.
27 Ibid.
28 Ibid.
29 Kumar, Randhir. 2012. "The Regularization of Street Vending in Bhubaneshwar, India: A Policy Model." WIEGO Policy Brief (Urban Policies). No. 7. http://www.wiego.org/sites/default/files/publications/files/Kumar_WIEGO_PB7.pdf
30 Ibid.

Alleviating Informality

To comprehensively consider problems associated with informality, we need to have a deep understanding of the motivations of informal operators. These motivations mainly stem from the late capitalist development era followed by globalization. Before the 1980s, the term informality was generally used as pertaining to the agriculture sector, and specifically to rural migrants, for whom informal arrangements were the primary way of generating income.[31] The problem was largely dismissed with the prospect of modern growth and industrial development. It was claimed that modern growth would block the expansion of the informal economy by creating positions for those informal operators in the formal economy.[32] Despite these predictions, the size of informal sectors proliferated starting with the late capitalist development era in which most countries began to experience unprecedented rates of growth. Especially in North America and Europe, production began on smaller scales, with increasing decentralization and flexibility.[33] Mass production reorganized into "flexible specialization." Flexible specialization is a form of competitive strategy where firms specialize into certain products, but they equip themselves with such flexible means of production that they can shift into producing other products instantly.[34] Flexible specialization allows modern firms to appeal to the different tastes and fashions of various consumer groups, allowing for higher product differentiation. This decentralized form of mass production increased the number of informal arrangements in order to adjust to the dynamics of the competitive market, increasing the practice of subcontracting to informal units. Informal units were an efficient choice for subcontracting because they were ready to take on jobs at below-market wages at all times. "In the process, the informal economy had become a permanent, but subordinate and dependent, feature of capitalist development."[35]

Beginning in the 1980s, markets favored flexible labor relationships even more. Different from before, formal firms started subcontracting to developing countries where labor costs are exceptionally low and the informal economy is the dominating portion of the total economy.[36] Overall, formal firms increased the number of their informal employment relationships for the following reasons:

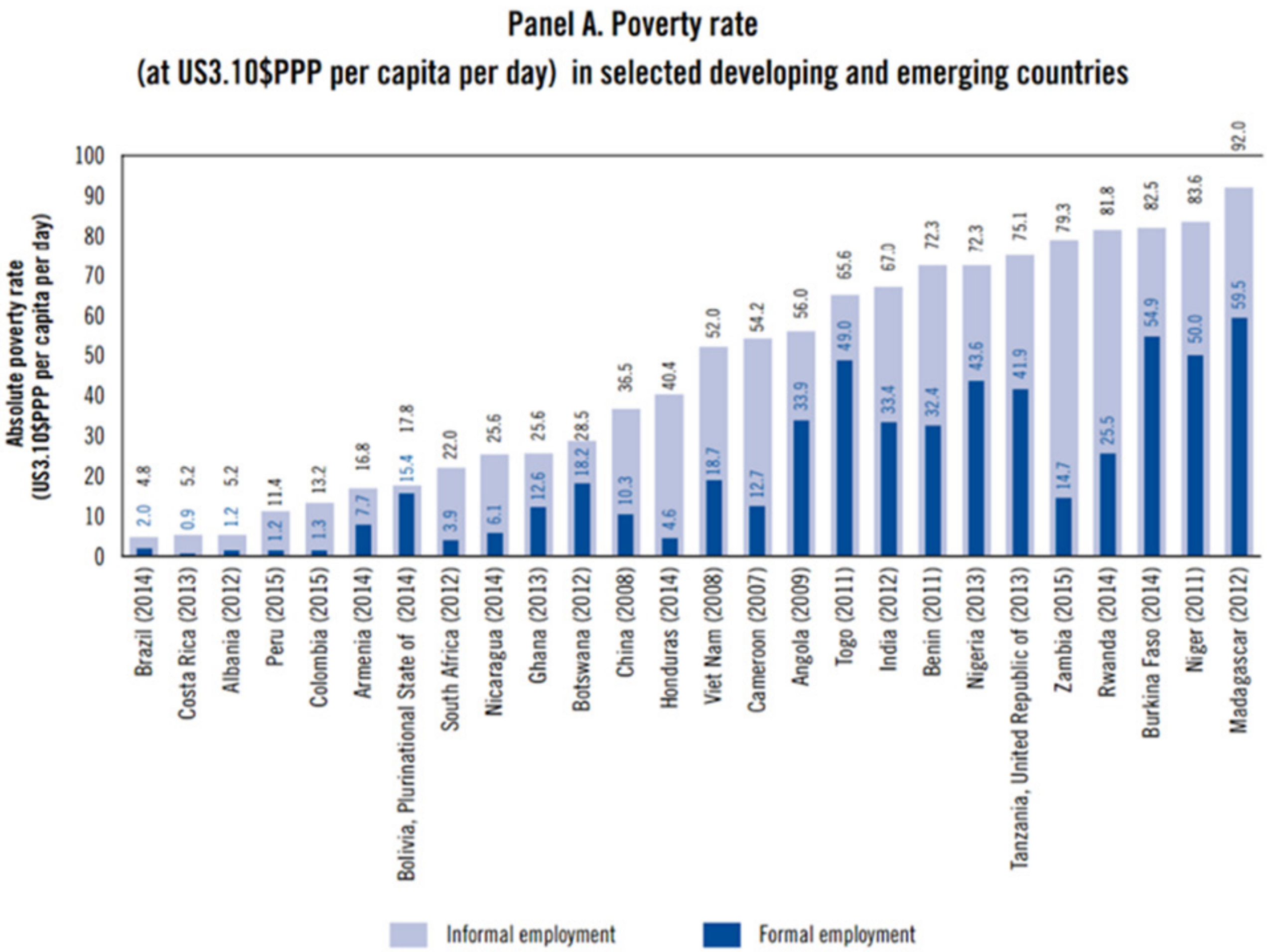
1) to take advantage of flexible specialization;
2) to become more competitive;
3) to reduce labor costs.

