



# DEFENDERS

Winter 2018



- A Glance at the Charter on Citizens Rights in the Islamic Republic of Iran
- Restricting Execution as Punishment for Drug Trafficking in Iran
- Unilateral Coercive Measures: A Guarantee for or Violation of Human Rights
- Armenians in Iran: A Brief History
- National Human Rights Institution: Taking the Middle Ground in the Promotion of Human Rights
- A Review of Human Rights Violations in Global Crises during 2017
- Transitional Justice and Human rights
- Myanmar and Yemen: Two Human Crisis in one Era
- Human Rights Violations in Saudi Arabia and International Organizations' Turning a Blind Eye
- The Legal Standing of Human Rights Nongovernmental Organizations in International Judicial Process
- The Manual of style for writing papers for Defenders Quarterly

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# Editor's Note

2017 was a very dark and grim year for human rights. Food crisis in Yemen, crimes against humanity in Myanmar, buying and selling of refugees in Libya, the visa ban imposed by the Trump Administration against certain Muslim majority countries, the dire conditions of refugees on Manus Island, global warming, crimes committed by ISIS in Iraq and Syria and the growth of extremist ideologies which are roots of acts of terror and one of the main threats against human rights, are all just a part of the human rights issues which has made the world face crises that are as a result of grave violation of human rights. This is while, as well as the abovementioned, governments around the world continue to crackdown on their opponents, human rights activists are harassed and prosecuted, and journalists and the media are denied freedom of expression and belief.

As a human rights magazine, Defenders Quarterly, through its new scientific approach, highlights the most important challenges in the world through scientific and promotional articles and documented reports.

To this aim, the observation of current human rights issues which were pointed out above, have been reviewed in this issue in the form of an article with a focus on crises that have risen as a result of the violation of human rights in the world.

One of the main human rights challenges of today's world is the crisis in Myanmar and Bahrain and also the critical post-ISIS conditions which have been reviewed in this issue.

Dealing with developments in Iran too has always been one of the subjects of attention of this magazine. The review of the citizen's rights legislation, the journey of the preparation and completion of the Fight against Drugs Act and its role in the reduction of executions, a review of the conditions of Armenians in Iran, are exclusively subjects on the conditions in Iran.

Also unilateral coercive measures and their effects on the violation of human rights and national human rights institution are other subjects that have been raised in this issue in the form of scientific and promotional articles.

Just as it has continued its development over the recent years, in a new approach, Defenders Quarterly has tried to pay attention to human rights issues from a scientific and new angle with the invaluable help of top young experts and writers.

To this aim, we welcome the articles and notes contributed by human rights experts, which are according to the methods of articles written for Defenders Quarterly, and we shake your assisting hand. With thanks to all companions who have human rights concerns that have helped us in this issue of our magazine, and with the hope that these actions result in raising human rights awareness and accomplishment

# A Glance at the Charter on Citizens Rights in the Islamic Republic of Iran



Nosaibeh Sadat Alavi  
MA in International Law

## Introduction

Unveiling of the Islamic Republic of Iran's Charter on Citizens' Rights in December 2016 and notification of the Iranian President Hassan Rouhani's circular to all state bodies to remind them of their general and specific duties in this regard, prompted all state organs to present annual reports on executive, administrative and educational steps taken for implementation of the Charter on Citizens' Rights. Those reports were supposed to be presented to the Iranian president's assistant on citizenship rights.

After ten state-run bodies and administrative organs presented accounts on their performance, it was necessary to offer an overall report with the goal of discussing the concepts embedded in the Charter on Citizens' Rights and presenting its achievements in various administrative and executive fields. This report aims to discuss the position of nongovernmental organizations with regard to the Charter, on the one hand, while, on the other hand, expound the most important efforts made to promote human rights in the Islamic Republic of Iran with an eye to the position of human rights principles in the Charter on Citizens' Rights.

## Explanation of concepts

The concept of "citizen" is among new concepts and phenomena, which is especially about equality and justice and enjoys a special position in all social, political and legal theories. This concept is realized when all people in a society enjoy the same civil and political rights and have easy access to equal economic and social opportunities. At the same time, citizens, as members of a society, take part in various fields of activity and not only have rights, but also shoulder responsibilities for better management of the society and establishment of order. Therefore, recognition of these rights and responsibilities plays an effective and axial role in promoting the concept of citizenship and creating a society founded on the basis of order and justice. In order for "citizenship" to have its real meaning and essence, citizens must be judged on the basis of objective and transparent criteria.

The concept of citizenship implies the feeling of belonging to a society as a member of that society. This concept puts a specific individual in a position to help the society and gives him some sense of independence. This independence, in turn, is reflected in a collection of rights, which although they are different in terms of content at various times and places, they always play a role in helping the active role of people with rights be accepted.

One can, however, say that citizenship is a “state in which a person can conduct his/her political and moral life on the basis of mutual interdependencies and according to principles and the balance between social rights and responsibilities.”

In fact, citizenship rights are a concept arising from human rights and basic rights and are among natural rights of humans. They can be defined as a collection of rights, which people have because of their citizenship status in their society, and include all privileges related to citizens as well as a collection of rules that govern their position in the society.

In the Islamic Republic of Iran, being a Muslim is not a precondition for availing oneself of citizenship rights. In fact, citizenship rights depend on one’s nationality. Therefore, “citizenship rights” constitute a relatively vast concept, which covers all political and nonpolitical rights and includes all three generations of human rights, including legal and political rights, economic and social rights, and solidarity rights.

### **Division of citizenship rights in the Islamic Republic of Iran**

Three groups of laws support citizenship rights in the Islamic Republic of Iran:

- Preventive (inhibitory) laws and regulation: These laws are formulated to prevent offenses and crimes and ban certain types of activities. An example is Article 19 of the Islamic Republic of Iran’s Constitution, which says, “All Iranian people, from any ethnic group and tribe, enjoy equal rights.”
- Supportive laws: These are laws, which are formulated in order to support the rights of people. An example is Paragraph 3, Article 3 of the Iranian Constitution, which has supported everybody’s right to cost-free education and physical education, and also stresses the necessity to facilitate higher education.
- Punitive laws: These are laws, which are about punishments and administration of those punishments in case of an offense and when the country’s laws are violated. An example is the Islamic Punitive Code, which has meted out punishments for those who disturb national security or create panic and fear in the society.

### **A glance at the Islamic Republic of Iran’s Charter on Citizens’ Rights**

The Charter on Citizens’ Rights is a list of the most important laws related to the rights of a country’s citizens. The issue of the citizenship rights and the charter that has been drawn up in the Islamic Republic of Iran under this name

were both among promises given by President Hassan Rouhani during his election campaign. He ordered the draft charter to be prepared during his first 100 days in office, but it actually took about three years and was finalized on December 19, 2016. It is noteworthy that this document is going to be used to build a suitable culture through a ten-year process and there is no haste or political attitude toward implementing it.

“The Charter on Citizens’ Rights” includes 22 rights and 120 articles and has been drawn up with the goal of promoting citizens’ rights and helping formulate “administration’s agenda and policy” as per Article 134 of the Constitution. It covers a plethora of citizenship rights, which have been either recognized by Iran’s legal authorities, or the administration has taken a serious measure to

recognize and implement them through making reforms to the legal system and well as formulating and following up on legal bills.

Therefore, it must be noted that the most important approach adopted by the Iranian administration to realization of this goal, especially on the basis of religious teachings, is to recognize citizens as agents of the administration and noting that being a citizen is not just a status or a title for enjoyment of certain rights and responsibilities. In this way, a citizen is not simply a stakeholder to receive a series of services, but he/she can take part in all affairs and must be so empowered that his/her social impact would reach its climax. Before being a basis for enjoying rights, citizenship is a ground for demanding rights and taking actions

in this regard. In this approach, citizens are not passive and are able through a two-way interaction with the government and other institutions, and also through support from the legal system and reliance on cultural norms, to play an essential role in both their individual growth and all-out development of their society.

The 22 rights, which have been mentioned in the Charter on Citizens’ Rights include: the right to life; the right to health and quality of life; the right to human dignity and equality; the right to freedom and personal security; the right to self-determination; the right to good administration and governance; the right to freedom of thought and expression; the right of free access to information; the right of free access to cyberspace; the right to privacy, the right of association, assembly and demonstration; the right to nationality, residence and freedom of movement; the right to family life; the right to a fair trial; the right to a transparent and competitive economy; the right to housing;



**It covers a plethora of citizenship rights, which have been either recognized by Iran’s legal authorities, or the administration has taken a serious measure to recognize and implement them through making reforms to the legal system and well as formulating and following up on legal bills**

the right to property; the right to employment and decent job; the right to welfare and social security; the right of access to and participation in cultural life; the right to education; the right to a healthy environment and sustainable development; and the right to peace, security and national power.

### **Implementation of the Charter on Citizens' Rights**

“Implementation of the Charter and Supervision Mechanism” comes at the end of the Charter and following the 22 rights.

It says:

1. The President shall appoint a Special Assistant for supervising, coordinating and pursuing appropriate implementation of the Government's obligations under this Charter. The Special Assistant will be responsible for, amongst others, proposing plans and guidelines for the full implementation of the Charter on Citizens' Rights.
2. Executive bodies under the Executive Branch, in coordination with the Special Assistant and within the scope of their legal competence and by attracting participation of the people, societies, nongovernmental organizations and the private sector, and by summing up and codifying the laws and freedoms set forth in the Constitution and in statutes, shall take legal measures and actions required for realization of these rights, particularly by preparing and implementing a plan for reforming and developing the legal system; providing information to the public; embarking on capacity building; and enhancing mutual understanding, dialogue and interaction in the public arena.
3. The bodies under the Executive Branch shall be required to prepare their plan for reforming and developing the legal system within six months from the date of the publication of this Charter and submit the same to the Special Assistant of the President, and shall present an annual report on their progress, challenges, barriers, and proposed solutions for the promotion and realization of citizens' rights within the scope of their responsibility, and shall take measures for realization of the citizens' rights set forth in this Charter through institutional and structural reforms.
4. Ministries of Education; Science, Research and Technology; and Health and Medical Education shall make necessary arrangements to best familiarize school and university students with citizens' rights concepts.
5. The President reports to the people annually on the progress and approaches to overcome challenges for realization of citizens' rights, and shall update the Charter as required.

### **Measures taken by state bodies to realize the ideals of the Charter**

One of the main strides taken by humanity to protect human dignity has been establishment of social systems to safeguard citizenship rights and keep





At the present time, we see across the country that the Charter on Citizens' Rights has increased coordination among various branches of the government and public organs of the Islamic Republic of Iran

those systems in place on the basis of people's votes. Therefore, according to the Constitution, people enjoy a special and prominent position in Iran and this approach to people is being followed by the eleventh Iranian administration. The Iranian administration believes that citizens must be aware of their natural and basic rights, because being aware of these rights is the requisite for the realization of those rights.

More than a year has passed since unveiling of the Charter on Citizens' Rights on December 19, 2016, which underlines such principles as human dignity, protection of those rights and

freedoms of which no human being can be stripped, the rule of people, everybody's right to avail themselves of equal human rights, prohibition of discrimination and equal support of law for all people of the nation. The president, who is responsible for the implementation and safeguard of this Charter, has taken the first step toward realization of the basic rights and freedoms of the Iranian nation through notification and proclamation of this Charter.

Notification of the Charter on Citizens' Rights under the eleventh administration was an important and groundbreaking step, because for the first time, the nation's citizenship rights were announced by the administration as part of its agenda and policy with the goal of promoting the basic rights of the Iranian nation. Of course, the main goal of the Charter has been to increase citizens' awareness of their basic rights and freedoms in order to take advantage of them, realize them, and promote them. However, the statement added to the Charter, which is an indispensable part of the Charter, has not only stressed the need to build necessary discourse about the citizenship rights, but has announced that the administration will take practical steps toward the realization of those rights.

At the present time, we see across the country that the Charter on Citizens' Rights has increased coordination among various branches of the government and public organs of the Islamic Republic of Iran. A sign of this was seen in the first "National Conference on Advances and Solutions for Removing Obstacles to Realization of Citizenship Rights," which was held on December 19, 2016, and was attended by President Hassan Rouhani.

According to the Charter, the President is obligated to present annual reports to the nation on advances in implementing the Charter as well as solutions for overcoming obstacles to realization of citizenship rights and, if need be, update the Charter. He also has to present a detailed report on

the implementation of the Charter on Citizens' Rights and performance of various state organs in this regard through objective and understandable examples.

A glance at the performance of various state-run bodies in the year that has passed since the implementation of the Charter on Citizens' Rights began will show that various achievements have been gained so far, which can be summarized as follows:

- **Promoting the position of women and children and answering to demands of ethnic and religious minorities:** A special approach has been taken to the issue of women according to which efforts have been made to implement more than 230 national and educational plans in addition to formulation of legal bills to support and ensure security of women and children;
- **Implementing the law on the right for free access to information:** More than one hundred state-run bodies have been already connected to a system, which ensures free access to information;
- **Approving a bill on citizenship rights within the administrative system:** The "bill on citizenship rights within the administrative system" has been approved and enforced to do away with discrimination and establish an accountable and efficient administrative system. It is also aimed at improving and promoting citizenship rights; allowing citizens to take advantage of new capacities; and facilitating realization of the goals enshrined in the general policies related to the administrative system.

### **The role and position of nongovernmental organizations in realization of citizenship rights**

As the concept of people's participation in public spheres continues to develop, progress in various social fields becomes more dependent on rationality, public participation and promotion of teamwork spirit. All developed countries have admitted that encouraging suitable participation of their citizens in running the social affairs and people's presence in voluntary activities has been the key to their success.

A prominent example of people's participation in social affairs is establishment of well-organized and voluntary groups that pursue their special goals and are known as nongovernmental organizations.

From the viewpoint of global organizations and international laws (including the Charter of the United Nations), presence of people and their participation in establishment and development of nongovernmental organizations (as natural and legal persons) is very important. At the present time, especially during the past two decades, people's participation in social activities through nongovernmental organizations has greatly increased in Iran. As a result, one can claim that realization of citizenship rights will not be possible without cooperation of nongovernmental



The Iranian administration, for its part, has taken various measures to encourage the activities of the nongovernmental organizations in order to promote people's participation in social affairs

organizations.

Promoting social welfare of citizens; making efforts to develop and teach citizenship rights and remove existing obstacles to their implementation; interaction with officials with the goal of promoting sustainable social development; reminding officials of social problems and conveying people's demands to officials in addition to identification of the elite and powerful people are just a few examples of functions of nongovernmental organizations.

The Iranian administration, for its part, has taken various measures to

encourage the activities of the nongovernmental organizations in order to promote people's participation in social affairs. Among those steps was a statement by the president on the eve of the anniversary of unveiling the Charter on Citizens' Rights to which was attached a note by minister of justice both underlining support for public supervision, especially through nongovernmental and popular institutions, in order to prevent violation of citizenship rights.

In line with the administration's determination to encourage participation of people and nongovernmental organizations, the Ministry of Justice has issued a call for nongovernmental organizations active in the fields of human rights and citizenship rights to cooperate and share their viewpoints and ideas for the better implementation of the Charter on Citizens' Rights.

### **Citizenship rights, a path to promotion of human rights**

Attachment of citizens to their rights and freedoms and efforts made to counter pressures from government are effective factors that ensure sustainability and safeguard of human rights and citizenship rights. Therefore, for this reason, national institutions have been established under such titles as human rights commission or mediation boards, which possess supervisory and advisory powers with regard to human rights and citizenship rights at national and international levels. Basically speaking, these institutions fulfill their duties through such mechanisms as giving warning and recommendation, or taking legal action and acting upon complaints received from various concerned people and groups.

Iran's parliament, the Islamic Consultative Assembly, has followed up on the issue of establishing a commission on human rights and citizenship rights in cooperation with the Judiciary. The commission is to act as an independent body for the safeguard of human and citizenship rights in

accordance with Iran's domestic laws and international principles, and the general outlines of its duties have been already formulated. In fact, the commission will at on the basis of Islamic law, but this does not mean that there is any ban on its activities in the field of international law. The commission is going to rely on the main point emphasized by the Universal Declaration of Human Rights, which is to protect human dignity. It will fulfill its legal and religious duties in line with articles 8 and 19-43 of the Islamic Republic of Iran's Constitution for the promotion of personal and social rights of citizens by facilitating public supervision and strengthening citizenship rights. The commission will also have a scientific committee, a committee in charge of domestic and foreign follow-ups, a women's affairs committee and a committee on people's participation.

### Conclusion

Civil, political and social rights, or in other words, citizenship rights, cover a vast expanse of various fields of citizens' social and personal life. Realization of these rights needs preconditions without which there can be no hope in realization of citizenship rights and promotion of human rights situation of our country at international level. On the other hand, citizenship rights cannot be conferred upon people by the government, but are unchanging and natural rights of citizens, which must be observed and respected and supported by governments. As a result, governments must provide all necessary grounds for realization of those rights and increasing public awareness of them through, among other things, promoting rights education across societies.

This report represents an effort to study citizenship rights from various angles and also explain efforts made by the Iranian government to provide more services to citizens under the contents of the Charter on Citizens' Rights and to realize all components of human rights in the Iranian society. There is still a long way to go and we are just at the beginning, but we have already achieved a lot with regard to formulation of legal and executive frameworks while the Iranian government has also broken many new grounds in this regard during this short period of time.

On the whole, it seems that existing laws in the Islamic Republic of Iran are to a great extent conformant to standards of citizenship rights and



Attachment of citizens to their rights and freedoms and efforts made to counter pressures from government are effective factors that ensure sustainability and safeguard of human rights and citizenship rights

human rights. However, there are still two basic challenges in the Iranian society, which are causing problems for the full realization of human ideals in this regard. The first, and of course the most important, of those challenges is cultural problems and conflicts, while the second problem is lack of awareness of citizenship rights and duties among people. These two problems can be only solved through close cooperation between the government and the nation. As said before, these two important institutions have already achieved a good degree of unity and empathy in this regard and have had acceptable achievements in this field. At the end, the Charter on Citizens' Rights should be considered as an important step toward revival of the ignored rights of people, clarification of the real status of citizens, strengthening social relations, and encouraging more interaction between the government and the nation. All told, the Charter can be considered as an essential move in direction of building a suitable culture with regard to citizenship rights.

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# Restricting Execution as Punishment for Drug Trafficking in Iran



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## Abstract

Lawmakers have been always trying to protect the society against various harms resulting from crimes by administering certain punishments for perpetrators of those crimes. Therefore, the laws have been usually formulated in a way that punishments specified in them would be deterrent while helping rehabilitation of criminals. They are also meant to console victims of various crimes and make up for all the losses they have suffered. Iranian laws, which are based on the Islamic Sharia, have always administered the execution as a punishment for the most serious crimes. Of course, this issue has been in line with the Islamic Republic of Iran's international and human rights obligations and based on the International Covenant on Civil and Political Rights, despite the fact that definition of serious crimes is somehow different in the Iranian law. However, the high number of convicts sentenced to execution in Iran, most of whom were in prison for committing drug-related offenses, as well as increasing problems resulting from this high number of executions and concerns raised by human rights activities during recent years finally prompted Iranian officials, legal activists and nongovernmental organizations to review those cases in which this punishment could be administered.

