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RE-EVALUATION OF THE CONCEPT OF JUSTICE AND HUMAN RIGHTS VIOLATIONS IN THE ISLAMIC WORLD

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PREFACE

One of the greatest pursuits of our age is "justice". For this reason, we have allocated the topic of our International conference to "Re-evaluating the concept of justice and violations of rights especially in the Islamic world".

35 presentations from 20 different countries were made to the international conference of the International Jurist Union (IJU) held in Konya on 19-22 May 2022. Even if some of the lecturers from outside Turkey who made presentations did not send their papers, the full text of 24 papers from 20 different countries is included in this "PROCEEDINGS BOOK".

We hope that the studies will be beneficial to all humanity. November, 2022.

Necati CEYLAN

IJU Secretary General

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Social Justice in Africa -North Africa-

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Social justice today has become a prerequisite for achieving security and peace, achieving social cohesion, and also to achieve the required change for a just and cohesive society, for the purpose of achieving the sustainable development goals for the year 2030, and other global commitments.[1]

The international parties are distinguished by their strong and distinguished presence in Africa from the south to the far north, and they are working to mobilize and activate many active international organizations, but the latter we find them walking at slow steps in order to contribute to the realization of what is called social justice.

And social justice, we believe, we see today with a vision that differs from that classic concept that was known to the whole world, and which has standards, elements and obstacles that limit its embodiment. Political, economic, social, cultural and even security stability.

It may be that the whole world, and Africa in particular - by virtue of our belonging - are the areas most affected by the understanding of the meaning of social justice, whether in the narrow sense or the broad sense, so that we find that this has been negatively reflected on it, which left the mistrust between society and the authority, which further widened the gap.

Chapter one

The concept of social justice

In fact, and in the absence of a complete definition agreed upon internally or regionally, social justice includes elements such as the just and equitable distribution of wealth and social resources, equal access to citizens' access to protection and equality, and the participation and protection of the state. Social justice is a vital basis for promoting economic development, social unity and political legitimacy. On the contrary, the absence of social justice and its disregard can constitute a motivation for social disengagement, frustration of citizens and instability, which poses deep risks to the future of governments and states.

Social justice is in fact a broad idea and also has a philosophical dimension as it is a religious idea, a social value and an ethical principle. It is a concept that overlaps a lot with other concepts such as equality, equal opportunities, discrimination, marginalization, economic justice, legal justice, poverty and freedom.

Social justice is a social and economic system that aims to achieve justice in society and ward off the dangers of class struggle. As for the distribution of wealth, it is the method chosen by just societies in dealing with their members in terms of distributing resources and providing a participatory share for every citizen, that worker and the other who receives social solidarity either as a guarantee or as a support. Too narrow in the meaning of social justice in its broad sense. Justice in Islam deals with all aspects of human life in an extremely precise system that does not need modification or interpretation and is not tainted by any deficiency.

Through the foregoing, and since there are international organizations that strive every day to study how to achieve justice by enacting regulations and laws, is the Maghreb among the countries that are waiting for a law to be enacted that embodies the desired justice?

Or is he demanding the application of Islamic law because it is the only solution to achieve justice?

And through the poverty and unemployment that the Maghreb is experiencing, the latter has exacerbated a social crisis that has prompted peoples to demonstrate and rise up against governments that do not take into account the interests of their citizens.

Therefore, we turn to the presentation of the most important crises in which the Arab Maghreb is floundering, as two indicators that reflect the concept of social justice and its correct understanding of the state that adopts the idea of justice:

1-Poverty:

The national poverty rate is the percentage of the population living below the national poverty line. National estimates are based on population-weighted subgroup estimates from household surveys.

Since the four countries that comprise the Maghreb region - Algeria, Libya, Morocco and Tunisia - differ in their economic performance, they face the same major social and economic challenges. Many believe that the most important of these challenges is the high rates of unemployment among young people, and the need to address them by developing the private sector in order to create more job opportunities and improve their quality.

For Algeria is a country with a population of about 39.7 million, and its economic problems can be easily managed, given its large area, and its status as an oil producer. The official poverty rate in Algeria reached 5.5 percent in 2011, which is the latest available data. The extreme poverty rate among the total population in Algeria was lower, at 0.5%. However, about 10% of Algeria's population - or nearly four million people - are considered at risk of falling back into poverty if conditions become severe.

To study the dynamics of poverty in Tunisia between the years 2000-2015, the poverty lines calculated during the five years prior to this date were updated, based on the internationally recognized statistical methods in this regard. Poverty in the previous series, but we added to the CPI the elasticity of the real growth rate recorded during each period according to Ravallion 1991.

Under the title "Poverty in Morocco: Challenges and Opportunities", a report jointly prepared by the World Bank and the High Commission for Planning in Morocco in 2017, analyzes the evolution of poverty and the root causes of vulnerability and deprivation in Morocco, and identifies possible ways to overcome poverty. The report shows that although Morocco witnessed an improvement in its standards of living, and the accompanying decline in poverty and deprivation rates between 2001-2014, the level of personal poverty is still high, especially in rural areas.

The situation in Libya differed to the opposite, after the term poverty in it ended decades ago, to become what can be called poor property owners, 80% of Libyans live below the poverty line as a result of the new exchange rate, and they cannot keep pace with the rise in prices. The government raised salaries, according to the statements of the economist, Ahmed Al-Mabrouk. The economic expert indicated in press statements that the reduction of the value of the dinar, while the minimum wage remained at 450 dinars, led to a decline in the value of the real income of individuals, which was reflected in the lives of citizens and caused an increase in poverty rates.

On the other hand, United Nations reports stated that 40% of the 6 million Libyans live below the poverty line, without any benefit from Libyan oil revenues.

Ali Farhat, Director of the Center for Social Studies at the Ministry of Social Affairs in the previous government of Al-Sarraj, confirmed that 45% of Libyan families live below the poverty line, in a record jump for the year 2019, and this record increase in poverty rates led to

the disappearance of the middle class and its joining the poor, as a result of the expansion in Financial spending at the expense of development

The Oea Center for Economic Studies also confirmed that poverty rates rose in 2021 to 59%, while the United Nations estimated that about 1.3 million people, representing 23% of Libyans, need humanitarian assistance.

2-The unemployment:

We can point out that Tunisia provided tax incentives in 2006 to attract foreign investments, but 47% of these foreign direct investments that entered the country between 2006-2010 went to the energy sector, so the benefit from them remained limited in some areas, as well as its impact on capacity on creating job opportunities.

Despite all the projects that governments may discuss in order to alleviate the hardship of their people, nothing tangible from them appears in the people. The Tunisian people are still their primary source of livelihood in tourism and agriculture.

Unemployment in Algeria may play this role, causing people's conditions to deteriorate. It reached record numbers in 2015, and no change was observed in the first half of 2016 in the high levels of unemployment among women (16.6%) or youth (29.9%).

About 75% of the poor in Algeria live in urban areas, and they work in jobs in the informal sector or depend on agriculture. The disparities between regions mean that the poverty rate among those who live in the Sahara in Algeria is twice the national average, and three times among those who live in the plains.

All these factors and their combination of falling oil prices make addressing disparities in Algeria a difficult challenge. The disparity in consumption rates is high in Algeria, with an estimated gap of 27.7% between the rich and the poor.

Since Algeria is very different from the rest of the brotherly and friendly countries in Africa, it enjoys many privileges that the rest of the countries may lack. The inner wealth, the vast area occupied by it, the strategic location and the untapped youth human energy are all possibilities that make it the object of the greed of many.

Algeria has elements that make it a country in the ranks of the first economic countries, but it continues to struggle with many forces and is facing great challenges, in order to achieve sufficiency and eliminate the unemployment crisis that is increasing annually.

Recently, Algeria launched 26 projects to explore neglected underground resources at a cost of 1.8 billion dinars, after identifying 32 untapped mines containing rare metals, such as lithium, potassium, sulfur, precious stones, lead, zinc and phosphate.

Algeria is now preparing, with what economists call, to get rid of oil slavery, and to go to the exploitation of minerals and open the doors for investment for private individuals to enter the mining sector.

As for Libya, the high unemployment rates are seen as having a role in the current prevailing instability, and in the prospects of peace returning to Libya. In the end, it is requested that short-term aid should give way to efforts to increase the effectiveness of the civil service and the public sector, as well as to develop the private sector and diversify its activities to enable it to create new jobs.

In Morocco, economic growth over the past 15 years has helped bring down the overall poverty rate from 8.9% among the population of 34.4 million in 2007 to 4.2% in 2014. But despite the fact that the rate of the poor and those living on less than $1.9 Daily for the year 2011 decreased relatively as it reached 3.1%, the rate of 15.5% of people living on 3.1 US dollars is still high. About 19% of the rural population that depends on agriculture in Morocco still lives in poverty or is at risk of falling into its clutches. It is believed that these poverty rates are not likely to change as long as economic growth is weak, and economic disparities remain within the country. While the regions are less developed than other regions of North Africa, the overall unemployment rate in Morocco is high, at 9%, and the highest degree is observed among young people in urban areas 38.8% for the year 2016. The success of the national strategy to create 200,000 jobs annually may depend on the implementation of reforms to make The labor market is more conducive to the requirements of the private sector, and the new strategy aims to reduce the total unemployment rate in Morocco to 3.9% within ten years.

Chapter two:

1- The causes of the revolutions in North Africa:

Many countries of the world, especially the Arab world, have witnessed during the current century revolutions under the name of the Arab Spring, which were caused by the deadly

stagnation of the rebellious peoples. Poverty, marginalization, bribery, nepotism and bureaucracy, which revealed the disappearance of trust between the people and the authority, and thus proved that social justice is ink on paper that politicians sing about.

Justice cannot be embodied in reality by the presence of all contradictions on the same ground, the high rate of unemployment, poverty and extreme poverty with natural wealth, including exploited and invested by foreign companies, including exported as raw materials.

The Arab and Muslim revolutionary peoples in particular do not demand the distribution of wealth to them in the name of social justice for free. Rather, they offer to exploit their youthful energy that is wasted over time by achieving a job position for work and opening opportunities to invest their intellectual, creative and scientific capabilities, in the Maghreb. It knows very high rates of unemployment among university graduates, and it is an untapped energy and wealth.

The corruption that affected the governments of North Africa, especially the countries of the Arab Maghreb, in which everything that happened in the popular movement such as an uprising did not bear fruit on the miserable conditions of the citizen such as poverty, unemployment and deprivation of all the requirements of a decent life, aware of it that it is a country full of good things and that he has no right Except for the election, which has not yet been fruitful. The citizen has become less interested in citizenship due to the marginalization and loss of the most basic requirements of life, as he finds himself forced to think about a living. He is well aware that he is under pressure of restricting freedom and disempowerment, and fully aware of manipulation With his destiny and interests.

2-The movement in search of justice:

The explosion of Tunisia with its popular movement on December 18, 2011, which awakened the oppressed world under the name of the Arab Spring, is a popular uprising against poverty, humiliation, marginalization, authoritarianism and unemployment. Industrialization hardly appears. Tunisian society had a nature of complacency, but insulting and trampling on human dignity was a red line that set the government on fire. Bouazizi was a poor, unemployed young man.

Libya on February 18, 2011 before this date was enjoying economic and social prosperity, unlike all the countries of the Maghreb and North African countries, and its prosperity is based on the export of oil. Until those demonstrations and chaos were the source of ruining the lives

of all the Libyan people, who did not enjoy It has not stabilized or resolved crises now, but has exacerbated the situation.

Morocco has also known maturity and social awareness, and there were protest campaigns to pressure the authority and to vent the tension or settle scores, even if symbolically, with those who are supposed to be responsible for the miserable conditions, and we mention among them the protests about unemployment for the upper echelons, December 1990. They are protests It turned into an uprising and was met with violence by the police. Many victims fell as a result, after the blockage of dialogue between the authority and the unions representing workers. But other protests followed, including the one in 2011 for the killing of "Smak Al Hoceima" inside a garbage truck. But the ruling of some Analysts and politicians say the protests are unsuccessful.

As for Algeria, it was also not spared from the protest movements that almost escaped from the authority of the state, and from these movements October 05, 1988, January 05, 2011 and the last protest February 22, 2019, and it can be said that the protest movements in Algeria seem like storms or cyclones without A goal or an end, its only function is to express a state of deep frustration and a feeling of despair. It is a state of anger over the stagnation that the youth can no longer bear at a time when they were waiting and covetously changing the situation for the better, so they were constantly shocked by the same situation. So they chose to leave without allowing any political current or thought sectarian to steal his expressions and adopt them. Because he has become distrustful of politicians and the government.

3-Social justice that the Maghreb aspires to:

Many of the interpretations that may be intended to translate that social justice is opening up to the West and adopting the laws of the Western world under the names of liberation and democracy. He remained wary of his demands not to deviate and take another course. Justice will not be achieved as long as it does not follow a solid method. Therefore, these peoples still cling to religion in the hope of achieving liberation from the imported man-made laws that spoiled his life, displacement and impoverishment, and every day in an amendment It is not in line with his interests.

The desired justice for the rebellious peoples is:

Freedom from all forms of slavery has been guaranteed by Islam for every person who believes in this religion. Freedom is the centerpiece of justice and a sign of human honor. A person feels

this and cannot be taken away from this feeling that God has granted him. He made Bouazizi revolt, as a result of feeling insulted by a policewoman, and he did not find justice in his homeland.

Liberty is that the citizen lives in the midst of justice, without discrimination or humiliation from the ruler or the authority, as the latter is granted sustenance, job, or security. Omar bin Al-Khattab, may God be pleased with him, with Amr bin Al-Aas, and the matter becomes clear in Omar's saying: "When did you enslave people, and their mothers gave birth to them free?" This applies to all human beings without exception. Worship is for God alone.

Human equality, which the divine law stipulated before all man-made legislations, the Almighty said: "And they feed the poor, the orphan and the captive with food for its love." Verse 8 of Surat Al-Insan

And the Almighty says, "So their Lord answered them that I will not waste the work of a worker among you, male or female, some of you are from others." Surah Al Imran, and here is an affirmation of human equality.

Here, equality is not a "generalization of the gender perspective," which is a strategy to address the concerns and experiences of men and women of different gender orientations, identities and gender expressions, which it sees as part of implementing or evaluating any measure to ensure equality and justice. And not equality and justice. In moral matters and obliterating the characteristics and biological functions of every organism, this is pathological conditions. It is not justice by making all people equal in money and possessions, as this is a narrow view that is limited to more material things.

The state must enact its laws in line with Islamic Sharia, which guarantees and enhances the values of integrity and transparency, provided that oversight bodies are specified to be competent in following up the implementation of strategies to combat administrative corruption. Even if these bodies exist, they must be activated. Islam guarantees the principle of equal opportunities and peoples. Islam is aware of this principle that people are not the same capabilities.

The marginalized and unemployed class, especially the youth, demands to be an active class and to have opportunities to participate in order to build an integrated society, by opening job positions that make him feel dignified because he is making an effort to obtain a salary that guarantees him a decent living and a stable life .

The subsidies provided by countries under the names of subsidies for basic materials and unemployment grants are temporary solutions and do not meet the aspirations of the peoples, and these are Western dictates, sometimes their ratios go up and sometimes they go down, sometimes they are available and sometimes they are interrupted, benefiting from the right holder and who is not He has a right. Therefore, peoples aspire to achieve what can be summarized in the following points:

-The poor are first among the first in Islam with public money.

-Not accumulating wealth and deprivation is rampant.

-The principle of differential tax according to ability and disability.

-The principle of not seizing necessities in payment of tax and not collecting them by force.

-The principle of the man and his need, so having children is not like a single person (doubling the need)

- The principle of general social security for each disabled and needy (and here the tolerance of Islam emerges in the bastard and the non-Muslim).

-Where did you get this from, the ruler has no immunity from being held accountable.

-The principle of general solidarity, which makes all the people of a country directly responsible for every hungry person, criminally responsible.

-Prohibition of usury, and distress when debtors are in distress.

Conclusion

In the end, let there be a clear conception of the meaning of social justice and of the protest movements that the Arab peoples went through, provided that everything that happened was an uprising to return to the realization of the real justice that was stolen, and these movements will not stop at this generation, but rather it is a completely unrealized justice and a renewed demand for it. Whenever necessary and deviated the authority to give the right to the right.

All the attempts made by the authorities to cover the needs of their citizens are to alleviate the crises on the people so that they can control the pace of their anger. And justice is not fully achieved. And the Islamic peoples believe that justice will not prevail in the presence of regimes that do not believe in religion.

Violations of International Law and Human Rights by Armenia against Azerbaijan

Att. Aygun ALIYEVA

It is not possible to fully understand the legal dimension of the Nagorno-Karabakh conflict without examining the role of Armenia. The separatist activity in Nagorno-Karabakh that was initially aimed at uniting the region with Armenia turned into open war with the involvement of Armenia in 1991 that could only be stopped temporarily with a ceasefire in 1994. After that date, the tension subsided, but the problem remained unresolved, or could not be resolved for a long time. As a result, Azerbaijan's former Autonomous Region of Nagorno-Karabakh and seven of its major cities outside the region, accounting for around 20%, was long under Armenian occupation.

Azerbaijan has today succeeded in taking back its occupied lands, at the cost of hundreds of lives, although this situation does not mean Armenia's responsibility for its unlawful actions during both the war and the occupation have been forgotten.

First of all, international law defines the rights and obligations of independent states, as the classical subjects of law. Domestic legal entities are not considered to be directly subject to international law. International law applies to federal states.

In this context, in the case of the Nagorno-Karabakh conflict, under international law it is not possible to apply direct prohibitions on the use of force only to Armenia, which was the subject of domestic law until the dissolution of the Soviet Union.

Armenia gained its independence as a result of the dissolution of the Soviet Union in December 1991, and thus become subject not only to the benefits of the rights stipulated by international law, but also its legal obligations.

Although the relationship between Armenia and the Nagorno-Karabakh incident before 1991, from the Independence to the 1994 Armistice, cannot be considered within the scope of the prohibition of use of force, according to international law, in the years after the independence of Armenia and Azerbaijan, the unlawful acts of aggression by Armenia increasingly continued and since 1991, the Nagorno-Karabakh conflict has started to turn into a full international armed conflict between Azerbaijan and Armenia. The Armenian side, which formed and armed its national military units with the support of Russia, entered the war at an advantage. As a result of the attacks launched by Armenia on October 16, 1991, 35 of the 57

settlements that were home primarily to Azerbaijani Turks were occupied up until February 1992.

The most horrific of the incidents against the civilian population occurred during the attacks by the Armenian militia and soldiers against the town of Khojaly, which was home only to Azerbaijani Turks, on the night of February 26, 1992, within the borders of Nagorno-Karabakh. According to Human Rights Watch, in the incident described as a "massacre" and "genocide" by Azerbaijan, the Armenians attacked the town of Khojaly which contained 3,000 civilians and only 160 lightly armed militia, with the support of the 366th Russian Motorized Regiment, and killed 636 people who were mostly women, elderly people and children, in one night. In its 1993 report, Human Rights Watch stated that at least 161 civilians had been killed, while in a later report it was stated that it was generally accepted that 200 people had been brutally murdered, with a total death toll of between 500 and 1,000. Two years later, a report by the Azerbaijan Prosecutor General's Investigation Group put the figures at 485 dead, 120 missing, 487 injured and around 500 hostages, 160 of whom were women and 33 who were children. It was further stated that some bodies showed signs of brutal torture and were beyond recognition, with noses and ears cut off and scalps removed.

The Khojaly “massacre/genocide” attracted the attention of the international community to the Nagorno-Karabakh conflict, compelling the Foreign Ministers of the OSCE (Organization for Security and Cooperation in Europe) nations to convene for the Minsk Conference on March 24, 1992 to resolve the problems between the two OSCE member states and formed the Minsk Group since January 30, 1992, while the Armenian side continued its military operations and armed attacks. Although the armed struggle of the volunteers and militias who have relations with Armenia in a broad or narrow scope until May 1992, an open and all-out war started as of June 1992, including Armenia. Thus, the Nagorno-Karabakh conflict, which had been previously an internal problem of Azerbaijan, escalated into a war between two states.

Drawing upon Russian arms support, on May 8, 1992, Armenia moved in and occupied Shusha, one of the largest settlements in Nagorno-Karabakh where all Azerbaijani Turks live, followed on May 15 by the city of Lachin, which formed a corridor between Armenia and Nagorno-Karabakh and remained outside the borders of the Autonomous Region.

The successful offensive launched by Azerbaijan in June to liberate the occupied areas and the intervention of foreign political leaders in the peace negotiations temporarily put pressure

not only on Nagorno-Karabakh, but also on the Armenian leadership. However, the Armenian attacks increased in intensity again after the Rome meeting of the Minsk Group on March 2, 1993. Although the military actions against Nagorno-Karabakh were subject to differences of opinion within the Armenian leadership, it is known that Manukyan, the Defense Minister at the time ordered the Armenian army to intervene and to launch operations in Azerbaijan's territories. As a result of the intensification of the Armenian attacks, Kalbajar (April/May 1993), Agdam (July 23), Fuzuli (August 23), Jabrail (August 23), Gubadli (August 31) and Zangilan (October 23), all of which are outside the borders of the Nagorno-Karabakh region and are among Azerbaijan's largest settlements, were occupied.

The occupation of Kalbajar, which is outside the borders of the Nagorno-Karabakh Autonomous Region, led to enormous international pressure being put on Armenia, resulting in the first UN Security Council decision related to the issue. In Resolution 822, the Security Council expressed its concerns about the deterioration of international peace and security, and demanded the immediate cessation of military actions, and called for the immediate removal of invading forces from Kalbajar and the occupied Azerbaijani territories.

The signing of the ceasefire in May 1994 was an important step in bringing a temporarily pause to the Nagorno-Karabakh war, although the problem could not be resolved for a long time. Around 20% of Azerbaijan, including Nagorno-Karabakh, remained under occupation.

The "Seventh Anniversary of the Nagorno-Karabakh Conflict" report penned by Human Rights Watch stated clearly that the presence of the Armenian army in Azerbaijan in legal terms made Armenia party to the conflict, and in this sense, the problem should be considered an international problem between Azerbaijan and Armenia. Official observers from the OSCE also drew attention to the fact that Armenian soldiers were deployed in Kalbajar, as one of the occupied territories.

The European Court of Human Rights, in a June 16, 2015 decision on "Chiragov and Others v Armenia", openly acknowledged that the Armenian State had exercised effective control over Nagorno-Karabakh during the specified period.

The armed conflicts that started on September 27, 2020 also made it clear that Azerbaijani lands were unlawfully occupied by the Armenian State, that is, the party of the armed conflict was directly the Armenian State. In this sense, the Armenian State has illegally occupied Azerbaijani lands from the very beginning, and continued its occupation and unlawful actions after September 27, 2020.

Armenia has continued to violate the prohibition on the use of force and interventions in international law, not only in the past, but also by acting as a party to the armed conflict when Azerbaijan tried to gain control over its territory after September 27.

Armenia, which has already violated the rules prohibiting the use of force *(jus ad bellum)* in international law, has also always ignored the rules of humanitarian law *(jus in bello)*.

Changing the demographic structure of the region is at the forefront of the actions of Armenia that violate the international humanitarian law. Due to the illegal use of force and the occupation of Azerbaijani lands by Armenia, a total of 600,000 Azerbaijani Turks – 40,000 from Nagorno-Karabakh and 560,000 from the surrounding occupied provinces – have been displaced. Armenia has transferred civilians to the regions evacuated by the Azerbaijani Turks after they were forced to migrate.

Upon the request of Azerbaijan, which has been disturbed by the resettlement of the region in violation of humanitarian law, the UN General Assembly decided to add the issue of "the situation in the occupied regions of Azerbaijan" to its agenda on October 29, 2004 and the issue was discussed at the 59th Session of the General Assembly on November 23, 2004. During the session, Azerbaijan provided documentary evidence of the illegal actions of the Armenian side, and expressed its serious discomfort with the resettlement of the region. Despite this, Armenia continued with its policies to change the demographic structure of the region, with efforts made to increase the number of Armenians in the occupied Azerbaijani lands to 300,000 in 2010 under the "Return to Artsakh" project. Article 49/6 of the 1949 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War prohibits the transfer of persons into occupied territories. In this sense, Armenia's actions amount to a fundamental violation of international law.

Another unlawful act in the occupied territories was the serious damage inflicted on cultural properties and the environment. Around 500 historical and architecturally important buildings, more than 100 archaeological monuments, 22 museums containing tens of thousands of artifacts, four art galleries, 927 libraries containing 4.6 million books and manuscripts, 85 schools providing education in music and fine arts, 20 cultural buildings and palaces and four state theaters belonging to the Azerbaijani people were caught up in the Armenian occupation. As a result of the Armenian occupation, many museums, sculptures, carpets and historical artifacts charting the history and culture of the Azerbaijani people, as well as paintings by Azerbaijan's most famous painters were looted, and many were taken to

Armenia. In this sense, Armenia's actions were openly in violation of international law, especially the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols; the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and the 1972 Convention concerning the Protection of World Cultural and Natural Heritage.
With the Joint Declaration signed on November 10, 2020, the Armenian military units were forced to leave the region after suffering a great defeat in Nagorno-Karabakh, but burned and plundered many regions. All of these are actions that require the direct responsibility of the Armenian State.

One of the main problems related to the occupied zones was the looting and the distribution of the goods left behind by the Azerbaijani Turks who had been forced to leave Nagorno-Karabakh. It is known that families transferred from Armenia were settled in the houses evacuated by the Azerbaijani Turks who had been forced to migrate. Under the *jus in bello* rules of international law, especially the Hague Convention on Land Wars (articles 46, 52, 53, 55, 56) and the Geneva Convention (IV) related to the Protection of Civilian Persons in Time of War (articles 53 and 147), the occupying state is obliged to treat the occupied territories with respect. Furthermore, Articles 50 and 51 of the List of Customary Rules of International Humanitarian Law stipulate respect for property, and plunder is completely prohibited under Article 52.

In addition, according to article 1 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, which lays down the customary rules of international law, every wrongful act of a state in contravention of international law creates the responsibility of that state. Pursuant to Article 2, which defines the elements of tort, if an act committed by executory or negligence can be attributed to the state in accordance with international law and constitutes a violation of an international obligation of the state, the state has a tort. In this case, Armenia is obliged to repair or compensate for all the damage it has caused to Azerbaijan within the framework of articles 31, 34 and the following articles of the Draft Convention. Until Armenia settles its torts, its responsibility will continue, in that as stated in Article 14/2 of the Draft Convention, the violation of an international obligation due to a continuous act of a state extends throughout the entire period during which the act continues and the international obligation remains violated. In this sense, it is clear that Armenia bears responsibility for its unlawful actions against civilians during the armed conflict that started on September 27, 2020. Within this process, prohibited missiles were fired by Armenia into

many regions of Azerbaijan, such as Barda and Ganja, which were outside the armed conflict zone, leading to the deaths of many civilians.

The Second Karabakh War, which broke out after Armenia attacked civilian settlements of Azerbaijan on September 27, 2020, ended with the signing of the Tripartite Declaration by Azerbaijani President Ilham Aliyev, Russian President Vladimir Putin and Armenian Prime Minister Nikol Pashinyan on November 10, 2020. The saddest scenes of the war that resulted in a decisive victory for Azerbaijan, and that are engraved in peoples memories, were the attacks of the Armenians against civilians. Continuing the acts seen during the 30-year occupation, Armenia constantly targeted civilians in the Second Karabakh War, which lasted for 44 days, and nearly 100 innocent civilians lost their lives as a result. Armenia has also violated the Hague Convention, the Geneva Convention (1949) and Rome Statute on the protection of civilians in times of war with its unlawful acts and discourses. Its attacks against historical and cultural artifacts and the natural environment during the war were also in contravention to the relevant agreements and conventions, especially the “1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict".

Armenia, which has been trying to annex Nagorno-Karabakh since 1988, and occupied approximately 20% of Azerbaijan in violation of the rules of use of force *(jus ad bellum)* in the process up until the ceasefire after it became an independent state, continued with these actions, which are clearly against international law, until 2020.

Continuing its aggressive behavior during the ceasefire, the Azerbaijan State responded to the latest armed attacks on September 27, 2020 with the use force, applying its natural right to self-defense, from the very beginning. The Azerbaijani army, which achieved significant successes under the Commander-in-Chief of President Ilham Aliyev, rapidly defeated the Armenian troops and reclaimed most of the occupied regions. With the Joint Declaration made on November 10, 2020, following the intervention of Russia, Armenia agreed to leave all occupied territories under the control of the Russian Peacekeeping Forces in a short time. Today, Azerbaijan has taken back all of its occupied lands, except for a very small part that remains under the control of the Russian Peacekeeping Forces. In accordance with international law and the Joint Declaration, all Armenian armed units in the region are now required to lay down their arms, the Armenian population that was transferred to the region are to depart under the control of the Peacekeeping Forces, and the Azerbaijani Turks are to be allowed to return to their homeland safely. Of course, the Armenian minority that has long been residing in the region will be allowed to remain with equal citizenship rights, like all the

other minorities within the borders of Azerbaijan, which is a state of law that respects human rights. The State of Armenia, on its part, is required to respect the territorial integrity of Azerbaijan and compensate for all the damages it has caused in the course of time. At the same time, at the end of the 5-year period stipulated by the Joint Declaration, the Russian Peacekeeping Forces should leave the region and cede control completely to Azerbaijan. As it has been tried to be explained from the beginning, Nagorno-Karabakh is part of Azerbaijan, and will continue to be so. It is clear that otherwise, it would be contrary to international law in a way that would violate the territorial integrity of Azerbaijan.

Overview of Human Rights Violations in Bangladesh

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Bangladesh is a sovereign democratic Republic. Since the fall of the autocratic regime of H M Ershad in 1990, Parliamentary elections have been held in the country at regular intervals. Between January 2007 and December 2008, the country was governed by an army backed caretaker government which manipulated the national elections leading to the Awami League sweeping the polls and assuming office with three quarters majority in Parliament. Since then the Awami League has continued to govern the country holding sham elections in January 2014 and December 2018 to cement its grip over the country.

Article 11 of the Constitution of Bangladesh proclaims that the Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed. The Constitution mandates that the judiciary shall be independent with the authority to enforce the fundamental rights enshrined in the Constitution, which is a sine qua non for establishing a democracy. However, democracy and the rule of law remain a far cry in Bangladesh.

For more than 12 years how, the people of Bangladesh have been subjected to misrule at the hands of the current ruling party. Authoritarianism thrives by clamping on the fundamental rights of the masses. Misrule is perpetrated and perpetuated through the creation of a culture of impunity. Bangladesh, sadly, is a textbook example of prolonged authoritarian misrule and misgovernance. In recent years, there has been a spike in human rights violations in Bangladesh - this is not unexpected as the country braces for national elections next year. The ruling power will no doubt try to manipulate the elections by conducting a campaign of torture and harassment against leading opposition politicians in the coming months.

In this paper, I provide an overview of human rights abuses committed in Bangladesh at the behest of state actors.

As in previous years, torture perpetrated by security forces, including enforced disappearances and extrajudicial killings remain pervasive throughout the country, taking place in an environment of absolute impunity. The elite force, Rapid Action Battalion (RAB) is particularly notorious for widespread abuses. UN human rights experts have voiced concerns about allegations that members of the unit engaged in torture, enforced disappearances, and other human rights violations. Reportedly, the RAB is operating outside the control of any civilian and judicial authority as a result of which it is practically impossible to hold accountable delinquent members of RAB. The current ruling party's reliance on RAB to muzzle dissenting voices in the already constricted political space is largely attributable to the impunity attached to RAB's excesses.

In December 2021, the United States government designated the RAB as a "foreign entity that is responsible for or complicit in, or has directly or indirectly engaged in, serious human rights abuse," under the Global Magnitsky Human Rights Accountability Act. The US Treasury Department subsequently imposed sanctions on six current and former commanders of the RAB while the US State Department imposed visa restrictions against two former commanders of the RAB. These sanctions have reignited calls for the UN to ban RAB members from deployment in peacekeeping operations. In response to these sanctions, the Bangladeshi government has intensified reprisals against human rights defenders, victims of human rights violations, and their families. Reportedly, the police have been appearing unannounced to the homes of families of victims of enforced disappearances, to coerce them into signing blank papers or pre-written statements to the effect that their relative had gone missing and the family had hidden that information. Some relatives have faced repeated visits and questioning by the authorities and have been taken to the police station at night for several hours of questioning. These family members have continued to live in a cycle of fear without justice.

In recent years, a number of laws has been enacted to clamp down on NGOs and Bangladesh's vibrant civil society which have traditionally played an important role in ensuring government accountability. The Foreign Donation (Voluntary Activities) Regulation Act 2016 was enacted with the purpose of allowing the government to inspect and monitor activities of NGOs thereby creating fetters in their regular functions and operations. Reportedly, many organisations have had to close down or stop their activities as a result of such oversight by the government.

Perhaps the most repressive of laws that has been used to suppress political dissidents is the Digital Security Act (DSA), which enacted in 2018 contains vague provisions criminalising legitimate forms of expression. Recently, the UN High Commissioner for Human Rights Michelle Bachelet called for an overhaul of the DSA. Instead, the Law Ministry proposed to expand the number of special tribunals specifically for these types of cyber "crimes." The UN Special Rapporteurs on freedom of expression and on the situation of HRDs have noted that the sections in the DSA are vague in defining categories of speech and gives the Bangladeshi government broad discretion to unduly penalize individuals for holding or sharing personal opinions. The law is regularly used by law enforcement agencies to penalise citizens for their social media posts which are critical of the ruling party or government representatives. Thousands have been charged under the DSA since its enactment who have been subjected to a wide range of human rights violations including enforced disappearance, detention, and torture simply for exercising their right to freedom of expression.

In February last year, writer Mushtaq Ahmed died in prison after being held in pretrial detention for nine months for publishing posts critical of the Bangladesh government's response to the Covid-19 pandemic on Facebook. Ahmed Kabir Kishore, a cartoonist held on similar grounds, filed proceedings alleging that he was tortured, and described the torture Mushtaq had also faced in custody. In January this year, a court in Mymensingh district charged a member of Odhikar, an NGO, under the DSA for documenting cases of enforced disappearances, extrajudicial killings, and other human rights violations. He is facing up to five years in jail. Criticism of the government actions have not been able to slow down the campaign of harassment and oppression conducted by the government. Reportedly, the Bangladesh government is continuing to systematically crack down on victims' families, human rights activists and journalists who speak out against violations.

Furthermore, the Bangladesh government has continued to prosecute Odhikar's Secretary, Mr. Adilur Rahman Khan in a cyber crime case at the Cyber Tribunal of Dhaka, in an attempt to sanction and silence their human rights activities. The proceedings were drawn up against Mr. Khan in the backdrop of a report published by Odhikar documenting extrajudicial killings by security forces and law enforcement agencies during a protest in May 2013. Following the imposition of US sanctions against RAB, surveillance by plain clothes detectives in in front of the home of Mr. Khan has been increased, raising concerns over the personal safety of the human rights advocate.

For more than a decade now, torture, ill-treatment, extrajudicial killings, enforced disappearances, along with detention and harassment of human rights activists and journalists have been a part of the modus operandi of law enforcement in Bangladesh.

In order to prevent the continuation of gross human rights abuses in Bangladesh, the international community should take a concerted action to compel the Bangladesh government to put an end to any extrajudicial killings, torture, and arbitrary arrest, and hold perpetrators accountable for these acts. Human rights activists and journalists should be allowed to carry out their legitimate activities without any hindrance and fear of reprisals. The Digital Security Act, 2018 and the Foreign Donation (Voluntary Activities) Regulation Act, 2016 should be amended immediately to ensure that they are compliant with the fundamental rights guaranteed under the Constitution.

Violations of the Religious Rights of Muslims in Western Countries and Ways to Confront Them

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Introduction

The International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and regional human rights treaties state that everyone has the right to" freedom of thought, conscience, and religion ",or in other words" ,conscience and religion.

These treaties also provide for the right to manifest one's religion or beliefs, unless the law stipulates restricting this right to the necessities of protecting safety, order, health and public morals or the rights and freedoms of others.

The right to respect for the religious or other personal beliefs of persons may not be restricted,.

Humanitarian law treaties stress the requirement to respect the religions of protected persons. The International Covenant on Civil and Political Rights and the European and American human rights conventions specifically state that the right to freedom of thought, conscience and religion includes the right to choose one's religion or belief freely.

Muslims in some Western societies are subjected to many attacks and violations of their religious freedom, sanctities and religious symbols, whether by the state and its institutions or by individuals and parties with an extreme right-wing orientation.

Therefore, it is necessary to address the legal methods to confront these violations and attacks, and the role of international organizations concerned with the protection of human rights in the world to end or limit these attacks.

Keywords :Protection of religious rights, Violations of the freedom to practice religious rites , International humanitarian law.

The purpose of this paper is a statement of the racist violations and attacks that Muslims are exposed to in many European countries because of their religious belief, and the legal ways to confront those violations.

In order to present these topics, we saw the division of the research as follows:

An Overview of the Right to Free Exercise of Religious Rites in International Law

The right to freedom of belief and the practice of religious rituals is the right to freedom of conscience and conscience in all that a person can choose through his diligence to understand religion without coercion. This right has been exposed to many obstacles throughout the various stages of history, but it has finally found its place within Human rights system. A relationship exists between the right to freedom of belief and other human rights and freedoms. The international bill stipulated this right, for example the Universal Declaration of Human Rights (1948), as well as most modern constitutions.

Legal obstacles to this right are still encountered, such as the non-compulsion of some international legal texts, the possibility of registering reservations on them if they are binding, the idea of preserving public order and other fluid phrases and unfair political interference.

Freedom of religion is one of the oldest and most controversial of all human rights and has been the object of international concern from the very beginnings of the modern international state system .The universal declaration of human rights recognizes religious freedom as universal right. Religious freedom is the fundamental of every human being to freely choose a religion, or to have no religion, and to pursue that belief publicly, without being a victim of oppression or discrimination. The freedom of thought, conscience and religion is a well attested component of the human rights canon. It is found in the principal international human rights instruments and is widely regarded as a key elements of the protective framework.

Yet it has an uneasy relationship with other elements of human rights, such as the freedom of expression, and the degree to which the realization of the freedom of religion necessitates a collective as opposed to an individualist paradigm can be a source of further friction. There are also difficulties in locating where the freedom of religion lies in relation to the freedom of association as well, as the problems of determining when the freedom of religion can be subject to legitimate restriction within a human rights framework.

The International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and regional human rights treaties state that everyone has the right to“ freedom of thought, conscience, and religion ”,or in other words“ ,conscience and religion ”.These treaties also provide for the right to manifest one’s religion and beliefs, unless the law stipulates

restricting this right to the necessities of protecting safety, order, health, and public morale or the rights and freedoms of others.

The International Covenant on Civil and Political Rights and the American Convention on Human Rights list the above rights as inviolable, while the Convention on the Rights of the Child and the African Charter on Human and Peoples' Rights do not allow these rights to be infringed. The right to freedom of thought, conscience and religion, the right to manifest one's religion or beliefs, and the right to change one's religion or belief are also contained in other international instruments.

The right to respect for the religious or other personal beliefs of persons may not be restricted, as opposed to the manifestation of these beliefs, which will be dealt with later. Humanitarian law treaties stress the requirement to respect the religions of protected persons. The International Covenant on Civil and Political Rights and the European and American human rights conventions specifically state that the right to freedom of thought, conscience and religion includes the right to choose one's religion or belief freely.

The International Covenant on Civil and Political Rights and the American Convention on Human Rights expressly prohibit subjecting anyone to coercion that could infringe on this right. In its General Comment on Article 18 of the International Covenant on Civil and Political Rights, the Human Rights Committee stated that the prohibition of coercion protects the right to change one's belief, maintain one's belief, or adopt atheistic views. It added that policies or practices with the same purpose or effect, for example, policies that restrict access to medical care, education or employment, violate this rule .

The same point was also made by the European Court of Human Rights and the African Commission on Human and Peoples' Rights, which also stressed the importance of respecting worldly ideas. Any form of persecution, harassment or discrimination based on a person's religious or non-religious convictions is a violation of this rule. In its report on terrorism and human rights, the Inter -American Commission on Human Rights stated that laws, and methods of investigation and prosecution, may not be designed in a manner intended to discriminate, or implemented in a manner that discriminates, among members of a group to the detriment of them, and on the basis of their religion, among other things.

The manifestation of one's beliefs or the practice of one's religion must also be respected. This includes, for example, access to places of worship and to the clergy. Restrictions are permitted only if necessary to protect order, security, or the rights and freedoms of others .

As stated in the commentary to Rule 127, detainees' religious practice may be subject to military regulations. However, this practice can only be restricted if such restrictions are reasonable and necessary in a particular context. In its General Comment on Article 18 of the International Covenant on Civil and Political Rights, the Human Rights Committee stated that restrictions must be directly related to and proportionate to a specific necessity, and that restrictions applied to protect morale must not derive exclusively from a single custom. It added that people subject to legal restrictions, such as prisoners, continue to enjoy their right to demonstrate their religion or belief" to the fullest extent, and in proportion to the nature of the restriction imposed on them".

Article 4 of the French Declaration of the Rights of Man and of the Citizen of 1789 stipulated the definition of freedom as follows“ :All people are free, and freedom is one’s ability to do all that does not harm others”.

Attack on the Freedom of Muslims to Practice their Religious Rites in Western Society

The term religious freedom has historically been used to refer to the acceptance of different religious beliefs, while the term freedom of worship refers to the freedom to exercise the individual, and the degree of acceptance of these freedoms has varied between different countries, where we find some countries may accept a form of religious freedom, but in fact impose some restrictions. against religious minorities, and works to enact some laws as a method of repression in addition to depriving them of their political rights

Muslims in European society are exposed to many attacks and violations that affect their sanctities and restrict their freedom to practice their worship, including burning the Noble Qur’an, offensive cartoons, banning the veil, prohibiting Islamic slaughter, and attacking worshipers in mosques.

For example in France

What does the French government's uprising against the European Council's support for the right to wear the veil, and its objection to a campaign launched to confront discrimination against Muslims on the continent, and to urge respect for the plurality of religions and cultures as an integral part of the principle of freedom mean?

And the French presidency's encouragement of the offensive drawings of the Holy Prophet, may God's prayers and peace be upon him, and this represents an attack on Islamic sanctities, as well as attempts to prevent halal slaughter.

This French tendency to restrict the freedom to practice religious rites is not new. But it has grown in the past two decades, and expanded in recent years.

In Denmark;

The cartoons of the Prophet Muhammad - may God bless him and grant him peace - date back to 2005 when they first appeared in a Danish newspaper. They consisted of 12 caricatures, including a drawing depicting the Prophet Muhammad wearing a turban in the form of a bomb from which the ignition fuse was hanging.

European newspapers republished the same pictures, including the Danish newspaper Jyllands-Posten on September 30, 2005, and after less than two weeks and on January 10, 2006 the Norwegian newspaper Magazinet, the German newspaper Die Welt, the French newspaper France Soir and other newspapers in Europe republished these caricatures, which ignited a wave Anger in the Islamic street

The French satirical magazine Charlie Hebdo republished it later in 2006, and the front page included, beside these cartoons, a cartoon of the Prophet Muhammad by the cartoonist Capo.

In Sweden;

A state of anger and sadness swept the entire Muslim world, after one of the extremists burned a copy of the Holy Qur'an in Sweden, which sparked violent protests by Muslims expressing their strong anger at the burning of the Qur'an, and this incident has become frequent and caused wounds to all Muslims.

Ways to Protect the Right of Muslims to Practice Their Religious Rites in Western Society

The principle of complete human freedom is in his private sphere, in which no one has the right to interfere. And human clothing is one of the most important elements of this special field. It is not permissible to impose a certain dress on an individual, or prevent him from wearing the clothes he desires, as long as it does not harm others.

The use of secularism to justify interference in the field of personal freedom contradicts one of the elements of the founding text in France, the famous 1905 law. This law was characterized by creative flexibility in the process of completing secularization gradually and without shocks.

And when he stipulated in his second chapter that the Republic does not support or finance any religion, he added that it is permissible to include the expenses necessary to ensure the free exercise of religious rites in the budgets of public institutions. It also obligated municipalities to maintain churches.

This means that what is happening now contradicts the spirit of the French law founding secularism, and not only with the principle of human freedom in his private sphere, which takes France from secularism towards a softening formula for the secular state.

The same applies to the rest of European countries, whose constitutions provide for personal freedom and freedom of worship.

The same applies to the rest of European countries, whose constitutions provide for personal freedom and freedom of worship

In order to confront the attacks and violations that Muslims are exposed to in some European countries, some methods can be followed to prevent or limit them.

For example;

-1Recourse to the European Court of Human Rights to confront these violations

-2Resorting to international organizations concerned with the protection of human rights, and activating their role in protecting the freedom of worship of Muslims in the West

-3Resorting to the International Criminal Court to confront the crimes of apartheid against Muslims, attacks on mosques and religious sanctities, and the murders of worshipers

Is the Right to family life and the right of family union of polygamic families respected in EU?

Prof. Dr. Paola Todini

The rights to family life and family unity are recognised to everyone, including person in need of international protection, by human rights law.

Several international conventions, indeed, recognize "the family" as a fundamental group unit of society and for that reason family is entitled to protection. The recognition of these rights takes place at different levels, not only ICCPR or ICESCR or other sources of international human rights law, in EU, for example article 8 of CEDU can be considered the base for the recognition of the importance of family also by an individualistic perspective because of the role played by the family in the personal sphere of human beings. These recognition find additional protection locally, in EU territory, by member States constitutions and special laws. For example Italy entitles the family of the right to be protected as natural society where the human personality is expressed.

Despite the above mentioned sources polygamic families seems to be excluded from the right to family life and family union on the base of the assumption that in EU countries polygamy is considered a disvalue.

This paper, through the exam of CEDU, and territorial courts decisions will try to demonstrate that in EU territories there is a violation of the rights of family union, family life and equality against members of polygamic families.

Enforced Disappearance and its Impact on Societal Peace in Iraq

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I. Introduction

Peace is an essential element of social cohesion and assistance in the well-being of societies. It includes the preservation of civil and political rights, economic, social and cultural rights. These rights sanctioned by divine laws and international organizations are interrelated, complementary and indivisible. The protection of civil and political rights is fundamental to the preservation of economic, social and cultural rights and vice versa. The preambles of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights state that "in accordance with the Universal Declaration of Human Rights, the ideal of a free human being, who has secured fear and want, is the way to create the necessary conditions to enable everyone to enjoy his wealth, economic, social and cultural rights as well as his civil and political rights.

The indivisibility and interdependence of these rights are essential for understanding the relationship between:

a. enforced disappearances (usually understood as mere violations of civil and political rights) on the one hand, and

b. economic, social and cultural rights, on the other.

Enforced or involuntary disappearance violates many economic, social and cultural rights and has a negative impact, in particular, on the enjoyment of those rights by the disappeared person, his family members and others. The Research in this article considers that the disappeared person and those who have suffered harm as a result of this disappearance are victims of enforced disappearance, as they suffer violations of a range of rights, including economic, social and cultural rights. Along the same lines, the Research in this article referred to matters relating to the right to health, property and education, as well as the right to take part in cultural life and access to housing.

The group has often focused on the economic, social and cultural harm of enforced disappearances in relation to the right to reparation. Finally, the Research in this article has on

many occasions highlighted the extreme poverty in which victims of enforced disappearance live. These cases of extreme poverty are both a cause and a consequence of enforced disappearances. However, to date, the Research in this article has not comprehensively and systematically addressed the relationship between enforced disappearances and economic, social and cultural rights. The Research in this article held a consultative meeting of experts to discuss the relationship between enforced disappearance and economic, social and cultural rights and to identify challenges and best practices in this aspect. Based on contributions from experts during the consultative meeting, research submitted.

The paper describes peace revolution as a three-dimensional process:

a. peacemaking,

b. peacebuilding, and

c. peacekeeping.

Each of these three components is itself a three-level process.

II. Peace and Legal Issues

Legal issues are very important aspects that help reducing illegal activities violating international rules. The main purpose of this section is to clarify and dismantle the relationship between enforced disappearances, on the one hand, and economic, social and cultural rights, on the other, while highlighting the methodology that states should follow to deal with this relationship.

Analysis of relevant practices, country reports and other activities, as well as reports issued United Nations and international human rights bodies, are used to collect items of information regarding prisoners and enforced disappearance.

The collected information used to study the impact of enforced disappearance on the enjoyment of economic, social and cultural rights. It also addresses the situation of human rights defenders and others who often become victims of enforced disappearance as a result of their defense of those rights.

The items of information seek to clarify the lack of effective enjoyment of economic, social and cultural rights as a factor that leads or contributes to the occurrence of enforced disappearances. In light of the United Nation Article 3 of the declaration on the protection of persons from Enforced Disappearance (hereinafter referred to as the “Declaration”), which urges individual

countries to take all effective measures to protect against and eliminate acts of enforced disappearance. The collected information also discusses the measures that countries must take action to address violations of the economic, social and cultural rights of victims as a cause and consequence of enforced disappearances.

III. Protection of Peace and Security

The absence of effective protection of certain economic, social and cultural rights may be one of the contributing factors to enforced disappearances. The study in this paper has observed that persons living in poverty who do not enjoy a number of economic, social and cultural rights are most vulnerable to enforced disappearance. Poverty can be defined as a human condition based on the continuous or chronic deprivation of resources and capabilities choices, security, and the ability to enjoy an adequate standard of living, along with other civil, cultural, economic, political and social rights.

Accordingly, often persons living in poverty suffer from a lack of social inclusion, political recognition, and legal and effective protection. In addition, the lack of security can lead to the lack of adequate protection for a number of rights, including human rights violations that include enforced disappearance. As a matter of facts. in many conflicts, a high percentage of victims of enforced disappearance are concentrated in the poorest regions and the majority of victims are poor.