During the 1990s, globalization exacerbated the informality problem. Accelerating global competition further grew the informal sector through three channels: formal firms, informal workers, and informal firms. In response to the rise of especially efficient and well-resourced multinational corporations (MNCs), less successful formal firms engaged in more subcontracting and informal arrangements to

31 Hart, Keith. 1973. "Informal Income Opportunities and Urban Employment in Ghana." *The Journal of Modern African Studies* 11, no. 1 (1973): 61-89. http://www.jstor.org/stable/159873.
32 Chen, Martha Alter.
33 Piore, Michael J. & Charles F. Sabel. 1984. "The Second Industrial Divide." New York: Basic Books. http://journals.sagepub.com/doi/abs/10.1177/002234338702400213
34 Bernard, Mitchell (2000). "Post-Fordism and Global Restructuring". In Stubbs, Richard; Geoffrey R.D. Underhill. Political Economy and the Changing Global Order. Oxford University Press Canada.

35 Chen, Martha Alter.
36 Ibid.

Figure 4. Poverty Rates for Informal and Formal Sectors



become more competitive.[37] Informal workers today are disadvantaged because although globalization created new jobs and labor markets, these positions are not accessible by everyone. The rise of automation necessitates that these new jobs are limited in number and designed for high-skilled workers, which an overwhelming portion of informal workers are not. As for the firms, they do not have the market knowledge and skills to compete with formal firms.[38] This inequality locks them in an informal labor market because they cannot afford the costs of formalization. This leads to a simple paradox: informal operators are informal because they are poor, and they remain poor because they are informal. Figure 4 empirically demonstrates the high incidence of poverty for informal workers.[39]

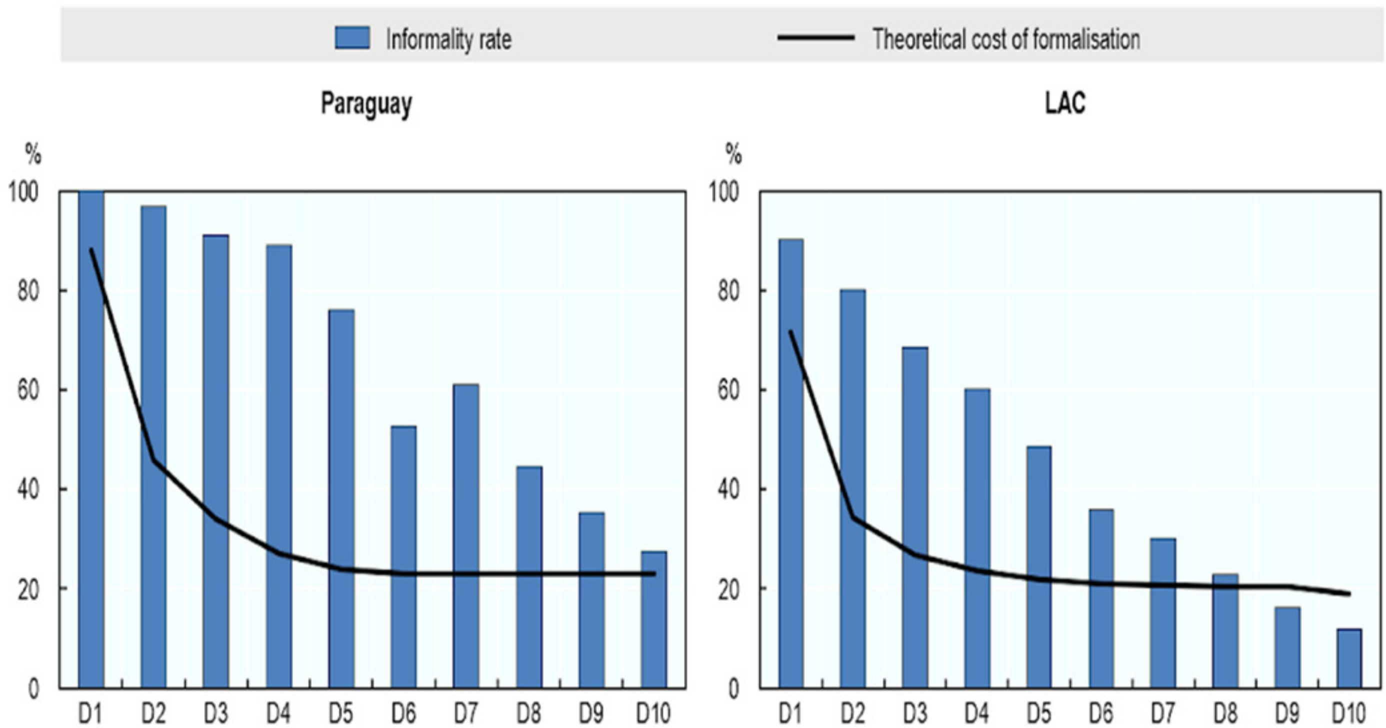
The effects of globalization require structural efforts such as continued investment in human capital and bold legislative action to ensure the rights of all workers are protected equally. However, this is a long-run goal, and does not present specific guidance for policy in the near term. Instead, policymakers should first

37 Rodrik, Dany. 1997. "Globalization, Social Conflict and Economic Growth." UNCTAD. 9, 7/1. https://unctad.org/en/docs/prebisch8th.en.pdf

38 Chen, Martha Alter.

39 ILO (2018). "Figure 23. Poverty rates and the informal or formal nature of worker's main job (percentages, latest available year)." https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_626831.pdf

Figure 5. Informality Costs and Informality Rates for Dependent Workers



focus on reducing the costs of formalization, especially with regard to removing disincentives from developing businesses and applying sanctions for those who benefit from informal workers.[40] Figure 5 presents the relationship between formalization costs and informality rates in two test regions, Latin America and the Caribbean.[41] This data suggests the theoretical costs of formalization and informality rate are positively correlated: a decrease in costs triggers a decrease in informality, implying a focus on cost and barrier reduction would be beneficial.

40 Kuddo, Arvo and Rutkowski, Jan. 2011. "Policies to Reduce Informal Unemployment." The World Bank. http://siteresources.worldbank.org/UKRAINEINUKRAINIANEXTN/Resources/455680-1310372404373/PoliciestoReduceInformalEmploymentEng.pdf

41 OECD/CIAT/IDB (2016). "Taxing Wages in Latin America and the Caribbean."

Policy Proposals

We break down methods to reduce structural formalization costs into three categories:

1) Tax Policy;
2) Labor Regulations;
3) Business Regulations.

