

AGORA – Evolving Perspectives on Anti-Discrimination Law and Human Rights:
Challenges and Judicial Responses

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The Changing Paradigm of Human Rights Justifications: Challenges for Civil Society

Abstract

This article scrutinises the evolving paradigm of human rights justifications (HRJs) and the growing complexities encountered by civil society when states invoke human rights to legitimise restrictive migration policies. Originally conceived as a shield to protect individuals from state power, human rights have increasingly been appropriated by states as instruments of governance, particularly in migration law. Through a typology comprising direct reference, misuse of human rights doctrine, and misuse of international law, the article analyses contemporary legislative reforms in the EU and Sweden—including the activation of the Temporary Protection Directive, tightening of residency requirements, and citizenship restrictions. The empirical and methodological approach integrates the co-production of knowledge with civil society actors. The analysis demonstrates that, while HRJs can be mobilised to expand rights in times of crisis, as in the EU’s response to the Ukrainian refugee influx, they are also deployed to restrict rights, as seen in recent Swedish legislative processes. The article further explores intersectionality as a critical lens and outlines coalition-building and experiential learning as strategies for civil society to counter HRJs. Ultimately, it contends that reinstating human rights as a protective shield depends on strengthening civil society’s role in legal and policy advocacy, knowledge production, and accountability requirements in an era of shifting state rationales.

Key words

Human rights justifications, civil society, migration law, Temporary Protection Directive, migrant residency requirements.

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The paradigm of human rights, as originally conceived in post-war European and international instruments,¹ was to function as a normative shield, asserted by individuals, protecting individuals against state power. An incremental change in this paradigm over the past few years can now be seen as full-blown: states are using human rights to justify their actions, at times in an individual rights-confirming manner, as seen below with the EU activation of the Temporary Protection Directive. In such positive examples, there is typically little need for civil society to react to such an expansion of rights. However, when human rights justifications (HRJs) are used insidiously to restrict the human rights of individuals—as seen from the Swedish examples below in the context of migration—counteracting such justifications is more difficult for civil society, particularly depending upon the type of HRJ, its context, the constitutional design of the legal system, and the access-to-justice mechanisms in place.

This article examines the use of HRJs in the context of migration, with examples taken from the EU and Sweden, and sets out a typology to help civil society identify human rights justifications. The methodology comprises two components. The first is the identification of HRJs, as used in the EU and Swedish examples, by states to motivate their actions. The second component is the co-production of knowledge through four civil society engagements, two in Sweden and two in Taiwan, involving the presentation of the HRJ findings to civil society in the first instance, and the co-production of knowledge² on HRJs and civil society alternatives to address HRJs in the second. The EU and Swedish HRJ examples demonstrate both the creation of a virtuous circle and its counterpoint, respectively. Avenues that civil society has taken in these examples are expanded here, alongside alternatives to engage with this difficult issue of the dismantling of human rights through human rights justifications.

1. Human Rights Justifications

Human rights justifications (HRJs)³ are defined here as instances in which States activate human rights to defend and legitimise their own actions: in essence, the human right is used as an instrument of governance instead of protection. This is a significant departure from the historical paradigm in which the state, rather than serving solely as the object of human rights accountability, assumes the role of subject, invoking rights, norms, or treaty principles as a rationale for state action (especially in restrictive measures). Such HRJs are distinct, for example, from public interest justifications that emphasise collec-

¹ See Preamble to the European Convention on Human Rights (ECHR); and the Universal Declaration of Human Rights (UDHR) 1948, Articles 1–2.

² Ostrom, 1996.

³ Grahn-Farley, 2026.

tive welfare, order, or security without any direct reference to binding human rights law.⁴ HRJs are also separate from propaganda and normative state messaging, which may use the language of rights rhetorically but do not rest on legal or treaty obligations.⁵ HRJs are narrower than, for example, the misappropriation of human rights as set out by de Búrca and Young. Misappropriation, as a discourse analysis examine the appropriation of rights as a rhetorical tool within a political context, including ultra-conservative or illiberal contexts. HRJs are used here as a tool for legal analysis to identify gaps and effects in the protection of individual human rights.⁶ Despite the fact that the function of human rights “has traditionally been considered to consist primarily in protecting individuals’ freedom against a potentially hostile State”,⁷ the State, by invoking HRJs, uses human rights as a governance instrument instead of protecting the rights of individuals.

When the State, and not the individual, is the activating subject, human rights serve the State in legitimising its actions, instead of serving the individual as protection from the State. When a State activates a human rights justification, it also decides what right to activate, when to activate it, and against which other rights and interests each right should be balanced. Instead of judicial or committee interpretations of human rights that have gone through due process, as is the case when individuals bring human rights violations to courts or committees, the state, by *sua sponte* interpreting human rights in a different context—with no counterparty or argument—whether in enacting legislation or policy, frees itself to advance its own interpretation. HRJs therefore result in a shift from a “bottom-up” to a “top-down” mobilisation of rights language in law and policy formation.

The question of whether the state is resting its argument on binding human rights or other legal obligations is consequently paramount to determining whether it is invoking an HRJ. The reach of a human right (whether negative or positive) is highly dependent on whether it constitutes a positive obligation for the state (the state is to take action) or a negative obligation (the state is to refrain from action). Whether accountability mechanisms exist for enforcement is also central to the strength attributed to the right. These enforcement mechanisms at the international human rights level include monitoring bodies (committees)⁸ and universal periodic reviews.⁹ At the regional European level, they include the courts: either the Court of Justice of the European Union for European Union law, or the European Court of Human Rights (ECtHR) for the European Convention on Human Rights (ECHR). The distinction between positive and negative obligations has been developed in ECtHR jurisprudence, which has found

⁴ Boot, 2024, p. 111.

⁵ Barnhizer, 2007.

⁶ De Búrca and Young, 2023, p. 213.

⁷ Fredman, 2008, p. 9.

⁸ Carraro, 2019, p. 1080.

⁹ Sivakumaran et al., 2021, p. 3.

that positive obligations require the State to actively to protect human rights. An ECHR right can be affected not only by way of state action (negative obligations) but also by inaction as “only the State can supply what is needed for an individual to fully enjoy her human rights” (positive obligations).¹⁰

Three categories of HRJs can be identified:¹¹

1. When states directly reference human rights to justify their domestic legal actions against the background of their obligations to comply with international law;
2. When states misuse international human rights doctrine to justify their domestic legal actions against the background of their obligations to comply with international law; and
3. When states misuse the parameters of international law to justify their domestic legal actions against the background of their obligations to comply with international law.

The next section provides examples of each of these three types, as used by the EU and Sweden with respect to the activation of the Temporary Protection Directive and legislation targeting migration and migrants, respectively.

2. HRJs in action

Using the three types identified above in the HRJ typology—direct reference, misuse of human rights, and misuse of international law more generally—the analysis below focuses on actual HRJ examples used to explain state actions that either expand or negate human rights in the context of migration.