The limited ability of poor people to access legal and judicial pathways and mechanisms is not only a violation of human rights, but also a consequence of many other violations. The absence of remedies for the negative effects of social policy in the areas of health, housing, education, culture and social security often results in an inability to seek re-address in cases of violation of basic human rights. Poor people, when confronted with criminal justice systems, are denied the means to challenge the conditions of their arrest, remand, trial, conviction, detention or release. There is a common understanding among human right protectors that “the inability of the poor to obtain judicial remedies through current systems increases their vulnerability to poverty and abuse of their rights. Conversely, their increased exposure to risk and exclusion further limited their access to justice systems. This vicious cycle prevents the enjoyment of many human rights”.

IV. Impact of Enforced Disappearance

Enforced disappearances result in the denial of the disappeared person's legal existence. As a result, he is prevented from enjoying all human rights and other freedoms. The disappeared person is de facto deprived of his residence and his property is frozen amid legal neglect as no one, even his closest relatives, can dispose of that country until the fate of the disappeared person is announced, alive or dead, which means that he is not legally recognized". One of the consequences of this situation is that relatives may also be denied access to their loved ones' pension, disposal of their bank accounts, and access to other means of support. Enforced disappearance [9].

a. Impact of Enforced Disappearance on Persons

The victim of enforced disappearance loses his liberty and is placed outside the scope of legal protection. Placing a person outside the scope of legal protection means the absence of all forms of protection, including those intended to secure economic, social and cultural rights. (E/CN.4/1435, paras. 184–187; and A/HRC/19/58/Rev.1).

The impact of enforced disappearance on the economic, social and cultural rights of the disappeared person has severe consequences. A person who is a victim of enforced disappearance cannot obtain wages, nor can obtain a job. The disappeared person's right to work is thus violated. The violation of the disappeared person's right to work may continue even after his or her release due to the stigma attached to the enforced disappearance or because of the psychological and physical effects it has on the victim.

The allegation that the disappeared person has engaged in illegal activity may intimidate other people in the community in such a way that they prevent the disappeared person from obtaining a job again. Many victims of enforced disappearance are held in unofficial or secret places that deprive them of their liberty, where they may be exposed to torture, ill-treatment, sexual violence and other violations of their physical and psychological integrity (A/HRC/13/42, para. 291). Under such circumstances, the right of everyone to the enjoyment of the highest standard of physical and mental health is violated. For those who regain their liberty after being subjected to enforced disappearance, the impact of these violations on their physical and psychological integrity and the right to health is enduring. The full right to health is further undermined by direct or indirect actions or omissions of the state during enforced disappearance.

Despite the low percentage of women and children who are victims of enforced disappearance, their rights are disproportionately affected when such violations occur.

Women who are victims of enforced disappearance often experience gender-based violence such as physical and sexual violence, including rape" (A/HRC/WGEID/98/2, paras. 8 and 14). Women also face special health risks due to pregnancy or pregnancies that may Occurs during detention and disappearance. When a woman is held in facilities where the required care for a pregnant woman is not available, her right to health is also violated (A/HRC/WGEID/98/2, para. 9; and E/C.12/2000/4, para. 21 In such cases, states are obligated to take special protective measures for pregnant women in detention (ibid.).

Children themselves may be subjected to enforced disappearance or be born to a mother who was a victim of enforced disappearance while in detention (A/HRC/WGEID/98/1, para. 2). In both cases, children are deprived of a range of economic, social and cultural rights, particularly their right to education (ibid., para. 33). When they are born during the period of their mother's enforced disappearance, documents proving their true identity are in most cases hidden or altered, putting them outside legal protection and depriving them of basic rights.

b. Impact of Enforced Disappearance on Families

Impact of enforced disappearance on the economic, social and cultural rights of the disappeared person's family or dependents has a clear role in their communities. They may also become prey to economic and sexual exploitation (A/HRC/WGEID/98/1). Moreover, mothers of disappeared persons may be stigmatized by blaming them for not taking proper care of the disappeared son [6]

The research in this paper discusses emotional distress of family members of victims of enforced disappearance and it is subsequently exacerbated by material poverty exacerbated by the costs of their decision to search for their loved ones. In addition, they do not know when their loved ones will return - if this happens - which makes it difficult for them to adjust to the new situation. In some cases, national legislation may make it impossible to obtain a pension or receive any other form of support in the absence of a death certificate. Accordingly, economic and social marginalization is often the result of enforced disappearance. Under these circumstances, many of the economic, social and cultural rights enshrined in the Universal Declaration of Human Rights and other instruments such as the rights to health, education, social security, property and family life are violated [6.7]

While the violation of the right to protection of family life is a central violation suffered by relatives, the families of persons who are victims of enforced disappearance suffer violations of their economic rights because they are deprived of the benefits, wages and social assistance to which the disappeared person is entitled. For example, the Constitutional Court of Colombia has brought before the Constitutional Court several cases in which family members sued for loss of wages for the disappeared family member.

In particular, the court decided that the state and the private sector must continue to pay the salary of the disappeared person throughout the period of the disappearance. Enforced disappearances result in the denial of the disappeared person's legal existence. As a result, he is prevented from enjoying all human rights and other freedoms. The disappeared person is de facto deprived of his residence and his property is frozen amid legal neglect as no one, even his closest relatives, can dispose of that country until the fate of the disappeared person is announced, alive or dead, which means that he is not legally recognized. (A/HRC/19/58/Rev.1, para. 2).

One of the consequences of this situation is that relatives may also be deprived of receiving their loved ones' pension, disposing of their bank accounts, and access to other means of support. In some cases, this is due to the absence of a “certificate of absence” due to enforced disappearance (A/HRC/WGEID/98/1, para. 12).

c. Impact of Enforced Disappearance on Community

Enforced disappearance has a significant impact on community, civil peace, the coherence of society and its solidarity. It directly has negative impact on the economy and the general health of families and a consequence on society. I knew large numbers of families that have lost their male family members. They have experience great suffering and they become damaged families begging for living expenses and begging for psychological treatment and the negative impact on the health of family members. These broken families need help in knowing the fate of their relatives, whether they are alive or dead, in order to put an end to the tragedies they suffer and wait for relief and hear gossip from here and there. It is a real human tragedy.

In order to spread peace among communities need to find solution to existing problems and one of them is the enforced disappearance. Social peace is achieved when people have a strong two-way relationship with the state and other community groups, and they trust that decisions by the state are made fairly, even if they do not benefit from them directly. Social peace does not entail removing differences in society or gaining consensus between all groups; rather, it means

better management of conflicting interests and needs, so that people do not feel they have to resort to violence in order to protect their rights. Social peace translated into action.

Peacebuilding is the development of constructive personal, group, and political relationships across ethnic, religious, class, national, and racial boundaries. It aims to resolve injustice in nonviolent ways and to transform the structural conditions that generate deadly conflict. The Basic Principles refer in particular to enforced disappearance in the context of measures of satisfaction, emphasizing that the search for the whereabouts of the disappeared person [27], the identification of abducted children, the remains of the deceased, and assistance in the process of recovery, identification and burial are all "according to the express or presumed desire of the victims. or the cultural customs of families and societies.

Under Article 17 of the Declaration, states are required to recognize the continuing nature of the crime of enforced disappearance, which should extend to which the continuing nature of the crime affects the full rehabilitation of the victims. For example, the Research in this article noted that the enforced disappearance of a child has implications beyond reaching adulthood. For the health needs of victims of enforced disappearance, the importance of comprehensive health care programs, given that the passage of time affects individual situations. These programs should reflect the different health needs of victims of enforced disappearance at different stages of their lives [35, 36]. In other words, reparations for violations of the right to health or other economic, social and cultural rights must take into account the continuing nature of enforced disappearance.

Enforced disappearances result in the denial of the disappeared person's legal existence. As a result, he is prevented from enjoying all human rights and other freedoms. The disappeared person is de facto deprived of his residence and his property is frozen amid legal neglect as no one, even his closest relatives, can dispose of that country until the fate of the disappeared person is announced, alive or dead, which means that he is not legally recognized". One of the consequences of this situation is that relatives may also be denied access to their loved ones' pension, disposal of their bank accounts, and access to other means of support. Enforced disappearance [9].

V. Maintaining Peace and Security

The family's right to adequate housing may also be violated because the family may be ineligible to inherit the house in which they live without the death certificate of the disappeared person. The right to adequate housing may also be violated when states impose laws that prevent

anyone, other than male heads of household, from undertaking large financial transactions such as purchasing a home.

Fear of repercussions on the part of the authorities or persons responsible for the enforced disappearance may force the family to abandon their home and move to a safer place. For many families, moving results in the abandonment of their homes, families, communities, livelihoods, jobs and study paths.

The emotional distress of family members of victims of enforced disappearance is subsequently exacerbated by material poverty exacerbated by the costs of their decision to search for their loved ones. In addition, they do not know when their loved ones will return. It is difficult for them to adjust to the new situation. In some cases, national legislation may make it impossible to obtain a pension or receive any other form of support in the absence of a death certificate. Many families experience lack death certificates which make life for them very hard. Accordingly, economic and social marginalization is often the result of enforced disappearance [7].

Under these circumstances, many of the economic, social and cultural rights enshrined in the Universal Declaration of Human Rights and other instruments such as the rights to health, education, social security, property and family life are violated [8]. While the violation of the right to protection of family life is a central violation suffered by relatives, families of persons who are victims of enforced disappearance suffer violations of their economic rights because they are deprived of the benefits, wages and social assistance to which the disappeared person is entitled. For example, the Constitutional Court of Colombia has brought before the Constitutional Court several cases in which family members sued for loss of wages for the disappeared family member. In particular, the court decided that the state and the private sector must continue to pay the salary of the disappeared person throughout the period of the disappearance.

The family's right to adequate housing may also be violated because the family may be ineligible to inherit the house in which they live without the death certificate of the disappeared person. The right to adequate housing may also be violated when states impose laws that prevent anyone, other than male heads of household, from undertaking large financial transactions such as purchasing a home. Fear of repercussions on the part of the authorities or persons responsible for the enforced disappearance may force the family to abandon their home and move to a safer

place. For many families, moving results in the abandonment of their homes, families, communities, livelihoods, jobs and study paths [10].

a. Human Right

Enforced disappearances are often used to repress and intimidate people who claim their rights [11]. The research has cases of enforced disappearance victims who are active in the exercise or promotion of the enjoyment of economic, social and cultural rights, including members of trade unions, environmentalists, farmers, teachers, journalists and artists. In those cases, enforced disappearance is used both as a repressive measure and as a tool to prevent, defend, promote or enjoy the legitimate exercise of economic, social and cultural rights.

Human rights defenders are often categorized as rebels, terrorists or "anti-development" to justify the human rights violations committed against them accepting or minimizing their gravity, including enforced disappearances [12]. When a person becomes a victim of enforced disappearance as a result of exercising or promoting economic, social and cultural rights, the possibility to enjoy those rights is violated. For example, the disappearance of a teacher promoting cultural rights also interferes with the right to cultural life, as well as a violation of students' exercise of their right to education [13].

Human rights defenders are also targeted to intimidate others and prevent them from claiming and exercising their rights. Enforced disappearance is a premeditated, premeditated crime as a means of intimidation, which discourages those who seek to enjoy their rights, including economic, social and cultural rights. The enforced disappearance of human rights activists also violates the social, economic and cultural rights of others involved in relevant activities and of the broader community of people who depend on the disappeared person to represent and defend their rights. People associated with human rights defenders may also be threatened or forcibly disappeared.

The enforced disappearance of a union leader, for example, may lead to violations of the right to work or to join unions by workers who may fear losing their jobs as a result of their union activities or facing reprisals in connection with their labor claims. Therefore, workers may not be able to demand their economic, social and cultural rights because of their fear of being subjected to enforced disappearance [14, 15, 16]

b. Living in peace

Moreover, when a person is subjected to enforced disappearance in retaliation for the exercise of social, economic or cultural rights in association with others, it is considered a violation of that right in particular. For example, the disappearance of a female union president because of her federal activities is a violation of her right as well as the right of other members of the trade union to join the union.

Finally, due to the collective nature of some economic, social and cultural rights, the disappearance of a person may have a negative impact on the wider community. An illustrated example of this is the enforced disappearance of a leader of a minority community and the effect this may have on the exercise of the right to participate in the cultural life of other members of the relevant community, which may be "collective" and "can only be expressed and enjoyed within the group". . Disappearances would have an impact on the right to political participation and the existence and protection of the cultural diversity of society, which is a condition for the exercise of all human rights.

c. Peacekeeping rules

the rules of peacekeeping mission are guided by three basic principles [17]:

- Consent of the parties;
- Impartiality;
- Non-use of force except in self-defense and defense of the mandate

Peacekeeping has proven to be one of the most effective tools available to the UN to assist host countries navigate the difficult path from conflict to peace. Peacekeeping has unique strengths, including legitimacy, burden sharing, and an ability to deploy and sustain troops and police from around the globe. It also integrates them with civilian peacekeepers to advance multidimensional mandates. UN peacekeepers provide security and the political and peacebuilding support to help countries make the difficult, early transition from conflict to peace. Peacekeeping is flexible and over the past two decades has been deployed in many configurations.

Today's multidimensional peacekeeping operations are called upon not only to maintain peace and security, but also to facilitate the political process, protect civilians, assist in the disarmament, demobilization and reintegration of former combatants; support the organization of elections, protect and promote human rights and assist in restoring the rule of law. Success is never guaranteed, because UN Peacekeeping almost by definition goes to the most physically

and politically difficult environments [18]. However, we have built up a demonstrable record of success over our 60 years of existence, including winning the Nobel Peace Prize. Peacekeeping has always been highly dynamic and has evolved in the face of new challenges. Former Secretary- General Ban Ki-moon established a 17-member High-level Independent Panel on UN Peace Operations to make a comprehensive assessment of the state of UN peace operations today, and the emerging needs of the future [19, 20, 21].

d. Global partnership

UN peacekeeping is a unique global partnership. It brings together the General Assembly, the Security Council, the Secretariat, troop and police contributors and the host governments in a combined effort to maintain international peace and security. Its strength lies in the legitimacy of the UN Charter and in the wide range of contributing countries that participate and provide precious resources

The study does not claim to cover all issues related to the link between enforced disappearance on the one hand, and economic, social and cultural rights on the other, but rather attempted to provide a preliminary analytical framework on how to emphasize that link and how to address it from a holistic perspective.

Based on the foregoing, the Research in this article makes the following initial recommendations to States that are to frame the dialogue and solutions. The recommendations presented do not represent a complete programmatic model, but rather aim to provide examples of how to adop measures linking enforced disappearances to violations of economic, social and cultural rights. Based on these considerations, the Research in this article recommends that States [22, 23]

(a) Adopt administrative, judicial and legislative measures with a view to protecting and promoting the social, economic and cultural rights of affected persons, especially those living in poverty, as a preventive measure against enforced disappearance.

(b) Facilitate access to justice for affected groups with a view to reducing impunity in cases of enforced disappearance and preventing their recurrence.

(c) Enable the disappeared person survivors with appropriate accompanying measures, such as vocational training, to enable them to reintegrate into social and cultural life and to regain employment once the disappearance has ceased.

(d) Provide medical care for the mental and physical health of the victims in relation to any injuries or illnesses they may have suffered as a result of enforced disappearance, including traumatic mental disorders;

(e) Ensuring social assistance with the aim of supporting families after the disappearance of the "main breadwinner".

f) Take measures to prevent and remedy social stigma and isolation among disappeared persons and their families through awareness-raising and awareness campaigns and other relevant measures.

(g) Delete existing provisions in laws and policies, and stop their implementation, if they prevent the families of the disappeared from obtaining and maintaining their right to adequate housing.

(h) Ensure the security of the families of the disappeared in their homes and lands, regardless of the type of tenure, against forced eviction, threats and harassment. the obligation of states to hold perpetrators of enforced disappearances to account

e. Responsibility for Breaching Peace

Under the Declaration, states are obligated to take effective legislative, administrative, judicial or other measures to protect against enforced disappearance (Article 3). In order to combat enforced disappearance, it is of paramount importance that any enforced disappearance be considered a criminal offense under the Criminal Code and punished with appropriate penalties (Article 4).

The right to a prompt and effective judicial remedy, as a means of determining the whereabouts of persons deprived of their liberty or of their state of health and/or determining the authority which issued or executed the order of deprivation of liberty, is necessary to prevent cases of Enforced disappearance in all circumstances. Human rights protocol clearly establishes the link between an effective remedy and the protection of economic, social and cultural rights, as it requires an effective remedy not only to determine the person's whereabouts, but also to determine his or her "state of health" [24]. This obligation requires the state to carry out the necessary research in order to reach the protection of the person's right to health, physical, psychological and other integrity [25].

The necessary measures should be taken to protect economic, social and cultural rights in order to establish a general framework to protect against or respond to enforced disappearances in the

event that they occur, and such measures are necessary even if the State concerned does not have a history or track record of enforced disappearances [26].

VI. Building a culture of peace ensuring realistic effectiveness

Since poverty in some societies increases the risk of enforced disappearance, states should take effective measures to alleviate and avoid conditions of poverty as a preventive measure to prevent enforced disappearances. Social security plays an important role in reducing and combating poverty, preventing exclusion and promoting social inclusion. legislative and other measures should be taken to provide social security without conditions to those who need it, including to those facing unemployment and particularly to the relatives of a person who is a victim of enforced disappearance.

In a number of countries, the concept of reparation is interpreted exclusively as compensation in the form of monetary compensation for the purpose of compensating the material and immaterial damages suffered by the victims. But reparation for the victims should not be limited to financial compensation, but should include medical and psychological care as well as legal and social rehabilitation of any form. forms of physical or mental harm. Measures should also be taken to guarantee the right of family members of victims of enforced disappearance to social benefits and other measures of financial support, including health care, special education programs and psychological assistance (A/HRC/22/45, paras. 53-54 and 59). These measures should be taken in the context of reparations for the human rights violations suffered by victims of enforced disappearance.

Rehabilitation is particularly necessary in the context of a violation of economic, social and cultural rights. Rehabilitation measures and programs should be established and accessible to victims and their families. The Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles, Basic General Assembly Resolution 60/147) state that rehabilitation must include medical and psychological care as well as legal and social services, taking conditions The special needs and needs of each victim are taken into account when providing psychological or physical therapy. Treatment can be personal, group or family therapy.

a. Promoting Sustainable Development

Enforced disappearances often affect many aspect of life of families as well as societies. Actions are needed to:

i. Undertake comprehensive actions on the basis of appropriate strategies and agreed targets to eradicate poverty through national and international efforts, including through international cooperation;

ii. Strengthen the national capacity for implementation of policies and programs designed to reduce economic and social inequalities within nations through, inter alia, international cooperation;

iii. Promote effective and equitable development-oriented and durable solutions to the external debt and debt-servicing problems of developing countries through, inter alia, debt relief;

Among the rehabilitation measures, reparations programs should include the right to education for children who are victims of enforced disappearance [28] Compensation for a violation of the right to education may also include violations of economic rights that strip victims of enforced disappearance of the resources to attend university; adult education programs that provide diplomas or degrees for those who are no longer eligible to enroll in primary or secondary school, and measures that allow victims to return to school without completing previous years of education.

This right of work, as guaranteed by the International Covenant on Economic, Social and Cultural Rights, confirms the obligation of states parties to guarantee the right of individuals to freely choose or accept work. That right is not to be deprived of work unjustly (Article 6). 6). Reparations should be provided for victims of enforced disappearance in order to address the violation of their right to work and the consequences of this situation. This includes reparation measures for the disappeared person who has lost his job and salary, as well as reparation for family members of the disappeared who have difficulty finding work due to cultural beliefs or stigmatization or because of the physical, mental and psychological harm that resulted from the disappearance [29]. States should also ensure that the salary the disappeared person earned continues to be paid to his or her family until an adequate and permanent reparation plan is developed.

In general, ensuring and respecting cultural diversity, providing spaces for the expression of opinions, situations and multiple readings of history in the public sphere is a factor that

mitigates the vulnerability of those who are in some way skeptical of prevailing ideas and attitudes, and thus prevents the targeting of human rights defenders.

The Declaration also requires states to ensure that victims of enforced disappearance have access to an effective remedy that includes a serious and impartial investigation to identify the persons responsible and to sentence them to appropriate penalties. States are also obligated to guarantee to any person who has knowledge or a legitimate interest claiming that a person has been the victim of an enforced disappearance, the right to file a complaint with an independent government agency and to have his complaint investigated [30].

The right to file complaints and to have a thorough and effective investigation must be guaranteed, especially for persons who do not have sufficient resources to travel or obtain legal aid for the purpose of filing complaints or investigating disappearances. Complaints mechanisms should be accessible to all, and necessary information on how to submit them should be widely disseminated. This is essential to prevent potential perpetrators of enforced disappearances from relying on The state discriminates against vulnerable groups so that they may commit acts of enforced disappearance and/or evade prosecution.

In order to fulfill this obligation, states must not only establish the necessary mechanisms, but also activate them without any discrimination. The steps that must be taken to ensure that officials do not abuse the rights of victims in the investigation include: sufficient time for investigations and for each practical procedure, criminal prosecution of officials who obstruct the functioning of the judiciary or fail to follow investigation procedures, the possibility of filing civil cases against them, and dismissal of bodies that abusive.

b. Educational Dimensions

Strengthening actions at the national, regional and international levels by all relevant actors Actions to foster a culture of peace through education as follows:

i. Reinvigorate national efforts and international cooperation to promote the goals of education for all with a view to achieving human, social and economic development and for promoting a culture of peace;

ii. Ensure that children, from an early age, benefit from education on the values, attitudes, modes of behavior and ways of life to enable them to resolve any dispute peacefully and in a spirit of respect for human dignity and of tolerance and non-discrimination;

iii. Involve children in activities designed to instill in them the values and goals of a culture of peace;

iv. Ensure equality of access to education for women, especially girls;

v. Encourage revision of educational curricula, including textbooks, bearing in mind the 1995 Declaration and Integrated Framework of Action on Education for Peace, Human Rights and Democracy3 for which technical cooperation should be provided by the United Nations Educational, Scientific and Cultural Organization upon request

vi. Encourage and strengthen efforts by actors as identified in the Declaration, in particular the United Nations Educational, Scientific and Cultural Organization, aimed at developing values and skills conducive to a culture of peace, including education and training in promoting dialogue and consensus-building;

vii. Strengthen the ongoing efforts of the relevant entities of the United Nations system aimed at training and education, where appropriate, in the areas of conflict prevention and crisis management, peaceful settlement of disputes, as well as in post-conflict peace- building;

viii. Expand initiatives to promote a culture of peace undertaken by institutions of higher education in various parts of the world, including the United Nations University, the University for Peace and the project for twinning universities and the United Nations Educational, Scientific and Cultural Organization Chairs Programme.

c. Religious Dimensions

Religion plays an important role in peace-making and conflict prevention and resolution. Religion connects with peace in four major ways: The ideas of human dignity and the common humanity of all, derived from the notion that all are created in the image of the Divine, are foundational to true peace. Religion connects with peace in four major ways [31]:

- The ideas of human dignity and the common humanity of all, derived from the notion that all are created in the image of the Divine, are foundational to true peace. Religious concepts of redemption and forgiveness underpin key post-conflict reconciliation efforts, providing resources to help societies heal the shattering consequences of war.

- Interfaith protests often focus attention on peaceful forms of resistance to oppression and injustice. Think of the religious denunciation of the practices of apartheid and segregation as sins, or religious efforts to halt ethnic cleansing in Darfur.

- Religion represents influential civil society communities and institutions, often seen as representing unifying values that transcend disputed issues; they are often among the most stable, most trusted entities in crisis venues, capable of contributing to mediating disputes. Think of the accomplishments of groups like the Community of Sant'Egidio' among whose achievements include successfully brokering the 1992 peace agreement in Mozambique after 30 years of civil war. Other examples are interfaith reconciliation efforts in South Africa, Muslim-Christian coalitions in the aftermath of the Balkan conflicts and ecumenical Christian efforts in Colombia.

- Local and international religious entities play a large and often unappreciated role in promoting education, delivering health care services and addressing poverty, all of which create conditions of hope, support to the needy and stability; conditions without which peace cannot flourish.

In almost every conflict region in the world, interfaith efforts have contributed to resolving or avoiding disputes, as well as improving the conditions of millions caught up in civil strife. However, there are limitations to the successes, impact, or consistency of these interfaith endeavors. Too often, their voices are drowned out by the raucousness of strife, cannot gain political traction, and are not a determining factor as such crises play out [32].

All these interfaith efforts, from Africa to the Middle East to East Asia, do so much good at the micro level, yet rarely are they able to truly change the short term destiny of countries caught up in civil war or regional strife. Despite these limitations, it is often the very existence of interfaith groups that inspires or encourages others to move in the direction of peace, mutual cooperation and reconciliation. The research reminds political, business, cultural and religious leaders the greatest gift religion, at its best, has given to humanity – the vision of the infinite potential of humankind under the conditions of peace.

Institutions or resources to properly carry out investigations These institutions must be established, otherwise actors including relevant international organizations or other States must be allowed to provide assistance. In particular, states should recognize all necessary measures and concrete measures in order to ensure that economic factors do not prevent access to justice for victims of enforced disappearance.

The obligation under Article 13 of the Declaration includes the duty to investigate violations of economic, social and cultural rights, as well as the circumstances of the enforced disappearance itself. The same applies when a case of disappearance occurred in retaliation against activists promoting or exercising economic, social or cultural rights, and this should be investigated in an appropriate and impartial manner. It is essential to highlight this link through criminal investigations to expose patterns of impunity and prevent similar incidents from occurring.

Victims of enforced disappearance who do not have the financial means to obtain information or appropriate remedies may be at risk of being denied their rights under the Declaration. As the special rapporteurs or some of the special procedures (A/67/278, para. 17; and A/HRC/8/4, para. 26) have made clear, in general, poor victims do not have access to justice because they do not have the material means to do so, because Financial factors acquire greater importance when other social, cultural or functional factors are added to them and lead to marginalization and social exclusion. Access to justice is of a comprehensive nature as it extends to activating the enjoyment of all human rights in their entirety.

In its general comment on women affected by enforced disappearance, the Research in this article emphasized that "States must recognize the obstacles women face in obtaining effective judicial remedies and take all appropriate measures to remove them. Such measures should include eliminating discrimination with regard to women's access to state institutions, which include linguistic, economic and cultural barriers" (A/HRC/WGEID/98/2, para. 29). The Committee on Economic, Social and Cultural Rights has also expressed concern about the demands made by states for families of victims of disappearance forced to choose between benefiting from social security or resorting to the judiciary, and recommended that the right to

resort to the judiciary and benefit from social security be unconditional, as this condition can become an obstacle for people who are in dire need of economic support in accessing justice.

In addition, as highlighted by the Special Rapporteur in the field of cultural rights, measures should be adopted that include cultural aspects that would help identify victims (A/HRC/25/49, paras. 47 and 66). According to Article 19 of the Declaration, "Persons who are victims of enforced disappearance and their families must be given redress, and they have the right to obtain appropriate compensation, including the means to ensure their full rehabilitation." (See also A/HRC/16/48/Add.1, para. 45).

The right to reparation for enforced disappearance includes medical and psychological care and guarantees of access to employment or property. In its general comment on article 19 of the Declaration, the Research in this article endorsed an expanded interpretation of the right to reparation for acts of enforced disappearance and includes "medical and psychological care and rehabilitation for any form of physical or mental harm as well as legal rehabilitation and social protection, guarantees of non-repetition, restoration of personal liberty, family life, citizenship, position of work and property, return to one's place of residence and other similar forms of compensation, satisfaction and reform which may eliminate the effects of enforced disappearance" (E/CN.4/1998/43, para. 68, see also (A/HRC/22/45, paras. 46 et seq.) If enforced disappearances occur, states are obligated to provide prompt and appropriate reparation.

VII. Exclusion of Violence

disappeared person is clarified, each State Party shall take the necessary measures regarding the legal status of disappeared persons whose fate has not been clarified, as well as of their relatives, In areas such as social security, financial matters, family law and property rights. Reparations must be comprehensive and include consideration of all rights infringed. Hence, reparations programs and measures should study how enforced disappearance violates economic and social rights. In order to reduce violence certain measure should be taken reparation. The aim of reparation is to eliminate, as far as possible, the consequences of the illegal act and to restore the situation that would have existed if the act had not been committed. Reparation can take various forms, including restitution, compensation or satisfaction. These

remedies can be applied either singly or in combination in response to a particular violation [37]

A culture of peace is an integral approach to preventing violence and violent conflicts, and an alternative to the culture of war and violence based on education for peace, the promotion of sustainable economic and social development, respect for human rights, equality between women and men, democratic participation, tolerance, the free flow of information and disarmament.

Recalling its resolution 52/15 of 20 November 1997, by which it proclaimed the year 2000 as the "International Year for the Culture of Peace", and its resolution 53/25 of 10 November 1998, by which it proclaimed the period 2001-2010 as the "International Decade for a Culture of Peace and Non-violence for the Children of the World"; Adopts the following Programme of Action on a Culture of Peace [33, 34]:

- Local and international religious entities play a large and often unappreciated role in promoting education, delivering health care services and addressing poverty, all of which create conditions of hope, support to the needy and stability; conditions without which peace cannot flourish.
- The Programme of Action should serve as the basis for the International Year for the Culture of Peace and the International Decade for a Culture of Peace and Non-violence for the Children of the World.
- Member States are encouraged to take actions for promoting a culture of peace at the national level as well as at the regional and international levels.
- Civil society should be involved at the local, regional and national levels to widen the scope of activities on a culture of peace.
- The United Nations system should strengthen its ongoing efforts to promote a culture of peace.

- The United Nations Educational, Scientific and Cultural Organization should continue to play its important role in and make major contributions to the promotion of a culture of peace.
- Partnerships between and among the various actors as set out in the Declaration should be encouraged and strengthened for a global movement for a culture of peace.
- A culture of peace could be promoted through sharing of information among actors on their initiatives in this regard.
- Effective implementation of the Programme of Action requires mobilization of resources, including financial resources, by interested Governments, organizations and individuals

The United Nations High Commissioner for Refugees (UNHCR) estimates that there are currently over 25 million refugees and 40 million internally displaced worldwide. In 2018, just 102,800 of refugees had been resettled, according to the UNHCR.

Many refugees flee without bringing necessary belongings such as clothing, food, money or a form of identification. Conditions in refugee camps are often poor, placing emotional, physical and psychological strain on families within them.

Reparation can take various forms, including restitution, compensation or satisfaction. These remedies can be applied either singly or in combination in response to a particular violation.

The aim of restitution is to restore the situation that existed before the wrongful act was committed. Examples include the release of wrongly detained persons, the return of wrongly seized property and the revocation of an unlawful judicial measure.3 There may obviously be circumstances in which restitution is materially impossible, for example, if the property in question has been destroyed. Restitution may also not be an appropriate remedy if the benefit to be gained from it by the victim is wholly disproportionate to its cost to the violator. Compensation is a monetary payment for financially assessable damage arising from the violation. It covers material and moral injury.4 Satisfaction covers non-material injury that amounts to an affront to the injured State or person. Examples include an acknowledgement of the breach, an expression of regret or an official apology or assurances of non-repetition of the violation. Satisfaction can also include the undertaking of disciplinary or penal action against the persons whose acts caused the wrongful act [40].

VIII. Conclusions and recommendations

This study addresses the indivisibility between economic, social and cultural rights, and civil and political rights in cases of enforced disappearance. By its nature, the crime of enforced disappearance violates the economic, social and cultural rights of the disappeared person, his family and others. In addition, persons who cannot fully enjoy economic, social and cultural rights are, in many cases, at risk of enforced disappearance.

In many cases, persons who are active in promoting the enjoyment or exercise of economic, social and cultural rights become potential victims of enforced disappearance. In those cases, enforced disappearance is used as a tool to prevent actors from promoting and exercising economic, social and cultural rights and this deterrence leads to the violation of the rights of the disappeared, others involved in relevant activities and the wider community due to the chilling effect of enforced disappearances.

States are obligated to protect against and eliminate enforced disappearances and to provide reparations to all victims of enforced disappearance, bearing in mind the true link between enforced disappearances and economic, social and cultural rights. Protection from enforced disappearance is one of the basic elements for the protection of economic, social and cultural rights, and in turn, the protection of economic, social and cultural rights is, at the same time, one of the basic elements for the prevention of enforced disappearances. Effective measures to protect against and eliminate enforced disappearances require a comprehensive approach that includes the appropriate promotion and protection of economic, social and cultural rights.

On behalf of families of disappeared bodies and innocent prisoners, a call is issued by them to the attention of this gathering to collaborate and put pressure on bodies that violate the international laws. making reparation is extremely important for practical reasons, particularly for individuals who have been victims of violations of international humanitarian law. Even once the immediate consequences of the violation have been dealt with, such persons remain extremely vulnerable. They may need long-term medical care, may no longer be able to earn an income and are likely to have lost home and belongings. It would be callous and naive to think that an award of compensation, for example, would restore victims to the situation they were in prior to the violation — re-establish the status quo ante as required by international law. Nevertheless, the receipt of timely and adequate compensation is an important element in enabling victims to try to rebuild their lives.

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7. United Nations General Assembly Session 61 Verbotim Report 82. A/61/PV.82 page 1. 20

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8. World Conference on Human Rights, Vienna Declaration and Program of Action, Vienna, 25 June 1993, para. 5.

9. “The Development of Modern Human Rights”, Accessed May 7, 2022. https://humanrights.gov.au/our-work/education/introduction-human-rights

10. A/HRC/22/45, para. 33.

11. United Nations General Assembly Session 47 Resolution 133. Declaration on the Protection of All Persons from Enforced Disappearance A/RES/47/133 18 December 1992. Accessed May 11, 2022..

12. A/HRC/13/22, para. 27.

13. A/HRC/22/45, para. 69.

14. On the subject of the impunity of those responsible for the disappearance of migrants in Mexico, for example, see WGEID, Mission to Mexico, above note 35, para. 69. See also CMW, above note 103, paras 29, 31. See also Foundation for Justice and the Rule of Law, above note 104, p. 6.

15. See, for example, IOM, Fatal Journeys, Vol. 2: Identification and Tracing of Dead and Missing Migrants, Geneva, 2016, pp. 20, 33, 36. See also CMW, above note 103, paras 29,

31.

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17. https://www.scribd.com/document/477451922/FINAL-CPTM-2017-Introduction-160517- pdf.

18. ARTHUR BOUTELLIS AND MICHAEL BEARY, "Sharing the Burden: Lessons from the European Return to Multidimensional Peacekeeping", Published by International Peace Institute, 2020 All Rights Reserved.

19. UN document S/RES/1325 (2000) d/d 31 October 2000. Date Views 18. 06. 2014. http://www.ipu.org/splz-e/cuenca10/UN_1325.pdf.

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21. Declaration on the Elimination of Violence against Women. UN document A/RES/48/104 Date Views 22. 06. 2014. http://www.un.org/ documents/ga/res/48/a48r104.htm

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26. E/CN. 4/1996/38 para. 49.

27. "Guiding principles for the search for disappeared persons", accessed May 9, 2022, https://www.ohchr.org/en/documents/legal-standards-and-guidelines/guiding-principles-search-disappeared-persons.

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https://www.usip.org/publications/2006/01/religious-contributions-peacemaking-when-religion-brings-peace-not-war

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34. Douglas P. Fry & Marta Miklikowska , (2012), Psychological Components of Sustainable Peace.

35. Kadic v. Karadzic, 70 F.3d 232, at 240 (2nd Cir. 1995), International Legal Materials, Vol. 34, 1995, pp. 1602-1606.

36. UN, Report of the Preparatory Commission for the International Criminal Court, Addendum, finalized draft text of the Rules of Procedure and Evidence, PCNICC/2000/INF/3/Add.1, Rule 94.

37. https://unfoundation.org/what-we-do/issues/peace-human-rights-and-humanitarian-response/?gclid=EAIaIQobChMI3ceopYja9wIVEeJ3Ch3lCAceEAAYAiAAEgJ5fvD_Bwe.

38. Article 36, ILC Articles on State Responsibility, op. cit.(note 1). Principle 23 of the draft Basic Principles and Guidelines (op. cit., note 2)

39. Articles 31 to 34 ILC Articles on State Responsibility, op. cit. (note 1). See also the 2000 draft of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, UN Doc. E/CN.4/2000/62, 18 January 2001

40. Article 37, ILC Articles on State Responsibility, op. cit. (note 1). Principle 25 of the draft Basic Principles and Guidelines (op. cit., note 2) sets out an extensive list of possible forms of satisfaction and guarantees of non-repetition.

Rights of the Rohingya: Effect of The Gambia Vs Myanmar on Asean and Asean Intergovernmental Commission On Human Rights' (Aichr) Policy and Action

Khairil Azmin Mokhtar

Rachminawati

A. INTRODUCTION

The tyranny against the ethnic Rohingya is not only a domestic human rights issue, it has great consequences regionally and global ramifications too.[1] The Rohingya issue is rather complicated as it entails various other issues such as statelessness, poverty, insurgencies, counterinsurgencies, security, human rights, and so on.[2] According to the United Nations (UN) and the United States (US), the way the Rohingya are treated by the Myanmar government is nothing short of ethnic cleansing.[3] The act is also condemned by EU foreign ministers who refer to it as "extremely serious" considering the rampant military violence that entails the rape and murder of innocent Rohingya.[4] This situation led the Republic of the Gambia to file a lawsuit against the Rohingya to the International Court of Justice (ICJ) with the support of the Organization of Islamic Cooperation (OIC).[5]

Unfortunately and strangely, there are no similar responses coming from ASEAN which is the regional body of the region. The action of the ASEAN and its member states is relatively weak, limited only to responding to the humanitarian aspect of the case such as donating food and health care to the affected area. According to the ASEAN Charter, ASEAN supposedly acts

[1] Ahmad Rizky M. Umar, "ASEAN countries should find a solution to end the persecution of Rohingya," The Conversation, <http://theconversation.com/asean-countries-should-find-a-solution-to-end-the-persecution-of-rohingya-66919> (accessed on 13 August, 2013)

[2] Zain Maulana, Interview by Author, Through Zoom Meeting, 30 April 2020.

[3] Garrido, Carmen Romero. "The State-Sponsored Genocide of the Rohingya Community from a Constructivist Perspective." Comillas Journal of International Relations 24 (2022), 64.
Al Jazeera, "Nobel trio: Suu Kyi responsible for Rohingya 'genocide'*",* <https://www.aljazeera.com/news/2018/02/stop-crime-nobel-laureates-visit-rohingya-call-suu-kyi-resign-180227081719019.html> (accessed 3rd May 2013).

[4] Dagba, Gershon, and Israel Nyaburi Nyadera. "Position of Responsibility: International Response to the Rohingya Refugee Crisis–The Case of Western Countries." In *Rohingya Refugee Crisis in Myanmar*, pp. 313-336. Palgrave Macmillan, Singapore, 2022. 313; *Channel News Asia*, "EU seeks sanctions on Myanmar military over Rohingya crisis", <https://www.channelnewsasia.com/news/asiapacific/eu-seeks-sanctions-on-myanmar-military-over-rohingya-crisis-9993160> (accessed 18 August, 2018).

[5] Garrido, Carmen Romero. "The State-Sponsored Genocide of the Rohingya Community from a Constructivist Perspective." *Comillas Journal of International Relations* 24 (2022):65.

more than that.[6] ASEAN and its member states have an obligation to make the ASEAN Charter a meaningful instrument for the region and its people.[7]

The lawsuit filed by the Gambia brings good news for the Rohingya people. It led the ASEAN in particular the ASEAN Intergovernmental Commission of Human Rights (AICHR) to act more actively and stout than before. This paper intends to investigate the effect of the Gambia vs. Myanmar Case on ASEAN especially the AICHR's policy and action. The findings will help in figuring out the solutions for ASEAN especially AICHR in settling the human rights violations of the Rohingya people.

B. THE ROHINGYA ATROCITIES: BACKGROUND AND CURRENT SITUATION

Myanmar or Burma became members of ASEAN on July 23, 1997. Myanmar has a population of approximately 53 million as of March 2018.[8] The country has 135 multiracial groups such as Kachin, Kayah, Kayin, Chin, Bamar, Mo , Rakhine and San.[9] Most of the population are Buddhist of religion.[10] The country has signed several international human rights treaties, including CEDAW and CRC.[11] However, other important human rights instruments such as ICCPR, ICESCR, CAT and CERD were not approved. At the regional level, Myanmar has signed and endorsed ASEAN Charter, which regulates the AICHR.[12] Myanmar's representative in the AICHR is H.E. Ambassador Kyaw Tint Swe.[13] Myanmar has also signed other regional human rights treaties, including the Phnom Penh Declaration on the adoption of the ASEAN Declaration of Human Rights and the ASEAN Declaration on the Protection and Promotion of

[6] See Article 1.4 and 1.7 of the ASEAN Charter

[7] *The Phnom Penh Post,* "Dear world: Don't expect so much from ASEAN on the refugee crisis", <http://www.phnompenhpost.com/opinion/dear-world-dont-expect-so-much-asean-refugee-crisis> (accessed on 13 August, 2018)

[8] *Worldometers*, "Myanmar Population", <http://www.worldometers.info/world-population/myanmar-population/> (accessed 13 August, 2018).

[9] Bertil Lintner, "A Question of Race in Myanmar," Asia Times, <http://www.atimes.com/article/question-race-myanmar/> (accessed 15 August, 2018).

[10] Charis Chang and AP, "Violence in Myanmar shows the world needs to stop romanticising Buddhism," News.com, <http://www.news.com.au/world/asia/violence-in-myanmar-shows-the-world-needs-to-stop-romanticising-buddhism/news-story/37bf65e55ec59eb1922f82942576161a> (accessed 15 August, 2018).

[11] Jefferson R. Plantilla, "ASEAN and Human Right," Asia-Pacific Human Rights Information Center, <https://www.hurights.or.jp/archives/focus/section2/2008/09/asean-and-human-rights.html> (accessed 16 August, 2018)

[12] The ASEAN Charter (adopted 2007 (AC), Art 14.

[13] The ASEAN Secretariat, *AICHR The ASEAN Intergovernmental Commission on Human Rights What You Need To Know*, (Jakarta: ASEAN Secretariat, 2012)

the Rights of Migrant Workers. In his country, Myanmar established the Myanmar National Human Rights Commission by Notification No. 34/2011. The 2012 Commission report highlighted activities addressing the treatment of prisoners and ethnic conflict.[14] However, observers suggest that Myanmar is more inclined to pursue policies that violate international norms and has a poor record of protecting human rights.[15] Myanmar was under the leadership of the military junta from 1962 to 2011; after two decades, the country finally held its first elections in 2010. The electoral process was intended to mark the country's transition from a military regime to a civilian democracy, as claimed by the military junta, but this has been riddled with corruption plagued of settlement disputes process.

The Rohingya have endured decades of discrimination and oppression in Myanmar of which majority are Buddhists.[16] They are branded as illegal Bangladeshi immigrants; their legal rights have been systematically stripped along with their access to Rakhine i.e. their generational state.[17] The Rohingya have faced decades of discrimination and repression under successive Myanmar governments. Effectively denied citizenship under the 1982 Citizenship Law, they are one of the largest stateless populations in the world.

After the burning of their homes in Myanmar in 2017, around 700,000 Rohingya had fled, more than 5,000 of whom lived on a narrow strip of land between the two nations. 4,444 According to the UN Refugee Agency, there are currently around 900,000 Rohingya living in Bangladesh, of whom 212,000 were in the country before last summer's crisis. There have been several refugee camps in southern Bangladesh since the early 1990s, suggesting that those under the age of 25 never left the camp.[18] The Rohingya's children have been deprived of many basic necessities including proper nutrition and education. Making things worse are the issues of

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[14] *Myanmar National Human Rights Commission*, "Activities of the Myanmar National Human Rights Commission (5 September 2011 to 31 January 2012)", <http://mnhrc.org.mm/assets/uploads/2013/02/Report-from-Myanmar-Commission.pdf> (accessed 16 August, 2018), 7-12.

[15] BBC News Editor, "Myanmar Country Profile," BBC News, <http://www.bbc.com/news/world-asia-pacific-12990563> (accessed 2 February, 2019).

[16] *The Globe and Mail*, "The Rohingya Crisis, Living in Limbo", <https://www.theglobeandmail.com/news/world/the-rohingya-crisis-inside-the-camps-where-thousands-of-refugees-still-live-in-limbo/article38193463/> (accessed 2 February, 2019).

[17] Ruma Paul and Shoon Naing, "Thousands of Rohingya flee 'no man's land' after resettlement talks," Reuters, <https://www.reuters.com/article/us-myanmar-rohingya-nomansland/thousands-of-rohingya-flee-no-mans-land-after-resettlement-talks-idUSKCN1GC0EE> (accessed 2 February, 2019)

[18] Holly Watt, "'Lives will be lost': Bangladesh rains promise further misery for Rohingya," The Guardian, <https://www.theguardian.com/global-development/2018/mar/01/bangladesh-monsoon-rains-further-misery-rohingya-myanmar> (accessed 2 February, 2019).

human trafficking and sexual assault.[19] Rohingyas continue to be annihilated by Myanmar via the deprivation of food and healthcare.[20] The Rohingya's lack of citizenship lies at the heart of why they fled to other countries and why they cannot return to Burma.

The United Nations branded this massacre as nothing short of ethnic cleansing.[21] Myanmar's de facto leader, Aung San Suu Kyi, refutes the claim and rejected the UN's inquiries into the crime. In September, she claimed that while others have lived in peace in the country, many Rohingya Muslims had chosen to flee; she even called the Rohingyas as "troublemakers".[22] Despite clear indications that the ethnic cleansing of Muslim Rohingyas is taking place,[23] Aung San Suu Kyi continue to ignore the matter.[24] Warnings of the occurrence of a genocide in Myanmar have been suggested by scholars at Yale University and the US Holocaust Museum as well as the UN human rights chief, Zeid Ra'ad al-Hussein. Genocide is often in the form of violent physical attacks, but in this case it is in the form of food or medical care deprivation.[25] Myanmar has violated countless international and regional treaties that it has signed. The massacre carried out by the State Council for Peace and Development (SPDC) violated countless international laws, portraying Myanmar as a rogue nation.[26] In fact, Myanmar is currently committing the most egregious human rights abuses in all of Southeast Asia. [27] Myanmar continues to assert that the Rohingya crisis is an internal affair and is best

[19] Plan International, "Rohingya children live in fear of human trafficking and sexual assault: Report," SBS News, <https://www.sbs.com.au/news/rohingya-children-live-in-fear-of-human-trafficking-and-sexual-assault-report> (accessed 9 February, 2019).

[20] Nicholas Kristof, "I Saw a Genocide in Slow Motion," The New York Times, <https://www.nytimes.com/2018/03/02/opinion/i-saw-a-genocide-in-slow-motion.html> (accessed 20 February, 2019)

[21] Charlotte Bellis, "Rohingya reflect: Six months since Myanmar exodus," Al Jazeera, <https://www.aljazeera.com/news/2018/02/rohingya-reflect-months-myanmar-exodus-180225103914874.html> (accessed February 2nd, 2019); Holy Watt, "'Lives will be lost': Bangladesh rains promise further misery for Rohingya," The Guardian, <https://www.theguardian.com/global-development/2018/mar/01/bangladesh-monsoon-rains-further-misery-rohingya-myanmar> (accessed 2 February, 2019).

[22] Pavin Chachavalpongpun, "Is Promoting Human Rights in ASEAN an Impossible Task?," The Diplomat, < https://thediplomat.com/2018/01/is-promoting-human-rights-in-asean-an-impossible-task/> (accessed 20 February, 2019)

[23] Steve Redisch, "Brownback: Myanmar Conducting 'Religious Cleansing' of Rohingya," VOA News,<https://www.voanews.com/a/brownback-myanmar-conducting-religious-cleansing-of-rohingya/4278699.html> (accessed 20 February, 2019).

[24] Ruma Paul, "Nobel peace laureates to Suu Kyi: 'End Rohingya genocide or face prosecution'," Reuters, <https://www.reuters.com/article/us-myanmar-rohingya-nobellaureates/nobel-peace-laureates-to-suu-kyi-end-rohingya-genocide-or-face-prosecution-idUSKCN1GC1S6> (accessed 20 February, 2019).

[25] Nicholas Kristof, "I Saw a Genocide in Slow Motion,".

[26] John Arendshorst, "The dilemma of non-interference: Myanmar, human rights, and the ASEAN charter", *Nw. UJ Int'l Hum. Rts.* 8, no. 1 (Fall 2009): 110.

[27] Pavin Chachavalpongpun, "Is Promoting Human Rights in ASEAN an Impossible Task?," The Diplomat, <https://thediplomat.com/2018/01/is-promoting-human-rights-in-asean-an-impossible-task/> (accessed February 20th, 2019).

addressed bilaterally with partners. Foreigners are prohibited from entering Rohingya areas.[28] Cooperation with the UN have been dismissed by Myanmar; now it seems that the nation is only comfortable cooperating with ASEAN on the matter.

The situation persists today as reported by the UN Special Rapporteur in Myanmar, Thomas Andrews.[29] Yet, ASEAN continues to be silent despite calls for it to address the Rohingya and boat crises which require expedient human action.