Tax Policies

Informal operators may "choose" to stay informal because of their expectations of how payroll taxes, social security contributions, or taxes for firms/employees are going to affect their economic interests. Although staying informal deprives them from certain state benefits, the tax-related costs of formalization could be so high as to overshadow the potential utility derived from the benefits of formalization. Also, it is important to remember that in many developing countries the coverage of state benefits is not substantial: most Middle Eastern and African countries do not have funds allocated for childcare or unemployment benefits, for example.[42] In such countries, staying informal may be more desirable. Even in developed countries, however, tax burden is a heavy concern.

During the 1990s, tax reforms targeted reducing tax burden on labor and corporations in many emerging market economies. The Czech Republic reduced its top corporate income tax to 28% while Latvia and Lithuania reduced it to 15%.[43] Considering that the average top corporate income tax across 188 countries is 22.5% as of 2016, these reductions are significant.[44] Theoretically, **lower corporate income taxes** for informal firms may be associated with greater incentives for these enterprises to come forward and register.

Another effective strategy could be a **negative income tax**. Bulgaria has indirectly implemented this, "by increasing the level of non-taxable monthly incomes from 100 levas in 2002 to 180 levas in 2006, which is above the level of minimum wages of 160 levas."[45] This serves as a negative income tax where people earning below a certain level receive supplemental money from the government.[46] This approach may be an attractive method for informal workers because its implementation would mean that becoming a formal worker has a bonus attached to formalization. Since most informal workers already make below the minimum wage of their nations, tax deductions have a high chance of translating to actual supplemental pay. This implementation could provide informal operators with a better cost-benefit analysis of formalizing. Additionally, **social security contribution caps** could be instituted to ensure there are no significant additional costs for newly formalized workers. This means that there is a limit as to how much a government can tax for items other than the regular income tax. In countries such as France, Germany, Greece, Spain and Turkey, there are ceilings on social security contributions, and such a policy could ensure that other incentives to formalize are not cancelled out by these additional costs.[47]

So far, we have established a link between tax reductions and greater incentives to formalize. Yet there is an important question to answer: how does government finance services while allowing so many tax breaks? A commonplace strategy is to broaden the tax base to increase government revenue.[48] Expanding the tax net while reducing tax burden on labor and corporations is beneficial for the government and informal operators. Such an expansion benefits government through increasing sources of income that previously escaped taxation. For the govern-

42 Angel-Urdinola et al (2012): Diego F. Angel-Urdinola, Arvo Kuddo, and Amina Semlali With support from Anne Hilger. "Public Employment Services in the Middle East and North Africa." The World Bank. http://conference.iza.org/conference_files/worldb2012/angel-urdinola_d4898.pdf

43 Kuddo, Arvo and Rutkowski, Jan. 2011. "Policies to Reduce Informal Unemployment," The World Bank.

44 Pomerleau, Kyle; Potosky, Emily. 2016. "Corporate Income Tax Rates around the World, 2016." Tax Foundation: Fiscal Fact No. 525. /TaxFoundation-FF525.pdf" \h https://files.taxfoundation.org/legacy/docs
/TaxFoundation-FF525.pdf

45 Kuddo, Arvo and Rutkowski, Jan. 2011. "Policies to Reduce Informal Unemployment," The World Bank.

46 Mankiw, N. Gregory. 2014. "Principles of Economics."

47 OECD, 2004. "OECD Employment Outlook." https://books.google.com/books?id=cX6G6mxfzLcC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

48 Kuddo, Arvo and Rutkowski, Jan. 2011. "Policies to Reduce Informal Unemployment," The World Bank.

ment, more taxable income means a more comprehensive record of economic activities. Counterintuitively, taxation can also *benefit* informal operators because it gradually integrates them into the formal economy. It goes without saying that expanding the tax base just enough to compensate for the revenue lost from tax reductions is a difficult business. Identifying new sources of income to broaden the tax base is usually done through improved assessments for better indicators of estimating taxpayers' income. The method of reducing taxes and broadening the tax base has worked in Bulgaria.[49] World Bank data suggest that this measure, together with mandatory registration of labor contracts with the National Social Security Institute have resulted in a tremendous increase in the number of new registered labor contracts and about 600,000 new insured people between 2002-2006.

In summary, reductions in top corporate income taxes, negative income tax, and ceilings on social security contributions could incentivize informal operators to switch to the formal economy, and these reductions could be made possible through a broader tax base.

Labor Regulations

What are labor regulations? Labor regulations include all hiring practices. They exist to make sure that minimum wages, local policies, and employability programs support workers in finding formal jobs.[50] We have previously stated that when considering an informal worker, viewing their condition as a consequence rather than a voluntary choice is critical in believing in the power of policymaking. This philosophy has direct implications for labor regulations, too. It is prevalent that formal and informal employers take benefit of informal workers. To prevent this, governments should make clear that they are on the side of informal workers, such as **by granting social security benefits and employment protection to workers regardless of the formal/informal nature of their jobs.** This might seem like a costly and generic implementation. However, it has many less obvious advantages. The Public Employment Service (PES) in Japan accepts unemployment benefit claims from all worker backgrounds, even to those workers whose employer has not paid insurance contributions.[51] PES's acceptance of unemployment benefit claims creates two positive effects:

> 1) the direct effect is that informal workers are given equal opportunities as formal workers to receive credit for their work and apply for benefits, and;
> 2) the indirect effect arises from the fact that "an enterprise that does not pay insurance contributions runs a risk of detection when a former worker applies for benefit."[52]

In this way, enterprises that have previously escaped their responsibilities have a greater incentive to pay insurance contributions for their employees. The effectiveness of this implementation is conditional on the governance and willingness of a given country to implement such a policy in good faith. Informal workers could be sanctioned in a hidden way when applying for benefits, even if public authorities claim otherwise. These hidden sanctions might come from employers who are determined not

49 Ibid.
50 Ibid.
51 Ibid.
52 Ibid.

to pay insurance contributions, supported by states that wish to attract their business. They could threaten their former workers to make sure they don't contact with public officials, or simply be more careful in their upcoming recruitment processes.