2.1. *The EU TPD Activation: HRJs with Direct References to Human Rights*

A compelling example of how HRJs can foster a virtuous circle between governmental action and civil society engagement is illustrated by the European Union’s unanimous activation of its Temporary Protection Directive (TPD).¹² The Russian Federation’s full-scale invasion of Ukraine in February 2022 triggered one of the largest mass displacements in recent European history. Within weeks, over a million Ukrainians sought refuge in the EU, compelling the Union to invoke the long-dormant TPD.¹³ Originally adopted in the aftermath of the Yugoslav Wars, the TPD had remained inactive for over two decades, with previous humanitarian crises—including the Syrian refugee crisis—failing to generate the consensus required for activation.

¹⁰ Stoyanova, 2023, p. 10.

¹¹ Grahn-Farley, 2025.

¹² Council Directive 2001/55/EC, paras. 12–23.

¹³ Council Implementing Decision (EU) 2022/382.

In marked contrast, the Ukrainian crisis elicited rapid and unanimous recognition of the situation as both “mass” and “unprecedented” by the European Commission and the Council of Ministers.¹⁴ Notably, the EU’s response was framed not only in pragmatic or security-oriented terms, but as an explicit reaffirmation of EU foundational values such as solidarity, in direct alignment with the Treaty on European Union, especially its Articles 2, 21, and 25. The HRJ for this decision referred to here as European solidarity, is grounded in Article 2 of the Treaty on European Union (TEU):¹⁵

“Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

The “European solidarity” HRJ was at the forefront for both the EU and its Member States in the swift mobilisation that occurred. This was done in the name of collective solidarity within the EU—and was a positive demonstration of the fulfilment of positive obligations towards human rights.

The ongoing provision of TPD benefits to all eligible forcibly displaced persons demonstrates compliance by EU Member States with both their negative and positive obligations: not only are they refraining from violations, but they are actively taking measures to protect rights such as the right to life, freedom from torture and inhuman or degrading treatment, and other core democratic values. This dual compliance resonates with the principle—central to the European Convention on Human Rights—that States must not only avoid infringing rights but also take affirmative action to safeguard them.¹⁶ Following its initial activation on 4 March 2022, the Council has annually extended the TPD, most recently to 4 March 2027.

The unanimous Council Decision activating the TPD was clearly preceded by an extraordinary wave of solidarity: the mobilisation of civil society—including NGOs, associations, trade unions, religious and educational institutions, business leaders, activists, and ordinary citizens—was immediate and comprehensive, as discussed further below in section 3. These actors compensated for institutional and legislative shortfalls at both EU and national levels, and significantly influenced political decision-making. While the degree of civil society engagement has varied across Member States, it was generally robust throughout the EU.¹⁷

¹⁴ Abrisketa, 2023, pp. 3–4 and 6.

¹⁵ Consolidated version of the Treaty on European Union (TEU).

¹⁶ Akandji-Kombe (2007) p. 7.

¹⁷ Ukrainian Red Cross Society, 2023, p. 11.

2.2. *The Swedish HRJs Used in Proposed Migration Legislation*

To understand the complexity of the use of HRJs in the following Swedish examples, some knowledge of the Swedish legislative process is necessary. Sweden has no constitutional court, with the focus being on proactive rather than reactive assessments of the constitutionality of proposed legislation. The Government begins the process by commissioning a committee or department to conduct investigations and draft initial legislative proposals: a legislative inquiry (SOU) or a department report (Ds). The investigation is the first check as to constitutionality. The proposal is then sent for comment to a wide array of stakeholders: government agencies, courts, municipalities, trade unions, civil society organisations, and potentially any actor with a relevant interest.¹⁸ Response time is imperative here, as responses take time to formulate; a typical period is 4–6 months. This is seen as the first democratic check. The Government is then to consider the responses and make appropriate revisions. This revised version is sent to the Council on Legislation (*Lagrådet*), comprised of senior justices, which issues an opinion as to the constitutionality of the proposed legislation. After revision by the Government, the proposed legislation is sent to Parliament for a vote.

As seen in the examples below, response times have been shortened considerably for much of the proposed legislation, placing extra stress on civil society as well as other respondents, particularly in light of the number of proposals. Another vital aspect of this system is that the Government's legislative preparatory works are used by courts to interpret the law, which entails the risk that embedded HRJs can be cited by courts as a legal source when interpreting the law. HRJs address the legal consequence of governance rather than of compliance, and their use in a system with parliamentary sovereignty such as Sweden affects the courts' ability to address interpretation, given that the HRJ is used as a governance tool rather than as a claim advanced by an individual.

The following examples of HRJs used as tools of governance underscore the vulnerabilities thereby introduced into the human rights regime—specifically, they compromise the system's capacity to safeguard individual rights *vis-à-vis* the State and the integrity of human rights protection. The examples included provide a baseline that sufficiently illustrates some of the many ways in which a government can use HRJs in the field of migration as an instrument of governance in the legislative process.

2.2.1. Direct Reference HRJs

The use of HRJs with the EU activation of the Temporary Protection Directive was a first example here of direct HRJs. The travel ban for children in Sweden is a second example.

¹⁸ Carlson (2019) pp. 45–48.

Exit Travel Ban for Children

The Swedish Government proposed in February 2024 an extension of the travel ban under the Act with Special Provisions on the Care of Young Persons (SFS 1990:52), aiming to enhance the protection of children from harmful stays abroad. This proposal empowers authorities to impose an exit ban in respect of a child where there is a significant risk that the child may be taken out of the country and exposed to threats to health or development during their time abroad. The risks identified include physical or psychological abuse, exploitation, inadequate care or living conditions, substance misuse, criminal involvement, or other socially degrading circumstances.¹⁹

To counter the substantial intrusion on individual liberties raised by the legislative proposal, the Government invoked HRJs to defend these new restrictions. It emphasised that such measures are designed to safeguard fundamental rights and freedoms, including the right to life, survival and development, respect for private and family life, health protection, the right to education, and safeguards against violence, sexual abuse, and exploitation. Reference was made to key legal instruments such as Articles 3 and 8 of the ECHR, Article 7 of the EU Charter, and Articles 6, 16, 19, 24, 28, 34 and 36 of the Convention on the Rights of the Child (CRC). The Government stressed the necessity and proportionality of the restrictions, arguing that they represent justified limitations under the Instrument of Government, the ECHR, the Fourth Additional Protocol to the ECHR, and the EU Charter, while simultaneously promoting other rights and freedoms.²⁰ The Government also assessed that the proposed travel ban increased the protection and security of children at risk, as required under the principle of the best interests of the child under the CRC.²¹ The Parliament (*Riksdag*) approved the Government's proposal, and the amendments entered into force on 1 June 2024 (SFS 2024:272), approximately three months after the proposal was submitted.