Making things worse is the current coup by the Myamar Military. Ethnic Rohingyas are living in fear more than any other citizens in Myanmar. Myanmar has no rule of law and no human rights protection.[30] The crisis in Myanmar is deemed as a significant test of ASEAN's reliability. The situation is a glaring demonstration of ASEAN's inability to uphold its principle of non-interference while avoiding its reputational damage. Amongst the ASEAN member states, Indonesia has been the most active in finding solutions for the crisis in Myanmar.[31]

C. ASEAN'S POLICY AND ACTION (INACTION) PERTAINING TO ROHINYA'S ISSUE BEFORE THE ICJ CASE ON GAMBIA VS. MYANMAR

Despite calls for its accountability regarding the human rights violation of the Rohingya, ASEAN continues to remain silent. Malaysia's Prime Minister, Najib Razak, was the only ASEAN member state leader who had spoke out against the crisis in Myanmar, describing the military actions as a "genocide".[32] Indonesia, on the other hand, offered humanitarian aid to the Rohingya refugees amidst pressures from human rights groups and Muslim groups in the country.[33] Singapore facilitated humanitarian aid via the ASEAN Humanitarian Assistance

[28] Nicholas Kristof, "I Saw a Genocide in Slow Motion,".
[29] *Umited Nation General Assembly,* "Situation of human rights in Myanmar", <http://undocs.org/A/75/335> (accessed October 9th, 2020)
[30] Esther Wah, "For some the nightmare has returned, but for ethnic people the nightmare never stopped," Myanmar Now, <https://www.myanmar-now.org/en/news/for-some-the-nightmare-has-returned-but-for-ethnic-people-the-nightmare-never-stopped> (accessed 15 March, 2021)
[31] Mennecke, Martin, and Ellen E. Stensrud. "The failure of the international community to apply R2P and atrocity prevention in Myanmar." *Global Responsibility to Protect* 13, no. 2-3 (2021). 127.
Dr. Pattharapong Rattanasevee, "Myanmar crisis could be a final test for Asean reliability," Manila Times, <https://www.manilatimes.net/2021/03/14/opinion/analysis/myanmar-crisis-could-be-a-final-test-for-asean-reliability/850949/> (accessed 15 March, 2021)
[32] Ahmad Rizky M. Umar, "ASEAN countries should find a solution to end the persecution of Rohingya," The Conversation, <https://theconversation.com/asean-countries-should-find-a-solution-to-end-the-persecution-of-rohingya-66919> (accessed 13 August, 2018)
[33] *Ibid*

(AHA) center.[34] The governments of Indonesia and Laos have also agreed to cooperate in solving the crisis in Myanmar.[35] Meanwhile, Brunei sent more of its NGOs to carry out humanitarian efforts in the Rohingya's refugee camps.[36] Cambodia decides to remain as a bystander as they believe that the crisis is an internal matter to be solved by the Myanmar government.[37] Thailand had donated numerous necessities to aid the Rohingya refugees in Bangladesh. Yet, the government does not acknowledge the Rohingya as refugees.[38] Meanwhile, the Vietnamese President extends aid to Bangladesh in an effort to resolve the Rohingya crisis yet turns a blind eye to the atrocities in Myanmar.[39] The AICHR's chairing state i.e. the Philippines has also remained silent on the Rohingya crisis.[40]

Past reactions from the individual Member States show that most of them have avoided making official comments on the crisis. Most opinions and actions tend to be more humanitarian. The main question remains: what is the collective response of ASEAN on this issue as an institution? There are still clear guidelines or statements from ASEAN and AICHR on this issue. The ASEAN website includes "Speeches and Statements" by the ASEAN Secretary General, the former ASEAN Secretary General and other leaders; It is believed that there would be an explicit response to the crisis, but the truth is that very few have done so. In the last speech uploaded to the site, i. H. the comments of H.E. Dato Lim Jock Hoi, ASEAN Secretary General

[34] Lydia Lam, "Singapore pledges $100,000 in humanitarian aid to help in Myanmar's Rakhine crisis," The Straits Times,<http://www.straitstimes.com/singapore/singapore-pledges-100000-in-humanitarian-aid-to-help-in myanmars-rakhine-crisis> (accessed 20 August, 2018).

[35] Sheany, "Indonesia, Laos Agree to Help Solve Myanmar Crisis," Jakarta Globe, <http://jakartaglobe.id/news/indonesia-laos-agree-help-solve-myanmar-crisis/> (accessed 20 August, 2018)

[36] Ain Bandial, "As humanitarian crisis mounts, more Brunei NGOs step up to help Rohingya refugees," The Scoop, <https://thescoop.co/2017/10/16/humanitarian-crisis-mounts-brunei-ngos-step-help-rohingya-refugees/> (accessed 20 August, 2018)

[37] Sao Phal Niseiy, "Cambodia's Prime Minister Is Wrong About Myanmar's Rohingya Issue, " The Diplomat, <https://thediplomat.com/2017/02/cambodias-prime-minister-is-wrong-about-myanmars-rohingya-issue/> (accessed 20 August, 2018)

[38] Supalak Ganjanakhundee, "Thailand's refusal to recognise Rohingya as refugees leaves them in illegal limbo," The Nation, <http://www.nationmultimedia.com/detail/asean-plus/30340157> (accessed 20 August, 2018).

[39] Nguyen Quoc Huy, "What do people from Vietnam think about Rohingya refugees?," Quora, <https://www.quora.com/What-do-people-from-Vietnam-think-about-Rohingya-refugees> (accessed …)

[40] Raul Dancel, "Philippines 'respects' Malaysia's dissent on Asean's Rakhine crisis statement," The Straits Times, <http://www.straitstimes.com/asia/se-asia/philippines-respects-malaysias-dissent-on-aseans-rakhine-crisis-statement> (accessed 20 August, 2018).

(2018-2022) at the handover ceremony of the ASEAN Secretary General in Jakarta on January 5, 2018, no mention was made of the Myanmar or Rohingya crisis.[41]

In this study, research by the Forum Asia is also referred to. The finding revealed that the AICHR has never had any significant contribution in alleviating the crisis in Myanmar since its establishment in 2009/2010 up to 2016.[42] The AICHR failed to play any role in easing the conflict in Myanmar where thousands were imprisoned for exercising their political rights.[43] Activists in the country had forwarded many human rights violation cases to AICHR but received no response. The inaction demonstrated by the organization contradicts its statement of being "people-oriented".[44] The meager performance shown by AICHR is a reflection of ASEAN's poor commitment in championing human rights despite the establishment of its common regional human rights body.

In 2011, Indonesia chaired the AICHR and was largely deemed as a strong proponent in advancing human rights matters in ASEAN. Yet, ASEAN as the main institution had constantly employed the "ASEAN way" to veto AICHR's policies.[45] AICHR failed to publish any document during the year being under harsh political restrictions at the time.[46] Consequently, the Rohingya crisis was overlooked although the Arakan Rohingya Refugee Committee (ARRC) was one of the contributors of the report.[47] The AICHR continued its silence in 2012

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[41] H.E. Dato Lim Jock Hoi, "Remarks by H.E. Dato Lim Jock Hoi Secretary-General of ASEAN (2018 – 2022) Handover Ceremony for the Transfer of Office of the Secretary-General of ASEAN," Asean Secretariat, <http://asean.org/storage/2018/01/ASEAN-SG-Dato-Lim-Remarks-for-the-Handover-Ceremony-5-Jan-2018_FINAL-II.pdf> (accessed 8 February, 2019)

[42] Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR), *Four Years On and Still Treading Water: A Report on the Performance of the ASEAN Human Rights Mechanism in 2013,* (2014).

[43] Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR), *Hiding Behind Its Limits, A Performance Report on the first year of the ASEAN Intergovernmental Commission on Human Rights (AICHR) 2009-2010,* (2010), 142.

[44] Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR), *Hiding Behind Its Limits, A Performance Report on the first year of the ASEAN Intergovernmental Commission on Human Rights (AICHR) 2009-2010,* (2010),

[45] Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR), *A Commission Shrouded in Secrery, A Performance Report on the ASEAN Intergovernmental Commission on Human Rights 2010-2011,* (2012), 35.

[46] Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR), *A Commission Shrouded in Secrery, A Performance Report on the ASEAN Intergovernmental Commission on Human Rights 2010-2011,* (2012).

[47] Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR), *A Commission Shrouded in Secrery, A Performance Report on the ASEAN Intergovernmental Commission on Human Rights 2010-2011,* (2012).

regarding the ethnic minority crisis in the Kachin and Arakan States in Myanmar[48] due to ASEAN's non-support. The only way AICHR can address the crisis is by getting ASEAN to improve the human rights protection mandate. The AICHR is at risk of losing its credibility if it does not tackle severe human rights violation like the crisis in Myanmar.[49] The Rohingya crisis would not have escalated if it had been tackled earlier on. The Rohingya issue was largely ignored in 2013.[50]

The AICHR inaugurated its five years of work in 2014. The report asserted that the AICHR had been solely focusing on promoting, and not protecting, human rights. The members of AICHR failed to reach a consensus in submitting the proposal to the AMM to revise the TOR.[51] This rendered AICHR powerless and voiceless in addressing severe regional human rights violation such as that of the Rohingya crisis.[52] The AICHR continued its focus in promoting human rights endeavors by conducting debates, workshops, training, and dialogues in 2015.[53] However, the body continued to ignore several other main regional human rights issues such as disappearance cases in ASEAN.[54]

A number of initiatives were rolled out to drive the adoption of the aligned guidelines for the AICHR and ASEAN Sectoral Bodies in tackling human rights issues.[55] This was a positive drive for the institution in realizing its human rights commitment. Yet, the report mentioned nothing about the efforts of ASEAN's and the AICHR in addressing the Rohingya crisis. Additionally, the interview showed that the term "Rohingya" was not cited at all in the official

[48] Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR), *Still Window-Dressing, A Performance Report on the Third Year of the ASEAN Intergovernmental Commission on Human Rights (AICHR) 2011-2012,* (2013), 43.

[49] *Ibid.*

[50] Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR), *Four Years On and Still Treading Water, A Report on the Performance of the ASEAN Human Rights Mechanism in 2013,* (2014).

[51] Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR), *The Future of Human Rights in ASEAN Public Call for Independence and Protection Mandates, A Report on the Performance of the ASEAN Human Rights Mechanism in 2014,* (2014), 6.

[52] Burma Partnership, *Human rights situation in Burma/Myanmar,* (Bangkok,Thailand : Forum- Asia), 17.

[53] Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR), *Breaking the Silence and Unlocking Berriers for Human Rights Protection in ASEAN, A report on the Performance of the ASEAN Human Rights Mechanisms in 2015,* (2016), 31.

[54] *Ibid.*

[55] *Ibid,* 82.

ASEAN document. Any mention of the term in the chairman's statement is not essentially associated with the AICHR.

The AICHR remained silent even when the Rohingya crisis escalated in 2016. Considering the massive spillover impact of the crisis on other countries and the significant casualties suffered by the victims, the AICHR's failure to act violates its own TOR as well as the ASEAN Charter. ASEAN as the key institution is accountable for AICHR's lack of action. From an institutional standpoint, the body's inability to make statements on cases associated with the civil and political pillars of the ASEAN Community had hindered it from taking accountability, including in the Rohingya case.[56]

As the Rohingya case was not the priority of ASEAN and the AICHR, no discussions were held regarding the enactment of the AICHR mandate throughout the year.[57] The matter of the Rohingya crisis never made it to the summit meeting, and it was only addressed in the chairman statement as mentioned before. The response of the AICHR was made not in the capacity of an institution; instead, it was made personally by the likes of Dinna Wisnu and Edmund Bon Tai Soon via the press conference.[58] Indeed, and individual act does not represent the act of the institution as a whole. Hence, no policies were made on the Rohingya crisis at the institutional level.

The human rights condition in Myanmar was analyzed in one study, but the findings indicate the non-involvement of ASEAN and the AICHR.[59] Instead, the study only revealed the UN's involvement in the matter. This is logical as the data or policies of ASEAN and the AICHR as well as their meetings are kept confidential. Yet, it is obvious that ASEAN has been largely inactive in helping the victims. The involvement of the UN is a diplomatic way of showing its distrust towards ASEAN for its reluctance and failure in solving the crisis.[60]

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[56] Asian Forum For Human Rights And Development (Forum-Asia) Solidarity for Asian People's Advocacy (SAPA) Task Force on ASEAN and Human Rights Working Groups On ASEAN (SAPA TFAHR & WGA), *Have They Passed The Litmus Test?, A Report on the Performance of the ASEAN Human Rights Mechanism in 2016* (2016), 30.

[57] *Ibid,* 20.

[58] Dinna Prapto Raharja, Interview by Author, Through Google Hangout, 22 April 2020.

[59] Burma Partnership, *Human rights situation in Burma/Myanmar* (Bangkok, Thailand : Forum- Asia).

[60] Dinna Wisnu, "Rohingya dan ASEAN," Sindo News, <https://nasional.sindonews.com/read/1241228/18/rohingya-dan-asean-1505832567> (accessed 4 January, 2019).

Finally, ASEAN demonstrated its response on September 24, 2017 i.e. a month following the assault on Rakhine State which caused the Rohingya to flee to Bangladesh. The response came in the form of a statement by the President in which ASEAN Foreign Ministers expressed concern about the crisis in northern Myanmar's Rakhine State. In addition to offering their condolences to the victims, they condemned the attacks on the Myanmar security forces on August 25, 2017, as well as all forms of violence that resulted in the death of civilians, the destruction of homes and the displacement of many persons.[61] On August 25, Rohingya militants attacked the police and killed 12 members of the security forces, prompting a crackdown by the security forces. Myanmar's army claimed they were fighting the rebels, but the fleeing group said troops and Rakhine Buddhists launched a fierce campaign to drive them away.[62] The ASEAN Chairman's Statement on The Humanitarian Situation in Rakhine State shows its stand for the Myanmar government. This is an unfair standing as ASEAN had failed to initiate any investigations prior to issuing the statement. Malaysia made a separate statement indicating its disagreement with the one made by ASEAN. The Malaysian government expressed its anger for the omission of the term "Rohingya" in the ASEAN statement which refers to a group of stateless Muslim minority who became the target of the attacks on Rakhine state.[63] The ASEAN Foreign Minister stated that the situation in Rakhine State was a complex inter-municipal problem that was deeply rooted in history. Therefore, they advise against the adoption of measures by the interested parties so as not to aggravate the situation. An agreement was reached to find viable and long-term solutions to resolve the conflict and foster a closer dialogue between Myanmar and Bangladesh so that the victims can rebuild their lives. The Foreign Ministers welcomed Myanmar's commitment to ensure the safety of civilians, to take immediate action to end the violence in Rakhine, restore the socio-economic situation and address the refugee problem through a screening process. Yet, no monitoring mechanism is in place to ascertain the extent to which Myanmar has followed through with this commitment.

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[61] Asean Secretariat, "ASEAN Chairman's Statement on The Humanitarian Situation in Rakhine State, " Asean Secretariat, <http://asean.org/asean-chairmans-statement-on-the-humanitarian-situation-in-rakhine-state/> (accessed 2 March, 2019).

[62] *BBC News*, "Myanmar: What sparked latest violence in Rakhine?", <http://www.bbc.com/news/world-asia-41082689> (accessed 15 August, 2018).

[63] *Radio Free Asia*, "Malaysia Rejects ASEAN's Latest Statement on Rakhine Crisis in Myanmar", <https://www.rfa.org/english/news/myanmar/asean-rohingya-09252017165325.html> (accessed 15 August, 2018).

With the non-mention of the Rohingya's plight in the ASEAN Foreign Ministers' statement, it is obvious that the institution is making a mockery of human rights. This indicates a blatant disregard for the Rohingya who are in fact citizens of ASEAN despite Myanmar's non-recognition of such. Rather than calling for prompt measures to resolve the dispute, ASEAN calls for the member states to take no action.

ASEAN should shame the policies and actions of EU countries. EU countries called for sanctions against Myanmar's senior military for "gross and systematic" human rights violations against the country's troubled Rohingya.[64] Blacklisting senior military officials, freezing their EU assets and preventing them from traveling to the bloc would be the most difficult step Brussels has taken so far to end the Rohingya crisis and bring the perpetrators to justice.[65] A strong response also came from Turkey's President Tayyip Erdogan. He was pressing world leaders to do more to help Myanmar's Rohingya Muslims, who face what he has described as genocide. Erdogan said "You watched the situation that Myanmar and Muslims are in You saw how villages have been burnt... Humanity remained silent to the massacre in Myanmar". As the head of the OIC, Erdogan had discussed the violence with around 20 world leaders and was continuing to deliver aid to the region. Turkey also raise the issue at the United Nations General Assembly in New York.[66]

Of course, the ASEAN political situation is quite different from the EU or the OIC, but at least ASEAN has the opportunity to think about the creation of an interim measures policy that would minimize the conflict and reduce the number of victims.

The Rohingya crisis is a test case for the AICHR to determine the extent of their involvement in solving the human rights problem. Unfortunately, according to Wahyuningrum, the AICHR was not mentioned anywhere in the talk on Rohingya at ASEAN's high-level meeting. The ASEAN member states attempted to frame it as a humanitarian action and humanitarian aid, and therefore the ASEAN Humanitarian Center is the one that was mobilized.[67] The framing of this case as a humanitarian case is not adequate. However, Wahyuningrum argues that the ASEAN Humanitarian Center (AH Center) is indeed a very important institution to mobilize

[64] *Channel New Asia*, "EU seeks sanctions on Myanmar military over Rohingya crisis", <https://www.channelnewsasia.com/news/asiapacific/eu-seeks-sanctions-on-myanmar-military-over-rohingya-crisis-9993160> (accessed 18 August, 2018)
[65] *Ibid*.
[66] Reuters Staff, "Turkey's Erdogan presses world leaders to help Myanmar's Rohingya", <https://www.reuters.com/article/us-myanmar-rohingya-turkey-idUSKCN1BF1PE> (accessed 20 May 2022)
[67] Miller, Hannah. "JUSTICE FOR ROHINGYA PEOPLE." (2022).6.

the case as they have the capacity, volunteers, warehouses, and logistics to mobilize the refugees. However, human rights can also be one of the options to make sure that the situation would be adequately addressed by applying the human rights principle and approach particularly in the repatriation phases. Therefore, the AICHR has to play a role.[68]

Wahyuningrum believes that a certain level of fear exists among the member states if the AICHR is involved in settling the Rohingya case. The member states often argue that human rights movements would name and shame their action or inaction to the cases. In addition, the member states are afraid that the foreign institution or foreign countries will use the AICHR to impose their own values. In this case, Wahyuningrum initially presents some of the positive examples of how the norm changes the sectoral bodies' attitude in ASEAN. However, at the same time, there is a certain reluctance from the members and trust issues regarding the AICHR's way of addressing the problem.[69] Wahyuningrum believes that the Member States' fear of the involvement of the AICHR will put them in hot seat.[70]

Zain, in the interview, said that the Rohingya case is primarily a human rights case. Hence, since ASEAN already has a human rights body i.e. the AICHR, ASEAN and its member states should significantly use the AICHR thus giving it a more prominent role in addressing or responding to the Rohingya issue. Furthermore, the AICHR could not use the excuse that they do not have any authority to be involved in or settle the human rights issues of Rohingya. Their status as the only overarching human rights body in ASEAN should justify their active role in protecting people in need, including the Rohingya.[71] Basically, the ASEAN Charter and the TOR open an opportunity for the AICHR to expand its mandate. Zain suggests that the AICHR should ask the ASEAN member states' governments to be more responsible in curbing the violation on the Rohingya. Besides that, they should also provide assistance to Myanmar in the form of basic needs including schools and health facilities.[72] Zain also strongly argues that the case of Rohingya is indeed the responsibility of ASEAN as a regional organization. However, the AICHR should be at the forefront in addressing this problem.[73]

The ASEAN governments may have described this case as a humanitarian case, learning from the European region. But what happened to the Rohingya is different from other "refugees" in

[68] Wahyuningrum, Interview by Author, Through Zoom Meeting, 15 April 2020.
[69] Wahyuningrum, Interview by Author, Through Zoom Meeting, 15 April 2020.
[70] Wahyuningrum, Interview by Author, Through Zoom Meeting, 15 April 2020.
[71] Zain Maulana, Interview by Author, Through Zoom Meeting, 30 April 2020.
[72] Zain Maulana, Interview by Author, Through Zoom Meeting, 30 April 2020.
[73] Zain Maulana, Interview by Author, Through Zoom Meeting, 30 April 2020.

Europe. ASEAN must watch the European Union deal with its own migration crisis. In the EU, people are fleeing throughout the region. Meanwhile, ASEAN people are fleeing within the region. The EU response "provides a framework for a solution and that framework is a regional solution of equitable burden sharing for a regional problem". Here too, ASEAN should be able to find workable solutions.[74] They provided help, support and certainty for their own people, since the Rohingya belong and are staying in the region. However, since the ASEAN leaders avoid discussing the case with Myanmar's government, finding a solution is unforeseeable. The ASEAN and the AICHR only calls Myanmar for their own obligation on the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide, which Myanmar ratified on March 14, 1956.

D. THE IMPACT OF ICJ'S ORDER ON THE CASE OF THE GAMBIA VS. MYANMAR ON ASEAN'S POLICY AND ACTION TOWARD THE ROHINGYA ISSUE

The lawsuit by Gambia under the ICJ, also support from other states such as Canada, Netherlands, and Maldives give new hope for AICHR to act more independently as an ASEAN human rights body. The jurisdiction of the Court is based on the fact that both states are parties to the Convention, without entering reservations for Article IX's reference to the Convention to the ICJ. The Gambia alleged that in its application to the ICJ, Myanmar committed genocide against the Rohingya through its policy and violated the Genocide Convention in a variety of ways, including failure to prevent and punish genocide. The Gambia specifically referred to Article 9 of the Genocide Convention. This allows all parties to the Convention to hold genocide accountable to another state. This is because all member states have an active obligation to prevent and punish genocide. Importantly, this case concerns a proceeding between the member states of the United Nations, which is subject to the Charter of the United Nations, the ICJ Statute, and the Genocide Convention. Rather than criminally detaining a particular individual responsible for coordinating, performing, and / or approving certain actions of Genocide, the proceedings ask Myanmar's responsibility. The ICJ proceedings are the first official to hold Myanmar as a state to legally liable for international crime under major international treaties.

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[74] *The Phom Penh Post*, "Dear world: Don't expect so much from ASEAN on the refugee crisis," <http://www.phnompenhpost.com/opinion/dear-world-dont-expect-so-much-asean-refugee-crisis> (accessed 13 August, 2018)

Interestingly, Canada and the Netherlands are ready to publicly praise the ICJ in The Gambia and support its efforts. In addition, the Republic of Maldives has indicated its intention to submit its own intervention to the International Court of Justice to protect the Rohingya.

Despite the issue of legal standing and court's jurisdiction, article 41 of the ICJ Statute empowers Court to "order interim measures necessary to protect the rights of either party". The hearing is "called immediately to make an urgent decision on the application." With respect to genocide, The Gambia relied heavily on the work of the United Nations Fact Finding mission, broadly citing mission reports and testimony given to the mission. Gambia concludes the application with an application for interim measures, arguing that the Rohingya and the right to apply require urgent court protection to prevent further irreparable damage. The Gambia has requested the court to stop all violations of the Genocide Convention and order Myanmar to report to the court on the implementation of interim measures four months after its adoption.

This part of the procedure does not provide a written response from the responding country, Burma. Instead, both states are given the opportunity to express themselves in oral trials in court, where they respond to the other's allegations. The hearing was held on the 10th-12th. December 2019.

ICJ Order issued on January 23, 2020 in The Gambia v. Myanmar, "There is a realistic and imminent risk of irreparable damages to the rights claimed by Gambia " In determining the risk of irreparable damage, the ICJ said that the extraordinary significance of allegations at this stage of the proceedings justified the discovery that had genocide intent. The ICJ acknowledges Gambia's request and does not need to determine if Myanmar has violated the Genocide Convention for the purpose of interim measures, only to determine if there are situations that require preliminary measures for enactment. In the court's view, all the facts and circumstances presented were protected from the genocide, thereby protecting the rights of the Rohingya and its members in Myanmar, which the Gambia claimed and sought protection. It was enough to conclude that it was done. The mentioned in Article III and Gambia's right to require Myanmar to comply with the obligation not to violate genocide and to prevent and punish genocide under the Convention are "plausible".

"The product" of this necessity and practice places the individual at the top priority of international human rights law. Necessity and practice could save thousands of lives by rewriting the procedure for issuing emergency measures, focusing only on the urgency, seriousness, and irreparability of personal injury. The ICJ has a vital role in the development of

the Responsibility to Protect (R2P) Framework. More than 26 years have passed since Bosnia and Herzegovina filed an application under the Genocide Convention, on November 11, 2019, The Gambia has filed a proceeding against Myanmar in front of the International Court of Justice for violations of the UN Genocide Convention.

This may indicate a lack of relevance and suggest that the role of the court under R2P is fairly theoretical, but it may also be revealed by the ICJ over time – Like other R2P actors in depends on the state's willingness to activate it. Long before the situation in Myanmar's deteriorated, the ICJ was able to act in other situations where there was a serious risk of genocide, such as 2003-2005 in Darfur, Sudan. Below, is a brief explanation of the case and the role of the ICJ in terms of R2P,

There is a key judgement in the ICJ case-law on atrocity prevention, namely the Bosnia Genocide case. The case shows us how the ICJ fits into the R2P framework as defined by its four atrocity crimes, three pillars, and its focus on prevention. Hence, this discussion is relevant to the current case on Myanmar.

The Key Judgement of the ICJ regarding the Prevention of Atrocity Crimes: Bosnia and Herzegovina v. Serbia and Montenegro (2007) in its case-law the International Court of Justice has to date seen very few proceedings that have dealt directly with the atrocity crimes that R2P seeks to prevent. States accused of committing atrocity crimes may not consent to an ICJ case, and states that could initiate such a case may fear the political costs of suing such a state. Witnessing widespread atrocities against its Bosnia population, Bosnia and Herzegovina instituted in 1993 a case under the UN Genocide Convention against the Federal Republic of Yugoslavia (which later was replaced by Serbia and Montenegro). Fourteen years later, the Court issued a merit judgement on 26 February 2007 which has direct relevance to the responsibility to protect. The ICJ does not follow a strict doctrine of precedent, but this was the Court's first opportunity to address in a contentious case a number of legal questions under the Genocide convention. The Court's finding on a legal duty to prevent genocide was historic, as it empowered the Article I of the Genocide Convention.

As the ICJ case progresses, we can begin assessing the potential role of the International Court of Justice in the R2P framework. The concept of "responsibility to protect" has never appeared in an application to the International Court of Justice in The Gambia, a court hearing, or a court order, but there is an element that makes stand out from an R2P perspective. There are three notable elements. First, there is the fact that the case is being pursued by The Gambia. The

Gambia has nothing to do with allegations of violations of the United Nations Genocide Convention recognizing it as a "particularly affected" condition. Second, statement a Gambian agent said the proceedings were initiated "to awaken the conscience of the world and raise the voice of the international community." In the opening debate of the UN General Assembly, Gambia "calls on all stakeholders to support this process. As a global community of conscience, we can no longer ignore the Rohingya plight. " This ambition is very similar to the idea behind R2P and its creation in response to the genocide in Rwanda and Srebrenica. The international community needed to recognize its responsibilities and act to protect the vulnerable groups from atrocities.

Third, considering the content of the interim measures ordered by the court, it is striking that the order concerns not taking genocide, preventing genocide, and punishing genocide. All these steps follow the logic of preliminary measures aimed at protecting the rights associated at this stage of the process from irreparable harm. However, these steps are also consistent with what Myanmar should do if is responsible under the framework of R2P. In addition, the ICJ has taken interim measures by requiring Myanmar to report to the ICJ (and Gambia) on a regular basis, not just once, for all steps taken to implement the court order. Added a clear preventive element.

These first observations emphasize that the state should be seen as a tool that can help carry out its responsibility to protect. Therefore, Canada and the Netherlands, two major supporters of R2P, in a joint announcement of intervening in the Gambia-initiated case, "we support these efforts to affect all humanity. It reflects the acceptance of the obligation of the Netherlands."

The proceedings currently running under the ICJ is significantly important for several reasons in particular to protect Rohingya people. As the first formal intervention on behalf of the Rohingya people on the world stage, the proceeding also highlight the dramatic consequences of global Islamophobia without meaningful intervention by sister countries to protect the vulnerable Islamic population.

After the ruling case, there is indeed progress with the AICHR now. For the past ten years, there had been many complaints sent to the AICHR including the Rohingya case especially from human rights activists. Unfortunately, there was no response from the AICHR both personally and institutionally. Progress was made in 2019 and 2020 when the AICHR through several of

its representatives carried out relevant efforts; after six meetings, the AICHR agreed on the correspondence guideline.[75]

Wahyuningrum is one prominent supporter of the idea. Although this is a fundamental mechanism, the guideline was not available before and hence was projected to have a good impact on the AICHR. Unlike the commissions in Africa, South America and Europe, this mechanism goes beyond mere correspondence. Once the complaint is sent, the complaint will be acknowledged, and the complainant will be sent to the countries concerned. If the AICHR had a similar mechanism, for instance with the Rohingya case, certain people may send a complaint to the AICHR who will then send it to the government of Myanmar. Although the government of Myanmar will unlikely respond to it positively, and the AICHR might not do any follow-up, at the very least the mechanism is already in place.[76]

The implementation of this mechanism is a test particularly for Indonesia, which is known for its strong support for the development of human rights mechanisms in the region. Of course, it is also a test for all ASEAN member states. The country's reaction to this mechanism could be different, since any agreement in the AICHR is voluntary and must be consensual.[77]

Currently, in terms of institutional support, the AICHR has been invited to a number of work plan developments of the case; however, in the case of addressing the repatriation of the Rohingya from Bangladesh, the AICHR was not mentioned anywhere despite the fact that the base of that approach is on human rights as explained previously.

Being responsible for one's own crisis or crime must be known in the ASEAN region. There are at least two types of mechanisms in this region: the Extraordinary Chambers of the Cambodian Courts to try the crimes of the Khmer Rouge and the United Nations Special Panel on Crimes in East Timor. In addition, there are special human rights courts in Indonesia that deal with human rights violations. Therefore, such a mechanism can also be built to redress Rohingya human rights cases, particularly boat cases.[78]

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[75] Eric Paulsen, Interview by Author, Through Whatsapp Video, 20 April 2020
[76] Wahyuningrum, Interview by Author, Through Zoom Meeting, 15 April 2020.
[77] Eric Paulsen, Interview by Author, Through Whatsapp Video, 20 April 2020
[78] Sangeetha Yogendran, "Responsibility for boat crises in ASEAN: Potential means and methods for accountability," Kaldo Centre <https://www.kaldorcentre.unsw.edu.au/publication/responsibility-boat-crises-asean-potential-means-and-methods-accountability?mc_cid=e467489f57&mc_eid=92fa64572f> (accessed 10 November, 2020).

According to Amara in her reply to the interview questionnaires, based on past performance, the ASEAN member states' role in responding to human rights situations vary from case to case. The case relating to civil and political rights tends to take a cautious strategy because it usually involves state action. To that end, ASEAN institutions could not go beyond the state's sovereignty as the non-interference principle applies in this case, including on that of the Rohingya Khmer Rouge, Sombath Samphone, and Wamena riots. Cases relating to economic, social, and cultural rights tend to be more proactive, although remain very slow.[79]

ASEAN as an institution has the opportunity to prove itself following the establishment of the ASEAN Charter by ideally developing mechanisms that are funded and fully supported by ASEAN institutions. Furthermore, according to the ASEAN Charter, the ASEAN member states have a collective responsibility to enhance peace and security. For the AICHR, the boat crisis also opens up more possibilities to demand for a more robust mandate from ASEAN institutions and member states to protect the Rohingya and in a more far-reaching aim to protect the human rights of all ASEAN citizens. The support and action from the civil society in several Rohingya boat cases, such as in Indonesia, is one modality for ASEAN institutions especially for the AICHR to act beyond their limited mandate. Who knows that through this case, AICHR may find the momentum to become an independent human rights commission? The AICHR can prove that what has been legally written and agreed in the Charter can be effectively implemented in this case if there is an action to stop the crisis.

Another recent Rohingya case is the detention of 300 Rohingya by the government of Bangladesh in November 2020. They were detained and isolated after the government of Bangladesh rescued them from a ship stranded at sea in May 2020. This action was claimed as improper. Responding to this, ASEAN Parliamentarians urged the Bangladeshi government to allow other actors to monitor the Rohingya situation in the camp. Fortify Rights, an NGO, previously reported human rights violations and mental health concerns for those detained on the island. Many Rohingya question their detention, but they assume that they are detained merely because they are Rohingya.[80]

Recently, on November 11, 2020, ahead of the 37th ASEAN Summit, the ASEAN Parliamentarians submitted an open letter urging ASEAN institutions to act proactively to end

[79] Amara Pongsapich, Interview by Author, Through E-mail, 16 April 2020.

[80] ***Fortify rights (FR)*, "Bangladesh: Free Rohingya Refugees Detained on Isolated Island", <https://www.fortifyrights.org/>**

the violence and displacement of Rohingya in Rakhine. The Rohingya case is not only a humanitarian case, but also one that needs to be addressed from all aspects by all countries particularly those in ASEA MPs also urged ASEAN to strengthen the capacities of their institution, including the AICHR. The summit changed course and used its political influence over the Myanmar government to promote measures that will bring significant change to the state of Rakhine.[81]

After the Court's order, Myanmar takes all steps to prevent genocide. This is of course a positive impact. ASEAN or AICHR can refer to the work of the UN fact-finding mission to Rakhine State that was cited by the Gambia in their proceedings that the irreparable damage against Rohingya is clear. Hence, ASEAN via AICHR can do a country visit to assure Myanmar stops all the atrocities as soon as possible and to make sure that the Rohingya people are now more protected than before. It could be a test for whether ASEAN human rights mechanisms works or not in the field. Seeing the case as a humanitarian disaster by assigning the AHA center to help Rohingya people with humanitarian aid is considered inappropriate. Hopefully, after the Courts' order, the ASEAN and AICHR will use a more legal approach to seek the solution. They can use the AICHR as a human rights body or they can apply their dispute settlement mechanisms under the ASEAN Charter by involving the AICHR in that regard.

Another effort ASEAN should try is to give an opportunity for the Myanmar government and the Rohingya's representatives to meet to express themselves in a dialogue or meeting. ASEAN or AICHR can continue to lobby Myanmar to take more action to return back Rohingya to the Rakhine state to which they belong. In sum, ASEAN or AICHR policy towards Rohingya should support the ICJ's order to stop atrocities against Rohingya.

Furthermore, many said that the ICJ's order indicates that Myanmar had genocide intent toward Rohingya, these are enough proof for ASEAN or AICHR to ask Myanmar to be legally liable for the Rohingya people. Supposedly, after the Court's order on the case, there is no more hesitation among member states of ASEAN to talk and decide their future action towards Myanmar. If the ICJ can only deliver the order for interim measures, ASEAN can go further to seek a merit solution to the case.

The Court's order is legally binding to Myanmar. Myanmar has to comply with the obligation not to violate genocide and to prevent and punish genocide under the convention. ASEAN or

[81] *ASEAN Parliamentarians for Human Rights (APHR)*, "**Parliamentarians urge ASEAN to take greater action to resolve Rakhine crisis", <**http://aseanmp.org/2020/11/11/parliamentarians-urge-asean-rakhine/>

AICHR shall support this decision by making a policy to monitor the implementation of the order by Myanmar. Presumably, the compliance of Myanmar will influence a lot by the policy and action of ASEAN or AICHR.

There is an interesting novelty from the case. The ICJ's order can be said as a product of necessity that is successfully issued and in practice, places the individual at the top priority. Something that is rarely implemented in other fields of international law. It is a new approach and gains a positive opportunity for the development of an intergovernmental human rights framework including for ASEAN.

Currently, Myanmar facing a hard time due to the coup de tat. The atrocities against Rohingya even get worst after it. The violence spread across the country. There are more uncertainties as to whom the Rohingya case must be held liable. Fortunately, both the ASEAN and the AICHR respond to the Myanmar crisis very quickly and can be considered effective compared with The Rohingya crisis. Here are the ASEAN responses to the Myanmar coup de tat crisis: ASEAN Chairman's Statement on 1 February; Shuttle Diplomacy, lobbies; ASEAN chairman's statement (informal ASEAN foreign minister meeting, 2 March 2021) the agendas are: stop violence, open dialogue with ASEAN, ASEAN readiness to assist Myanmar; Chairman statement (ASEAN leaders meeting, ASEAN Secretariat Jakarta, 24 April 2021); Communication and coordination with the UN and other international systems as well as individual countries; Before and after 24 April 2021 individual ASEAN member states connected to CRPH and NUG; On 4 June 2021: visit Myanmar. FM Brunei and the ASEAN Secretariat General met Sen Gen Ming Aung Hlai (MAH); AHA Center is in coordination with relevant institutions to prepare for humanitarian assistance; FM Brunai (Dati Eryawan) was appointed as the ASEAN Special Envoy. Among those responses, unfortunately, the ASEAN did not involve AICHR to act.

However, the AICHR took its own initiative to respond to the situation. Below are the AICHR responses to Myanmar Crisis: 5 February 2021, press statement expressing concerns about the Myanmar coup, signed by Indonesia, Malaysia, Thailand, and Singapore; 8 April 2021 - include AGENDA ITEM 15 on human rights development in ASEAN; 6 countries made an oral intervention on Myanmar: Indonesia, Malaysia, Philippines, Thailand, Singapore, and Vietnam; 9 April 2021 - press release: highlighted concerns over the escalation of violence, expressed AICHR readiness to support Myanmar on any task assigned by AMM; 26 April - include AGENDA ITEM 4: updates from AICHR representative: Indonesia highlighted issues on refugees (Rohingya); 2 August 2021 interface meeting with AMM: 2 out 6 AICHR

representatives highlighted on Myanmar in front of AMM. Indonesia highlighted issues on the rights of detainees and demand the release of political prisoners; September 2021 - ASEAN Human Rights Dialogue.

The ICJ's order also opens an opportunity for ASEAN or the AICHR to deal with Myanmar on the issue of Rohingya's statelessness. Citizenship, or nationality, is a fundamental human right that facilitates the ability to exercise other human rights. The right to a nationality is extremely important because of its implications for the daily lives of individuals in every country. Being a recognised citizen of a country has many legal benefits, which may include – depending on the country – the rights to vote, to hold public office, to social security, to health services, to public education, to permanent residency, to own land, or to engage in employment, amongst others. Although each country can determine who its nationals and citizens are, and what rights and obligations they have, international human rights instruments pose some limitations on state sovereignty over citizenship regulation. Specifically, the universal human rights principle of non-discrimination and the principle that statelessness should be avoided constrain state discretion on citizenship.

While issues of nationality are primarily within each state's jurisdiction, a state's laws must be in accord with general principles of international law. Article 15 of the Universal Declaration of Human Rights recognises the right to a nationality, a right to change one's nationality, and the right not to be deprived of nationality. According to Article 15 of the Universal Declaration of Human Rights, "[e]veryone has the right to a nationality," and "[n]o one shall be arbitrarily deprived of his nationality." The right to a nationality is confirmed in many other international instruments, including the European Convention on Nationality of the Council of Europe (1997).

Nationality, according to the International Court of Justice, is "a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments." The right to nationality without arbitrary deprivation is now recognized as a basic human right under international law, which, through legal instruments and the practice of many states, imposes the general duty on states not to create statelessness.[82]

[82] The primary international legal instruments addressing the issue of statelessness are: the 1954 Convention Relating to the Status of Stateless Persons and; the 1961 Convention on the Reduction of Statelessness. These conventions provide for the acquisition or retention of nationality by those who would otherwise be stateless and who have an effective link with the state through factors of birth, descent, or residency. The 1954 Convention

All Rohingya born in Myanmar and their children have a right to Myanmar citizenship. By denying them citizenship, Burma is violating international law especially the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. While Burma is not a party to these conventions, the general principles embodied in the conventions are drawn from the basic provisions found in nationality legislation and practice of the majority of states. The conventions, therefore, reflect an international consensus on the minimum legal standards of nationality. In addition, provisions in other conventions support the principles underlying the instruments on statelessness. Giving the Rohingya a citizenship will faster the reconcialiation process of the conflict.[83]

The future of the conflict in Myanmar, and the protection of the Rohingya population, is still very much in question. An ICJ Order is a significant decision under international law and should play a critical role in protecting a group under serious threat. However, it is only as significant as the political will of the international community, a longtime challenge regarding human rights under international law. The international community should continue to put pressure on Myanmar to provide full citizenship and accompanying rights to its Rohingya population. Until Myanmar does so, the Rohingya who flee human rights abuses and ill-treatment in Myanmar should be provided with asylum and international refugee protection. The significant impact of the Order will can only be seen in the months and years to come.

If the ICJ has successfully “resolved” the issue of legal standing and jurisdiction by issuing an order of the case on the interim measures, the AICHR should also find out the way can also to waive or compromise the ASEAN ways or any other hindrances resulting from their TOR. Any drawbacks especially its weak mandate to protect people could not be claimed as the reason for the AICHR for their inaction. Not only the AICHR but the ASEAN and its elites of leaders have to take a strong effort to end the atrocities against Rohingya in Myanmar. The appointment of the AHA Center is not enough to help Rohingya out of this situation. AHA center must act

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Relating to the Status of Stateless Persons defines a "stateless person" as someone "who is not considered a national by any State under the operation of its law."

Under Article 1 of the 1961 Convention on the Reduction of Statelessness, a state "shall grant its nationality to a person born in its territory who would otherwise be stateless."

[83] Garrido, Carmen Romero. "The State-Sponsored Genocide of the Rohingya Community from a Constructivist Perspective." *Comillas Journal of International Relations* 24 (2022).57.

beyond its humanitarian mandate. Ideally, the mandate to give human rights protection to Rohingya people lies with the AICHR.

E. CONCLUSION

The lack of protection mandate as enshrined in the TOR could not be claimed to justify their silence to protect Rohingya from any atrocities against them. The findings show that there was significant progress since the issuing of the ICJ's order on the Gambia vs. Myanmar case on the policy of ASEAN especially the AICHR.

The ICJ's proceeding shall also be considered important in determining the future ASEAN policy towards Myanmar, especially on the issue of citizenship of the Rohingya people. In addition, it will also influence the future human rights framework under the AICHR. The AICHR can ask member states to be more active in protecting people's rights especially vulnerable groups within the region. Member states' obligation relies on many-core human rights treaties to which they are parties to it.

ASEAN can help Myanmar to comply with the Court's order by giving them technical assistance for all steps taken to implement the court order. In this context, not only Myanmar can be seen as a tool that can help carry out its R2P, but ASEAN too.[84] If the court's order that indicates R2P successfully enforces Myanmar to compliance and stops the atrocities, this would be a good lesson for ASEAN in the future to use such a framework in any similar case.

The AICHR's responses to the Myanmar crisis show that the AICHR's actions are unnecessary to have a full agreement from each of state's representative. The AICHR, in this case, was brave enough to stand and sound their thought on the Myanmar crisis including on Rohingya. This is very significant progress the AICHR has that needs to be maintained and developed. If ASEAN succeeds in dealing with this crisis, it will be a good example to other parts of the world in handling similar crises. It will also confirm that they create the AICHR for the sake of their citizen's interests i.e. to promote, protect, and fulfill their rights.

[84] Zahed, Iqthyer Uddin Md. "RESPONSIBILITY TO PROTECT? THE INTERNATIONAL COMMUNITY'S FAILURE TO PROTECT THE ROHINGYA." *Asian Affairs* 52, no. 4 (2021).940.

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Violation of Human Rights in Mali: Impunity Aggravates Situation

Amadou Togola

With the 2012 invasion of the north of the country by armed groups and the coup that overthrew the late President Amadou Toumani Touré, we are witnessing a degradation of human rights on both sides throughout the of the territory. Despite the presence of organizations operating in the fight against human rights violations such as Amnesty International and their denunciations, an increase in human rights violations is seen in Mali. According to several sources an increase in human rights violations in sight under the military regime in Mali. Foreign forces, armed groups and even the Malian armed forces are accused of abuses and crimes against civilian and military numbers in Mali.

Malian armed forces accused of abuses

From 2012 to the present day, the Malian armed forces are accused of many crimes of which no light is shed despite the facts. The first is the assassination of 21 red berets who wanted to protect and prevent the coup whose families of the victims are still waiting for justice to be done. After the arrest of the incumbent president in 2012, the body of 21 red berets who were the president's close guards were found in a mass grave in the town of "Diago" in southwestern Mali..[1] The red berets were detained before being executed between April 30 and May 1, 2012. The green berets responsible for the coup are accused of these assassinations. The latter allegedly intimidated and threatened journalists and relatives of the victims after their acts. A witness testifies to having seen Sanogo kicking detainees at the Kati military camp. The mother of one of the missing would also have revealed a telephone communication from her son before his disappearance. She said: "*My son looked so scared…He said the soldiers were discussing among themselves whether they were going to kill his son and the detainees…He was so scared.*

» The wife of a red beret is said to have recounted the suffering and torture suffered by her husband. According to another witness on May 3, 2012, soldiers were put into a truck around 3 a.m. and that was the last time they were seen. If the conviction of the author of the coup d'état Amadou Aya Sanogo considered a step against impunity in Mali, the latter will be released later. Instead of doing justice, the state of Mali enacted a law in 2019 granting amnesty to certain numbers of soldiers who committed these crimes. This action only protected the defendants and prevented the continuation of the human rights violations committed in the red beret case. Despite the denunciations of Amnesty İnternational and Human Rights Watch, these violations remain unpunished as they should be and the female families of the victims are left

to their fate while the Malian authorities are still expected to bring the accused persons to respond to their actions. According to Human Rights Watch since 2012 several extrajudicial abuses, disappearances and tortures are made by the Malian army on people suspected of being terrorists.2 In 2020 we witnessed abuses committed by the Malian army which cost the lives of peaceful demonstrators between July 10 and 11, 2020 in Bamako. The previous month, crimes were committed in the city of Sikasso including one killed and injured. On the same day in the town of Kayes a young pacifist demonstrator named Seyba Tamboura aged 17 was shot dead. These killings were carried out during a new coup in 2020. The security forces fired live ammunition at some peaceful demonstrators in a mosque in Bamako. One of the victims is İbrahim Touré, a 16-year-old boy who succumbed to his injuries. According to his brother who answered questions from Amnesty International, the boy was shot twice. Despite the denunciations of organizations such as Amnesty, those responsible remain unpunished and the Malian authorities are asked to render justice so that the perpetrators answer for their actions.

Journalists are also the targets. Saouti Labas Haidara was one of the journalists tortured by the Malian military in 2012. During a Human Rights Watch investigation, interviewees testified that relatives of coup leader Amadou Aya Sanogo committed abuses.

The crimes and abuses of armed groups

Armed groups since the beginning of the crisis in Mali have been committing crimes and abuses against civilians and undermining human rights in Mali over the past ten years. Armed independence groups of the National Liberation Movement of Azawad known as MNLA along with terrorist groups that invaded the north in 2012 summarily executed around 153 Malian soldiers in the town of Enguelhok. After the occupation of northern Mali since 2012, jihadists affiliated with Al-Qaeda in the Islamic Maghreb have committed many crimes and abuses against civilians. The Ansar Dine group and the Katiba de Macina are responsible for several abuses in central Mali. Old Bourahima testified that they whipped women who did not wear the veil and added: “my own daughter was whipped, and I could not defend her”. These armed jihadist groups have established sharia in many localities in Mali where civilians are the most affected by bad practices. The recent crimes took place in the Mopti region in January 2022 where the groups killed 4 men. According to a witness, the 4 victims Adbou Nouh, Hama Bouka, Nouh Diamgouno were shot in the head.3

The “Mistakes or violations”, Crime of foreign forces on civilians remain unpunished

Since the launch of the French military intervention under the name of "Operation Serval", civilians have been victims of the blunders of foreign forces on Malian soil. While foreign forces are supposed to protect civilians, the latter are victims. İdrissa Maiga, a 60-year-old farmer in the city of Konna was a victim of Operation Serval strikes in January 2013. In the early morning he had gone out to visit his crops in his field and suddenly he saw a helicopter which began to fly. bomb. On his return home he found that his house had been hit by the bombings of French helicopters and that members of his family were killed as a result of these strikes. His two daughters Zeinabou and Aminata and his two boys Adama and Aliou were all killed. In a report İdrissa Maiga expresses herself in these terms: “I found my four children lying down and dead and that is what I remember from the war”. These strikes would have been carried out well before the outbreak of war and are a source of violation of the territorial integrity of Mali. But the French authorities refuse this version and that there was no victim. Since then, the Maiga family has demanded justice and reparation from the Malian and French authorities. Mr Maiga even went to the French Embassy in Bamako to seek justice and reparation. But unfortunately, the agreement signed between France and Mali before the intervention blocks the repairs of damage which must go to Mr Maiga. In this agreement it is noted that the damage caused during the operation will not be repaired by France but by the Malian state. Since 2013 the Maiga family has been waiting for damages to be repaired and for justice to be done.

From 2013 to the present day, civilians have been victims of the blunders of foreign and French forces. In January 2013 civilians in the middle of a wedding suffered French helicopter strikes which left 21 dead. MINUSMA published a report on March 30, 2021 on the strikes carried out by the French army in the town of Bounty on January 3, 2021 which caused the death of 21 civilians who were participating in a wedding ceremony. Even if the French authorities deny the facts the testimonies show that there was a wedding and that the ceremony was targeted by the strikes of the French army. According to Abdoulaye, a resident of the village of Bounty, "that day, the population was celebrating the wedding of Allaye and Aissata, two young people from the village". He added: “I was coming back from my field, and I was about to join the wedding ceremony and I heard several explosions and I fled towards the bush. On my return it was carnage, we could not identify the dead and I lost three brothers and a cousin. Abdoulaye also testified that those killed were civilians. But unfortunately, in distress of the families of the

victims the French army to recognize the facts. From January 2021 until today the families of the victims that justice be done.

Rights of migrants, refugees and asylum seekers: What protection in Morocco

Dr. Latmani Saida

The migratory problem is becoming increasingly acute. As the years go by, the phenomenon grows and grows. It then becomes thorny and arises as a major concern. Consequently, the migratory phenomenon rises to the top of the debates, reflections and analyzes both at the level of the States and at the international level.

From one point to another, from one country to another, individuals move. This is only a manifest expression of human nature. Thus, migratory routes are emerging. Among them, figure prominently that of Africa to Europe via Morocco. Moreover, these movements of individuals from one geographical area to another are dependent on a set of factors and underpinned by a set of issues. Factors and issues endogenous to States but very often exogenous because they are also regional or even international.