An additional component of labor regulations is government efforts in creating formal jobs. This is usually done through **worker training programs**. Successful training programs generally target underprivileged people whose chances of going into the informal economy are higher. In Hungary, programs such as START, START PLUSZ, and START EXTRA target creating formal jobs for underprivileged people, people above the age of fifty, and people who are looking for jobs with special childcare restrictions.[53] If these people know that their governments attempt to create positions for them in the formal economy, they are less likely to go into the informal economy to make their living. Another potentially useful implementation is improving standardization across government agencies. European Commission's Green Paper on Labor Law "highlighted a need for more effective cooperation at national level between different government agencies, such as labor inspectorates, social security and tax authorities." When cooperation between these authorities is weak, inspections targeted at the informal economy either happen sporadically without any systematic order, or are conducted by multiple authorities and have inefficient outcomes. Thus, it is important that efforts to fight informality are standardized and multilateral.

Overall, treating informal and formal workers as equally qualified for state benefits, targeting those individuals who have a high risk of joining the informal economy through employment programs, and improving standardization across government regulations could be effective strategies in tackling the informality problem.

53 Ibid.

Business Regulations

We need business regulations to be able to create more jobs in the formal sector, to support the development of new businesses, and to make the growth of established firms easier.[54] When governments don't promote healthy business environments, this pushes some producers out of the market. One example of such a situation is salt makers in India. The government mandates that small salt makers own a minimum of 90 acres of land to be eligible for a train wagon. As a result, some small salt makers cannot use railway and have to use private transport. Due to high transportation costs, these producers become less competitive than larger salt makers. Informal enterprises face such situations everyday, which is part of the reason they stay in their respective informal sectors.[55] In some countries, administrative, time, and financial burdens on producers is so high that the incentive not to register is greater than it would be otherwise.

Italy has attempted to solve this costly problem since 1998. Help-desks have been established for potential entrepreneurs, particularly aimed at providing consulting for companies on reducing registration costs.[56] Ukraine adopted the same method for new business registration. Portugal implemented three effective strategies that reduced the time to register an informal company from 54 to 8 days:

54 Ibid.
55 Ibid.
56 Kuddo, Arvo and Rutkowski, Jan. 2011, "Policies to Reduce Informal Unemployment," The World Bank.

1) a new fast-track registration service that provides a choice of pre-approved names at the registry's website;
2) tax, social security, and labor registration recommendations on the website of the Ministry of Justice;
3) information articles on how to fill out the registration application fast and correctly. "Within a year, the number of companies using the new service rose from 12 to 75 per day."[57]

Conclusion

Martha Alter Chen, in "The Informal Economy: Definitions, Theories and Policies", imagines a society in which a hybrid economy model dominates. She envisions waste pickers bidding for waste management contracts, informal construction workers having the protection that formal workers do, small producers competing in export markets on fair terms, and street vendors operating alongside retailers and wholesalers. Her motivation comes from the belief that policymakers should stop assuming that "economic policies cannot reach and do not impact the informal economy."[58]

Formal and informal sectors are interconnected: policies targeting one will necessarily affect the other. Any effective policy must accommodate these effects. We believe that taken together, reforms in tax policy, labor regulations, and business regulations could potentially decrease the costs of formalization while ensuring countries are still incentivized to enforce them. The decrease in formalization costs has the potential for allowing a safe transition from the informal to the formal economy.

57 Ibid.
58 Ibid.

Worldly Label but Western Norms: Critiquing the Universality of the International Human Rights Framework

Charlie Rollason

Introduction

Following the adoption of the United Nations Charter in 1945, the first worldwide recognition of universal human rights was marked by the passage of the United Nation's Universal Declaration of Human Rights (UDHR) in 1948. The UDHR aims to provide an all-encompassing global human rights framework to prevent unjust abuses like those witnessed in World War II. Spearheaded by Eleanor Roosevelt and drafted by John Humphrey of Canada and René Cassin of France, the document often faces critique for Western bias and limitations to its true universality. As the UDHR was heavily modeled on British, American, and French revolutionary documents with occasional input from Latin American and Asian scholars, it seems the critique may stand stronger than the UN would like to admit — especially in regard to the almost nonexistent input of African leaders.

Since 1948, similar human rights documents including the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) have also faced critique regarding their supposed universality from scholars like Isabelle Gunning[1] and Raimundo Panikkar.[2] Due to their frequent ignorance to the nuances of non-Western cultures, these documents are often struggle to account for ways in which human rights advances must differ from culture to culture in order to make any measurable impact.

The implications of this critique across human rights documents can be observed in the controversy surrounding various traditional practices dubbed human rights violations by international organizations but which are often cultural practices by native peoples. The questions this paper aims to answer are, "To what extent is the international human rights framework actually universal?" and, accordingly, "How can we ensure the human rights framework accounts for differences regarding the cultural specificity of various traditional practices?"

Following an investigation into the scholarly literature on the aforementioned overarching questions, this paper will examine a single case study to draw out answers to these questions. From breast ironing in Cameroon to child marriage across Africa and Asia, the CEDAW condemns many traditional practices that affect women worldwide. Due to the breadth and depth of these topics, this paper will only focus on the practice of female genital cutting (FGC) in the West African country of Sierra

1 Isabelle R Gunning, "Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries," *Columbia Human Rights Law Review* 23, no. 8 (1992): pp. 188-248.

2 Raimundo Panikkar, "Is the Notion of Human Rights a Western Concept?," *Diogenes* 30, no. 120 (1982): pp. 75-102, https://doi.org/10.1177/039219218203012005.

Leone. Sierra Leone was specifically selected for this study, out of the twenty-nine countries with the ongoing practice, because of the stark cultural pushback women in the country have put on potential government bans. This pushback is likely due to the value the native women place on the ceremonies that encompass FGC.

The analysis of the case study will examine the arguments of FGC in Sierra Leone as both a human rights violation and a practice of cultural significance. In order to do this, the paper will explore the perspectives put forward and the events leading up to the UN and World Health Organization's declaration of FGC as a violation of human rights. Additionally, the secret Bondo society initiation into womanhood ceremonies will be investigated in conjunction with the pushback the parliament has faced in passing anti-FGC legislation into law.

From this analysis, I conclude that women—at the consenting age of 18 years old—should be able to independently decide whether or not to undergo FGC. I will also suggest ways to empower women to make their choices without regard for male pressure. The implications of this conclusion will then be examined under the scope of the international human rights framework.