2.2.2. HRJs misuse human rights doctrine

This second type of HRJ, defined as where a state misuses a human rights doctrine, can be seen in the following example concerning the use of “the best interests of the child” under the CRC to restrict migrant rights. Swedish migration policy has shifted decisively towards greater restrictiveness, a trend underscored by the legislative programme outlined in the Tidö Agreement (*Tidöavtalet*), signed after the 2022 general election by four right-wing parties. Based on this Agreement, the Government has spearheaded nearly all major restrictive migration reforms; notably, the only exception has been the activation of the EU Mass Migration Directive that was adopted unanimously at EU

¹⁹ Legislative Bill Prop. 2023:24/72, p. 3.

²⁰ *Ibid.*, pp. 23 and 40.

²¹ *Ibid.*

level.²² Here, the Government rationalises its action by arguing that reducing the number of migrants allowed into the country would improve conditions for those children already in the country.

The Temporary Aliens Act—Best Interests of the Child

The unprecedented influx of asylum seekers to Europe in 2015—driven largely by conflicts in Syria, Afghanistan, and other crisis regions—placed an extraordinary strain on national reception systems. Sweden, which had historically pursued comparatively generous asylum policies, received a record number of asylum applications that year, positioning it among the EU Member States with the highest per capita intake. In November that year, the Swedish Government announced a strategic policy shift aimed at what it termed creating “breathing space” (*andrum*) within the reception and integration system. This policy was explicitly framed as a temporary derogation from Sweden’s traditionally more expansive protection framework. The underlying legal approach was to recalibrate Sweden’s national asylum provisions to the minimum standards permitted under EU secondary legislation—namely, the Qualification Directive (2011/95/EU), the Reception Conditions Directive (2013/33/EU), and the Family Reunification Directive (2003/86/EC)—while continuing to adhere to its obligations under the relevant international instruments.

According to the Government, lowering the protection standards to the EU’s legal baseline was necessary to dissuade potential applicants from choosing Sweden over other Member States. The temporary law introduced significant restrictions. It curtailed the grounds on which residence permits could be granted for protection purposes, and it limited the right to family reunification. Furthermore, individuals recognised as refugees or as beneficiaries of subsidiary protection were no longer eligible for permanent residence permits; instead, they were to receive only temporary permits. The sole exception concerned resettled refugees, who would continue to be granted permanent residence. The reform also removed the possibility of granting residence permits on humanitarian grounds, except where refusal would contravene Sweden’s obligations under international law.²³

In response to criticism raised specifically regarding children’s human rights, the Government invoked HRJs and stated that ensuring children’s rights does not always involve simple and obvious solutions, and that it ultimately requires weighing different interests against each other and making choices and setting priorities. According to the

²² Malm Lindberg, 2024, p. 6.

²³ Legislative Bill Prop. 2015/16:174, pp. 22–65. The typical legislative drafting procedure with respect to this law was bypassed due to the perceived urgency of the migration situation in 2015. The relevant preparatory work consists largely of a Departmental Report Ds 2016:45 released after the legislative bill and which informed the drafting of the bill. This also led to criticism due to the absence of a thorough legislative inquiry process preceding such far-reaching changes.

Government, a more equal distribution in the EU (through restricting the rights granted in Sweden) would create better conditions for providing a good reception for the children who came to Sweden.²⁴ The legislative bill was officially published on 28 April 2016, the underlying Government report was officially published on 5 July 2016, and the adopted new Act took effect on 20 July 2016, a timespan of approximately three months.²⁵ Its enactment marked a decisive turn in Swedish migration and asylum policy, representing a deliberate departure from the normal legislative procedure as well as a shift from Sweden's historically generous asylum practices—including permanent residence permits and broad family reunification rights—to a regime notable for its restrictiveness.²⁶

2.2.3. HRJs Misuse the Framework of International Public Law

The third type of HRJ identified here is where the state misuses the framework of international public law, such as the technical claims in the next example that neither EU law nor international public law requires permanent protection.

The 2020 Temporary Residence Permits—the New Status Quo

After 2016, Sweden, in line with broader European trends, witnessed a pronounced reduction in the number of asylum applications. For instance, applications fell steeply from a high of 162,877 in 2015 to 28,939 in 2016, and further to 11,400 by 2021²⁷—a trend partially attributed to both legislative reforms and external factors such as the COVID-19 pandemic.²⁸ The Swedish Government, in its 2021 legislative assessment, acknowledged that the restrictive provisions on residence permits introduced via the temporary law were among several factors contributing to this decline, although it stated that it was “not possible to determine exactly to what degree”.²⁹ The Government emphasised the methodological difficulty of isolating and quantifying the causal effect of these legal changes compared to other external variables.³⁰

The Government's position was to retain the temporary residence permit model and replace the earlier statutory framework of permanent residence permits for refugees.³¹ This was justified in the legislative preparatory works with reference to human rights justifications, the Government arguing that neither EU law nor relevant international conventions require the granting of permanent residence permits to persons in need of

²⁴ Legislative Bill Prop. 2015/16:174, p. 29.

²⁵ Lag (2016:752) *om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige* [The Act on Temporary Restrictions on the Possibility of Being Granted a Residence Permit in Sweden].

²⁶ Stern, 2020, pp. 121–123; and Stern, 2018, pp. 233–262.

²⁷ Statista, 2025a and 2025b.

²⁸ ECRE, 2022.

²⁹ Regeringen, 2021, pp. 58–73.

³⁰ *Ibid.*, pp. 58–59, 96–97.

³¹ *Ibid.*, p. 58.

protection. More specifically, it maintained that neither the human right to asylum nor other positive obligations under international human rights law entail any requirement that the protection granted be permanent, concluding that the shift from permanent to temporary protection in Swedish law was legally permissible under Sweden's international obligations.³² The Government also underscored that this approach was necessary to “safeguard the right to asylum” and to ensure that Sweden could meet its responsibilities to people in need of protection in a “troubled world”, while aligning Sweden's asylum framework closely with those in other EU Member States.³³ After Sweden's legislative shift in 2021, converting most residence permits for asylum seekers from permanent to temporary, a wide range of civil society organisations, legal experts, and researchers criticised its humanitarian, legal, and social consequences. The proposed amendments were adopted on 28 April 2021 (SFS 2021:765), seven months after the submission of the initial Legislative Inquiry in September 2020.³⁴ This passage exemplifies the phenomenon of “ratchet effects” in migration law—where extraordinary temporary restrictions become permanent—a recognised risk in EU migration governance.³⁵

Continued Stricter Rules for Labour Migration

Later examples of the use of HRJs in Sweden's restriction of migration rights follow the same pattern. The State's use of HRJs evidences what can be termed an HRJ creep, with even broader assertions as to the proposal's basis in human rights and international law. A legislative proposal³⁶ published on 25 February 2022 introduced a substantially higher requirement of financial support for allowing entry to family members of labour migrants. Criticism was raised regarding the compatibility of a financial support requirement with Sweden's international obligations, particularly under the ECHR, the CRC and the principle of family unity.³⁷ The Government responded by asserting that the CRC does not “in itself” establish an absolute right to a residence permit.