In the light of these factors and issues, the migratory phenomenon becomes complex in its apprehension and understanding but also and above all multifaceted. Thus, migration can be desired but also and above all forced, in this second case, we are talking about refugees seeking international protection. Whether wanted or forced, rightly remains the question of the rights of migrants, refugees and asylum seekers.

Consequently, the rights of migrants, refugees and asylum seekers will suffer. In other words, from the recognition and consecration by legal texts of the said rights to their effective and efficient respect, there is very often a strong disparity that strongly calls into question the full enjoyment of the said rights by migrants, refugees and asylum seekers. .

So, with regard to the issues previously described, the question of protecting, guaranteeing and respecting the rights of migrants, refugees or applicants arises with great interest.

War crimes and Crime against humanity in Indian occupied Kashmir; Role of Human Rights watchdogs

Nasir Qadri

THE PROBLEM OF KASHMIR

Kashmir is an important topic today primarily because of the three nuclear armed countries engulfing it and the never-ending human tragedy unfolding there—intensively over the past twenty-five years and, in a more attenuated form, for decades before that. Kashmir had become "the most heavily militarised region in the world" in 2004, and there was "one soldier for every ten civilians". Amy Hawkins argued, the world is reaping the crop of chaos the British Empire sowed, and "locals are still paying for the mess the British left behind in Hong Kong and Kashmir." To trace the genealogy of this conflict, it is imperative to contextualize this assertion to understand the contemporary political dynamics and conflict of Kashmir. The anticolonial uprisings in the Indian subcontinent, China, the Arab world and elsewhere did not result in freedom or democracy for the nations ruled by the British Empire. The genesis of the dispute can be traced back to the partition plan of India, which gave the choice to 565 Princely states to join either India or Pakistan considering the religious, geographic, economic, and ethnic affinity. Jammu and Kashmir being the only Muslim majority state wanted to accede Pakistan, yet Maharaja Hari Singh's instrument of accession to India dragged to three wars against each other since 1947, the first two of which were over Kashmir and the confrontation on the borders [LOC] continue to escalate tensions between India and Pakistan.. Since then, India is violating the fundamental human rights recognized by the UN, deliberately involved in genocide, ethnic cleansing, and crimes against humanity. The Indian security forces overtly killed nearly a hundred thousand innocent civilians, illegally detained thousands in detention camps, and introduced several draconian laws to repudiate the basic human rights. The question of Kashmir continues to remain a perennial bone of contention between two nuclear armed countries—India and Pakistan.

The Indian state's governance of Indian-administered Kashmir requires the use of discipline (in Foucauldian etymology actually punishment) and death as techniques of social control. The structure of governance affiliated with militarization in Kashmir necessitates dispersed and intense forms of psychosocial regulation. As an established nation-state, India's objective has been to discipline and assimilate Kashmir into its territory. To do so has required the domestication of Kashmiri peoples through the selective use of discipline and death as

regulatory mechanisms. Discipline is affected through military presence, surveillance, punishment, and fear. Death is disbursed through "extrajudicial" means and those authorized by law. Psychosocial control is exercised through the use of death and deception to discipline the living. Discipline rewards forgetting, isolation, and depoliticization. Today Kashmir is one of the most heavily militarized zones in the world. More than seven million soldiers have been deployed, including newly added million forces, as per the reports, to counter what the Indian army itself admits is now just a handful of "Islamist terrorists." This myth has time and again punctured, because what has transpired from past three decades and the last three months, if there were any doubt earlier, it should be abundantly clear by now that their real enemy is the Kashmiri people, especially "Kashmiri Muslims", as what was also reiterated by Imran Khan in UN general assembly speech. What India has done in Kashmir over the last 70 years is unimaginable for the world and unforgivable. An estimated 70,000 people have been killed in the conflict, thousands disappeared, dozens of women raped, hundreds lost their sight due to pellet guns, tens of thousands have passed through torture centers like of Abu Gharib. Most armed rebels operating in the valley today, who have personally gone through and experienced the brute manifestations of violence, are young Kashmiris, armed and trained locally. They do what they do knowing full well that the minute they pick up a gun, their "expected life span" is unlikely to be not more than six months, some even only last for 48 hours, as, is the case with an assistant professor in sociology, Mohammad Rafi, of Kashmir university. Each time a gun-holding boy is killed, Kashmiris turn up in tens of thousands to bury the dead body whom they venerate as a shaheed, a martyr.

The peoples of Jammu & Kashmir are struggling for the inherent right of self-determination a right recognized by the international peace keeping bodies and civilized nations, but India has been denying accepting it. Meanwhile, years of mismanagement and oppressive rule of India set the stage for an uprising in the late 1980s and streets of Srinagar experienced a new phase of the intifada. The legitimate demand was brutally crushed by the Indian forces and mass demonstrations of civilian killings, kidnapping, extra-judicial killing, gang rape, and property vandalism were reported across the region. Indian central government introduced various draconian laws contrary to the international human rights law and provided immunity to security forces deployed in the Jammu & Kashmir region to commit the overt acts of genocide.

Indian Occupation and Human Rights Abuses in Kashmir

The nation-states are sovereign in determining their internal and external policies, fully responsible to protect their citizens from harm and dangers. They constitute certain laws to

uphold the basic rights and protect citizens from persecution. India always praises its democratic and secular posture. Nonetheless, the situation in Jammu & Kashmir is contradictory. Since 1947, the fundamental human rights of peoples of Jammu and Kashmir have been grossly violated by the Indian occupied forces. The paramilitary troops are purposefully involved in systematic killings and gross violations of basic human rights, using various draconian laws to legitimize the persecution. Since January 1989, the suppressive forces persecuted some hundred thousand Kashmiris to change the demography of the region. In late 1992 and early 1993, human rights conditions further deteriorated as Indian troops embarked on a "catch and kill" campaign against suspected militants. Since then, summary executions of detainees by security forces have sharply increased. In October 1992, Asia Watch and Physicians for Human Rights (PHR) sent a delegation to Kashmir to document human rights abuses and violations of the laws of war by Indian security forces and by militant forces. Following the upsurge in violent reprisals against civilians and attacks on human rights activists in late 1992 and early 1993, Asia Watch sent a second mission to Kashmir in April and May 1993, in cooperation with Physicians for Human Rights Denmark. The given table illustrates the human rights violations committed by the Indian forces in the region. Human rights violations in Kashmir from January 1989 till October 31, 2020

Sr. No.	**Description**	**Numbers**
01	Total murders	95,709
02	Custodial killings	7,150
03	Civilians detained	161,131
04	Structures arsoned/destroyed	110,374
05	Women widowed	22,922
06	Children bereaved/orphaned	107,805
07	Women gang rapes/molested	11,224

Fasting forwarding this to the abrogation of Article-370, arbitrary mass arrests and detentions occurred after 5 August in Jammu & Kashmir and have been used against thousands of people, including political leaders, human rights activists, lawyers, and ordinary citizens. Less than two weeks after the abrogation of Article 370 of the Indian Constitution [see below, Background], 4,000 people were reported to have been placed in custody since 5 August. On 20 November

2019, the government told Parliament that 5,161 persons had been detained since 5 August, and that 609 of them were still in detention. These figures, however, did not specify the laws under which individuals had been arrested and under which charges. The 1978 Public Safety Act (PSA) allows detention for up to two years without charge and has frequently been used against HRDs and political activities in Jammu & Kashmir. Although establishing accurate figures of arrests and detentions under the PSA since 5 August has been difficult due to the ongoing restrictions on freedom of expression and information, on 6 September 2019, the government claimed to have arrested 3,800 people under the PSA, 2,600 of whom had been released. Many of those arrested and detained were transferred to jails outside of Jammu & Kashmir, including district jails in Agra, Varanasi, Bareilly, Lucknow, Ambedkar Nagar, and Prayagraj Naini (all in Uttar Pradesh State), and the Tihar Pirson Complex in New Delhi. This has been especially the case of youth and low-ranking political activists. During the total communication blockade, families were kept in the dark as to the location of their relatives who had been arrested, and locations of detention centers were not made public. The communication blockade made it particularly difficult for family members of detainees to obtain information regarding their location and health conditions. The location of approximately 45% of the 635 cases of individuals from Jammu & Kashmir detained under the PSA that local human rights organizations have been able to verify remains unknown to these organizations. According to a petition filed by the Juvenile Justice Committee of the Jammu & Kashmir High Court before India's Supreme Court on 26 September 2019, 144 under-aged boys, including a child as young as nine years old, had been arrested since 5 August, as of the date of the filing of the petition. However, field investigations conducted by local human rights organizations seem to indicate that there were significantly more cases of juveniles being illegally detained, many of whom for over 24 hours. Cases of torture remain frequent in Jammu & Kashmir and continued to be reported after 5 August. Many of the individuals, particularly youth, who were arrested during night raids reported being subsequently tortured while in detention. Many of the boys and young men alleged to have been sexually tortured during their detention. Despite many serious allegations of torture in custody, it is not known whether any investigations into these reports have been carried out.

Surveillance and Control

Surveillance, detentions, and the politics of fear—a tripartite strangulation model shapes the security theology of Indian state to control Kashmir. India's security forces have occupied 10,54,721 kanals of land in Indian-held Jammu and Kashmir. On this land, 671 security camps

have been established in Kashmir. The structure and placement of the camps enforce contact between women, children, and security forces and create contexts in which gendered violence is regularized. The widespread use of torture in detention camps and interrogation centers, against men and male youth, has impacted 60,000+. As many as 1,00,000 have been orphaned. Also, tracing the genealogy, we see how nation state politics is based on the modern conception of the Westphalian nation state model, which organizes and monopolizes violence under the exclusive authority of a sovereign state. This conception, Khaled Al-Kassimi asserts "only began to characterize global politics in the 19th century and more so at the beginning of the 20th century, contrary to the political myth that perceives the year 1648 as the moment where world state leaders monopolized, organized and structured violence." As Wael Hallaq argues, the state can delimit, limit, exclude or curtail any religious practice, and thus has the power to determine the quality and quantity of the religious sphere as it sees fit. This is because the state is the ultimate sovereign, with its own reason for existence — what we call reason of state or *raison d'etat,* a relatively new concept in the long stretch of human history. The Indian state discovered an opportunity to frame its counter insurgency efforts in Kashmir within the wider context of the nasty brutish and long America's war on Terror. In doing so, successive Indian governments have tried to promote the idea that their counter terrorism efforts in Kashmir are to subdue a threat similarly faced by Israel from Hamas. This is an attempt on the part of the government to distract from its own failings in addressing the genuine political aspirations of the majority Muslims in Kashmir. "Seen through the fog of the "war on terror" and the Indian government's own cynical propaganda, the problem in Kashmir seemed entirely to do with jihadist terrorists" wrote Indian author, Pankaj Mishra in 2008.

Few key and significant people among twenty-five Kashmiris recently appeared in a controversial potential surveillance Pegasus list. Apart from several journalists, these include separatist leaders Mirwaiz Umar Farooq and Bilal Gani Lone. It was already reported that late SAR Geelani's phone was also targeted for almost two years. The history of control through surveillance in various modes traces its genealogy much earlier in post-1947 annexation of Kashmir. Lasting more than sixty years, and despite India's constitutional Basic Law, judicial precedents and a plethora of civil rights statutes formally prohibiting racial discrimination, the oppression of Kashmiris through various modes and forms of surveillance has not ended. Visible and non-visible, formal, and non-formal, and legal and illegal discriminatory acts, along with deeply embedded personal and group preconceptions and public policy assumptions, continue to support discriminatory public policies against Kashmiris. The colonizer's

monitoring and surveillance exercises in Kashmir simultaneously aim at sustaining otherness and preserving the settler's power to control the native's body, home, and land; the colonizers place individuals and communities under surveillance to keep the colonized in their place. Elements of the discursive dynamics that maintain surveillance over the development, movement, life, and body of Kashmiris, in the context of Indian colonialism, is revealed through an examination of laws like AFPSA and UAPA. These laws convict political activists, academics, or anyone who seek their legitimate political right.

It is not my intention to historicize this organization, although I will discuss the historical context when relevant; rather, my aim is to examine its acts and discourse as a vehicle in my quest for new directions in analyzing securitization, surveillance, and the production of fear. The Indian settler state's habitual behaviors of resorting to force, violence and intimidation as a chosen means to evict the native–such as the state-sanctioned violence against Kashmiris by Indian security forces in various massacres (Gawkadal, Bijbehara among others) were calculated measures in a formal program of creating fear and silence-by-terrorization". Amid technologies of controlling bodies, there has been a strategic paradigmatic shift in Orwellian terms to 'monitor' all forms of political dissent in Kashmir. Strengthening the surveillance structure is the main reason behind the loss of lives, of continuing sieges, mass arrests, and crackdown on activists in the recent decade in Kashmir. Jammu Kashmir Coalition of Civil Society, a group of human rights organizations, reported in August that police had made complaints against more than 200 users of social media platforms and virtual private networks, deploying surveillance technology to trace and summon them to police stations under anti-terror and detention laws. As many as 25 people from the Kashmir Valley were potential targets of surveillance through the Pegasus spyware between 2017 and mid-2019, a report published by The Wire said on Friday.Surveillance of Kashmiri 'bodies' have always been an integral part of Indian colonial project. Tools deployed included population registries, identification cards, land surveys, watchtowers, imprisonment, and torture. Although surveillance has always been a vital constituent of the ruling apparatus in Jammu and Kashmir (J&K).

Among more than 600,000 Indian troops and other visible markers of a military occupation, various surveillance units dot Kashmir's landscape. There is a strong physical surveillance in place with a plethora of new technologies, such as phone and internet monitoring and interception, and CCTV, has enabled Indian state to surveil the population it occupies on a massive, intrusive scale and not even in educational centres are left due to sustained anti-India protests. Such panopticon that has been encircling Kashmir is a construction of the Indian state,

which has been intensifying its mass-surveillance architecture in the region for over a decade. Indian state shifted its focus on social media to monitor what individual Kashmiris say and do, as well as to gather and analyse information on attitudes among the Kashmiri population more broadly. The recent upsurge in summoning people to police stations and counter-insurgency torture centres disabling social media accounts came as a by-product of the 'politics of fear' raising voices against the Indian state and brutalization of Kashmiri bodies, to visit police stations in one such example of the 'controlling' the flow of information. In November 2014, Vasundhara Sirnate, the chief coordinator of research at The Hindu Centre for Politics and Public Policy wrote in an article in The Hindu: "An Intelligence Bureau official stationed in Kashmir told me that they were tapping 10 lakh phones in Kashmir alone by 2014." Mobile telephony was introduced in India in 1995 and, owing to security concerns, was permitted in Jammu and Kashmir only in 2003. For the state, the arrival of cellular phones proved to be beneficial in tracking down militants. However, since 2008, a surge in mass civil uprisings and the use of technology for information dissemination, protests and mobilisation in the state have led to major curbs on mobile services and the internet. The government also relies heavily on human intelligence or "agents" embedded within the population. "Surveillance aided by technology is only a supplement and not a replacement to the human interface," Rajendera Kumar the director general of police in Jammu and Kashmir. In Kashmir, tracking Social Media posts, columnists, or students actively involved in raising their voices against Indian atrocities in Kashmir and abroad is a surveillance tool used to identify and then curtail such voices of dissent. The recent coup of Kashmir Press Club, intimidation, and harassment of more than thirty journalists, anti-terror cases of UAPA against three Kashmiri journalists, Fahad Shah, Gowhar Geelani and Masrat Zahra, terror charges against world renowned Human Rights activist Khurram Parvez manifest the obsession of furthering a particular narrative and controlling the flow of information from Kashmir. Cyber police in Kashmir was expanded shortly after the abrogation of article-370 with the intention of curbing cybercrimes. Since then, the unit has grown into a sophisticated surveillance operation, equipped with advanced technology for tracking down Kashmiris, including more recent monitoring of those who contracted Covid-19 during the pandemic. As SAR Geelani, a professor from Kashmir who teaches Arabic in Delhi University, argued snooping has become elemental to the state's socio-cultural atmosphere, leading to fear and its internalisation. that the state aims to create fear. Geelani, who was given the death sentence in the 2001 Parliament attack case, but was later acquitted of all charges, told a researcher, "Surveillance and politics of fear is part of their social engineering project. They fear togetherness. It is a psychological war."

Torture, Detentions and Politics of Fear

The militarisation of Kashmiri territory, torture, clamping down on demonstrations (often violently) and routine detentions of protestors and activists is a reality Kashmiris know too well. Torture, as an institutional expression of power and social control, is an instrument for states to intimidate or even eliminate enemies and non-enemies. When torture becomes a routine practice of the State, it is a reflection of the State's use of authorized violence and impermissible coercion, practices which are backed by the notions of self-defence, national security and at a broader level, the very survival of the State. Since the acts of torture are an attack on the physical as well as the psychological integrity of a human being, therefore, its prohibition exists across international, regional and national laws. Despite the proscription of torture in both International Humanitarian Law and Human Rights Law, there existed a lack of definition on what constitutes torture. The first instrument to define torture was the UN Declaration Against Torture in 1975. However, the most influential definition of torture is found in Article 1 of UNCAT, which has also been considered to be representative of Customary International Law. It includes an act by which "severe pain or suffering" is intentionally inflicted on a person or a third person with the intention of obtaining "information or a confession"; or as a "punishment for an act committed or suspected of committing"; or on any reason based on discrimination of any kind.

For Kashmiris, Illegal detention, torture and disappearances is the norm and dissent is labelled as political blasphemy. It is estimated that since 1990, around 8,000 men "disappeared" while in custody or during crackdowns. In 2006, HRW reported a similar pattern of state violence and a disregard for basic civil liberties of the Kashmiri people that it had documented 13 years earlier. While a number of laws applicable in Jammu and Kashmir allow for administrative detention, the most commonly used is the AFPSA. Administrative detention is also provided for in other forms such as house arrest, as well as Section 107 read with Section 151 of the J&K Code of Criminal Procedure (1989).As the period of permissible detention is limited in these provisions due to availability of bail, they are sometimes used in J&K only to detain individuals while the paperwork for PSA detention orders or criminal charges are being prepared. PSA provides for detention for a maximum of two years "in the case of persons acting in any manner prejudicial to the security of the State." It further allows for administrative detention of up to one year where "any person is acting in any manner prejudicial to the maintenance of public order". A report by J&K Coalition of Civil Society (J&KCCS) and Association of Parents of

Disappeared Persons' (APDP) said 662 persons, including a former chief minister and sitting MP, were booked under the PSA in 2019.

While torture has been used for reprisals, as a punitive measure, and as a controlling tactic widely and extensively across Kashmir. It is used as a systematic mechanism to create a fear-psychosis in the Kashmiri people and weaken the people's resolve to resist the occupation. India's systemic torture in Kashmir is a grave violation of International Humanitarian Law and Human Rights Law. The International Covenant on Civil and Political Rights prohibits torture and other forms of cruel, inhuman, and degrading treatment. Articles 4 and 7 of the ICCPR explicitly ban torture, even in times of national emergency or when the security of the state is threatened and the government of India is a party to the ICCPR. India is also violating Article 3 in the Geneva Conventions. Torture, hostage-taking, and rape have all been prominent abuses by India in Kashmir, and it is evident that Common Article 3 forbids each of them. Rape also violates the ICCPR and Common Article 3 prohibitions on torture. A report by the JKCCS & APDP in 2019 stated that torture is used against minor children, women, the elderly, students, political activists, journalists–essentially, any common Kashmiri can be picked up and tortured by the Indian army. This is one of the 432 case studies of torture within a new report titled *Torture: Indian State's Instrument of Control in Indian Administered Jammu and Kashmir* – which aims to expose what it calls the indiscriminate and systematic perpetration of torture by the Indian state. Out of the 432 cases, 49 people died during or after torture. Eight were shot dead after being tortured. 209 survivors suffer from enduring ailments like physical weakness and frequent aches, while 49 people reported acute ailments like cardiac and nephrological problems, partial or total paralysis, loss of eyesight, internal organ injuries or have become disabled for life. The report further states that 42 survivors suffer from psychological disorders, like post-traumatic stress disorder, depression, anxiety, insomnia, dementia and memory loss. In 36 cases, victims and their families live in abject poverty, out of whom 27 have suffered from chronic health effects, rendering them incapable of doing physically exhausting work. People's businesses have also suffered due to continued harassment, and many have had to pay exorbitant bribes or extortion money to secure their release. There are also several cases of people having to relocate, to escape threats from state forces.

Four UN special rapporteurs have asked the Indian government to investigate the alleged torture and custodial killings of several Kashmiri Muslim men since January 2019. A report was sent to the Indian government on May 4 over "the continued deterioration of human rights

conditions" in Indian-administered Jammu and Kashmir, documenting several cases of "arbitrary detentions, violations to the prohibition of torture and ill-treatment and rights of persons belonging to minorities." It also reiterates, "We remain deeply concerned about the ongoing human rights violations," said the report shared on the Office of the United Nations High Commissioner for Human Rights (OCHCR) website this week. The report, endorsed by former United Nations (UN) special rapporteur Juan E Mendez, accuses the Indian state of violating international human rights law by practicing torture against civilians, destroying property such as homes, and causing widespread psychological distress. The UN Commission on Human Rights has also called for setting up a Commission of Inquiry (COI) to conduct a comprehensive independent international investigation into allegations of human rights violations in Kashmir. It has released a 49-page report on alleged excesses by security forces in the region.

The first person narratives on the torture trails in Kashmir such as the interview of one Kashmiri citizen unfolds the tragedy on ground. He mentions, "they beat every part of my body. They kicked us, beat us with sticks, gave us electric shocks, beat us with cables. They hit us on the back of the legs. When we fainted they gave us electric shocks to bring us back. When they hit us with sticks and we screamed, they sealed our mouth with mud. "We told them we are innocent. We asked why they were doing this? But they did not listen to us. I told them don't beat us, just shoot us. I was asking God to take me, because the torture was unbearable." Another villager, a young man, said the security forces kept asking him to "name the stone-throwers" referring to the mostly young men and teenage boys who have in the past decade become the face of civilian protests in Kashmir Valley. He said he told the soldiers he didn't know any, so they ordered him to remove his glasses, clothes and shoes. "Once I took off my clothes they beat me mercilessly with rods and sticks, for almost two hours. Whenever I fell unconscious, they gave me shocks to revive [me]. "If they do it to me again, I am willing to do anything, I will pick up the gun. I can't bear this every day," he said. Laws like AFPSA enables the state to impose surveillance in Kashmir, with the aim of subduing the resistance. The unnecessary and excessive interference with, and monitoring of, detainees by police and military personnel even after their release from prison, makes detainees continue to exist in virtual confinement. The surveillance becomes so pervasive that detainees openly claim to experience imprisonment without actually being in prison. Also, their horrific treatment in prison –from forced cohabitation with criminals, to degrading and demeaning treatment inside the jails– is enforced with the intent of establishing Indian authority and making Kashmiri

citizens fear. The experience of the Kashmiris with the Indian security apparatus would be irrefutably familiar to the Palestinian people. Discourses linked to torture and surveillance ring true with the experience of suffering in Kashmir and Palestine. Kashmir thus, is increasingly going the Palestinian way. To end on what Mahmoud Darwish mentions:

The killer looks at the ghost of the murdered, not in his eyes, without remorse. He tells the mob, "Do not blame me: I am afraid, I killed because I was scared, and I will kill because I am scared." A few interpreted the sentence as the right to kill in self-defense. A few shared their opinions saying, "Justice is the overflow of the generosity of power." As if the deceased should apologize to the killer for the trauma he caused him. Others said, "If this incident occurred in another country, would the murdered individual have a name and a reputation?" The mob paid their condolences to the killer but when a foreigner wondered, "But what is the reason for killing a baby?" The mob replied, "Because one day this baby will grow up and then we will fear him." "But why kill the mother?" The mob said, "Because she will raise a memory." The mob shouted in unison, "Fear and not justice is the foundation for authority." (Darwish, 2008, pp. 85–86)

Genocide in Kashmir:

The disastrous and bone chilling memories of Serbian genocide and ongoing Palestinian genocide came into mind when Indian Consul General in new York, Sandeer Chakarborty's recent called for the 'Israel model' in Kashmir. He flagrantly asserted "I don't know why we don't follow it. It has happened in the Middle East. If Israeli people can do it, we can also do it. But Kashmir has already been the throes of the worst bloodbath in its history. Since 1819, when Kashmir slipped out of Muslim hands, it has witnessed many a bloodbath and large-scale misery and persecution. An incomplete listing of the massacres, forgotten by the rest of the world but part of personal and social memory in Kashmir, would begin thus: in 1990, Kupwara, Gawkadal and Basantbagh in Srinagar, Alamgarhi Bazar, Tengpura and Zakoora, Islamia College, Srinagar, Mashalpura, Pazipora (Kupwara), Handwara, Rainawari (Srinagar), and Chrar-i-Sharief; in 1991, Magarmalbagh (Srinagar), Achabal Islamabad, Sopore, Zakoora Nagbal (Srinagar), Pishwari Trehgam (in Kupwara), Khayam, Khhanyar and Pir Dastageer neighbourhoods in Srinagar, Chotanbazar Srinagar, and Safanagri and Nelora (in Pulwama district); in 1992, Aloosa village in Badipora tehsil, Baramulla district, Mohalla Hajama, Talian, Syed Sultanpora, Mahrajpora, and Chinkipora, Lal Chowk, Srinagar, Ishbar locality in the outskirts of Srinagar, Nasrullahpora, adjacent to Budgam, Taj Mohalla of Tral, in Pulwama district, Handwara town of Kucpwara, Kishtwar area of Doda district; in 1993, Sopore in

Baramulla district, Bijbehara, Sopore, the burning of downtown Srinagar in 1993 and Chrar-I-Sharief in 1996; the Salian Surankote massacres in 1998. While Palestine and Kashmir are historically and politically two different contexts with the former having seen a near total annihilation and illegal control over land, it is important to understand from its case the trajectory of a similar project in Kashmir. The colonisation of Kashmir, like Palestine, is not just the influx of a settler population that would derive multiple economic and political benefits at the cost of the natives. It is to be the "crown" of a Hindutva project that wants to make itself the only legitimate sovereign of a people that refuse its control over them. It is to ensure resident status for its forces stationed in Kashmir, to permanently have them deployed and further suppress the freedom sentiment. It is to remove, relocate, eliminate, dispossess, and dehumanise Kashmiris as the coloniser deems fit. The due institutionalisation of this project, carrying out an incremental genocide over the decades, has now in the recent times witnessed a frequency in the number of encounters and the killing of militants. This moment might mark the onset of a decisive shift in the strategy of militants too in terms of dealing with the settlers as a "reaction" to the influx and demographic change.

The talk of Genocide in contemporary scenario in abrogation of article 370 and 35(A) and rising tide of Hindu fascist authoritarian politics traces its history back to post-1947 idea of realizing the dream of Akhand Bharat. Firstly to define, Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) define genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group". As per the definition, Indian inhumane acts in Jammu & Kashmir are part of a larger plan of genocide. Indian security forces are intentionally killing the Kashmiri civilians, using the pellet gun to blind Kashmiris, detaining them in torture camps, raping women, and destroying the physical and psychological conditions of Kashmiri peoples. Since the abolition of the Special Status of Jammu & Kashmir on August 5, 2019, eight million peoples are living in complete siege and no one is immune from the Indian brutality. Gregory Stanton, the founder and director of Genocide Watch, said during a US congressional briefing there were early "signs and processes" of genocide in the Indian-administered Kashmir. Stanton argues, genocide was not an event but a process and drew parallels between the policies pursued by Indian Prime Minister

Narendra Modi and the discriminatory policies of Indian government against Kashmiris. Among the policies he cited were the revocation of the special autonomous status of Indian-administered Kashmir in 2019–which stripped Kashmiris of the special autonomy they had for seven decades. Stanton said the Hindutva ideology was "contrary to the history of India and the Indian constitution and referred to Modi as an "extremist who has taken over the government".

The abrogation of Article 370 and 35A exposed the evil designs of the Bhartiya Janata Party (BJP) to bring a demographic change in the region. The presidential decree stepped down the special status of the state permitting the non-state individuals to purchase property, and secure the government jobs in the region. The change could be disastrous for Jammu & Kashmir, as non-state settlers will largely transform the Muslim majority into a minority. The indigenous peoples bluntly rejected the Indian notion and urged the international community to take notice of nefarious Indian designs. Genocide Watch, a US-based pressure group has issued a genocide alert for the Indian occupied Kashmir. The alert called on the United Nations and the international community to warn India not to commit the genocide in the region, as the ruling BJP is on a campaign to make India a pure Hindu state. The prior genocidal massacres and continuing impunity has also increased the consciousness for a pre-planned genocide and ethnic cleansing in the Indian Occupied Jammu & Kashmir.

As Edward Said argues that the success of Israel's settler colonial project was the coming to fruition of a detailed policy where every single thing was "surveyed down to the last millimeter, settled on, planned for, built on, and so forth, in detail." These details, as we see them in motion in Kashmir, must leave no doubt about the already entrenched practice of settler colonialism of the Indian state over the decades and its hastening in recent times. The recent developments are a continuation of the historical dispossession and violence intrinsic to India's control of Kashmir. These intersecting forms of violence and control form a structure that has been continually upgrading itself, deepening its hold over territory and people—both in life and in death.

Settler Colonialism in Kashmir

After five centuries of settler-colonialism built on the physical, epistemic, and structural annihilation of indigenous peoples, and after the formation of an entire UN to supposedly facilitate a decolonial process after World War II, we have settler-colonial overtures taking place in 2020. As this happens, that same UN, already guilty of allowing the creation of another

settler-colonial state in Israel, passively watches as the Indian state begins making provisions for the movement of settlers to Kashmir. To be genealogically clear, Kashmir was already colonised by India, just as it was starting to leave the clutches of British colonialism and India's settler colonialism in Kashmir is not starting now, eliminating the natives is a process long underway. From controlling space to regulating movement, from land holdings to resource extraction, from neoliberal policies converging with colonial aims to memory erasures and intensive surveillance, the Indian state has been at it for long. The recent developments are only a continuation of the historical dispossession and violence intrinsic to its control of Kashmir. In the immediate recent past, on August 5, 2019, the Indian government for its larger political project revoked the autonomous status of Kashmir by abrogating Articles 370 and 35A of the Indian Constitution and thus initiated a new mode of settler colonialism. The primary objective of settler colonialism, by contrast, is to permanently occupy the colonized territory: settler states recruit settler classes that "bring with them a purported sovereign prerogative to establish a new state on someone else's land." While the laws discussed above are animated by the settler colonial logic, Article 35A's abrogation makes the recruitment of a settler community on indigenous land a reality. The abrogation secures "settler colonialism's specific, irreducible element": "territoriality." Without Article 35A, India can now use the territory of Kashmir for investment, natural resources, and a new community of residents. Settler colonialism is premised on the recruitment of a settler class whose goal is not only to occupy indigenous land but also to eliminate the indigenes who stand in their way. Thus, as non-Kashmiris flood the region as new residents, India's identity as a settler state comes to the fore. Article 35A of the Constitution had a practical function for preserving Kashmiri identity and vested Kashmir's legislative assembly with the sole authority to define "permanent residents." In revoking Article 35A, the Indian government unearthed a fear that Kashmiris had been wrestling with since Independence: that India would increase violence in Kashmir, curtail dissent and recruit non-Kashmiri settlers to dilute the region's ethnic and religious makeup. Around 400 thousand people have been granted domicile certificates in Indian-administered Kashmir till July, 2020 proving right the fears of the beginning of demographic changes in the Muslim-majority Himalayan region. The certificate, a sort of citizenship right, entitles a person to residency and government jobs in the region, which till last year was reserved only for the local population. The whole purpose of revoking Article 370 was to settle outsiders here and change the demography of the state. Now this provides the modalities and entitles so many categories of Indians whose settlement will be legalised in Kashmir.

Invisibilization in and by Law

While the laws discussed above are animated by the settler colonial logic, Article 35A's abrogation makes the recruitment of a settler community on indigenous land a reality. A central feature of the settler colonial project is the eviction of the colonised people from law to render them invisible and further subjugate them. In Kashmir, these measures are not about the absence or suspension of law. Rather, as a lawyer and academic argues, it is about how the law determines "the terms of its own suspension, authorization and application." Thus, lawlessness is institutionalised through the law itself. In curtailing the rights of the natives over land, property, and jobs, the Indian state notified a domicile law (the Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules, 2020) to hasten the process of dispossession and demographic change. The reference to "permanent residents" (with exclusive rights over land ownership and government jobs) as replaced with "domiciles of the Union Territory [UT] of Jammu and Kashmir." In the order, domicile is defined as anyone "who has resided for a period of 15 years in the UT of J&K or has studied for a period of seven years and appeared in Class 10th/12th examination in an educational institution located in the UT of J&K or who is registered as a migrant by the Relief and Rehabilitation Commissioner (Migrants)." The order now permits Indian citizens who have lived in the region for a set period of time to claim a "domicile certificate." The children of those domiciled can also claim their own certificates, even without ever having entered the region. These provisions extend to armed forces stationed in Kashmir and their children as well, making the hundreds of thousands of armed forces in Kashmir a potentially new class of settlers themselves. The Jammu and Kashmir administration's order to withdraw a 1971 circular that made it mandatory for the Indian Army, the Border Security Force and the Central Reserve Police Force to obtain a "no objection certificate" to acquire land in the region is also seen as part of a settler colonial project. Not only has the decrees evoked a sharp reaction among locals, which have long feared Delhi's forceful integration of the restive region with the Indian union, but observers are also accusing Modi's right-wing dispensation of using the Covid-19 pandemic to advance its Hindu settler colonial enterprise in the region, saying it is a page right out of the Israeli playbook to transform the region's demographics. United Kingdom-based Kashmiri lawyer Mirza Saaib Bég argues that "J&K's demography is bound to be altered beyond belief. And at a speed so astonishing that the procedure for issuing a domicile certificate will seem, unfortunately, a quasi-colonial

project". By claiming domicile, these non-Kashmiris can now apply for all local government jobs, including those in police or administration, that were previously reserved for Kashmiris. The August 5 abrogation has also paved the way for exploitative resource extraction in the region. Kashmir's special status ensured that nonlocal businesses were barred from operating in the region without a lease agreement with the government. Starting in January following the abrogation, all mining bids were solicited online at a time when internet connectivity was still restricted in Kashmir. The result was a "death blow to [Kashmiri] business": for the first time, almost seventy percent of mineral extraction contracts in Kashmir were procured by non-Kashmiris. Similarly concerning is the government's ability to designate "strategic area[s]" for military use without the previously required consultation with local government. While the full effects of these reforms are unknown, one thing is clear: J&K is now up for sale.

- **Role of Secretary General United Nation under Article 99 of UN charter**

The above sections pursuant to genocide threat and threshold of the armed conflict between India and Pakistan on Kashmir having far reaching impact on the international peace and security in this situation the secretary general of United Nation can play his role as under.

Of the five articles in the UN Charter assigning functions to the Secretary-General, Article 99 is the most important in the context of international peace and security. It grants the Secretary-General the authority "to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security". In this way, Article ((allows the secretary General to initiate Council discussion.

Secretary-General Dag Hammarskjöld underscored that

"[it] is Article 99 more than any other which was considered by the drafters of the Charter to have transformed the Secretary-General from a purely administrative official to one with an explicit political responsibility". The drafters of the Charter were fully aware of the weight of vesting this task in the Secretary-General: as the report of the UN Preparatory Commission points out, "the responsibility it confers upon the Secretary-General will require the exercise of the highest qualities of political judgment, tact and integrity".

A case Kashmir could be made for the Secretary-General to make greater use of his Article 99 powers today, given that the current Council dynamics could make it difficult to get agreement on discussing emerging conflicts. Bringing such situations to the Council's attention would open up the possibility that the Council might focus on its conflict prevention role and Chapter VII's variety of tools. This, in turn, might lead the Council to take a step closer to fulfilling the promises of the "never again" pledge.

- **Case Under Responsibility to Protect (R2P)**

Professor Lisa Hajjar argues in her publication titled 'Is Gaza Still Occupied and Why Does It Matter?' that

"For stateless people, including those living under occupation, international law is exceptionally important because they have no national law-based alternative to assert, let alone exercise, their right of self-determination. International law provides the point of reference for that and all the other rights they can claim by virtue of being humans."

Among the casualties — with far-reaching implications for other bloody conflicts around the world — are a number of international norms that were supposed to limit the suffering of civilian populations.

The doctrine of "responsibility to protect." Often abbreviated as R2P, holds that the international community does not just have a right but also an obligation to intervene in conflicts where atrocities are committed against civilian populations.

Three-tier process under R2P

The ambit under which the R2P can be invoked explicitly includes humanitarian crisis resulting from genocide, war crimes, ethnic cleansing, and crimes against humanity.

R2P requires a three-tire process involving: the responsibility of each State to protect its populations; the responsibility of the international community to assist States in protecting their populations; and the responsibility of the international community to protect when a State is manifestly failing to protect its populations.

If a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter.

In the context of R2P, the biggest concern in South Asia since 1947 is the prolonged conflict of Kashmir. Civilian population living in disputed Jammu and Kashmir without basic human rights prevails under the shadow of anarchy. The recent onslaught on the semi-autonomous status on August 5th of 2019 has escalated state violence against Kashmiris which itself requires humanitarian assistance. Genocide Watch, a global organisation working for the prevention of genocide, has issued two warning alerts for India — one for the occupied territory of Kashmir and the other for Assam state.

While the doctrine of R2P insists on the fact that the primary responsibility for the protection of populations from mass atrocities lies with the state in charge, it is also built upon the acknowledgement that states do, at times, fail to exercise this responsibility. It is in those cases that other actors, acting as part of the 'international community', will step in.

It seems that non-state actors have a role to play, most particularly when both the State(s) in charge and the UN Security Council are unable or unwilling to take actions to protect a population against the most serious international crimes. As UN Secretary General reminds us on various occasions that the prevention of genocide is both a collective and individuals' responsibility. The same is certainly true of the other R2P crimes.

The available forum for foreign office of Pakistan or any civil society working for Kashmir cause is Global Centre for R2P based in New York working in different conflict regions by mobilizing the international community to act in situations where populations are at risk of mass atrocity crimes.

- **Prosecutor office International Criminal court (ICC)**

The reports on hundreds of mass graves in Kashmir, Torture, hostage-taking, and rape has all been prominent abuses in the IOJK. Both Indian Occupying forces and Jammu & Kashmir police have used rape as a weapon: to punish, intimidate, coerce, humiliate and degrade civilian population.

There is widespread and frequent fighting throughout Kashmir, recourse by the government to its regular armed forces, the organization of indigenous armed rebels into armed forces with military commanders responsible for the actions of those forces and capable of adhering to laws of war obligations, the military nature of operations conducted on both sides, and the size of the Armed rebels and of the government's military forces, which makes Geneva Conventions applicable to the armed conflict in Kashmir but still Indian government argues that it does not meet the threshold for application of Common Article 2 or 3. This is because India has viewed the conflicts it has been beset with as domestic affairs, if above the 'law and order' level but certainly below that of IAC or NIAC. This reluctance is despite Common Article 2or 3 stating that its application 'shall not affect the legal status of the Parties to the conflict. The Judiciary has failed its duty in this context by overlooking 'judicial guarantees' as required by the article.

The situation of conflict that persists in Kashmir and the North-East explains the reasons for the state's anxiety that this manner of violence could be referred to the ICC. Always arguing that the threshold has not reached, India continuously evades application of Geneva conventions.

Some help could have been taken from Additional Protocol II, where a lower threshold in found under Article 1(2) but India has not ratified the same. Even, the inclusion of 'armed conflict not of an international character' in defining 'war crimes' in Article 8 of the Statute for an ICC met with resistance from the Indian establishment. With the broken records of gross human rights violation in occupied Kashmir and the crime against minorities in different state, there is a fear that if India signs Rome statue it would come under the jurisdiction of ICC. However, the Rome status given Sou moto power to Prosecution to take cognizance of international crime without any precondition of having ratification to treaty.

The PROPRIO MOTU (Power of the Prosecutor)

The Atrocity crimes or crimes of aggression perpetrated by India in occupied Kashmir can be investigated by Prosecutor of ICC having Proprio motu power under the Rome Statute. The proprio motu power of the prosecutor is one of the most controversial in the discourse of the states that have refused to ratify the Rome Statute. It can be found in Article 15 of the Rome Statute. It has six paragraphs each related to the other and it discusses how the prosecutor can

initiate investigations. Article 15(1) provides that the Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court. Article 15(2) relates to the process of the preliminary examinations and the means of getting more information. Article 15(3) provides that if the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to thePre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected.

Conclusion and Policy Recommendations:

The world community developed a full-proof mechanism to stop the genocide and ethnic cleansing of communities across territorial boundaries after witnessing the same in Rwanda and Balkans and that is what can be used as a reference point for Kashmir. The then Secretary-General Kofi Annan of the UNGA made pleas to the international community to find a way to stop human suffering. Therefore, the Canadian government in September 2000 established the International Commission on Intervention and State Sovereignty. In 2001, it presented a report on "Responsibility to Protect". In 2005, the UN adopted the R2P commitment with wider support from member states. The UN invoked R2P in certain cases but failed to do so in the case of Indian atrocities in the occupied Kashmir. The Right to Protect concept has developed by the UN to save citizens from the persecution of state and non-state actors. The concept is based on three principles; i.e. states assume sole responsibility to protect citizens, the international community help states to build capacity for protection, and the international community should take timely and decisive action in case of state-sponsored persecution. The Indian massacres in the Jammu & Kashmir require the cognizant attention of the international community, and a serious commitment beyond lip service from Pakistan (party to the conflict) as the Indian occupying forces are systematically and deliberately involved in the gross human rights abuses in the valley. The atrocities have been documented by the UN Commission on Human Rights and other credible human rights groups, yet the inability of the UN to take effective action is questionable. The analysis exposes that the domestic and systemic variables largely influence the UN reluctance to invoke R2P. At the system level, the high politics of economic and military interests of major powers in India and the UN dependence overruled the concerns of human rights abuses in the Jammu & Kashmir. Equally, ascertains that the geography of Jammu & Kashmir largely ignores in the new geopolitical great game of major

powers, and India's rise as a regional hegemon further augment its position in regional political and security architecture. On the other hand, Pakistan's limited capacity, economic instability and domestic instability inhibit it to internationalize the crimes of India. The Indian growing power in the international system and Pakistan's limited capacity to present Kashmir on the international forum making headways for UN failure. Since 1947, Kashmir experienced various episodes of crimes against humanity and ethnic cleansing. The tragedy of November 1947 is most vehement when the Dogra forces with the aide of Sikhs and RSS extremists slaughtered some 230,000 Muslims in Jammu region alone. The second wave of slaughter started from 1989 to 2019 with the killing of around 100,000 innocent peoples in the protracted conflict. Since August 5, 2019, the third episode of massacres is in full swing, as India repealed the special status of Jammu & Kashmir. Abrogation of Article 370/35(A), tortures, detentions, intimidations, killings of civilians in the past decade has increased manifold. This new genocidal framework is a blueprint of the Modi government's plan change the demography and political narrative of Kashmir. The large scale assassination will turn the Muslim majority into a minority and will pave the way for a greater India. Before it is too late, the international community and the UN seriously consider the issue and take decisive and timely action to save the Kashmiri's from the large scale genocide and ethnic cleansing.

Re-Discussing the Concept of Justice and Law

Dr. Ali Khashan

1. Introduction:

The popularity of most governments increases if their political program aims to achieve justice, satisfy the people, achieve their economic well-being, ensure their security as well as achieve justice and equality, and in this regard it is said that the government is good according to the popular assessment when the people are happy, the people have hope and confidence in the judicial system and in the future of their country.[1]

In this context, one of the most important goals of governments is to maintain law and public order, and achieve it, according to a legal system that is linked to the prevailing values and is based on justice and equality, which creates harmony among the members of society, establishes peace and security throughout the country, and increases citizens' trust in the government and state institutions.[2]

Based on the foregoing, and when discussing the idea of law, we find that it is always linked to the idea of justice, which represents the supreme goal that the law seeks to achieve.

In other words, the purpose of the law is to achieve justice as the first virtue of institutional work, as achieving justice is a very important matter.

And it is not just a hope and ambition that governments are working to achieve.

The law is the best way to achieve a just government that is trusted by the people, and the essence of the law is related to justice.[3]

When the laws are just, they take into account the aspirations of the people and meet their desires. It is imperative that there be a fair and smooth application of those laws.[4]

2. Definition:

[1]I. Šarotar Žižek, M. Mulej, A. Potočnik, The Sustainable Socially Responsible Society: Well-Being Society, Sustainability 2021, 13(16), 9186**; https://doi.org/10.3390/su13169186.**

[2] A. Popa, Principles for Good Governance in the 21st Century Policy Brief No.15 By John Graham, Bruce Amos and Tim Plumptre, Copyright, 2003, Institute On Governance Institute On Governance, Canada.

[3]B. Rothstein, E. M. Uslaner, All for All: Equality, Corruption, and Social Trust
Published online by Cambridge University Press: 13 June 2011.

[4] B. Manin,On Legitimacy and Political Deliberation, Volume: 15 issue: 3, page(s): 338-368
Issue published: August 1, 1987.

Definition of justice Controversy usually arises when defining the concept of justice where justice is defined from a different perspective, and justice is defined as what is legal, legitimate and equitable right. Black's Law Dictionary Tenth Edition 3 where it defines justice as: "*Fair treatment of people; the quality of fairness or reason; the legal system by which people are judged and their reasons especially the system used to punish people who have committed crimes. The just and proper administration of law*." [5]

And according to US legal definition: "*Justice is the concept of moral rightness based on ethics, rationality, law, natural law, fairness, religion and/or equity. Justice is the result of the fair and proper administration of law. It is the quality of being just; in conformity to truth and reality in expressing opinions and in conduct; honesty; fidelity; impartiality or just treatment; fair representation of facts respecting merit or demerit. It also can refer to a person duly commissioned to hold court sessions, to try and decide controversies and administer justice.*" [6]

Justice and law, professional ethics, and the prevailing legal system, where each person guarantees his right to the existing system, and justice and equality represent one of the existing problems and obstacles to the implementation and application of justice in many countries.[7]

The Rule of Law is more than just a team of global experts of lawyers and judges, but it is also a dedicated team of management, logistics, finance, security and systems experts who work together to implement essential programs for the rule of law, human rights and justice. Achieving justice and the rule of law must be at the same time strategic, flexible, professional and highly ethical in working in complex countries, especially in the countries of the so-called Arab Spring, to achieve results. It is a huge challenge for anyone. Despite what happened and is happening in Egypt, Libya, Yemen and Syria, the situation now in Tunisia is more complex than some imagine, despite the great hopes placed on this country. However, the recent developments threaten the decline of democracy and predict dangerous developments that may bring to mind the anti-Ben Ali rule. It is in Tunisia that the situation becomes more complex, difficult and rewarding more than everyone expects.[8]

[5] Black's Law Dictionary Tenth Edition 3
[6] Uslegal.com definitions.uslegal.com/j/justice/
[7] S. Sheppard, LAW, ETHICS, AND JUSTICE, The University of Arkansas, Fayetteville, Arkansas, USA, See Law, Ethics, and Justice (eolss.net).
[8] W. Hammink Aba's rule of law work in Tunisia and Libya 'more complex, challenging, difficult and rewarding than I ever expected', JULY 25, 2019, American Bar Association.

Part of the reasons for these obstacles, and obstacles to the implementation of justice are often represented by lawyers, judges and legislative bodies who are more involved in the proceedings than in achieving justice for all.[9]

As it is said, "*Delaying justice is a denial of justice, which finds its application through long and cumbersome procedures, the lack of courts and judges, the backlog of cases, the clogging of the system with unfounded cases, and the use of courts to settle matters that can be resolved through alternative dispute resolutions. Also, lawyers always try to postpone because of or without cause and judges who fail to cut unnecessary proceedings are all eroding factors of justice*".[10]

Justice is a legal system through which a person takes his or her dues, including rights, whether natural or legal, based on the principle of reward and punishment, by protecting the rights of the individual and punishing when violating the laws, all legal systems seek to be fair in the application of laws in the state despite the difficulty of this, as there may be many unfair laws.[11]

Justice is one of the human values urged by Islam, and made it one of the basics of individual, social, family and political life. Islam has made the establishment of justice a goal for all divine messages; Islam also showed that justice is not affected by love or hate, or by position or family relationship. It does not differentiate between a Muslim and a non-Muslim.[12]

Rather, it is granted to all human beings regardless of money and prestige. Therefore, Islam forbids oppression, especially the oppression of the strong against the weak. It is also worth noting that justice with non-Muslims is an obligation for every Muslim, and Islamic legislation does not know injustice, as the Prophet Muhammad said in what he narrates about God, "*O My servants! I have forbidden oppression for myself and made it forbidden among you*."[13]

3. Justice crisis between domination and independence:

[9] D. L. Rhode, *Access to Justice*, 69 Fordham L. Rev. 1785 (2001).
[10] E. Newburger, Lawyering and justice in a world that we know is riven by injustice,Harvard Law today, March 22, 2022.
[11] L. M. Friedman ,Total Justice, New York, 1985**,** p. 43.
[12] G. Williams, J. Zinkin, Islam and CSR: A Study of the Compatibility Between the Tenets of Islam and the UN Global Compact, *Journal of Business Ethics*, volume 91, pages519–533 (2010).
[13] A. H. Usman, A. Z. Ismail, M. K. Soroni ,R. Wazir Rise and Fall of Development: How does Hadith Views on Economic System? Asian Social Science; Vol. 11, No. 27; 2015 ISSN 1911-2017 E-ISSN 1911-2025 Published by Canadian Center of Science and Education.

The issue of the independence of the judiciary has been occupied by jurists, thinkers, legislators, academics, politicians and philosophers whose ideas have emerged with creative solutions that emphasize the independence of the judiciary and show the importance of justice for citizens, society and the state.[14]

When discussing the issue of the dialectical relationship between law and justice, problems arise that plague judges and those working in the judiciary and justice, as the judiciary is unfortunately not seen as an independent authority of the three state authorities, as stipulated in constitutions and laws concerned with judicial affairs, but the judiciary is considered as an official function of Government functions are controlled by the executive authority as it wants and however it wants and desires.[15]

Based on the foregoing, developed countries are interested in choosing the right guardian of justice from among the judges, with absolute transparency, away from abhorrent quotas, political or ideological affiliations, or relying on personal knowledge and nepotism, So that the balance of justice is not affected, and the sanctuary of justice remains pure and undefiled.