By arguing that the Western and white feminist dominance of human rights documents and judgments renders the universality of the international human rights framework at least partially false, this paper surmises that the global community should in fact make at least moderate exceptions under the human rights framework in regard to the cultural specificity of traditional practices that are currently considered human rights violations. Ideally, though, this paper suggests that there be a reworking of the current human rights framework as a whole in order to bring in alternate voices previously left unheard.

Literature Review

Various arguments regarding the universality of the international human rights framework have emerged in academia since the adoption of the UDHR in 1948 and the signing of CEDAW in 1979.

In her book *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, Mary Ann Glendon emphasizes the initial efforts of the United Nations to produce an all-encompassing human rights document with the UDHR.[3] From her analysis, it is implied that the writers succeeded in the creation of a truly universal document. As she explains, John Humphrey consulted with experts of various cultures including Mohandas Gandhi in his initial draft of the document.[4] Barnard College researcher Courtney W. Howland–expressing similar confidence in the universality of international human rights documents–argues that the standing international human rights framework must be upheld without exception for cultural pushback.[5] Evaluating Howland's work, Radhika Coomaraswamy regards her argument as "attractive because of its clarity" in ensuring at least some progress in human rights is made by setting clear international goals.[6] Additionally,

3 Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York, NY: Random House, 2002).

4 Ibid, 51.

5 Courtney W Howland, "The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An Analysis under the United Nations Charter," *Columbia Journal of Transnational Law* 35, no. 2 (1997): pp. 271-376.

6 Radhika Coomaraswamy, "Different but Free: Cultural Relativism and Women's Rights as Human Rights," in *Religious*

Martha Nussbaum echoes Howland's sentiment that the framework must be implemented as written, reasoning that oppressed women have developed adaptive preferences that make them okay with the sexist conditions they face in their culture.[7] To Nussbaum, the argument for the presence of cultural relativism in international human rights documents is simply defending the continued acquiescence of women to their subordination in society.[8]

However, there are multiple scholars who argue in contention with the supposition that the current human rights framework is universal and should be implemented as such. In contrast to Glendon's view that the construction of human rights led to universal documentation, Raimundo Panikkar argues that human rights are in fact a Western construct and that there must be room for non-Western cultures to adjust certain human rights to fit their traditions.[9] As a solution to the frequent Western and non-Western divide on certain human rights, he advocates for a middle ground where each side engages in dialogue and cross-critique in order to move towards a truly universal document. Isabelle Gunning further finds the arguments that current documents should be universally applied–like those of Howland and Nussbaum–to be biased towards Western culture and too ignorant to consider non-Western cultures as anything but inferior.[10] She stresses the importance of recognizing all cultures as equals and finds importance, like Panikkar, in Western and non-Western dialogue to reach actually agreed upon norms in international human rights framework.

There then seems to be the question of whether a middle ground argument on this topic truly exists. Radhika Coomaraswamy argues in favor of this middle ground.[11] From her perspective, the current human rights framework must be implemented internationally in order to set clear global standards and assure accountability. This side of her argument clearly aligns with that of Howland's.[12] On the ground, however, she seems to side more with Gunning, writing that the international agencies who strive to implement human rights efforts must do it with cultural sensitivity in mind. It is then important to address that Coomaraswamy's argument does not leave room for any change to the international human rights framework, which Panikkar supports.[13] Instead, she focuses on different ways to "eradicate negative cultural practices," leaving out the importance of understanding that cultural practices may not be all bad from the perspective of the people involved in them.

The aim of this paper is to evaluate the strengths of these arguments through the basis of a case study, which most of these authors fail to do aside from Gunning. My approach, how-

Fundamentalisms and the Human Rights of Women (New York, NY: St. Martin's Press, 1999), 85-86.

7 Martha C. Nussbaum, "Symposium on Amartya Sens Philosophy: 5 Adaptive Preferences and Womens Options," *Economics and Philosophy* 17, no. 1 (2001): pp. 67-88, https://doi.org/10.1017/s0266267101000153.

8 Ibid.

9 Raimundo Panikkar, "Is the Notion of Human Rights a Western Concept?," *Diogenes* 30, no. 120 (1982): pp. 75-102, https://doi.org/10.1177/039219218203012005.

10 Isabelle R Gunning, "Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries," *Columbia Human Rights Law Review* 23, no. 8 (1992): pp. 188-248.

11 Radhika Coomaraswamy, "Different but Free: Cultural Relativism and Women's Rights as Human Rights," in *Religious Fundamentalisms and the Human Rights of Women* (New York, NY: St. Martin's Press, 1999), pp. 79-90.

12 Courtney W Howland, "The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An Analysis under the United Nations Charter," *Columbia Journal of Transnational Law* 35, no. 2 (1997): pp. 271-376.

13 Raimundo Panikkar, "Is the Notion of Human Rights a Western Concept?," *Diogenes* 30, no. 120 (1982): pp. 75-102, https://doi.org/10.1177/039219218203012005.

ever, differs from that of Gunning's as she seeks to identify how to respectfully bring FGC to an end while I seek to identify whether it must come to an end at all based on the experiences of women on the ground.

Case Study: Female Genital Cutting (FGC) in Sierra Leone FGC as a Human Rights Violation

As FGC was only deemed a human rights violation by the UN and the WHO in 1997, it seems questionable how and why it only recently reached the forefront of the global stage although it has been practiced over the last two thousand years. Accordingly, it is important to evaluate the process by which FGC became recognized as a human rights violation in the first place in order to determine how justified and universal the qualification actually is from the perspective of the women affected by it.

Emerging alongside the second wave of feminism in the 1970s, the argument against FGC was put forth by Western feminists–including Gloria Steinem and Fran Hosken–claiming its oppressive nature.[14] Hosken, an American journalist, was the first to refer to FGC as "female genital mutilation," stressing the horror of the practice, in her 1976 newsletter *Women's International Network News*.[15] Additionally, she presented her medical research findings against the practice at the 1979 WHO Seminar on Harmful Traditional Practices Affecting the Health of Women and Children. However, according to Elizabeth Boyle and Stephanie Lundquist this focus on oppression and subordination in the practice of FGC actually clashed with that of African feminists who felt overshadowed in a conversation about a cultural practice they found to align with their belief systems.[16] Accordingly, the initial argument against FGC appeared to focus less on the African women actually on the ground and more on the white Western women on international podiums. It then seems concerning whether a debate so one-sided can lead to an actual universal agreement about the status of a practice as a human rights violation.