Further, the Government emphasised the voluntary and lawful nature of labour migration to Sweden, contending that individuals electing to migrate must “take into account the possible consequences that may result from this migration, e.g. that the family may live in different countries for a certain period of time.”³⁸ The Government invoked another HRJ arguing that an income requirement for accompanying family members could serve to “prevent family members from being exploited and forced to work under poor conditions.” From a children's rights perspective, it contended that a maintenance

³² *Ibid.*, p. 58, 96–97.

³³ *Ibid.*, p. 53.

³⁴ SOU 2020:54.

³⁵ Dauvergne, 2016, pp. 67 and 211.

³⁶ Legislative Bill Prop. 2021/22:134.

³⁷ *Ibid.*, pp. 111–114; see also Article 8 ECHR.

³⁸ Legislative Bill Prop. 2021/22:134, pp. 112–114.

threshold could be beneficial for those children granted residence permits, as it would ensure a reasonable standard of living in Sweden. The law (SFS 2022:303) amending the 2005 Aliens Act, among other statutes, was published on 4 May 2022 and entered into force on 1 June 2022, about three months after the proposal was made.

Tightening the Requirements for Citizenships

These final two examples have not yet resulted in legislative bills, as they remain at the inquiry stage. They are included here because they complete the circle concerning restrictions on migrant rights, culminating in the next proposal with the revocation of citizenship. Based on the Tidö Political Agreement, the Government established a legislative inquiry which issued its report in 2025³⁹ with the aim of tightening the requirements for citizenship, with the justification that this would upgrade Swedish citizenship.⁴⁰ In the directive to the inquiry, the Government states that the 1961 UN Convention on the Reduction of Statelessness⁴¹ allows for a requirement that the stateless person has not been convicted of either a crime against national security or a crime punishable by imprisonment for five years or more. The current Swedish law on citizenship has no such requirement, and the Government believes that there are

“strong reasons to consider using the capacity under international law to prevent a stateless person born in Sweden from being granted Swedish citizenship when the person has been convicted of a crime against Sweden’s security or otherwise sentenced to a long prison sentence.”⁴²

The proposed changes in the inquiry include:

- A longer residence requirement for citizenship, from five years to eight years;
- A requirement of stable financial support in the form of income from employment or business;
- Tightened standards regarding honest and lawful conduct (not explicitly defined);
- Extended waiting periods for applicants with criminal records before eligibility is restored;
- Consideration of crimes committed outside Sweden in assessments;
- Treating a no-contact protective judicial order as evidence of problematic conduct;
- Additional requirements for knowledge of Swedish society and cultural understanding in a citizenship exam;
- Removal of some simplified notification procedures for acquiring citizenship;

³⁹ SOU 2025:1. The list of organizations consulted by the Government contained less than five NGOs, see Regeringskansliet, 2025 dated 21 January giving app. a two-month response deadline of 1 April 2025.

⁴⁰ Regeringen, 2023.

⁴¹ UN Convention on the Reduction of Statelessness (1961). UN General Assembly resolution 896 (IX), 4 December 1954.

⁴² Regeringen, 2024.

- Mandatory loyalty declarations;
- Citizenship interviews or ceremonial elements as the final step in the citizenship process;
- Stricter criteria for stateless individuals born in Sweden;
- For children born outside Sweden to unmarried Swedish fathers, tougher rules regarding exemptions from naturalisation requirements.

The proposed amendments are to enter into force on 1 June 2026. The legislative bill has not yet been submitted.

Revoking Swedish Citizenship

The second legislative inquiry in 2025 concerns revoking Swedish citizenship.⁴³ Based on the Tidö Agreement, the Government is also investigating whether constitutional protection for citizenship should be limited for those who have committed “system-threatening crimes” (which is how the Government itself describes “gang-related crimes” in other written statements/official documents). Based on an interest in “strengthening the bond that citizenship represents between the citizen and the state”, the Government determined that the kind of crimes that are so serious that citizenship should be revoked ought to be investigated in order to protect Sweden’s vital interests.⁴⁴ The inquiry presents proposals for amendments to the Swedish Constitution in order to create a greater possibility to revoke citizenship. It suggests that it should become possible to introduce legislation enabling revocation of Swedish citizenship for individuals with dual citizenship who have acquired Swedish citizenship through incorrect or incomplete information or improper procedures, as well as for those who have committed crimes that seriously threaten Sweden’s security or crimes within the jurisdiction of the International Criminal Court. The constitutional amendment is proposed to take effect on 1 January 2027. In May 2025, the government launched a new inquiry to analyse how the Citizenship Act could be amended should the constitutional change be enacted; this is to be reported by 20 March 2026. With this latest proposal, the circle from abolishing permanent residency for migrants to the revocation of migrants’ acquired Swedish citizenship can be seen as complete.

These examples of HRJs in the EU and Sweden are not confined to these legal systems. Examples abound of the use of HRJs by other states, such as the United Kingdom Government’s “Rwanda Plan” for third-country asylum processing, which was defended by the HRJ of the right to life (detering Channel crossings). The UK Supreme Court found this HRJ wanting, ruling that Rwanda did not guarantee non-refoulement and minimum rights standards.⁴⁵ Child detention in Canada has been justified under “best

⁴³ SOU 2025:2.

⁴⁴ Regeringen, 2023, pp. 9–10.

⁴⁵ *R (AAA) v Secretary of State for the Home Department* [2023] UKSC 42.

interests” HRJs. The UN CRC Committee has repeatedly ruled that such detention can never be in a child’s best interests.⁴⁶

3. Responses and Challenges for Civil Society

Hurst Hannum concludes that “[w]hile states cannot deny that human rights treaties do create binding legal obligations, in most instances the ultimate power to determine just what these obligations entail remains with the countries themselves.”⁴⁷ Evidently this is true, but the opening for civil society is also contained here, as it is civil society that can help inform and influence the state as to what these rights entail. The importance of civil society in promoting and establishing human rights has historically been proven time and time again, beginning with movements for the emancipation of slaves, women, children and workers in the late eighteenth century. This work has continued to the present day, advocating in particular for the recognition of non-discrimination as a human right with respect to racial and ethnic minorities, women, persons with disabilities, children, and members of the LGBTQI community, among others. Civil society movements have played an essential role at local, national and international levels, both in formulating concrete proposals and in engaging in strategic litigation. With respect to migrants, this role is even more critical, as migrants are often at the edges of legal systems, exposed to intersectional discrimination based on gender, class, age, ethnicity, nationality, and more. Not citizens, at times unable to speak the language of the host state, and not represented politically, migrants often rely on civil society as interpreter and representative in situations of acute need.