Smuggling of illicit drugs and addiction are among major maladies plaguing the humanity and a continuous and all-out struggle, including military, political, economic and cultural efforts, is needed to overcome these problems. In view of the high sensitivity of the Islamic Republic of Iran about the issue of drug trafficking and complexities that surround this phenomenon, one of the tools used in the Iranian laws to fight it is considering severe and heavy penalties, including execution and long-term imprisonment.

However, following many years of studies and research on the inefficiency of execution as a form of punishment for drug offenders, the Islamic Consultative Assembly (Iranian parliament) passed a new law on October 19, 2017, according to which, from now on, only three groups of convicts imprisoned for committing drug-related offenses, will be sentenced to execution. They include those drug traffickers who carry firearms, drug traffickers who are ringleaders, and drug traffickers with a criminal record related to drug offenses of more than 15 years. The new law is expected to lead to a drastic fall in the number of drug-related executions and according to the current estimates, 4,000 inmates sentenced to

death will be saved from execution.

The following report seeks to discuss the new amendments to this law in view of the importance of execution as a punishment from the viewpoint of human rights and the impact that the new law will have on improving the overall structure of Iran's criminal code. It also offers a brief review of previous laws and punishments considered for drug offenders in order to facilitate understanding of the new amendments.

### **Introduction**

During recent years, the high number of executions has caused many problems for the families of convicts, on the one hand, while stirring serious concerns among human rights activists, who bitterly criticized the Islamic Republic of Iran, on the other hand. Figures showed increased trend of drug trafficking in the country, increased rate of addiction and increasing discovery of illicit drugs, which proved that execution as a punishment has not been able to have a remarkable effect in reducing drug trafficking in the country. As a result, state bodies in charge of fighting drug trafficking spent a lot of time to revise and amend those laws, which pertained to punishment of drug traffickers.

Following the ratification of legislation by the Islamic Consultative Assembly (Iranian Parliament) regarding amendment of the Anti-Narcotics law, which was on 19 October, finally years of efforts of Iranian NGOs, legislators and human rights experts has been effective. With the ratification of this law the number of executions will dramatically drop in Iran, because most executions in Iran are related to drug crimes.

### **History of Heavy Sentences for Drug Crimes**

The fight against drugs is one of the most important issues in Iran, which annually imposes heavy financial and material costs. According to the announcement of the Interior Minister, drug traffickers make 5 billion dollars per year, which is approximately 5 percent of the national budget. The Police Superintendent says that till the end of 2016, 4000 policemen had been killed and 12,000 injured in the fight against drugs. In addition to these figures, the 43 percent level of the figures for drugs criminals in relation to the total number of prisoners has also added to these figures.<sup>1</sup>

These issues have made the legislator, throughout different periods, to apply heavy sentences that include capital punishment to fight the entry and exit and distribution of drugs. In June 1980, the Revolutionary Council, harshened the punishment for drugs criminals where in some instances capital punishment had been foreseen as punishment<sup>2</sup> and in 1981 with the addition of a clause to its article, the jurisdiction of the definition of drugs increased. In November 1988, the Expediency Discernment Council ratified the Anti-Narcotics law, and capital punishment became inclusive to 9 various scenarios.<sup>3</sup>

In 1997, this law was again amended by the Expediency Council, but nothing changed with regards to capital punishment. In December 2010, the Expediency

Council once again amended the Amendment of the Anti-Narcotics law, but this time too, the stopping of executions or reduction had not been foreseen, but the sphere of capital punishment was increased to include individuals who use children or mentally ill individuals to commit crimes and also organize and manage drug gangs and make investments. Also the sphere of the definition of drugs increased and also actions were foreseen for the treatment of addicts and their supplementary benefits. Also addicts who take steps to get treatment became exempt from prosecution.<sup>4</sup> Ultimately in October this year with the amendment of the Anti-Narcotics law, the Parliament deemed only 3 situations where capital punishment would apply to drug crimes.

Reducing the frequency of executions for drug offenses had started many years ago. As a result, the judicial procedure in Iran during recent years shows that more lenience has been exercised for the administration of execution as a punishment for drug offenses. Therefore, out of all cases in which execution has been given as the final sentence for inmates, only 12 percent actually ended in that punishment and in other cases, the offenders were either pardoned or their sentence was overruled by the Supreme Court. (Akhavan, 2017, p53)

### **Efforts to Remove Capital Punishment from Drug Crimes**

In the recent years Iranian NGOs have tried hard to get the law changed. Many field and academic studies have been conducted to this aim, and governmental and nongovernmental organizations and held various campaigns. These include the Judiciary's High Council for Human Rights, the Fight Against Drugs Department, the campaign in support of the commuting of capital punishment to life imprisonment, the Imam Ali Society regarding Juvenile Criminals, the Jurisprudence Association of Iran, and the Organization for Defending Victims of Violence as one of the NGOs active in the campaign to change the capital punishment of drug traffickers law, made extensive efforts for dialogue with Judiciary officials and the Parliament. Several meetings with officials provided the opportunity for the ODVV and sister organizations so that convince the decision makers in the Parliament and government that capital punishment was a weak deterrent for the reduction of drug trafficking.

Furthermore, in the recent years, man academics and law researchers have complained about the Drug Crimes Punishment Law and called for its amendment. They believed that capital punishment for drug traffickers and couriers caused the carrier of small amounts problems and did not result in the apprehension of drugs trafficking bosses. (Poorbafrani, & Masaeli, 2017, p146) It seems that capital punishment in practice is not effective in crime prevention. Even the children and family members of those that have been executed continue on this path, because of perhaps the problems that they experience following the execution of a family member. Therefore it is not deemed as a deterrent.<sup>5</sup>

In amending this law, the observation of Sharia laws in the carrying out of the punishment of those convicted of drugs offense was necessary, because Iranian laws are based on Islamic Sharia laws. The spokesperson of the Parliament's



Legal and Judicial Commission, Hassan Nowrouzi says: “there are differences of opinion for the punishment of production, distribution and importing of drugs. Some believed that these individuals no matter in what capacity that they conduct activities are eligible for capital punishment and some others, particularly Imam Khomeini believed that the religious jurisprudence of capital punishment include corruptions that are alongside war against God (Moharebeh), therefore some are for the execution of these types of criminals and some are against. (Akhavan, 2017, p40)

Some jurists believe that usually those get involved in this crimes who are not the main traffickers and for receiving small amounts of money as truck drivers, become transporter of drugs and unfortunately heavy sentences are automatically

dished out in this regard.<sup>6</sup>

In view of these criticisms, a proposal with the aim of reduction of capital punishment cases and effectiveness and deterrence was brought to the attention of Parliament experts and jurists. But in spite of holding numerous meetings with those in charge of fighting drugs crimes and even experts from the Expediency Council did not reach a consensus because of big disagreements. One of the important disagreement points was the fear of committing a crime becoming easier with the removal of capital punishment and lack of deterrence from other lesser punishments. For example,

the National Security Commission rejected this proposal because it believed that heavier sentences played a deterrence role.

This proposal was once again prepared by a number of members of Parliament in the 10th Islamic Parliament and placed in the working agenda of the Parliament Judicial and Legal Commission. Based on field and communication studies which it conducted with the people (particularly in regions that suffered the most executions) and also carrying out some amendments and enclosing expertise viewpoints, the Commission sent the proposal to the open session of the Parliament. But after the adoption of the generalities of the proposal, many amended comments regarding paragraphs of this article resulted in the proposal being resent to the Judicial and Legal Commission for more technical amendments.

After the referral of this proposal the situation for the offenders for the commuting of the death sentences changed in the Judicial and Legal Commission in a way that the weight condition for the production, distribution, carrying, holding and importing of drugs got completely omitted from capital punishment. On this basis, capital punishment only included the leaders of drug trafficking groups



**This proposal was once again prepared by a number of members of Parliament in the 10th Islamic Parliament and placed in the working agenda of the Parliament Judicial and Legal Commission**

and those who used firearms in committing these crimes.

The removal of the paragraph in this proposal with regards to production, distribution, carrying, holding and importing of drugs to determine capital punishment caused numerous reactions and objections; in a way that those in charge of the fight against drugs, Judiciary and Justice Ministry officials and the Attorney General of the country as opponents through dialogue with the board of directors tried to send this to the Judicial and Legal Commission for amendment for a second time. In fact, the opponents stressed on the determination of the weight as criteria for specification of cases where capital punishment should apply. On this basis the proposal to attach an article to the Fight against Drugs Law was for the second time sent to the Commission and amendments were done in the presence of the Attorney General and deputies from the Judiciary. With these amendments capital punishment for the production, distribution, carrying, holding and importing of 100Kg of traditional drugs and 2Kg of industrial drugs was considered and approved.

### **Approval of Restrictions on Capital Punishment**

According to the new law<sup>7</sup>, three groups of those convicted of drugs offences are executed, and the rest of the offenders to whom previously capital punishment was dished out will instead be sentenced to 25 to 30 years imprisonment:

The first group are traffickers who use firearms while trafficking drugs and or carry any type of firearms which this group of traffickers are examples of war against God and will be sentenced to death.

The second group are those traffickers who form bands or gangs and they traffick drugs in the group form, who according to the recent law these individuals will be sentenced to death. Furthermore, traffickers who use children or mentally ill individuals for trafficking drugs are included in this article and will be sentenced to death.

The spokesman for the Judicial and Legal Commission of the Parliament in explaining about the third group of traffickers who will be sentenced to death said: “Traffickers who have drug-related criminal records that are longer than 15 years, in the event of repeat offence will be included in capital punishment sentences.”

The current law has been ratified following months of studies and utilisation of nationwide academic researches. The new law is directed towards being constructive for the drug offenders, because the experiences of the previous years showed that not only did this law not have a deterrent effect, but the families of those who were executed on drugs convictions, were unwillingly drawn into drugs trafficking due to the history of the head of household. The spokesmen of the legal Commission said the aim of this law is the reintegration of drug traffickers back to society.

The Deputy Speaker of the Parliament has estimated that approximately 4,000 prisoners who are in death row, will have their lives spared in view of the precedence of the new law.

## Conclusion

Although there are still human rights concerns about the high number of executions in Iran, the point that must be taken into account is that Iran is located along the main drug transit routes. Therefore, the costs incurred on the Iranian government and society as well as the loss in human life suffered in the fight against drug trafficking are very high. This is why the Iranian law has always administered strict punishments for drug offenders, so that, such punishments will be able to reduce the frequency of drug-related offenses. At the present time, there is hope that the new amended law, commuting punishment of drug offenders, and considering substitutes for execution will finally reduce social and economic harm done to the country through drug-related offenses.

Also, in view of the heavy financial, economic and physical burden for the prevention of the transit of drugs to Europe, it seems necessary to ask the following question, "how much technical assistance can international organizations and NGOs that criticise the execution of drug criminals, provide with regards to reduction of armed clashes on the borders with Afghanistan and reduction of the human casualties of the border patrols of Iran, so that the concerns of the domestic critics are also replied, and also prevent the increase in the volume of drug trafficking in Iran?"

In particular, considering the UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances in 1988, member states are committed to cooperate for further performance in the fight against various dimensions of drugs trafficking and fight against drugs trafficking is the collective duty of all states and reaching this objective requires a coordinated action within international cooperation framework.

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# Unilateral Coercive Measures: A Guarantee for or Violation of Human Rights



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## Abstract

The question of this paper is “are unilateral coercive measures taken to guarantee implementation of human rights, when peremptory norms of human rights are violated, a real guarantee for the implementation of human rights or amount to violation of those rights?”

To answer this question, the legal fundamentals of unilateral coercive measures as well as their impact on countries have been studied on the basis of the United Nations’ documents.

Of course, use of unilateral coercive measures or sanctions as a guarantee for the implementation of human rights has its roots in international law, but study of the UN documents on the effect of these sanctions on human rights violations will prove their inefficiency as a tool.

Therefore, one can conclude that unilateral coercive measures, one of the most important of which is imposition of sanctions, have not only failed to promote human rights through forcing countries to observe those rights, but should be considered as a means of violating human rights. Subsequently, there seems to be a need to review use of such unilateral coercive measures as a tool to guarantee implementation of human rights within framework of international law.

## Human rights supervisory mechanisms

At the present time, a very complicated and huge mechanism is at work at international level to supervise implementation of human rights. It aims to assess situation of human rights in various countries and to evaluate supervision on human rights and how human rights grievances are being dealt with. This mechanism takes advantage of a 70-year legacy since the Charter of the United Nations was adopted, which includes the United Nations’ supervisory mechanisms, regional human rights mechanisms, and the mechanism of unilateral measures taken by countries.

## UN supervisory mechanisms

1. Mechanisms based on the Charter of the United Nations

There are many mechanisms based on the Charter of the United Nations,



**Of course, in addition to government reports, some treaty-based supervisory institutions have set up a mechanism, which allows complaints to be filed against governments over violation of their human rights commitments emanating from a specific treaty**

taking into account that the UN is the main body supervising implementation of human rights and its output, including resolutions, decisions, and recommendations, play a part in facilitating implementation of human rights.

The General Assembly and its Third Committee, the UN Economic and Social Council, the Human Rights Council, the Commission on the Status of Women (CSW), and the Office of the UN High Commissioner for Human Rights are among major UN bodies supervising human rights. Also, a number of human rights treaties include provisions according to which any dispute between two parties can be

heard at the International Court of Justice. Some of those treaties include the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention Relating to the Status of Refugees, and the Convention on the Political Rights of Women.

## **2. Treaty-based mechanisms**

On the whole, there are 18 human rights documents in this regard, including the Universal Declaration of Human Rights, two international covenants, the Convention on the Prevention and Punishment of the Crime of Genocide, as well as 14 treaties on the rights of refugees, women, children, nationality, slavery, torture, racial discrimination, and so forth. Supervision over and follow-up on these human rights treaties have been entrusted to special committees, whose experts are chosen by state members of these documents or by the UN Economic and Social Council. This mechanism helps guarantee implementation of human rights by obliging member states to present reports on the fulfillment of their commitments and take part in the committee meetings, while being accountable with regard to their human rights obligations.

Of course, in addition to government reports, some treaty-based supervisory institutions have set up a mechanism, which allows complaints to be filed against governments over violation of their human rights commitments emanating from a specific treaty.

An example is the UN Human Rights Committee, which supervises correct implementation of the two international covenants on human rights. Some of the Committee's duties are preparing a report and sending it to the General Assembly through the UN Economic and Social Council and also to hear

complaints filed by people and ask the respective governments to answer.

### **Mechanism for country measures Reciprocal unilateral measures by countries**

Reciprocal measures are among the most important tools made available to governments by international law in order to support human rights.

Such measures are equally available to all governments regardless of whether they are or are not members of a specific organization or treaty and can be used to protect those human rights commitments, which have turned into peremptory norms of international law.



**A review of treaty-based and other mechanisms devised to guarantee human rights implementation will reveal extensive limitations that are intrinsic to these tools for guaranteeing implementation of human rights**

### **Grounds for using reciprocal unilateral measures**

A review of treaty-based and other mechanisms devised to guarantee human rights implementation will reveal extensive limitations that are intrinsic to these tools for guaranteeing implementation of human rights.

Non-treaty-based mechanisms, which are based on the Charter of the United Nations, are also bugged with shortcomings for guaranteeing implementation of human rights. They suffer from major limitations, because they are restricted to recommendations and it is almost impossible to take effective measures through these mechanisms due to conventional political exchanges. On the other hand, treaty-based mechanisms, including committees that supervise a specific treaty, are only limited to that treaty and can supervise implementation of commitments enshrined in the treaty only when the state in question is a member to the treaty.

The absence of guarantees for the implementation of human rights commitments and weakness of the existing mechanisms – both treaty-based and others – for supporting human rights, have tempted international authorities to find guarantees within the common international law. An example of those guarantees is reciprocal measures taken by governments in the face of violation of peremptory and universal norms of human rights.

### **Legal basis for reciprocal unilateral measures in international law**

The International Court of Justice first recognized universal commitments in the case of Barcelona Traction. According to the court's verdict in that case, commitments that exist with regard to basic human rights are among the most fundamental examples of universal commitments. Of course, they cannot be categorically considered as part of legal norms, but one can say

that these commitments aim to support the interests of the international community, both when a state has been harmed and when no state has been harmed. As a result, they serve as a guarantee for the implementation of human rights. According to the aforesaid verdict, unlike commitments that are related to a specific harmed state, universal commitments are related to the entire international community. Therefore, all states are entitled to them with no need to physical proof. According to the court's verdict in that case, human rights norms are part of such commitments.

### **Peremptory norms**

Peremptory norms are those norms of international law, which cannot be violated under any circumstances. They can overrule those norms of international law, which are not peremptory or are in conflict with them. On the other hand, *erga omnes* are those norms, which if violated, everybody will have the right to take legal action. This right applies to all states that are subject to those norms.

Implementation of international responsibility of states through recourse to reciprocal unilateral measures is possible when the state that plans to use such measures has the right to raise the issue on the basis of the responsibility of the state that has violated its commitment. The state in question must also prove that it has been harmed by the action of the latter state, which has violated its commitment.

After the International Law Commission adopted its plan on the international responsibility of states in 2001, these complexities were somehow reduced. According to that plan, a state found in violation of international law shoulders civic responsibility and must make up for the damage done to other states or their nationals.

When it comes to international responsibility, the International Law Commission has gone beyond reciprocity enshrined in international law by differentiating between the state that has been directly harmed and the third state. The third state is a state, which has not been directly harmed by a human rights violation, but is still a stakeholder due to the importance of those norms, which have been violated. Such violations are usually committed with regard to human rights norms.

Meanwhile, based on the verdicts of the International Court of Justice and opinion of the International Law Commission in its 2001 plan, the approach taken by countries to reciprocal unilateral measures indicates that a customary law has been created in this regard.

### **Incompatibility of unilateral sanctions with human rights<sup>1</sup>**

Unilateral economic sanctions, including unilateral sanctions imposed by the United States against Iran, are at odds with the first generation of human rights, that is, civil and political rights, because the right to free trade is among civil rights of humans. Unilateral sanctions are also incompatible

with the second generation of human rights, that is, economic, social and cultural rights. This is true because principal goals of these rights include promotion of economic, cultural and social relations; equitable access to job opportunities; and advancement of science and technology. Unilateral sanctions are incompatible with the third generation of human rights as well, because they violate the right to peace, the right to self-determination and the right to development as they are usually imposed in line with political and foreign policy goals of sanctioning country.

### **The right to peace**

Unilateral sanctions take aim at a state and its policies, especially economic policies, and as such, pose a threat to peace. Threat and pressure from a state against another state can be used as a pretext to wage war.

### **The right to self-determination**

Paragraphs 1 and 3, Article 21 of the Universal Declaration of Human Rights have specified that the “will of the people shall be the basis of the authority of government” and the right to self-determination. The Charter of the United Nations, in Paragraph 2 of its Article 1, has also said that development of friendly relations among nations should be based on respect for the principle of equal rights and self-determination of peoples. Therefore, unilateral sanctions against a country’s state institutions outside the framework of the United Nations Security Council, which is responsible for safeguarding global peace and security, would be incompatible with “self-determination of peoples” as is enshrined in the Charter of the United Nations.

