

Aknowledgements

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It's also dedicated to all the members of the jury and to every teacher of the department of English working in Oran University.

Abstract

Human Rights as a legal concept is a relatively recent notion in Africa. The situation of Human Rights in the African continent is generally reported to be poor, and it is seen as an area of concern according to the UN, governmental, and non-governmental observers.

Algeria has been categorised by Freedom House as “not free” since it began publishing such ratings in 1972, with the exception of 1989, 1990, and 1991, when the country was labeled “partly free.” Free elections were held in the country beginning in 1988, but a victory of the Islamic Salvation Front (FIS) in the 1991 parliamentary ballot sparked a military ‘coup d'état’ and the imposition, in February 1992, of a state of emergency under which basic human rights were suspended. Freedom of expression, association, and assembly were severely restricted, and many individuals were arrested without charge and held without trial. A ‘civil war’ raged from 1991 to 1999, and since its end there have been no proper official investigations into the massive Human-Rights violations that took place during the conflict.

Various NGO’s have intervened in the situation of human rights in Algeria but none of them was as eager as Amnesty to reveal the truth behind the murders, the kidnappings and the arbitrary arrests . Amnesty even called for an internationalisation of those violations in order to open the doors for international committees to investigate in the mass

massacres and the thousand people that disappeared and that the authorities denied knowing anything about.

The Algerian authorities dealt carefully with the claims of the NGO's activists, thus, the government denied any relationship with the violations that Amnesty related to security forces and self-defense groups, and in the counterpart, the authorities sustained reports of NGO's about the responsibility of Islamic opposition groups on the same violations.

The civic society including mass media, national NGO's and people did not approve the NGO's attitudes when emphasizing the dramatic scene of what was happening in Algeria. they even suspected Amnesty and its allies being guided by some external parts who wanted to take profit of the political chaos.

keywords : Human rights , Non-Governmental organisations, human rights violations, Amnesty international , internationalisation

Résumé

Les droits de l'homme en tant que concept juridique sont une notion relativement récente en Afrique. La situation des droits de l'homme en continent Africain est généralement considérée comme médiocre, et elle est considérée comme un sujet de préoccupation selon les observateurs de l'ONU, des gouvernements et des organisations non gouvernementales.

Freedom House a qualifié l'Algérie de «non libre» depuis le début de la publication de ces notations en 1972, à l'exception de 1989, 1990 et 1991, année où le pays avait été qualifié de «partiellement libre». Des élections libres ont été organisées dans le pays en 1988, mais une victoire du Front islamique du salut (FIS) lors du scrutin parlementaire de 1991 déclencha un coup d'État militaire et l'imposition, en février 1992, d'un état d'exception en vertu duquel les droits de l'homme fondamentaux étaient suspendus. La liberté d'expression, d'association et de réunion a été sévèrement restreinte et de nombreuses personnes ont été arrêtées sans inculpation et détenues sans procès. Une «guerre civile» a éclaté de 1991 à 1999 et, depuis sa fin, aucune enquête officielle n'a été ouverte sur les violations massives des droits de l'homme commises pendant le conflit.

Plusieurs ONG sont intervenues dans la situation des droits de l'homme en Algérie mais aucune d'entre elles n'était aussi désireuse que Amnesty de révéler la vérité sur les meurtres, les enlèvements et les arrestations arbitraires. Amnesty a même appelé à une internationalisation de ces violations afin de permettre aux

commissions internationales de mener une enquête sur les massacres de masse et les milliers de personnes disparues et que les autorités ont nié tout savoir.

Les autorités algériennes ont soigneusement traité les affirmations des militants des ONG. Ainsi, le gouvernement a démenti toute relation avec les violations d'Amnesty International relatives aux forces de sécurité et aux groupes d'autodéfense. des groupes d'opposition islamiques sur les mêmes violations

La société civile, y compris les médias, les ONG nationales et la population, n'a pas approuvé l'attitude de cette ONG lorsqu'elle a souligné la scène dramatique de ce qui se passait en Algérie. Elle a même soupçonné Amnesty et ses alliés d'être guidés par des instances extérieures qui souhaitaient tirer profit du chaos politique.

les mots clés : les droits de l'homme, les organisations non gouvernementales, les violations des droits de l'homme, Amnistie internationale , internationalisation

ملخص

حقوق الإنسان كمفهوم قانوني هو مفهوم حديث نسبيا في أفريقيا. وتفيد التقارير أن حالة حقوق الإنسان في القارة الأفريقية عموما متدنية، وينظر اليها على أنها مصدر قلق وفقا للمراقبين للامم المتحدة والحكومية، وغير الحكومية.

تم تصنيف الجزائر من قبل منظمة فريدم هاوس بأنها "غير حرة" منذ أن بدأت بنشر هذه التصنيفات في عام 1972 ، باستثناء 1989 و 1990 و 1991 ، عندما تم وصف البلاد بأنها "حرة جزئيا". أجريت انتخابات حرة في البلاد في عام 1988 ، ولكن انتصار جبهة الإنقاذ الإسلامية (FIS) في الاقتراع البرلماني عام 1991 أثار "انقلاب" عسكري وفرض ، في فبراير 1992 ، حالة الطوارئ التي بموجبها تم تعليق حقوق الإنسان الأساسية. تم تقييد حرية التعبير وتكوين الجمعيات والتجمع بشدة، وتم اعتقال العديد من الأفراد دون توجيه تهمة إليهم واحتجازهم دون محاكمة. اندلعت "حرب أهلية" من عام 1991 إلى عام 1999، ومنذ انتهائها لم يتم إجراء تحقيقات رسمية في الانتهاكات الجسيمة لحقوق الإنسان التي وقعت أثناء النزاع.