3.1. HRJs and Civil Society

The case of the EU activation of the TPD clearly demonstrates that, where there is an accepted space, civil society can push for greater change. By contrast, the fast-tracking of Swedish legislation restricting migrant rights—and eventually citizenship-related rights—has had as an objective the rapid enactment of legislation without allowing for civil society influence or mobilisation. This has been done by overriding the typical legislative procedure and setting very short response times for consultative responses, making it difficult for civil society, particularly less well-funded organisations, to match the pace set by the lawmaker, effectively muffling civil society’s voice.

⁴⁶ UN Committee on the Rights of the Child, *Concluding Observations: Canada* CRC/C/CAN/CO/5–6 (2022).

⁴⁷ Hannum, 2019, p. 6.

3.1.1. The Activation of the TPD

As seen above, the invocation of human rights—and particularly solidarity—first by civil society and then by the EU, created a strong foundation for action. Civil society was instrumental both at the outset of Russia’s invasion⁴⁸ and in the subsequent integration of Ukrainian forced migrants.⁴⁹ This response encompassed both established non-governmental organisations (NGOs) and more informal networks, including volunteers, community groups, and activists. Particularly in the Visegrad countries (Czechia, Hungary, Poland, and Slovakia), civil society actors bridged significant gaps in official crisis management and influenced national strategies.⁵⁰ NGOs provided immediate humanitarian aid at borders, established information points, and offered ongoing support in housing, language training, education, and employment. A notable feature was the emergence of organisations founded by Ukrainians themselves, which played critical roles in social cohesion and service provision within host communities.⁵¹

Grassroots mobilisation acted as a catalyst, prompting states—and, by extension, the EU collectively—to enact political and legal measures tailored to the exigencies of the moment. However, as the situation evolved into a phase of long-term adaptation, and as compassion fatigue set in within civil society, primary responsibility for sustaining assistance necessarily shifted to the state. The EU then intervened at a foundational level by enacting robust legislation and instituting operative mechanisms for enforcement, renewing legislative protections and increasing financial resources. The activation of the TPD has institutionalized human rights justifications, extending norms of intra-EU solidarity to Ukraine. The institutional mechanisms established across Member States have become pivotal in upholding migrant rights, compensating for the waning vigour of civil society support.⁵²

This initial surge by civil society proved difficult to sustain indefinitely. Within six to twelve months, “compassion fatigue” became evident as financial constraints, bureaucratic obstacles, exhaustion, and the prolonged uncertainty of the conflict began to take their toll.⁵³ Nevertheless, support for Ukrainian forced migrants—though diminished—remains markedly high. In this lifecycle, civil society’s spontaneous engagement served as a catalyst, urging the EU to enact appropriate legislative and policy responses. As the crisis has matured, the state has necessarily assumed a greater role, providing long-term guarantees through effective laws and operational frameworks—endeavours requiring greater coordination, oversight, and financial commitment.

⁴⁸ De Leur (2023) p. 39.

⁴⁹ Chernenko & Bulgakova, 2025.

⁵⁰ Moroń et al., pp. 62–110.

⁵¹ *Ibid.*, p. 71.

⁵² Chernenko & Bulgakova, 2025.

⁵³ Banulescu-Bogdan et al., 2024, pp. 15–18.

The lifecycle of the Ukrainian protection response underscores both the potential and limitations of civil society as an agent for legal and policy change.⁵⁴ Civil society played an indispensable role in activating the TPD, yet its capacity to sustain advocacy is inherently susceptible to fatigue. Ultimately, the long-term protection of displaced persons depends on the entrenchment of legally binding guarantees. Once established, these obligations serve as a bulwark against the dissipation of public and political will. The EU activation of the TPD demonstrates that, when human rights justifications are energised by vigorous civil society mobilisation and subsequently enshrined in legal frameworks, they can rapidly advance the protection of vulnerable groups. Yet the durability and efficacy of these responses in achieving protection hinge on persistent civic engagement, legal vigilance, and an ongoing willingness to confront the complex politics of solidarity, temporariness, and inclusion. Without continuous engagement, including by civil society—as watchdog, advocate and facilitator—the risks of exclusion, neglect, and bureaucratic inertia remain.

3.1.2. Civil Society and the HRJs Concerning Swedish Migration Law

Several examples were given above of the use of HRJs by the Swedish Government in relation to migration law. In contrast to the EU example in which civil society called for action and was included in the process, Swedish civil society was asked to comment on already packaged legislation that was expedited and not altered by the responses the Government received.

The Exit Travel Ban

The HRJs used by the Swedish government to justify restrictions on individual liberties in the exit travel ban for children included that the measure was designed to safeguard fundamental rights and freedoms, encompassing the right to life, survival and development, respect for private and family life, health protection, the right to education, and safeguards against violence, sexual abuse, and exploitation.⁵⁵ Reference was made to key legal instruments such as Articles 3 and 8 of ECHR, Article 7 of the EU Charter, and pertinent articles of the Convention on the Rights of the Child (CRC). The Government stressed the necessity and proportionality of the restrictions, arguing that they represent justified limitations under the Instrument of Government, the ECHR, the Fourth Additional Protocol to the ECHR, and the EU Charter, while simultaneously promoting other rights and freedoms. In the Government's summary concluding that the ban was consistent with basic human rights, it stated that the overwhelming majority of referral bodies were of the same opinion or did not raise objections.⁵⁶

⁵⁴ Chernenko & Bulgakova, 2025.

⁵⁵ Legislative Bill Prop. 2023:24/72, p. 3.

⁵⁶ *Ibid.*, pp. 22–23.

The 2016 Temporary Aliens Act

The legislative proposal for the 2016 Swedish Temporary Aliens Act, concerning the temporary removal of permanent residence permits for refugees,⁵⁷ was met by significantly harsher criticism during the legislative process. Many referral bodies, including civil society, argued that the proposals risked violating Sweden's human rights obligations under international and regional human rights law,⁵⁸ and that normal Swedish legislative procedures were bypassed. The Government responded by maintaining that the measures were necessary temporarily to limit the number of asylum seekers to Sweden and to encourage more people to seek asylum in other EU countries. In response to criticism raised specifically regarding children's rights, the Government used HRJs and stated that ensuring children's rights does not always involve simple and obvious solutions and that it ultimately requires weighing different interests against each other and making choices and setting priorities. According to the Government, a more equal distribution in the EU (through restricting the rights granted in Sweden) would create better conditions for providing a good reception for the children who came to Sweden.⁵⁹ The legislative bill was officially published on 28 April 2016, the underlying Government Report was officially published on 5 July 2016, and the adopted new Act took effect on 20 July 2016, a timespan of approximately three months.⁶⁰ Its enactment marked a decisive turn in Swedish migration and asylum policy, representing a deliberate departure from the normal legislative procedure as well as a shift from Sweden's historically generous asylum practices—including permanent residence permits and broad family reunification rights—to a regime notable for its restrictiveness.⁶¹

The legislative procedure, as well as the substantive proposals in legislative bill prop. 2015/16:174, attracted criticism from multiple stakeholders. The Swedish Red Cross, other NGOs, and governmental agencies repeatedly cautioned that the new law would lead to damaging outcomes, particularly in terms of integration, health, and the basic rights of refugees and migrants. The Swedish Red Cross documented deteriorating mental health among temporary permit holders, driven by renewal uncertainty and risk of deportation.⁶² The Council on Legislation (*Lagrådet*), Sweden's constitutional check prior to adopting legislation, criticised the hasty drafting process and questioned the adequacy of legal reasoning and compatibility with Sweden's international obligations.⁶³ Post-

⁵⁷ Legislative Bill Prop. 2015/16:174.