### **The right to economic activity**

Paragraph 1, Article 23, and Paragraph 1, Article 25 of the Universal Declaration of Human Rights assert that “everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment,” and “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.” In addition, articles 7, 11, 12, 13, 14, 15, and 18 of the International Covenant on Economic, Social and Cultural Rights have described “the enjoyment of just and favorable conditions of work” as a requisite for the realization of the right to work.

### **The right to development**

Unilateral sanctions and unilateral coercive measures are totally incompatible with the right of nations to development. For example, the first seven articles of the Universal Declaration of Human Rights clearly show why unilateral sanctions are incompatible with the right to development.

In general, violation of human rights as a result of unilateral sanctions can



be viewed from two angles:

### **1. Impact of unilateral sanctions on nations**

According to information included in various reports, including reports by the UN Special Rapporteur on unilateral coercive measures, innocent people living under sanctioned governments suffer the most from unnecessary bans, which are not even aimed at the target state.<sup>2</sup>

In many cases, mounting pressure on government and other officials to make them change their behavior is mentioned as the main goal of sanctions, but in practice, the citizens and civilians bear the brunt of sanctions and have no way to ask for remuneration for the damaged done to them.

For example, with regard to US sanctions against Iran, although the United

States of America and the European Union claim that the sanctions do not apply to humanitarian items, in actual fact they have deeply affected the delivery and availability of medical supplies. The import of medicines containing antibiotics (of types not produced inside the country) has decreased by 20.7 per cent, and prices have increased by more than 300 per cent. The estimated 20,000 persons suffering from thalassaemia in the country receive only a few days of their monthly medicinal needs. Survivors of chemical weapons used during the war with Iraq in the 1980s, in need of medicine and equipment, including cornea transplants and inhalers,

similarly suffer from a shortage or lack of medical supplies.<sup>3</sup>

According to a non-profit organization based in the United States, smart sanctions imposed on the banking, gas and insurance sectors have wreaked havoc with the lives of many Iranian citizens, as price hikes have led to the high cost of food (increases by 1,500 per cent in the period 2010–2012). Besides strengthening the black cash economy and increasing criminalization, women's access to higher education has decreased. Women are being pushed out of the job market. Furthermore, the sanctions have triggered a collapse in industry, skyrocketing inflation and massive unemployment. The country's middle class has disappeared, and even access to food and medicine has been compromised.<sup>4</sup>

Although such measures may be selective and to a large extent affected by unilateral interests of governments or may even be the result of double standards that the sanctioning government applies to human rights, nobody can deny that this course of action has become prevalent in international law.



**According to information included in various reports, including reports by the UN Special Rapporteur on unilateral coercive measures, innocent people living under sanctioned governments suffer the most from unnecessary bans, which are not even aimed at the target state**

Another point is that as put by economists, foreign trade plays an important role in any country's economy, both with regard to imports and exports and with respect to banking and financial services. However, a large part of industries in countries exposed to sanctions are dependent on raw materials, parts and equipment, and rapid and efficient banking relations.<sup>5</sup> Therefore, sanctions will inevitably lead to economic recession in any country on which they are imposed.<sup>6</sup>

In other cases, unilateral measures have violated financial and economic rights of people in a country and have practically made way for the sanctioning country to seize property and assets of another country. Such assets may sometimes even be among historical heritage of that nation.

Therefore, in many cases, unilateral sanctions not only target economy of sanctioned countries in general, but are also imposed for very hostile reasons. For example, heavy punishments considered for companies that breach unilateral sanctions cause such a fear among international trade community that many companies avoid doing trade with the sanctioned country even with regard to those goods, which are not covered by sanctions and are even essential for people in the sanctioned country.

In other words, such punishments are not simply applied to companies that support those governments which are subject to sanctions, and a large part of these strict measures are not even related to worrisome security issues. This is true because sometimes institutions in the sanctioning country impose punishments on companies simply for unintentional violation of sanctions when they do small and daily transactions with the sanctioned country.

## **2. Governments pursue political goals through sanctions instead of guaranteeing human rights**

Some sanctioning governments simply hide their political goals under the cover of such terms as international concerns, threats against human rights and international security. This causes doubts about goodwill of those governments, taking into account that goodwill is one of the most important principles of international law.

Therefore, there is serious need to explore real intentions of sanctioning governments and adopt solutions to reduce destructive impact of sanctions on ordinary people. This goal can be achieved through attention to international regulations related to unilateral coercive measures.

## **Conclusion**

Unlike domestic laws, there have never been powerful guarantees for the implementation of international laws and this is why they have been always open to criticism. The same is true about human rights supervisory mechanisms, both those mechanisms, which are based on the Charter of the United Nations, and those, which are based on treaties. In both cases they are marked with many shortcomings, including absence of effective

guarantees for their implementation. This setback has left governments in charge of implementing international law. Therefore, in those cases when dispute settlement mechanisms, both international and intergovernmental one, are insufficient, the governments are in charge to decide when and how to deal with human rights violations. Reciprocal measures are among major tools used by governments under such conditions to deal with the violating government and forcing it to comply with human rights norms and make up for any possible losses.

A very important point here is that although reciprocal unilateral measures, of which sanctions are a prominent example, have been designed to guarantee implementation of human rights, they themselves lead to violation of human rights. Of course, it must be admitted that regulating reciprocal measures through adoption of UN resolutions on reciprocal measures taken by governments, will be an important step toward restricting the scope of such measures and preventing their abuse by governments.

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# Armenians in Iran: A Brief History



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## Author's Note:

As an Iranian-Armenian, seeing all the negative – mostly outrageous lies – news reported on Iran by international media outlets and social media, I strongly felt that there was a need to clear some things from the first hand observer's angle. When I see how religious and ethnic minorities are treated in some of the Middle East and North Africa region, I know that I must speak out in the defense of Iran and Iranians.

I was born in Iran and have spent over half of my adult life in the country, both prior to the '79 Revolution and after (been living in Iran again since 2000). I never experienced any sort of prejudice or discrimination in either period. In this article I will attempt to as briefly as I can go through the history of the Armenian people in Iran.

## History:

Armenians are a part of the Indo-Iranian Aryan race (note: not in the Nazi ideology sense)<sup>1</sup>. They settled mainly in the region today known as the Caucasus (modern day Armenia, Georgia and Azerbaijan Republic). Throughout history, due to the geographic location of Armenia, it was always caught between the Persian, Greek and the Byzantine Empires. At various periods Armenia was either an ally to or part of one of these empires.

Armenia is a unitary, multi-party, democratic nation-state with an ancient cultural heritage. Urartu was established in 860 BC and by the 6th century BC it was replaced by the Satrapy of Armenia. In the 1st century BC the Kingdom of Armenia reached its height under Tigranes the Great. Armenia became the first state in the world to adopt Christianity as its official religion. In between the late 3rd century to early years of the 4th century, the state became the first Christian nation. The official date of state adoption of Christianity is 301 AD. The ancient Armenian kingdom was split between the Byzantine and Sasanian Empires around the early 5th century. Under the Bagratuni dynasty, the Bagratid Kingdom of Armenia was restored in the 9th century. Declining due to the wars against the Byzantines, the kingdom fell in 1045 and Armenia was soon after invaded by the Seljuk Turks. An Armenian principality and later a kingdom Cilician Armenia was located on the coast of the Mediterranean Sea between the 11th and 14th centuries. Between the 16th century and 19th

century, the traditional Armenian homeland composed of Eastern Armenia and Western Armenia came under the rule of the Ottoman and Iranian empires, repeatedly ruled by either of the two over the centuries. By the 19th century, Eastern Armenia had been conquered by the Russian Empire, while most of the western parts of the traditional Armenian homeland remained under Ottoman rule. During World War I, Armenians living in their ancestral lands in the Ottoman Empire were systematically exterminated in the Armenian Genocide. In 1918, following the Russian Revolution, all non-Russian countries declared their independence after the Russian Empire ceased to exist, leading to the establishment of the First Republic of Armenia. By 1920, the state was incorporated into the Transcaucasian Socialist Federative Soviet Republic, and in 1922 became a founding member of the Soviet Union. In 1936, the Transcaucasian state was dissolved, transforming its constituent states, including the Armenian Soviet Socialist Republic, into full Union republics. The modern Republic of Armenia became independent in 1991 during the dissolution of the Soviet Union.<sup>2</sup>

### **Armenians in Iran:**

Although Armenians have a long history of interaction and settlement with Persia/Iran and within the modern-day borders of the nation, Iran's Armenian community emerged under the Safavids. In the 16th century, the Ottoman Empire and Safavid Iran divided Armenia. From the early 16th century, both Western Armenia and Eastern Armenia fell under Iranian Safavid rule. Owing to the century long Turco-Iranian geo-political rivalry that would last in Western Asia, significant parts of the region were frequently fought over between the two rivalling empires. From the mid-16th century with the Peace of Amasya, and decisively from the first half of the 17th century with the Treaty of Zuhab until the first half of the 19th century, Eastern Armenia was ruled by the successive Iranian Safavid, Afsharid and Qajar empires, while Western Armenia remained under Ottoman rule. From 1604 Abbas I of Iran implemented a "scorched earth" policy in the region to protect his north-western frontier against any invading Ottoman forces, a policy which involved a forced resettlement of masses of Armenians outside of their homelands.

Shah Abbas relocated an estimated 500,000 Armenians from his Armenian lands, during the Ottoman-Safavid War of 1603-1618, to an area of Isfahan called New Julfa and the villages surrounding Isfahan in the early 17th century, which was created to become an Armenian quarter. Iran quickly recognized the Armenians' dexterity in commerce. The community became active in the cultural and economic development of Iran.

Bourvari (Armenian: Բուրվարի) is a collection of villages in Iran, between the city of Khomein (Markazi Province) and Aligoodarz (Lorestān Province). It was mainly populated by Armenians who were forcibly deported to the region by Shah Abbas of the Safavid Persian Empire during the same as

part of Abbas's massive scorched earth resettlement policies within the empire. The following villages populated by the Armenians in Bourvari were: Dehno, Khorzend, Farajabad, Bahmanabad and Sangesfid.

With increasing encroachments of the expanding neighbouring Russian empire towards the south at the expense of Qajar Iran and Ottoman Turkey, in the course of the 19th century Qajar Iran would lose all its integral territories in the Caucasus region through the Russo-Persian Wars to Russia. This included the irrevocable loss of Eastern Armenia (roughly equivalent with modern-day Armenia) in 1828 per the Treaty of Turkmenchay.

From 1795 to 1804 during the earliest clashes leading up to the 19th century wars between the Russian and Persian Empire Armenians were taken as captive in Iran. There were also 20,000 Armenians who moved for Georgia. Following the results of the Russo-Persian War (1804-1813), Qajar Iran was forced to irrevocably cede swaths of its territories in the Caucasus, comprising modern-day Georgia, Dagestan, and most of the Republic of Azerbaijan. The Russo-Persian War (1826-1828) that followed afterwards forced Qajar Iran to irrevocably lose the complete remainder of its Caucasian territories, comprising modern-day Armenia and the remainder of the Azerbaijan Republic. All abovementioned territories, which had made part of the concept of Iran for centuries, were ceded to Imperial Russia as confirmed by the 1813 Treaty of Gulistan and 1828 Treaty of Turkmenchay, respectively. The ceding of what is modern-day Armenia (Eastern Armenia in general) in 1828 resulted in a very large amount of Armenians falling now under the rule of the Russians.

The Treaty of Turkmenchay further stipulated that the Tsar had the right to encourage Armenians who were still living within the now drastically shrunk borders of Iran to settle in the newly conquered Caucasian territories. This resulted in a large demographic shift as many of Iran's Armenians followed the call, while many of the Caucasian Muslims migrated towards the newly established borders of Iran.

As a result, an estimated 40,000 Armenian refugees from Persia returned to the territory of the Erivan khanates after 1828, while about 35,000 Muslims (Persians, Turkic groups, Kurds, Lezgis, etc.) out total population of over 100,000 left the region, many going to the newly established borders of Qajar Iran.



**The Treaty of Turkmenchay further stipulated that the Tsar had the right to encourage Armenians who were still living within the now drastically shrunk borders of Iran to settle in the newly conquered Caucasian territories**

With these events of the first half of the 19th century, and the end of centuries of Iranian rule over Eastern Armenia, a new era had started for the Armenians within the newly established shrunk borders of Iran. The Armenians in the recently lost territories north of the Aras River as a result of the Russian conquests now would go through a Russian dominated period, until 1991.

The Armenians played a significant role in the development of 20th-century Iran, regarding both its economical as well as its cultural configuration. They were pioneers in photography, theater, and the film industry, and also played a very pivotal role in Iranian political affairs.

The Revolution of 1905 in Russia had a major effect on northern Iran and, in 1906, Iranian liberals and revolutionaries, demanded a constitution in Iran.

In 1909 the revolutionaries forced the crown to give up some of its powers. Yeprem Khan, an ethnic Armenian, was an important figure of the Persian Constitutional Revolution.

Armenian Apostolic theologian Malachia Ormanian, in his 1911 book on the Armenian Church, estimated that some 83,400 Armenians lived in Persia, of whom 81,000 were followers of the Apostolic Church, while 2,400 were Armenian Catholics. The Armenian population was distributed in the following regions: 40,400 in Azerbaijan, 31,000 in and around Isfahan, 7,000 in Kurdistan and Lorestan, and 5,000 in Tehran.

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With these events of the first half of the 19th century, and the end of centuries of Iranian rule over Eastern Armenia, a new era had started for the Armenians within the newly established shrunk borders of Iran

In 1914 there were 230,000 Armenians in Iran. During the Armenian genocide about 50,000 Armenians fled the Ottoman Empire and took refuge in Persia. As a result of the Persian Campaign in northern Iran during World War I the Ottomans massacred 80,000 Armenians and 30,000 fled to the Russian Empire. The community experienced a political rejuvenation with the arrival of the exiled Dashnak(ARF) leadership from Russian Armenia in mid-1921; approximately 10,000 Armenian ARF party leaders, intellectuals, fighters, and their families crossed the Aras River and took refuge in Qajar Iran. This large influx of Armenians who were affiliated with the ARF also meant that the ARF would ensure its dominance over the other traditional Armenian parties of Persia, and by that the entire Iranian Armenian community, which was centered around the Armenian church. Further immigrants and refugees from the Soviet Union numbering nearly 30,000 continued to increase the Armenian community until 1933. Thus by 1930 there were approximately 200,000 Armenians in Iran.

The modernization efforts of Reza Shah (1924–1941) and Mohammad Reza

Shah (1941–1979) gave the Armenians ample opportunities for advancement, and Armenians gained important positions in the arts and sciences, economy and services sectors, mainly in Tehran, Tabriz, and Isfahan that became major centers for Armenians. From 1946-1949 about 20,000 Armenians left Iran for the Soviet Union and from 1962-1982 another 25,000 Armenians followed them to Soviet Armenia. By 1979, in the dawn of the Islamic Revolution, an estimated 250,000 - 300,000 Armenians were living in Iran.

Armenian churches, schools, cultural centers, sports clubs and associations flourished and Armenians had their own senator and member of parliament, 300 churches and 500 schools and libraries served the needs of the community. Armenian presses published numerous books, journals, periodicals, and newspapers, the prominent one being the daily “Alik”

Many Armenians served in the Iranian army, and many died in action during the Iran–Iraq War. Due to the war, the number of Iran’s 250,000 Armenians further decreased to its current 150,000.

Later Iranian governments have been much more accommodating and the Armenians continue to maintain their own schools, clubs, and churches. The fall of the Soviet Union, the common border with Armenia, and the Armeno-Iranian diplomatic and economic agreements have opened a new era for the Iranian Armenians. Iran remains one of Armenia’s major trade partners, and the Iranian government has helped ease the hardships of Armenia caused by the blockade imposed by Azerbaijan and Turkey. This includes important consumer products, access to air travel, and energy sources (like petroleum and electricity). The remaining Armenian minority in the Islamic Republic of Iran is still the largest Christian community in the country, far ahead of Assyrians.

The Armenians remain the most powerful religious minority in Iran. They are appointed two out of five seats in the Iranian Parliament (the most within the Religious minority branch) and are the only minority with official Observing Status in the Guardian and Expediency Discernment Councils. Today in Iran there are about 120,000–150,000 Armenians left. Half of which live in the Tehran area. A quarter live in Isfahan, and the other quarter is concentrated in North-western Iran or Iranian Azerbaijan. The majority of Armenians live in the suburbs and centre of Tehran, most notably Narmak, Majidiyeh, Nadershah, Sanaee St., Bahar St. etc.

### **Laws for Armenians**

Some of the Iranian laws do not apply to religious minorities. Marriage and divorce and inheritance laws for example are set by the minorities for themselves. Aside from birth and death certifications which are done in Iranian registry offices across the nation, marriage and divorce certificates are issued by a government registry office located in main churches in different towns and cities. The marriage and divorce registry office in Tehran is located in the building adjacent to Sourb Sarkis (Saint Sarkis) Church, which is the



Armenian Prelacy where Archbishop Sebouh Sarkissian has his office.

The Iranian inheritance laws are based on Islamic Sharia Laws. For example only one third of property can be put in a will in the way the writer of the will wishes how his property is divided to his next of kin. The remaining two-thirds go under the inheritance laws. For example if a man who is married and has a son, daughter and a wife, the inheritance law is such that – in the event of there being a will – one-eighth of the remains of the estate goes to his widow, and rest is divided into the children in such way that the daughter gets half of what the son gets.

These laws do not apply to Armenians. The full estate or property can be put into a will and the writer of the will can choose who gets what to what amount. In other words an Armenian can if he chooses so not to for example include his wife in the will and will everything he owns to his children equally regardless of gender; or any other combination that he chooses. In the event that there is no will, the property is equally divided among the immediate family members (widow, children) of the deceased. In the event that there are no immediate survivors the property goes to the siblings of the deceased, and so on and so forth.

In December 2011 significant developments occurred in the Dia or bloody money/compensation Law for religious minorities. Prior to that religious minorities were entitled to receive half of their Muslim counterparts. But thanks to the joint campaigns of minorities' leaders and Islamic scholars and jurists, ultimately thanks to the Supreme Leader Ayatollah Khamenei's decree, the law changed and religious minorities became entitled to equal compensation as their Muslim counterparts. It must be mentioned that according to Iranian laws women are entitled to half compensation as men, and since the law for religious minorities is equal to the nation's laws, the same ration applies to religious minorities, a significant step nonetheless.

