



# JUGGLING COMPETING NEEDS IN THE JUSTICE SYSTEM: A RULE OF LAW AND HUMAN RIGHTS PERSPECTIVE

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# THE RULE OF LAW

All people should be ruled by just laws  
subject to the following principles:



The rule of law must be supported by informed and active citizens

01.

## THE RULE OF LAW AND HUMAN RIGHTS

*You can't have one without the other*

02.

## ACCUSED/ OFFENDERS

*Case studies*

03.

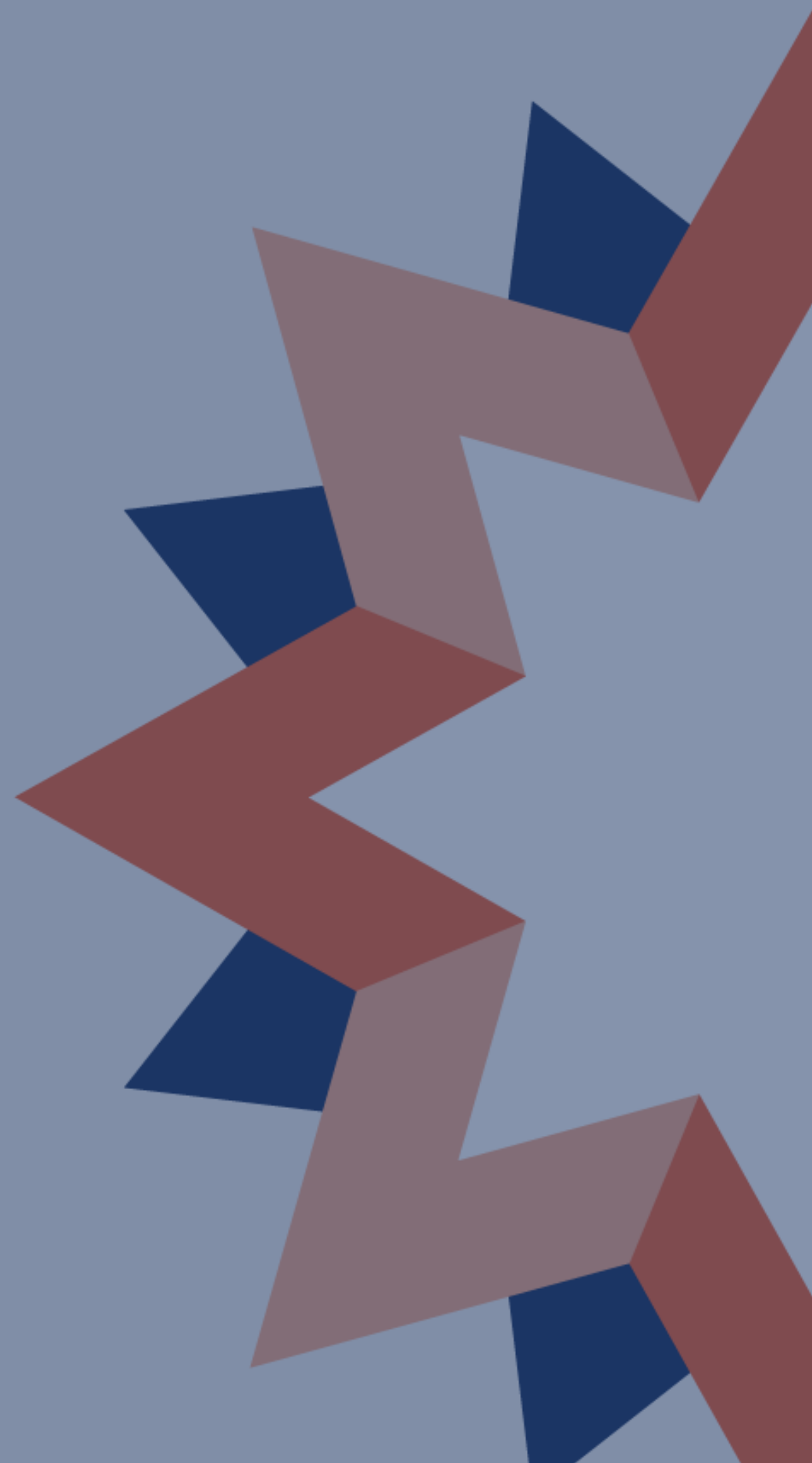
## COMPLAINANTS/ VICTIMS

*Case Studies*

04.