The proper application of the law and ensuring the achievement of justice requires that judges be independent in their judgments and will. [16]

The Judges are governed by their conscience, not affected by any political, financial, social or professional interference, they are subject in their work only to the law, they are not subject to the censure or influence by the president or the government, any action from the executive authority does not frighten them, threatening or intimidating and Do not dissuade them from their opinion, promise, or encouragement.

The crisis of justice lies in the unjustified interference in its affairs by those in charge of it first before we talk about the other authorities.

[14] R Pound, ML DeRosa - An Introduction to the Philosophy of Law, taylorfrancis.com ,2017
[15] T. Moustafa,The Struggle for Constitutional Power: Law, Politics, and Economic development in Egypt, Cambridge University Press.2007.
[16] G. O'Donnell, The Quality of Democracy: Why the Rule of Law Matters**,** Journal of Democracy Johns Hopkins University Press, Volume 15, Number 4, October 2004,pp. 32-46.

One of the most important components of the good conduct and organization of the judiciary, its integrity, and impartiality lies in its independence and non-interference in its affairs even by those who are unfairly affiliated with it.

The judiciary was not, it may not be an arena for settling personal, factional, and political accounts, or those accounts combined.

If justice is the basis of governance, then the independence of the judiciary is the basis and guide of justice.

For this reason, the independence of the judge has not been considered a privilege for him, but rather an important pillar that ensures the achievement of justice and embodies the principle of the rule of law. The principle of judges' inability to be dismissed is one of the most important guarantees stipulated in constitutions, which guarantees the independence of judiciary and judges.[17]

The judge, who fears impeachment, strays from the path of truth and justice. And the judge who is insecure in his future will not be able to carry out the thought and elicit judgments, nor will he be able to issue judgments with confidence and comfort.[18]

The real ordeal of justice lies in the fact that laws in some countries make the dismissal and removal of judges in the hands of their colleagues under the guise of immunity and within the framework of false guarantees that lack legitimacy.

Arrest or dismissal of judges procedures must be in accordance with applicable international standards and rules of judicial conduct, and judges may not be dismissed according to illegal procedures and by using unconstitutional methods.

The judiciary is not a political institution that can deal the executive authority often raises the slogan of judicial reform as a goal it wants to achieve, based on the belief that the judiciary is an obstacle to achieving justice, or that it constitutes an obstacle in the way of establishing constitutional institutions, especially with successive judicial failures.[19]

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[17] J. P. Terhechte, Judicial Accountability and Public Liability—The German "Judges Privilege" Under the Influence of European and International Law, German Law Journal, 2012 - Published online by Cambridge University Press: 06 March 2019.

[18] A.D, Hellman - Justice O'Connor and the Threat to Judicial Independence: The Cowgirl Who Cried Wolf, Arizona State Law Journal, Vol. 39, p. 845, 2007 .

[19] J. Ferejohn, Judicializing Politics, Politicizing Law,Law and Contemporary Problems,Vol. 65, No. 3, The Law of Politics (Summer, 2002), pp. 41-68, Duke University School of Law.

With the importance of judicial reform and its role in achieving justice, it must be based on clear and fair rules, and judicial reform should not be aimed at illegally dismissing judges. Society will not survive if judges and jurists are oppressed and controlled by others in the name of justice.

Justice is the basis of governance, and there is no justice without the independence of judges and the judiciary. It is not correct to talk about the crisis in the justice sector without talking about the parties to the crisis and the actors in it, such as the Judge's Syndicate, which is a union for judges to defend them. Interests and defending the independence of the judiciary, the Bar association, the Public Prosecution, and others, we will address them successively.[20]

Despite the importance of the independence of the judiciary, which we have emphasized repeatedly, this does not negate what exacerbates the crisis.

4. Justice human rights and democracy

Human rights and democracy reinforce each other, although regional developments require the observance of the legitimacy of international human rights to explore how human rights and democracy can be re-coupled, once they are separated or separated, or reunified across the levels of government in the state.[21]

There are many questions that arise about the political-ethical nature of human rights and their relationship to political equality, and also about their legal nature from the perspective of democratic theory. Then the question related to the implications at the local or international levels of legal recognition and determination of human rights with reference to their legitimation within a democratic society at the national or local level.

It is necessary to talk about the interrelationship between human rights and the rights of citizens and from where international human rights derive their democratic legitimacy.[22] Possible changes in the nature and legitimacy of international human rights once political structures outside the state become more democratic, and human rights and democracy are restored again at different levels of government.

[20] *D, Piana,* Judicial Accountabilities in New Europe,From Rule of Law to Quality of Justice, Lodon, 2010.
[21]R. Bellamy, Political constitutionalism and the Human Rights Act ,Oxford academic, International *Journal of Constitutional Law*, Volume 9, Issue 1, January 2011, Pages 86–111.
[22] C. C. Gould ,Globalizing Democracy and Human Rights, Cambridge,2004.

The relationship between human rights and democracy is among the most classic questions in political and legal theory. The importance of human rights in democratic legislation emerges, but the most important question revolves around judicial review based on human rights.

It is the applications of human rights that trouble philosophers and jurists in the field of law and politics, because scientific applications go to the practical separation between human rights and democracy, with jurists always trying to link them.

Among the reasons for addressing this classic question again and since 1945 is the progressive internationalization of human rights and democracy, thus severing the direct links that could be there at the local level.[23]

Human rights and international democracy were separated because democracy and human rights were not supposed to be united, at least initially, in a newly created regional or global supranational state or in any kind of supranational political society. The question that political theorists face is how to adapt their calculations of the relationship between democratic legitimacy and human rights when human rights or democratic processes or even both are international.

It is not only about how to make these calculations move to the international level, but also back to the local level when applying international human rights in the local context.

5. The goals of Law and achieving Justice?

The law seeks to achieve many goals; we focus on a number of them in this matter:[24]

1. Maintaining order:

It is said that the law sets the standards that seek to build a conscious and civilized society, and this is reflected in the philosophy that defines the legislative process to formulate a law capable of protecting the security and public order, and this must be reflected in all its members, and the important thing here is the need for the law to be consistent with the community of the guiding principle when it is implemented and put into practice.[25]

2. Standard setting:

The law is the one that regulates behavior and sets the minimum acceptable behavior in society.

[23] D. P. Forsythe, Human Rights in International Relations, Cambridge, 2017.
[24] D. M. Grommet, J.M. Darley, Punishment and Beyond: Achieving Justice Through the Satisfaction of Multiple Goals, Law & Society Review, Volume43, Issue1, March 2009,Pages 1-38.
[25] F. A. Hayek Law, Legislation and Liberty, Volume 1: Rules and Order, Chicago, 2011.

Therefore, most of what individuals do is permissible and the law determines the activities that are considered a crime for society often these activities harm people or property and sometimes put aggravating or mitigating circumstances on the actions according to the nature of the act or behavior and whether it was intended or not.

That is why the law sets some criteria to determine whether or not it will tolerate behavior that may constitute a crime, and defines the nature and conditions of those standards.[26]

3. Conflict Resolution:

Society is made up of people with many different types of wants, aspirations, needs, values, etc. Therefore, those needs and desires may collide, which requires the intervention of the state through its various arms, and the law gives an official means to resolve disputes that are subject to the court system, and the laws aim in their relentless pursuit of justice through official methods and other alternative solutions to settling disputes.[27]

4. Protection of Freedoms and Rights:

The constitutions and laws of most countries are keen to provide protection for various rights and freedoms, in terms of constitutional and legal guarantees for those rights and freedoms. In addition, and in principle, these texts are not limited to theoretical protection only, but one of the functions of the law is to protect many rights and freedoms from violations or interference by organizations, persons, or the government.[28]

If an individual believes that freedom of expression is prohibited by the government, or that his protected rights and freedoms have been violated, he can pursue the matter by going to court and filing a case before courts to prevent the violation of his rights and freedoms or some of them.

This indicates the close relationship and interdependence between law and justice, but this matter requires an independent, impartial, and just judiciary, and away from government interference in it.[29]

Otherwise, the pillars of justice will be shaken and it will be difficult to achieve justice.

The relationship between law and justice is critical and for this it was necessary to clarify the controls related to law and justice, for a good and effective application of the law and thus to

[26] D. Levi-Faur, Regulation and regulatory governance, Handbook on the Politics of Regulation, Cheltenham, 2011.

[27] J. A. McGregor, L. Camfield, A. Woodcock, Needs, Wants and Goals: Wellbeing, Quality of Life and Public Policy, Applied research in Quality of Life, volume 4, Berlin, 135–154 (2009).

[28] *M, C. Nussbaum*, Justice and the Capabilities Approach, Capabilities, Entitlements, Rights: Supplementation and Critique, 1st Edition, 2012.Chapter 4.

[29] C. F. Edley, Administrative Law: Rethinking Judicial Control of Bureaucracy**,**Yale, 1992.

determine the cooperation of the law with accepted practices, to know the general standards that the law must modify or exceed, because without the real practice of law, no Justice can be achieved.

To achieve justice, we must settle the unstructured matters that exist in the courts and other organs that apply the law, which is why the term “law” refers to justice, morals, and order.[30]

Based on the foregoing, the law sets the rules and guidelines for society, and provides justice to individuals who have been subjected to injustice, and has stipulated that it protects us from our government. In particular, the law likewise gives a system for determining discussions arising from those obligations and rights and allows assemblies to support safeguards in the courtroom.

6. Can the constitution be violated when justice requires it?

This question, which President Abraham Lincoln faced as he fought a war to end slavery, is still very much alive today.[31]

In his newly published book, "The Broken Constitution: Lincoln, Slavery, and the Refounding of America," Harvard Law Professor Noah Feldman states that the Charter, originally drafted in 1787, has been repeatedly violated by US President Lincoln, as Winning the Civil War required Lincoln to make a moving compromise to preserve and expand the institution of slavery, a practice that even most drafters of the time admitted was morally, repugnant. Indeed, in his first inaugural address in March 1861, he made history in the name of the great liberator vowing not to interfere with the institution of slavery, saying, "*I believe I have no legal right to do so, and I have no inclination to do so*." But in less than two years, with the stroke of a pen he announced the release of all the slaves, men, women, and children living under Confederate rule.[32]

It is believed that Lincoln drafted a new constitution, based on justice and divorced from the tainted document he had inherited. Lincoln's decision to break with an unjust system of government was not only morally justified, but it could also serve as a role model for people today, to illustrate his point of view on the logic of upholding outdated and unjust laws.

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[30] A. D'Amato, On the Connection Between Law and Justice, Northwestern University School of Law, 2011.
[31] J. Neal, In a conflict between justice and the Constitution, ‘why should the Constitution prevail’? November 16, 2021
[32] *A. Sailor, P. Larkin, T. Sandefur, A. Guelzo, S. Wilent, L. Morel,* Slavery and the Constitution,the heritage foundation, 2021.

7. Justice and legitimacy and the rule of law

This brings us to another important topic, which is the relationship between justice and legitimacy.[33]

Justice and Legitimacy in Contemporary Liberal Thought Liberalism require the same necessary and sufficient conditions of justice and legitimacy, and in doing so obscures its evaluative distinction, arguing that the priority given to the liberal theory of justice, understood as a moral concept, has led to a failure to appreciate the multifaceted political nature of legitimacy. By recognizing this nature, including the various (political) circumstances in which the demand for legitimacy arises and the needs to which it responds, this theoretical impasse can be overcome.[34]

Perhaps one of the most important features of the modern state is its quest to be a legal state, which requires extending the rule of law to everyone.

The importance of the relationship between the concept of the legal state and the principle of legality is shown by obligating both the rulers and the ruled to submit to and respect the provisions of the law, which consequently embodies the so-called state of law.

The principle of legality is manifested in the supremacy of the rule of law and the supremacy of its provisions and rules above all wills, whether it is related to the will of the ruler or the ruled.

Based on the foregoing, contemporary countries are trying hard to appear as a legal state By stipulating in its constitutional documents the principle of the rule of law, the supremacy of the constitution, respect for public rights and freedoms, stipulating the principle of separation of powers, and emphasizing the principle of judicial independence.

This is despite the fact that the practical application in some of those countries violates those constitutional provisions.[35]

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[33]W. Hinsch, Legitimacy and JusticeA Conceptual and Functional Clarification, Political Legitimization without Morality? pp 39–52, Berlin.

[34] M, Sleat**,** Justice and Legitimacy in Contemporary Liberal Thought A Critque, Social Theory and Practice Volume 41, Issue 2, April 2015,

[35]GM Danilenko,, Implementation of international law in CIS states: theory and practice, *European Journal of International Law*, Volume 10, Issue 1, 1999, Pages 51–69, Oxford.

Therefore, it is not surprising that we see the best constitutional texts in developing countries and third world countries, including Arab countries, while the practical reality shows the spread of authoritarian rule and the individual monopoly of power.

In addition, the practical reality shows that the judiciary cannot impose its control over many of the actions carried out by the executive authority under the pretext of the so-called "*acts of sovereignty*" or the sovereign actions of the government.

Likewise, the executive authority interferes in the work of both the legislative and judicial authorities, without a constitutional basis and without any regard for constitutional supremacy or the principle of legal hierarchy.

The principle of legality requires the state's respect for the law, that is, the necessity for it to carry out the actions that the law dictates the necessity to implement and perform them, since the state's failure to perform these actions or its silence in performing them is considered a negative and illegal behavior and accordingly, the executive authority, like other authorities in the state, must respect all legal rules in force in the state, regardless of the nature of the existing political system and the applicable constitutional system, and to abide by them in all its positive and negative actions.[36]

This principle represents the top of the basic guarantees of the rights and freedoms of peoples, as it crystallizes all the gains that peoples have been able to achieve throughout history in their struggle with the ruling authorities to force them to give up all manifestations of absolute rule.

Regarding the form of the state, it includes the democratic state as well as states that adopt the absolute monarchy as long as they are subject to the law; otherwise, it is considered a police state.

As for the practical necessity, it is based on the fact that the legal rules enjoy generality and abstraction, which means that their application will achieve peace for all, provides justice and equality.

7. Conclusion:

[36]TRS Allan Judicial Deference and Judicial Review: Legal Doctrine and Legal Theory, Law Quarterly Review, Vol. 127, Issue 1 (January 2011), pp. 96-117

By discussing the relationship between law and justice, it was evident that the existence of legislative texts which guarantee the rule of law by protecting individuals from the abuse of governments is not sufficient.

Rather, there must be a government capable of imposing order and respect for the law, as well as a good government that implements laws and sets regulations and decisions that contribute to the care and stability of this principle and achieve justice.

And to do everything that would implement such legislation in accordance Due Process of Law, The Universal Declaration of Human Rights issued by the United Nations General Assembly in 1948 gave the utmost importance to this principle, to the extent that its neglect by any state makes it a police state.

So that the actions taken by States must be consistent with the principles of customary international law and the Charter of the United Nations, as well as with the advisory opinions of the International Court of Justice, States must also refrain from adopting unilateral coercive measures that violate their human rights obligations under treaty law or customary international law.

Some jurists, influenced by the ideas that prevailed during the French Revolution, have gone to say that the law is the expression of the general will of the people or the nation, and it is one of the most important powers constitutionally granted to the legislature, which is authorized to put it in accordance with the methods and mechanisms specified by the constitution.

Of course, the regulations come out of this description as administrative and not legal decisions, and include decrees and decisions issued by the executive authority and public administration, as they were not made by the people or their elected representatives, despite their general, abstract, binding and impersonal rules, and we believe that this opinion is dangerous and threatens the justice and the principle of the rule of law and leads to sacrificing the rights and freedoms of individuals in favor of the administration and the governing bodies, an opinion issued by the dictatorial environment where lives and under which some jurists who are looking forward to satisfy the president and enable him to extend his powers without accountability or supervision, and thus affects public rights and freedoms, squanders moral standards and harms justice.

This comes in light of the ongoing debate between legal and political jurists to extrapolate the boundaries of the relationship between democracy and the legitimacy of the state in the Arab

political systems as a result of the Arab state model's loss of the concept of legitimacy in its two parts, i.e.[37]

the legitimacy of existence because this type of states in the Arab region is lacking in legitimacy "constitutional legitimacy or The legitimacy of performance" as well as the legitimacy of survival and continuity, which made these countries unable to embody citizenship issues and develop the collapsed relationship between individuals and the state and thus the inability to win the satisfaction of their citizens and their confidence in the nature of the existing system or in individuals alike. The real goal of making laws in some countries is to protect the ruler (president, King, etc.) and grant him immunity that prevents his accountability.[38]

Within the scope of the research and debate on the principle of legality and the principle of the rule of law, some jurists go to say that the principle of legality is a sub-branch of a higher principle, the principle of the rule of law. Thus, it makes the principle of the rule of law more comprehensive and broader than the principle of legality.[39]

Finally, we see that the congruence between the principle of legality and the principle of the rule of law, or the difference between them, is due to the angle that each jurist looks at and the nature of the applicable legal system.

Also, historical circumstances have played an important role in the definition, whether it was from France, England or the United States of America. Undoubtedly, the political developments in those countries and the expansion of the scope of intervention contributed to the development of the definition that prevailed and opened the way for the government to extends the scope of oversight to include all those decisions, decrees, or regulations issued by the administration, regardless of the circumstances in which were taken, and whether they were normal or exceptional circumstances.

In Palestine as example, it has stipulated in Article Six of the amended Palestinian Basic Law of 2003 and its amendments of 2005 that the principle of the rule of law is the basis of governance in Palestine and that all authorities, agencies, bodies, institutions and persons are subject to the law.[40] Individual rights and freedoms, affirmed the independence of the judiciary,

[37] C. Miro (2009) "The Relationship Between Law and Politics," *Annual Survey of International & Comparative Law*: Vol. 15 : Iss. 1 , Article 3.
[38] VV.AA., The Legitimacy of the State in Fragile Situations Commissioned by Norad and French Ministry of Foreign and European Affairs Norad Report 20/2009 Discussion, 2015.
[39]I. SALEVAO, Rule of Law, Legitimate Governance & Development in the Pacific, Camberra, 2005.
[40] The Basic Law | The Palestinian Basic Law, The Basic Law of 2005 Concerning the Amendment of Some of the Provisions of the Amended Basic Law of 2003.

and prohibited the provision in laws to immunize any decision or administrative action from judicial oversight.

But in Practice most of the Arab countries affects the principle of the independence of the judiciary, which is part of the human conscience and one of the principles without which justice cannot be achieved and it is not permissible to deviate from it or deny it.

As we mentioned Most of the third world countries including Arab countries doesn't deal with the judiciary as an independent authority of the three state authorities as stipulated in the constitutions and laws , but rather Looking at the judiciary and dealing with it as an official function of the state, controlled by the executive authority, either in implementation of a political desire or pursuant to legal advice or at the request of a governmental or security apparatus, the chief Justice position as President of the Supreme Judicial Council became a judicial advisor in the presidency.

The executive authority should stop its intervention on the judiciary so that the balance of justice shall not affected, and that the sanctuary of justice remains pure, undefiled, and far from the whispers of the executive authority, and any violation of these rules renders the decisions in violation unconstitutional.

The jurist, Maurice Hauriou, who is considered the one of spiritual father of French administrative law, was one of the most enthusiastic of the theory of necessity, and made this theory a legal basis for the state's right to legitimate defense.[41]

Despite what has been said of important jurisprudential opinions, it should be noted here that researching the legitimacy of the executive authority's behavior, whether under normal circumstances or exceptional circumstances in developed countries, has a different situation, as these countries have constitutional, political and judicial guarantees and oversight that can protect The prevailing legal system, and this is not available in many legal systems in the third world including Arab countries, where the individual system prevails and the public interest declines, with the difficulty of having a practical criterion to verify the purpose and goal that

[41] C. Berry Gray, the philosophy of Maurice Hauriou, Concordia, 1983.

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the ruling authority wishes to achieve, and this would shake people's confidence in their existing constitutions, rather In all the public authorities in those countries.

The French jurist André Hauriou sensed the relative low value of the constitution in the contemporary political world, when he noticed that the increase in illegitimate constitutional procedures, and even the legitimacy that contradicts the texts of constitutions, helped to degrade the value of these constitutions.[42]

Also, in Western countries, coherent party systems emerged, it mostly carries out some of the burdens of governance and managing the relations between the authority and the citizens, so that it can be said that the borders and political parameters overshadowed the legal rules. In some societies from third world countries, the constitution is considered a hollow appearance, while the reality of the powers is in the hands of the ruling party and about the decisions taken by the party leaders. Therefore, the constitution in those countries is considered camouflage, and a deceptive democratic appearance behind which the tyrannical authority hides. Where the explicit violation of the laws and the provisions of the Constitution strip the state of its legal status and put it in the ranks of the police states.

That's why the judiciary must intervene in this case to cancel the violating decision. Therefore, the violation of the provisions of the law by the executive authority results in the invalidity of its work, whether the work is material or legal, and thus leads to the termination of the work and the removal of its effects. Without this, it cannot be said that there is real justice, even if the constitutions stipulate that in theory.

[42] André Hauriou, *Droit constitutionnal et institutions politiques*. Paris, Montchrestien, 3ème éd., 1968.

Criminal Protection of Cultural Property in the City of Jerusalem and the international Humanitarian Law

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Introduction:

The criminal protection of cultural properties was met by significant international interest, spatially after the humanity suffered and still suffer from grave abuses and violations against cultural and religious properties.

Due to the historic importance of cultural and natural global heritage, ensuring its criminal protection is not the responsibility of national legislations only, but should be also ensured by international criminal protection in accordance with international legislations and conventions because it is the ownership of the entire humanity.

Since criminalization and penalization philosophy for cultural property criminal protection was set to achieve the social defense dimensions that reflect a new philosophy directed to the protection of tangible, literary and cultural values required to safeguard the community structure.

First: Importance of the Research:

The importance of this research lies in highlighting the position of international conventions on criminal protection of antiquities in general and in the city of Jerusalem under the occupation in particular. The study is also important to clarify the position of the 1954 Hague Convention for the Protection of Cultural Property in terms of the reinforcing forms of public and private protection. The importance of the study lies also in obliging the states parties to undertake necessary measures that ensure the prosecution of persons who violate the provisions of this convention through imposing criminal and disciplinary penalties on them.

Second: Subject of the Study:

1. The subject of this study lies in determining the bases and criteria for criminal protection of antiquities in Jerusalem, in accordance with national legislations applied in the occupied Palestinian territories and the international conventions relevant to criminal protection of antiquities in the city of Jerusalem.
2. The Israeli attacks on antiquities in the city of Jerusalem and clarification of Israel's commitment as an occupying power to the criminal protection of antiquities.

Objectives of the Study:

1. This study aims to know the Palestinian antiquities in the city of Jerusalem and the general provisions for criminal protection of antiquities in accordance with relevant international conventions.
2. This study aims to identify the criminal dimensions of the protection of antiquities in the city of Jerusalem based on international conventions.

Third: Research Methodology:

This study is based on analyzing the texts of international conventions related to criminal protection of antiquities during the occupation period and clarifying Israel's responsibility for its violations of the provisions of these conventions. and highlighting the resolutions issued by relevant international conferences.

Search Plan:

The study of this subject is conducted based on the following plan;

Chapter One: The legal status of Jerusalem and international humanitarian law

Chapter Two: The scope of applying the provisions on the protection of cultural property in the city of Jerusalem.

Chapter Three: International Criminal Responsibility on Israel for crimes committed against cultural, religious and archaeological property in Palestine.

Chapter One: The Legal Status of Jerusalem and International Humanitarian Law

Based on the importance of cultural property as part of the cultural heritage of the country to which it belongs as well as for all of humanity, the rules of international law have established the need to protect them in times of peace and war. Among the most important relevant international conventions is the Hague Convention of 1899, 1907 and 1954 and its additional protocols of 1999, as well as the four Geneva Conventions of 1949 and their two protocols of 1977 to the protection of cultural property[1].

The legal status of the city of Jerusalem is clear from the fact that the military occupation is the ability of a belligerent state to enter the territory of the enemy and taking control over it in total or in part of it effectively[2]. According to the text of Article (42) of the Regulations Concerning the Laws and Customs of War on Land of 1907, the belligerent occupation was defined as follows:

"Territory is considered occupied when it is actually placed under the authority of the hostile army.
The occupation applies only to the territory where such authority is established, and in a position to assert itself".

According to the Hague Regulations Concerning the Laws and Customs of War on Land, the territory is considered occupied when it is actually placed under the authority of the hostile army or the military leadership of the latter, and that the power of government has moved to it on the ground. The occupying power must take all possible measures to restore and ensure

[1] See Dr. Ahmed Abu Al-Wafa, Public international law; 4th edition, Dar Al-Nahda Al-Arabiya; Cairo, 2004, p. 855.
[2] See Dr. Ali Sadiq Abu Heif; Public International Law, 12th edition; Monchaat Al Maaref Alexandria, p. 826.

safety and public order, with the need to respect the law in force in the country on the eve of the occupation[3].

The belligerent occupation is based on legal foundations and rules, the basis of which is that it does not result in the transfer of sovereignty rights over the territory of the country that owns that territory to the occupying power. The sovereignty of the first state remains, even if it has ceased over the occupation period, and it shall be exercised in place by the occupying power. It is not permissible for the occupying power to transform this actual situation resulting from the occupation to a legal status by annexing the territory to it.[4]

After the defeat of the Arab countries in the June 1967 war and the occupation of East Jerusalem by the Israeli occupation forces, and with the aim to unify Jerusalem and consider it the eternal capital of the State of Israel. and extending its control based on the seizure of others' territories by force after occupying its other parts in 1948 in order to prevent taking the Holy City as the capital of the Palestinian state[5], The Israeli Parliament (the Knesset) contributed to the policy of perpetuating and confirming the annexation of East Jerusalem to Israel, not only through legislations issued by it; but also through decisions it made on more than one occasion[6].

According to the text of Article (47) of the Fourth Geneva Convention of 1949 regarding the protection of civilians at the time of war, it constitutes one of the important instructions in the context of annexations, and this article states the following:

"Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory".

[3] See Dr. Ahmed Abu Al-Wafa, Public international law; op. cit., p. 754.
[4] See Dr. Muhammad Hafez Ghanem; Public international law principles; Al Nahda Al Jadida Press, Cairo, 1967, p. 744.
[5] Dr. Khaldoun Abu Al-Saud, The impact of the Israeli occupation on the right of Palestinian sovereignty over Jerusalem in accordance with international law, 1st edition, Human Rights and Democracy Media Center; SHAMS, Ramallah, 2010, p. 50.
[6] Osama Halabi, The legal status of Jerusalem city, Institute for Palestine Studies, Beirut, Lebanon, p. 27.

One of these changes set out in Article (47) is "Any form of annexation… in the whole or part of the occupied territories" by the occupying power.

It is important to point out here that the text on annexation in Article (47) cannot be considered an implicit recognition that gaining sovereignty through annexation is legal.[7]

Contemporary international law affirms during armed conflicts and belligerent occupation the necessity of applying the provisions of international humanitarian law, both customary and contractual provisions. This means that the provisions of the international humanitarian law must be applied to the Palestinian territories occupied in 1967, including East Jerusalem[8].

This was confirmed by the Advisory Opinion issued by the International Court of Justice in 2004 regarding the legal consequences arising from the construction of a wall in the occupied Palestinian territories, which emphasized the inadmissibility of the acquisition of territory by force and reaffirms the applicability of the Fourth Geneva Convention as well as the additional Protocol I to the Geneva Conventions on the occupied Palestinian territory, including East Jerusalem.[9]

The advisory opinion also confirmed that the actions carried out by Israel, the occupying power, to change the status of the occupied holy Jerusalem and its demographics does not have legal validity and is null and void.[10]

The International Court of Justice also confirmed that since 1967 until now. Israel has taken a number of measures in these territories aimed at changing the status of the city of Jerusalem. After the UN Security Council indicated in several occasions (the principle of the

[7] See attorney Yotam Ben Hillel, the Norwegian Refugee Council. The legal status of East Jerusalem, December 2013, p. 18.
[8] See Dr. Nizar Ayoub, The Palestinian Intifada and the Israeli Supreme Court, Nadia for publishing, printing, advertising and distribution, Al-Haq, Ramallah, 2003; p. 13.
[9] Marco Sassoli and Antoine Bouvier, How does law protect in war?, The International Committee of the Red Cross, 1st edition, The Regional Advertising Center, Cairo, 2011, p. 87.
[10] Marco Sassoli and Antoine Bouvier; Ibid, p. 88.

inadmissibility of acquiring a territory by armed force), it condemned those measures. and the Council, under Resolution 298 of 1971, affirmed in the clearest possible terms that: "all legislative and administrative measures that were taken by Israel to change the status of the city of Jerusalem, including the confiscation of land and property, transfer of population and the legislation aimed at annexing the occupied part, are totally incorrect and cannot change that status."[11]

We note that the rule preventing the annexation of occupied territories as a result of military operations is one of the war law rules. This affirms that occupying part of other party's territory after the signing of the Hudna (ceasefire) agreement is a military occupation. It also prevents the state that did so from annexing the occupied territories and it prevents other countries from recognizing this annexation or setting the necessary legal effects for such an annexation.[12]

Furthermore, the International Court of Justice notes that the states party to the Fourth Geneva Convention agreed to the interpretation of the convention on July 15, 1999. They issued a statement in which they "reiterated the validity of the Fourth Geneva applicability to the occupied Palestinian territories, including East Jerusalem"[13].

In light of the foregoing, the International Court of Justice considers that the Fourth Geneva Convention applies to the occupied territories in the event of an armed conflict taking place between two or more High Contracting Parties. Israel and Jordan were two parties to that Convention when the conflict broke out in 1967 and thus the Court considers that the Convention applies to the Palestinian territories that were located to the east of the Green Line before the outbreak of the conflict, that were occupied by Israel during the conflict, as there is no need to discuss the exact previous situation to those territories.[14]

Therefore, and based on the principles of international law and international humanitarian law and the resolutions issued by the Security Council and the United Nations General Assembly

[11] Dr. Abdullah Al-Asha'al, the separation wall case before the International Court of Justice; Dar Nasr for Printing and Publishing, 2nd edition, Cairo, 2006, p. 157.
[12] Dr. Aisha Ratib, Legal Studies, Dar Al-Nahda Al-Arabiya, Cairo, 2002-2003, p. 149.
[13] Dr. Hossam Hassan Hassan, the separation wall and the International Court of Justice; Dar Al-Nahda Al-Arabiya, Cairo, 2004, p. 176.
[14] Dr. Khalil Sami Ali Mahdi, the general theory of internationalization in contemporary international law with an applied study on attempts to internationalize Jerusalem, 1st edition, 1996, p. 485.

as well as based on the advisory opinion of the International Court of Justice on the Apartheid Wall, the Palestinian territories occupied since 1907, including East Jerusalem shall be considered occupied territories and they subject to international humanitarian law, in particular the Fourth Geneva Convention of 1949.

Israel's conduct to annex the city of Jerusalem shall be deemed null and in violation of international law and international humanitarian law, and all the consequences of this annexation shall be void.

Furthermore, the sovereignty in Jerusalem, as an integral part of the Palestinian territories occupied since 1967, shall not be transferred to Israel through its mere occupation, as the occupation does not entail the transfer of sovereignty from the state of origin to the occupying power.[15]

Based on the foregoing, the principles and rules of international humanitarian law shall apply to the criminal protection of cultural property in the city of Jerusalem, and this requires the protection of cultural property in the occupied city of Jerusalem.

Consequently, most of the legislations, laws and internal regulations enacted by Israel in order to

consolidate its occupation of Jerusalem in 1980 or other legislations intended to violate the Fourth Geneva Convention of 1949 and all relevant international treaties relevant to the protection of civilians and civil objects shall deem void without legal effects in international law and international humanitarian law because these legislations are in violation of Israel's obligations and duties as an occupying power and as a ratifier of the Four Geneva Conventions of 1949, and it is not allowed to invoke these laws to justify its stay in the territories and committing its grave violations against the civilian population and civilian objects in Palestine, and therefore Israel is obligated to respecting and implementing the Fourth Geneva Convention

[15] Dr. Mohammad Mohammad Farhat, Application of the Fourth Geneva Convention on Palestinian Territories; Journal of Legal and Economic Sciences, January 2000, 1st edition, p. 32.

on all the occupied Palestinian territories, including East Jerusalem as well as all relevant international conventions and treaties.[16]

Since Palestine obtained a legal status in the international law as a non-member state of the United Nations, legal effects have resulted in favor of the State of Palestine and its legal status is improved, as a person of the international law, from a national liberation movement under occupation to a person of international law as an observer member state under occupation.

This legal status implies legal implications for Palestine by acceding to a set of international conventions, especially the four Geneva Conventions of 1949 and the First Additional Protocol of 1977 and the Hague Conventions concerning the respect of Laws and Customs of War on Land as well as the Regulations Concerning the Laws and Customs of War on Land, in addition to many relevant international conventions.

This legal status of the State of Palestine will enhance and develop the legal status of Palestine and impose obligations on the occupying power to respect and apply all international conventions related to the protection of civilians and civilian objects, including cultural and religious property in the Occupied Palestinian Territory in general and in Jerusalem in particular.

Chapter Two: The Scope of Implementing the Provisions on the Protection of Cultural Property in the City of Jerusalem.

Based on the Hague Convention of 1954 and its first and second protocols, which included special provisions for the protection of cultural property during the period of occupation, the first additional protocol of 1977 included a text on protecting cultural objects and worship places.[17]

[16] Dr. Motaz Faisal Al-Abassi, the obligations of the occupying country towards the occupied country, Al-Halabi legal Publications, 1st edition, 2009, Beirut, Lebanon, p. 493

[17] Counselor Sherif Atlam; Counsellor Mohamed Maher Abdel Wahab, International Humanitarian Law Conventions, ICRC delegation in Cairo issuance, 1st edition, Cairo, 2002, p. 397.

According to Article (55) of the Regulations Concerning the Laws and Customs of War on Land of 1907, the occupying power does not have sovereignty over public real estate assets, except as an administrative official, and according to the text of Article (50) of the Regulations concerning the Laws and Customs of War on Land, the occupying power may not influence some property and real estate, such as places of worship. Churches, education, art and science that should be treated as public property. It is not permissible to damage, destroy, or cause deliberate damage to them.

The most important thing stated in the Hague Convention of 1954 is the reference to the concept of "cultural property" in the light of general concepts of international law. Article (1) of the 1954 Hague Convention provides a general definition of the cultural property concept. It identified three types of property and the criteria used for their identification are: "Significance" to the cultural heritage of peoples, i.e., artistic, historical and archaeological significance, but not the "value" of the property. Based on the 1954 Hague Convention concerning the Protection of Cultural Property, Article (1) sets the definition of cultural property:[18]

a. Movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

b. Buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

c. Centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as `centers containing monuments".

It is clear from this definition of cultural property as well as based on the text of Article 5 of the 1954 Hague Convention, the scope of protection contained in the 1954 Hague Convention

[18] Dr. Mohammad Sameh Amro, International Protection of Cultural Property in Periods of Armed Conflict, Al-Aseel center for printing publishing and distribution, 1st edition, Cairo, 2002 p. 74.

and its annex also includes periods of occupation, whether in the whole or part occupation, and even if the occupation forces were not confronted by resistance actions[19].

Article (5) of the 1954 Hague Convention[20] stipulates that "Any High Contracting Party in occupation in the whole or part of the territory of another High Contracting Party shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property. Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures."

Article (56) of the Regulations Concerning the Laws and Customs of War on Land of 1907 has prohibited the willful seizure of destruction or damage of worship, charitable, educational, art and science institutions as private property[21].

The first additional protocol to the Geneva Conventions of 1949 stipulated the prohibition of hostilities historical antiquities, works of art, or places of worship constituting cultural or spiritual heritage for peoples[22].

Based on the foregoing, Israel as an occupying state of the occupied Palestinian territory, including East Jerusalem, which has ratified the four Geneva Conventions of 1948 and the Hague Convention of 1954, has legal obligations regarding the legal protection of cultural property in Al-Jerusalem regardless of Israel's adoption of a set of invalid decisions and legislations regarding the annexation of the city of Jerusalem. Those decisions and legislations are entirely an outrageous violation of the principles and rules of international law, international humanitarian law and international human rights law.

The acceptance of Palestine as a non-member state of the United Nations and its accession to a set of international conventions, especially the Geneva Conventions and the Hague Convention of 1954, as well as its full membership in the UNESCO offers it legal consequences towards Israel as an occupying power by holding it accountable for its grave violations in the city of Jerusalem against cultural and archaeological properties and places of worship that fall within

[19] See Counselor Sherif Atlam, op. cit., p. 398.
[20] See Counselor Sherif Atlam, op. cit., p. 23.
[21] See Counselor Sherif Atlam, op. cit., p. 289.
[22] See Counselor Sherif Atlam, op. cit., p 398.

the jurisdiction of the Hague Convention of 1954 and its Protocol in accordance with the text of Article (1) of the Convention and Article (3) Paragraph (1) of the Second Protocol, which Israel, as an occupying power, tries to destroy, obliterate, degrade, raze and even steal, in addition to the organized archaeological excavations carried out by Israel.

The legal status of the State of Palestine as a person of international law under occupation and its accession to the Hague Convention and other relevant international conventions on the protection of cultural property in accordance with the international law, affirms the applicability of the Hague Convention and the four Geneva Conventions to the occupied Palestinian territories, including the city of Jerusalem, in which various cultural and archaeological properties and worship places are located.

The Hague Convention and its first and second protocols included special rules for the protection of cultural property during the occupation. This was addressed by the Hague Convention in its fourth article on the respect of cultural property, which obligate the High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property[23].

The Convention also obligates all High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.[24]

Based on the legal value of protecting cultural property in the occupied territories, the Second protocol of 1999 confirms the protection of cultural property in the occupied territories. Article (9) stipulates the protection rules established in accordance with Articles 4 and 5 of the 1954 Hague Convention.

Article (9) has also made it clear with additional provisions in a manner that ensures and guarantees the appropriate protection of these properties during the occupation.[25]

[23] See Counselor Sherif Atlam; op. cit., p. 397, 398.
[24] See Dr. Motaz Faisal Al Abbasi, op. cit., p. 499. And see Dr. Mohammad Sameh Amro, op. cit., p. 81.
[25] See Counselor Sharif, op. cit., p. 439. And see Mohammad Sameh Amro, op. cit., p. 81, 82. And see Dr. Motaz Faisal Al Abbasi; op. cit., p. 499.

Paragraph one of Article (9) also obligates the states in occupation of the whole or part of the territory of another Party shall prohibit and prevent in relation to the occupied territory any illicit export, other removal or transfer of ownership of cultural property; it also obligates the occupying power not to carry out any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property as well as any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.[26]

Based on the foregoing, the 1999 Second Protocol on the Protection of Cultural Property in the occupied territories obligates the occupying power to refrain from carrying out any archaeological excavation, and in case antiquities are found accidentally or during military operations, the occupying authorities must take all necessary measures to protect these antiquities and to submit them after the war with all records and information to the competent authorities of the occupied territory[27].

Therefore, what Israel is doing in terms of carrying out organized excavations in East Jerusalem shall deem a violation of the international law. As for accidental discoveries, the occupying power must take all measures to protect them and hand it over to the competent authorities at the end of the occupation. Despite the prohibition stipulated in the relevant international treaties, the Israeli occupation is excavating hundreds of archaeological sites in the city of Jerusalem.

Al-Quds Al-Sharif (Jerusalem) and its walls were registered by UNESCO on the endangered Word Heritage List in 1982, and accordingly, the antiquities in the city of Jerusalem, as an occupied city, are subject to legal protection framed by the Hague Convention and its Protocol.

Despite the many international resolutions that emphasize the protection of cultural property in the city of Jerusalem, there are many violations by the Israeli occupation in terms of the destruction of cultural property in Jerusalem since the Israeli occupation of Jerusalem in 1967. Israel has carried out extensive excavations in the city. The antiquities and finds were

[26] See Dr. Anton Khater, International Systems of Archaeological Excavations, Egyptian Journal of International Law, V. 30., Cairo, Al-Busair Press, 1957, p. 130.
[27] See the documented technical report on the illegality of excavations carried out by the Israeli occupation authorities in the holy Jerusalem, ISESCO Committee of archaeological experts, Jordanian Department of Antiquities, Amman, Jordan., 2001, p. 4.

transferred through the occupation authorities or under licenses issued by Israeli authorities to individuals or through Israeli soldiers or through civilian-traders of antiquities[28].

According to the documented technical report issued by the Committee of ISESCO archaeological experts in Jordan in 2011, Israel has carried out or permitted the following activities since 1967[29]:

- The Israeli government support archaeological excavations in various areas of Jerusalem, especially in the old city and its surroundings as well as around the Haram al-Sharif and below it.
- Israel transfers antiquities from archaeological sites and museums in occupied Jerusalem into Israel, and it transferred some stones of the Umayyad Emirate House which is immediately located to the south of Al-Aqsa Mosque.
- Israel sold a lot of antiquities in the antiquities market.
- Israel destroyed many archaeological sites as a result of the illegal construction work.
- Israel destroyed the Magharba Quarter, with all its cultural heritage dating back eight centuries, and appropriated historical buildings of a cultural status in the old city.
- Israel carried out more excavations in different areas of the Old City, especially in the tunnels, which contradicts the fact that Jerusalem is on the World Cultural Heritage List.

Based on the foregoing, Israel's violations of cultural and religious property in Jerusalem, in particular, next to the Al-Aqsa Mosque, and the sabotaging and destructive measures it faces, Israel has obligations in accordance with the rules of international law and international humanitarian law towards the protection of the civilian population and civilian and cultural objects. Thus, the UNESCO position towards the Israeli government violations has many decisions towards the protection and preservation of cultural and religious property in Jerusalem.

The UNESCO Executive Board approved in its 185th session held on October 19, 2010 has voted in favor of five important resolutions condemning Israel in relation to its practice in terms

[28] See the documented technical report on the illegality of excavations carried out by the Israeli occupation authorities in Jerusalem, op. cit., p. 4, 5.
[29] See the documented technical report on the illegality of excavations carried out by the Israeli occupation authorities in Jerusalem, op. cit., p. 5.

of cultural heritage; one of the resolutions is concerning the Mugharba Gate and Israel's continued disregard of the relevant UNESCO resolutions, including the suspension of all excavation work and alteration of landmarks, and the resolution condemned the disruption of the work of the UNESCO Committee in this regard. The UNESCO asked Israel to allow the Waqf/Endowment Department and Jordan access to the site. In another resolution, the UNESCO Secretary-General was asked to sends permanent experts to reside in Jerusalem to submit permanent and periodic reports to the Secretary-General with regard to antiquities, architecture, culture and education.

In another resolution, the committee also condemned Israel's registration of both the Ibrahimi Mosque in Hebron and Bilal Ibn Rabah Mosque in Bethlehem on the Israeli National Heritage List as the two sites are occupied Palestinian areas.[30]

In 2013, the UNESCO has also made a decision to send a mission to the occupied Jerusalem to investigate the Israeli measures of Judaization in the city as part of a deal under which Israel allows to organize a tour for the delegation in the Old City, in exchange for the Palestinians to postpone five decisions against the occupation before the Organization. However, Israel prevented that Mission from visiting the Old City in the occupied city of Jerusalem.to examine a number of facilities registered with the Organization. as a (human heritage). The Palestinian National Authority has signed an agreement with the UNESCO under which a UNESCO delegation will examine the restoration work in the Old City of Jerusalem.[31]

Chapter Three: International Criminal Responsibility on Israel for Crimes Against Cultural, Religious and Archaeological Property in Palestine.

Israel, as the occupying power of Jerusalem, bears full international responsibility for violations of human rights against the civilian population and civilian objects whether the violation was the state or persons who constitute part of its armed forces or the settlers, and Israel shall be obligated to compensate for the damage resulting from these violations. According to Article (3) of the Fourth Hague Convention of 1907, which states, “A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation.

[30] See http://www.article.wn.com/view.
[31] See Abd al-Ghani Mahmoud, International humanitarian law, Dar Al-Nahda Al-Arabiya, Cairo, 1991, p. 183. See Counselor Sherif Atlam; op. cit., p. 9.

It shall be responsible for all acts committed by persons forming part of its armed forces." Article (91) of the first protocol of 1977 states that the state can be acquitted from the international responsibility if it penalizes the people who committed this malicious act.[32]

Therefore, Israel as an occupying power the occupied Palestinian territories, including East Jerusalem shall bear criminal responsibility for violating the laws and customs of war, and due to its violations of international humanitarian law and the 1954 Hague Convention and its two Protocols, it shall be subject to two types of penalties:

General penalties imposed on Israel as an occupying power that violates international conventions and customary rules as well as personal penalties that apply to its members who are responsible for the damages or crimes that occur as a result of violating the rules of international humanitarian law.[33]

Accordingly, Israel's responsibility for its violations of cultural, religious and archaeological property in the city of Jerusalem will be addressed based on the 1954 Hague Convention and its two protocols on the measures relating to breaches of Israel's obligations to protect and respect cultural property. This has been affirmed as well in the Statute of the International Criminal Court of 1998, which emphasized that the violation of protection and respect of property is a war crime[34].

Israel's responsibility for violating the rules and provisions for the protection of cultural property in the city of Jerusalem will be addressed

Israel as the occupying state of Jerusalem is required to compensate for the tangible losses that cultural, religious and archaeological property has been exposed to as a result of its repeated attacks on cultural and religious objects, which obliges Israel to return all movables and tangible

[32] See Dr. Ali Sadiq Abu Haif, Public International Law, op. cit., p. 792.
[33] See Salwa Ahmad Maydan Al-Mafraji; op. cit., p. 108., And see Counselor Sherif Atlam, op. cit., Article (8/A, B), p. 692.
[34] See Dr. Kamal Hammad, Armed Conflict and International Law, University Foundation for Studies, Publishing and Distribution, Beirut, p. 97.

assets that it seized during the occupation period or through paying financial compensation equal to the damage that occurred as a result of its occupation.[35]

This was adopted by the first "Protocol" to the Geneva Conventions of 1949, provided that "the party to the conflict violating the provisions of the conventions or this "Protocol", if the case demands, be liable to pay compensation and it shall be responsible for all acts committed by persons forming part of its armed forces.[36]

The Hague Convention of 1949 did not refer to the responsibility of states as it referred to the criminal responsibility of individuals. The international responsibility of states is not excluded based on the principles of international law as it is a general concept in law that any violation of an obligation entails an obligation to fix it, which is stipulated in Articles 53, 54 and 55 of the first protocol of 1977.[37]

However, the Second Protocol of the 1954 Hague Convention refers directly to the responsibility of states in Article (38), which confirms that No provision in this Protocol relating to individual criminal responsibility shall affect the responsibility of States under international law, including the duty to provide reparation[38].

Therefore, the 1954 Hague Convention and its two Additional Protocols obligate states parties in the event of breach of the provisions of the Convention to return cultural property stolen or seized its looting or appropriation, or pay the necessary compensation in case of destroy them.[39]

Accordingly, it is the responsibility of Israel, as an occupying power violating the provisions of the Hague Convention and its two Additional Protocols, to return the cultural property that was stolen and thus falls on Israel compensation in kind if liability is established. It is the responsibility of the state of Palestine, as a non-member state in the United Nations and a major

[35] Counsellor Sherif Atlam, op. cit., Article (91) of the first protocol of 1977, p. 315.
[36] Articles 53, 54, 55 of the first protocol of 1977. And see Dr. Amer Al-Zamali, Introduction to international humanitarian law, Publications of the Arab Institute for Human Rights and the International Committee of the Red Cross, 2nd edition; Tunis, 1977, p. 79.
[37] See Vittorio Mainetti, New prospects for the protection of cultural property in the event of armed conflict: The entry into force of the Second Protocol to the 1954 Hague Convention, The International Review of the Red Cross, 2004, p. 240.
[38] See Dr. Mohammad Sameh Amro, op. cit., p. 146.
[39] See Salwa Ahmad Maydan Al-Mafraji; op. cit., p. 111.

party to most international conventions related to the protection of cultural property, to hold Israel accountable for violating the Hague Convention and other conventions.[40]

The issue of exporting cultural property from the occupied territories as well as the special rules for protection and return to their countries of origin in accordance with the text of Article (9) of the First Protocol of 1954 have been addressed.[41]

Israel, as the occupying power of Jerusalem, bears the international legal responsibility to return the stolen objects and other cultural items as well as to maintain other sites, prevent any damage to them and restore the damages occurred to these places and handing over the cultural property to the State of Palestine in accordance with the international legitimacy resolutions and in line with the principles and rules of international law.[42]

Israel shall also bear the international legal responsibility to pay compensation for what happened to the cultural property in terms of demolition and destruction during the Israeli occupation.[43]

Israel shall also, as an occupying power, bear individual criminal responsibility for the Israelis for violating the rules and provisions on the protection of cultural property during the occupation in Jerusalem.

The principle of the criminal responsibility of states has not yet been established in international law. Thus, the principle of individual criminal responsibility was adopted, according to which individuals who violate the provisions of international law and international humanitarian law in terms of crimes against cultural property shall be penalized[44].

[40] See Dr. Mohammad Sameh Amro, op. cit., p. 146.
[41] See Dr. Motaz Faisal Al Abbasi, op. cit., p. 523.
[42] See Dr. Mohammad Sameh Amro, op. cit., p. 156.
[43] See Dr. Abdelghani Mahmoud, International humanitarian law, op. cit., p. 183., And see Salwa Ahmad Maydan Al-Mafraji; op. cit., p. 125.
[44] See Dr. Mohammad Sameh Amro, op. cit., p. 157. And see Salwa Ahmad Maydan Al-Mafraji; op. cit., p. 125.