### **Social, Cultural and Sports Clubs and Centres and Schools**

As mentioned Armenians, and overall all religious minorities have their own social, cultural and sports clubs which are exclusively for them. i.e. only Armenians can use their own clubs and centres, Assyrians can only use their own centres, and the same for Jews and Zoroastrians. Since this article is focused on Armenians in Iran, it will concentrate on the workings of these clubs and centres. There are a number of social, cultural and sports centres in Tehran, one of these is the massive Ararat sports and recreation complex which is located in the Vanak district of the city. The complex includes a football stadium, volleyball and basketball court, an open air garden restaurant which operates in spring and summer, indoor restaurant, conference and reception halls. With the reception hall being very spacious it is a very popular venue for wedding and other occasion receptions. Unlike Iranian wedding receptions where men and women are segregated, in the Ararat receptions hall and in other Armenian facilities across the city, receptions are held in the mixed

form where families and friends can sit and dance together. Also to prevent tensions and incidents from breaking out, there are guards inside the gates of the complex and also Iranian police outside the gates.

There are numerous football volleyball and basketball sports teams for boys and girls and men and women, and unlike the Iranian sports venues where unfortunately women are still not allowed, women spectators are allowed to the venues.

Armenians also have their own boy and girl scouts in their various clubs and schools, who follow the internationally recognised Boy and Girl Scout rules.

Prior to the revolution there were both mixed schools, and boy and girl schools for Armenians. I myself, attended a mixed school up to eighth grade before leaving the country in 1976.

In post revolution Iran schools became segregated for boys and girls. In Armenian schools as well as all the nationwide curricula that is taught, the students also learn the Armenian language, grammar, history and religion. It must be noted that these schools are not private schools and are state run schools.

The social and cultural centres also host various venues ranging from lectures in Armenian matters and history to dance and musical groups performances.

### **Armenian Churches**

There are approximately 200 operating churches across Iran the oldest of which date back to the 12th Century. Some of these churches are now closed for various reasons, the main one of which being not enough Armenians left in the community to make up a significant congregation, but they are preserved as churches nonetheless.

Armenian churches are concentrated in the following provinces and cities: Tehran (15), Isfahan (11), West (67) and East (18) Azerbaijan Provinces, and Ardebil, Shiraz, Bushehr, Bandar Abbas, Rasht, Qazvin, Hamadan, Arak, Mashhad<sup>3</sup>, Masjed-l-Soleiman, Abadan and Ahwaz towns and cities (12).

### **The Future of Armenians in Iran – Shortfalls and Challenges**

In the 1950s and 60s, some Armenians emigrated to Soviet Armenia from Iran, some, regretting their irreversible move. In the early 70s some Armenians emigrated to Australia, Europe and North America, but following the Islamic Revolution of 79, the number of Armenians leaving the country notably



**There are numerous football volleyball and basketball sports teams for boys and girls and men and women, and unlike the Iranian sports venues where unfortunately women are still not allowed, women spectators are allowed to the venues**

increased. Among today's Armenians in Iran, hardly a family can be found who does not have a member that lives in America or Europe, including the author of this article whose sister and her family have been living in America for more than three decades.

Some of the common reasons for Armenians leaving Iran include, welfare and healthcare, job opportunities, children's education, and social "freedoms"<sup>4</sup>. With welfare and healthcare for example, Armenian senior citizens get these facilities in most of the western countries including the United States and Canada, where they receive pensions and free medical care.

With myself it is a different story. Having lived outside the country for 24 years, I decided to move back to Iran for personal and family reasons, and as I look back at the last 17 years I am very happy with my decision. I lead a comfortable life with a modest income.

So overall, Iran has historically been a very kind and generous host to Armenians. But I believe there are some minor improvements that can be made. For example, Armenians or overall, religious minorities (Assyrians, Jews and Zoroastrians) cannot be candidates for elections to high civil service positions such as city or borough or town mayorship. Apart from the two seats that are allocated for Armenian members of parliament, Armenians cannot run as independent candidates for parliament.

I believe that the criteria that should allow individuals of all ethnic and religious backgrounds should be factors in the eligibility of an individual to hold a high office. The individual should be a true patriot, care for the community and the nation and have a passion to serve the country.

My argument is, if London can rightly so, have a Muslim mayor, why can't Tehran have an Armenian mayor for example?

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1-<https://en.wikipedia.org/wiki/Aryan>

2-<https://en.wikipedia.org/wiki/Armenia>

3-Note: Mashhad is a Holy City where the Shrine of the Shia 8th Imam, Imam Reza is located, and it has an Armenian church. Whereas there is not a single church of any denomination in all of Saudi Arabia, let alone in its two Holiest Cities of Mecca and Medina.

4- The reason for the quotation marks is because of the interpretation of social freedoms. Many Armenians living in Iran are content with the freedoms that they have.

# National Human Rights Institution: Taking the Middle Ground in the Promotion of Human Rights



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## Introduction

Establishing national institutions for the promotion of human rights came under the radar of the United Nations even before the ratification of the Universal Declaration of Human Rights<sup>1</sup>. However, it wasn't until the 1990s that the mandate of national human rights institutions (NHRI) attracted due attention. Many countries -particularly young democracies- established NHRIs through constitutions. Whence forth, UN took it upon itself to introduce NHRIs and emphasize their role in the protection of human rights. The most notable document in this respect is the Paris Principles relating to the Status of National Institutions (1993).

As the bridge between states and civil societies, NHRIs can have various potentials. They usually have a rather broad mandate and benefit from governmental budget –whether or not this feature is a blessing or a curse is subject to rigorous debates. At least, the critical position of these bodies in protection and promotion of human rights is clear. However, the question remains regarding their effectiveness in meeting these goals on the ground. This paper seeks to shine light on the gap between theory and practice by providing a brief introduction of NHRIs and their achievements in Afghanistan, Bahrain and Malaysia and Iran.

## 1. NHRIs: A Brief Summary

A national human rights institution is an institution with a constitutional or legislative mandate to protect and promote human rights. Such institutions can take various forms, including human rights commissions, ombudsmen, consultative and advisory bodies. Regardless of the form, they pursue the goal of human rights protection through conducting research, education, investigating violations, and in some cases hearing complaints and attempting reconciliation.

It is often said that NHRIs are somewhere in between states and civil societies. On one hand, they are funded by states. However, the essential component of these institutions is their independence from states. Moreover, comparing to governmental bodies such as the judiciary, 'NHRIs are easier to access,

more cost-effective, and have a lower threshold of proof before they can hear a case' (Setiawan, 2013: 2). Another distinctive feature is that NHRIs have a specific international normative basis (Aichele, 2010: 28).

On the other hand, they lean towards the civil society in their mandate to thoroughly monitor the state and make sure that it obliges with its human rights responsibilities. Unlike the civil society, NHRIs have more resources and as mentioned by Setiawan, '[they] are also likely to command more authority within the state than NGOs' (2013: 2).

This delicate position makes it challenging for NHRIs to find the balance between tailoring their recommendations based on state's limitations and loosing independence. Many efforts at international and regional levels have been made to assist NHRIs through this road. The most prominent one is the Paris Principles, which sets minimum requirements for the establishment of NHRIs and its mandate, clarifies the competence, responsibilities and methods of operation of NHRIs and provides benchmarks to measure their independence. While the Paris Principles tries to present a comprehensive set of norms, it cannot alone guarantee the effectiveness of NHRIs. Rather, it is merely the precondition of effectiveness. To assess the effectiveness, the context in which an NHRI is performing is of utmost importance.

## **2. NHRIs: On The Ground**

A number of factors can influence the effectiveness of an NHRI. According to the International Council on Human Rights Policy (ICHRP), an NHRI's legitimacy among the civil society, networking with like-minded bodies, popular acceptance, accessibility and interaction with them among these factors (2005: 42). The UN center for human rights suggests similar factors: independence; defined jurisdiction and adequate powers; accessibility; cooperation; operational efficiency and accountability (63). Therefore, even a NHRI which formally respect the Paris Principles but lack some of these factors might lack effectiveness on the ground. To illustrate, a few case studies will be presented.

### ***2.1. Bahrain***

Bahrain's NHRI formally started its activities in 2014 in response to national and international demands regarding the promotion of human rights. Even though three years is a short period for assessing the real effectiveness of an NHRI, the overall performance of this NHRI has already been scrutinized. In respect to monitoring elections, Farid Ghazi Jassim Rafie, a member of the NHRI, provides evidence which indicates the Institute's meticulous attention regarding the inclusivity of elections and equality of all candidates. In the NHRI's report, various violations were announced, including national media's bias, child exploitations and damaging private property by some campaigns (2016: 10-11). Regarding the follow-up to these recommendations, it should be kept in mind that the NHRI is relatively young and the existence of such

follow-up should be studied in future elections. What is clear at this stage is that the NHRI is willing to uphold its duty in monitoring the elections.

On another note, some believe that the effectiveness of this NHRI depends on the type of violations that were committed. Only violations which are ‘unlikely to cause embarrassment or repercussions on official bodies or the government [such as] a failure to complete paper work, or a case of a teacher hitting a student’ are being paid due attention (Salam for Democracy and Human Rights Structure, 2017: 18).

In this report, the Salam NGO claims that the NHRI is deliberately neglecting the civil society’s reports regarding the systematic violations of human rights in Bahrain (18). For instance, during the trial hearings against a political society, despite the attendance of the NHRI, various fair trial rights were violated (19). This report can be an indication of the fragile legitimacy and accessibility of Bahrain’s NHRI in the eyes of the civil society.

## **2.2. Afghanistan**

Afghanistan was a progressive state in establishing a NHRI in the region. The Independent Human Rights Commission (AIHRC) started its activities at 2002. Even though this NHRI has a strong legal foundation, the first step towards its establishment was taken through the Bonn Agreement on Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions (2001). It was, therefore, part of the effort to bring stability to this conflict-ridden country.

Considering the long history of violence in the country, the Commission conveys an overall positive picture in promotion and protection of human rights. It enjoys a broad mandate, working in, inter alia, education, women’s rights, children’s rights, disability rights and transitional justice. Moreover, it has been granted a quasi-judicial position in matters of human rights. The Commission has also managed to increase its accessibility by establishing numerous local offices. Despite being established by a foreign agreement, this NHRI has positive interactions with the civil society. According to Sajjad,

*‘Their public/popular accountability is the mainstay of their support – that is, accountability to the public at large, including to non-state actors. Such accountability helps members of the public to ascertain the independence of an NHRI and scrutinize*



Afghanistan was a progressive state in establishing a NHRI in the region. The Independent Human Rights Commission (AIHRC) started its activities at 2002

*its performance while allowing the institution itself to benefit from their experience and insight.* (2009: 436).

Such activities increase the legitimacy of the NHRI. At the same time, one must not assume the AIHRC perfect. As pointed out by Sajjad, putting too much focus on transitional justice, especially at the beginning, turned the NHRI into a truth commission and therefore, distracted from its original day-to-day human rights mandate (2009: 442).

### **2.3. Malaysia**

Being established at 1999, Malaysia's NHRI is the product of the criticism against 'pseudo-democracy: a country with moderately competitive elections,

but where systemic electoral abuses took place and where government was strongly dominated by one political party' (Setiawan, 2013: 115). As part of the reformist movement, NGOs pushed for the establishment of a NHRI. While this may induce the image of legitimacy in the eyes of the civil society, there existed criticisms against the original structure of the NHRI. Many members of the civil society were of the opinion that this institution does not adhere to the Paris Principles (118). Regardless, from the beginning, the NHRI took firm steps in putting human rights on the state's agenda and helping the civil



The first step for Iran is establishing a strong legal foundation for the NHRI, which includes a clear mandate and an independent and transparent method of appointing commissioners

society during the reformist movement. One of its main achievements was investigating police violence against those arrested during protests. In this report, the institution went as far as requesting immediate release and site visit (122). Such acts increased the NHRI's legitimacy among the members of the civil society.

The active role of the Malaysian NHRI continued during its later years. The institutions has tried to completely fulfill its mandate, doing research, investigations, awareness-raising, education and performing quasi-judicial tasks (127-128), while facing harsh criticism from the government. According to Setiawan, the government, in many cases, refuses to implement the NHRI's recommendations or tries to control the NHRI through the appointment of the commissioners (130-131). Nevertheless, the NHRI has managed to achieve an overall effective role in protection and promotion of human rights in Malaysia.

### **2.4. Iran**

The first step for Iran is establishing a strong legal foundation for the NHRI,

which includes a clear mandate and an independent and transparent method of appointing commissioners. In this respect, the second government of President Rouhani has presented the 'Draft Bill on the Establishment of the National Human Rights and Citizen Rights Institution' (hereinafter draft bill). Regarding the appointment of members, the draft bill is a step forward. The drafters has introduced arrangements to guarantee the independence of member. For instances, the members cannot possess a governmental job. Moreover, the civil society is allowed to appoint three members from related NGOs. Such arrangement can increase the legitimacy of the NHRI and strengthen its link with the civil society. The drafters have also tried to increase the diversity of the members. Other than the civil society, academics, journalists and religious figures with experience in human rights are among the members. However, not all members require to have a human rights knowledge or experience, such as a member of Chamber of Guilds. It appears that the drafters have had considerations other than competence in mind, which could threaten the effectiveness of the NHRI and push towards politics.

In respect to the mandate, the NHRI benefits from a rather broad range of authorities, inter alia, education and promotion, policy-making, consultative role, and most importantly, receiving communications. The last authority is an innovation, especially considering the fact that most human rights in Iran have a near non-justiciable status in Iran. Even though a NHRI is not a judicial body, even the quasi-judicial status of such communications is a valuable progress which can brings the notions of remedy and restitution for human rights violations into Iranian legal discourse. Another welcoming feature is the NHRI's authority to have on-site visits without obtaining a permission. For institutions under the authority of the Supreme Leader permission is required.

In general, the draft bill can be considered as a progress. However, the bill is still under the consideration and has not been submitted to the Parliament. The process within the government, Parliament and the possible involvement of non-state actors can all influence the final structure and authority of the NHRI.

### **3. Conclusion: Lessons Learned**

Considering the brief introduction of these NHRIs, it appears that the political context of the country influences the effectiveness of a NHRI. According to ICHRP, if the NHRI is established during transition to a new democracy the likelihood of public legitimacy will be greatest (2004: 59). In Afghanistan, NHRI was part of the transition process. However, its legitimacy was not the result of the civil society's involvement in its establishment, but because the NHRI took a firm position in performing its duty as a transitional justice mechanism. A feature which can have the downside of neglecting the original mandate of a NHRI. However, as the country moves further in the road of





This statement is partly true in the case of Bahrain. As some activists in Bahrain reported, the NHRI did not make the effort to fully distance itself from the government and was unsuccessful in creating a political space within which

democracy, it seems that the NHRI is becoming more involved in day-to-day protection of human rights, such as promoting women's rights.

Another case is when the establishment of the NHRI is an answer to the criticisms regarding the status of human rights in a country, which was the case in Malaysia and Bahrain. ICHRP mentions that 'it will be much more difficult for [such] institution to win public legitimacy. It is far less likely that there will be serious public consultation over the creation of the institution, with the consequence that it will be widely seen to belong exclusively to the government and not to the nation as a whole' (2004: 62).

This statement is partly true in the case of Bahrain. As some activists in Bahrain reported, the NHRI did not make the effort to fully distance itself from the government and was unsuccessful in creating a political space within which other human rights activists can operate. The Malaysian NHRI was established under similar conditions and still faces pressure from the government. Contrary to Bahrain's case, this NHRI has managed to obtain the trust of the civil society by adding to their voice and going beyond: investigating issues which are out of the reach of NGOs. Hence, even in the situation of political pressure the NHRI can act as an independent monitoring body.

Iran has a similar situation. NHRI, the vision presented in the new draft bill can have elements of independence, legitimacy and accessibility. However, the law-on-the-paper is not the law-on-the-ground. The effectiveness of the Iranian would-be NHRI is yet to be assessed. However, following successful patterns such as that of Malaysia can increase the probability.

In conclusion, NHRIs can be influential bridges between the government and the civil society. While benchmarks introduced by the Paris Principles can guide a NHRI in the path of protecting human rights, they lack context-sensitivity. To become effective, the NHRI should have a comprehensive knowledge of the political context, earn the trust of the civil society and that of the government. In other words, the NHRI should be both diligent and pragmatic in protecting human rights. They should respond to public demands and shine light on the cases of violations and, at the same time, understand the constraints of the government. The most important role of a NHRI is to find a solution to create a balance between the two.

NHRIs have limited powers. One cannot compare the effectiveness of the Dutch NHRI with that of Bahrain. As put by ICHRP, 'indicators should always

be developed, understood and interpreted taking account of the political and economic context. No single set of indicators will provide information that is relevant and useful to every case' (2004: 39).

Nonetheless, the minimum expectation from a NHRI is to keep the human rights discourse alive and actively find a way to have the maximum effectiveness considering the constraints. Such continuous efforts can lead to gradual establishment of a culture of human rights in the society, since an imperfect NHRI is better than none in a restrictive political context. However, it will not be a durable mechanism for the long-term protection of human rights.

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1- See: ECOSOC resolution 2/9, 21 June 1946, sect. 5.

# A Review of Human Rights Violations in Global Crises during 2017



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## Introduction

The year 2017 was riddled with a host of important crises. High number of refugees, vulnerable children exposed to various threats, escalation of conflicts, growth of hatemongering and extremism and so forth were a few consequences of those crises. A crisis is a sudden and sometimes escalating development, which faces a person, society or group with unstable and dangerous conditions. Crises lead to conditions, which need extraordinary measures to be handled. Crises differ according to their type and intensity. Crises lead to especially huge pressures, which shatter conventional notions and lead to different kinds of reactions as well as various threats, risks, and new demands. Due to importance of crises and their relationship with increased violation of human rights in the world, this paper focuses on the main human rights crises in 2017. It has picked five main human rights crises including critical humanitarian conditions in Yemen and Myanmar, surge of terrorist groups, climate changes, and growing extremism. These crises have been chosen on the basis of their extensive impact on human rights violations.

## Yemen

Yemen, one of the Arab world's poorest countries, has been devastated by a war between forces loyal to the government of President Abdrabbuh Mansour Hadi and those allied to the Houthi rebel movement. However, the actors are not limited to these 2 groups, Al-Qaeda in the Arabian Peninsula (AQAP) and the Islamic State of Iraq and Levant have also carried out attacks. The conflict started in 2015 and until now, all the efforts by United Nations for peace negotiation have failed. All of these factors contributed to the fact that Yemen is in a humanitarian crisis.

There have been many human rights violations committed by various groups during the Yemeni Civil War and all sides of the conflict have been accused of human rights violations. Coalition forces led by Saudi Arabia and backed by the United States and other nations have also been accused of violating human rights and in some cases, breaking international law.

## An overview of Humanitarian Situation in Yemen:

Two years of conflict have devastated Yemen, left 18 million people in need of some kind of humanitarian assistance and created the largest food security emergency in the world.<sup>1</sup> The situation in Yemen has been described as “one of the worst crises in the world” by the United Nations Humanitarian Coordinator for Yemen.<sup>2</sup>

On 24 March 2017, the Office of High Commissioner for human rights reported that “Since 26 March 2015, at least 4,773 civilians have been killed and another 8,272 injured by the violence – a total of 13,045 civilian casualties. These figures reflect only those deaths and injuries that the UN Human Rights Office has managed to corroborate and confirm to be civilians. The actual death toll is certainly considerably higher. Another 21 million Yemenis – 82 per cent of the population – are in urgent need of humanitarian assistance.”<sup>3</sup>



**More than 5,000 children have been killed or injured in the violence – an average of five children every day since the conflict began**

### **Major human rights violations:**

#### Right to health

The country’s water and sanitation infrastructure has been ravaged, posing serious health risks. Restrictions on the importation of fuel have disrupted the delivery of water to millions of people in one of the most water-scarce countries on Earth. Fuel shortages have also curtailed access to health care, as hospitals are unable to power the generators they need to function.