## SOCIETY/ COMMUNITY

*Case Studies*



“Whereas **it is essential**, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, **that human rights should be protected by the rule of law...**”

Universal Declaration of Human Rights:  
Preamble

Universal Human Rights codes are a regulatory framework for states that provide common standards of achievement for their peoples

These are standards by which all nations can be measured and critiqued for their responsiveness to the common principles regardless of political system (and whether they have agreed to them or not)

# Right

or

# FREEDOM?





## Human Rights are protected by The Rule of Law

The Magna Carta was the basis for contemporary human rights and established the Rule of Law. The Rule of Law principles provide the foundations for the protection and enforcement of human rights, and in turn, the principles are protected with human rights by International documents, such as the UDHR, the ICCPR and the ICESCR.



Human rights and the Rule of Law  
are protected and supported by the  
participation of informed and active citizens

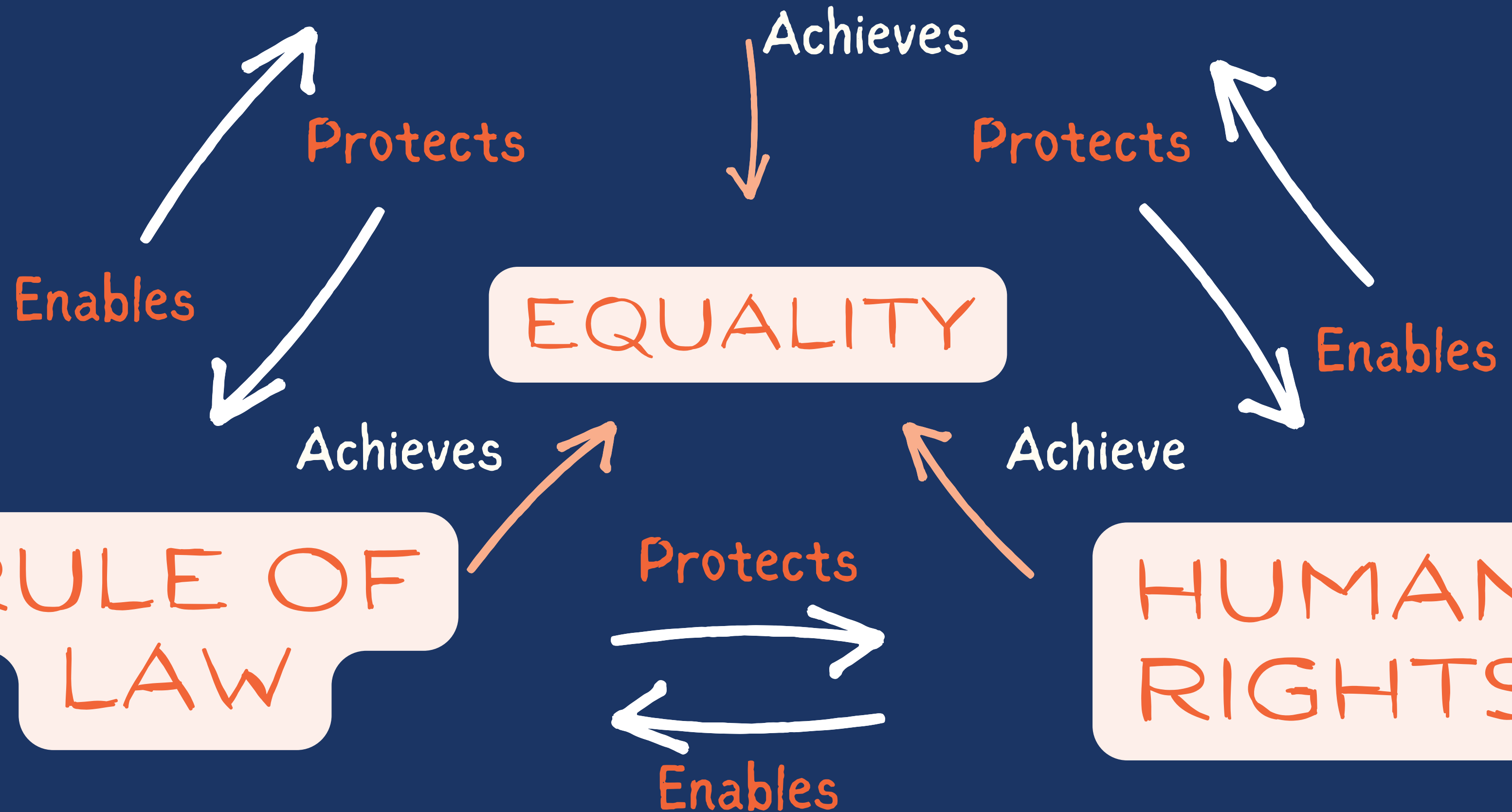


DEMOCRACY

EQUALITY

RULE OF  
LAW

HUMAN  
RIGHTS







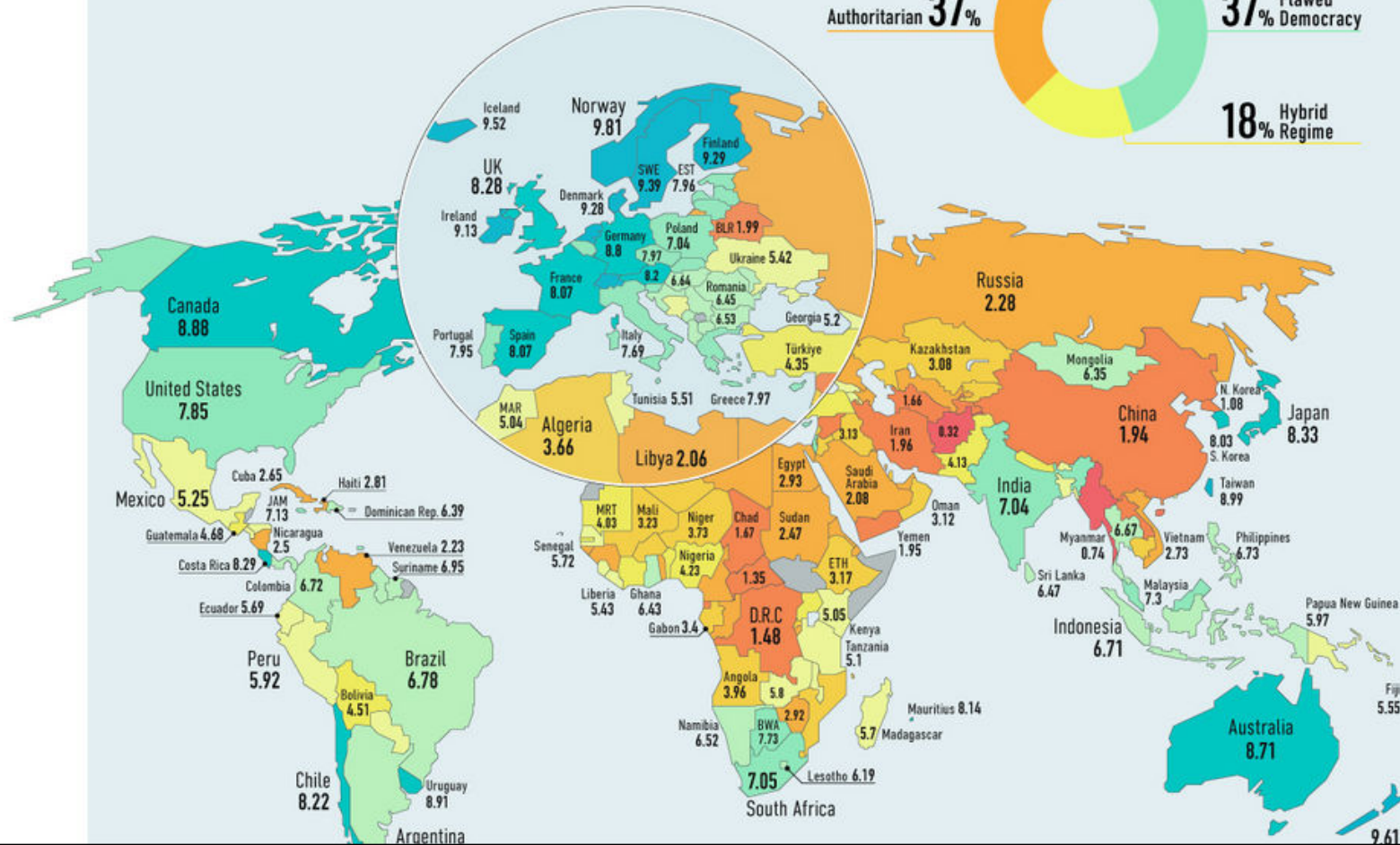
## Mapped: The State of Democracy Around the World