وقد تدخلت منظمات غير حكومية مختلفة في حالة حقوق الإنسان في الجزائر لكن لم يكن أي منهم حريصاً مثل منظمة العفو على الكشف عن الحقيقة وراء جرائم القتل والاختطاف والاعتقال التعسفي. حتى أن منظمة العفو الدولية دعت إلى تدويل هذه الانتهاكات من أجل فتح الأبواب أمام اللجان الدولية للتحقيق في المجازر الجماعية وألف شخص اختفوا، وأن السلطات نفت معرفة أي شيء عنها.

كما تعاملت السلطات الجزائرية بعناية مع مزاعم نشطاء المنظمات غير الحكومية ، نفت الحكومة أي علاقة لها بالانتهاكات التي ترتبط بها منظمة العفو مع قوات الأمن وجماعات الدفاع عن النفس ،

وفي المقابل ، استمرت السلطات في تقارير المنظمات غير الحكومية عن المسؤولية جماعات المعارضة الإسلامية على نفس الانتهاكات.

لم يوافق المجتمع المدني بما في ذلك وسائل الإعلام والمنظمات غير الحكومية الوطنية والشعب على مواقف المنظمات غير الحكومية عند التأكيد على المشهد الدرامي لما يحدث في الجزائر. حيث يشتبه في أن منظمة العفو الدولية وحلفاءها يسترشدون ببعض الأجزاء الخارجية التي أرادت جني الأرباح من الفوضى.

الكلمات المفتاحية: حقوق الإنسان ، المنظمات غير الحكومية ، انتهاكات حقوق الإنسان ، منظمة العفو الدولية ، التدويل.

List of Abbreviations and Acronyms

FH	Freedom House
FIS	Islamic Salvation Front
FIDH	International Federation of Human Rights
HRW	Human Rights Watch
ICRC	International Committee of the Red Cross
LADH	National League for Human Rights
NGO's	Non Governmental Organizations
OUA	Organisation of African Unity
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
RSF	Reporters without Borders

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General

Introduction

Modern international laws and customs force any free country to submit and admit the universal declaration of Human Rights of the 10th December 1948 and the other many Human Rights conventions that followed .However, these articles and conventions could not always stop the violation and non respect of Civic Rights of people ,especially in the under developed countries as in the African continent where crisis, civic wars and poverty issues were top priorities of governments that consider Human Rights as a luxury .

What intrigued most of researchers is that the protection and promotion of Human Rights does no longer belong only to the state and its official departments and administrations, other new actors share that role now and ask for more democracy and transparency in dealing with Human Rights issues without considering that it is an interference in the internal affairs of the countries .thus many organisations and associations were established to follow the commitment of the governments to Human Rights laws and standards. These new organisations were national and international, governmental and non-governmental but the concept of non-governmental organisations should not be understood as anti governmental but it includes organisations set up without the funding and leading of governments

A non-governmental organisation (NGO) is a non-profit, citizen-based group that functions independently of government. NGOs, sometimes called civil

societies, are organised on community, national and international levels to serve specific social or political purposes, and are cooperative, rather than commercial, in nature.

Examples of NGOs include those that support Human Rights, advocate for improved health or encourage political participation. Two broad groups of NGOs are identified by the World Bank: operational NGOs, which focus on development projects; and advocacy NGOs, which are organised to promote particular causes. Certain NGOs may fall under both categories simultaneously.

While the term "NGO" has various interpretations, it is generally accepted to include private organisations that operate without government control and that are non-profit and non-criminal. Other definitions further clarify NGOs as associations that are non-religious and non-military.

NGOs are a new phenomenon in international relations even if charity organisations and civic society organisations exist since centuries, especially with people's awareness of their rights in America and Europe, many organisations emerged. The case of Quakers was one of the very first NGO's that fought against slavery in Philadelphia (USA).

The 1970's was marked by a considerable growth of NGO's activities related to the field of Human Rights . and one of the well known is Amnesty International which showed an increasing interest to African authorities violations to Human Rights ,then Algeria was not out of its agenda.

As many of us have witnessed the so called "Red decade" in Algeria where chaos reigned over a seemingly ten eternal dark years, much talk was said on the role of such organisations to fight against Human Rights violations and to preserve dignity of people and sustain peace. At this point, one can be personally engaged in a quest to discover the truth behind the work of such organisations. But since it is not possible to study all the NGO's that focused on Human Rights issues, the study may be narrowed to one of the most famous NGO's in the field, so that to investigate and assess its real role in lightening the human rights issues in Algeria during the 1990's. The study aims to investigate the real role of NGO's in under developed countries like Algeria, and to follow the paths of these organisations and their methods of work in order to test and compare its different actions in different situations and countries and judge its real intentions towards these countries.

Thus, the research question addressed in this memoire is about : what is the real role of Amnesty International in promoting human rights in Algeria during the 1990's ?

The memoire also raises the following sub-questions:

1-what is an NGO and how does it operate?

2- Do under developed countries protect Human Rights?

3-How efficient are NGO's in promoting Human Rights?

4-Do countries allow NGO's to pursuit their (humanitarian work)?

To answer these questions, one should raise the following hypotheses:

1-NGO's operate out of governmental control and is sponsored in different ways, point which raises the question of who do they truly serve!!

2-Human Rights protection is relevant to countries' development and economic progress and welfare, which is a luxury to most under-developed countries.

3-Most African countries were built upon military dictatorship systems which enforce law and impose it on poor unconscious populations.

This academic quest is based on different readings of books, magazines and articles that tackle the topic of NGO's role in Human Rights and the various reactions of governments to their interference in this sensitive issue. This perspective is also oriented by former studies in political sciences and international law. Also the study benefited from newspapers articles, TV news and annual reports of Amnesty international on the topic. Under this

perspective, one would suggest that this study would be qualitative which is not totally wrong since Qualitative research is a scientific method of observation to gather non-numerical data. This type of research "refers to the meanings, concepts definitions, characteristics, metaphors, symbols, and description of things" and not to their "counts or measures. We obviously need to analyse, understand and structure that collected data in order to deduce results and try to generalise them to similar cases(Amnesty International in Algeria---NGO's in Africa) .But still the results stand exclusive to the case study most of the time and ,what is true in one country would not match much in another ;thus, the study will be using both quantitative and qualitative methods and techniques as we intend to visit and interview national non-governmental organisations, the bureau of Amnesty International in Algeria and even the national Observatory of Human Rights.