Based on a report by WHO on 14 August 2017, the total number of suspected cholera cases in Yemen this year hit the half a million mark on Sunday, and nearly 2000 people have died since the outbreak began to spread rapidly at the end of April<sup>4</sup>.

#### Children’s Rights

More than 5,000 children have been killed or injured in the violence – an average of five children every day since the conflict began<sup>5</sup>.

On 2 March 2017, Stephen O’Brien stated that also 500,000 children under the age of five suffer from malnutrition and that a child dies every 10 minutes due to preventable causes in Yemen<sup>6</sup>.

### **Myanmar**

On the night of August 25 2017, an attack on Myanmar security forces by a handful of Rohingya militants in Northern Rakhine State prompted a brutal government counteroffensive that has, in turn, led to the greatest refugee crisis of the 21st century.<sup>7</sup>

Rohingya people, who form Myanmar’s Muslim minority, have been living for many years in the country’s Rakhine state. However, the government of Myanmar considers them illegal immigrants from Bangladesh and deprives them from such citizenship rights as the right to freedom of movement.

A report by the Office of the United Nations High Commissioner for Human Rights said as a result of crackdown by Myanmar’s military, about 626,000 Rohingya Muslims (more than half of their total population) had fled to Bangladesh by

December 2, 2017.

Various international bodies have reacted to the catastrophic situation in Myanmar:

- The UN Committee on the Elimination of Discrimination against Women and the UN Committee on the Rights of the Child have issued statements condemning widespread violation of human rights in the country, including murder, rape and forced disappearance, as crimes against humanity.<sup>8</sup>
- The United Nations Security Council issued a statement on November 6, 2017, condemning widespread violence against Rohingya Muslims. The statement was adopted after a relevant Security Council resolution against the government of Myanmar was vetoed by China.
- The UN High Commission for Human Rights described measures taken by Myanmar's government in northern Rakhine state as textbook example of ethnic cleansing.<sup>9</sup>
- The UN Committee on the Elimination of Discrimination against Women has asked the government of Myanmar to present a special report on the state of women and girls in Rakhine state.<sup>10</sup>

According to the UN High Commission for Human Rights, various factors that can prove a genocide is going on in Myanmar include the stateless condition of Rohingya people, which has continued for many long years, adoption of inhuman discriminatory policies against them; violence against and rape of Rohingya along with forced displacement; systemic destruction of their villages, houses, religious sites and cultural symbols; not issuing marriage permits for Rohingya, and depriving them of all health services.<sup>11</sup>

The UN Human Rights Council discussed the situation in Myanmar in its 27th extraordinary meeting on December 5, 2017 and adopted a resolution with 33 positive votes. The resolution<sup>12</sup> condemned systemic violations of human rights in Myanmar, especially against Rohingya people, asking the country's government to guarantee the rights of the minority group.

An ongoing problem with regard to Rohingya refugees is their return to the country. Their return must take place at a suitable time, through their informed decision and consent, and in the presence of sustainable peace. They must be able to return to their own regions with no limitation and root causes of the ongoing conflict, including lack of Rohingya recognition as Myanmar's citizens, must be gradually eliminated.

The governments of Myanmar and Bangladesh signed an agreement on November 23, 2017 on the voluntary return of the Rohingya refugees. According to the agreement, a joint task force will be established between the two governments and the UN High Commissioner for Refugees to enable Rohingya refugees to get back to their homes on their own free will and in a dignified manner. The government of Myanmar has been required to emphasize its commitment to recommendations given to it by the advisory commission on the Rakhine state, which include social and economic development for that state, ensuring citizenship rights of its people, and to guarantee freedom of movement and security of its citizens.<sup>13</sup>

## Human rights after the fall of Daesh

The Islamic State of Iraq and Syria (ISIS or Daesh in Arabic) is a jihadist and military group, which gained power in 2014 after pushing back the Iraqi forces from the western parts of the country and occupation of the northern city of Mosul. This group committed many crimes against Christian, Izadi (Yezidi), and Shia minorities in areas under its control, including murder, rape and abduction.

The United Nations Security Council held a meeting in 2014 to adopt Resolution 2170 in which the group was designated as a terrorist group. The European Union and many countries, including the United States and Russia, also considered Daesh as a terrorist group. Since then, Daesh has turned into a global crisis, which is posing threats to global peace and security.

In July 2017, Iraq's security forces<sup>14</sup>, along with their allied forces, started an operation codenamed "Qademoun Ya Nineveh," which led to the liberation of city of Mosul, which had been under Daesh control since July 2014. "During the course of the operation to retake Mosul City thousands of civilians were subjected to shocking human rights abuses and clear violations of international humanitarian law," said the UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein. "The execution-style killing of civilians, the suffering inflicted on families, and the wanton destruction of property can never be tolerated in any armed conflict, and those responsible must answer for their heinous crimes," he added.<sup>15</sup>

According to the report released by the Office of the UN High Commissioner for Human Rights and the UN Assistance Mission for Iraq (UNAMI) on November 2, 2017, Daesh "perpetrated serious and systematic violations that amount to 'international crimes' during the nine-month military campaign to liberate Mosul City in Iraq."<sup>16</sup> Among major crimes committed by Daesh from November 2016 to June 2017, the report has mentioned "execution-style killing of civilian, mass abductions of civilians, the use of thousands as human shields, the intentional shelling of civilian residences, and indiscriminate targeting of civilians trying to flee the city."<sup>17</sup>

According to this report, since the operation to liberate Mosul started in October 2016 up to the full liberation of the city in July 2017, 2,521 people had been killed, including 741 people by execution, and 1,673 were injured.<sup>18</sup> On the other hand, since 2014 up to the present time, at least, 74 mass graves have been discovered in areas taken back from Daesh and all evidence points to the fact that Daesh can be charged with committing international crimes.

Following the collapse of Daesh's self-proclaimed government in Iraq and Syria, the human rights crisis has not reached its end in these regions. Now, perpetrators



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of the crime of genocide and other crimes against humanity must be held to account on the basis of transitional justice to answer for systematic violations of human rights. Punishment of those behind genocide and other crimes committed by Daesh is not only a demand of the people in Iraq and Syria, but also a requisite for the realization of the international law and human rights in these regions. In doing this, governments play an important role by meeting their commitment to administer justice.

Following liberation of territories previously conquered by Daesh, it is time to investigate crimes committed by this group. The government of Iraq may consider the possibility of accession

to the Rome Statute of the International Criminal Court and accept the Court's competence and jurisdiction to investigate the country's conflict as per Article 12(3) of the Rome Statute. The government of Iraq must launch an impartial and comprehensive probe to identify those behind violations of human rights and the international humanitarian law and inform the public of its results. The accused must be arrested on the basis of law and adequate proof, and be put to fair trial in accordance with the Iraqi Constitution and the rules of the international law.

The international community also bears a responsibility towards Iraq such as seeing into all measures that led to death of civilians, including as a result of military operations by the international community. The Security Council and the Human Rights Council must continue to monitor the situation in Iraq and ensure the prosecution and punishment of all those who have violated human rights and the international humanitarian law. Since many leaders of Daesh have already fled Iraq and Syria, regional and trans-regional governments, in addition to the United Nations, are responsible for their prosecution in line with their international and humanitarian commitments.

### **Climate change**

There is no doubt that a healthy environment is requisite for realization of people's right to life, food and suitable living standards. Climate change has serious effects on the livelihood of billions of people, various ecosystems, natural resources and physical infrastructure.

Climate change has already affected ambient temperature, hydrological circles, functions of various ecosystems, and agricultural production in many parts of the world. Many communities, especially in polar and low altitude regions of the world, are also expected to move to other regions as polar ice caps continue to thaw. According to the World Food Program (WFP), a 2-degree increase in temperature will expose about 189 million to food insecurity, while a 4-degree increase will

do the same to 1.8 billion people across the world.<sup>19</sup> Endangerment of food security, which will affect the right to food as one of the most basic human rights, can lead to new crises in the near future.

As a result, the Paris Agreement on climate change was formulated through cooperation of 196 countries on December 12, 2015 and within framework of the United Nations Framework Convention on Climate Change (UNFCCC). The goal of the agreement is to prevent global temperatures from rising more than two degrees centigrade during the current century and also to launch an effort to limit temperature rise to less than 1.5 degrees centigrade compared to pre-industrialization era.

On July 1, 2017, US President Donald Trump announced his country's withdrawal from the Paris Agreement. Therefore, the United States, along with Syria and Nicaragua, are the sole member states of the UNFCCC, which have not joined the Paris Agreement yet. Trump then claimed that Paris Agreement would weaken the US economy.

This action by the president of the United States, as number one economic power of the world and the second biggest producer of greenhouse gases after China, will have certain consequences. The first impact of the US withdrawal from the Paris Agreement will be doubts about the universal nature of the agreement. One of the most important factors differentiating between the Paris Agreement and the Kyoto Protocol (1997) was universal membership of all developed and developing countries in the Paris Agreement and their role in making global climate policies. Washington's withdrawal from that agreement is sure to cast serious doubt on universality of the Paris Agreement.

Of equal importance is the impact of US withdrawal from the Paris Agreement on funding of the agreement. The United States is the main contributor when it comes to funding climate policies of developing countries. Between 2011 and 2012, the United States allocated 9.6 billion dollars to this issue.<sup>20</sup> Withdrawal of the United States and subsequent curtailment of its financial aid to the agreement will face many developing countries with problems for funding their climate projects.

Although Washington's decision to quit the Paris Agreement was within jurisdiction of the country's government, it must be noted that climate change is a global problem and its consequences, including endangering food security across the world and probable flooding of tiny island countries, will challenge the entire humanity.

### **Extremism and Xenophobia**

Extremism is not a recent issue and the world has seen various examples of



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extremism in the last decade. However, in the last few years and by radical right parties rising to power, this issue is highlighted again.

Of course, extremism is not limited to a specific party. However, in recent years, far-right parties in Europe have made great efforts to rise to power and have even won parliamentary seats in many European countries.

Extremism is any kind of behavior or action, which is distant from common ethical standards. Extremism shows hatred toward any person that is considered as the “other” and can be reflected in sharp and critical speeches, discrimination, or physical violence. This issue is rooted in extremist beliefs as well as extreme anger and desperation, which give rise to a wide array of violent measures from hate crimes to terrorism.

Europe is facing a rising tide of far-right parties, which have already entered governments in Finland, Austria, Slovakia, Hungary and Poland. The European Parliament has been influenced by the increase of these parties among its ranks and 23 percent of its members currently come from right-wing parties.<sup>21</sup> Therefore, it seems that at a time when Europe is facing one of the worst refugee crises since the end of World War II, some European Union member states have taken positions, which are at odds with the fundamental principles of the EU, especially with regard to human rights and freedom of movement.

After more than one million people from the Islamic world flooded the European Union, populist movements started to pressure their governments to close borders to Muslim refugees, shut down Muslims’ schools and ban hijab or the Islamic dress of code for women, across Europe. Nationalism is on the rise in Europe so rapidly that the dominant political current is tilting toward far-right parties as a result of which, many EU states have been distancing themselves from basic principles of the Union, including tolerance and diversity.

Following its presidential election in 2016, the United States of America has also seen a rising wave of xenophobia. Discrimination against Muslims had already risen following terrorist attacks on the US soil on September 11, 2001, but Trump’s executive order banning entry of nationals from a number of Muslim-majority countries depicted a new face of xenophobia in the United States. Discrimination against Muslims has soared so high in the United States that it can be easily called Islamophobia. On the other hand, Trump is planning to build a wall across the US border with Mexico to prevent entry of illegal immigrants from that country. This step has been also construed as another aspect of xenophobia by the US administration.

The US president has a long record in inciting xenophobic sentiments. Through posts on his social media accounts as well as through media remarks, he has been clearly fanning the flames of Islamophobia in the United States. The Islamophobic views of Trump have been followed with an increasing frequency of hate crimes against Muslims across the country. Attacks on Muslims in the United States in 2016 reached their highest after the September 11 terrorist attacks.

Addressing the issue of xenophobia by the United Nations and building a suitable discourse around it to identify its causes and consequences can be a useful step toward resolution of this global problem. A meeting can be also arranged to be attended by

high-ranking country officials in order to engage in dialogue and exchange of views in this regard. Such a meeting can boost mutual understanding and strengthen their will to pass domestic laws to support foreign nationals and criminalize measures taken against minorities. Introducing a mechanism to supervise measures taken by countries to eradicate xenophobia and Islamophobia in addition to provision of advisory services by the UN organs are other important steps that this international body can take in order to tackle this issue.

The UN secretary general, the UN high commissioner for human rights, and other high-ranking UN officials can appoint Muslim spokespersons, deputies and assistants in order to project a positive image of Muslims and gradually do away with the common image that depicts Muslims as a bigoted and inflexible group.

UNESCO, as the educational, scientific and cultural organ of the United Nations, can use its regional offices to educate journalists and reporters on how to present reports free from ethnic and religious clichés and how to offer a positive image of immigrants and foreign nationals. Those offices can also take steps to increase awareness among journalists and other media crewmembers about issues related to Muslims as well as cultural characteristics of other minority groups.

Elimination of xenophobia and its effects would not be possible in the absence of suitable cooperation from the United Nations as well as regional, national and nongovernmental organizations. The United Nations must actively cooperate with members of the civil society to overcome this problem and take advantage of ideas offered by nongovernmental organizations in this regard.

### **Conclusion**

As the high commissioner for human rights has told before, “Human rights is not, as some have argued, a boutique preoccupation of a privileged, lawyerly élite. Upholding human rights means ensuring equal access for the poor and downtrodden to justice, to resources, to decent schools, health-care and jobs. It is about clawing apart the steel trap of discrimination, which wounds and scars. It is about holding governments accountable to their people.”<sup>22</sup>

There is nothing new about crises pivoting around human rights. During the past 70 years and following adoption of the Universal Declaration of Human Rights, which forms the groundwork for the international human rights system, this area has seen many crises as a result of armed conflicts, civil wars, and measures taken by governments in violation of human rights. These crises have had a profound effect on human rights and can greatly weaken human rights as an international institution. It must be noted that there could not be global development, peace and security in the absence of human rights and a system to support these rights.



**Following its presidential election in 2016, the United States of America has also seen a rising wave of xenophobia**

“The global institutions which protect us against chaos are cracking, splintering deeper by the day. If they break, the price paid by humanity could well be so profound, we could be placed beyond recovery. There can be no peace, no development, no safety, no future for any of us if we allow the human rights of the people – all the people – to be broken apart.”

Out of all available solutions, it seems that a serious resolve on the part of the international community to bolster the human rights system in cooperation with people, civil society, nongovernmental organizations, and international and regional organizations can be effective in putting an end to these crises. In addition, governments must be committed to stop using human rights as a tool and safeguard the real global ideals of human rights.

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# Transitional Justice and Human rights



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## Abstract

Daesh terrorist group was born in Syria and Iraq in 2013 as a new phenomenon in international system and introduced an intermediate concept, which stood somewhere between government and terrorist groups.

Systematic violation of human rights started in an explicit manner by this self-proclaimed government since its inception in Iraq and Syria. Now, after the collapse of this self-proclaimed government, the concept of transitional justice and such issues as compensating the damage done by Daesh and punishment of criminals have been raised by human rights communities.

This paper aims to answer this question: How can world countries prevent violation of human rights and guarantee enforcement of those rights with regard to the crime of genocide and other war crimes? The focus is also on this issue that enforcement of human rights in the field of justice depends on the behavior and performance of governments in the face of crimes committed by such groups as Daesh. It underlines that in order to see justice administered, countries must cooperate with the International Criminal Court. Materialization of the doctrine of transitional justice can be a good response to genocide and Daesh's crimes against people. In the meantime, the role of the International Criminal Court (ICC) as well as the regional and international actors in administering various aspects of the transitional justice doctrine has been discussed by the authors.

### **Definition of transitional justice and its relationship with human rights**

Transitional Justice is the overall modern concept describing approaches through which societies may address massive human rights violations, mass atrocities, or other forms of severe trauma in order to restore peace and positive relations within the society. Transitional Justice is mostly applied at a point of political transition from authoritarian, dictatorial regimes to democracy or after war and civil conflict. Transitional Justice has become an almost standard approach of reconciliation and coping with the past, especially since the mid 1990ies. Until the 1980ies, only courts had been used to that end. Since the 1990ies, truth commissions were frequently established. Transitional Justice today covers not only the judiciary approach to cope with the past, but also society-wide discussions and deliberations.<sup>1</sup>

In March 2010, the United Nations Secretary-General released his “Guidance Note on the United Nations Approach to Transitional Justice”. Its principle calls on the United Nations to “strive to ensure Transitional justice processes and mechanisms take account of the root Causes of conflict and repressive rule, and address violations of all rights, including economic, social and cultural rights.”<sup>2</sup>

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has also recognized this need. In 2006, the United Nations High Commissioner for Human Rights, Louise Arbour, already made call in this sense. She considered that “transitional justice must have the ambition to assist the transformation of oppressed societies into free ones by addressing the injustices of the past through measures that will procure an equitable future. It must reach to—but also beyond—the crimes and abuses committed during the conflict that led to the transition, and it must address the human rights violations that predated the conflict and caused or contributed to it.”<sup>3</sup>

The United Nations has defined transitional justice as “the full range of Processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”

### **The United Nations Human Rights Council considers four concepts for the enforcement of transitional justice:**

- (a) the State obligation to investigate and prosecute alleged perpetrators of gross violations of human rights and serious violations of international humanitarian law, including sexual violence, and to punish those found guilty;
- (b) The right to know the truth about past abuses and the fate of disappeared persons;
- (c) The right to reparations for victims of gross violations of human rights and serious violations of international humanitarian law;
- (d) The State obligation to prevent, through different measures, the reoccurrence of such atrocities in the future.<sup>4</sup>

**Other mechanisms used by the Human Rights Council to fulfill its obligations with regard to transitional justice include:**

Human right council has been established Different mechanisms or measures to fulfil these obligations:

- Truth-seeking mechanisms such as truth commissions;
- Judicial mechanisms (national, international or hybrid); reparations; and
- Institutional reform, including vetting.

(Available from <http://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/TransitionalJustice.aspx>)

Transitional justice is built on the assumption that social, economic and Political changes are possible when significant negotiations of power are taking place in a State.

Nevertheless, transitional justice emerged to deal only with a limited dimension of those changes: the legacy of large-scale atrocities and preventing their reoccurrence. While human rights law has strongly influenced transitional justice, the latter has focused on violations of civil and political rights. Transitional justice has, therefore, evolved in relative isolation from important developments in economic, social and cultural rights.<sup>5</sup>

The role played by law in the enforcement of transitional justice and its relationship with human rights are also very important.