VISUAL CAPITALIST, APRIL 2023

The global Democracy Index score showed a slight improvement in 2022, but remains at its second lowest point since tracking began in 2006.

1 2 3 4 5 6 7 8 9  
AUTHORITARIAN HYBRID REGIME FLAWED DEMOCRACY FULL DEMOCRACY

PERCENTAGE OF GLOBAL POPULATION

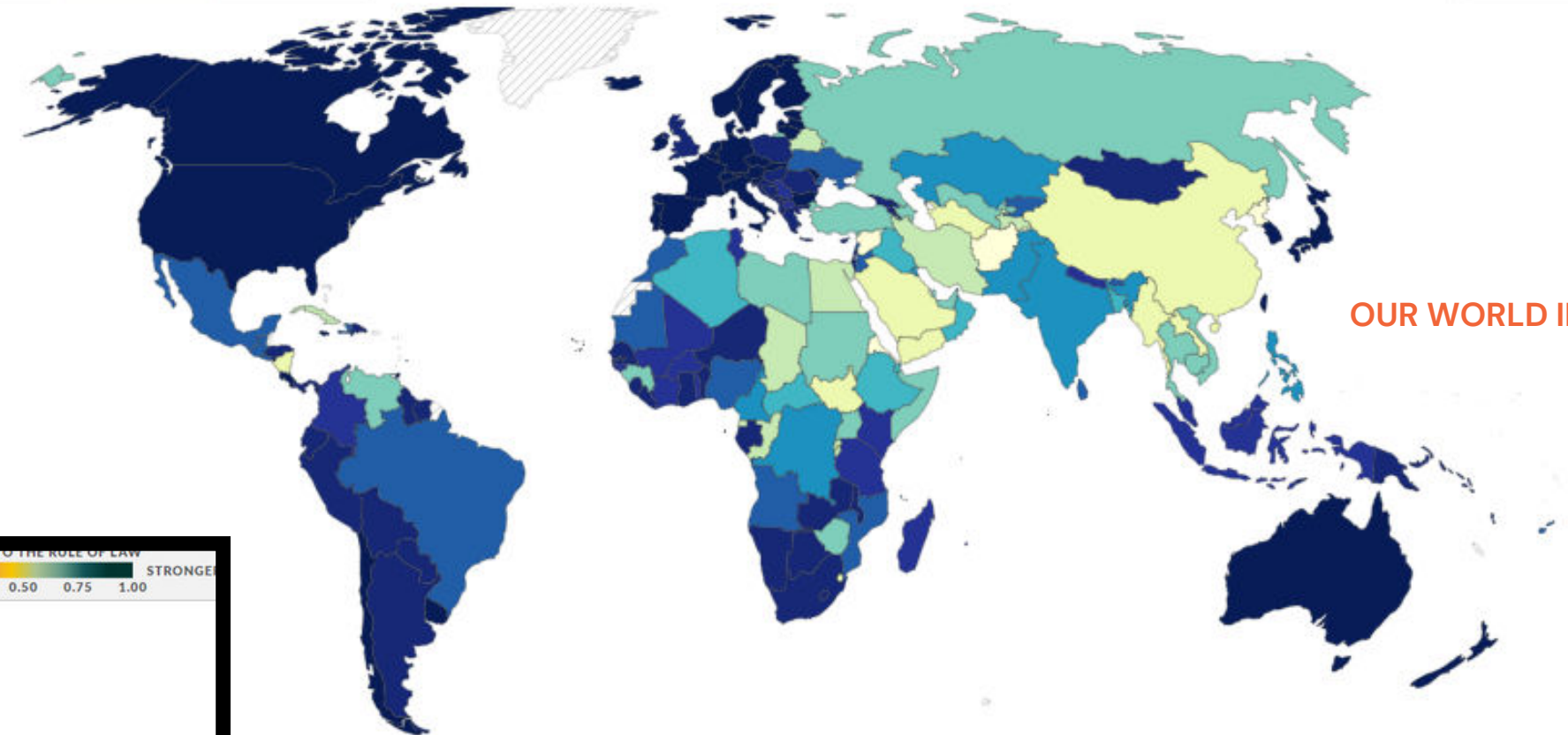


## Human rights index, 2022

Based on the expert assessments and index by V-Dem. It captures the extent to which people are free from government torture, political killings, and forced labor; they have property rights; and enjoy the freedoms of movement, religion, expression, and association. The variable ranges from 0 to 1 (most rights).