This research consists of three main chapters. The first chapter deals with the origins of NGO's and their different classifications and tools and methods used in order to pursue their goals in different domains and especially in human rights .then the second chapter highlights the situation of Human Rights in Algeria via laws, institutions and even national NGO's. Then speaking about violations of Human Rights leads straightly to the third chapter which oppose Amnesty's work to Algerian authorities and Medias.

Chapter One

Chapter one: Notion and Origns of Non-Govenmental Orgaisations

1-1-Historical background of Non-Governmental Organisations

International non-governmental organisations have a history dating back to at least the late 18th century. It has been estimated that by 1914, there were 1083 NGOs. International NGOs were important in the anti-slavery movement and the movement for women's suffrage, and reached a peak at the time of the World Disarmament Conference. However, the phrase "non-governmental organisation" only came into popular use with the establishment of the United Nations Organisation in 1945 with provisions in Article 71 of Chapter 10 of the United Nations Charter for a consultative role for organisations which are neither governments nor member states ¹. The definition of "international NGO" (INGO) is first given in resolution 288 (X) of ECOSOC on February 27, 1950: it is defined as "any international organisation that is not founded by an international treaty". The vital role of NGOs and other "major groups" insustainable development was recognised in Chapter 27 of Agenda 21, leading to intense arrangements for a consultative relationship between the United Nations and non-governmental organisations. It has been observed that the number of INGO founded or dissolved matches the general "state of the world", rising in periods of growth and decline in periods of crisis.²

Rapid development of the non-governmental sector occurred in western countries as a result of the processes of restructuring of the welfare state.

¹ Steve Charnovitz, "Two Centuries of Participation: NGOs and International Governance, Michigan Journal of International Law, Winter 1997.p 25

² Ibid

Further globalisation of that process occurred after the fall of the communist system, and was an important part of the Washington consensus.

Globalisation during the 20th century gave rise to the importance of NGOs. Many problems could not be solved within a nation. International treaties and international organisations such as the World Trade Organisation were centered mainly on the interests of capitalist enterprises. In an attempt to counterbalance this trend, NGOs have developed to emphasise humanitarian issues, developmental aid and sustainable development. A prominent example of this is the World Social Forum, which is a rival convention to the World Economic Forum held annually in January in Davos, Switzerland. The fifth World Social Forum in Porto Alegre, Brazil, in January 2005 was attended by representatives from more than 1,000 NGOs. In terms of environmental issues and sustainable development, the Earth Summit in Rio in 1992 was the first to show the power of international NGOs, when about 2,400 representatives of NGOs came to play a central role in deliberations. Some have argued that in forums like these, NGOs take the place of what should belong to popular movements of the poor. Whatever the case, NGO transnational networking is now extensive.³

³ Stone, Diane (2004). "Transfer Agents and Global Networks in the 'Transnationalisation' of Policy". *Journal of European Public Policy*. *austiniskewl*. **11** (3): 545–566.

1-1 -Definition of NGO's.

Non-governmental organisations, commonly referred to as NGOs, are usually non-profit and sometimes international organisations independent of governments and international governmental organisations (though often funded by governments) that are active in humanitarian, educational, health care, public policy, social, Human Rights, environmental, and other areas to effect changes according to their objectives. They are thus a subgroup of all organisations founded by citizens, which include clubs and other associations that provide services, benefits, and premises only to members. Sometimes the term is used as a synonym of "civil society organisation" to refer to any association founded by citizens, but this is not how the term is normally used in the media or everyday language, as recorded by major dictionaries. The explanation of the term by NGO.org (the non-governmental organizations associated with the United Nations) is ambivalent. It first says an NGO is any non-profit, voluntary citizens' group which is organized at a local, national or international level, but then goes on to restrict the meaning in the sense used by most English speakers and the media: Task-oriented and driven by people with a common interest, NGOs perform a variety of service and humanitarian functions, bring citizen

concerns to Governments, advocate and monitor policies and encourage political participation through provision of information.⁴

NGOs are usually funded by donations, but some avoid formal funding altogether and are run primarily by volunteers. NGOs are highly diverse groups of organisations engaged in a wide range of activities, and take different forms in different parts of the world. Some may have charitable status, while others may be registered for tax exemption based on recognition of social purposes. Others may be fronts for political, religious, or other interests. Since the end of World War II, NGOs have had an increasing role in international development particularly in the fields of humanitarian assistance and poverty alleviation.⁵

The number of NGOs worldwide is estimated to be 10 million. Russia had about 277,000 NGOs in 2008. India is estimated to have had around 2 million NGOs in 2009, just over one NGO per 600 Indians, and many times the number of primary schools and primary health centres in India. China is estimated to have approximately 440,000 officially registered NGOs. About 1.5 million domestic and foreign NGOs operated in the United States in 2017.

The term 'NGO' is not always used consistently. In some countries the term NGO is applied to an organisation that in another country would be called an NPO (non-profit organisation), and vice versa. Political parties and trade

⁴ Stone, Diane, op, cit p 95

⁵ Steve Charnovitz, op; cit p55

unions are considered NGOs only in some countries. There are many different classifications of NGO in use. The most common focus is on "orientation" and "level of operation": orientation refers to the type of activities it takes on. These activities might include Human Rights, environmental, improving health, or development work. An NGO's level of operation indicates the scale at which an organisation works, such as local, regional, national, or international. ⁶

The term "non-governmental organisation" was first coined in 1945, when the United Nations (UN) was created. The UN, itself an intergovernmental organisation, made it possible for certain approved specialised international non-state agencies — i.e., non-governmental organisations — to be awarded observer status at its assemblies and some of its meetings. Later the term became used more widely. Today, according to the UN, any kind of private organisation that is independent from government control can be termed an "NGO", provided it is not-for-profit, non-prevention, but not simply an opposition political party.