Transitional justice consists of both judicial and non-judicial mechanisms, including prosecution initiatives, reparations, truth-seeking, institutional reform, and a combination thereof). Whatever combination is chosen must be in conformity with international legal standards and obligations.<sup>6</sup>

**Main actors in transitional justice mechanisms**

A) International actors

International actors must be divided into two groups: international courts and the United Nations Security Council.

B) National actors

When the process of transition to democracy takes place in a post-conflict society without intervention of foreign forces, it is national actors that play an important role in the enforcement of transitional justice and realization of mechanisms used for its enforcement.

C) Nongovernmental organizations and transitional justice

**A) International actors<sup>7</sup>**

The United Nations has adopted a number of resolutions on the rule of law, transitional justice in conflicts, conflicts in societies, supporting the rule of law and promoting human rights.<sup>8</sup>

- S/2004/616 - The rule of law and transitional justice in conflict and post-conflict societies

- S/2006/980 - Uniting our strengths: Enhancing United Nations support for the rule of law
- A/RES/60/147 - GA Resolution
- E/CN.4/2004/88 – Promotion and Protection of Human Rights: Impunity
- E/CN.4/2005/102/Add.1 - Promotion and Protection of Human Rights: Impunity
- E/CN.4/2006/91 – Promotion and Protection of Human Rights: Study on the right to the truth
- A/HRC/12/18 - Analytical study on human rights and transitional justice (Available from <http://www.ohchr.org/Documents/Publications/HR-PUB-13-05.pdf>)

In addition to the aforesaid resolutions, the United Nations has taken further steps with regard to transitional justice and the issue of Daesh.

On 21 SEPTEMBER 2017 Security Council asked the Secretary-General to establish an independent investigative team to support domestic efforts to hold Islamic State in Iraq and the Levant (ISIL/Da'esh) accountable for its actions in Iraq but not Syria.

By the terms of resolution 2379 (2017), adopted unanimously, the team should collect, preserve, and store evidence of acts that may amount to war crimes, crimes against humanity and genocide committed by the terrorist group in Iraq. The Council asked the Secretary-General to establish the team, to be headed by a Special Adviser, and to submit terms of reference acceptable to the Government of Iraq.<sup>9</sup>

The United Nations experts, highlighted several times Da'esh's horrific treatment of women and children, noting how they were executed in public, abducted, enslaved, raped and sold like livestock, as well as exploited as suicide bombers.

The United States' representative on 21 September 2017 also addressed the treatment of women by Da'esh. She spoke of conversations she had had with Yazidi women who had been the victims of atrocities, noting how their stories would now be heard and perpetrators could be brought to face justice.<sup>10</sup>

In 2015, the United Nations released a report showing that ISIS committed widespread abuses, war crimes, and crimes against humanity in Iraq and called on the U.N. Security Council to take action. The report specifically highlighted the horrible abuses the Yazidi religious minority population suffered, naming it genocide.<sup>11</sup>

## **2. Role of the ICC as a means to enforcement of transitional justice**

The rise of Islamic State (IS) has fundamentally altered the conception of terrorism, a development which international criminal law is arguably unprepared for. Given the scale and gravity of the group's crimes, questions abound as to how those responsible will be held accountable. In the absence of significant domestic prosecutions and short of the establishment of a dedicated accountability mechanism, the International Criminal Court (ICC) stands as the forum of last

resort in which IS members could stand trial.<sup>12</sup>

The rise of Islamic State (IS) represents an unprecedented challenge to international criminal law. Unlike non-State actors carrying out serious but relatively contained periodic attacks, IS has succeeded in capturing and holding State-run territory using sustained and extreme violence. The group's stated aim of establishing a caliphate in western Iraq, eastern Syria and Libya is a cause to which thousands of foreign fighters have flocked.

Additionally, IS has advocated for the commission of attacks worldwide—with insurgent groups and individuals carrying out terrorist acts in the name of IS in Europe, South East Asia, Africa and North America. The scale and gravity of IS's crimes have been deemed a threat to international peace and security by the UN Security Council (UNSC), raising the legitimate expectation of a legal response. Nationally, while some IS members have been tried in domestic courts, prosecution invariably involves breaches of domestic anti-terror statutes which do not cover crimes committed in IS held territory.<sup>13</sup>

Though the UNSC has the power to establish an ad hoc tribunal that could adjudicate these crimes, as it did in the situations of Rwanda and the former Yugoslavia, the likelihood of that happening in the context of IS appears limited. Under these circumstances, it remains to be seen whether the International Criminal Court (ICC or Court)—set up to end impunity for the perpetrators of the most serious crimes of concern to the international community—should play a role.<sup>14</sup>

The ICC operates on the basis of complementarity, with the primary responsibility for exercising criminal jurisdiction over those responsible for international crimes resting on States Parties. The ICC will only step in where there are no national proceedings occurring in States with jurisdiction, or where such States are unable or unwilling genuinely to investigate or prosecute.<sup>15</sup>

The main point is that perhaps terrorism has not been defined as a form of war crime in international law yet and this issue may hamper the ICC's effort to see into these crimes. However, when it comes to Daesh, as admitted by all international institutions, this group has committed such war crimes as genocide and crimes against humanity in Iraq and Syria.

the ICC cannot deal with all of the world's ills and, indeed, is specifically designed to be complementary to national jurisdictions, the threat posed by IS and clear lack of serious judicial reckoning for its crimes inexorably leads to the conclusion that the ICC should pursue all possible avenues to ensure justice is done.<sup>16</sup>

## **National actors**

### **Role of countries in enforcement of transitional justice**

It is in this stage that the role played by the international community and neighboring countries of Daesh in the realization of transitional justice becomes clear.

Human rights crimes, crimes against humanity, and systematic violation of human rights by Daesh are no secret to anyone. This issue has also kicked off efforts aimed at investigating crimes committed by Daesh terrorists. The main problem



and reality, however, is the absence of a political will among countries to punish this group and enforce transitional justice in the case of Daesh's crimes.

Transitional justice is built on the assumption that social, economic and political changes are possible when significant negotiations of power are taking place in a State.

Therefore, countries play an important role in enforcing transitional justice with regard to Daesh. In view of the mechanisms that the UN Human Rights Council has devised for enforcement of transitional justice, including establishment of fact-finding committees, referring this issue to local or international courts by these countries can play an important role in the enforcement of transitional justice. Prosecuting war criminals is the minimal requirement that countries must meet in order to pave the way for enforcement of human rights. On the other hand, applying double standards by countries to enforcement of human rights will damage realization of transitional justice (in both judicial and non-judicial forms). According to available evidence, some governments have been either directly or indirectly involved in helping "Daesh leaders," who were mostly responsible for the crime of genocide and other war crimes in Iraq and Syria, to escape punishment. Following the defeat of Daesh, many reports about organized escape of "Daesh leaders" appeared in media, which challenged the human rights stances of those governments, which had in any form helped transfer of these war criminals to other places and supported them.

The BBC news network released an in-depth report in November 2017 about how the leaders of Daesh escaped with support of the US-led coalition. The report, which was actually a case study, proved lack of the necessary political will on the part of governments to investigate war crimes by the terrorist groups and administer transitional justice.

### **Organized escape of Daesh forces and support of some governments**

In late September 2017, the BBC revealed the details of a secret deal, which allowed hundreds of Daesh terrorists and their families to escape Syrian city of Raqqah under the eyes of the US-led coalition, British forces and the Syrian Democratic Forces (SDF). According to the BBC report, in addition to ordinary members of Daesh and their families, leaders of the terrorist group were also among those who left the Syrian city and crossed the Syrian border into Turkey with US-led coalition being fully aware of this.

Based on the BBC report, the deal allowed hundreds of Daesh terrorists to escape the city. At that time, neither the United States, nor Britain, nor the SDF were willing to admit to their part in that deal. Isn't the secret deal of Raqqah, which allowed Daesh terrorists to cross the crisis-ridden country's borders into other regions, a blatant violation of international law and disregard for the concept of transitional justice and principles that require prosecution of war criminals? <sup>17</sup>

### **B) Nongovernmental organizations and transitional justice**

There are some nongovernmental institutions at international level, including the International Center for Transitional Justice, which help harmonize local

needs with global knowledge. These local and international institutions can play an important role in promoting human rights and encouraging use of transitional justice mechanisms and also to raise awareness about the fact that these mechanisms are necessary to the establishment of international peace and stability.

Since forming fact-finding committees is a preliminary step toward enforcement of transitional justice, every fact-finding committee would need humanitarian and human rights nongovernmental organizations in order to complete its investigations.

Despite their current popularity, truth commissions are best understood as one of many complementary strategies for addressing legacies of abuse and violence.

Every truth commission is different and all have reflected, to one degree or another, their national context.

There is no “science” of truth commissions, and indeed there should not be. National actors-victim associations, democratic leaders, NGOs, individual victims, religious institutions, and a host of others-should debate and ultimately decide whether to create a truth commission and, if they choose to do so, what it should look like.<sup>18</sup>

The NGOs also show potential autonomy. Motivated to join the process for their belief in the TJ norms and the opportunities they get from their participation, they are nevertheless local context-bound agents that partly contribute to the dysfunctions, or pathologies, of the TJ institution. It is largely because of the role of the NGOs as agents, which requires them to work within the parameter of justice--what justice means and how it is achieved.<sup>19</sup>

## **Conclusion**

As announced by the UN Human Rights Council, attention to the concept of transitional justice and undertaking structural reforms are necessary:

“Institutional reform is one of the most under researched and unexplored areas of transitional justice despite being necessary to achieve lasting change after conflict or repression. While institutional reform has largely focused on legislative reform, security sector reform and vetting and undergoing transition the go further and deal with the root causes of conflict and economic, social and cultural rights”<sup>20</sup>

In addition to the impact of transitional justice on promoting social and cultural rights, it is noteworthy that in a world where human rights ideals were defined following World War II to prevent these crimes, genocide and crimes against humanity must not be allowed to go unpunished and their perpetrators must not be able to escape justice anywhere in the world.

Enforcement of transitional justice will be possible when international and regional cooperation is in line with demand of the nation in any given country where this justice is to be enforced. However, giving refuge to human rights violators such as the leaders of Daesh, offering them overt and covert support, and reluctance of some regional and transregional governments to cooperate with fact-

finding committees have depicted a bleak future outlook for the administration of transitional justice.

To administer transitional justice in a society, which is going through transition from a human rights violating regime to a democratic society based on human rights, the following prerequisites must be met first:

1. Providing social and cultural grounds for administration of justice;
2. Launching fact-finding missions and documentation of committed crimes as well as their perpetrators and victims; and

Existence of a political will among governments to administer this form of justice. At the present time, there are good social and cultural grounds for administration of transitional justice in the post-Daesh era. On the other hand, fact finding and documentation will be carried out by the United Nations and its fact-finding missions. In the meantime, nongovernmental organizations, which demand administration of transitional justice, can be of great help in this regard.<sup>21</sup>

Administration of transitional justice, however, will take place when, first of all, there is a political will to do this, so that, international institutions and the United Nations could join hands with governments and put perpetrators of international and human rights crimes to trial in the post-Daesh era.

In fact, the most important factor in this regard is political determination of governments for investigating the issue of genocide and other war crimes. Unfortunately, the present conditions regarding this issue have largely dashed any hopes about the ability of governments to administer transitional justice

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1. (Available from [http://www.claiminghumanrights.org/transitional\\_justice.html](http://www.claiminghumanrights.org/transitional_justice.html))
  2. (Available from <http://www.ohchr.org/Documents/Publications/HR-PUB-13-05.pdf>)
  3. Available from <http://www.ohchr.org/Documents/Publications/HR-PUB-13-05>.)
  4. (Available from <http://www.securitycouncilreport.org/un-documents/terrorism/>)
  5. (Available from <http://www.ohchr.org/Documents/Publications/HR-PUB-13-05.pdf>)
  6. (Available from [https://www.un.org/ruleoflaw/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf))
  7. Mahdi Zakerian, *Transitional Justice and International Security*, Page 77
  8. In this paper, international actors include the International Criminal Court and the United Nations Security Council
  9. (Available from <https://www.un.org/press/en/2017/sc12998.doc.htm>)
  10. (Available from <https://www.un.org/press/en/2017/sc12998.doc.htm>)
  11. Available from <https://www.humanrightsfirst.org/blog/iraq-finally-holds-isis-responsible-crimes-against-humanity>)
  12. (Available from <http://natoassociation.ca/why-the-icc-cannot-prosecute-isis/>)
  13. (Available from "War Against Terrorism" (2002) 78 *International Affairs Prosecuting Crimes of International Concern: Islamic State at the ICC?*. Author: C6man Kenny available from file:///C:/Users/60/Downloads/vandermewerw\_transformative\_2012.pdf )
  14. (Available from Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 (Rome))
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  17. (Available from [http://www.bbc.co.uk/news/resources/idt-sh/raqqas\\_dirty\\_secret](http://www.bbc.co.uk/news/resources/idt-sh/raqqas_dirty_secret))
  18. (Available from <https://www.ictj.org/sites/default/files/ICTJ-Global-TRC-Guidelines-2004-English.pdf>)
  19. (Available from <https://scholarspace.manoa.hawaii.edu/handle/10125/101683>)
  20. (Available from <http://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/TransitionalJustice.aspx>)
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# Myanmar and Yemen: Two Human Crisis in one Era



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## Abstract

Human rights situation in Myanmar and in Yemen is worrying and undesirable, and their civilians are being deprived from their very primary rights, such as right to life. Human rights in Myanmar under its military regime have long been regarded as among the worst in the world. Besides, The Saudi Arabia-led coalition's aerial and ground campaign against Houthi forces and forces loyal to former President Ali Abdullah Saleh began on March 26, 2015, in support of the government of President Abdu Rabu Mansour Hadi and has been supported by the United States and the United Kingdom. According to reports of human rights bodies and NGOs, there are serious evidence for violation of human rights including crime of genocide and war crimes in Myanmar and Yemen by military regime and the Saudi-led campaign, respectively. Although, these crimes are in the jurisdiction of International Criminal Court (ICC), but neither Myanmar nor Yemen are parties to the statute of ICC. This is not the end of the story though, because the Rome statute also reserves a role for the United Nations Security Council. The Council can refer situations in which one or more such crimes appears to have been committed in any state, regardless of whether it has ratified the Statute of the Court, under Chapter VII of the Charter of the United Nations. The international community expects Security Council to engage, as it has primary responsibility for the maintenance of international peace and security, event through Responsibility to Protect. However, there is a possibility that any decision in Security Council may, unfortunately, face negative vote of permanent members, in that case General Assembly or other competent specialized agencies could request for an Advisory Opinion from International Court of Justice.

## Key Words:

Myanmar, Yemen, Human Rights, International Criminal Court, Responsibility to Protect, International Court of Justice

## 1) Myanmar Crisis

The Rohingya crisis is a human rights crisis with serious humanitarian consequences. In Myanmar/Burma, the Rohingya have very limited access to basic services and viable livelihood opportunities due to strict movement restrictions. The legal status and the discrimination that these stateless people face must be addressed. The crisis has a wider regional dimension, with record numbers of Rohingya fleeing to



**Muslim minorities in Burma, in particular the 1.2 million ethnic Rohingya, continue to face rampant and systemic human rights violations**

neighbouring countries on precarious boat journeys. According to the UNHCR some 94,000 people (many of which Rohingya) departed irregularly from the Bangladesh-Myanmar border over the course of 2014 and 2015 (ECHO factsheet, The rohingya crisis, p.1).

A: Minorities and Human Rights

Myanmar's security forces have been carrying out "clearance operations" in Rakhine State since 25 August, after an armed group calling itself the Arakan Rohingya Salvation Army (ARSA) attacked police posts and an army base. Since that

date there have been widespread reports of the security forces imposing collective punishment upon the ethnic Rohingya community, including the unlawful killing of civilians, mass displacement, rape, and the burning of at least 288 villages. ([www.globalr2p.org/regions/myanmar\\_burma](http://www.globalr2p.org/regions/myanmar_burma))

Muslim minorities in Burma, in particular the 1.2 million ethnic Rohingya, continue to face rampant and systemic human rights violations. The security operations led to numerous reports of serious abuses by government security forces against Rohingya villagers, including summary killings, rape and other sexual violence, torture and ill-treatment, arbitrary arrests, and arson ([www.hrw.org/world-report/2017/country-chapters/burma](http://www.hrw.org/world-report/2017/country-chapters/burma)).

The UN Special Rapporteur on the situation of human rights in Myanmar made two official visits to the country. While her access improved, she reported ongoing surveillance and harassment of civil society members she met. She also reported finding a recording device placed by a government official during a community meeting in Rakhine State.

In March, the UN Human Rights Council adopted the outcome of the UN Universal Periodic Review (UPR) process on Myanmar. Although Myanmar accepted over half of the recommendations, it rejected key recommendations on the rights to freedom of expression, of association and of peaceful assembly, and the situation of the Rohingya. In July, the UN Committee on the Elimination of Discrimination against Women raised concerns about discriminatory laws, barriers to justice for women and girls, and their under-representation in the peace process ([www.amnesty.org/en/countries/asia-and-the-pacific/myanmar/report-myanmar](http://www.amnesty.org/en/countries/asia-and-the-pacific/myanmar/report-myanmar)).

The effective denial of citizenship for the Rohingya—who are not recognized on the official list of 135 ethnic groups eligible for full citizenship under the 1982 Citizenship Law—has facilitated enduring rights abuses, including restrictions on movement; limitations on access to health care, livelihood, shelter, and education; arbitrary arrests and detention; and forced labor. Travel is severely constrained by authorization requirements, security checkpoints, curfews, and strict control of IDP camp access. Such barriers compound the health crisis caused by poor living conditions, severe overcrowding, and limited health facilities ([www.hrw.org/world-](http://www.hrw.org/world-)

## **B: Responsibility to Protect**

The responsibility to protect (R2P) is a notion agreed to by world leaders in 2005, that holds States responsible for shielding their own populations from genocide, war crimes, ethnic cleansing, and related crimes against humanity, requiring the international community to step in if this obligation is not met.(Bricmont, 2009, 1) There are situations that could justify foreign intervention, despite the sovereignty claim. These cases are grave breaches of human rights, such as genocide, war crimes, crimes against humanity, cases of ethnic cleansing etc. Perpetrators of such crimes should no longer be able to hide behind the shield of state sovereignty.(Gagro, 2014, 63)

Although the Responsibility to Protect has not yet emerged as binding international law, it is well grounded in existing international law and shaping international discourse on sovereignty, atrocity prevention, and international intervention.

However, the pursuit of the responsibility to protect in Darfur has not achieved its goal,<sup>1</sup> but it was successful in Libya. The Security Council passed resolution 1973 in 2011, sanctioning the imposition of a no-fly zone over Libya. On 19 March, military action against Libya began and by October Colonel Gaddafi was dead and his regime destroyed. Many lauded this intervention as evidence of R2P's influence.