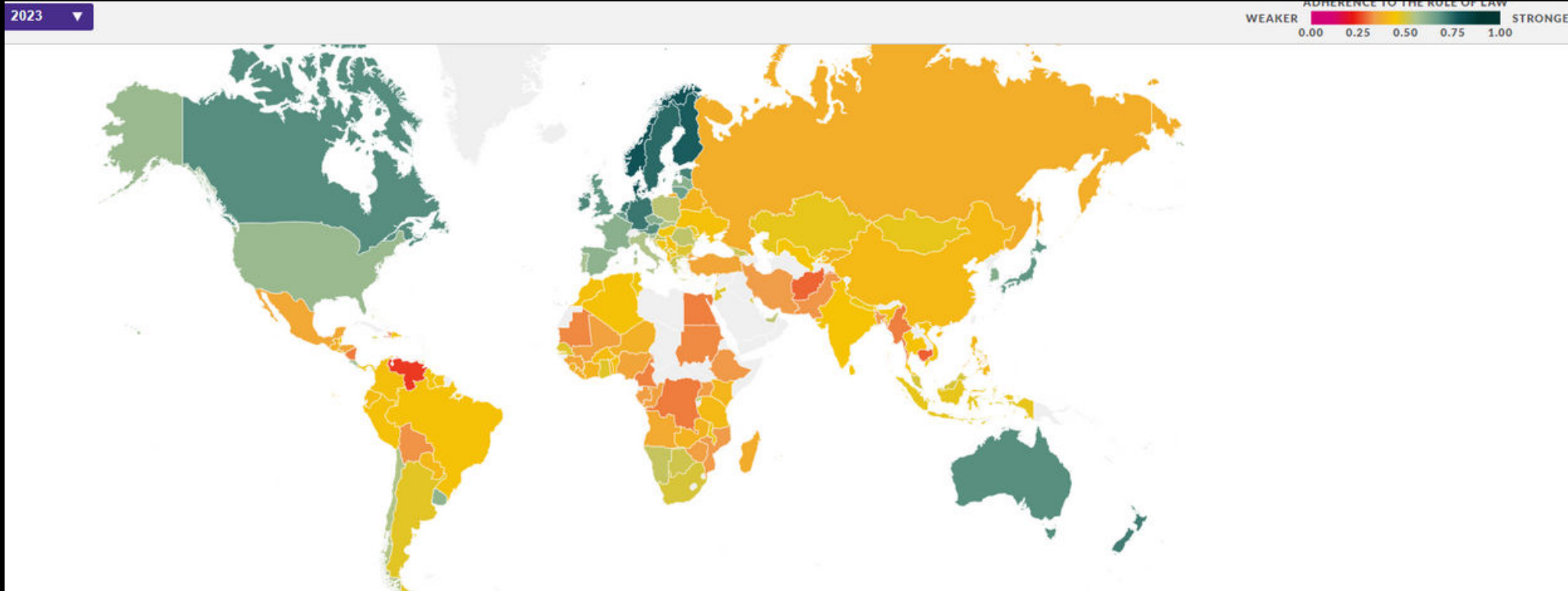
Table Map Chart

World



OUR WORLD IN DATA, 2023

No data 0 0.1 0.2 0.3 0.4 0.5 0.6 0.7 0.8 0.9 1



WORLD JUSTICE PROJECT RULE OF LAW INDEX 2023

# HOW ARE HUMAN RIGHTS PROTECTED AND ENFORCED IN AUSTRALIA? POSITIVE LAW

Presumption of Innocence

Procedural fairness

**Explicit recognitions**

Vote

Trial by Jury (C/W matters)

Freedom of religion

Acquisition of property on just terms

Discrimination on basis of state of residency

**Implied recognitions**

Freedom of political communication

Only courts can impose criminal sanctions

The  
Constitution

Common  
Law

Statute  
Law

**The Principle of Legality**

‘Somerset’s Case’ 1772 (UK)

Established fundamental rights on individual’s status as a political subject

**Teoh’s Case [1995] HCA 20**

individuals entitled to fundamental rights where Aus is a signatory

**Toonen v Australia [UNHRC]**

Right to a private life

*Australian Human Rights Commission Act 1986 (Cwlth)*

*Equal Opportunity Act 1977 (Vic)*

Human Rights Acts (ACT, Qld, Vic)

Commonwealth Discrimination Acts - age, gender, race, disability

*Family Law Act 1975 (Cwlth)*



# WHAT ARE THE OBSTACLES FOR HUMAN RIGHTS PROTECTION IN AUSTRALIA?

Political willingness for compliance and accountability (e.g. CPCAT, youth prisons and UNi Torture prevention body)

Party and political instability and smaller majorities makes law making and law reform challenging

Balancing competing needs in a multicultural, socio-economically diverse society with a complicated social history

Inadequate legislative protections

Reduced participation in democratic processes

Government overreach restricting pursuit of remedies

No singular framework to provide consistency across the geographical jurisdiction eg QLD, ACT and Vic HR's Acts

What we often end up with in domestic policy terms is a form of Pareto optimality - efficient resource allocation, but we can't make someone better off without making someone worse off

# Pareto Optimality

Domestic Law




International Law

NASH

EQUILIBRIUM

When we consider International Law, we often see a Nash Equilibrium with the legal norms established in ID's as the focus, where states choose to compliance if others do too.