One characteristic these diverse organisations share is that their non-profit status means they are not hindered by short-term financial objectives. Accordingly, they are able to devote themselves to issues which occur across longer time horizons, such as climate change, malaria prevention, or a global

⁶Davies, Thomas (2014). *NGOs: A New History of Transnational Civil Society*. New York: Oxford University Press. p. 3.

ban on landmines. Public surveys reveal that NGOs often enjoy a high degree of public trust, which can make them a useful - but not always sufficient - proxy for the concerns of society and stakeholders.⁷

⁷ Willetts, Peter. "[What is a Non-Governmental Organization?](#)". *UNESCO Encyclopaedia of Life Support Systems*. City University London. Retrieved 18 July 2012.

1-2-Characteristics of NGO's.

1. An NGO is a non-profit making, voluntary, service-oriented/development oriented organisation, either for the benefit of members (a grassroots organisation) or of other members of the population (an agency).
2. It is an organisation of private individuals who believe in certain basic social principles, and who structure their activities to bring about development to communities they are servicing.
3. It is a social development organisation assisting in empowerment of people.
4. An organisation or group of people working independent of any external control with specific objectives and aims to fulfill tasks that are oriented to bring about desirable change in a given community or areas or situation.
5. An independent, democratic, non-sectarian organisation of people working for the empowerment of economic and/or socially marginalised groups.
6. An organisation not affiliated to political parties, generally engaged in working for aid, development and welfare of the community.
7. An organisation committed to the root causes of the problems trying to better the quality of life especially to the poor, the oppressed, the marginalised in urban and rural areas.

8. Organisations established by end for the community with or without little intervention from the government; they are not only a charity organisation, but work on socio-economic-cultural activities.⁸

NGOs are also traditionally known as:

1. Voluntary Organisations (VOs)
2. Voluntary Agencies (VAs)
3. Voluntary Development Organisations (VDOs)
4. Non Governmental Development Organisations (NGDOs)⁹

1-3-Funding of NGO'S

Whether the NGOs are small or large, various NGOs need budgets to operate. The amount of money that each requires varies depending upon multiple factors, including the size of the operation and the extent of the services provided. Unlike small NGOs, large NGOs may have annual budgets in the hundreds of millions or billions of dollars. For instance, the budget of the American Association of Retired Persons (AARP) was over US\$540 million in 1999. Funding such large budgets demands significant fund raising efforts on the part of most NGOs. Major sources of NGO funding are membership dues, the sale of goods and services, grants from international

⁸ Jon Bennet and Sara Gibbs, NGO's funding strategies. intrac publications, Great Britain. 1996. p15

⁹ Edwards, M. and Hulme, D. (1996) Too Close for comfort? The impact of official aid on Non-Governmental Organisations. "World Development." 24(6), pp. 961-973.

institutions or national governments, and private donations. Several EU-grants provide funds accessible to NGOs.¹⁰

Even though the term "non-governmental organisation" implies independence from governments, many NGOs depend heavily on governments for their funding. A quarter of the US\$162 million income in 1998 of the famine-relief organisation Oxfam was donated by the British government and the EU. The Christian relief and development organisation World Vision United States collected US\$55 million worth of goods in 1998 from the American government.

Government funding of NGOs is controversial, since, according to David Rieff, writing in *The New Republic*, "*the whole point of humanitarian intervention was precisely that NGOs and civil society had both a right, and an obligation to respond with acts of aid and solidarity to people in need or being subjected to repression or want by the forces that controlled them, whatever the governments concerned might think about the matter.*" Some NGOs, such as Greenpeace do not accept funding from governments or intergovernmental organisations.¹¹

¹⁰ Davies, Thomas.op,cit p77

¹¹ Edmund Jouve ,International Relations of third worl and rights of people.2nd edition,Paris ,Berger Levault,1979.p20

2-Amnesty International.

2-1 The creation of Amnesty International.

Amnesty International (commonly known as Amnesty or AI) is a London-based non-governmental organisation focused on Human Rights. The organisation claims to have over 7 million members and supporters around the world.

The stated mission of the organisation is to campaign for "a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international Human Rights instruments." Amnesty International was founded in London in 1961, following the publication of the article "The Forgotten Prisoners" in The Observer on 28 May 1961, by the lawyer Peter Benenson¹². Amnesty draws attention to Human Rights abuses and campaigns for compliance with international laws and standards. It works to mobilise public opinion to put pressure on governments that let abuse take place. Amnesty considers capital punishment to be "the ultimate, irreversible denial of Human Rights".The organisation was awarded the 1977 Nobel Peace Prize for its "defence of human dignity against torture", and the United Nations Prize in the Field of Human Rights in 1978.

¹² Ibid

In the field of international Human Rights organisations, Amnesty has the third longest history, after the International Federation for Human Rights and broadest name recognition, and is believed by many to set standards for the movement as a whole.¹³

2-2 The purposes of Amnesty International.

Amnesty International primarily targets governments, but also reports on non-governmental bodies and private individuals ("non-state actors").

There are six key areas which Amnesty deals with:

- Women's, children's, minorities' and indigenous rights
- Ending torture
- Abolition of the death penalty
- Rights of refugees
- Rights of prisoners of conscience
- Protection of human dignity.