The pushback to this supposition would be that there have been various African activists speaking out against FGC in the past. In particular, many African activists applauded the formation of the Inter-African Committee on Traditional Practices Affecting Women and Children (IAC) in 1984, which works within the guidelines of CEDAW to end traditional practices affecting women and gained immense support at the 1985 UN Conference for Women.[17] But, this accepting stance was not taken by all African women, many of whom thought the term "female genital mutilation" and the argument of oppression surrounding FGC was ignorant and culturally imperialist.[18] These women

14 Stephanie Lundquist, "Transnational Mobilization against Female Circumcision," *Journal of Development and Social Transformation* 1 (2004): pp. 23-29.

15 Lisa Wade, "The Evolution of Feminist Thought about Female Genital Cutting," *Sociologists for Women in Society*, 2009, https://www.socwomen.org/wp-content/uploads/Wade-The-Evolution-of-Feminist-Thought-About-Female-Genital-Cutting.pdf.

16 Elizabeth Heger Boyle, *Female Genital Cutting: Cultural Conflict in the Global Community* (Baltimore: Johns Hopkins University Press, 2005); Stephanie Lundquist, "Transnational Mobilization against Female Circumcision," *Journal of Development and Social Transformation* 1 (2004): pp. 23-29.

17 Fran P Hosken, "Female Genital Mutilation: Strategies for Eradication," *Women's Health Newsletter* 2, no. 36 (March 1998): pp. 4-5; "About IAC" (Inter-African Committee on Traditional Practices, n.d.), http://iac-ciaf.net/about-iac/.; Anika Rahman and Nahid Toubia, Female Genital Mutilation: a Guide to Laws and Policies Worldwide (London, United Kingdom: Zed Books Ltd, 2000).

18 Lisa Wade, "Learning from 'Female Genital Mutilation': Lessons from 30 Years of Academic Discourse," *Ethnicities* 12, no. 1 (2011): pp. 26-49.

instead preferred the promotion of the medicalization of the practice in order to decrease health effects and to maintain the cultural significance of the practice.[19] Unfortunately for these women, however, their stances were not those amplified on the world stage, as the declaration of FGC as a human rights violation by the UN and WHO in 1997 carried on despite their protests.

It therefore appears that the process by which FGC was deemed a human rights violation from the 1970s to the 1990s could hardly be deemed universally inclusive. While there were some African voices recognized on the international stage by the 1980s, the beginning of the process was dominated by vastly Western white feminists and the end still silenced many African women who remained in favor of the practice. Additionally, the few African women whose voices were heard were often the highly educated doctors or wealthier elite who had access to the global talks, rather than the rural women who disproportionately practiced the cutting.[20] It then seems that Howland's stance on the universality of the human rights documents and the need to fully implement the international agreements without exception is narrow-minded.[21] As the UN defines universality to mean being "applicable in all countries, in all contexts and circumstances and at all times," it is clear the universality surrounding the process by which FGC became recognized a human rights violation is necessarily invalidated.[22]

FGC on the Ground

Aside from the discussions surrounding FGC on the global stage, it is important to evaluate the practice on a smaller scale to determine whether its classification as a human rights violation is really justified on the ground. For these purposes, this paper will discuss FGC in Sierra Leone through the Human Rights Watch's definition of human rights: "rights to health, to be free from violence, to life and physical integrity, to non-discrimination, and to be free from cruel, inhuman, and degrading treatment."[23]

Despite the declaration of FGC as a human rights violation in 1997 and Sierra Leone's promise to eradicate FGC with its ratification of the Maputo Protocol in 2015, approximately 90% of women in Sierra Leone have undergone the practice according to UNICEF.[24] Even with a temporary legal ban on the practice with the Ebola outbreak in 2015, there was little evidence that the practice significantly declined, especially in rural areas where legal enforcement is slim.[25] Therefore, if women had the legal grounds to fight back against FGC and the UN assesses the practice as a human rights violation, why does its prevalence remain so high in the country?

19 Anika Rahman and Nahid Toubia, *Female Genital Mutilation: a Guide to Laws and Policies Worldwide* (London, United Kingdom: Zed Books Ltd, 2000).

20 "Female Genital Mutilation and Other Harmful Practices. Retrieved" (World Health Organization, n.d.), http://www.who.int/reproductivehealth/topics/fgm/fgm_prevalence_egypt/en/.

21 Courtney W Howland, "The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An Analysis under the United Nations Charter," *Columbia Journal of Transnational Law* 35, no. 2 (1997): pp. 271-376.

22 "Universality and the 2030 Agenda for Sustainable Development from a UNDG Lens" (United Nations, n.d.), https://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/qcpr/undg-discussion-note-on-universality-and-2030-agenda.pdf.

23 "Q&A On Female Genital Mutilation," Human Rights Watch, June 16, 2010, https://www.hrw.org/news/2010/06/16/qa-female-genital-mutilation.

24 "Female Genital Mutilation/Cutting: A Statistical Overview and Exploration of the Dynamics of Change" (UNICEF, 2012), https://www.unicef.org/media/files/FGCM_Brochure_Lo_res.pdf.

25 Umaru Fofana, "Captured and Cut: FGM Returns to Sierra Leone despite Official Ban," *The Guardian*, September 29, 2016, https://www.theguardian.com/global-development/2 016/sep/29/female-genital-mutilation-returns-sierra-leone-official-ban.