⁵⁸ RödaKorset, 2018, pp. 56–57.

⁵⁹ Legislative Bill Prop. 2015/16:174, p. 29.

⁶⁰ Lag (2016:752) *om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige* [The Act on Temporary Restrictions on the Possibility of Being Granted a Residence Permit in Sweden].

⁶¹ Stern, 2020, pp. 121–123; and Stern, 2018, pp. 233–262.

⁶² RödaKorset, 2016.

⁶³ Lagrådet, 2016, pp. 3–20.

implementation studies have confirmed these concerns.⁶⁴ Family separation intensified due to restrictive income and housing requirements, disproportionately affecting women and children.⁶⁵ A review of Swedish media framing from 2016–2019 reveals a normalisation of restrictive measures, with right-wing rhetoric increasingly influencing mainstream coverage and political speech. Immigrants and refugees are frequently discussed as “cultural threats”, and their individual voices are often absent from reporting. Legal discourses have shifted from a rights-based perspective to one emphasising national interests and the need to regulate immigration, further entrenching policy restrictiveness.⁶⁶

Sweden’s 2016 Temporary Aliens Act triggered intense debate regarding the balancing of national interests, EU legal minimum standards, and international human rights standards. The Government’s use of HRJs based on the best interests of the child, as well as *de minimis* interpretations of human rights, were pointed out in several instances as not being well-founded. In addition, a dangerous precedent for the normalisation of emergency measures in migration law was arguably created, as seen from subsequent legislative proposals. Policy recommendations from the Swedish Red Cross and legal scholars include restoring permanent residence as the standard, ensuring the right to family reunification for all protection beneficiaries, and incorporating a robust proportionality review into all migration decisions.⁶⁷

The 2020 Temporary Residence Permits

The Swedish Government decided to retain the 2016 temporary residence permit model.⁶⁸ Swedish civil society, notably the Swedish Red Cross, characterised the reform as precipitating a “humanitarian catastrophe” for unaccompanied minors and other vulnerable groups, with acute risks of homelessness, mental health distress, and destitution—concerns detailed in public reports from both 2018 and 2020.⁶⁹ Other consulted organisations⁷⁰ were also critical of all or parts of the proposal, including five

⁶⁴ For a complete listing of all the consultation responses (remiss) that were submitted, as well as an overview of the fall-out from the amendments, see Anderson et al., 2025, p. 6.

⁶⁵ Wikström et al., 2023, pp. 108.

⁶⁶ Kvist, 2024.

⁶⁷ RödaKorset, 2018. pp. 56–57.

⁶⁸ *Ibid.*, p. 58.

⁶⁹ RödaKorset, 2018 and 2020.

⁷⁰ Over 127 consultation responses were submitted from 27 municipalities, 5 counties, 4 embassies, 5 courts, 19 Governmental authorities, 3 universities, 9 labour and employer unions and approximately 44 NGOs with respect to this proposal, Regeringen, 2021, pp. 229–230. Legislative Bill Prop. 2020/21:191 was submitted 29 April 2021.

governmental authorities;⁷¹ eight Swedish municipalities;⁷² the Church of Sweden; four Swedish courts;⁷³ two labour unions;⁷⁴ two universities (Lund and Stockholm); and fifteen NGOs.⁷⁵

A particular criticism raised was that temporary status would foster insecurity and undermine integration,⁷⁶ particularly youth integration.⁷⁷ RFSL highlighted the disproportionate harm to LGBTQ+ asylum seekers, noting in its 2023 report that the migration authorities' credibility assessments and denial practices were especially exclusionary and failed to protect individuals at risk, contrary to Sweden's international obligations.⁷⁸ Collectively, these criticisms converged on the assessment that replacing permanent residence permits with temporary status undermined both Sweden's tradition of progressive refugee protection and its obligations under international and EU law. The proposed amendments were adopted on 28 April 2021 (SFS 2021:765), seven months after the submission of the initial Legislative Inquiry in September 2020.⁷⁹

Continued Stricter Rules for Labour Migration

A 2022 legislative proposal⁸⁰ introducing an increased requirement of financial support for allowing entry to family members of labour migrants was criticised as incompatible with Sweden's international obligations, particularly under the ECHR, the CRC and

⁷¹ *Socialstyrelsen* [National Board of Health and Welfare], *Barnombudsmannen* [Child Ombudsman], *Myndigheten för ungdoms- och civilsamhällesfrågor* [Swedish Agency for Youth and Civil Society], *Arbetsförmedlingen* [Swedish Public Employment Service] and *Migrationsverket* [Swedish Migration Agency].

⁷² Stockholm, Kumla, Gällivare, Umeå, Strömstads, Gothenborg, Malmö, Borlänge as well as *Sveriges Kommuner och Regioner (SKR)* [Swedish Association of Local Authorities and Regions].

⁷³ Administrative courts in Gothenborg, Stockholm and Malmö and the Administrative Court of Appeals.

⁷⁴ *Akademikerförbundet SSR* and *Tjänstemännens centralorganisation (TCO)*.

⁷⁵ *Svenska Röda Korset* [Swedish Red Cross], *Rädda Barnen* [Save the Children], Civil Rights Defenders, *Asylrättscentrum* [Swedish Refugee Law Center], Amnesty International, *Riksförbundet för homosexuella, bisexuella, transpersoners, queeras och intersexpersoners rättigheter (RFSL)* [Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Rights], *Flyktinggruppernas riksråd (FARR)* [The Swedish Network of Refugee Support Groups], UNICEF Sweden, Caritas Sweden, *Riksföreningen Sveriges Stadsmissioner* [The National Association of Sweden's City Missions], *Sveriges advokatsamfund* [Swedish Bar Association], *Svenska Barnläkarföreningen* [Swedish Pediatrician's Association], *Riksorganisationen för kvinnojourer och tjejjourer i Sverige (Roks)* [National Organisation for Women's Shelters and Young Women's Shelters in Sweden] and Terrafem.