Some specific aims are to: abolish the death penalty, end extra judicial executions and "disappearances", ensure prison conditions meet International Human Rights standards, ensure prompt and fair trial for all political prisoners, ensure free education to all children worldwide, decriminalise abortion, fight impunity from systems of justice, end the recruitment and use

¹³ ["Amnesty International's Statute". www.amnesty.org.](http://www.amnesty.org)

of child soldiers, free all prisoners of conscience, promote economic, social and cultural rights for marginalized communities, protect Human Rights defenders, promote religious tolerance, protect LGBT(lesbian, gay, bisexual, and transgender) Rights, stop torture and ill-treatment, stop unlawful killings in armed conflict, uphold the rights of refugees, migrants, and asylum seekers, and protect human dignity.¹⁴

To further these aims, Amnesty International has developed several techniques to publicise information and mobilise public opinion. The organisation considers as one of its strengths the publication of impartial and accurate reports. Reports are researched by: interviewing victims and officials, observing trials, working with local Human Rights activists, and monitoring the media. It aims to issue timely press releases and publishes information in newsletters and on web sites. It also sends official missions to countries to make courteous but insistent inquiries.

Campaigns to mobilise public opinion can take the form of individual, country, or thematic campaigns. Many techniques are deployed, such as direct appeals (for example, letter writing), media and publicity work, and public demonstrations. Often, fund-raising is integrated with campaigning.¹⁵

¹⁴ C .MEYA NCHAMA « The Role of NGO 's in the Promotion and Protection of Human Rights »New York,United Nations,1992 .p 55

¹⁵ ibid

In situations which require immediate attention, Amnesty International calls on existing urgent action networks or crisis response networks; for all other matters, it calls on its membership. It considers the large size of its Human resources to be another of its key strengths.

The role of Amnesty International has an immense impact on getting citizens onboard with focusing on Human Rights issues. These groups influence countries and governments to give their people justice with pressure and in human resources. An example of Amnesty International's work, which began in the 1960s, is writing letters to free imprisoned people that were put there for non-violent expressions. The group now has power, attends sessions, and became a source of information for the UN. The increase in participation of non-governmental organisations changes the way we live today. *Felix Dodds* states in a recent document: "*In 1972 there were 39 democratic countries in the world; by 2002, there were 139*". This shows that non-governmental organisations make enormous leaps within a short period of time for Human Rights.¹⁶

¹⁶ *Amnesty International Report 1968-69. Amnesty International. 1969.*

2-3 The procedures and methods of Amnesty International.

Amnesty International was founded in London in July 1961 by English labour lawyer Peter Benenson. According to his own account, he was travelling in the London Underground on 19 November 1960 when he read that two Portuguese students from Coimbra had been sentenced to seven years of imprisonment in Portugal for allegedly "*having drunk a toast to liberty*". Researchers have never traced the alleged newspaper article in question. In 1960, Portugal was ruled by the Estado Novo government of António de Oliveira Salazar. The government was authoritarian in nature and strongly anti-communist, suppressing enemies of the state as anti-Portuguese. In his significant newspaper article "The Forgotten Prisoners", Benenson later described his reaction as follows: "*Open your newspaper any day of the week and you will find a story from somewhere of someone being imprisoned, tortured or executed because his opinions or religion are unacceptable to his government ...*" The reader of the newspaper feels a sickening sense of impotence. Yet if these feelings of disgust could be united into common action, something effective could be done.¹⁷

Benenson worked with his friend Eric Baker. Baker was a member of the Religious Society of Friends who had been involved in funding the British Campaign for Nuclear Disarmament as well as becoming head of Quaker

¹⁷ C .M EYA NCHAMA ,op cit,p 62

Peace and Social Witness, and in his memoirs Benenson described him as "*a partner in the launching of the project*". In consultation with other writers, academics and lawyers and, in particular, Alec Digges. They wrote via Louis Blom-Cooper to David Astor, editor of The Observer newspaper, who, on 28 May 1961, published Benenson's article "The Forgotten Prisoners". The article brought the reader's attention to those "imprisoned, tortured or executed because his opinions or religion are unacceptable to his government" or, put another way, to violations, by governments, of articles 18 and 19 of the Universal Declaration of Human Rights (UDHR). The article described these violations occurring, on a global scale, in the context of restrictions to press freedom, to political oppositions, to timely public trial before impartial courts, and to asylum. It marked the launch of "*Appeal for Amnesty, 1961*", the aim of which was to mobilise public opinion, quickly and widely, in defence of these individuals, whom Benenson named "*Prisoners of Conscience*". The "*Appeal for Amnesty*" was reprinted by a large number of international newspapers. In the same year, Benenson had a book published, *Persecution 1961*, which detailed the cases of nine prisoners of conscience investigated and compiled by Benenson and Baker (Maurice Adin, Ashton Jones, Agostinho Neto, Patrick Duncan, Olga Ivinskaya, Luis Taruc, Constantin Noica, Antonio Amat and Hu Feng). In July 1961 the leadership had decided that the appeal would form the basis of a permanent organisation, Amnesty, with the first meeting taking place in London. Benenson ensured

that all three major political parties were represented, enlisting members of parliament from the Labour Party, the Conservative Party, and the Liberal Party. On 30 September 1962, it was officially named "Amnesty International". Between the "Appeal for Amnesty, 1961" and September 1962 the organisation had been known simply as "Amnesty".¹⁸

What started as a short appeal soon became a permanent international movement working to protect those imprisoned for non-violent expression of their views and to secure worldwide recognition of Articles 18 and 19 of the UDHR. From the very beginning, research and campaigning were present in Amnesty International's work. A library was established for information about prisoners of conscience and a network of local groups, called "THREES" groups, was started. Each group worked on behalf of three prisoners, one from each of the then three main ideological regions of the world: communist, capitalist, and developing.¹⁹

By the mid-1960s Amnesty International's global presence was growing and an International Secretariat and International Executive Committee were established to manage Amnesty International's national organisations, called "Sections", which had appeared in several countries. The international movement was starting to agree on its core principles and techniques. For

¹⁸ Jon Bennet and Sara Gibbs, *op.cit.*, p55

¹⁹ *Ibid.*, p 56.

example, the issue of whether or not to adopt prisoners who had advocated violence, like Nelson Mandela, brought unanimous agreement that it could not give the name of "Prisoner of Conscience" to such prisoners. Aside from the work of the library and groups, Amnesty International's activities were expanding to helping prisoners' families, sending observers to trials, making representations to governments, and finding asylum or overseas employment for prisoners. Its activity and influence were also increasing within intergovernmental organisations; it would be awarded consultative status by the United Nations, the Council of Europe and the UNESCO before the decade ended.