The 1998 Second Protocol established the individual criminal responsibility in the event of a violation of the rules on the protection of cultural property established in accordance with the 1954 Hague Convention and its two Additional Protocols.

Here it must be noted that as long as these violations deem to be war crimes, they subject to the rules for war crimes. Therefore, these crimes will not be prescribed over time and the perpetrators can be held accountable and penalized regardless of the time in which the crimes were committed.[45]

One of the important aspects addressed by the second protocol is the issue of criminalizing some tracks marked with "serious abuses" and putting a system in place to suppress those abuses. Chapter Four of the second protocol, which was entitled "Responsibilities and Mandate" has supplemented the Articles of the Hague Convention of 1954 by stipulating a distinction between two types of violations, "serious violations," Article 15, and other violations, Article 21.[46]

The Hague Convention of 1954 did not give the issue of responsibility other than a modest stature regarding destroying and looting, assaulting and stealing the cultural property as well as all other forms of threats directed against persons appointed to protect cultural property. These practices shall be penalties under individual criminal responsibility (Article 28 of the Convention). According to this article, "The High Contracting Parties undertake to take, within the framework of their criminal legislations, all procedures that ensure the prosecution of persons who contravene the provisions of this Convention or those who order contravening it and impose criminal or disciplinary penalties on them, regardless of their nationalities"

However, Article (15) of the Second Protocol defines the first type of violations, i.e. (serious) based on the statute of the International Criminal Court.[47]

[45] See Vittorio Mainetti, op. cit., p. 236.
[46] The Statute of the International Criminal Court of 1998 defines war crimes as follows "…Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments… provided they are not military objectives", Article 2 of the Statute of the International Criminal Court, the ninth paragraph of item "b" of the Article.
[47] See Article 15, second paragraph of Protocol II to the Hague Convention,

There are five violations considered serious when they are committed internationally and constitute a violation of the Hague Convention of 1954 and the Second Protocol, namely:

1. Targeting cultural property under enhanced protection by aggression.

2. Using cultural property under enhanced protection or using its immediate vicinity in support of a military action.

3. Extensive destruction of cultural property protected under the Convention and this Protocol or their seizure.

4. Targeting cultural property protected under the Convention and this Protocol by aggression.

5. Committing theft, looting, embezzlement or vandalism of cultural property protected under the Convention.

The states parties are obligated to take all necessary measures to stipulate these five violations in their national laws as criminal violations (criminalizing the violations and repressing them by suitable penalties.[48]

In this context, a distinction must be made between two types of serious violations based on the consequences thereof. The first three violations are listed under [serious violations] of the 1949 Geneva Conventions and their first additional Protocol.

The E, which can be characterized as grave breaches because they entail the obligations of the States Parties to prosecute or extradite (either extraditing or prosecuting) all persons accused of committing such breaches in order to apply the principle of universal jurisdiction. The states are required, in front of these violations, to somehow try to exercise their jurisdiction not only when the violation takes place on their territory or when it is believed that it was committed by

[48] See Vittorio Mainetti, op. cit., p. 238, 239.

its citizens, but also when the violation is committed outside its territory and by a citizen of another country. As soon as the accused is present on the territory of a state, it should exercise its jurisdiction by prosecuting or extraditing him/her.[49]

As for the two serious violations, they amount to a war crime in the system international Criminal Court Statute, but they do not have the same consequences as the first three violations, so that criminal penalties shall be imposed on the states parties if the act is committed on their territory or if the perpetrator was a citizen of the state. However, if the act of violation was committed abroad and the perpetrator is a citizen of another country, the principle of voluntary universal jurisdiction shall be applied in this context. Therefore, each country is eligible to prosecute for such violations without being obliged. In addition to these serious and grave violations, there are other violations that do not necessarily entail criminal liability[50].

Thus, we find that the Hague Convention and its protocol have approved a set of international legal rules for the protection of cultural property. in addition to the rules of international law and international humanitarian law in general, including cultural property in Jerusalem, they have established criminal responsibility for individuals and states that violate cultural property, including the Israeli occupation state and its citizens.

Conclusion:

In the foregoing, we have completed the research on criminal protection of cultural property in the city of Jerusalem and we will conclude this study by demonstrating its results and suggestions that we concluded:

Results:

1. The study clarified the illegality of the belligerent occupation of the occupied Palestinian territories, including the city of Jerusalem, and the decision to annex Jerusalem by Israel as an occupying state is void and the legal consequences thereof are void according to the Fourth Geneva Convention of 1949, and the Hague Convention of 1954 and its first and second Protocols.

[49] See Vittorio Mainetti, op. cit., p. 239.
[50] See Vittorio Mainetti, op. cit., p. 239

2. Israel has committed many grave violations of cultural property in Jerusalem, which is considered a flagrant violation of international humanitarian law and the Hague Convention of 1954 and its two Protocols.
3. The study dealt with the criminal legal mechanisms to prosecute Israel and its citizens because of their grave violations of cultural property in Jerusalem.
4. Violations of cultural property have been criminalized in national, regional, and international legislations, which stipulates penalizing those who commit such crimes.

Suggestions:

1. Inviting the High states parties to the Fourth Geneva Convention of 1949 to hold a meeting to oblige Israel to respect and implement the Fourth Geneva Convention on the occupied Palestinian territories, including East Jerusalem.
2. Calling on the State of Palestine to ratify the Statute of the International Criminal Court to ensure the implementation and respect the criminal protection of cultural property in the city of Jerusalem.
3. Documenting all grave violations of cultural property in the city of Jerusalem and collecting all evidence that proves the violation of cultural property by Israel and its citizens for the purposes of prosecuting the perpetrators of these crimes and holding them accountable before all local, regional and international courts.
4. Activating the legal and judicial mechanisms against Israel's violations of cultural property in the city of Jerusalem in accordance with the international humanitarian law and the Hague Convention of 1954 and its protocol.

The Situation of the People of West Africa under International Human Rights Law

Maître Djibril

I. COMPLEX AND MULTIFACETED CRISES AND THEIR IMPACT ON HUMAN RIGHTS

A. The security crisis

Human rights violations have long been analysed in terms of the relationship between the defence and security forces, which are used by states against the population, particularly by certain states with strong central powers. Since 2009, the sub-region has been experiencing a security crisis for which an appropriate response has yet to be found. The African armies of the region seem to be totally helpless in the face of the asymmetric warfare imposed by extremist armed groups.

B. **The Defence and Security Forces (FDS),** which have great difficulty in containing the terrorist threat and fighting against community violence and organised crime. In most countries facing terrorism, the FDS are unable to reverse this trend and put these armed groups out of action. On the contrary, they are increasingly accused of committing massacres and extrajudicial executions.

Sexual violence by individuals and groups sometimes leads tragically to the pregnancy of some young girls who are forced not only to drop out of school but are often stigmatised by society.

As schools are prime targets for armed terrorist groups, several schools are attacked, depriving thousands of schoolchildren of an education. More than 85 attacks on schools in Burkina Faso, Niger and Mali were perpetrated by armed terrorist groups between January and June 2020, despite the closure of schools due to the COVID-19 pandemic[1] .

C. The crisis of the rule of law, democracy, human rights and governance

ECOWAS celebrated the 20th anniversary of the Protocol on Democracy and Good Governance in December 2021, including: the separation of powers, accession to power through free, fair and transparent elections, the prohibition of any anti-constitutional change, the non-political status of the army which must be subject to the duly established political authority, the status of the opposition, freedom of association, etc.

In electoral matters, the Protocol prohibits any major reform of the law six (06) months before the elections, it gives the possibility to each member state to request ECOWAS assistance for the organisation and conduct of elections and may deploy electoral observers.

This Protocol promotes the **specific rights of women and children**.

D. Restriction of civic space

West Africa has long been considered the most advanced region in terms of democracy on the continent. In recent years, however, it has increasingly moved towards political authoritarianism. The last two years have been particularly marked by a brutal restriction of civic space with an unmitigated crackdown on political dissidents and civil society actors.

West Africa is currently going through a most absurd situation in which the youth condemn the decisions of ECOWAS and support military coups, which must absolutely make us reflect on the model of democratic representation in which we live and which is considered as a simple swindle by a certain youth. Hence the need to rethink democracy, governance and security in our sub-region.

E. Law enforcement violence

From the very first days of the curfew, we witnessed an unmitigated repression with scenes of violence, beatings and humiliation of individuals who sometimes had the misfortune to miss their bus

F. Exacerbation of fractures and social inequalities

Social fractures and inequalities have been particularly exacerbated in the informal sector, which accounts for 87.5% of total employment in the sub-region, severely affecting the right to work of the most vulnerable.

G. Gender-based social divides

The gender-based social divides are the deepest and often invisible. Female-headed households have been hit by poverty as a result of the impact of the HIV/AIDS pandemic.19 E)

E) Demographic pressure

Today, the population of the ECOWAS region represents nearly 400 million inhabitants, half of whom are young people, and is expected to grow to 796 million in 2050 (+104%) and 1.5 billion in 2100 (+284%), whereas the rest of the world is characterised by an ageing population, . The explosive cocktail of frustrated, marginalised and hopeless youth is an easy prey for radicals. It is known that young people are more susceptible to extremist discourse. Extremist groups then take advantage of this to recruit and indoctrinate them.

II. CLASSIC HUMAN RIGHTS VIOLATIONS

These are mainly violations that are committed in the name of culture, custom or religion.

A. Situation of women in relation to human rights

1. Gender-based violence

In several African countries, particularly in West Africa, GBV reflects inequalities and disparities between men and women, which are rooted in the social system based on patriarchy.

2. Women's participation in political life

As in many parts of the world, women's participation in politics is still an issue in West Africa. Looking at the percentage of women in national parliaments, 12 out of 17 West African countries have a percentage below the world average of 23.3%. Of the total number of parliaments, 421 seats (16.1%) are held by women. Senegal is an exception. With 42.7% of women MPs, it ranks just behind Sweden[2] . Women occupy on average less than 20% of ministerial positions, most of them related to social affairs and women's rights. Men are also more numerous in ministerial administrations.

3. Early marriage of young girls

Seven West African countries are among the 20 countries with the highest rate of early marriage in the world.

4. Female genital mutilation

The WHO currently estimates that more than 130 million girls and women worldwide have undergone female genital mutilation. Every year, more than 3 million additional girls are estimated to undergo this practice, mainly for cultural, religious, or social reasons. The practice remains widespread in West Africa

5. Low enrolment of girls in school

Although it has made great progress in recent years, the results are much less impressive.

6. Violence against children

In 2005, the UN Security Council adopted Resolution 1612 to establish a UN mechanism to monitor and report on the following six grave violations against children during armed conflict: killing and maiming of children, recruitment and use of children, abduction of children, rape and other forms of sexual violence committed against children, attacks on schools and hospitals, and denial of humanitarian access

7. Child begging, the causes of which are complex and multifactorial, combining economic realities and socio-cultural beliefs. On the economic front, these include poverty, harsh living conditions in rural areas, recurrent droughts and worsening food insecurity, which encourage the exodus to urban centres.

8. The recruitment of child soldiers in conflict zones as a result of the deteriorating security situation which has led to massive population displacement.

9. **Sexual assaults against minorities.**

In sub-Saharan Africa, homosexuality is largely criminalised officially but also unofficially in several countries. Out of 45 countries in sub-Saharan Africa, 28 still have legislation prohibiting or repressing homosexuality.

In West Africa, in most legal texts and especially the penal code, this sexual orientation is clearly defined as an unnatural practice.

III. THE STATE LEGAL FRAMEWORK FOR THE DEFENCE AND PROMOTION OF HUMAN RIGHTS IN WEST AFRICA: THE EXAMPLE OF SENEGAL

The State in its classical definition in political systems of republican or even monarchical essence comprises three fundamental elements: a territory (1) in which a group of people live (2) subject to a legal and legitimate authority (3).

A. The rules put in place to guarantee the rule of law:

The constituent elements of the rule of law are based on an essential foundation of democracy and guarantee the security of people and their property, their rights, their freedoms, their development and social peace. In Senegal, the rules governing the organisation and functioning of the State were drawn up by the Constitution with a view to regulating, controlling and sanctioning failures and violations in the relationship between the authority embodied by the President or the Head of Government under a presidential or parliamentary system and the other citizens who are the governed. It is then up to the Constitution, the supreme norm, to consecrate and protect the rights and freedoms of citizens, to define the three powers of different institutions and their limits: The Executive Power, the Legislative Power and the Judicial Power. This is the case in Senegal as enshrined in its Constitution

1. The Executive in a State governed by the rule of law :

In many West African countries, such as Senegal, the President of the Republic is elected by direct universal suffrage. As guardian of the Constitution, he has very broad powers. He is "the guarantor of the regular functioning of the institutions and alone appoints to civil and military posts, the ministers including the Minister of the Interior, the Minister of the Armed Forces and the Minister of Justice. He determines their attributions and terminates their functions" according to the Senegalese Constitution.

2. The Legislative Power as creator of legal instruments:

It is embodied by citizens who are deputies or senators, depending on whether they are qualified representatives of the nation.

They have the mission to pass internal laws, to adopt by resolutions the Agreements, Conventions, International Treaties. These include the 1789 Declaration of the Rights of Man and Citizens, which enshrines and guarantees all the rights and freedoms of citizens, the international instruments adopted by the United Nations, the Organisation of African Unity, the Universal Declaration of Human Rights of

10 December 1948, the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, the Convention on the Rights of the Child of 20 November 1989, and the African Charter on Human and Citizens' Rights. In addition, there are rights linked to the sacred and inviolable nature of the human person, which the State is responsible for ensuring are respected and protected: "the right to life, respect for one's physical integrity and protection against voluntary, ritual physical mutilation, human sacrifices of people living with a disability (albinos), refugees, stateless people who have fled their countries, faced with the threat of multiple aggressions, wars, persecutions, natural disasters, famines, etc. The same applies to civil, political, opinion, press, association, cultural and religious freedoms, as well as to new categories of rights called "New Rights", such as the right to health, education, water, work, to undertake, to have a healthy environment, etc. ....

But these freedoms and rights are exercised under the conditions provided for by the law. The same applies to the right to express and disseminate one's opinions freely by word, pen, image or peaceful march. However, they must not undermine the honour and consideration of others, nor public order. The balance between the exercise of these rights and freedoms and the respect of their limits often poses difficulties in practice to situate the responsibility between the authority and the citizen.

A.3 The Judiciary :

It is the guardian of the rights and freedoms defined by the Constitution and the laws. The Judiciary is independent of the Legislature and the Executive. Judges are appointed by the President of the Republic after consultation with the Superior Council of the Magistracy. Judges are subject only to the authority of the law in the exercise of their functions. Judges are irremovable. Criticism is often levelled at the judicial system with regard to its independence.

1.2) Other actors :

These are citizens, the press, civil society, trade unions, human rights associations and activists. In the enjoyment and exercise of their rights, as citizens they are required to scrupulously respect the Constitution, laws and regulations, in particular to fulfil their civic rights and to respect the rights of others and to ensure respect for the public good, but also to refrain from all acts likely to compromise public order, security, health and tranquillity. The same applies to the right to defence: "Defence is an absolute right in all States and at all stages of the proceedings.

2) The Contribution of Community Instruments for the Protection and Promotion of Human Rights :

2.1).1 Africa-specific instruments

For the control and protection of human rights, we can mention in the African space: the African Court of Human Rights in Arusha, (Tanzania), the African Commission on Human and Peoples' Rights, and for West Africa, the ECOWAS Court of Justice. This Court adopts resolutions and makes decisions following appeals by citizens who feel that their rights have been violated by the state. In principle, their decisions have the force of law in the member countries. The Court's achievements include the compulsory presence of a lawyer as soon as a person is arrested and placed in police custody, under penalty of nullity of the procedure. The Extraordinary African Chambers responsible for trying former heads of state for certain crimes can be cited,

The protection of human rights is essential for the realisation of democracy, as it is the basis for freedom

2.1.2) Genocide committed by people in Africa.

2. Universal Instruments: **The Rome Statute**

The Rome Statute redefined certain crimes such as "genocide" as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group"; "crime against humanity" as "any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack"; "war crimes" as "grave breaches of the Geneva Conventions of 12 August 1949**.** The ICC only has jurisdiction over crimes committed after the entry into force of the Rome Statute for a given State and, in any case, after 1 July 2002, the date of its entry into force.

III. SENEGAL'S EFFORTS IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

The protection of human rights is essential for the realisation of democracy, as it is the basis for the freedom and security of everyone. At the international level, it contributes to international peace and security, conflict prevention, sustainable development and prosperity, and thus serves the interests of our country. Whatever action Senegal takes, human rights are an integral part of its policy.

A. Progress in promoting gender equality

Representing 52 per cent of the population, or 7,041,131 in Senegal, women constitute the majority of the population. The illiteracy rate is 40.4 per cent. However, in our country, not a day goes by without women's rights being violated or even scorned. However, since its independence in 1960, Senegal has had a legal and institutional framework that is more or less respectful of the rule of law.

This well-established legal framework was consolidated with Senegal's ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the United Nations General Assembly on 18 December 1979[3] .

By ratifying the Convention, States commit themselves to take measures to eliminate all forms of discrimination against women in the political, economic, social, cultural and civil spheres.

It is a universal reference text on women's rights and a binding instrument for signatory states (185 countries

- nearly 95% of UN member states)

Thus, significant progress has been made with the establishment of structures that work towards the respect of women's rights. In this perspective, legislative measures have been taken. As an example, we can cite

☞ Women's access to law enforcement and security forces (police, peacekeepers, military health service personnel, gendarmerie, customs);

☞ Amendments to the Family Code in the direction of equal rights with Act No. 89-01 of 17 January 1989 amending certain provisions of the Family

Code (Article 13 - Legal determination of domicile, Article 19 amended to include the possibility for a married woman to be the legal administrator of her absent spouse's property,

abrogation of Article 154 which allowed the husband to prohibit his wife from exercising a profession);

☞ Taking into account the rights of women and mothers in law n°97-17 of 1 December 1997 on the Labour Code (Article L.105 equal pay for equal
work, Article L.143 maternity leave, Article L.144 breastfeeding time;)

☞ Reinforcement of the repression of violence against women with law 99-05 of 29 January 1999, repression of violence against women in the home and
in society (J.O. of 27 February 1999, p. 832);

☞ Introduction in the Preamble of the 2001 Constitution of conventions on women's and children's rights, equal access to land, prohibition of forced
marriage, ...

☞ Funds set up for women exclusively by decree by the Ministry of Women's Entrepreneurship

☞ Law n°2005-06 of 10 May 2005 on the fight against trafficking in persons and similar practices and the protection of victims (J. O. n°6223 of Monday 30
May 2005);

☞ Ministerial order no. 10545 dated 10 December 2008 creating the committee for reflection on violence against women and children;

☞ Decree No. 2004-426 of 14 April 2004 on the creation of the National Fund for the Promotion of Women's Entrepreneurship;

☞ Law n°2005-18 of 5 August 2005 on reproductive health (J.O. n°6245 of Saturday 8 October 2005);

☞ Development of the national strategy for gender equality and equity ;

☞ Removal of restrictions on medical care for a woman employee's spouse and children in 2006

☞ Decree No. 2008-1045 of 15 September 2008 creating and setting the rules for the organisation and functioning of the National Directorate for Equity
and Gender Equality;

☞ Decree No. 2008-1047 of 15 September 2008 on the creation and setting the rules of organisation and operation of the National Observatory for
Women's Rights

☞ Establishment of absolute male-female parity in the Republic's fully or partially elected institutions with Law No. 2010-11 of 28 May 2010 (J.O. No.
6544 of 4 September 2010); Decree No. 2011-309 on the creation, organisation and functioning of the National Observatory for Parity;

☞ Law n°2010/03 of 9 April 2010 on HIV and AIDS (J.O. N° 6535 of Saturday 10 July 2010);

☞ Social Orientation Law n°2010-15 of 6 July 2010 on the promotion and protection of the rights of persons with disabilities (J.O. N° 6553, 30 October
2010);

☞ Law No. 2013-05 of 8 July 2013 on nationality giving equal rights to women and men in the transmission of nationality.

B. Progress in child protection

Child protection is marked by the persistence of a number of problems, including early marriages and the practice of excision, the phenomenon of child begging (talibé children), the failure to register many children with the civil registry, etc. Particular measures are being implemented. At the judicial level, juvenile justice in accordance with international principles and guidelines is provided in the context of supervised education and social protection.

Measures adopted by the State of Senegal in favour of children :

☞ 1. Child marriages

Since 2014, Senegal has adopted a policy aimed at providing, through an integrated protection system, a political, institutional, legal and protective environment against all forms of violence against women, their families and their communities

2. Child trafficking

The Ministry of Justice has, by circular No. 4131 MJ/DACG of 11 August 2010, instructed prosecutors to systematically prosecute the alleged perpetrators of these acts and to seek firm sentences against them.

In general, trafficking in persons in all its forms is severely punished by law. Several prosecutions and convictions have been recorded in the annual report of the National Unit for the Fight against Trafficking in Persons (CNLTP) and in the study on the evaluation of the law.

3. Draft Children's Code

The draft Children's Code contributes to the full development of children, the enjoyment of their rights and the safeguarding of their best interests in accordance with Article 4 of the CADBE. Once adopted, this draft will make it possible to put an end to practices that are detrimental to the well-being of the child.

Indeed, it bans excision and proposes to raise the minimum age of marriage to 18 for girls and boys, contrary to the current provisions which allow girls to be married from the age of 16. In short, this code guarantees the child's fundamental rights to life, education, health and protection. The Government has thus resolutely relaunched its drafting process.

CONCLUSION

The lesson that can be drawn from the above concerning the human rights issue in West Africa, in other parts of the continent and in the rest of the world is that acts of violence, crimes against humanity and genocide against people have become recurrent despite the measures taken by the States. These violations should not obscure other equally dangerous and destructive cases. These are the doctrines and currents of thought conveyed by certain individuals and groups who advocate, through their doctrine, ideology and violent discourse, under the false pretext of religion, race or political affiliation, intolerance, which is the breeding ground for terrorism. In addition, the world is now under the sway of the Digital Age, which is also a weapon against rights and freedoms! At first it was welcomed as a technological convenience useful in more ways than one for honest users, it must

be admitted. But as if to confirm the adage that "Science without conscience is but the ruin of the soul", it did not take long for it to show us another hideous and harmful facet through unhealthy uses. Hence the urgent need for states to monitor and ensure transparency in the way

internet companies exploit citizens' data, feed predictive models and artificial intelligence, and amplify disinformation through "fake news", editing of obscene images, hate speech, threats and blackmail, destroying their victims' lives forever. Solutions could be proposed to create the conditions for their resilience through a twofold pedagogy:

- Prevention through education, promoting values from childhood onwards in the family, school and institutional environment, instilling in young people, tomorrow's citizens, values of humanism such as tolerance, respect for rights and freedoms, solidarity and generosity.
- Deterrence through the establishment of an institutional framework for

further research to identify members of the camp of human rights enemies engaged in cyber crime, with a view to prosecuting and punishing the perpetrators of such acts so that they do not go unpunished.

Status Muslim Minority in Post-War Sri Lanka: In The Context of Minority Rights Legal Regime

Faris Saly

Surprisingly, the Sinhala Tamil ethnic conflict slowly morphed into a Sinhala-Muslim conflict, jeopardizing Muslims' 1000-year peace with the majority Sinhalese. The lessons learnt from the destruction of ethnic polarization, which resulted in the country's bloodiest 30 years of civil conflict, were neglected. It is argued that the state and state-sponsored non-state entities play a critical part in the conflict against Muslims. Democratic principles such as multiculturalism, pluralism, tolerance, and coexistence were ignored for political gain. Additionally, actions taken to preserve minority rights in accordance with constitutional and international mechanisms were insufficient. Muslim hatred was drilled into the minds of the Sinhalese Buddhist majority and the country's largest Tamil minority, which continues to face harassment and atrocities. The complexity is that Muslims are targeted by both Sinhalese and Tamils through a well-coordinated series of anti-Muslim hate campaign operations. To rule out the effect of Islamophobia and entrenched interest groups in inflaming the situation in Sri Lanka is prejudicial.

In recent years, there has been increased concern over the Muslim presence in the country, with a fringe part of the majority Buddhists believing that Muslims are plotting to falsely Islamize the country, further alienating the already polarized communities that recently ended ethnic strife. The purpose of this study is to conduct a critical analysis of the legal framework that protects minority rights, with a particular emphasis on constitutional safeguards and international human rights instruments. Second, it attempts to document how recent violent incidents targeted Muslims, their businesses, properties, mosques, religious leaders, and other organizations. More crucially, how the suicide attack on Easter Sunday, April 21, 2019 was systematically twisted to demonize the Muslim community. Thirdly, the role of state and non-state actors in escalating violence against Muslims, hence increasing Islamophobia's popularity.

Human Rights Violations in Sudan and Legal Protection in Light of the Criminal Law (Obstacles and Solutions)

Dr. Yasein Hassan M. Osman

Section one: Concept of human rights and social justice

There are various concepts and principles for human rights based on people and their needs, in terms of gender and age group. There are also terms and legal principles that were used in social and legal fields, which were meant to achieve human rights, such as the rights to life and physical integrity from torture.

There have some characteristics that set human rights apart from the other legal principles, of which: they are deeply rooted in every human being and cannot be sold, bought, acquired or inherited. It is a taken as a whole, equally, as they are "universal", regardless of gender or religion. These human rights principles are constant and inalienable. Human rights are also imprescriptible from the local authorities. No body, an entity or a group has the right to deprive any human from his/her natural rights, as they are interconnected.

Despite the differences in human rights concepts in some communities, they all aim to protect humans wherever they are, and seek to achieve stability and justice in these communities. That's why there is a link between the concept of human rights and social justice, in terms of general principles. In the same token, social justice has its elements and hindrances, as well as the methods to reinforce others, like human rights[1].

Section 1: the Concept of Human Rights

Human Rights as a legal term is vast and has various significances. At times, the term denotes general rights and liberties. Some view it as ordinary, standards and the basic needs that humans cannot have dignified life without it. That's because they constitute all the necessary rights which make Humans feel their humanity. Moreover, some compare human rights with freedom; while total freedom means non-adherence to anything, without taking into account other people's rights[2].

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[1] Rifaat Al-Mirghani, Transitional Justice in Arab Contexts, Evaluating the Sudanese Experience, Arab Organization for Human Rights, First Edition, 2014, pp. 120-128.

[2] The French Declaration of Human Rights issued in the aftermath of the French Revolution of 1789 defines freedom as "the right of the individual to do all that does not harm others."

Human rights include aspects of humans' life; the civil, political, economic, social and cultural ones. They are regarded as fundamental for justice in society and safety on earth. That's why some view the term "right" as: "an interest protected by law". Others defined it as "the capacity or the will permitted by law for a person in a given scope". Another concept for human rights adopted by some scholars who view them as "privileges that need guarantees and protection, in terms of procedures and government actions which touch upon the fundamental freedom and human dignity, and attack or underestimate the human's role in social life of the State system. The researchers consider this definition as more inclusive to human rights, as it comprehends (the extent of the State's commitment with justice principles). The authors add that there is a difference between “freedoms” and “right” according to the Universal Declaration of Human Rights or as it were reported in the French Declaration of Human Rights, or the other ones. However, the two terms are used as synonyms, as both are employed interchangeably.

What we mean by human rights and its liberties:

They are the norms, standards and the basic needs that humans cannot live decently without, while freedom are the "groups of indispensable needs without which humans cannot live, and which the State recognizes, organize and protect; each of which has a group of elements and challenges that hinder stability of society, and contribute in the increase of violations; such as dictatorship or militarisation of the ruling system, increase of successive governments, political and security instability, besides multi-party and existence of opposition and impunity.

Section Two: the concept of social justice:

We mean by social justice distribution of wealth, opportunities and privileges inside the same society, equally, meeting society needs. In some civilizations, we mean by it guaranteeing that society members play their roles and responsibilities toward their society, and to have what they deserve as rights. So, social justice represents the set of natural rights; whether they are social, civil, political, economic or cultural. Thus, we observe a clear resemblance between the different types of social justice and human rights. They go hand in hand when it comes to gender, social, civil, economic and cultural rights[3]**.**

[3] The French Declaration of Human Rights issued in the aftermath of the French Revolution of 1789 defines freedom as "the right of the individual to do all that does not harm others".

Social justice is one of the social systems through which we can have equal job opportunities, wealth and privileges sharing, political rights, education, healthcare, etc. So, society members will have a decent life, regardless of their gender, race, religion or economic situation, without impartiality. Social justice aim also to achieve welfare, stability of society, protecting its members and groups from authorities meddling into the fundamental freedom, and engage them to perform certain acts or not to do in order to preserve human dignity. Other scholars see human rights as social justice itself[4].

Components of social justice:

Social justice components are based on the following:

1. Realizing dignity amongst people in society.
2. Disseminating love and peace among people, as the aim of human rights.
3. Spreading equality among society members, without unbiased discrimination and enhancing spirit of solidarity and cooperation.
4. Respect and reinforcement of social justice concept so as to have good use of the available resources in a just way.

Obstacles to social justice:

They are represented in the following:

1. Expropriation of freedom by the State.
2. Spread of injustices, corruption and nepotism at work.
3. Inequality in wealth and resources sharing among local communities, and inequality at work, education, healthcare opportunities and the other services.

How social justice can be reinforced?

Firstly: Raising awareness regarding the concepts and importance of social justice among society:

Having awareness with social justice and disseminating its concepts through accepting the differing views, dialogue with others and knowing their ideas and thoughts and respecting them.

[4] Rifaat al-Mirghani, previous reference, pp. 120-128.

Secondly: supporting the institutions which operate to achieve equality among community members:

There's a necessity to eliminate the injustices, exploitation, persecution and prevention from wealth and power or both, and engaging the whole society in their rights and freedom in an equal and just manner, without discrimination amongst its members or the groups and regions inside the same country, encouraging them to achieve social justice and creating balance and equality in society[5].

Thirdly: Adopting developmental and volunteer projects:

This is the State's role to take care of its all members, guaranteeing what realizes their welfare and enjoying their whole social, economic, political and cultural rights equally, and to be just toward all their members so as to engage them in social solidarity.

Fourthly: eliminating discrimination based on gender, religion, race and culture:

One of the obligations of the State is to implement all the international and regional conventions and local laws principles related to protection of human rights without any discrimination. It's noteworthy to know that in the case of Sudan violations against the civilians perpetrated during the former regime were numerous, represented in genocide and crimes against humanity attributed to the then President of Sudan (Omer el-Bashir), and some of his aids. They violated human rights in Darfur region in western Sudan because of the racial discrimination based on race, culture and color. This what has been proved by the causes of the outbreak of war in the region, violating the provisions of article (2) of the Universal Declaration of Human Rights of 1948 which ensure that: (any human has the right to enjoy all his rights and freedom as reported in the Declaration, without any discrimination of any form, especially the one based on race, color, gender, language, religion, political or apolitical opinion, national or social origins, wealth, birth or any kind…). Proceedings of the international trial are still continuing with one of the defendants in those crimes (Ali Kosheib) who surrendered himself to the International Criminal Court voluntarily in the Republic of Central Africa on June 9, 2020 as he was accused of committing 31 crimes of war and crimes against humanity in Darfur

[5] Iyad Yunus Mohammed al-Saqli, Amer Hadi Abdullah al-Jubouri, previous reference, 230-239.

between August 2003 and April 2008[6]. And one of the State's obligations is to combat all forms of discrimination on the ground of gender, religion or culture…

Fifthly: Reinforcement of human dignity and equality among people:

Reinforcement of human dignity can be through respecting the human and not violating his/her rights, as well as protecting and persevering them in the local laws, imposing severe sanctions on anyone who violates them. The State has also to implement the rule of law principle without favoritism and equally between the ruler and the ruled in case of committing crimes.

Sub-section Three: Relationship of social justice with human rights:

We saw previously how social justice is based on equality and equal opportunity, encouraging to have a decent life and meeting the basic needs for every person, attaining happiness and welfare as human's aim.

The Universal Declaration of Human Rights in article (3) stipulated that individuals have the right to life, freedom and physical integrity… According to the International Covenant on civil and political rights of 1966 article (2), the rights to life are non-derogable for all humans, and law obliges that these rights must be protected and no one has to be prevented from life arbitrarily (prevention of imposing political death penalty). Generally, we can say that relationship between human rights and social justice meets in the following:

a. The rights to life are non-derogable for every human being and the law has to protect these rights, and nobody has to be arbitrarily prevented from life.

b. In the countries where death penalty is not abolished, this penalty mustn't be executed except for the most dangerous crimes according to the applied legislation at the time of committing the crime, and which is not against the provisions of this covenant and the convention of genocide prevention. Killing may not be a penalty except for the most dangerous crimes according to the legislations in force at the time of committing crime. However, Sudan still applies the capital

[6] United Nations News, the International Criminal Court and the trial of Ali Kushayb for his human rights violation, crimes against humanity and war crimes in Darfur. Kushayb on 9 July, 2021. These charges are: (Deliberately directing attacks against the civilian population, premeditated murder, looting, and destruction of enemy property, outrage on personal dignity, rape, forcible transfer, persecution, torture, cruel treatment, and attempted premeditated murder). It is worth noting that the International Criminal Court issued an arrest warrant against Ali Kushayb in 2007, https://news.un.org/ar/story/2022/04/1098182, 5/4/2022, accessed: 24/4/2022.

penalty in the political crimes. The researchers view that social justice is as vast a concept as human rights; both are considered as legal terms which are essential for humans' life. And their existence in a given environment may not be perceived without having a link between rights and justice.

Continuous violations of human rights were marked in Darfur region until now; there are still killing, racial conflicts, displacement and homelessness, as well as excessive violence from the part of the Sudanese government against the peaceful protestors and widespread arrests violating human rights[7].

Section Two: Causes of human rights violations in Sudan:

Generally, causes of human rights violations are common for the majority of local communities, and the major motifs are similar as they are based on the government system in the country, absence of State's authority and the existence of insurgent groups. In Sudan, we find that the causes of continuation of war and the increase of human rights violations resides particularly in the absence of State authority. That is because the actual regime in Sudan in the transitional period (2019-2022) is (a military-party rule) and is itself one of the reasons of violations, as excessive violence has spread from the regular forces against the civilians who are exerting their right of peaceful expression represented in the peaceful gatherings and their demand of freedom and to have a civil rule[8].

Weak economy in Sudan was one of the reasons of human rights violations, in addition to lack of security in the local communities which resulted in their displacement in search of security and stability. Furthermore, not having social justice led to imbalance in power and wealth sharing equally. That was one of the major demands of the insurgents, reflected in human rights violations causes[9]. Absence and weakness of the State's authority in implementing the rule of law is serious threat to the local and regional community in its security and peace, which requires the interventions of the international entities to keep security and peace. The widespread racial conflicts in Sudan is one of the major threat to peace and social security, as it disharmonize the Sudanese society which was known by its strong unity in demanding it's

[7] Yasein Hassan Mohammed Osman/ Mohammed Hassan Jamaa' crocodile, Controls of Arrest and their Effects on Human Rights, Journal of Rights and Human Sciences, Issue Four, Volume 13, December 2020, pp. 144-162.

[8] Abdel Karim Abdellawi, presented by Hani Megally, The Experience of Transitional Justice in Morocco, First Edition, Cairo Institute for Human Rights Studies, Cairo, 2013, p. 46.

[9] Rifaat al-Mirghani, previous reference, pp. 120-128.

rights and freedom; this constitutes a human rights violation. Thus, killing, theft, burning villages… which were committed by the tribes against each other are a result of the absence of rule of law implementation, especially for those who violate human rights[10]. The causes of human rights violations can be summarized as the following:

Sub-section One: The legal nature of system of governance in Sudan:

The legal nature of actual system of governance in the transitional period from 2019 up until 2022 cannot be specified according to the known systems. But we can say, if that is possible, that it's a mixed system between the ministerial and presidential Para-electoral one; the power is represented by the Prime minister, chosen by the majority of the nation and parties so as to lead the country in the transitional period. After the coup on the 25th of October 2021 there is no longer a Prime minister, the semi consensual Sovereign Council was dissolved, and the military high ranks in power opted for a new Sovereign Council through a deal with some political parties which signed to the Peace Agreement after being political factions/parties warring and opposing the ancient regime. Some tribal communities exploited the absence of power in implementing the rule of law to disseminate problems among some tribes and to have armed conflicts sporadically to trade. As an example we saw human rights violations in Darfur west state, in Moun Mountain area and Kreinik[11].

The researchers consider the government system in Sudan in this period is mixed, as it depends on a military presidential framework, that have a Sovereign Council, military and civil appointed and not elected for the democratic transition. The Sudanese army Commander is the Head of State and the Prime minister for a multi-parties system; such kind of system cannot be easily be described, as it has many disadvantages and weaknesses in decision making, such as the decision to use violent methods against the peaceful civilians that resulted in death, harm, arbitrary arrests, and repression in terms of rights and freedom, like freedom of expression and peaceful gathering, organization of manifestations and total absence of national will to manage the country.

[10] Ali Ahmed El-Sayed, Immunity from the Criminal Issue in Sudanese Criminal Laws and Islamic Law, 1st Edition, Meroe Library Press, Khartoum, Sudan, 2006, pp. 8-9.

[11] The UN Human Rights Council report criticized Sudan in its reports, and "the government's repressive practices that violate basic civil and political rights, restrict religious freedoms, and ignore obligations to protect civilians under international humanitarian law." International reports also focus on what is happening in conflict areas, especially in West Darfur.

Second sub-section: Weakness of economy and absence of social stability and political consensus:

Human Rights are closely related with the economic situation of the State, the social stability and political consensus; as achieving welfare and improving people's level of life and eliminating poverty represent the economic rights as reported in the Universal Declaration of Human Rights of 1948, as well as the local Constitutions. And the economic situation all over Sudan is in a continuous deterioration, which very alarming. Thus, the State must find rapid economic solutions and establish developmental projects that achieve human dignity and his welfare.

Those who follow Sudan's economy during this period will find that the majority of human violations are because of bad situation and deterioration of the State's economy, as an evidence the big number of conflicts over the natural resources, spread of crimes, looting and killing with the aim of steeling money. We also observe that the Sudanese government does not put into account its pledges toward the international community and does not respect the commitments and international charters that Sudan adopted, despite lifting the American sanctions that where imposed due to commiting human rights violations by the former government in a span of three decades. Hence, the economy is one of the major causes that lead to human rights violations[12]. Suspension of grants and international assistance to the government of Sudan because of the decisions of October 25th, which resulted in dissolving the government, caused the economy deterioration[13]. While others think that this economic crisis can be solved by the government itself, through improving living situations and prioritizing basic needs of the people in terms of food and medication, in addition to laws reform due to the fact that they are related to principle of social justice[14].

Absence of political consensus in Sudan and the process of government system transition according to the political decisions of (25 October 2021) that led to dissolve the fragile government system transition, and to form a government to manage the State's affaires until forming a consensual government, or heading to the elections, these are decisions

[12] Abd al-Karim Abd al-Lawi, previous reference, pp. 172-189.

[13] Abdel Hamid Awad, Human Rights in Sudan... Violations that Exhaust Citizens, https://www.alaraby.co.uk, Khartoum, December 11, 2018, accessed 4/21/2022 AD.

[14] Khaled Desouky/Francis Press, Poverty, marginalization and suppression of freedoms in Sudan, Al-Araby Al-Jadeed, Khartoum, December 11, 2018.

fundamentally oppose all international Human Rights laws, thus undermining the constitutional principles "coup"[15], and also the principles of the Transitional Constitution Document in Sudan and the other founding documents on State's management in this transitional period[16]. The characterization of these decisions according to what has been mentioned above falls in international human rights violation represented in freedom of expression repression, arbitrary detentions and the use of excessive violence against protestors and killing them[17]. That is because every undemocratic transition that comes through regular military takeover or any civil group to seize power without consensus or elections is a coup[18].

Political practices in Sudan in the actual transitional period witnessed many changes and political instability resulting from the non-consensus among the political parties, besides multiparty which is an obstacle itself to have consensus among the social components; as there are more than 100 political party, and every party has its own different vision of the State management, which rendered reaching a consensus impossible. On another aspect, we find the military in power has as a pretext the absence of political consensus among the political parties, and that they, the military, seek to build a civil State where freedom is exercised and administered via the elections. The period was marked by many human rights violations, represented in the killing of peaceful civilians and widespread arbitrary arrests of political leaders and some media professionals, as well as human rights activists without regard for their

[15] Michelle Bachelet, Human Rights Violations, United Nations High Commissioner for Human Rights, United Nations News - A Global Perspective Humanitarian Stories, November 5, 2021 AD.

[16] Abdul Wahed Osama Mubarak Allah Jabu, The Sudanese Constitutional Document of 2019 and the Empowerment Removal Law of 2019 and its comparison with the provisions of the International Covenant on Civil and Political Rights, Journal of Legal and Social Sciences, Zayan Ashour University, Volume Five, Issue Three, Jafla, Algeria, 1/9/2020, pp. 762-770.

[17] Ali Mohammed Salih Al-Dabbas / Ali Alyan Mohammed Abu Zaid, Human Rights and Freedoms, Edition 1, Volume 1, House of Culture for Publishing and Distribution, Jordan, 2005, pp. 160-161.

[18] The United Nations High Commissioner for Human Rights, Michelle Bachelet, called the military takeover of power in Sudan “extremely disturbing,” adding that it was “a betrayal of the brave and inspiring 2019 revolution and inconsistent with all international human rights laws, as well as the country’s constitutional document and other founding documents of the transition.” The events since the coup have brought to mind a bleak page in the country's history when freedom of expression was stifled and human rights were comprehensively suppressed. The arrest and detention of numerous people – including government ministers, members of political parties, lawyers, civil society activists, journalists, human rights defenders and protest leaders The UN High Commissioner for Human Rights, Michelle Bachelet called the military takeover of power in Sudan “extremely disturbing,” adding that it was “a betrayal of The 2019 revolution is brave and inspiring and is inconsistent with all international human rights laws, as well as the country’s constitutional document and other founding documents of the transition.” The events since the coup have brought to mind a bleak page in the country's history when freedom of expression was stifled and human rights were comprehensively suppressed. and the arrest and detention of numerous people – including government ministers, members of political parties, lawyers, civil society activists, journalists, human rights defenders and protest leaders.

legal and constitutional rights. It is noteworthy to indicate that under the Protocol of security arrangements in Juba Peace Agreement a committee to deal with the issue of war-prisoners and missing persons was formed but had not entered into force[19].

Sub-section Three: State's authority in implementing the rule of law:

There is a total absence of the Sudanese government in implementing the rule of law principle, which is the basis for the legitimacy of the State's actions. And though Human Rights violations being so clear in Sudan in the last three decades, and the existence of complaints against international crimes' perpetrators, there is still no criminal trial against them. This demonstrates the weakness of governance system or unwillingness to conduct any trial for human rights violations perpetrators. That resulted in international criminals perpetrators of human right' impunity, that encouraged in another way those who are in power and officials in the country to commit more violations so as to stay in power the longest possible period, to achieve their goals which oppose the principle of rule of law.

The system of governance in Sudan during 2019-2022 was characterized by the system of mixed consensual council between a military and civil, and is majorly unstable; as the government was changed three times so as to have a political agreement to manage the country in transition, and to meet the Sudanese people demands who aspired majorly to have guaranteed freedom and achieve peace and justice and democratic transition and civil rule of law and establish a civil State. However, multiplicity of governments in a short period, with a rate of one government each year occupied the military and civil institutions from their obligations toward the State and neglected implementing the principle of rule of law which is the most important legal principle to achieve social justice[20].

Furthermore, the actual system of governance since 2019 up until now is characterized by weakness and absence of impartiality implementing the law on all; as we don't see local trials for human rights perpetrators in Sudan, especially in Darfur region and Kordofan. There

[19] Mohammad Amin Yasein, Human Rights Violations in Sudan, "United Nations News, the Criminal Court begins the trial of Ali Kushayb on charges of war crimes and crimes against humanity in Darfur," Asharq Al-Awsat, No. 15793, 23/2/2022, https://news. un.org/ar/story/ 04//2022/1098182.

[20] Mohammed Khalifa Hamid, Encyclopedia of Criminal Publications (a comparative jurisprudential study), Part Two, Technical Office of the Supreme Court, Khartoum, Sudan, 2001, pp. 43-44.

is a delay of trial for more than two years because of immunities or favoritism, absence of impartiality, which is against the principle of justice itself[21].

Sub-section Four: Spread of tribal conflicts phenomenon during the transitional period in Sudan (2019-2022):

The widespread tribal conflicts in Sudan became a social phenomenon in the transitional period in Sudan from 2019 until 2022. It also became a serious security threat to that may lead to the decomposition and destruction of the Sudanese society if it isn't rapidly dealt with from the local and international community. The reason is the absence of State's authority in implementing the rule of law on human rights violations and crimes perpetrators. Crime we s spread amongst the Sudanese communities in all cities; such as thefts, looting and killing. Racial conflicts, particularly in Darfur, became a social phenomenon threatening peace and social security, locally and internationally. The last three months, there has been a frightening increase in the rate of victims of racial conflicts that might reach hundreds in one month. In the city of Kreinik and Ajineina, the capital city of West Darfur state, conflicts victims reached in April of this year more than one hundred. The Sudanese government is still helpless to put an end to these violations and achieve justice. These tribal conflicts will have more impacts on the society, such as killing, theft, burning villages and forced displacement…Whereas impunity of these crimes perpetrators will encourage them to commit more violations. In addition, the question of eliminating violations is the State's obligation with all its institutions; they have to protect the civilians, respect and preserve human rights and freedom as reported in the Constitution[22].

Section Three: provisions of the legal protection on human rights in the Sudanese Criminal Code:

Provisions on human rights protection against violations as reported in the Sudanese Criminal Code texts through criminalizing the acts and violations and imposing penalties, such as criminalizing killing, crimes against humanity and hurt crimes…Hence, Criminal Code is a set of legal rules indicating the crime, demonstrating the penalty when it is committed. This is known as report of criminal responsibility. Here, we can take as an evidence article (8) of the

[21] Rifaat al-Mirghani, previous reference, pp. 120-128.

[22] Michelle Bachelet, Human Rights Violations, United Nations High Commissioner for Human Rights, United Nations News - A Global Perspective Humanitarian Stories, November 5/11/ 2021.

Criminal Code of 1991 stipulating that: (1) no responsibility but on the person who is major and chosen, (2) no responsibility but on an illegal act that is intentionally perpetrated or by negligence. The article shows how the Criminal responsibility is reported, in terms of the age of the defendant, his/her act intention, negligence, result and relationship (causal relationship). These rights and provisions will be dealt with in the following sub-sections.

Sub-suction One: The most important rights protected by the Criminal Code and principles of protection:

1. The rights to life security physical integrity:

The rights to life and physical integrity was mentioned in the Universal Declaration of Human Rights, article (3) and emphasized on the individual's right in life, freedom and physical integrity, it was also cited in the International Treaty for Civil and Political Rights of 1966 in article (2) which ensured the importance of safeguarding the rights to life, through forbidding any person from life oppressively (interdiction of political death penalty). Article (130) of the Sudanese Criminal Code (1991) reinforced protecting individuals and ensured their physical integrity through criminalizing killing with all its forms, and executing death penalty when violating human's body through killing. Articles 138-142 emphasized on protecting individuals by persevering their physical integrity through criminalizing inflicting physical hurt and violence with all its forms and imposed imprisonment penalty**.**

2. protection from arbitrary detention because of freedom of expression:

Article (165) of the Criminal Code stipulated the protection of individuals from any illegal arrest due to exerting the rights to freedom of expression, and imposed imprisonment penalty for everyone who violate the individual's rights to expression or detaining or opposing him/her without any legal justification. Nevertheless we find cases of arbitrary detentions going on by the military in Sudan[23].

3. Prohibition of private life and rights to security:

[23] Article (165) of the Criminal Code of 1991 states: (A person who imprisons a person in a certain place without a legitimate purpose or continues to imprison him knowing that an order has been issued for his release is considered to have committed the crime of unlawful arrest, and he shall be punished with imprisonment for a term not exceeding one year or with a fine or with both).

Article (166) of the Criminal Code stipulated prohibiting violating privacy through spying on individuals on their private calls, and imprint penalty is imposed on those who commit it[24].

4. Protection of human dignity:

Article (186) of the Criminal Code of 1991, amended in 2009 was in accordance with Rome Statute which emphasizes the rights to human dignity and criminalizing crimes against humanity[25]. It stipulated that any act leading to human dignity must be criminalized, and in return it imposes death penalty or life imprisonment on anyone who violate human rights.

Sub-suction Two: Obstacles to implement human rights and general freedom in Sudan:

The most noticeable hindrances to human rights and freedom in Sudan are as the following:

1. The regime is characterized by dictatorship (military) and lack instability, in addition to the ongoing political conflicts and arbitrary change of government (coup), and freezing some articles of the Constitution and some laws and accords.
2. Weak knowledge of concepts and human rights principles for some local communities in Sudan, non -acceptability and lack of implementation of the principle of rule of law, such as the community of native administrations and regular forces.
3. Spread of violence which transformed into terrorism or civil or sectarian war.
4. Confusing the political and legal relationship, in terms of objectives and tools.
5. The governor itself is violating human right and the non- implementation of the rule of law and impunity of the perpetrators of violations from the penalty.
6. Arbitrariness and abuse of power from some officials and those who have political and social influence in the country and having objective and procedural immunity[26].
7. Weakness of some of our national legation which ensure human rights and how they conflict with international charters (Security Service Law), with lack of sufficient mechanism to apply Human Rights laws and weakness conflicts resolution.

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[24] Article (166) of the Criminal Law of 1991 states: (Whoever violates the privacy of a person by accessing him in his home without his permission, or without legitimate means by wiretapping him, or viewing his messages or secrets, shall be punished with imprisonment for a period not exceeding six months or with a fine or with both)

[25] Khaled Tohma Safak Al-Shammari, International Criminal Law (the concept of international criminal law and its sources - international criminal responsibility and its types - extradition system - international criminal justice), second edition, Kuwait, 2005, p. 64.