An explanation to this question is provided by Fuambai Ahmadu, a Sierra Leonean-American anthropologist, who stresses that the practice of FGC is not centered on male oppression of women despite misogyny being fundamental to the international critique of FGC.[26] Instead, it seems that the practice is endeared by women of the Kono culture of Sierra Leone. Within the Kono culture, the majority of women are members of a secret society called Bondo. Young girls, through Bondo, undergo respected and esteemed initiation ceremonies to transition into womanhood at the age of puberty.[27] During these ceremonies, traditional cutters–known as soweis–conduct the cutting but also teach the girls to cook, clean, and dance.[28] These ceremonies, according to Ahmadu, place women at the center of society, without a suffocating "cultural obsession with feminine chastity, virginity, or women's sexual fidelity."[29] As such, the positivity and female empowerment that comes with these initiation ceremonies seems to undercut the possibility that FGC in Sierra Leone denies women life, physical integrity, non-discrimination, and freedom from degrading treatment as perceived internationally. It also appears to undercut Nussbaum's argument that women have just come to accept the mistreatment male domination places on them in society because it is in fact a practice of female empowerment.[30]

Furthermore, the Bondo society is an immense political force in the country. Instead of men leading the political push for the oppression of women through FGC, local soweis often organize pro-FGC activism, stressing the importance of the practice to Sierra Leonean culture.[31] Various parliamentarians, despite pressure from international organizations and the signatories of the anti-FGC Maputo Protocol, have expressed that voting against the practice of FGC would be political suicide.[32] If international organizations so often promote fair representation of citizen preferences in government, how fair would it be to ban the practice when it is not really what the people want?

This argument of the cultural significance and positivity of FGC in Sierra Leone can be countered in two ways. The first counterargument surrounds the "right to health" stressed by the Human Rights Watch.[33] According to a study conducted by Margaret Brady in 1999, girls often face a great chance of infection after undergoing FGC as they are often cut with an unsterilized knife that has been used multiple times on other girls.[34] Additionally, a study

26 Fuambai S Ahmadu, "Rites and Wrongs: An Insider/Outsider Reflects on Power and Excision," in *Female "Circumcision" in Africa: Culture, Controversy, and Change* (Boulder: Lynne Rienner Publishers, 2000), pp. 283-285; "Current Status and Progress," UNICEF DATA (UNICEF, June 2016), https://data.unicef.org/topic/child-protection/female-genital-mutilation-and-cutting/#.

27 Research Directorate of the Immigration and Refugee Board of Canada, Ottawa. "Sierra Leone: The Practice of Female Genital Mutilation (FGM); the Government's Position with Respect to the Practice; Consequences of Refusing to Become an FGM Practitioner in Bondo Society, Specifically, If a Daughter of a Practitioner Refuses to Succeed Her Mother.," Canada: Immigration and Refugee Board of Canada, March 27, 2009.

28 Olivia Acland, "Ebola Ended FGM in Sierra Leone, but Now It's Back," *Vice News*, March 21, 2016, https://www.vice.com/en_us/article/ney9mb/ebola-ended-fgm-in-sierra-leone-but-now-its-back.

29 Fuambai S Ahmadu, "Rites and Wrongs: An Insider/Outsider Reflects on Power and Excision," in *Female "Circumcision" in Africa: Culture, Controversy, and Change* (Boulder: Lynne Rienner Publishers, 2000), pp. 283-285.

30 Martha C. Nussbaum, "Symposium on Amartya Sens Philosophy: 5 Adaptive Preferences and Womens Options," *Economics and Philosophy* 17, no. 1 (2001): pp. 67-88, https://doi.org/10.1017/s0266267101000153.

31 J S, C B, and A J, "The Political Battle on FGM/C," *The New Humanitarian (IRIN News*, December 17, 2012), http://www.irinnews.org/report/97066/sierra-leone-political-battle-fgmc.

32 Ibid.

33 "Q&A On Female Genital Mutilation," Human Rights Watch, June 16, 2010, https://www.hrw.org/news/2010/06/16/qa-female-genital-mutilation.

34 Margaret Brady, "Female Genital Mutilation: Complications and Risk of HIV Transmission," *AIDS Patient Care and STDs*

found that approximately 34.3% of women who undergo the procedure experience complications like tetanus and urinary tract infections.[35] From this data, it seems possible FGC could be justifiably argued as a human rights violation due to the fact that it jeopardizes female health, which they have an inalienable human right to. However, Fuambai Ahmadu critiques the often cited Western medical studies on FGC as exaggerated.[36] She stands in solidarity with various Kono women who believe that the practice should simply be medicalized, ultimately reducing medical risk.[37] She also illustrates this possibility is real as she personally decided to return to Sierra Leone to undergo the cutting ceremony as an adult in 1991 alongside her mother and sister.[38] With medicalization of the procedure as a possibility, the argument that FGC violates a woman's "right to health" is weakened. Further, if international organizations like the UN and the WHO allow FGC for women who find the practice culturally empowering, then the medicalization of the procedure would likely become more widespread, ensuring the health of more African women who wish to see the procedure continue.

The second counterargument to the cultural significance and positivity of FGC in Sierra Leone is that not all women in the country are supportive of the practice. For example, twenty-eight-year-old mother Khadija Balayma Allieu was reportedly kidnapped and cut against her will in 2016 by five or six Bondo women.[39]In this case, it is clear that Allieu's human rights were violated as she faced violence, inhumane treatment, and a threat to her physical integrity. Without giving consent for an empowering Bondo ceremony or the cutting at all, Allieu should be accorded full protection under international human rights law.

The key crux of this counterexample, however, surrounds choice. If Allieu had the choice, she would not have undergone FGC. In contrast, many women, unlike Allieu, make the conscious choice to undergo the procedure because they feel empowered by it. The choice here makes an immeasurable difference on whether FGC is considered a human rights violation, as the perception a woman has on the practice can determine whether or not she is degraded by it. This conclusion is further supported by Ahmadu who writes that women like herself should not be chastised for making choices regarding their own bodies.[40] Additionally, cultural anthropologist Richard Shweder furthers this argument, stressing that women deserve the right to personal and family privacy in the decision to undergo FGC.[41]

13, no. 12 (June 25, 1999): pp. 709-716, https://doi.org/10.1089/apc.1999.13.709.

35 Adriana Kaplan et al., "Health Consequences of Female Genital Mutilation/Cutting in the Gambia, Evidence into Action," *Reproductive Health* 8, no. 1 (October 3, 2011), https://doi.org/10.1186/1742-4755-8-26.

36 Fuambai S. Ahmadu and Richard A. Shweder, "Disputing the Myth of the Sexual Dysfunction of Circumcised Women: An Interview with Fuambai S. Ahmadu by Richard A. Shweder," *Anthropology Today* 25, no. 6 (December 2009): pp. 14-17, https://doi.org/10.1111/j.1467-8322.2009.00699.x.