In 1967, Peter Benenson resigned after an independent inquiry did not support his claims that AI had been infiltrated by British agents. Later he claimed that the Central Intelligence Agency had become involved in Amnesty.²⁰

Leading Amnesty International in the 1970s were key figures Seán MacBride and Martin Ennals. While continuing to work for prisoners of conscience, Amnesty International's purview widened to include "fair trial" and opposition to long detention without trial (UDHR Article 9), and especially to the torture of prisoners (UDHR Article 5). Amnesty International believed that the reasons underlying torture of prisoners by governments, were either to acquire and obtain information or to quell opposition by the use of terror, or

²⁰ C .M EYA NCHAMA .op ,cit .p 42

both. Also of concern was the export of more sophisticated torture methods, equipment and teaching by the superpowers to "client states", for example by the United States through some activities of the CIA.²¹

Amnesty International drew together reports from countries where torture allegations seemed most persistent and organised an international conference on torture. It sought to influence public opinion to put pressure on national governments by organising a campaign for the "*Abolition of Torture*" which ran for several years.

Membership of Amnesty International increased from 15,000 in 1969 to 200,000 by 1979. This growth in resources enabled an expansion of its program, "outside of the prison walls", to include work on "disappearances", the death penalty and the rights of refugees. A new technique, the "Urgent Action", aimed at mobilizing the membership into action rapidly was pioneered. The first was issued on 19 March 1973, on behalf of Luiz Basilio Rossi, a Brazilian academic, arrested for political reasons.²²

At the intergovernmental level Amnesty International pressed for application of the UN's Standard Minimum Rules for the Treatment of Prisoners and of existing humanitarian conventions; to secure ratifications of the two UN Covenants on Human Rights in 1976; and was instrumental in obtaining

²¹ Jack Donnelly, « International Human Rights » Second Edition, USA: Westview Press, 1998 .P10.

²² Ibid.p 12

additional instruments and provisions forbidding its practice. Consultative status was granted at the Inter-American Commission on Human Rights in 1972.

In 1976, the British Section of Amnesty started a series of fund-raising events that came to be known as The Secret Policeman's Balls series. They were staged in London initially as comedy galas featuring what the Daily Telegraph called "*the crème de la crème of the British comedy world*" including members of comedy troupe Monty Python, and later expanded to also include performances by leading rock musicians. The series was created and developed by Monty Python alumnus John Cleese and entertainment industry executive Martin Lewis working closely with Amnesty staff members Peter Luff (Assistant Director of Amnesty 1974–78), and subsequently with Peter Walker (Amnesty Fund-Raising Officer 1978–82). Cleese, Lewis and Luff worked together on the first two shows (1976 and 1977). Cleese, Lewis and Walker worked together on the 1979 and 1981 shows, the first to carry what the Daily Telegraph described as the "rather brilliantly re-christened" Secret Policeman's Ball title. The organisation was awarded the 1977 Nobel Peace Prize for its "*defence of human dignity against torture*" and the United Nations Prize in the Field of Human Rights in 1978.²³

²³ [*When the State Kills: The Death Penalty Vs. Human Rights*](#), Amnesty International, 1989, P60

By 1980 Amnesty International was drawing more criticism from governments. The USSR alleged that Amnesty International conducted espionage, the Moroccan government denounced it as a defender of lawbreakers, and the Argentinian government banned Amnesty International's 1983 annual report.

Throughout the 1980s, Amnesty International continued to campaign against torture, and on behalf of prisoners of conscience. New issues emerged, including extrajudicial killings, military, security and police transfers, political killings, and disappearances.

Towards the end of the decade, the growing number of refugees worldwide was a very visible area of Amnesty International's concern. While many of the world's refugees of the time had been displaced by war and famine, in adherence to its mandate, Amnesty International concentrated on those forced to flee because of the Human Rights violations it was seeking to prevent. It argued that rather than focusing on new restrictions on entry for asylum-seekers, governments were to address the Human Rights violations which were forcing people into exile.²⁴

Apart from a second campaign on torture during the first half of the decade, two major musical events occurred, designed to increase awareness of Amnesty and of Human Rights (particularly among younger generations)

²⁴ Ibid ,p65

during the mid- to late-1980s. The 1986 Conspiracy of Hope tour, which played five concerts in the US, and culminated in a daylong show, featuring some thirty-odd acts at Giants Stadium, and the 1988 Human Rights Now! world tour. Human Rights Now!, which was timed to coincide with the 40th anniversary of the United Nations' Universal Declaration of Human Rights (UDHR), played a series of concerts on five continents over six weeks. Both tours featured some of the most famous musicians and bands of the day.

Throughout the 1990s, Amnesty continued to grow, to a membership of over 7 million in over 150 countries and territories,[1] led by Senegalese Secretary General Pierre Sané. Amnesty continued to work on a wide range of issues and world events. For example, South African groups joined in 1992 and hosted a visit by Pierre Sané to meet with the apartheid government to press for an investigation into allegations of police abuse, an end to arms sales to the African Great Lakes region and the abolition of the death penalty. In particular, Amnesty International brought attention to violations committed on specific groups, including refugees, racial/ethnic/religious minorities, women and those executed or on Death Row. The death penalty report *When the State Kills* and the "Human Rights are Women's Rights" campaign were key actions for the latter two issues.²⁵

²⁵ Jack Donnelly, *op.cit* .p88

During the 1990s, Amnesty International was forced to react to human rights violations occurring in the context of a proliferation of armed conflict in Angola, East Timor, the Persian Gulf, Rwanda, and the former Yugoslavia. Amnesty International took no position on whether to support or oppose external military interventions in these armed conflicts. It did not reject the use of force, even lethal force, or ask those engaged to lay down their arms. Instead, it questioned the motives behind external intervention and selectivity of international action in relation to the strategic interests of those who sent troops. It argued that action should be taken to prevent Human-Rights problems from becoming Human-Rights catastrophes, and that both intervention and inaction represented a failure of the international community.