Already in Resolution 1970 of 26 February 2011, the Council recalled "the Libyan authorities' responsibility to protect its population". In his press statement on this resolution, the permanent representative of France to the UN insisted on the

concomitant subsidiary obligation of the international community: "If a government is not able to protect its own population, it means that the international community has the right and the duty to step in", Ambassador Araud said.(Peters, 2011, 1)



**However, the pursuit of the responsibility to protect in Darfur has not achieved its goal, but it was successful in Libya. The Security Council passed resolution 1973 in 2011, sanctioning the imposition of a no-fly zone over Libya**

## **2) Yemen and Saudi-led Coalition**

Human rights violations and abuses continue unabated in Yemen, along with unrelenting violations of international humanitarian law, with civilians suffering deeply the consequences of an "entirely man-made catastrophe", according to a UN human rights report. The report, mandated by the UN Human Rights Council, records violations and abuses of human rights and international humanitarian law over three years, since September 2014. Between March 2015, when the UN Human Rights Office began reporting on civilian casualties, and 30 August, at

least 5,144 civilians have been documented as killed and more than 8,749 injured. Children accounted for 1,184 of those who were killed and 1,592 of those injured. Coalition airstrikes continued to be the leading cause of child casualties as well as overall civilian casualties. Some 3,233 of the civilians killed were reportedly killed by Coalition forces ([www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22025&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22025&LangID=E)).

### **A: Questions and Justifications**

The Saudi justification for the attack rested on the claim that it was coming to the aid of a neighbor in need after a specific request from its governing authority – which is legal under international law. But, having overstayed his term in office, resigned once and even fled the country, Hadi's legitimacy as ruler is shaky, legal experts say, placing the Saudi military action in murky legal territory. But having overstayed his term in office, resigned once and even fled the country, Hadi's legitimacy as ruler is shaky, legal experts say, placing the Saudi military action in murky legal territory ([www.irinnews.org/analysis/2015/04/03/saudi-war-yemen-legal](http://www.irinnews.org/analysis/2015/04/03/saudi-war-yemen-legal)).

Hadi himself wrote a letter to the Security Council in which he asked the Security Council to authorize a military intervention to "deter Houthi aggression" and stated that he had asked members of the Gulf Cooperation Council and the Arab League to intervene militarily. He also invoked Article 51 of the Charter. This is odd, because Article 51 would only be relevant if Yemen (or the Saudi coalition) were asserting that Yemen was responding to an external armed attack. Assuming that the Saudi coalition is acting on Hadi's consent to avoid any Article 2(4) problems, we might wonder about the strength of that consent, given that Hadi effectively has been forced out of Yemen. ([www.lawfareblog.com/international-legal-justification-yemen-intervention-blink-and-miss-it](http://www.lawfareblog.com/international-legal-justification-yemen-intervention-blink-and-miss-it)).

Pursuant to article 20 of Draft Articles on Responsibility of States (2001), the consent by a state should be "Valid". A State that seeks to justify an internationally wrongful act on the basis of consent must demonstrate that such consent emanates from competent authorities of the injured State. Such a State must show that a person or organ in authority gave the consent on behalf of the injured State and that the latter cannot validly refute such authority. (Abass, 2004, 215)

### **B: A significant instance for International Court of Justice**

Requesting for an advisory opinion from International Court of Justice may be a right solution as to legality of coalition. Advisory proceedings before the Court are open solely to five organs of the United Nations and to 16 specialized agencies of the United Nations family or affiliated organizations. The United Nations General Assembly and Security Council may request advisory opinions on "any legal question". Although the Yemen crisis is a matter of international peace and security, but intervening a mostly political organ such as Security Council in a case, which is occurring in the most controversial region, is highly dependent on other states' policies. Whereas any action through UNSC will face a Veto vote by a permanent member,<sup>2</sup> it will be on General Assembly to ask for an advisory opinion.

If it happens, the court will face two kind of questions. The first and most important

question is about competency of Hadi as to asking other countries for assistance. There are serious doubts about the legitimacy of his request, as he resigned and left the country. The court will examine the facts, especially the Yemen constitution, and will render an advisory opinion.

The second Question will be on legal nature and consequences of Saudi-led coalition. This question is highly relevant to the first one. If Hadi had not competency to ask for assistance by other states, then there are an act of aggression against a state, which is definitely prohibited under article 2(4) of United Nations Charter and international customary law. In addition, many serious violations of human rights have been occurred by the coalition, which may considered crimes against humanity and war crimes.

This will be the fourth advisory opinion requested from ICJ as to “legal consequences” of an event. The first one was about legal consequences for states of South Africa’s continued presence in Namibia. The Court was of opinion that the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory. In addition, states members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration (ICJ Reports, 1971, 58). There may be slight but important similarities between the case in 1971 and the one that might take place in 2018.

The second advisory opinion was the controversial case of “Wall” in 2004, and the third one, which was requested on 23rd June 2017 and is not rendered yet, is about legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.

As the human rights situation in Yemen is worsening every day and outbreak of contagious disease like Cholera is threatening civilian lives, The World Health Organization (WHO) will be entitled too, as to requesting an advisory opinion about legal consequences of coalition acts on Yemeni people health. The WHO has proved that it had the capacity of requesting an advisory opinion on a subject, which is precisely in its scope of activity. <sup>3</sup>

### **3) International Criminal Court and Two Possible Situations**

As discussed above, serious breaches of human rights obligations, namely crimes against humanity in Myanmar and war crimes in Yemen, are threatening international peace and security. Notwithstanding neither Myanmar nor Yemen or the coalition states (except Jordan) are parties to Rome Statute, the UN Security Council's power to refer potential prosecutions to the International Criminal Court (ICC) in situations outside the Court's treaty-based territorial and nationality jurisdiction helps deter the perpetration of genocide, war crimes and crimes against humanity everywhere in the world.(Moss, 2012, 3)

Article 13 (b) of the Rome Statute provides that the Court may exercise jurisdiction



over statutory crimes if “[a] situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations”.

Where the ICC obtains jurisdiction over a case by virtue of such a Security Council referral, its jurisdiction is considered much stronger and truly universal, rendering irrelevant the consent of the state where the crime occurred. (Heyder, 2006, 653)

The historic referral of the situation in Darfur in March 2003 was widely welcomed as an important step in the fight against impunity as was the Security Council’s later, and more controversial, referral of Libya in February 2011. (Arbour, 2014, 195)<sup>4</sup>

It is noteworthy that even where a Security Council referral has been made, there is still a role for the ICC Prosecutor in determining whether an investigation should actually proceed. Under Article 53 of the Rome Statute, the Prosecutor should not initiate an investigation if s/he determines there is “no reasonable basis to proceed” or “an investigation would not serve the interest of justice”.<sup>5</sup>

If Security Council hesitate to decide on these two situations for a referral to International Criminal Court, there may happen another atrocity like Srebrenica or Rwanda in 21st century. <sup>6</sup>

### **Conclusion**

Besides there are serious doubts about compliance with international human rights obligations within the countries composing Saudi-led coalition,<sup>7</sup> the acts and omissions of coalition in Yemen is endangering the very fundamental rights of civilians. Indiscriminate attacks and preventing the access of protected people to international humanitarian aids are making Yemeni peaceful settlements impossible. According to Yemen constitution, it seems the resigned president had not the authority to call for assistance from his allies, so the Coalition intervention in another state is completely contrary to article 2(3) and 2(4) of UN charter, the principle of Non-Intervention, and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among states (Resolution 26/25(XXV)).

Approximately five thousands kilometers far from Yemen, another state is committing serious breaches of international obligations embodied in ICC statute and in general international law. Developing human rights concepts have truly narrow and modify the scope of sovereignty, and thus, states are responsible for their acts toward civilians. Myanmar government is either “unable” or “unwilling” to protect civilians from massacre, and hence, the burden of saving Myanmar minorities is on international community as a whole.

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1 . For more information see: Alex De Waal, "Darfur and the failure of the responsibility to protect", International Affairs 83: 6 (2007) 1039–1054.

2 . There is just one advisory opinion requested by UNSC. On 29 July 1970 in resolution 284, it asked for an advisory opinion on the legal consequences for states of South Africa's continued presence in Namibia.

3 . In 1993, World Health Organization requested for an advisory opinion from International Court of Justice about legality of the use by a state of nuclear weapons. However, this request was not accepted by the court, approval a resolution in the assembly of the world health organization as to a subject which is really controversial, shows the potential and capacity of specialized agencies in asking legal questions from the Court.

4 . For an analyze of advantages and disadvantages of UNSC under article 13(b) of Rome statute see, Louise Arbour (2014) The Relationship Between the ICC and the UN Security Council, Global Governance: A Review of Multilateralism and International Organizations: April-June 2014, Vol. 20, No. 2, pp. 195-201.

5 . However, Darfur and Libya were not the only conflict situations outside of the ICC's jurisdiction that the UN Security Council could have referred to the ICC. Israel's Operation Cast Lead in the Gaza Strip in 2009 and the government-led final offensive in the Sri Lankan civil war are select examples of situations where atrocity crimes may have been committed, but where the ICC did not have jurisdiction and the Security Council did not (but could have) used its powers to refer cases to the ICC.

6 . 'Never again' we said after the Holocaust. And after the Cambodian genocide in the 1970s. And then again after the Rwanda genocide in 1994. And then, just a year later, after the Srebrenica massacre in Bosnia. And now we're asking ourselves, in the face of more mass killing and dying in Darfur, whether we really are capable, as an international community, of stopping nation-states murdering their own people. How many more times will we look back wondering, with varying degrees of incomprehension, horror, anger and shame, how we could have let it all happen? (Garreth Evans, 2004)

7 . For reviewing the human rights situation in Saudi Arabia and its compliance to international obligations see, The Accountability Levels of Saudi Arabia towards United Nations Mechanisms (2009-2016), Farzaneh Mostofi-far & others, International Journal of Political Relations, Vol. 7, No.1, spring 2017, 1-9.

# Human Rights Violations in Saudi Arabia and International Organizations' Turning a Blind Eye



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## Abstract

Human rights are the most fundamental and basic rights that every individual should enjoys for solely being humans. This simple definition has had important social and political impacts for people and governments at national and international levels, and numerous international organizations are active in this regard. The question that arises here is why despite the existence of an international human rights mechanism, which is made up of organizations, institutions, and almost accepted international conventions and norms, we are witness to their silence towards the dire human rights conditions in Saudi Arabia, and no reaction or actions are taken in this regard? To answer this question in this research tries to apply the views of international mechanisms to study the discriminatory view based on the interests of the founders and leaders of international bodies towards human rights in Saudi Arabia. Human rights issues such as gender and religious discrimination, the lack of legislations, arbitrary detentions, lack of religious freedom, violence against women, lack of freedom of expression and thought, lack of observation of human rights are all examples of human rights violations in Saudi Arabia, which will be dealt with in depth in this article.

## Keywords:

Human rights, Saudi Arabia, international mechanisms, international bodies, America

## Introduction

A structural approach towards international mechanisms shows that the human rights mechanism follows the international order and hegemony. The United States of America and the European Union as influential players of the international order are trying to impose their own approved mechanisms on the international community. With regards to the human rights mechanism too, they have discriminatory and double standard approaches towards countries. For example, they have appointed a Special Rapporteur on the Human Rights

Situation in Iran and they are trying to turn human rights into a security issue, and use it as a tool to benefit from their imposed demands. But no Special Rapporteur has been appointed in relation to the bad human rights situation in Saudi Arabia, and no attention is given to this country.

For example the UN Special Rapporteur on the Human Rights Situation in Iran, Ahmad Shaheed, welcomed dialogue on the human rights situation in Saudi Arabia, and said: “If the human rights situation is also taken seriously for other countries, the rest will think more about their practices. If there are clear policies for all which show that human rights are taken seriously, then it can be said that they have got the message.”<sup>1</sup>

the relationships Saudi Arabia on the one hand, and the United States and EU as the leaders of international bodies on the other hand, indicates the double standard approach of western countries and clarifies that human rights is used as a tool to establish western hegemony.

## **Human Rights Violations in Saudi Arabia**

The human rights challenges of Saudi Arabia can be expressed from two angles. First: its own citizens, particularly discrimination against women, religious discrimination and the situation of minorities, limitations to political participation, no freedom of expression and press, and no equal rights, and second: the citizens of other countries due to direct or indirect participation in wars. On this basis, Saudi Arabia is under the scrutiny of the ICC for a breach of humanitarian law and war crimes, which we’ll discuss in detail.

### **1 – Human Rights Threat**

#### **1-1 Discrimination against Women**

Equality of men and women is one of the fundamental principles of the UN Charter. But in legal terms, women are suffering from discrimination in the monarchy and are threatened by gender discrimination. Saudi Arabia’s discriminatory male guardianship system remains intact despite government pledges to abolish it.<sup>2</sup> Under this law women in Saudi Arabia require the permission of their male guardian (that include father, brother or even son) to travel, get a job, continue education, marry or have certain surgeries.<sup>3</sup>

Of course, the year 2017 should be considered as a golden year for Saudi women, because in that year, they were given the permission to drive, enter sports stadiums, ride bicycles, issue religious decrees (fatwas), and attend court sessions without wearing a veil. The old system, which considers men as the guardians of Saudi women in all affairs, has been somehow modified and, at the present time, women can take advantage of certain governmental services without needing permission of their guardians. However, they are still unable to open bank accounts or launch an economic project without a “testamentary guardian.” They are yet not allowed to leave the country without permission of their guardian, and without his agreement, they cannot hand in a request to receive administrative documents. Saudi women still need agreement of their

guardians in order to get out of prison and men continue to wield special powers and take advantage of special privileges in many judicial cases, including those related to divorce.

Many human rights experts and activists believe that giving the Saudi women the right to drive vehicles and the likes of that cannot be taken lightly in the area of women's rights. Khadija al-Riyadi, the Moroccan human rights activist, however, believes that "A real political will to change the status quo of Saudi women and give them a minimum of their rights (even equal to what has been done in Kuwait) is still missing. It is both funny and lamentable that we must consider permitting women to drive cars as a major achievement in this regard." Nobody can really say whether recent changes are signs of a new chapter being opened for Saudi women or such measures are taken just to appease the United States.<sup>4</sup>

### **1-2 Religious Discrimination and Minorities' Conditions**

Minorities are faced with violation of their human rights in the political and legal systems of Saudi Arabia. For example the rise in the number of executions in the kingdom has been due to the Shia minority movement in the eastern province, the most highlighted one of which was the execution of Sheikh Al Nimr, a Shia cleric opponent of the government. One hundred and fifty-four executions took place in 2016, forty-seven in one day. Qatif was the focal point of the anti-government Shia protests in Saudi Arabia in 2011, following which more than 900 arrests were made 300 of which are still in prison. Figures indicate that the country has more than 30 thousand political prisoners, most of whom are prisoners of conscience and mainly include Shia minorities from the eastern regions of the kingdom. The Christians also are in no better conditions than the Shia; to an extent in which in 2012 the grand mufti of Saudi Arabia called for the destruction of all churches in the country.<sup>5</sup>

The sweeping reforms in Saudi Arabia, which is looking for an alternative source of revenue in place of petrodollars, seem to be aimed at eliminating the element of extremism, which has been considered as the main axis of the country's domestic and foreign policies for many decades. In doing this, Riyadh is trying to pave the way for accepting more tourists, providing suitable grounds for foreign investment and developing its trade, economic and cultural relations with the world. In line with this policy, Bechara Boutros al-Rahi, the leader of Lebanon's Maronite Christians, was invited to visit Saudi Arabia. During a meeting between the Lebanese patriarch and the Saudi king, the two sides emphasized the role of religions in bolstering coexistence, eliminating violence and terrorism, and helping realize regional and global security.<sup>6</sup> During the meeting, Saudi officials also promised the Lebanese Christian leader to help with the reconstruction of a historical church, which has been discovered recently. The church is about 900 years old. It seems that Saudi Arabia sees this project as a symbolic gift to the Lebanese Maronite Christians in order to promote dialogue between Islam and Christianity.

There are more than 1.5 million Christians in Saudi Arabia, who are not allowed to perform their religious rituals. Of course, in April 2017, an American priest called Brandon, who works with the Saudi air force as an advisor, said in an interview that he and a group of Christians living in Saudi Arabia had launched the first legal church in Saudi Arabia's capital city of Riyadh.<sup>7</sup>

Although no Jews live in Saudi Arabia, "the country is trying to normalize relations with the Zionist regime of Israel through dialogue among various religions in order to improve its image before the world's public opinion."<sup>8</sup> At the beginning of 2018, secretary general of the Islamic World Society, which is based in Saudi Arabia, issued a statement in which it supported the Holocaust and claimed that rejecting it would amount to distortion of history and insult to the entire humanity.

Saudi Arabia's Shia Muslims, however, have yet to wait in order to avail themselves of the country's moderate policies despite the fact that they account for 15-20 percent of the country's total population. Even adoption of a milder policy toward Shias living outside Saudi Arabia, including a visit to Saudi Arabia by Iraqi Shia cleric, Muqtada al-Sadr, has not yet changed Riyadh's approach to Shias living in Saudi Arabia.

In the same year that Saudi Arabia was going on with its reforms, the government of Saudi Arabia forced the residents of historical city of al-Awamiyah in the Shia-majority Qatif region to leave the city after which al-Awamiyah was razed to the ground. Some small towns around al-Awamiyah were also badly damaged during the operation. Human Rights Watch issued a report in 2017 titled "They Are Not Our Brothers: Hate Speech by Saudi Officials." In that report, Human Rights Watch discussed various aspects of the Saudi regime's racial measures, which are aimed at isolating the country's Shia minority. The rights group also condemned crimes committed against Saudi Arabia's Shia minority.

The report says, "Since its establishment, the Saudi state has permitted government-appointed religious scholars and clerics to refer to Shia citizens in derogatory terms or demonize them in official documents and religious rulings, which influence government decision-making." Human Rights Watch says such measures by Saudi Arabia are similar to policies and behaviors of terrorist groups like "the so-called Islamic State or ISIS or al-Qaeda." It has added that Saudi judicial system also exercises vast discrimination against Shias both in courts and schools and dissident Shias are ruthlessly oppressed. According to the report, a high-ranking Saudi cleric had called Shia's in one of his speeches as the "brothers of Satan."<sup>9</sup>

### **1-3 Limitations to Political Participation**

Call to demonstrations or assemblies, call for forms, criticism of officials or joining domestic or international groups or parties have punishments of 10 years in prison to execution. The parliament of the country has limited consultative privileges and the members are appointed. Since there are no written criminal laws in which fines and punishments are set, judges are free to determine the

sentencing of individuals on the basis of their own various interpretations of Islamic Sharia laws.<sup>10</sup>

In spite of Article 25 of the Universal Declaration of Human Rights which states each individual has the right to free association and peaceful assembly, Saudi Arabia bans the activities of parties, associations and assemblies, formation of civil societies and political parties in the country. Such activities are criminalized and faced with severe judicial consequences.<sup>11</sup>

#### **1-4 Freedom of Expression, Thought and Press**

The 2016 and 2017 Amnesty International annual reports state that the Saudi authorities impose severe restrictions on freedom of expression and any opposition is cracked down. They put pressure on government critics such as writers, internet activists, political activists, women's rights activists, Shia minorities and human right defenders have prosecuted them and some of them have been imprisoned on ambiguous charges after their trials.<sup>12</sup>

Richard Spencer, a British journalist with The Times, who is based in Riyadh, wrote an article in December 2017 titled "Prince Mohammed bin Salman tightens grip on dissent in Saudi Arabia." In that article, he said despite proclaimed reforms by Saudi Arabia's crown prince were in full swing, his orders had led to further restriction of freedoms for Saudi people. He added that not only Saudi opposition figures have been arrested, but some supporters of the government had also ended up in jail.<sup>13</sup> The Freedom House, which is a US-based nongovernmental organization, has noted that Saudi Arabia is not a free country.