[26] Ali Ahmed El-Sayed, Immunity from the Criminal Issue in Sudanese Criminal Laws and Islamic Law, previous reference, pp. 8-9.

8. Some movements and political parties tried to dominate rights and natural freedom of the people, via consecrating the State capacity toward their society or their religious groups.
9. Some governments and opposition parties attempted to form structures of organization, groups and offices in the name of human rights, affiliated to them, aiming at raising their ideas and promoting their political propaganda. That may sometimes cause confusion on the human rights issue.
10. Interference in the internal affairs in the country under the pretext of providing humanitarian and economic assistance, in a way that serves their international and regional objectives and interest, whether it was through its financing or some private sector[27].
11. Confusing between the executive authority and legislative authority in the actual regime in this transitional period: system of governance in Sudan during this period since 2019 lacks the legislative one. Only the executive authority (the sovereign council) enact laws, confliction with the principle of separation of power which stipulate not to centralize authorities in one hand. Hence, this authority will change into a dictatorship, not taking into account, as usual, human rights as is the case in the system of government in Sudan.
12. Lack of human rights respect and the absence of the State to apply the rule of law.

Section Three: The proposed solutions to contribute in putting an end to human rights Hindrances:

There are a number of proposed solutions to counter human rights hindrances from some scholars as the following:

1. The importance of transitioning from mixed system of governance or the system of sovereignty council (military - civil) to a total civil rule and implementing democracy principle.
2. .Spreading concepts related to human rights principles among the Sudanese communities, and seeking to reinforce the role of knowledge of research centers for human rights and community

[27] Yassin Hassan Mohamed Othman, Basic Principles of the Concept of the Rule of Law and the Challenges It Facing, Justice and Human Rights Forum Conference, United Nations Development Program in cooperation with the Judiciary, South Darfur State, Sudan, Nyala, 24/October/2019

training, especially the native administration community and regular forces to implement the rule of law and not having recourse to customs in the issues of .human right violations.

3. The Sudanese government must proceed to the disarmament process and put an end to crimes using the rule of in a just way to all society members so as to eradicate crimes.
4. It's vital that political, legal and social relationship must be well established and separate so as not confuse them and justify the use of excessive violence in order to deny people their freedom, under the pretext of achieving stability and peace.
5. Activating the role of local jurisdiction in the issues of human rights violations and finding effective mechanisms and abolish reconciliation issues in the cases of human rights that were undertaken by native administration in order to put an racial issues.
6. Putting an end to immunities and just trials procedures on the perpetrators of International crimes, human rights violators, with legalizing the role of the native administration and the issues that go in line with the raised subjects based on its social capacity.
7. Finding a way to conduct an intellectual and knowledge dialogue under the slogan of human rights for all parties (government, movements and the people), so that it we are able to meet and have a dialogue around human right.
8. Aspire to have peaceful transition of power and leave the seat peacefully, and to give the final say to the elections ballots, implementing democracy in the governance system.
9. Disarmament of all civilians and trigger national reconciliations process with all conflict parties.
10. To put an end to foreign political interferences putting into consideration the international assistance in terms of human and security aid that aim to achieve integrity of the society.
11. The importance of forming the three authorities in the country and to separate between them, so as to be fully independent and to guarantee democracy.
12. The State must take care of justice principles in the transitional period and must implement the rule of law, reform laws and institutions so as to preserve the human dignity.

Conclusion:

The study handled the topic of human rights violations in Sudan in in light of the Criminal Law, focusing on their causes and obstacles facing human rights in Sudan and the proposed solutions to counter them. The research comes up with a number of findings and recommendations, of which:

Study findings:

1. There are still human rights violations, in terms of killing, looting, violence and an ongoing illegal detention in Sudan in the transitional period (2019-2022), on a larger scale threatening society security in the country.
2. There is no social justice in Sudan due to the aspiration have sovereign and economic dominance from some of those who are in power, without bearing in mind to any human dignity.
3. Ruling system in Sudan is characterized by authoritarianism and dictatorship, centralizing authorities in the Sovereign Council and its excessive use of violence and suppression of freedom.
4. We witness a wide spread of crimes and an increase of armed tribal conflicts, particularly in Darfur region, and that threat local and international security and peace.
5. The main problem regarding human rights violations in Sudan resides in the absence of the State's role in implementing the rule of law, and denial of some local communities to adhere to human rights concepts, besides lack of political will for the parties to transition toward a civil society and achieve democracy and social justice.

Recommendations:

1. To work to end human rights violations and to have tribal reconciliation for those who have armed conflicts, and have recourse to disarmament to reach to social justice in the country.
2. The state has to adopt a d legalize human rights in its national laws, and bring them into line with the international charters, and to apply the principle of rule of law, in addition to finding effective mechanisms to safeguard and adopt human rights, including the International Criminal Court.
3. The necessity of having a peaceful power and sovereign practice, forming the government and separating authorities, taking into account as a basis democracy and institutions reforms and holding elections.
4. Activating tools and mechanisms for individuals' protection, holding just trials for the international crimes perpetrators.
5. Raising awareness so as to comprehend the democratic State requirements, letting them know the human concepts, besides enhancing the political will to establish a civil State.

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An Overview of Human Rights and Its Applications in the Arab World and Islam

Husam Aldeen Alsamman

There is no doubt that our Islamic Doctrine Pathway (Sharia)was a forerunner in establishing the Bill of Human Rights, in theory, and practice. Many people who had accepted Islam over the years had enjoyed living under a government that practiced those rights for a long time, even though the practice varied under different leaderships. However, the practice of human rights toward the Islamic community had completely vanished with the fall of the Ottoman Caliphate where Muslims' blood became worthless, and their dignity was no longer valued, but it was rather locked up in a prison of injustice, oppression, and persecution. Furthermore, the Islamic community had suffered from colonialism and oppression inflicted by oppressive states where they split their land amongst them as if they were splitting the inheritance of an old sick man. Meanwhile, they have violated the human rights of Muslims in particular when they assaulted their land, blood, money, and honor.

On the ruins of World War 1 and World War 2, an international system was formed, and the United Nations Assembly was established which proclaimed the Bill of Human Rights in 1948 AD, which was supplemented by the two international covenants in 1966. These human rights included economic, social, and cultural rights as well as political and civil rights, and countries around the world joined these two covenants.

The fact that the human rights document is issued by the international organization that represents the international community, constitutes an international custom that gives it the status of binding these rules. The international organization was the main source for the rules of international humanitarian law, where it derived its constitutions from its articles, which call for the protection of human rights. The human rights in its internal law are known as the public freedom, but internationally it is a set of rules and principles that are stipulated in the Universal Declaration and international treaties that secure the rights and freedom of individuals and people in the face of governments. Human rights are universal indivisible, interrelated, and intertwined rights, and the international community must treat these rights in a comprehensive and equal manner, with no bias. Not as is the case now, there is bias and double standards in following these rules, which calls for the establishment of a new international system that provides justice for all and stands against injustice and oppression.

It is important to talk about human rights and celebrate them, but it is more important to talk about the human rights violations and the danger associated with violating them, which was

especially violated in the Arab and Islamic world. These violations are the main cause for undermining societies where these rights are being violated. These violations are the reason for the spread of misery and terrorism, they are the reason for the lack of peace and security, which result in the interference of major prevalence countries in the internal affairs of these governments and taking control over their resources.

Unfortunately, many human rights violations have happened under the pretext of the war on terrorism and the protection of national security. Shockingly, the same countries that are pioneers in violating human rights are members of the Human Rights Council at the United Nations. The war led by the United States of America against the so-called terrorism has inflicted different types of terrorism across the Islamic world in general and Arab countries in particular.

In light of this bleak reality, which comes with many unknown consequences that may affect the Middle East in the coming days, we say that governments and regimes should realize that the issue of human rights is not only a local issue but rather, a global issue that is governed by international standards.

Furthermore, the establishment of democracies should not be based on elections only but should be also based on the valuing of human rights. Governments across the world must participate in a coordinated effort to advance human rights internationally and improve their application.

Human rights live in the minds and consciences of all people, and this is the true value of human rights. Today, the international community must review its policies and rise to consecrate these rights and abandon its double standards, especially when it comes to Israel and its allies who kill civilians in cold blood and enjoy the protection and support of the international community. The international community must realize that hatred breeds hatred and violence lead to more violence and misery for humanity.

In light of the violation of human rights, security and stability around the world cannot be achieved, and that international peace and security require the protection and preservation of human rights throughout the world. Mankind is the creation of Almighty God, and he is cursed for whoever tries to destroy God’s creation.

Almighty God said, “We have certainly honored the children of Adam, and carried them on the land and sea and provided them with the good things, and we have preferred them over many of those whom we have created.” (The Qur’an, 17:70).

God Almighty also said, “For this reason, we decreed upon the children of Israel that whoever takes a life, unless as a punishment for murder or mischief in the land, it is as if he had killed all of mankind, and whoever saves a life, it is as if he had saved all of mankind.” (Qur’an, 5:32) The great truth of God almighty.

Rethinking of Justice and Social Justice

Prof. Dr. M. Refik Korkusuz

I- HISTORICAL DEVELOPMENT OF NOTION OF "JUSTICE" IN ISLAMIC WORLD

Justice has turned into a goal that every person should pursue as much as they can and is advised to use the responsibilities and rights given to them in the society as a basic tool in reaching this goal. It is seen that this idea is largely the same as the understanding that Kant later put forward in the Western world, but in terms of practice, it creates an environment in which results suitable for Aristotle's analysis of justice are obtained[1]. This led to the creation of a completely different and new legal order for the era aforementioned. Interestingly, this situation emerged and developed from the foundation of society in a completely non-state or supra-state form, with a motivation provided by belief alone[2]. In addition, the translations made from ancient Greek philosophers, especially during the Abbasid Caliphs, led to the rapid and sometimes differentiated development of the understanding of justice among Islamic Society as well as its implementation.

[1] The story about Hz. Davud and Hz. Süleyman making cross-cutting decisions about a shepherd's flock entering a farmer's field is particularly important in this regard. According to the story, while Hz. Davud was examining the problem before him, he decided to give the farmer the herd, which he realized was equivalent to damages that calculated in the field; his son Hz. Süleyman stopped him and claimed that this would be a disaster for the farmer. Hee then argued that with a payment plan spread over time, the shepherd would be able to pay the debt arising from the damage to the farmer without suffering a complete economic destruction. Hz. Davud follows his son's suggestion.. See. Enbiya 78-79 Diyanet İşleri Başkanlığı, Kur'an-ı Kerim,, versiyon 3.0, Windows, Türkçe, Diyanet Yayınları, 2016, sh. 327, http://kuran.diyanet.gov.tr/ Because for his efforts to come up with a solution that would appeal to everyone and cause the least total damage, Hz. Süleyman; on the other hand, because he did not prevent his son from doing this and ignoring the result he reached with his efforts –as an elder, as a king- Hz. Davud are glorified. He is glorified for not rejecting Süleyman's solution proposal. However, today, many thinkers and researchers are content with considering this situation as an understanding that is at the basis of many different solution proposals in Islamic law. As an example of such inferences See. EKİNCİ, Ekrem Buğra, Hukukun Serüveni, 1. Ed., Din-Tarih, Sosyoloji Dizisi 28, Arı Sanat Yayınları, İstanbul-2011, p. 279–81. On the other hand, apart from the Prophet, Hz. Ömer, as someone who understands this situation best and applies it as much as he can in his decisions, acted as the incarnation of the word equity. Another example, Hz. Ali, on the other hand, was rather the watcher of distributive justice and tried to eliminate the inequalities that started to emerge in his time in the Islamic society. For example, he aimed to remove the priority of seniority in the distribution of loot and to ensure equal distribution of loot to everyone, which may be the main reason behind the reactions to him and his administration.

[2] Ercan Er, "İbn Haldun'un Asabiyye Kuramına Göre Devletleşme Sürecinde Hukukun Yeri" Master Thesis, Galatasaray University, İstanbul-2016, p. 20-22.

Briefly, the stages of law in Islamic societies also reveal the evolution of the understanding and practice of justice.

III- THE PERIOD IN WHICH THE UNDERSTANDING OF LAW AND JUSTICE WAS AN INTRINSIC VALUE LIMITED TO MUSLIMS

In the first stage, in the first period of the emergence of Islam, the prophet and his relatives had a dynamic and lively structure that settled within them individually snd prompted them to act justly to the best of their ability. And also this structure did not rely on any social and institutional structure and did not need to draw strength from them. People were complying with the regulations brought by Islam only because of their beliefs, without the need for any external force. Unlike today, people saw punishments as a purifying and comforting tool and internalize them, and aldı they acted responsibly while obeying the orders and using the freedoms given to them[3]. To a large extent, law, morality, religion and justice were intertwined, creating a strong sense of justice for people.

II- THE PERIOD IN WHICH THE UNDERSTANDING OF LAW AND JUSTICE WAS BOTH INTRINSIC AND EXTRINSIC FOR MUSLIMS

In the next stage, starting from the period of the four caliphs, an institutionalization process and the studies on law and justice were carried out by real experts. Towards the end of this period, with the emergence of the Four Imams, the structuring of the understanding of law and justice in Islam reached its peak to a large extent. Four Imams, by displaying resilient attitudes in terms of their personalities, also took an upright stance against state structures that tended to evolve into exploitative structures in many ways.

In this period, people adopted the understanding of justice of the lawyers whom they trusted to be experts and the works of these lawyers in this field and they made an effort to apply them in social life, although not as much as in the previous period. Furthermore, the states, saw that the legal regulations provided by the sects and the legal structures that emerged spontaneously in the social life were functional in terms of ensuring justice and created

[3] For an interesting example on this subject, see. OmarSuleiman, En Komik Sahabe, youtube, 2014, https://www.youtube.com/watch?v=2c4UG19AUW4.

educational institutions such as foundations, kulliyes, and medreses to support the development process[4].

III- THE PERIOD OF EVOLUTION TO THE STATE OF LAW

In the third stage, at the end of the previous process, the developed and mature structure of Islamic Law in the newly emerged states had largely developed on non-state affairs and the relations between individuals and societies directly. In the formation of this legal structure, the influence of those who came after the prophet and the four caliphs and Muaviye was significant. State affairs completely went out of Islam in this period. Unfortunately, it was not possible to reintegrate the understanding of Islam with a state in the next period. Unfortunately, the understanding of Islam could not be truly reintegrated into a state in the following period[5].

The social movements in the first two periods -firstly the society's efforts to seek justice as a whole and then leaving it to the experts- resulted in a regression in the third period in the form of the alienation of individuals and the societies made up of them from Islam and its Understanding of justice. It can be said that the most obvious example of this is the regulations and practices that the Ottoman Empire had to make and implement directly by the state during the reign of Kanuni Sultan Süleyman. Society pretended to prioritize seeking justice in its behavior and understanding of Islam[6]. The society acted as if seeking justice was not a priority in their behavior and in their understanding of Islam. This gap created because of the change of priorities is filled bu states -for example Ottoman Empire- out of necessity[7]. But as people were reluctant to obey the rules of law created by the state, states brought the law out of the roof of Islam and imposed stricter rules in order to ensure justice.

IV- IS the ISLAM WOULD BE the MAIN STATION FOR REACHING TO SOCIAL JUSTICE

Although there are too many various opinions about what Social Justice is it cannot be said that there is a consensus about it.

[4] For detailed information on this subject, see. Linda T. Darling, "SocialCohesion ('Asabiyya') andJustice in TheLateMediavelMiddle East",In ComparativeStudy of SocietyandHistory , V. 49 (2007), p. 329–57, doi:10.1017/S0010417507000515.

[5] Even today, this has not changed. It is unrealistic to talk about the existence of a state structure that carries out activities that fully reflect Islamic Law and its understanding of justice.

[6] AYDIN, M. Âkif, Osmanlı Devleti'nde Hukuk ve Adalet, 1. Ed, İstanbul-2014, p. 85–96.

[7] This does not mean that the understanding of law and justice can no longer develop under the umbrella of Islam; but it is difficult to say that necessary and sufficient efforts were made in that era and even today.

Social Justice is a type of Justice which means compliance with rights and law, protecting rights, truthfullness. It refers to ideal conditions in which every single member of the society has the same fundemental rights, protection, oppotunities, obligations and other social facilities.

Like aformentioned before Social Justice can be defined differently. It can be said that social justice is to provide the equality and security of all social, economic and political rights and freedoms that all persons that constitutes society have as humanbeings. Also it can be defined as suppressing the distinction or imbalance between social classes and protection of economicly lower social classes aganist the other social classes.

There are two different approaches in defining social justice. Supporters of Radical Social Justice argue that the social justice can only possible through change of order. On the other hand Social Statist Social Justice supporters argue that the State has to control of the market.

Islamic jurists generally attributee the same meaning both justice and social justice. To corroborate this kind of approach they argue that in the termination of justice, equality may not help to reach to aims that pursued all the time.

The concept of justice, which means the observance and fulfillment of the right, is considered in two groups as distributive justice and corrective justice. Distributive justice is distributing a gain among individuals in a proportion that is equal to the ratio between their values. Rawls emphasizes "distributive justice" by stating that the state is responsible for maximizing the welfare of the most disadvantaged individuals in society. Rawls' conception of justice has two basic principles: "equal fundamental freedoms" and "fair equality of opportunity". According to the first principle, every individual is entitled to the widest possible range of equal fundamental rights and freedoms, compatible with a fundamental system of freedom for all. This principle defends the equality of all before the law. According to the second principle, social and economic inequalities should be eliminated, social and economic opportunities should be organized to benefit the most disadvantaged, and institutions and positions should be made open to all to ensure equality of opportunity. In Rawls' justice, each individual has an equal right to have and exercise rights, and he emphasizes the responsibility of the state to help its citizens exercise these rights.

In welfare countries, the following criteria are taken into account in ensuring social justice: prevention of poverty, providing equality of opportunity in education, participation to the market, social security and organizing social assistance, redistribution of welfare and income,

fair distribution of sources, fair tax organisations. Corrective justice is directed towards voluntary and involuntary behavior of a person.

V- CONCLUSION; THINKING of JUSTICE for EVERYBODY in the WORLD

As explained by Muslim thinkers, there are three basic elements of social justice in Islam. Those are absolute freedom of conscience, equality of all people, social solidarity between members of society

Given the first element, freedom of conscience, social justice can only be achieved through a completely free human conscience that believes that there is no superior authority other than Allah.

Power and authority are in the hands of Allah alone and no one, not even a prophet, can be a mediator between Him and His servants. The Quran, the holy book of Muslims, contains the following verse on this matter: "*No doubt i can neither harm you nor benefit you.*" With free spirit or free will, man does not live in fear of any being, because no one but God can benefit or harm his life, livelihood or position.

Moreover, this attempt to completely free the human soul from the fear of any object or being other than God cannot be fully realized since it is still dependent on the basic instinctual need for food, which is still of the greatest importance to humans. Therefore, in order for Islam to realize this freedom of the soul or will, God has established social laws that meet the basic needs of the human being, thereby securing the liberation of the human soul.

The most important of social laws is the full equality that exists between people. No individual can claim superiority over others by claiming to have noble blood in his veins or to be descended from prophets. The second important law that guarantees human freedom is social solidarity. Social solidarity is a sense of responsibility and duty towards society.

Today, these concepts have been forgotten and are avoided by Muslims. It is a mandatory provision in Islam that the rightful owner, whether he is a Muslim, a Christian or an irreligious person, must be given his due. It is a provision that every Muslim must obey.

Kashmir: A Case of Right to Self-Determination

Dr. Ghulam Nabi Fai

"We should not allow more casualties to occur (in Kashmir). By having a multilateral dialogue, (in which) we can be involved, we can seek ways to settle the issue once and for all." President Recep Tayyip Erdogan, May 2017 on the eve of his visit to India

The aim of this paper is not to appeal the conference participants' religious or ideological sympathies, nor to their leanings towards either India or Pakistan, but solely to their conscience, human concern, and moral rectitude.

Basic principle of self-determination

The self-determination of peoples is a basic principle of the United Nation Charter which has been reaffirmed in the Universal Declaration of Human Rights, the International Covenants of Civil and Political Rights (the ICCPR) & International Covenants on Economic, Social and Cultural Rights (the ICESCR) and applied countless times to the settlement of many international disputes. The concept played a significant part in the post-world war I settlement, leading for example to plebiscite in several disputed conflict areas, even though no reference was made to self-determination in the League of Nations Covenant.

Historical evolution of self-determination

The concept seems to be as old as Government itself and was the basis of French and American revolutions. In 1916, President Wilson stated that self-determination is not a mere phrase. He said that it is an imperative principle of action and included it in the famous 14-point charter. That gave a prominence to the principle. Self-determination as conceived by President Wilson was an imprecise amalgamation of several strands of thought, some long associated in his mind with the notion of "self-determination," others hatched as a result or wartime developments, but all imbued with a general spirit of democracy.

The Atlantic Charter of 14 August 1941, which was issued by the British Prime Minister Winston Churchill and the US President Franklin D. Roosevelt, affirmed the right of all people

or peoples to choose their own form of Government. They further added that they wished to see the sovereign rights restored to those who had been forcibly deprived of them.

Finally, in 1945 the establishment of the United Nations gave a new dimension to the principle of self-determination. It was made one of the objectives which the United Nations would seek to achieve, along with equal rights of all nations. After the Second World War, the concept began to acquire much greater importance. Article 1.2 of the Charter of the United Nations as one of the purposes of the UN reads: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."

United Nations resolutions

From 1952 onwards, the General Assembly of the United Nations adopted a series of resolutions proclaiming the right to self-determination. The two most important of these are resolution 1514 (XV) of 14 December 1960 and resolution 2625 (XXV) of 24 October 1970.

In the 1950's and 1960's the right of self-determination was seen almost exclusively as part of process of decolonization. Resolution 1514 is entitled: "Declaration on the Granting of Independence to Colonial Countries and Peoples." It includes the following statement of principle: "All peoples have the right to self-determination; by virtue of that right they freely determine political status and freely pursue their economic, social and cultural development."

The resolution 2625 of 1970, adopted a document entitled "Declaration on Principles of international Law Concerning Friendly Relations and Co-Cooperation among States." In a section entitled "The principle of equal rights and self-determination of peoples", the declaration states: "By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter."

International Covenants

In 1966, the General Assembly of the United Nations adopted the International Covenants of Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR). Article 1 of each of the Covenant's states:

"1.1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development….

"1.3 The States Parties to the Present Covenant, including those having responsibility for the administration of non-self-governing and Trust Territories, shall promote the realization of their right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

The Covenants came into force in 1976. They take effect as treaties and (unlike resolutions of the General Assembly) are binding, in international law on the ratifying States, subject to any reservations at the time of ratification.

Vienna Declaration

The Vienna Declaration, adopted by the United Nations 'World conference on Human Rights' on 25 June 1993, repeated Article 1.1. of the Covenants and continued: "Taking into account the particular situation of peoples under colonial or other form of alien domination or foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right to self-determination. The World conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right."

African Charter

Article 20 (1) of the African Charter on Human rights and Peoples Rights reads: "All people shall have the right to existence, they shall have unquestionably and unalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen."

International Court of Justice

International Court of Justice considered the several resolutions on decolonization process and noted: "The subsequent development of International Law in regard to non-self-governing territories as enshrined in the Charter of the United Nations made the principle of self-determination applicable to all of them." This opinion establishes the self-determination as the basic principle for the process of de-colonization.

The principle of self-determination in modern times can be defined as the right of peoples to determine their own political status and pursue their own economic, social, and cultural policies. Self-determination in its literal meaning or at a terminological level implies the right [of a people] to express itself to organize in whatever way it wants.

Guidelines to be promulgated by the United Nations

What is desperately needed today is for the United Nations to promulgate specific guidelines for identifying a people entitled to claim self-determination under international law and the Universal Declaration of Human Rights! A special group of human rights experts and historians should be recruited to provide advice and to compose an initial draft. The World Court should be entrusted with mandatory jurisdiction to decide whether a nation is violating the right to self-determination at the behest of the alleged repressed group. An affirmative judgment should result in the expulsion of the culpable country from the United Nations General Assembly unless remedial action is taken with a specified period, including the holding of a self-determination plebiscite conducted by the United Nations and fully transparent to the international community. Unless something like this ruggedness and bite is adopted, self-determination will remain a crass tool of international power politics, a cruel hoax to many. Self-determination is a right that must be honored irrespective of the identity of the oppressor.

Self-determination and the Kashmir Dispute

The principle of self-determination and the maintenance of international peace and security are inseparable. For example, the denial of this right to self-determination to the people of Kashmir

has brought two neighboring countries in South Asia - India and Pakistan - to the brink of nuclear catastrophe. The applicability of the principle of the self-determination to the specific case of Jammu and Kashmir has been explicitly recognized by the United Nations. It was upheld equally by India and Pakistan when the Kashmir dispute was brought before the Security Council in 1948. Since, on the establishment of India and Pakistan as sovereign states, Jammu and Kashmir was not part of the territory of either, the two countries entered into an agreement to allow its people to exercise their right of self-determination under impartial auspices and in conditions free from coercion from either side.

The idea that the dispute over the status of Jammu and Kashmir can be settled only in accordance with the will of the people, which can be ascertained through the democratic method of a free and impartial plebiscite, was the common ground taken by all the three parties to the dispute, viz., the people of Kashmir, Pakistan, and India. It was supported without any dissent by the United Nations Security Council and prominently championed by the United States, Britain, and other democratic states.

The United States and Britain have traditionally been committed supporters of the plebiscite agreement as the only way to resolve this issue. They sponsored all the Security Council resolutions which called for a plebiscite. Their commitment was indicated by a personal appeal made by America's President Harry Truman and Britain's Prime Minister Clement Atlee that differences over demilitarization be submitted to arbitration by the Plebiscite Administrator, a distinguished American war hero: Admiral Chester Nimitz. India rejected this appeal and, later objected to an American acting as the Plebiscite Administrator. Another American Senator Frank Graham visited the Subcontinent as the United Nations Representative to negotiate the demilitarization of Kashmir prior to the plebiscite. India rejected his proposals as well. It became a matter of controversy only after India realized that she could not win the people's vote.

The idea of Plebiscite in Kashmir was never controversial

There was much in these submissions at the United Nations that was controversial between India and Pakistan, but the proposal of a plebiscite was not. This is clear from the statement made on 28 January 1948 by Ambassador Fernand van Langenhove of Belgium as the President

of the Security Council. He said: " ... the documents at our disposal show agreement between the parties on the three following points:

(1) The question as to whether the State of Jammu and Kashmir will accede to India or to Pakistan shall be decided by plebiscite.

(2) This plebiscite must be conducted under conditions which will ensure complete impartiality.

(3) The plebiscite will therefore be held under the auspices of the United Nations."

The idea of plebiscite was suggested by India

It is clear from the statement made at the Security Council by Sir Goplaswamy Ayyanger, Indian delegate to the United Nations on January 15, 1948, that whether Kashmir remains in India or accedes to Pakistan or seeks membership at the United Nations, it must be decided by the people of Jammu & Kashmir.

Mahatma Gandhi, the founder of the nation of India said during a visit to Kashmir, "The princes being the creation of British imperialism and the British having quitted India, the people in the States were their own masters and Kashmiris must, therefore, decide without any coercion or show of it from within and without to which dominion they should belong."

Gandhi also said in August 1947, "I want to repeat the Government of India will stand by that pledge, whatever happens. That pledge itself stated that it is for the people of Kashmir to decide their fate without external interference."

Gandhi further articulated the position of his government on October 26, 1947, in these words, "If the people of Kashmir are in favour of opting for Pakistan, no power on earth can stop them from doing so. They should be left free to decide for themselves."

Pandit Nehru, India's first prime minister declared on Jan. 2, 1952: "We have taken the issue to the United Nations and given our word of honor. We have left the question of final solution to the people of Kashmir."

What exactly is the Kashmir dispute?

The Kashmir issue is simply this: the people of a large territory which is not part of any existing sovereign state were assured by the entire international community represented by the United Nations that they would be enabled to decide their future by a free vote. Until now, this assurance has not been honored.

It suits the guilty party, India, to quibble over the issue and make it look as abstruse and forbiddingly intricate. The false intricacy, in turn, provides an alibi to others to temporize and postpone a just and fair settlement of the dispute. The cost is imposed on the people of Kashmir - in countless inquires and deaths and intense suffering.

Tripartite Agreement between Great Britain, Indian National Congress & Muslim League

At a time, when Britain was liquidating its empire in the subcontinent, the tripartite agreement of Britain, the National Congress (representing Hindus) and the Muslim League (representing Muslims) partitioned British India into two independent countries: one compromising Hindu-majority areas which retained the name `India' and the other including Muslim-majority areas which named itself Pakistan. As this settlement also meant the end of British paramountcy over the autonomous principalities called States, these were supposed to merge with one of the two countries in accordance with the wishes of the people and the principle of partition (Hindu-majority States with India and Muslim-majority States with Pakistan). Kashmir was a predominantly Muslim-majority State; besides, it was far more contiguous with Pakistan than with India. It was therefore, expected to accede to Pakistan. But the Maharajah was Hindu and he rejected the first option and could not manage the second.

Faced with the insurgency of his people, which had been joined by a few hundred civilian volunteers from Pakistan, Maharaja fled the capital Srinagar, on 25 October 1947 and arranged that India send its army to help him crush the rebellion. India, coveting the territory, set one condition on its armed intervention. The condition was that the Maharajah must sign an Instrument of Accession (IOA) to India. He agreed but India did not wait for his signature to fly its troops into the State. Moreover, as British scholar Alistair Lamb has convincingly demonstrated in “Kashmir: A Disputed Legacy, 1846-1990,” the Instrument of Accession is probably as bogus as the ugly Protocols of the Elders of Zion confected by the Russian Tzar's

Ohkrana secret police. An original of the document has never been produced by India or anyone else.

Accession Provisional

Though long planned and swiftly executed, the annexation of Kashmir could not be a simple affair for India. First, there was the incongruity of the act which clearly violated the principle of partition. Secondly, while accepting the instrument of accession from the Maharajah, India did not wish to jeopardize its chances of annexing two other principalities or States (Hyderabad and Junagadh) which, in contrast with Kashmir, had Hindu majorities but Muslim rulers. It had a stake, therefore, in ostensibly preserving the principle that in case of conflict between the ruler's and the people's wishes, the latter must prevail. Under these compulsions, India had to attach a condition to the transaction with the Maharajah: the accession was made subject to "reference to the people."

Kashmir Question at the United Nations

Between October and December of 1947, the Azad Kashmir forces successfully resisted India's armed intervention and liberated one-third of the State. Realizing it could not quell the resistance, India brought the issue to the United Nations in January 1948. As the rebel forces had been joined by volunteers from Pakistan, India charged Pakistan with having sent "armed raiders" into the State and urged that the United Nations call upon Pakistan to withdraw them. This was coupled with the assurance that, once the "raiders" were withdrawn, India would enable a plebiscite being held under impartial auspices to decide Kashmir's future status. In reply, Pakistan charged India with having maneuvered the Maharajah's accession through "fraud and violence" and with collusion with a "discredited" ruler in the repression of his people. Pakistan's counter complaint was also coupled with the proposal of a plebiscite under the supervision and control of the United Nations to settle the dispute.

The Security Council discussed the question exhaustively from January to April 1948. It came to the conclusion that it would be impossible to determine responsibility for the fighting and futile to blame either side. Since both India & Pakistan desired that the question of accession should be decided through an impartial plebiscite, the Security Council developed proposals based on the common ground between them. These were embodied in the resolution # 47,

adopted on 21 April 1948 envisaging a cease-fire, the withdrawal of all outside forces from the State and a plebiscite under the control of an administrator who would be nominated by the Secretary General. For negotiating the details of the plan, the Council appointed a five-member Commission (including the United States) which proceeded to the Subcontinent in July.

The International Agreement

The United Nations Commission for India and Pakistan (UNCIP) which was set by the Security Council worked out the concrete terms of settlement in close and continuous consultations with both India and Pakistan. These were crystallized in two resolutions adopted on 13 August 1948 and 5 January 1949.

In Part III of the resolution of 13 August 1948, the agreement stipulates: "The Government of India and the Government of Pakistan reaffirm their wish that the future status of the state of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the truce agreement, both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured."

The January 5, 1949, resolution mandated that all authorities within the State of Jammu and Kashmir collaborate with the Plebiscite Administrator to guarantee the basic conditions for free and informed voting by the people of Kashmir, including protection of fundamental political rights of expression and association.

As both governments formally signified their acceptance of the Commission's proposals, these constituted an international agreement as binding as a treaty. A cease-fire was immediately enforced. The Commission then started negotiations to draw up a plan for the withdrawal of Indian and Pakistani armies from the State in a manner and sequence that would not cause disadvantage to either side or imperil the freedom of the plebiscite. Meanwhile, a distinguished American, Admiral Chester Nimitz, was designated as Plebiscite Administrator.

Impact of the Cold War

A development that hardened India's stance was Pakistan's joining military pacts sponsored by the United States. From 1955, India took the position that, in view of this alliance, it could no longer countenance the withdrawal of its forces from Kashmir. To repeated pleas that the withdrawal was not meant to be unilateral in any case but would be coordinated with that by Pakistan, its response remained immovably negative. India found a ready supporter for this position in the Soviet Union which, after 1958, blocked every attempt by the Security Council to unfreeze the situation and implement the peace plan originally accepted by both parties.

Arrangements for Plebiscite

It is clear that there is nothing fuzzy about the modalities of holding the plebiscite even today. These were exhaustively worked out during the negotiations concluded by the United Nations about the implementation of its peace plan for Kashmir. The phased withdrawal of forces on both sides, the appointment of the Plebiscite Administrator by the United Nations Secretary General, his induction into office, the institution of the electoral process under his authority, the exercise of powers deemed necessary by him -- all these are fully known to the parties. If a credible peace process is instituted, some t's will need to be crossed and some i's dotted but given the political will of India and Pakistan to implement their international agreement, and the will of the Security Council to secure that implementation, these can present no obstacles. It is not the inherent difficulties of a solution, but the lack of the will to implement a solution, that has caused the prolonged deadlock over the Kashmir dispute. The deadlock has meant indescribable agony for the people of Kashmir and incalculable loss for both India and Pakistan.

The Situation in Kashmir

India's occupation of Kashmir has thus been left undisturbed by the international community, even though its validity has never been accepted. At no stage, however, have the people of Kashmir shown themselves to be reconciled to it. There have been several uprisings, notably in 1953 and 1964, and even the relatively calmer interludes have witnessed continuous peaceful protest met with unrelenting force. Kashmir's record of opposition to its annexation by the Indian Union, can by no standard be reckoned as less genuinely demonstrated than that of countries of Eastern Europe under the dominance of the Soviet Union. But while the popular revolt in the countries of Eastern Europe was observed and reported by the international media, that in Kashmir has remained largely hidden from the world's view.

The United Nations High Commissioner on Human Rights (UNHCHR) issued its "Report on the Situation of Human Rights in Kashmir," on June 14, 2018. The report contains graphic documentation of human rights violations being committed by the Indian military and paramilitary forces in Indian Occupied Kashmir. This is a significant step towards greater international recognition of the serious abuses committed against Kashmiris at the hands of Indian army. This report takes the veil of secrecy off of India's crimes against humanity. Perhaps now the global community can share the outrage felt by the people of Kashmir.

The report cites specific incidents where the Indian Government violated the very principles of human decency and democratic freedom against the people of Kashmir. The reports states that, "In responding to demonstrations that started in July 2016, Indian security forces used excessive force that led to unlawful killings and a very high number of injuries. … One of the most dangerous weapons used against protesters during the unrest in 2016 was the pellet-firing shotgun."

The report details many instances where the use of draconian laws have given sense of total impunity to the Indian army in Kashmir. It states "The government of India has passed legislation under the Jammu and Kashmir Disturbed Areas Act of 1990 which gives extraordinary power to all ranks of the Indian military and paramilitary forces." These laws, the report emphasizes, " have created structures that obstruct the normal course of law, impede accountability and jeopardize the right to remedy for victims of human rights violations."

The report underscored that "Impunity for human rights violations and lack of access to justice are key human rights challenges in the state of Jammu and Kashmir." And that "Impunity for enforced or involuntary disappearances in Kashmir continues as there has been little movement towards credibly investigating complaints including into alleged sites of mass graves in the Kashmir Valley and Jammu region."

Many international NGO's have suggested that Kashmir was the largest army concentration anywhere in the world. The report noted that "Civil society and media often cite the figure of 500,000 to 700,000 troops which would make Kashmir one of the most militarized zones in the world."

As we know that during the latest phase of uprising, virtually the whole population of Kashmir turned on the streets to demand the right of self-determination to be given to the people of the territory. The U.N. report underlines this fact by stating; “While Indian-Administered Kashmir has experienced waves of protests in the past—in the late 1980s to early 1990s, 2008 and 2010—this current round of protests appears to involve more people than the past, and the profile of protesters has also shifted to include more young, middle-class Kashmiris, including females who do not appear to have been participating in the past.”

It is a fact that bilateral talks between India and Pakistan have failed because they sought to by-pass the leadership of the people of Kashmir, which is the primary party to the dispute. This fact has been recognized in the report which clearly says, “There remains an urgent need to address past and ongoing human rights violations and to deliver justice for all people in Kashmir who have been suffering seven decades of conflict. Any resolution to the political situation in Kashmir should entail a commitment to ending the cycles of violence and accountability for past and current human rights violations and abuses committed by all parties and redress for victims. Such a resolution can only be brought about by meaningful dialogue that includes the people of Kashmir.”

The Indian human rights organizations and NGO’s including ‘The People’s Union of Civil Liberties’, and others sent out teams to Kashmir to study specific allegations of human rights abuses including torture and publish reports on their findings, which are often highly critical of government authorities. The United Nations report validates these finding by suggesting that [As a State party to the International Covenant on Civil and Political Rights, which prohibits torture under any circumstances (Article 7), India is obliged to ensure that no person is “subjected to torture or to cruel, inhuman or degrading treatment or punishment”. There have long been persistent claims of torture by security forces in Kashmir.]

It is well documented that the bloody occupation has resulted in massive human rights violations, particularly targeting women and children. The sanctity of women has been violated, in a gruesome and unforgiving fashion. The UN report upholds that [In the 2013 report on her mission to India, the Special Rapporteur on violence against women, its causes and consequences, said, “[W]omen living in militarized regions, such as Jammu and Kashmir and the north-eastern states, live in a constant state of siege and surveillance, whether in their homes or in public. Information received through both written and oral testimonies highlighted the use

of mass rape, allegedly by members of the State security forces, as well as acts of enforced disappearance, killings and acts of torture and ill-treatment, which were used to intimidate and to counteract political opposition and insurgency."]

The United Nations report makes the following recommendation to the UN Human Rights Council to, "Consider the findings of this report, including the possible establishment of a commission of inquiry to conduct a comprehensive independent international investigation into allegations of human rights violations in Kashmir."

Distinguishable Characteristics of Kashmir Dispute

There are certain characteristics of the situation in Kashmir, which distinguish it from all other deplorable human rights situations around the world.

1. It prevails in what is recognized - under international law and by the USA - as a disputed territory. According to the international agreements between India and Pakistan, negotiated by the U.N. and endorsed by the Security Council, the territory's status is to be determined by the free vote of its people under U.N. supervision. The unresolved dispute caused two wars in the not-so-remote past between India and Pakistan.

2. It represents a government's repression not of a secessionist or separatist movement but of an uprising against foreign occupation, an occupation that was expected to end under determinations made by the United Nations. The Kashmiris are not and cannot be called separatists because they cannot secede from a country to which they have never acceded to in the first place.

3. It has been met with studied unconcern by the United Nations. This has given a sense of total impunity to India. It has also created the impression that the United Nations is invidiously selective about the application of the principles of human rights and democracy. There is a glaring contrast between the outcry over the massacre in Crimea, on the one side, and the official silence (barring some faint murmurs of disapproval) over the killing and maiming of a vastly greater number of civilians in Kashmir and the systematic violation of the 1949 Geneva Convention.

4. It is a paradoxical case of the United Nations being deactivated and rendered unable to address a situation to which, under U.S. leadership, it had devoted a number of resolutions and in which it had established a presence, though with a limited mandate. The United Nations Military Observers Group in India and Pakistan (UNMOGIP) is one of the oldest peace-keeping operations of the U.N.; the force is stationed in Kashmir to observe the cease-fire between India and Pakistan.

All these peculiarities of the Kashmir situation become more baffling in view of the fact that the mediatory initiative which would halt the violations of human rights and set the stage for a solution would entail no deployment of the troops of the United Nations, no financial outlays and no adversarial relations between world powers and India.

Are UN resolutions obsolete?

Much is being made of the fact that seven decades have passed since the principled solution for Kashmir was formulated by the United Nations with almost universal support. Mere passage of time or the flight from realities cannot alter the fact that these resolutions remain unimplemented until today. The United Nations resolutions can never become obsolete or overtaken by events or changed circumstances. The passage of time cannot invalidate an enduring and irreplaceable principle – the right of self-determination of the people of Kashmir. If passage of time were allowed to extinguish solemn international agreements, then the United Nations Charter should suffer the same fate as the resolutions on Kashmir. If non-implementation were to render an agreement defunct, then the Geneva Convention in twenty-first century in many countries is in no better state than these resolutions.

Procedures of the United Nations

We are mindful of the fact that the established procedures of the United Nations will not facilitate the speedy intervention that both the humanitarian and the political aspects of the situation in Kashmir call for urgently. However, the minimum that can be done to help bring relief and redress to the people of Kashmir is to dispatch a fact-finding mission headed by a statesman or diplomatist of high international standing to report expeditiously on the situation in Kashmir. Such a mission could visit all parts of Jammu & Kashmir as well as the capitols of both India and Pakistan and verify the truth of allegations from either side. The matter is much

too urgent to be relegated to the routine mechanism of the Human Rights Council and the various bodies established to monitor various conventions.

The people of Kashmir understand that the procedures contemplated at early stage of the dispute at the United Nations for its solution may be varied in the light of changed circumstances, but its underlying principle must be scrupulously observed if justice and rationality are not thrown overboard. The setting aside of the UN resolution is one thing; the discarding of the principle they embodies is altogether another. We hope that the world powers in general and the United States in particular will not continuance any attempt to ignore the wishes of the people of the State of Jammu and Kashmir and bypass the expression of those wishes.

The Current Mass Uprising

Kashmir could not remain untouched by the tide of freedom which rolled across the world in the late 1980's, sweeping away the Soviet military invasion of Afghanistan and Iraqi occupation of Kuwait, South Africa's 70-year old rule over Namibia and unpopular establishments in Eastern Europe. Inspired by it and also encouraged by the emergence from limbo of the United Nations as a central peace-making agency, the people of Kashmir intensified their struggle against the unwanted and tyrannical Indian occupation. Their uprising entered its current phase in July 1989. The scale of popular backing for it can be judged from the established fact that, on many occasions since 1990, virtually the entire population of Srinagar came out on the streets in an unparalleled demonstration of protest against the oppressive status quo. The further fact that they presented petitions at the office of the United Nations Military Observers Group (UNMOGIP) shows the essentially peaceful nature of the aims of the uprising and its trust in justice under international law. India has tried to portray the uprising as the work of terrorists or fanatics. Terrorists do not compose an entire population, including women and children; fanatics do not look to the United Nations to achieve pacific and rational settlement.

Role of United States in Kashmir dispute

The following considerations are most pertinent for an assessment of the dispute by the policy-making agencies and personalities of the world powers, particularly the United States.

When the Kashmir dispute erupted in 1947-1948, the United States championed the stand that the future status of Kashmir must be ascertained in accordance with the wishes and aspirations of the people of the territory. The United States was the principal sponsor of the resolution # 47 which was adopted by the Security Council on 21 April 1948, and which was based on that unchallenged principle. Following the resolution, the United States as a leading member of the United Nations Commission for India and Pakistan (UNCIP), adhered to that stand. The basic formula for settlement was incorporated in the resolutions of that Commission adopted on 13 August 1948 and 5 January 1949.

The part played traditionally by the United States Government is apparent from:

a). The appeal made by President Harry Truman that any contentious issues between India and Pakistan relating to the implementation of the agreement on Kashmir must be submitted to arbitration.

b). The appointment of an eminent American, Admiral Chester Nimitz, as Plebiscite Administrator on Kashmir.

c). The bipartisan expressions of support for the U.S. position from statesmen as different otherwise as Adlai Stevenson and John Foster Dulles; The American position was bipartisan and maintained equally by Republicans and Democrats.

Secretary of State John Foster Dulles stated on 5 February 1957 that: "We continue to believe that unless the parties are able to agree upon some other solution, the solution, which was recommended by the Security Council should prevail, which is that there should be a plebiscite.

On 15 June 1962, the American representative to the United Nations, Adlai Stevenson, stated that: " ... The best approach is to take for a point of departure the area of common ground which exists between the parties. I refer of course to the resolutions which were accepted by both parties, and which in essence provide for demilitarization of the territory and a plebiscite whereby the population may freely decide the future status of Jammu and Kashmir. This is in full conformity with the principle of the self-determination of people which is enshrined in Article I of the Charter as one of the key purposes for which the United Nations exists."

d). The appeal personally made in 1962 by President John F. Kennedy to the President of Ireland to the effect that Ireland sponsors a resolution on Kashmir in the Security Council reaffirming the resolutions of the Commission.

e). The forceful advocacy by the U.S. Delegation of points regarding the demilitarization of Kashmir preparatory to the plebiscite at countless meetings of the Security Council from the years 1947-48 to 1962 and its sponsorship of twelve substantive resolutions of the Council to that effect.

f). The protracted negotiations conducted by another distinguished American, Mr. Frank Graham, from 1951 to 1958 in the effort to bring about the demilitarization of Kashmir, making possible the holding of a free and impartial plebiscite.

g). The clarification made by President George W. Bush on February 22, 2006 that Kashmir solution must be acceptable not only to India and Pakistan but also to the citizens of Kashmir.

h). The declaration of General Colin Powell as Secretary of State on July 28, 2002, "Kashmir is on the international agenda. The US would provide a helping hand to all sides in order to resolve the Kashmir issue."

i). The affirmation of President Obama on October 30, 2008, that "We should probably try to facilitate a better understanding between Pakistan and India and try to resolve the Kashmir crisis."

Then again on November 8, 2010, President Obama said Kashmir was the long-standing dispute. "I have indicated to Prime Minister (of India) that we are happy to play any role the parties think is appropriate in reducing tensions. It is in the interest of the two countries, region and the US."

j). The report published in Washington-based 'Atlantic Council' on April 24, 2014, "The nub of the India-Pakistan conflict is the dispute over Jammu and Kashmir. Its acrimony is felt in all international forums where the two nations meet. Kashmir remains a potential global flashpoint that could escalate into a nuclear war very quickly."

What should be the point of departure?

The question arises: what should be the point of departure for determining a just and lasting basis? The answer obviously is (a) the Charter of the United Nations which, in its very first article, speaks of "respect for the principles of equal rights and self-determination of peoples" and (b) the international agreements between India and Pakistan.

In the first place, the commonsense appeal and justice of the idea is undeniable. There is no way the Kashmir dispute can be settled once and for all except in harmony with the people's will, and there is no way the people's will can be ascertained except through an impartial vote. Secondly, there are no insuperable obstacles to the setting up of a plebiscite administration in Kashmir under the aegis of the United Nations. The world organization has proved its ability, even in the most forbidding circumstances, to institute an electoral process under its supervision and control and with the help of a neutral peace-keeping force. The striking example of this is Namibia and East Timor, which were peacefully brought to independence after seven decades of occupation and control by South Africa; and after 27 years of control by Indonesia respectively. Thirdly, as Sir Owen Dixon, the United Nations Representative, envisaged seven decades ago, the plebiscite can be so regionalized that none of the different zones of the state will be forced to accept an outcome contrary to its wishes.

The people of Kashmir would prefer that the Security Council take steps to implement its plebiscite resolutions and end the agony and glaring injustices in Kashmir and its danger of provoking nuclear volleys between India and Pakistan. If, however, the world powers and the Security Council are unmoved by international law and moral justice to act, then Kashmiris will be forced to organize their own referendum with the assistance of eminent persons and NGOs on independence. If that last alternative is forced upon them, Kashmiris hope that India, with the urging and moral suasion of the international community, will put no obstacles in the way and that the world will honor the results of the free and fair vote.

Impact of Kashmir dispute on India & Pakistan

The persistence of this problem has been a source of weakness for both India and Pakistan. It has diminished both these neighboring countries. This has been a fact in the last century, and it is underlined by the unfolding environment of the twenty-first century. America draws great

satisfaction from India's striking economic progress which will enable India to play its rightful role as a great power. That kind of role can only be hobbled by a festering problem. India's adversaries -- if there are none, whoever does not wish India to play the role of a major power in one context or another – will try their utmost to take advantage of it. A great power cannot afford disputed boundaries if it wishes to maintain or enhance its prestige and influence; a small or even a medium power can live with them indefinitely.

Indeed, some discerning observers already perceive a growing awareness in the Indian middle class that the persistence of the Kashmir problem weakens India by diminishing its stature among the great powers. As a matter of fact, there have always existed saner elements in India which have questioned both the ethics and the practical advantage of India's intransigence on Kashmir. As they have received little support from outside, they have remained mostly subdued. But the apparent failure of India's policies, the tattered regime it maintains in Kashmir and the losses it has made to sustain in Kashmir, despite the employment of an overwhelming force to brutalize the people into submission – all these seem to be bringing home to more and more people in India, even in its army, that the game is not worth the candle. But this constructive trend will vanish if the world powers are seen as tolerant of India's obduracy and unmindful of healthier opinion in India itself about what is best for India.

Arundhati Roy, Booker Prize winner said on March 18, 2103, "And today Kashmir is the most densely militarized zone in the world. India has something like 700,000 security forces there." She also said on October 28, 2010 (Daily Hindu, India), ""Kashmir has never been an integral part of India. It is a historical fact. Even the Indian government has accepted this."