In 1995, AI wanted to expose Shell Oil Company involvement with the execution of an environmental and Human-Rights activist called Ken Saro-Wiwa in Nigeria, but it was stopped. Newspapers and advertising companies refused to run AI's ads because Shell Oil was a customer of theirs as well. Shell's main argument was that it was drilling oil in a country that already violated human rights and had no way to enforce Human-Rights policies. To combat the buzz that AI was trying to create, it immediately publicised how Shell was helping to improve overall life in Nigeria. Salil Shetty, the director of Amnesty, said, "*Social media re-energizes the idea of the global citizen*".

James M. Russell notes how the drive for profit from private media sources conflicts with the stories that AI wants to be heard.²⁶

Amnesty International was proactive in pushing for recognition of the universality of Human Rights. The campaign 'Get Up, Sign Up' marked 50 years of the UDHR. Thirteen million pledges were collected in support, and the Decl music concert was held in Paris on 10 December 1998 (Human Rights Day). At the intergovernmental level, Amnesty International argued in favour of creating a United Nations High Commissioner for Human Rights (established 1993) and an International Criminal Court (established 2002)²⁷.

After his arrest in London in 1998 by the Metropolitan Police, Amnesty International became involved in the legal battle of Senator Augusto Pinochet, former Chilean dictator, who sought to avoid extradition to Spain to face charges. Lord Hoffman had an indirect connection with Amnesty International, and this led to an important test for the appearance of bias in legal proceedings in UK law. There was a suit against the decision to release Senator Pinochet, taken by the then British Home Secretary Mr Jack Straw, before that decision had actually been taken, in an attempt to prevent the release of Senator Pinochet. The English High Court refused the request.

²⁶ Davies, Thomas, op ,cit P 26

²⁷ Ibid ,p 32

After 2000, the agenda of Amnesty International's turned to the challenges arising from globalisation and the reaction to the 11 September 2001 attacks in the United States. The issue of globalisation provoked a major shift in Amnesty International policy, as the scope of its work was widened to include economic, social and cultural rights, an area that it had declined to work on in the past. Amnesty International felt this shift was important, not just to give credence to its principle of the indivisibility of rights, but because of what it saw as the growing power of companies and the undermining of many nation states as a result of globalisation ²⁸.

In the aftermath of 11 September attacks, the new Amnesty International Secretary General, Irene Khan, reported that a senior government official had said to Amnesty International delegates: "Your role collapsed with the collapse of the Twin Towers in New York." In the years following the attacks, some believe that the gains made by Human Rights organisations over previous decades had possibly been eroded. Amnesty International argued that Human Rights were the basis for the security of all, not a barrier to it. Criticism came directly from the Bush's administration and the Washington Post, when Khan, in 2005, likened the US government's detention facility at Guantanamo Bay, Cuba, to a Soviet Gulag.

²⁸ « Freedom in the World ».Freedom House.Retrieved January ,2013 .p 23

During the first half of the new decade, Amnesty International turned its attention to violence against women, controls on the world arms trade, concerns surrounding the effectiveness of the UN, and ending torture. With its membership close to two million by 2005, Amnesty continued to work for prisoners of conscience.

In 2007, AI's executive committee decided to support access to abortion "within reasonable gestational limits...for women in cases of rape, incest or violence, or where the pregnancy jeopardizes a mother's life or health".

Amnesty International reported, concerning the Iraq War, on 17 March 2008, that despite claims the security situation in Iraq has improved in recent months, the human rights situation is disastrous, after the start of the war five years earlier in 2003 ²⁹ .

In 2009, Amnesty International accused Israel and the Palestinian Hamas movement of committing war crimes during Israel's January offensive in Gaza, called Operation Cast Lead, that resulted in the deaths of more than 1,400 Palestinians and 13 Israelis. The 117-page Amnesty report charged Israeli forces with killing hundreds of civilians and wanton destruction of thousands of homes. Amnesty found evidence of Israeli soldiers using Palestinian civilians as human shields. A subsequent United Nations Fact

²⁹ Bösl, Anton & Diescho, Joseph (Eds), Human Rights in Africa. Legal Perspectives on their Protection and Promotion, Macmillan Education Namibia 2009.p 90

Finding Mission on the Gaza Conflict was carried out; Amnesty stated that its findings were consistent with those of Amnesty's own field investigation, and called on the UN to act promptly to implement the mission's recommendations.

In February 2010, Amnesty suspended Gita Sahgal, its gender unit head, after she criticized Amnesty for its links with Moazzam Begg, director of Cage prisoners. She said it was "*a gross error of judgment*" to work with "*Britain's most famous supporter of the Taliban*". Amnesty responded that Sahgal was not suspended "for raising these issues internally... [Begg] speaks about his own views ..., not Amnesty International's". Among those who spoke up for Sahgal were Salman Rushdie, Member of Parliament Denis MacShane, Joan Smith, Christopher Hitchens, Martin Bright, Melanie Phillips, and Nick Cohen ³⁰.

In February 2011, Amnesty requested that Swiss authorities start a criminal investigation of former US President George W. Bush and arrest him.

In July 2011, Amnesty International celebrated its 50 years with an animated short film directed by Carlos Lascano, produced by Eallin Motion Art and Dreamlife Studio, with music by Academy Award-winner Hans Zimmer and

³⁰ Davies, Thomas;op,cit p 18

nominee Lorne Balfe. The film shows that the fight for humanity is not yet over ³¹.