⁷⁶ Regeringen, 2021, pp. 55 and 56.

⁷⁷ Lind et al., 2023, p. 143

⁷⁸ RFSL, 2024.

⁷⁹ SOU 2020:54.

⁸⁰ Legislative Bill Prop. 2021/22:134.

the principle of family unity.⁸¹ The Swedish Children’s Ombudsman explicitly opposed the proposal, emphasising the imminent risk that the financial support requirement would precipitate the separation of children from their parents—a situation deemed incompatible with Article 9 CRC, which enshrines the child’s right not to be separated from his or her parents against their will.⁸² The Government responded by asserting that the CRC does not ‘in itself’ establish an absolute right to a residence permit.

Tightening Citizenship

These final examples are still in the legislative process. The NGO Civil Rights Defenders has criticised the first inquiry concerning restrictions on the grant of citizenship,⁸³ for its lack of initial scientific investigation into whether the proposed legislation was appropriate and for the many different parallel legislative processes referring to preparatory works generated for other proposals, fragmenting both the inquiry and any assessment and response. The inquiry’s basis was arguably insufficient, particularly given the far-reaching legal and practical consequences.⁸⁴ This superficial examination can be seen in its summary concerning international obligations which simply asserts that the proposal respects the requirements under international law that Sweden must follow.⁸⁵ The legislative bill has not yet been submitted. The second 2025 legislative inquiry concerns revoking Swedish citizenship for those who have committed “system-threatening crimes”.⁸⁶ Fatigue has been experienced in both EU and Swedish contexts by civil society: in the EU due to the duration of the war, and in Sweden due to the number of legislative proposals in a short period and short response times, raising—through the invocation of HRJs—significant human rights issues.

3.2. Identifying HRJs

The three categories of HRJs were presented in civil society engagements between the researchers in the HRJust project and different civil society organisations for feedback on the HRJ types: direct reference, misuse of international human rights doctrine, and misuse of international law generally.⁸⁷ In addition to these types identifying states using

⁸¹ *Ibid.*, pp. 111–114; see also Article 8 ECHR.

⁸² Legislative Bill Prop. 2021/22:134, p. 107; Barnombudsmannen, 2021; and 2022, p. 4.

⁸³ SOU 2025:1.

⁸⁴ Civil Rights Defenders, 2025.

⁸⁵ SOU 2025:1, p. 488

⁸⁶ SOU 2025:2.

⁸⁷ Civil society engagements were held within the HRJust project in Sweden and in Taiwan upon several occasions during 2024–2025 for the co-production of knowledge with respect to HRJs and civil society responses. The first set of engagements presenting the HRJust project findings with respect to identifying HRJs, with the second set of engagements continuing this discussion but also

human rights as instruments of governance, patterns were traced across the different HRJs, including:⁸⁸

- Hierarchy of Rights: the state prioritises A rights to counterbalance or undermine B rights;
- Substitution of Stakeholders: the state overlooks X stakeholders who are highly adversely impacted by a policy while emphasising Y stakeholders who are less affected;
- Facade of Paternalism: the state labels a restriction as a “benefit” or “right” (for the benefit of those who are restricted);
- Confusion of Slighter Limitation: the Government suggests a less severe limitation is a “benefit” or “right”.⁸⁹

Another overarching pattern identified was that HRJ rhetoric encountered by civil society tended not only to be highly paternalistic but also opportunistic. The meaning of human rights as used in HRJs was often found to be vague or even distorted. Rather than being guided by consistent legal standards, the state often framed it in terms of protection or for the benefit of stakeholders themselves. As a result, civil society perceived human rights in HRJs as having been reduced to a pretext for deflecting responsibility and reinforcing control, which in turn intensified the very structures of exclusion and social discrimination that human rights are meant to counteract.⁹⁰

Participants in the civil society engagements held with academics⁹¹ also raised the issue of knowledge. A government’s justifications for rejecting human rights advocacy—for example, when arguing “insufficient societal consensus”, “national security”, or the adequacy of existing measures—are always challenging for civil society to counter. The consensus in the engagements was that it is not necessarily the case that HRJs are more difficult to address than non-HRJ excuses in terms of persuading government and effecting change. However, civil society participants pointed out that HRJs are distinct in that they raise the technical and knowledge thresholds required to effectively challenge the government claims.

Civil society also found that, while it may seem encouraging that governments adopt the language of human rights to defend policies—creating an impression of greater human rights sensitivity and opening space for international dialogue and human rights monitoring—this also heightens the expertise needed for NGOs to meaningfully engage. Legislators unfamiliar with these issues may also find it harder to hold the execu-

exploring ways for civil society to address HRJS. The findings of these engagements are memorialized in Yang, 2024 and 2025; and Lappalainen, 2025a and 2025b.

⁸⁸ These different aspects were identified in the civil society engagements held within the HRJust project in Sweden and in Taiwan upon several occasions during 2024–2025. The findings of these engagements are memorialized in Yang, 2024 and 2025; and Lappalainen, 2025a and 2025b.

⁸⁹ Yang, 2024.

⁹⁰ Yang, 2025.

⁹¹ *Ibid.*

tive accountable, as HRJs can make government positions sound plausible and facially legitimate. Moreover, the government can strategically include symbolic representatives or make public participation excessively burdensome, entangling stakeholders in bureaucratic red tape and curtailing genuine reform. Such tactics consume the already limited resources and energy of NGOs, which often operate under funding and staffing constraints.⁹²

While the civil society engagement emphasised the higher communication costs, shifting dynamics in policy dialogue, tokenism, and weakened accountability under HRJs, participants did not view the phenomenon as wholly negative. They considered that HRJs can also create opportunities for NGOs. The universalist nature of human rights standards invites external scrutiny of a state's policies and offers NGOs a framework for engaging with international actors. For instance, human rights issues tend to resonate strongly with the EU, whereas the US may prioritise specific rights concerns. When a government adopts HRJ terminology, domestic groups can leverage international pressure to push for policy change, rather than being confined to domestic political channels.⁹³

Challenges identified for civil society addressing HRJs included lack of knowledge, particularly of law, and limited financial and technical resources. Discussions by civil society in Sweden focused on combining resources and sharing knowledge through building coalitions. Raising awareness was also raised as a less expensive alternative to change, in contrast, for example, to strategic litigation.⁹⁴

3.3. Complex Intersectional as a Lens to Address HRJs in a Migrant Context

Analysing HRJs through the lens of complex intersectionality can be a helpful tool when determining how to address HRJs, particularly in a migrant context. HRJs are not confined solely to migration issues; however, migration is an especially fertile ground for HRJs for several reasons. Migration law has complex layers, sitting at the intersection of constitutional, regional (such as EU), and international treaty demands, allowing for strategic invocation of rights from different legal sources. Migration law often affects multiple groups—migrants, citizens, children, local communities—with potentially competing rights claims. The state may justify one group's deprivation (e.g. migrants) by reference to the protection of another (e.g. children, the general public). This competition between groups can lead to an objectification and “demonisation” of migrants as objects of fear.⁹⁵

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ Lappalainen, 2025b.