37 Ibid.

38 Ibid.

39 Umaru Fofana, "Captured and Cut: FGM Returns to Sierra Leone despite Official Ban," *The Guardian*, September 29, 2016, https://www.theguardian.com/global-development/2 016/sep/29/female-genital-mutilation-returns-sierra-leone-official-ban.

40 Fuambai S. Ahmadu and Richard A. Shweder, "Disputing the Myth of the Sexual Dysfunction of Circumcised Women: An Interview with Fuambai S. Ahmadu by Richard A. Shweder," *Anthropology Today* 25, no. 6 (December 2009): pp. 14-17, https://doi.org/10.1111/j.1467-8322.2009.00699.x.

41 Richard A Shweder, "What about 'Female Genital Mutilation'? And Why Understanding Culture Matters in the First Place," *Daedalus* 129, no. 4 (2000): pp. 209-232, http://www.jstor.org/stable/20027671.

Case Study Conclusions

As illustrated by the above analysis, it appears that at least in Sierra Leone the practice of FGC itself does not always qualify as a human rights violation as defined by the Human Rights Watch in 2010.[42] Specifically, with consent and medicalization involved in the practice, a woman's right to health, physical dignity, non-discrimination, and freedom from violence are all protected. Therefore, in order to make the implementation of international human rights standards truly universal, states should allow consenting women at the age of eighteen or older to independently decide whether or not to undergo FGC. Not only does this protect women who do not want to undergo the procedure from the practice, but it also allows the women who do want to undergo FGC their right to privacy established in the Universal Declaration of Human Rights.

Of course, it is also necessary to put measures in place that assure women are actually deciding about the procedure for themselves. According to a study completed by Nafissatou J. Diop and Ian Askew, community-based educational programs for men and women that focus on the anatomy of FGC and the importance of women's empowerment often decrease the amount of women who undergo the practice.[43] It is therefore likely that the women who still chose to undergo the practice more likely decided on it for themselves rather than being influenced by possible pressures around them. Additionally, as the educational programs are run by local leaders, the women are also not choosing whether or not to undergo the practice based on Western ideals put forth in any neocolonial manner. They are instead fostering empowering conversations about their bodies that ensure sensitivity to their culture and could help men gain a greater respect for the female body. This paper thus suggests the implementation of these community-based educational programs across Sierra Leone and other African countries to protect those who do not want to undergo practice as well as the international right to privacy of the women who do support the practice.

Implications to the International Human Rights Framework Conclusions

Because FGC is considered a human rights violation by the United Nations and the World Health Organization, it is imperative to discuss the implications of the above analysis on the international human rights framework.

To begin, Glendon and Howland's arguments that the human rights framework has always been formed in a universal manner have lost much credibility.[44] Due to the dominance of Western white feminists and more well-educated Africans in the process by which FGC became considered an international human rights violation, it seems that the perspectives of African women in more rural areas who appreciate the practice for cultural reasons were practically dis-

42 "Q&A On Female Genital Mutilation," Human Rights Watch, June 16, 2010, https://www.hrw.org/news/2010/06/16/qa-female-genital-mutilation.

43 Nafissatou J. Diop and Ian Askew, "The Effectiveness of a Community-Based Education Program on Abandoning Female Genital Mutilation/Cutting in Senegal," *Studies in Family Planning* 40, no. 4 (December 8, 2009): pp. 307-318, https://doi.org/10.1111/j.1728-4465.2009.00213.x.

44 Mary Ann Glendon, A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights (New York, NY: Random House, 2002); Courtney W Howland, "The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An Analysis under the United Nations Charter," *Columbia Journal of Transnational Law* 35, no. 2 (1997): pp. 271-376.

missed. By the definition of universality provided by the UN, it is clear that the process was not in fact universal, exempting a large population of women from expressing their views of the practice from their cultural context. Accordingly, the proclaimed universality of the international human rights framework is at least partially false. And because there are various other traditional practices dubbed international human rights violations, it is possible that further research could strengthen this argument with deeper analysis into the process by which other traditional practices were deemed human rights violations in the past.

Additionally, the arguments Gunning and Coomaraswamy (1999) put forth that traditional practices must always be put to an end but with more respect for cultural pushback are challenged by the analysis as presented in this paper.[45] As illustrated by this paper, FGC is not always a violation of human rights as defined by the United Nations because it can be done in a manner that is consensual, that does not risk a woman's health, and that is empowering rather than degrading. Therefore, the practice should not be put to an end under all costs, as doing so could actually violate the right to privacy women have to personally decide to undergo it in the first place. The current international human rights framework is therefore not a code that can be implemented in a universally appropriate manner as the international community intends it to be.

45 Isabelle R Gunning, "Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries," *Columbia Human Rights Law Review* 23, no. 8 (1992): pp. 188-248.

Suggestions

The conclusions reached by this paper may ultimately draw concern to how the international community should move forward to address the flawed universality of its human rights framework. To mitigate these concerns, this paper puts forth two suggestions.

In order to fix the problems associated with the process by which traditional practices are deemed human rights violations, the United Nations should organize commissions on each practice to be discussed among national leaders, local leaders, and local people. By ensuring the inclusion of these participants, it is more likely that an organized and well-rounded perspective will be heard on each issue. The United Nations should grant these commissions full authority to change the human rights framework in relation to these practices with assurance that the changes reached still provide protection to those who do not consent to practices and therefore have their human rights violated.

If it is not possible to pursue the first suggestion, then a more moderate approach is suggested. With the international human rights framework remaining the same, it is important to implement it in a way that makes exceptions with cultural specificity in mind. Even if practices like FGC are still considered human rights violations on paper, for example, the ceremonies that do not violate a woman's human rights under consent, medical safety, and female empowerment must not be criminalized. Only the instances by which the practices truly violate human rights–like those that threaten a woman's health, dignity, and freedom from discrimination–should be criminalized to the full extent

Howland suggests.[46] Although the distinction between these two instances may perhaps be difficult to discern sometimes, the further implementation of community-based educational programs may make the distinction clearer.

By heeding these suggestions, it is likely that the human rights framework will be applied with greater cultural sensitivity while continuing to protect the rights of those who may be most vulnerable. The greater the willingness to improve the universality of the documents and application of this framework, the more universal the international human rights framework will become.

46 Courtney W Howland, "The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An Analysis under the United Nations Charter," *Columbia Journal of Transnational Law* 35, no. 2 (1997): pp. 271-376.