It seems that reforms and even a change in rulers have not been able to change Saudi Arabian government's stances on human rights activists. In August 2017, a court in Riyadh sentenced members of the Saudi Civil and Political Rights Association to a total of 105 years in prison. They were also banned from leaving the country for 94 years, were fined and were banned from any activity on social networks. This human rights association was established under former Saudi monarch, King Abdullah, in 2009 and was dissolved in 2013.<sup>14</sup>

The government has sole property of media publication and the Ministry of Culture and Information censors the media. In Saudi Arabia there are no private audio-visual media, who can independently criticise the government. Saudi Arabia's place in the list of global press freedom dropped from 158 in 2012 to 168 in 2017.

According to Reporters Without Borders report regarding the freedom of expression index, in the current year Saudi Arabia ranks 163rd in a list of 179 countries.<sup>15</sup>

Another report by this organization in 2017 showed that Saudi Arabia ranked the 168th out of 180 countries, becoming the fourth Arab country in terms of repressing media and also the world's 12th suppressor of media freedoms.<sup>16</sup>

#### **1-5 Torture and other Inhuman Behaviours or Treatment**

According to Amnesty International report in 2016-2017 prisoners continue to be subjected to tortured and other mistreatments, especially during interrogation.

And in unfair trials, courts continue to accept confessions obtained under torture. Also in 2016, Saudi officials continued to issue corporal punishment sentences, particularly flogging, and violated the ban on torture and other forms of mistreatment. For example in February this year, the public court reduced the death sentence of Ashraf Fiaz, Palestinian poet and artist to 800 floggings and 8 years in prison. In 2015 he had been charged with blasphemy and apostasy for his writings.<sup>17</sup> Also according to statements issued by the Saudi Interior Ministry, 144 people have been executed from January to mid-November 2016, and most of the executions have been related to murder and terrorism, and 22 were condemned to death for nonviolent crime of drugs trafficking, most of these executions have been taken place in public places, in the form of beheadings.<sup>18</sup> Bruising caused by beating, electric shock, hanging from a window, unethical behavior, flogging, beating with a metal cane, putting prisoners in very cold and damp cells in winter and summer, using nonstandard prisons, and deprivation of hygienic conditions are a few examples of torture used in Saudi prisons. These reports have been confirmed by prisoners released or have been corroborated after examination of bodies of prisoners who died under ruthless torture. Ali bin Abdullah al-Qahtani and Habib Yusuf Alshuwaikhat are two Saudi citizens who died under torture quite recently.<sup>19</sup>

### **1-6 High Poverty Levels and Social Class Gaps**

The lack of a transparent legal system with regards to the Saudi economy has resulted in the wealth of the country to be in the control of a small minority from the Saudi ruling family and with a vast natural resources reserves this country has turned into the private property of the Saudi dynasty princes. The country in practice is the prisoner of approximately 7000 princes. Throughout the period the princes have always leaned on various posts of the country. Approximately 200 princes of the various Saudi dynasty families have key posts, and more than 6000 other princes have exclusive positions in the country. This situation has caused the creation of widespread poverty in Saudi Arabia. The situation of the country has deteriorated over the recent years, to an extent that inflation in the goods and services sectors have been announced as 400 percent. Lack of transparency makes it impossible to get an accurate statistic of the poverty percentage, but the poverty levels of the country have been reported to be between 20 and 39 percent. In its last year's report, UNICEF too stressed that 4000 Saudi children have left school because of poverty.

The King Khalid Foundation released a report in 2017 in which the poverty line for a family with seven members had been put at a monthly salary of 3,323 dollars. Now, two to four million Saudi citizens are living on a monthly salary of 530 dollars (17 dollars per day), and this figure is calamitous for a country whose liquidity figure stands at about half a trillion dollars and is the world's biggest exporter of crude oil as well.<sup>20</sup>

### **2 – Threats to Humanitarian Law**

Over the recent years, Saudi Arabia has directly or indirectly been involved in



armed conflicts in the region. The Yemen conflict, is the most clear case of Saudi Arabia's violation of humanitarian law which according to the report of the High Commissioner for Human Rights, from the start of the Saudi led Coalitions attacks till the publication of Human Rights Watch 2016 annual report, more than 4125 civilians were killed and another 7207 injured in Yemen, most of which were children. UNICEF has said that in the two year period of March 2015 till February 2017 more than 1500 children have been killed in the conflict in Yemen and nearly 2500 children left injured or maimed.<sup>21</sup>

Human Rights Watch has successfully registered 57 inhuman attacks committed by the Saudi led Coalition, some of which reach war crimes levels, and have taken the lives of 800 Yemeni civilians, and have hit homes, markets, hospitals, schools and mosques, which are all cases of clear violation of rules of war.<sup>22</sup>

Holding the Lebanese Prime Minister Saad Hariri as hostage and forcing him to tender his surprise resignation through an unofficial Saudi satellite news network, laying economic and political siege on Qatar for unclear reasons, forcing Saudi Arabia's allies to support Riyadh's positions through bribe or threat, and threatening some other states are just a few examples of violation of other countries' sovereignty and rights by Saudi Arabia.

#### International Organizations' Reactions

With regards to international organizations' reactions which are active on this subject, how can Saudi Arabia who has not accepted the Universal Declaration of Human rights (1948), the International Covenant on Civil and Political Rights (1966) and International Covenant on Economic, Social, and Political Rights (1966) be recognised as a violator of human rights, and have this country accountable? In fact, faced with Saudi Arabia, international organizations cannot really expose the human rights situation of the country.

But in spite of lack of transparency, in 2013, Amnesty International reported the systematic violation of women's rights and the exploitation of foreign workers in the kingdom and this whistleblowing resulted in Saudi Arabia to resign from non-permanent membership of the Security Council in a show of protest.

In the summer of 2016, human rights organizations too, asked the UN General Assembly to suspend Saudi Arabia from membership of the Human Rights Council, and in a joint statement Human Rights Watch and Amnesty International also demanded that while the Saudi led Coalition has not stopped the killing of civilians in Yemen, Riyadh must not be allowed in the Human Rights Council. Also in 2016, following the death and injuries of Yemeni children, and attacks against schools and hospitals, the Saudi led Coalition was added to a blacklist called the "List of Shame", specifically with regards to children and armed conflict, and the UN published this list. But following Saudi Arabia's threats to cut financial contributions to the UN, its name was taken out of the list.

In a resolution issued in September 2016, the Human Rights Council expressed its deep concern on the killing of civilians and attacks on urban infrastructures in Yemen, and called for the strengthening of the presence of the OHCHR in Yemen so that the truth and violation of laws are documented and presented to

the Human Rights Council.<sup>23</sup>

Also in the UPR which is carried out by the Human Rights Council on the situation of human rights, the issues related to Saudi Arabia were to such an extent that they almost covered all aspects of human rights including civil, political, economic and cultural rights.<sup>24</sup> The below instances were specifically recommended to this country: elimination of discrimination against women, suspension of or moratorium on the death penalty and physical punishment, guarantee of children's rights, joining international human rights instruments, accept the request of special rapporteurs for country visits, observe freedom of expression and belief, reforms to national laws for their conformity with international standards stated in human rights instruments, no discrimination against minorities, reforms to the justice system and increase legal guarantees for the independence of judges, observe workers' rights, include human rights in education curricula and increase efforts to fight terrorism.

In October 2016, the UN Rights of the Child Committee called on the Saudi government to immediately halt the executions of individuals under the age of 18, and to clearly ban death sentences for those who committed the crimes when they were below 18.<sup>25</sup>

In their reports, UN Special Rapporteurs have pointed out the bad human rights situation in Saudi Arabia. For example the report of the UN Special Rapporteur on Extreme poverty and human rights in Saudi Arabia in 2017 states that there has been little progress in the following fields: arbitrary detentions, peaceful demonstrators' imprisonment, capital punishment, discrimination against religious minorities and women.<sup>26</sup>

On 20 April, 2017, "Save the Children" and the "Watchlist on Children and Armed Conflict" in a joint statement to the UN Secretary-General asked him to put the Saudi led Coalition in the list of the violators of children's rights in armed operations. Prior to that, the then UN Secretary-General put the name of the Coalition in the list of children's rights violators for a short period of time, on the basis of reports of children getting killed in Coalition airstrikes in Yemen. But Saudi Arabia's objection resulted in the Secretary-General retracting his view. In fact the extensive Coalition airstrikes in residential areas in Yemen, has put Saudi Arabia on the verge of war crimes charges, and this country can be brought before the ICC through some mechanisms.

#### Conclusion

From the international order's aspects, the human rights situation of Saudi Arabia is very fragile and threatening. Discriminatory and violent response to the protesting Shia minorities in the recent years still continue. The war crimes in the Middle East, Yemen in particular, has resulted in Saudi Arabia being considered as a grave violator of human rights and even a country that commits war crimes. Saudi Arabia has not signed the ICC Rome Statute and is not one of its members, and only the UN Security Council's decision can deem the kingdom as guilty of war crimes in Yemen. Although through launching the Malek Salman Aid Centre to provide aid to Yemenis, Saudi Arabia has tried

to cover up its crimes, but as noted in this article the existing facts, figures and reports collected from various institutions such as the UN, Human Rights Watch, UNICEF etc., accuse Saudi Arabia of grave human rights violations. The case of Saudi clearly shows that human rights is influenced by the international order and hegemony. In other words, as influential players in the international order, the United States and the EU are trying to create a good image of their favourite States in the international community and considering their national interests they use selectivity and double standards. For example while making soft criticisms of Saudi human rights violations, the United States has given the Saudi led Coalition logistical and intelligence backing and in August 2016, despite the widespread opposition of the Congress, the White House signed an arms deal with the kingdom worth 1.5 million dollars. In fact since the governors of international bodies, with the US and EU at the top, themselves are the creators of international human rights mechanisms, do not deem the punishment of Saudi Arabia as part of their political-economic interests, ignore the human rights situation in the kingdom, the war crimes committed by the country; and Saudi Arabia's petrodollars has helped the country prevent human rights related sanctions being imposed against it. This trend increases the human rights violations in Saudi Arabia on a daily basis.

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# The Legal Standing of Human Rights Nongovernmental Organizations in International Judicial Process



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## Introduction

In contemporary times, when we are faced with many cases of violence and violation of the basic norms of human rights, there are international nongovernmental organizations whose most important goal is to support those human rights norms. One of the main and pivotal features of such international human rights nongovernmental organizations is their voluntary nature. These organizations cannot act on the basis of the power of law or the executive power, which is special to governments. Therefore, those tools, which are available to such human rights institutions, are different from what is used within the government structure. In general, the main goals of the international human rights nongovernmental organizations can be put into six categories, which include: 1. providing advisory services, 2. education, 3. mediation, 4. participation in governments' activities, 5. acting as catalyst for governments' human rights measures; and in some cases 6. restricting certain measures taken by governments. Therefore, one can claim that human rights nongovernmental organizations influence governments for the purpose of promoting and supporting human rights norms and preventing human rights violations.

Human rights institutions, which are subject of this discussion, are those institutions, which make their effect on governments and international system through fact-finding missions, publicity and other measures that they take. Therefore, information provided by such nongovernmental organizations is also used by other human rights and international law organs to bring transparency and clarity to a specific situation as a balancing weight against government's claims about the existing realities.

Therefore, presence of the human rights nongovernmental organizations in this structure can be determining. A role that such organizations can play is in international courts, because it is the place where providing a clear definition of the reality as well as verification of various aspects of a human rights violation case are of the utmost importance. Under usual circumstances, a government or an official in the government is one party to such cases while the other party is a person or persons whose basic rights have been violated.

It must be noted that when a case is under consideration, reports and



The case of “Center for Legal Resources on Behalf of Valentin Câmpeanu v. Romania” was one of the above three

information provided by a human rights nongovernmental organization play an important role. However, the issue that must be clear here is to what extent human rights nongovernmental organizations play a role in hearing a human rights violation case and when their information and documents can be relied upon?

### **Part one: Role of human rights nongovernmental organizations in international judicial process**

In many international courts, including the European Court of Human Rights, the Inter-American Court of Human Rights, and so forth, nongovernmental organizations are known as the “friend of the court.”<sup>2</sup> In this position, such organizations can start a case or even be a party to it, or be present as a party in the judicial process taken to discover the facts in a case or when legal issues are under discussion. They can even act as a witness by bearing witness at the court.<sup>3</sup>

For example, On July 14 and 17, 2014, the European Court of Human Rights decided three cases, one against Romania concerning the death of a mentally disabled and HIV-positive young Roma and two other cases against Poland concerning the detention and transfer of terrorist suspects who were subjected to torture. As will be demonstrated hereunder, these cases would not have been decided – or decided with that information at hand – if there had not been civil society organizations caring to denounce and document the human rights violations at stake.<sup>4</sup>

The case of “Center for Legal Resources on Behalf of Valentin Câmpeanu v. Romania” was one of the above three. Shortly before dying alone at the hospital, Valentin Câmpeanu was visited by staff of the Center for Legal Resources (CLR), as a Romanian nongovernmental organization, which, among other activities, monitors residential centers for persons with disabilities. When made aware of the young man’s death, the nongovernmental organization took various steps and lodged complaints requesting criminal investigations on the circumstances of the death of Câmpeanu. The CLR, acting on behalf of Câmpeanu, complained before the European Court of Human Rights that he had been unlawfully deprived of his life. Many human rights institutions, including Human Rights Watch, argued that the application by the CLR should be admitted by highlighting the highly problematic access to justice for people with disabilities. Therefore, they argued, granting nongovernmental organizations legal standing would be in line with the case law of many other tribunals and would avoid impunity.<sup>5</sup>

The court's decision read as such: "Against the above background, the Court is satisfied that in the exceptional circumstances of this case and bearing in mind the serious nature of the allegations, it should be open to the CLR to act as a representative of Mr. Câmpeanu, notwithstanding the fact that it had no power of attorney to act on his behalf and that he died before the application was lodged under the Convention."<sup>6</sup> In this way, the court rejected a claim by the government of Romania that CLR could play no part in the judicial process. This case was just a small example of the role played by a nongovernmental organization at an international court.

Another issue facing various courts is related to evidence and documents that a human rights organization can provide in order to affect the decision of the court in a specific case.

### **Part two: Legal standing of reports and instrumental evidence provided by human rights nongovernmental organizations in judicial process**

The International Criminal Court is an international institution, which hears cases of international crimes by heads of state in accordance with Article 5 of its Statute, known as the Rome Statute. War crimes, crimes against humanity, the crime of genocide and the crime of aggression fall within subject-matter jurisdiction of this court. Therefore, the main goal of this court is to fight against impunity with regard to violations of human rights and international humanitarian law by leaders of a given state.

According to Paragraph 4, Article 69 of the court's Statute as well as articles 63 and 64 of the court's Rules of Procedure, "the Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence..."<sup>7</sup> For example, in the case of the Prosecutor v. Thomas Lubanga Dyilo and also in the case of

William Samoei Ruto and others, the court announced that the probative value of the evidence must be assessed on a case by case basis.

The notable point is that the International Criminal Court has considered reports by governmental and nongovernmental organizations as well as media reports as "indirect evidence" in its judicial procedure. The court has noted in its Rule of Procedure that such indirect evidence is usually of lower probative value. Of course, the court does not ignore such evidence, but exercises caution when using it to justify its decisions. With regard to indirect evidence, the court emphasizes that such evidence cannot provide a reliable ground for



**Another issue facing various courts is related to evidence and documents that a human rights organization can provide in order to affect the decision of the court in a specific case**

court's decision and must be considered in parallel to other developments. When assessing the probative value of the evidence, the Special Tribunal for Lebanon in its decision on the admissibility of documents published on the Wikileaks website considered several factors for assessing the probative value of the evidence, which included reliability, authenticity and accuracy.

In the case of the US Embassy staff in China, the International Court of Justice noted that extensive information received from various sources could only be used as complementary evidence if various parts of that information are compatible, or at least in line with the existing realities, not when they reject or deny those realities.

As said before, the presence as well as information and evidence provided by nongovernmental organizations, including human rights institutions, are generally of importance to international courts and tribunals.

### **Sources**

Human rights nongovernmental organizations are among those institutions and legal tools, which are considered as very important in the current international law. These organizations have gradually become an integral part of the international judicial system and accompany a court when a case is being heard. Introduction of such terms as “the friend of the court” or reliance on reports presented by such human rights organizations as Human Rights Watch, underline their effective presence on the opposite side of states.

The main factors, which increase credibility of such organizations and encourage courts to rely on documents and evidence provided by them through the judicial process, are the type of their activity and its framework. In view of the above examples, that organization will be held as credible, which is first of all, known for its impartiality, an example of which is the International Committee of the Red Cross. The next factor is that a nongovernmental organization must collect correct information and assess their accuracy and validity in every case. When reports provided by a nongovernmental organization are frequently cited and relied upon by the international system, it could be a sign of credibility and reliability of those documents.

On the whole, at the present time, international courts and tribunals, especially those, which are focused on supporting human rights norms, are willing to take advantage of the evidence and instruments made available to them by human rights nongovernmental organization, which play an effective role in country-level and international judicial systems. Such organizations can make it possible for violated human rights norms to be correctly identified and compensated.

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# The Manual of style for writing papers for Defenders Quarterly

The following types of papers will be accepted for publication in Modafe'an quarterly:

**A) Research papers**, which are scientific reports on research studies. Such papers include an abstract, an introduction, the main body (methodology, findings, discussion), conclusion and bibliography. (2,000-3,000 words)

**B) Review papers**, which are written about a new topic in the field of human rights and also cover previous studies on that new scientific topic. Such papers include an abstract, an introduction, the main body (findings, discussion), conclusion and bibliography. (1,500-2,000 words)

**In general, such papers must be structured in accordance with the following format:**

1. Title: Must be clear and relevant.
2. Abstract: Must not exceed 300 words and include explanation of the issue at hand, main questions, hypothesis of the paper and its results.
3. Introduction: Is necessary to precede the main discussion, which expounds the topic of the paper.
4. Main body: Includes discussions aimed to prove or reject the hypothesis of the paper. Avoiding general remarks, avoiding use of words that convey special values, and use of documented material are among the main characteristic of the body of the paper.
5. Conclusion: This part of the paper includes answers given to the main questions of the paper and this is where the hypothesis is either proven or rejected.
6. Intratextual reference method will be acceptable.

## Notes

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