⁹⁵ Bolger, 2023.

The lens of “complex intersectionality”⁹⁶ can be used with respect to the HRJs addressed here, allowing for the invocation of group consciousness, liberal intersectionalities and vulnerability intersectionalities simultaneously. The term “complex” is used to demarcate this multi-level approach. Intersectionalities are not addressed as competing binaries—for example, identities such as class⁹⁷ and race,⁹⁸ or vulnerabilities—but rather together as creating a specific place- and time-based form of intersections, with contexts evaluated rather than focusing on the process of construction.⁹⁹ This holistic understanding of an individual—including identity, for example based on human rights treaties, as well as protected grounds—allows for an analysis based on vulnerability, nationality, ethnicity and gender, addressing the individual as a subject rather than an object. The objectification of migrants facilitates the use of HRJs, while an understanding of migration issues based on a complex intersectional approach may assist civil society in revealing the faulty logic upon which many HRJs are based.

3.4. *Potential Avenues for Civil Society to Address HRJs*

From the perspective of law, several avenues are available to civil society to address HRJs, depending on its (often limited) resources, including access to state funding, but also on the constitutional/procedural design of the legal system in question, as well as the presence of access-to-justice mechanisms. Strategic litigation was used in the UK and Canadian examples above and is technically available in most jurisdictions; however, it is often costly and time-consuming, and out of financial reach for less powerful parts of civil society, particularly in jurisdictions applying the “loser pays” rule for attorneys’ costs and fees. The examples given above from the EU and Sweden focus on legislative advocacy: in the EU case proactively, and in the Swedish case reactively.

Addressing two aspects discussed in the civil society engagement—coalition-building and raising awareness—two tools in the civil society arsenal are taken up here: the “rings of water” approach to coalition-building and experiential learning. Both are based on building trust, with experiential learning functioning as a process of raising awareness and, it is hoped, leading to a fairer understanding by those with the power to apply the law as to the conditions of those individuals who are the focus of those laws.

⁹⁶ Grahn-Farley, 2024a, pp. 59–82.

⁹⁷ Mutua, 2008.

⁹⁸ Crenshaw, 1989; Atrey, 2015 and 2021.

⁹⁹ This is different from a contextualization approach, the latter defined as “taking into consideration the context in which the facts arise by using a variety of sources” but still with respect to the discrimination grounds *per se*. See Kotevska, 2022, p. 390.

3.4.1. Coalition Building – “Rings of Water” Approach

Given the constraints often faced by civil society, building coalitions to identify and address HRJs, and to share knowledge and expertise, is an avenue to explore.¹⁰⁰ One method, the “rings of water” approach, has several stages. A coalition starts with meetings of a small group of stakeholders—for example, civil society and academics—exchanging information, building trust, and developing concrete proposals. Once established, the group is expanded successively to include more stakeholders until a critical mass is reached, enabling a focus on strategies addressing HRJs based on shared information, experiences and knowledge. Technology can assist, for example, with coalition-led monitoring to increase resilience and ensure rights remain visible while contesting the reversal that HRJs exact of the core function of rights—moving from being a shield to becoming a legitimising tool.¹⁰¹

3.4.2. Changing Hearts and Minds – Experiential Learning

Through the use of complex intersectionality, individuals are seen as subjects rather than objects. Raising awareness of the biases that inundate us all—here particularly in the context of decision-makers such as legislators or judges—is a step that could lead to fairer assessments in migration law. One approach to begin to grapple with personal biases is experiential learning. When meeting with decision-makers, this method can focus on creating a pyramid of support involving peer decision-makers, civil society and community stakeholders and, with this support, establishing education for decision-makers concerning social context.¹⁰²

After the pyramid of support is established, at both leadership and peer levels, and only after the community is integrally involved in the process, the design and development of a social context programme can begin. Not only must the community be involved in delivery, but it must be involved in all aspects leading up to and including delivery of such education, with the support and endorsement of peer decision-makers. Including community expertise means including civil society in partnership with peer decision-makers, which provides an opportunity for decision-makers to hear the specific concerns of a marginalised community (i.e. migrants) and provide a unique perspective to decision-makers. Having a full and informed understanding of the social context reality of migrants (or other excluded communities) is the foundation on which an impartial and empathetic outcome is possible. This offers decision-makers the ability to use information obtained through open dialogue or interaction in the most constructive manner

¹⁰⁰ Grahn-Farley et al., 2024b.

¹⁰¹ UN Development Program, 2024.

¹⁰² This model is based on the Sakshi cooperation spearheaded by Naina Kapur with the Asia Pacific Advisory Forum on Judicial Education for Equality that offered judicial education across India, Bangladesh, Nepal, Bhutan, and Sri Lanka using this method.

possible. The process of inclusion is at the heart of experiential learning and a means to promote robust equality outcomes for marginalised communities such as migrants.

Once the pyramid of support has been cultivated, the elements of equality and experiential learning in targeted decision-making can draw on the following non-exhaustive aspects, adapted according to individual contexts:¹⁰³

- Bringing attention to specific challenges migrants face;
- Understanding migrants’ narratives of inequality in context of their perspectives such as those of the Global South and the Third World, from the ground up;
- Emphasising the importance of diverse perspectives to foster justice and equality;
- Encouraging critical thought and discussion about geographical and systemic obstacles;
- Rethinking migrant rights and international law;
- Involving participants in field visits to local communities, shelters, or support centres to engage with migrant workers and gain first-hand insights into their realities;
- Participating in experiential exercises such as role reversals;
- Building empathy;
- The central role of social context realities and alternative forms of analysis in judicial decision-making in the context of migrant issues.

Building trust, as with the rings on water approach, is an integral component in the success of experiential learning. As both approaches result in the mobilisation of civil society—at least in more democratic societies—this mobilisation in itself can also signal to legislators and judges that they need to pay attention.

4. Reinstating the Shield: Protecting Human Rights

HRJs raise several systemic risks to human rights. First and foremost is the reversal of the core function of human rights—from shield to legitimising tool. Fragmentation of rights occurs as certain rights holders are prioritised in HRJs over others. The State, through HRJs, also interprets human rights without any directly available recourse to due process by which that interpretation can be contested. Civil society is essential to identifying, assessing, contesting, and raising awareness of this use by the state of HRJs. Two methods have been raised as potential assistance in this monumental task, creating coalitions through “rings of water” and experiential learning to change hearts and minds. In our times, the vital tasks of civil society will, it is hoped, provide a shield to protect human rights against the state’s dissipation of human rights, and those of migrants in particular.

¹⁰³ Kapur, 2025.

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