# WHOSE NEEDS ARE THE ARMS OF THE SEPARATION OF POWERS JUGGLING WITH RESPECT TO JUSTICE?



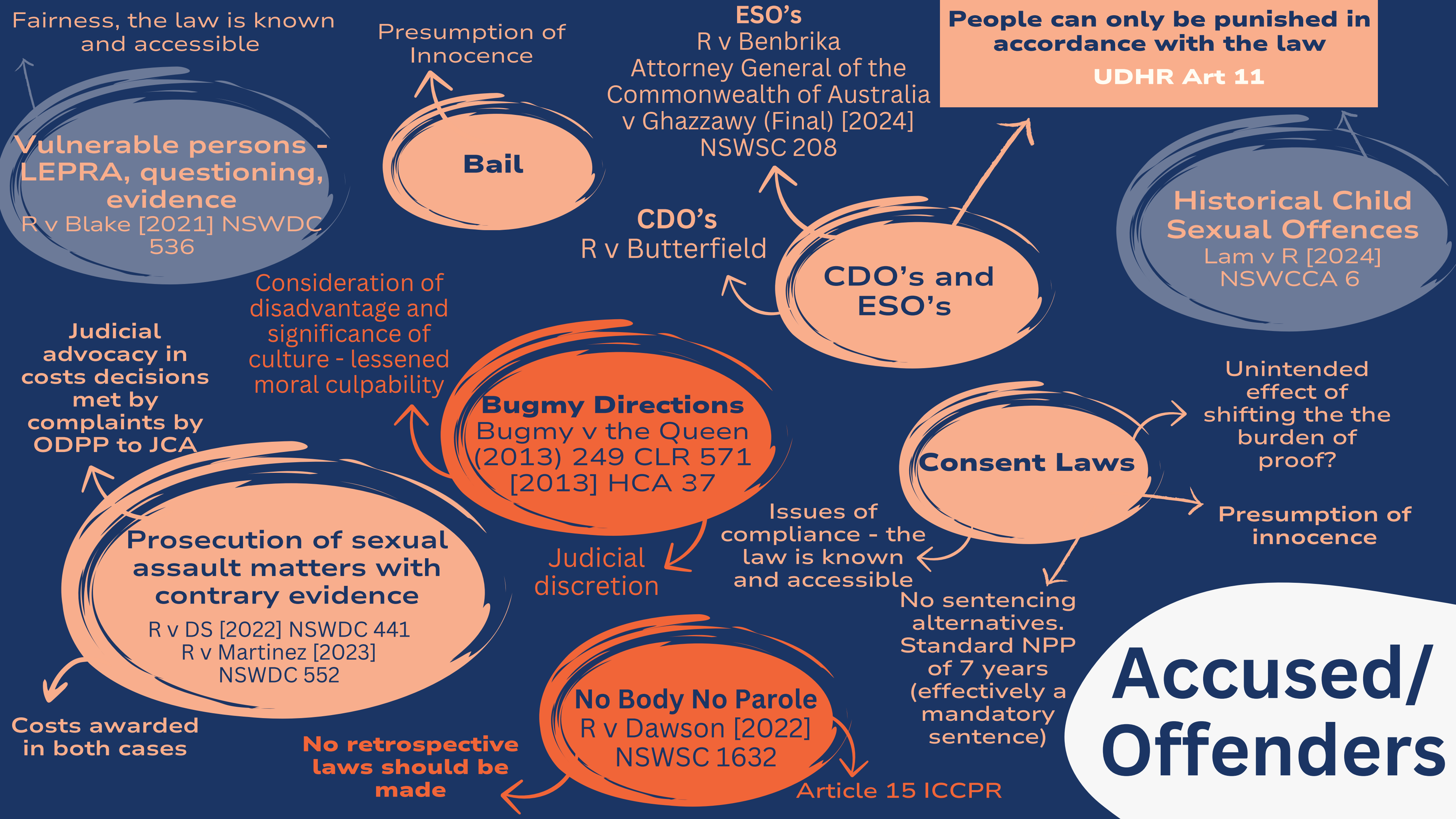
Accused persons/ offenders, victims/ complainants – how will upholding these rights impact on the other party? Will those decisions have implications on future parties?