Mr. Vir Sanghvi wrote in the New Delhi based Hindustan Times on August 16, 2008, "So, here's my question: why are we still hanging on to Kashmir if the Kashmiris don't want to have anything to do with us?" "I reckon we should hold a referendum in the Valley. Let the Kashmiris determine their own destiny. If they want to stay in India, they are welcome. But if they don't, then we have no moral right to force them to remain." "It's time to think the unthinkable."

Columnist Swaminathan Aiyar wrote in The Times of India "We promised Kashmiris a plebiscite six decades ago. Let us hold one now, and give them three choices: independence, union with Pakistan, and union with India. Let Kashmiris decide the outcome, not the politicians and armies of India and Pakistan."

Gautum Navlakha, former Editor of Economic and Political Weekly of India said, "Long and short of it is that Indian state has become its own worst enemy. There is no point blaming Pakistan, fundamentalists, human rights activists, and the usual alibis used by the Indian state. It is time to acknowledge that 'national security' paranoia cannot hide the reality that Muslims of J&K have no confidence in the Indian state."

Pankaj Mishra, an Indian scholar wrote in the Guardian on August 13, 2010, "Once known for its extraordinary beauty, the valley of Kashmir now hosts the biggest, bloodiest and also the most obscure military occupation in the world. With more than 80,000 people dead in an anti-India insurgency backed by Pakistan, the killings fields of Kashmir dwarf those of Palestine and Tibet. In addition to the everyday regime of arbitrary arrests, curfews, raids, and checkpoints enforced by nearly 700,000 Indian soldiers, the valley's 4 million Muslims are exposed to extra-judicial execution, rape and torture, with such barbaric variations as live electric wires inserted

bilateral talks: Not an option

All experts of South Asia discount the United States hopes that the dispute over Kashmir could be settled through bilateral peaceful talks between India and Pakistan. They recount the litany of failed bilateral efforts between New Delhi and Islamabad. At the same time, the All Parties Hurriyet Conference (APHC) has steadfastly mainlined that talks between the three parties, India, Pakistan and the Kashmiris, are the only way to resolve the Kashmir issue. We hope that the leadership of India and Pakistan recognize that there can be no settlement of the Kashmir dispute, without the active and full participation of the people of Jammu and Kashmir living on both sides of the Ceasefire Line.

The mantra has been repeated too often that the world powers have no alternative to relying on bilateral talks between India and Pakistan to achieve a settlement. The experience of more than seventy years is ignored. No bilateral talks between India and Pakistan have yielded agreements without the active role of an external element. The missing element is sustained and coordinated diplomatic pressure by peace-loving democratic powers. If the world powers do not deem it prudent to get directly involved, there is no reason why the Security Council of

the United Nations or, with the Council's support, the Secretary General should not be urged to play a real facilitating role.

Failure of the United Nations

We must mention here that even by today's violent world, the behavior of the Indian occupation regime in Kashmir is singular in as much as it has enjoyed total immunity. Not a word of condemnation has been uttered at the important capitols of the world, not even a call on India to cease and desist from its near- genocidal campaign. This is not merely a case of passivity and inaction; in practical effect, it amounts to an abetment and encouragement of murderous tyranny. If tyranny is not condoned inside the territory of a member state of the United Nations, is there not greater reason for the United Nations to intervene when the territory is one whose disposition is to be determine through a free and fair vote under the impartial auspices of the world organization.

It is symptomatic of the United Nations approach that greater emphasis is placed on the reduction of tensions rather than on the settlement of the core issue, i.e., Kashmir. This encourages giving importance to superficial moves and temporary solutions even though it is known that such moves and solutions do not soften the animosity of the parties nor allay the life-and-death concerns and anxieties of the people most directly affected.

Kashmir and the Misplaced Focus

It is commonly acknowledged that, with India and Pakistan both being nuclear-weapon states directly confronting each other, this dispute is potentially the most dangerous in the world. It should, therefore, be a major interest of the world powers, including the United States to prevent this dispute from exploding into a conflict which can be catastrophic for a large proportion of the human race. Yet, ever since the start in 1989-90 of the popular uprising in Kashmir against alien military occupation which accentuated the character of the dispute, the U.N. has been content with playing often a passive, at times a tentatively advisory, marginal role. It has remained unmoved by the killings of anywhere between 80,000 (India's figure) and 100,000 (popular estimate) people in Kashmir, accompanied by acts of rape and widespread devastation. It has declared that it will not exercise mediation unless both parties ask for it. Since India is uncompromisingly opposed to U.N. mediation and since the U.N. also has been made inactive,

the result is the total absence of a guiding hand towards a just, peaceful and lasting resolution of the conflict.

An indication of this misplaced focus is the wrong-headed talk about the "sanctity" of the line of control in Kashmir. It is forgotten that this line continues to exist only because the international agreement which had been concluded between India and Pakistan, with the full support of the United States. This line was originally formalized by that agreement as a *temporary cease-fire line* pending the demilitarization of the State and the holding of a plebiscite under impartial control to determine its future. As long as this line will remain clamped down on the state, it will continue to impose a heavy toll of death on the people of the land. They have had no hand in creating it. It has cut through their homes, separated families and, what is worse, served as a protecting wall for massive violations of human rights. They are not resigned to it becoming some kind of an international border. To treat this line overtly or otherwise as a basis for the partition of the State is to reward obduracy, countenance iniquity, encourage tyranny and oppression and destroy the hopes for peace in accordance with justice and rationality in Kashmir. To regard this line as a solution is to regard disease as remedy. Any kind of agreement procured to that end, under any foreign influence, will not only *not* endure; it will invite resentment and revolt against whichever leadership in Kashmir will sponsor or subscribe to it.

It is hard to understand why, contrary to its traditional principled stand on the Kashmir dispute, the world powers have been in recent years treating the problem as if it were an unchartered terrain about which no road map exists. The United Nations has at its inception devoted immense labor and thought, extending over a hundred meetings of the Security Council with active U.S. participation, to its solution. The fact cannot be dismissed that the terms of settlement the United Nations worked out did elicit the signed agreement of both India and Pakistan. It may be admitted that those terms seem to be in need of revision in the light of current or emergent realities but their basis, the consent of the people of Kashmir, remains inviolable. Neither pragmatism nor morality would sanction the setting aside of that basis.

Abrogation of Article 370 & 35 A

We believe that abrogation of article 370 and 35 A is an act of aggression and assault on the rights of the people of the State. Such attempts are in open contravention of UN resolution

#122 adopted on January 24, 1957; # 123 adopted on February 21, 1957, and # 126 adopted on December 2, 1957. These resolutions prohibit any unilateral action to change the disputed nature of the State of Jammu and Kashmir.

It is to be noted that the United Nations Security Council Resolution # 122 "declares that the convening of a constituent assembly as recommended by the General Counsel of the 'All Jammu and Kashmir National Conference' and any action that assembly may have taken or might attempt to take to determine the future shape and affiliation of the entire State or any part thereof, or any action by the parties concerned in support of any such action by the assembly, would not constitute a disposition of the State in accordance with the above principle."

An authoritative pronouncement of Mr. Antonio Guterres, the Secretary General of the United Nations (contained in the press briefing on August 8, 2019) is pertinent in this context: "The position of the United Nations on this region (Jammu & Kashmir) is governed by the Charter of the United Nations and applicable Security Council resolutions."

Responsibility of the United Nations

The people of Kashmir continue to hope in the United Nations. They see it working, they see it enforcing Security Council resolutions, they see the United Nations taking leadership roles in various trouble spots of the world.

Therefore, the grave situation in Kashmir demands that it could be brought to the attention of the Security Council. Whether this could be done successfully depends on the attitude and policies of the permanent members, but they should be left in no doubt that any failure to resolve the problem could lead to serious disorders throughout the South Asian Subcontinent and possibly to yet another war between India and Pakistan, with incalculable consequences for the whole world, since both states now have nuclear capabilities.

We appeal to the United Nations Secretary General to intervene in the situation in Kashmir under the Article 91 of the United Nations Charter. Because human rights violations in Kashmir are systematic, deliberate and officially sanctioned. Far from seeking to rectify the atrocious human rights record, India has legalized its state-sponsored terrorism in Kashmir. It has given its occupation forces powers to shoot to kill and the license to abuse the people of Kashmir; in

whatever ways they like in order to suppress the popular movement for basic human rights and human dignity.

We, therefore, trust that Mr. Antonio Guterres, the Secretary General of the United Nations will bring its influence to bear on both India and Pakistan to initiate peace process with which the United Nations as well as the people of Jammu and Kashmir will be associated so as to ensure that settlement arrived at will be based on the principle of justice.

Kashmir: A way forward

I believe that peace and justice in Kashmir are achievable if all parties concerned – India, Pakistan, and Kashmiris – show some flexibility and make sacrifices. Each party will have to modify its position so that common ground is found. It will be impossible to find a solution that respects all the sensitivities of Indian authorities, values all the sentiments of Pakistan, keep intact the unity of the State of Jammu & Kashmir, and safeguards the rights and interests of the people of all the different zones of the state. Yet this does not mean that we cannot find an imaginative solution.

I also believe that it is not the inherent difficulties of a solution, but the lack of the will to implement a solution, that has caused the prolonged deadlock over the Kashmir dispute. The deadlock has meant indescribable agony for the people of Kashmir and incalculable loss for both India and Pakistan. If the new world order is not to be an order of unreason, injustice, and terror and thus a permitted anarchy, that agony should be brought to an end and that loss repaired. The peace that has eluded the South Asian subcontinent, should be made secure.

The dispute can be put towards the road to a settlement if without detracting from the necessity of trilateral negotiations, Kashmiri leadership is ready for a preparatory dialogue with the Indian Government provided an environment of non-violence is established. This can be done by:

a. The immediate and complete cessation of military and Para-military actions against the civilian population.

b. Withdrawal of the military presence from towns and villages.

c. Dismantling of bunkers, watch towers and barricades.

d. Releasing of political prisoners.

e. Repealing the Domicile Law which is designed to change the demography of Jammu & Kashmir.

f. Annulling various special repressive laws.

g. Restoring the rights of peaceful association, assembly and demonstrations.

h. Permitting to travel abroad without hindrance, Kashmiri leadership who favor a negotiated settlement.

i. Issuing visas to the Diaspora Kashmiri leadership to visit Jammu and Kashmir to help initiate the peace process.

Guiding principles to resolve the Kashmir dispute

With all these factors in mind, the following principles should guide the negotiating process between India and Pakistan:

i. The Kashmir conflict cannot be resolved through military might but through peaceful negotiations.

ii. There must be a cease-fire from all sides during negotiations. Negotiations cannot be carried out at a time when parties are trying to kill each other.

iii. Kashmir has to be de-militarized on one side and de-terrorized on the other.

iv. There cannot be and should not be any condition from any party, other than commitment to non-violence and to negotiations.

v. Efforts should be directed towards a peace process, which will be based on secular grounds.

vi. All platforms should be justified through meritocracy.

vii. The objective of peace process should not be to answer *what is* the desirable solution of the Kashmir conflict but *how* that solution can be achieved.

viii. There should be third party facilitation to ensure the peace process becomes result oriented. A third party could be a person of an international standing.

ix. The genuine leadership of the Kashmiri people must be senior partners along with Governments of India and Pakistan in any negotiations over Kashmir's political future.

x. No solution will endure which fails to command popular consent of the people of the Princely State of Jammu & Kashmir.

Win-win solutions are further important because they safeguard against prospective bitterness or humiliation that are the fuel of new conflict. If one party to a solution feels exploited or unfairly treated, then national sentiments to undo the settlement will naturally swell. We must not belittle, embarrass, or humiliate any party. Every participant should be treated with dignity and humanity. Also, charity, not the triumphal, should be the earmark of the negotiating enterprise.

In searching for a method to resolve conflict, the best approach is to avoid litigation or arbitration which generally amount to zero-sum games for the parties, i.e., one party wins and the other loses. Unless the stakes are trivial, the losing party will tend to ignore or fight over a court decree or arbitral award. India repeatedly refused United Nations arbitration over the number of troops in Kashmir in anticipation of a plebiscite conducted by the United Nations. The World Court is routinely ignored by the losing nation, whether the United States, Iran, Israel, or otherwise. Indeed, it is difficult to discover a single decision by the International Court of Justice since its inception in the Versailles Treaty and League of Nations that avoided an international conflict. A litigation method of resolution would seem most propitious if the judges are selected by the nations at loggerheads, who in turn select a neutral to break tie votes. Mediated resolutions are ordinarily preferable because the entire array of issues between the disputing nations can be employed to make a trade-off acceptable to both parties. The

greater the number of items eligible for trade, the greater the likelihood of finding an acceptable bargain.

Human Rights Situation during Seven Years of War

Tawfik Al-Hamidi

Brief Introduction

On February 11, 2011, millions of Yemenis protested in streets and public squares in more than 20 provinces against the regime of Ali Abdullah Saleh, who ruled like a tyrant for nearly 33 years, and Yemen was ranked among the last countries in the human development index. On the other hand, the country ranked among the first countries in corruption indicator. During the last period of the rule of the former president, the institutions of the Yemeni state deteriorated significantly, especially the military institution, which became a family sector. Then the internal conflict between sons and uncles began to work up the appetite of the Houthi group to rebel against the state in 2006 which involved in a fight with the regime that continued for years even after the revolution of the Yemeni youth, although it was marked by periods that seemed to the observer to be periods of reconciliation.

- The Houthi group participated in the peaceful sit-ins and submitted to the Gulf initiative by participating in the National Dialogue Conference. Despite their participation in the National Dialogue and the Yemenis' preoccupation with the outcomes of this conference, the Houthi armed forces did not stop overthrowing the governorates, including Amran governorate, which is adjacent to the capital, Sana'a.

Ali Abdullah Saleh stepped down in accordance with the Gulf initiative. The Gulf initiative and its executive mechanism included four steps for the peaceful transfer of power, which, in their entirety, urged preparation and implementation for the establishment of a comprehensive national dialogue conference aimed at enabling all groups and political forces to participate in making historical decisions that would result in a new vision for the future of the country where the comprehensive National Dialogue Conference results in articles that represent inputs for the drafting of the new constitution by the Constitutional Committee which will be formed after the conference and the subsequent public consultations on the draft constitution and a popular referendum that ends with the adoption of the new constitution. Preparations are then made for holding general elections at the end of the transitional process, including the establishment of a new election commission, the preparation of a new electoral register, the adoption of a new election law and its conduct in accordance with the new constitution.

- Despite the announcement of the results of the National Dialogue Conference on January 25, 2014 and the signing of all parties participating in it, including the Houthi group, the military progress of the Houthi group towards the capital, Sana'a, and the overthrow of the districts and villages surrounding the capital, Sana'a, did not stop. On September 21, 2014, the Houthi forces took control of the capital, Sanaa, ending primarily the existence of the government of the Arab Spring revolution that emerged under the Gulf initiative, and keeping President Hadi, as an honorary president, and placing him under house arrest until he was able to flee to the city of Aden and declared it the interim capital of Yemen. On March 26, 2015, the Arab coalition began a large-scale air military operation in Yemen, against the Houthi group in the capital, Sana'a, and a number of Yemeni governorates, at the request of Yemeni President Abd Rabbo Mansour Hadi, under the name "Decisive Storm".

- As the war continues, the fighting forces committed grave human rights violations in Yemen, which required the formation of an investigation team by the Human Rights Council in Resolution 36/31 of September 29, 2017, and the team issued the report on its findings..

Necessary determinants in order to understand the nature of the conflict in Yemen

- The conflict in Yemen is essentially a political conflict between the Yemeni components, and then it evolved to include the social and sectarian factor.
- The last war actually began with the Houthi militia taking control of the capital by force of arms and overthrowing state institutions on September 21, 2014
- The Yemeni war is an internal, national war with a regional and international dimension. Therefore, we apply internal law in this war and it is governed by international law.
- The humanitarian effects and human rights violations are a reflection of the impact of this war.

Legal analysis of the Yemeni war from the perspective of international law

On March 24, 2015, President Hadi asked the Gulf Cooperation Council and the Arab League to intervene militarily, notifying the United Nations Security Council and requesting the adoption of a resolution under Chapter 7 calling on all sponsoring states to provide support in order to deter the Houthi advance. On March 25, 2015, 10 countries led by the Kingdom of Saudi Arabia formed a coalition to intervene militarily in Yemen, in response to President Hadi's request. The United States announced that it would provide logistical and intelligence

support to the coalition. The coalition forces launched an air campaign against Houthi military objectives in Yemen.

The ongoing conflict between the armed forces of the Yemeni government and the Houthi group was described as a non-international armed conflict between a state party and a non-state armed group. “Paragraph 46 Group of Experts 2018 panel of experts” Although many countries are involved in the conflict in Yemen, the fighting does not involve a state engaged in an armed conflict with another state, and therefore it is not an international armed conflict, and thus the legal regime of non-international armed conflicts applies to it. In addition, the Yemeni conflict is not subject to international humanitarian law set out in treaties and customary international law. The most important treaty law is Common Article No. 3 of the Geneva Conventions of 1949, to which all members of the coalition are considered parties.” “In addition to Protocol II to the Geneva Conventions, which provides additional protection measures for combatants and civilians during non-international armed conflicts.”

All parties to the Yemeni armed conflict - including non-state armed groups - are responsible for complying with the requirements of international humanitarian law. That is, each party must respect the laws of war, whether the opposing party abides by them or not. Nor does it depend on the underlying causes of the conflict or the reasons why any particular party has resorted to the use of force, whether it is governmental forces or a non-state armed group. All parties to an armed conflict are bound by the same standards, regardless of any disproportions in the degree of harm caused by the alleged violations.”

The legitimacy of the intervention of the Arab coalition in the Yemeni war (the position of international law on the intervention of the international coalition led by Saudi Arabia in Yemen)

The participation of the Arab coalition under the name Decisive Storm on March 26, 2015, led by the Kingdom of Saudi Arabia and the UAE alongside the legitimate government, to stop the progress of the Saleh-Houthi alliance towards the southern governorates, and to enhance the military and combat capabilities of the remaining forces of the internationally recognized government "based on the Request from the Yemeni government “Paragraph 50 Report 2018 Experts, to the Gulf Cooperation Council and the League of Arab States based on Article 6 of the Charter of the League of Arab States and Article 2 of the Mutual Defense Treaty among the Arab States, as this intervention received explicit international consensus from the Security Council, in Resolution No. 2216, where the Republic of Yemen sent a letter to the Security

Council informing it of its request from the Gulf Cooperation Council and the League of Arab States to provide immediate support to Yemen and taking note of the letter dated 24 March 2015 from the Permanent Representative of Yemen to the United Nations, who transmitted a letter from the President of Yemen informing the President of the Security Council that he "has requested the Cooperation Council for the Arab States of the Gulf and the League of Arab States to provide support immediately, by all means and measures necessary, including military intervention, to protect Yemen and its people from the continuation of Houthi aggression." It also refers to the letter dated March 26, 2015 from the Permanent Representative of the State of Qatar, 217/2015/S, who transmitted a letter from the representatives of the United Arab Emirates, the Kingdom of Bahrain, the State of Qatar, the State of Kuwait and the Kingdom of Saudi Arabia, "where Security Council resolution 2216 expressed an explicit consensus and support for this intervention, "The Security Council reiterates its support for the efforts of the Gulf Cooperation Council in assisting the political transition in Yemen and commends its engagement in this regard" Resolution 2216.

Thus, this participation by the international coalition led by Saudi Arabia in the Yemeni conflict at the request and support of the Yemeni government does not change the non-international nature of the conflict. Since the international coalition supports Yemen as a state party to a conflict against a non-state armed group, and there is no conflict between two state parties and this is a prerequisite for the conflict to be considered international.

Parties to the Yemeni conflict

- In the seven-year war in Yemen, a number of main parties have a clear political agenda, and others are indirectly working in favor of one of the main parties and working to achieve their goals. All of these parties have committed gross violations of human rights in Yemen under international law and international humanitarian law, and these parties can be divided into:-
- The legitimate Yemeni government: It is the internationally recognized and supported government, headed by Abd Rabbo Mansour Hadi, who was elected on February 21, 2012 in a consensual manner according to the outputs of the Gulf initiative. It includes various partisan and non-partisan political forces opposing the Houthi project. It controls about 75% of the area of Yemen, and its interim capital is the city of Aden in southern Yemen.

- The Houthi rebel group: it is an armed (political) movement that emerged in the governorate of Saada in northern Yemen. It was known as the Houthis or the Houthi group after its spiritual leader Badr al-Din al-Houthi. It is also known as the Ansar Allah movement or the Believing Youth, which seized power in Yemen by force of arms on September 21, 2014.
- Forces of former President Ali Abdullah Saleh: Ali Abdullah Saleh took power in North Yemen in 1978 and played an important role in securing the tribal and military alliances that allowed the Houthis to take control of the capital in September of 2014. Saleh announced his public alliance with the Houthi group after that, but disputes began to emerge between them until they developed into an armed confrontation that ended with a statement by the Houthi group announcing the killing of former President Ali Abdullah Saleh on December 4, 2017.
- The Arab Coalition: In March 2015, the international coalition led by Saudi Arabia participated in the Yemeni war at the request and with the support of the Yemeni government. The ten-state Arab coalition led by the Kingdom of Saudi Arabia launched military operations against the Houthi group, which began with central air strikes on the capital, Sana'a, and other governorates on March 26, 2015 under an operation called Decisive Storm, in which fighter aircrafts from Egypt, Morocco, Jordan, Sudan and the United Arab Emirates, Kuwait, Qatar and Bahrain participated. Then Qatar was excluded in June 2017, and Morocco announced the cessation of its participation in February 2019. The coalition worked to form armed militias under its supervision that were stationed in the western coast and southern Yemeni governorates under the "supervision of the Emirates" and another in the southern border under "the supervision of the Kingdom of Saudi Arabia." The most important of these forces are :-

First, the forces that are supervised by the United Arab Emirates:

- These are the forces that were established under the supervision of the Emirati forces on the southern and western coasts of Yemen, which number approximately 200,000 fighters, and the most famous of which are the Giants Brigades, the Republican Guard Forces (National Resistance Forces), the forces stationed in the southern and eastern governorates. These forces, according to international reports, are alternative forces to the government ones, and the UAE has been keen to train, arm and fund them. Also, their units carry out some of the tasks of the army and police in those areas and they were officially considered operating outside the framework of the governmental

command and control structure. These forces are the Security Belt Forces, the Elite Forces (the Hadrami Elite - the Shabwani Elite) in addition to the Abu al-Abbas forces in Taiz Governorate.

Second, the forces supervised by the Kingdom of Saudi Arabia

These forces station in the southern border area, adjacent to the Yemeni border, and consist of Yemeni fighters and supervised by the Kingdom. The most important of these brigades is the Al-Fateh Brigade.

Violations

During the period of six years, SAM monitored and documented the killing of (5612) civilians and the wounding of (6188) other civilians. Although the number is much higher, but that is what SAM was able to document and these are the victims that the organization was able to obtain the data of.

The killing of (2,583) civilians was attributed to the attacks of Houthi and Saleh forces, while 4,355 were injured in the attacks of these forces. The attacks of the Arab coalition countries killed more than (1697) civilians, and wounded more than (925) others. Whereas the government forces killed more than (109) civilians and wounded more than (127) others. Meanwhile, "SAM" recorded the killing of more than (146) civilians and the injury of more than (37) others in the attacks of the Southern Transitional Council forces.

SAM documented the killing of (82) civilians during the past six years in US drone attacks and the injury of (8) others. It also documented the killing of more than (193) civilians by extremist organizations' attacks and the injury of (19) others.

While "SAM" recorded the killing of more than (792) civilians and the injury of more than (715) in the attacks of military formations, including the National Resistance Forces and the Giants Brigades in the West Coast, as well as the attacks of armed groups, some of which were reported against unknown persons, but they occurred on the occasion of the armed conflict.

Laid Mines

The total number of civilian victims of mines and civilian facilities in Yemen as a result of their explosion during the period covered by the report (2014-2022) reached (6018) civilians, including (2632) dead and (3386) injured. The material losses also included (4743) facilities,

while the losses in public facilities amounted to (456). This crime was committed only by the Houthi group, in grave violation of the Ottawa Convention on mine action and international human rights law.

The report documented the killing of (477) children and (168) women were documented, while the number of children injured by mine explosions reached (730), and the number of women injured by mine explosions reached (219). On the other hand, the damages to private civil facilities included the detonation of (1005) houses while (464) houses were partially damaged. Also, (588) vehicles were totally and partially damaged, (344) farms were damaged, and (2185) livestock owned by citizens were killed or injured.

Violations against women

In its report, the organization recorded shocking numbers about the scale of violations that Yemeni women were subjected to during the past six years of war as it recorded more than 4,000 cases of violations until the end of 2020, including killing, physical injuries, arbitrary detention, enforced disappearance, torture, and restrictions of movement in addition to more than 900,000 displaced women in Marib camps. These violations were perpetrated by the parties to the conflict in Yemen, whereas the Houthi group ranks first when it comes to the violations against women as more than (889) women are victims of attacks and violations by the Houthi group and Saleh forces (60% of female victims). More than (314) women are victims of attacks by the Arab coalition forces by 20%, and (22) women are victims of violations by government forces. While the organization recorded more than 127 women victims of violations and attacks by various parties, including the forces of the Transitional Council and the National Resistance, armed groups, and extremist organizations, who committed grave violations against civilians and activists that amount to war crimes and crimes against humanity. SAM issued two reports devoted to violations of women's rights in Yemen. The first is entitled "What is left for us?" The second is “and the Suffering of Women in Yemen.”

Air strikes

The organization monitored more than (332) air strikes by the Arab coalition countries, killing more than 3,500 civilians and wounding 4,000 others. These airstrikes contributed to the destruction of thousands of civilian facilities and infrastructure, such as bridges, farms, and others. Although the military flights of these countries are much more than that, the organization

was able to reach this number of raids and document their victims and their impact on civilian facilities.

Arbitrary detention and enforced disappearance

SAM also documented the arrest, detention and disappearance of (10,251) civilians during the past six years and documented torture against (547) victims. “SAM” verified the arrest and disappearance of more than (9810) in prisons belonging to the Houthi group, as well as the torture of (396) others. The organization documented arrests and disappearances of (445) civilians in government forces' prisons and the torture of 22 others. It also documented the arrest and disappearance of (392) civilians in the prisons of the Southern Transitional Council forces, and the torture of more than 122 victims. "SAM" recorded the detention and disappearance of more than (85) civilians in prisons belonging to the National Resistance Forces and the joint forces in the West Coast, and others detained by extremist forces, and some were recorded against unknown persons. The organization monitored torture and arrests of (25) victims in the prisons of Saudi and UAE forces in Yemen.

Rights of children

The organization was able to document (5461) violations of the right of children varied between killing, wounding, recruitment, torture and arrest. The "Houthi group" with "Saleh's forces" was the biggest violator of children's rights, as the organization documented more than (4,277) child victims of violations by these forces. More than (746) children are victims of attacks by Arab coalition aircraft, more than (114) children are victims of violations by government forces, and more than (26) children are victims of violations by the Transitional Council forces, in addition to documenting more than (291) child victims of violations by armed groups, extremist groups, and the National Resistance Forces, many of which were recorded against unknown persons.

In February of 2021, SAM and the Euro-Mediterranean Monitor issued a report entitled Militarized Childhood, which monitored and documented the child recruitment crime. The Houthi group was the only party that committed this crime as the group exploits schools and summer camps to recruit children and deploy them to the battlefield.

Press Freedoms

The organization revealed (424) violations and attacks against press freedoms and press facilities, and more than (1,196) crimes against activists and human rights defenders during the

past six years. The Houthi group was the most frequent perpetrator of these violations. the organization documented more than (267) violations against journalists and more than (897) violations against activists and human rights defenders committed by the Houthi and Saleh forces, and more than (73) violations against journalists and (113) against activists and defenders committed by government forces, and more than (62) violations against journalists and (127) violations against activists and defenders committed by the forces of the Southern Transitional Council and the UAE-backed National Resistance Forces. While it monitored more than (22) violations against journalists and (59) violations against activists and defenders committed by armed groups and extremist organizations. In 2019, SAM issued an expanded 112-page report titled Dangerous Career.

Right to a fair trial

SAM released a report entitled “Death as a Punishment,” which monitored more than 300 death sentences against political and intellectual opponents. The Houthi militia executed ten people from Al-Hodeidah Governorate on a trumped-up charge of aiding in the assassination of Al-Sammad, the head of the Houthi group’s political office. The organization documented how the Houthi group has restructured the judiciary to be one of its tools in terrorizing opponents from politicians and journalists.

Looting and seizing opponents' money

SAM issued an investigative report in which a specialized team worked in five governorates, titled "the Receiver", to monitor the Houthi group's confiscation of more than 3,000 homes and companies with a capital exceeding $20 billion. It established an organ similar to the Iranian system, which was established with the Iranian revolution to confiscate the opponents’ money. The judicial guard today is an integral body that works to confiscate funds and integrate them in the market and launder collective money. It has nothing to do with the judicial status in the commercial or civil law, but rather it is a cover for looting in the name of the judiciary

Blowing up houses and mosques

The organization monitored the bombing of nearly a thousand homes of opponents and the displacement of their owners outside the places where they used to live all their lives, and the bombing included almost all areas of confrontation and conflict. It also included schools for the Holy Qur’an and mosques.

Humanitarian Situation

In the summary of its third report, the Security Council's Panel of Experts on Yemen said: "After nearly three years of conflict, Yemen as a state has almost ceased to exist. Instead of one state, there are warring states, and none of these states has political support or military power. It can reunite the country or achieve victory on the battlefield."

In the summary of its fifth report, the panel said, "The situation in Yemen continues to deteriorate with devastating effects on the civilian population. Three main factors contribute to this disaster:

a. Economic profiteering by all Yemeni parties, affecting human security.
b. The continuous and widespread violations of human rights and international humanitarian law in light of impunity.
c. The escalation of fighting and its impact on civilians, including displacement.

These shocking introductions summed up the human story in Yemen, even though the tragedy that resulted from the armed conflict is beyond any description. "Sam" sensed the dangers of this humanitarian crisis from many evidence on the ground, most notably the indicators and numbers of the hungry in Yemen, and indicators of severe malnutrition among children, as well as the destruction and closure of many factories and large commercial companies, the closure or bankruptcy of many medium and small companies and small traders, the emergence of a parasitic class of merchants loyal to the parties to the conflict, and other manifestations related to the expulsions of Yemeni expatriates in the Kingdom of Saudi Arabia, which hosts more than two million Yemenis. Recently, the exchange rates of the national currency declined to frightening levels in light of the presence of two financial systems in Yemen, which contributed greatly to the severity of the humanitarian crisis.

The United Nations said in a report issued in February 2021 that "Yemen is witnessing a large-scale famine that threatens the lives of millions," and the report said, "As the conflict enters its seventh year, Yemen is witnessing the worst humanitarian crisis in the world.. Nearly 21 million people, more than 66% of the total population, need humanitarian assistance and protection... The number of hungry people in Yemen is expected to reach 16 million this year. Indeed, nearly 50,000 people are close to dying of starvation, with the re-emergence of famine-like conditions in some areas of Yemen for the first time in two years, and another 5 million people are only one step away from starvation.. About 2.3 million children under the age of five in Yemen are

expected to suffer from severe malnutrition this year. Of these children, 400,000 children may die if they do not receive urgent treatment. These figures indicate the highest rates of severe acute malnutrition in Yemen since the escalation of the conflict in 2015.

Fears of the significant spread of the “Covid 19” virus in Yemen seem to be a matter of merit and concern in light of the worsening humanitarian conditions, and the destruction of the health sector and its workers “The virus is still spreading in Yemen. The response to the pandemic in Yemen has been affected by limited testing tools and health care centers and the acute shortage of medical supplies and personal protective equipment. SAM sensed the matter through its monitors' visits to the containment center in the city of Taiz, and obtaining observational information from the community, where indications confirmed the extensive spread of this virus in its second wave, and the seriousness of its spread with the emergence of a third wave of it, and there are no possibilities to confront it.

About 20.5 million Yemenis live without safe water and sanitation, and 19.9 million people are without adequate health care. As a result, over the past few years, Yemen has been experiencing mass outbreaks of preventable diseases.

What happened to the education sector in Yemen is not diiferent in terms of the destruction and erosion of its identity and methodology. Evidence indicates that thousands of Yemenis consider enrolling their children in educational schools a mere luxury, in light of the lack of basic daily needs for survival, in addition to the lack of means, supplies and costs of education for their children.

The educational infrastructure has been seriously damaged, and the parties to the conflict are using educational buildings for military operations. “SAM" obtained information confirming that the Houthi group has incorporated sectarian ideas it believes in into the basic education curricula, and has changed many educational workers and replaced them with members of its affiliates.

Hope Springs Eternal: The Resilience of the Bangsamoro

Sha Elijah Dumama

The Philippines is the only Christian-majority nation in Southeast Asia. The island of Mindanao, which is the Philippines' second largest island, is home to three major groups: the Muslims, the Christians, and the Indigenous Peoples called the Lumad. The Muslims in the region have long been fighting for the right to self-determination and self- governance. This is what we refer to as the Bangsamoro Question. What is the Bangsamoro Question?

When the Spaniards came to the Philippines, they created the term Moro (Moor) to describe the Muslim population. The area occupied by the Moros was never fully controlled by Manila or integrated into the larger country. The Americans took over and disposed of Moro lands to the non-Moros at that point. In fact, we stand firm that there was the illegal and immoral usurpation of the Bangsamoro freedom and independence, and annexation of the Bangsamoro people and homeland when the United States of America granted independence to the Philippine Republic in 1946.

From then until now, economic and political integration of Mindanao was slow and unsuccessful. Over the years, the Muslim population became progressively more marginalized by the Central government. Mindanao had experienced unwarranted settlements by northern Christians, supported by what many southerners viewed as unjust property laws, and this contributed to the political alienation of the Moros. The conflict can be categorized as political in origin; hence, the Bangsamoro Question requires a political solution, that is, the restoration, regaining and recognition of the Moro identity, homeland and right to self-governance.

The Moro National Liberation Front (MNLF) was created sometime in the 50's and 60's, pushing forth the struggle to unite the Muslim tribes in the region and to forge a new identity separate from the Philippine government. Full-scale civil war broke out when former President Ferdinand Marcos declared martial law following conflict with the MNLF in 1972.

By 1974, the peace process between the Government and the Bangsamoro began, which was at this stage represented by the Moro National Liberation Front (MNLF) under Chairman Nur Misuari. The parties signed the Tripoli Agreement of 1976, where the Philippine Government granted autonomy to the Muslim Mindanao in lieu of independence. But the inconvenient truth remained that we were "autonomous" in name only.

The late Amirul Mujahideen Ustadz Salamat Hashim felt that the MNLF lost the vision of going for a nation state especially since it settled for autonomy instead of independence for the Muslim region. And so, he and some of the members of the MNLF broke away from the group and formed the Moro Islamic Liberation Front (MILF) in 1977.

Upon the overthrowing of Marcos through the People's Power in 1986, President Corazon

Aquino continued to toe the line and pursue the path towards peace in Mindanao. Among the first things she did was to meet with Chairman Misuari in Jolo, Sulu, against the wishes of her military, but no peace agreement was signed under her administration. Under her term, a Constitutional provision granted "autonomy" to Muslim Mindanao, and the Philippine Congress passed Republic Act No. 6734, (Organic Act). Out of 13 provinces, only the provinces of Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi joined the Autonomous Region in Muslim Mindanao (ARMM).

Meanwhile, MILF was convinced that if the 'Bangsamoro Question' is resolved peacefully through a negotiated political solution, then it would put an end to centuries-old armed conflict between the Philippine government and the Bangsamoro. The MILF believed that the most civilized, practical and democratic way of resolving this conflict in Mindanao and the Bangsamoro Question is through principled negotiation resulting in a peace settlement that is comprehensive, honorable and just, and mutually beneficial to all the concerned and affected peoples and parties, especially the oppressed and marginalized Bangsamoro people. In 1997, the "Domestic Stage" of the negotiation started which led to the signing of the Ceasefire Accord, which served as the basis for the creation of the Coordinating Committee on the Cessation of Hostilities (CCCH) and other ceasefire mechanisms.

However, by 1999, a new government in Manila, led by former President Joseph Estrada, opposed further concessions to the MILF. President Estrada launched an all-out war against the MILF in 2000.

Following protests against government corruption, Vice President Gloria Macapagal- Arroyo assumed the presidency in 2001 and instructed an all-Mindanao panel constituted to pursue an

"all-out peace" policy. This marked the Diplomatic or International Stage of the peace negotiations.

In 2008, the parties finalized the Memorandum of Agreement on Ancestral Domain (MOA-AD) that will form the Bangsamoro Juridical Entity (BJE) that will replace the ARMM. But the initiative was received with little public support and more political opposition, resulting in the issuance of a Temporary Restraining Order by the Supreme Court of the Philippines. This was a major setback to the peace process that sought to address the Bangsamoro Question. Conflict re-erupted in the region.

Upon election of President Benigno Aquino III in 2010, he continued efforts to forge peace in Mindanao. In 2011, President Aquino met with MILF chair Murad Ebrahim in Tokyo, away from public scrutiny and pre-emption, and they agreed to speed up the peace negotiations. It was the first time that a Philippine president met with a leader of the rebel group since the on-and-off peace talks, marred by violence and distrust, started in 1997.

On October 15, 2012, the parties finally signed the Framework Agreement on the Bangsamoro, and the subsequent Annexes thereto were signed and completed by early 2014. Again, it was a long and arduous process, which, if the parties had given up on, could not have resulted in the opening of the doors for genuine peace and development in the region. In between, the Bangsamoro Transition Commission was created to draft the Bangsamoro Basic Law, among others.

Consequently, the Comprehensive Agreement on the Bangsamoro was signed on March 27, 2014, or after more than 17 years of formal negotiations between the MILF and the Government of the Republic of the Philippines (GPH). The CAB paved the way for the two interrelated tracks in the Bangsamoro Peace Process – the political track as embodied in Bangsamoro Organic Law (BOL) and the normalization track – that are designed to address the struggles and aspirations of the Bangsamoro and to put an end to the protracted social conflict in Muslim Mindanao.

On July 26, 2018, President Rodrigo Roa Duterte signed into law the Republic Act No. 11054 or the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao (RA 11054 or OLBARMM). The creation of the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) became effective as a result of the overwhelming "yes" vote in the plebiscite conducted on January 21 and February 6, 2019 to ratify the law and determine the areas for the new political entity. Since March 2019, the BTA and the Government of the Day have been

working tirelessly to fulfil their mandate, implement flagship programs, and institute major reforms and behavioral change.

Against this backdrop, the Moro Islamic Liberation Front now leads the transition government and faces the realities of being the interim administrators of the new autonomous region. As a transition government, the Government of the Day has an enormous task to deal with, the most pressing are managing the expectations of the Bangsamoro people and delivering on the promises made when the MILF campaigned during the plebiscite. The MILF is going through a major paradigm shift from being a revolutionary movement into governance, which in itself, is a complex process. This transition not only involves a change in nomenclature, but a change in roles and mindsets. We are trying to navigate around a political environment that entails building a relationship between governments, that is, between the Bangsamoro Government and the National Government. There is an overall transition of an entire region into a new parliamentary setup vis-a-vis a National Government that has a unitary setup. The complexity of this transition calls for flexibility in processes, relationships, and timelines.

Transition period, particularly in post-conflict setting, refers to the critical phase in which at the very least, new systems of governance, functioning bureaucracy, and rule of law are in place. Recognizing the scholarly studies and experience of other countries that any transition period for a post-conflict government takes at least 6 to 10 years, the Philippine Congress passed into law RA No. 11593 to extend the period of transition from 2022 to 2025 or for another three (3) years. We hope that through this extension, crucial peacebuilding programs are sustained to maintain trust in the peace process, build legitimacy, prevent recurrence of conflict and move the country forward.

The practices of dialogue, cooperation, consultation and coordination are not new to Islamic governance. Within the framework of Islamic Public Administration, public officials of the Bangsamoro Government would have to work through fixed rules and procedures to realize governmental objectives as expressed in the policies and programs of the Government of the Day and observing consultation or Shura. Social justice is the paragon of public administration in Islam.

As the saying goes, “One can kill the dreamer, but never the dream.” The implementation of the Bangsamoro Organic Law will have to be consistent with the spirit of the FAB and CAB to allow the Bangsamoro to chart their own destiny. Genuine autonomy and lasting peace cannot

be attained unless the nation opens its eyes to recognize the need to address historical injustices that left the Bangsamoro behind in all aspects of development.

Human Right Abuses in Nigeria

Ibrahim Muhammad Abdulrahman

INTRODUCTION:

"I went inside my heart to see how it was. Something there makes me hear the whole world weeping." – Rumi Nigeria is a federal republic composed of 36 states and the Federal

Capital Territory. For a little over a decade now Nigeria has experienced the sad affliction of terrorism, BokoHaram to be specific, The insurgency in the Northeast by the militant terrorist groups Boko Haram and the Islamic State in West Africa continued. The groups conducted numerous attacks on government and civilian targets, resulting in thousands of deaths and injuries, widespread destruction, the internal displacement of more than two million persons, and the external displacement of somewhat more than an estimated 300,000 Nigerian refugees to neighbouring countries.

HUMAN RIGHT ABUSES IN NIGERIA

Like many countries, Nigeria has its own share of human right abuses. And as some of the abuses are perpetuated by the state against its citizens, some are perpetuated by the citizens against each other, although most of it are only possible by either the action or omission of the law enforcement agencies in conspiracy with the affluential or influential citizen against the weak and the helpless.

As succinctly observed by an Egyptian panelist yestarday, it is normal to have a conflict between parties and of course such conflicts may have human right abuses elements in them, just as it is normal to have such conflicts end up in court. The abnormal thing that slows down the wheel of justice is always the lack of will by the state to provide an able, sound, credible and autonomous judiciary.

As long as our judiciary is handled by individuals who are not intellectually prepared for it and by individuals who are ready to do that which will put a smile on the face of the government at the detriment and expense of the weak and the helpless, justice will remain a dream that will never come true. The state being the employer of our judicial officers has the power to hire and fire them and for a judiciary whose fate is at the mercy of the state, objective dispensation of justice is the last thing to expect from it, more especially in a matter that involves human right abuses perpetuated by the state agencies against the weak and helpless citizen.

THE PRESENT GOVERNMENT'S EFFORTS:

But with all sincerity, the Nigerian government, more especially in the last 7 or so years, has tried its best not to interfere into the judiciary's work, this can be seen in many court judgments that were delivered against the state by the courts for human right abuses by agents of the state.

ROLES THE INTERNATIONAL JURISTS UNION CAN PLAY

The International Jurists Union, being an umbrella of Muslim lawyers and jurists, has a lot to offer in the fight against human right abuses in Nigeria and in the world generally. In Nigeria we have thousands of Muslim lawyers, some of these lawyers are fond of giving pro bono cases in favor of the weak and the indigent. The IJU can organise workshops and seminars through its members in which they can give more highlights and hints on how best indigenous lawyers can offer such services in the fight against injustice and human right abuses in their various countries.

The IJU can also help through its donors fund human right abuses cases in Nigeria. Because sometimes it takes less than $200 to fund a human right abuse case, but due to the party's inability to pay legal fees, he or she may live with the abuse or languish in prison. But if there are donors who fund such matters and lawyers who offer pro bono services, human right abuses cases will drastically be minimized.

PRO BONO SERVICES AND HELPING THE INDIGENT

As lawyers or jurists it is our duty to fight for human rights and justice and we can do so by representing the weak and the indigent through filing their cases before the relevant courts. Being guided by precedents, there are numerous precedents that are slowing the wheel of justice, we can do a lot to our various legal systems by making sure that such arbitrary, archaic and obsolete precedents of our courts are reviewed and overruled. By so doing we can with ease change some of what is contained in our laws without necessarily going through the herculean legislative processes that we have.

Per Oputa, Justice of the supreme Court of Nigeria (as he then was) captivatingly said:

"We are final not because we are infallible; rather we are infallible because we are final. Justices of this Court are human beings, capable of erring. It will certainly be short-sighted arrogance not to accept this obvious truth. It is also true that this Court can do inestimable good through its wise decisions. Similarly, the Court can do incalculable harm through its

mistakes. When therefore it appears to learned counsel that any decision of this Court has been given per incuriam, such counsel should have the boldness and courage to ask that such a decision be overruled. This Court has the power to overrule itself (and has done so in the past) for it gladly accepts that it is far better to admit an error than to persevere in error."

I can't thank the Secretary General of the IJU and the entire IJU family for inviting me to this august occasion. I also thank Farida, my wife, for being a worthy Personal Assistant. Thank you and God bless you all

The Human Rights Situation in Egypt

Dr. Mustafa Özdemir

In 1952 it is no secret to your honor that a military coup was carried out in Egypt. This military coup took control of all the reins of affairs in Egypt and has remained so since 1954, and after President Mohamed Naguib, three military rulers ruled after him: Gamal Abdel Nasser, Anwar Sadat, and then Hosni Mubarak for a period 30 years. In 2011, a great revolution took place in Egypt, everyone knows it. It is the second revolution after Tunisia in the Arab Spring. It was based on several principles, namely, living, freedom, social justice, and human dignity. Indeed, Hosni Mubarak stepped down or Hosni Mubarak was deposed. It happened during the days of Hosni Mubarak, but the military tried to obstruct the matter, but the elections took place at the end of 2011/2012, such as parliamentary elections and then the presidential elections in June 2012. The Freedom and Justice Party won the parliamentary elections with a majority. Then President Mohamed Morsi, the party leader, won these elections, and he became The first civilian Egyptian president for Egypt in the modern era.

However, the military tried to obstruct and thwart it for a whole year until it staged a full-fledged military coup against it, as most countries and all human rights organizations said about it, so that it could be obstructed by civilian rule and the return of military rule as it exists now.

After what happened in July 2013, the military once again took control of all aspects of the country's political, economic and social aspects, and it remained so until we reached what we have reached.

In a quick hurry, we review the human rights situation in Egypt: -

First: Thousands of peaceful protesters and protesters were killed, the most prominent of which were undoubtedly in Rabea and Al-Nahda, as well as several squares, including Sidi Gaber Square in Alexandria and others, as we know.

Second: More than 1,000 Egyptians were killed outside the law as well, and accusations were brought against them, such as confronting the police forces, although not a single police man or soldier was injured in such cases, which they said were confrontations, all civilians were killed and then a weapon was placed next to them and it is said that there were confrontations.

Third: enforced disappearance has become the title in Egypt largely over the past nine years, as it was mentioned by three international human rights organizations that it is more than

10,000 forcibly disappeared, and then some of them appear either killed or accused in one of the pre-existing and ready-made political cases.

Fourth: The prisons became overcrowded with political detainees until they exceeded more than 70,000, and this military government unfortunately established 60 new prisons, and even boasts of this, and he also announces them on the official television that these prisons are five stars, as he says, even one of the announcers affiliated with this military government says that they are seven Stars, not five.

Fifth: As for litigation, unfortunately, it has happened and there is nothing wrong with it. This military ruling created 12 exceptional courts and named them the Terror Courts to judge all opponents of this military rule. They called it the terrorism legislation, and they eliminated all aspects of freedoms in Egypt completely, whether they were personal or not. Neither the freedom of movement, nor the freedom to travel, nor the freedom of the press, nor any kind of freedom, even the right to life itself, no longer exists to a large extent in Egypt. They amended a number of laws to control the judiciary in Egypt, in a way that affects the independence of the judiciary and disrupts the Court of Cassation's practice of its stable work for more than eighty years, as well as the selection of the heads of judicial bodies through the President of the Military Republic.

Sixth: They referred thousands to the military judiciary, but not only this exceptional judiciary and the cases of terrorism or the circles of terrorism, but they referred thousands to the military judiciary to be sentenced to death and tens of thousands of years in prisons.

Seventh: In fact, the military coup went even further, so he confiscated the Egyptians' money and seized hospitals, universities and schools that were helping the poor, and also took over the economic life, which led to the closure of hundreds of commercial companies and the investors flee. The only solution became in debts until these debts reached 6 One trillion Egyptian pounds as an internal debt, while the external debt has reached 147 billion pounds by the year 2020.

Eighth: - Arresting children and women has become the approach followed either to pressure their families to surrender themselves or to prosecute them personally, and there are now dozens of women who have been in detention for six or seven years now,

Ninth: There are no rights for detainees in Egypt. There are cemeteries they are called Al-Aqrab prison and Tora heavily guarded prison. No political detainee has any rights. For nine

years, they have not seen a lawyer or their family, and even when they go to court, the court prevents them from their rights and even litigation in a glass cage, this is what is happening now in Egypt.

Tenth: Almost all human rights organizations in Egypt are either closed, or their owners or relatives are detained in Egyptian prisons, until 31 countries, mostly European countries, intervened and issued a statement on March 12, 2021 saying that this matter will not and cannot continue in Egypt. This is how it exists, especially in stifling journalists, lawyers and human rights organizations in this way.

Eleventh: All attempts to prosecute these soldiers for the crimes they committed, which are crimes against humanity or other crimes, unfortunately, have failed, and the reason is very simple that the one who carried out this military coup was the Western countries, and that what was carried out was the military of Egypt, and That funded are some Arab countries that fear the Arab Spring to extend to it.

Therefore, there is a big role for our union, the International Federation of Jurists, in thinking about how to get to prosecute these killers. Here we are not talking about politics as much as we are talking about this miserable situation that has been surfacing to a large extent and then many of us have forgotten and forgotten the situation in Egypt as It has become a stable and normal condition and there is no longer any problem in human rights in Egypt.

Unfortunately, the human rights situation in Egypt is getting worse day by day, yet it does not take its right from us as organizations to pursue those who are responsible or to change the reality in Egypt, and we bear a great burden in allowing the court to prosecute the military who are turning against legitimacy, and to take this important issue its right in the media. And that we do our part in talking to the different governments to play their role in putting pressure on the political system in Egypt, which ended the rights and freedoms of Egyptians.


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