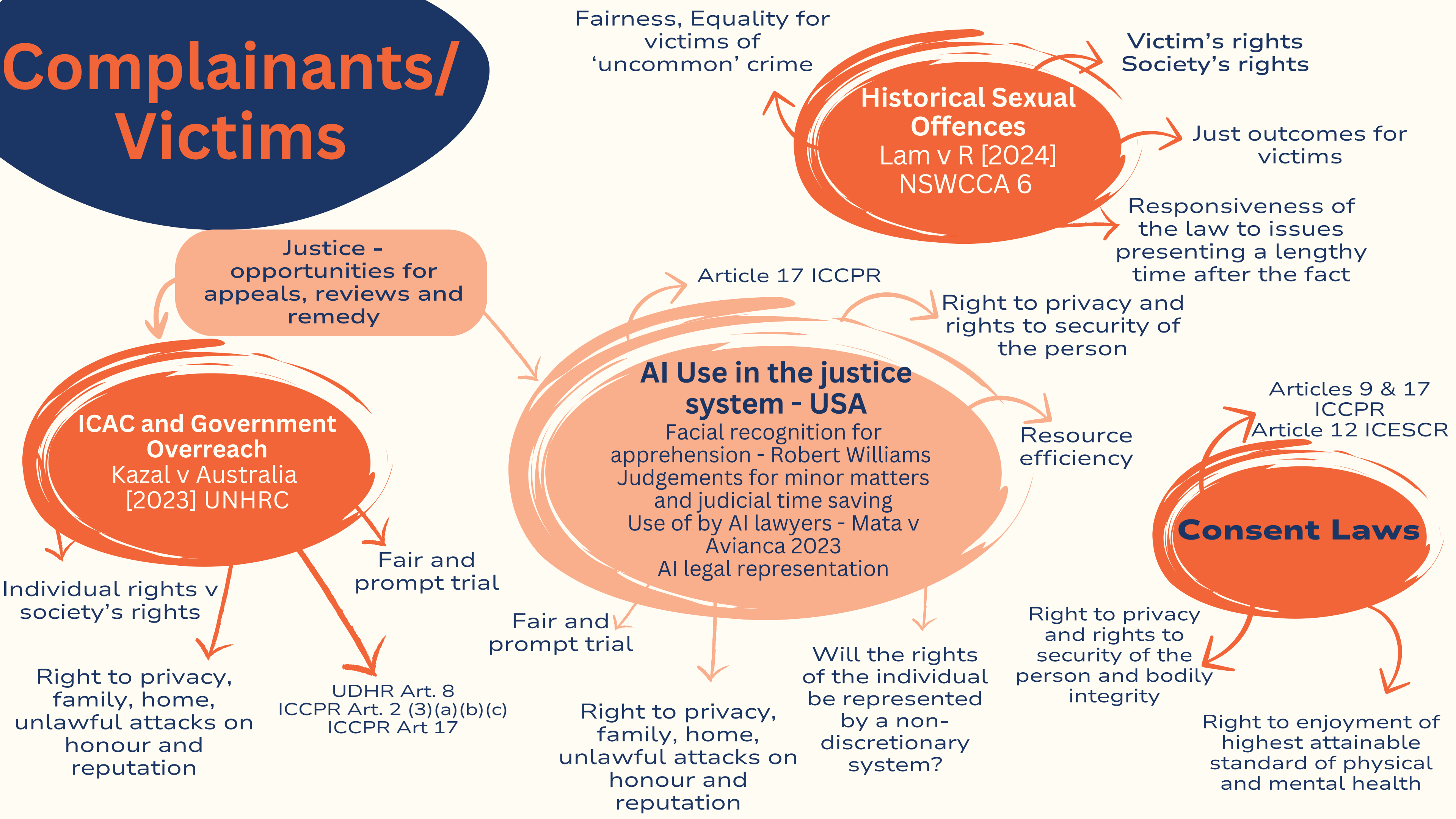
Differing social groups (gender, race, age, culture, income level), current and future community members – when we cater to one group, are/ how are other groups impacted? Negatively or positively? The needs of groups are prioritised based on social conventions and political interests of the time

Community – local, domestic, global – what scale impact will a decision have? Dependent on the decision maker

EQUALITY BEFORE THE LAW ASSISTS IN MEETING HUMAN RIGHTS OBLIGATIONS







# Society/ Community

Equality before the law  
ICESCR Article 7(d)

## The Closing Loopholes Bills

e.g *Fair Work Amendment  
(Right to Disconnect) Bill  
2023 (Cwlth)*

Improved fairness and  
equality

Following lead  
of France and  
Italy (2017)

Promotion and  
enforcement

## Issues of compliance and non-compliance in Human Rights

Effectiveness of legal  
measures in protecting  
human rights

The role of law reform in  
protecting Human Rights

In conflict with  
*Charter of Human  
Rights and  
Responsibilities Act  
2006 (Vic) s12*

## Covid-19 legislation

e.g Victoria

Where is the line  
between protections and  
freedoms? Who decides  
and how?

## Environment and Culture

Billy and Ors v Australia  
[2023] UNHRC

UDHR Article 8

Right to  
privacy, family  
and the home

Present and  
future rights

Conflicting types of  
individual rights and  
collective rights

Intergenerational  
equity and promotion  
and protection of  
socioeconomic rights  
needed to support RoL  
principles

Effectiveness of  
International  
response?

# Get in touch...

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