In August 2012, Amnesty International's chief executive in India sought an impartial investigation, led by the United Nations, to render justice to those affected by war crimes in Sri Lanka.

On 18 August 2014, in the wake of demonstrations sparked by people protesting the fatal police shooting of Michael Brown, an unarmed 18-year-old man, and subsequent acquittal of Darren Wilson, the officer who shot him, Amnesty International sent a 13-person contingent of Human Rights activists to seek meetings with officials as well as to train local activists in non-violent protest methods. This was the first time that the organisation has deployed such a team to the United States. In a press release, AI USA director Steven W. Hawkins said, "*The U.S. cannot continue to allow those obligated and duty-bound to protect to become those who their community fears most.*"

In June 2016, Amnesty International has called on the United Nations General Assembly to "immediately suspend" Saudi Arabia from the UN Human Rights Council. Richard Bennett, head of Amnesty's UN Office, said: "*The credibility of the U.N. Human Rights Council is at stake. Since joining the council, Saudi Arabia's dire Human Rights record at home has continued to*

³¹ Ibid

deteriorate and the coalition it leads has unlawfully killed and injured thousands of civilians in the conflict in Yemen." ³²

In December 2016, Amnesty International revealed that Voiceless Victims, a fake non-profit organisation which claims to raise awareness for migrant workers who are victims of Human Rights abuses in Qatar, had been trying to spy on their staff.

Amnesty International published its annual report for the year 2016–2017 on 21 February 2017. Secretary General Salil Shetty's opening statement in the report highlighted many ongoing international abuses as well as emerging threats. Shetty drew attention, among many issues, to the Syrian Civil War, the use of chemical weapons in the War in Darfur, outgoing United States President Barack Obama's expansion of drone warfare, and the successful 2016 presidential election campaign of Obama's successor Donald Trump. Shetty stated that the Trump election campaign was characterised by "poisonous" discourse in which "he frequently made deeply divisive statements marked by misogyny and xenophobia, and pledged to roll back established civil liberties and introduce policies which would be profoundly

³² Shetty, Salil (February 2017) Amnesty International Report 2016/17, Part 1: Foreword and Regional Overviews, p. 12

inimical to Human Rights." In his opening summary, Shetty stated that "the world in 2016 became a darker and more unstable place" ³³.

In February 2016, Amnesty International launched its annual report of human rights around the world titled "The State of the World's Human Rights". It warns from the consequences of "us vs them" speech which divided Human beings into two camps. It states that this speech enhances a global pushback against human rights and makes the world more divided and more dangerous. It also states that in 2016, governments turned a blind eye to war crimes and passed laws that violate free expression. Donald Trump signed an executive order in an attempt to prevent refugees from seeking resettlement in the United States. Elsewhere, China, Egypt, Ethiopia, India, Iran, Thailand and Turkey carried out massive crackdowns, while authorities in other countries continued to implement security measures represent an infringement on.

In July 2017, Turkish police detained 10 human rights activists during a workshop on digital security at a hotel near Istanbul. Eight people, including Idil Eser, Amnesty International director in Turkey, as well as German Peter Steudtner and Swede Ali Gharavi, were arrested. Two others were detained but released pending trial. They were accused of aiding armed terror organizations in alleged communications with suspects linked to Kurdish and

³³ Ibid,p 16

left-wing militants, as well as the movement led by US-based Muslim cleric Fethullah Gulen³⁴.

³⁴ Ibid

Chapter Two

“ je me révolte, donc je suis “

Albert Camus

Chapter two: the Human Rights Question in Algeria

2-1-A historical Overview of Status of Civil Rights in Algeria.

Algeria has been categorised by Freedom House as "not free" since it began publishing such ratings in 1972, with the exception of 1989, 1990, and 1991, when the country was labeled "partly free". To the extent that there is democracy in today's Algeria, it is founded in three pieces of legislation:

- The Political Parties Act (1989, amended 1997), which allowed multiple political parties
- The Associations Act (1987, amended 1990), which permitted establishment of associations
- The Information Act (1990), which paved the way for independent news media

Free elections were held in the country beginning in 1988, but a victory by the Islamic Salvation Front (FIS) in the 1991 parliamentary ballot sparked a military coup d'état and the imposition, in February 1992, of a state of emergency under which basic Human Rights were suspended. Freedom of expression, association, and assembly were severely restricted, and many individuals were arrested without charge and held without trial. A civil war raged from 1991 to 1999, and since its end there have been no proper

official investigations into the massive Human-Rights violations that took place during the conflict.³⁵

The government's main opponent in the war was the Armed Islamic Group (GIA), an Islamic terrorist organisation and Al Qaeda affiliate that was described by John R. Schindler in *The National Interest* in July 2012 as "supremely violent" and as the perpetrator of "a wave of bombings in Paris in the summer of 1995" that were "Al Qaeda's first attacks on the West". Schindler notes that "Algeria's nightmare years of 1993–1997 were a focus of the international Human-Rights community" but that "the terrible fratricide [of] the 1990s got little coverage in Western media, despite the fact that it probably claimed twice as many lives as the Bosnian conflict, which ran concurrently and received nonstop Western attention". Schindler added that "Algeria's bloody civil war, which began twenty years ago, never really ended".

December 2010 marked the beginning of a period of frequent and nationwide protests inspired by the so-called "Arab Spring" and sparked by widespread anger over high unemployment, a serious housing shortage, high food prices, extensive corruption, and severe restrictions on freedom of expression and other Human Rights.³⁶

³⁵ Quandt William B, "Société et pouvoir en Algérie: la décennie des ruptures." (traduit par: M'hamed Bensemmane, Mustapha Ben Abdelaziz et Abdessahel Benzenache). Alger: Casbah Editions, 1999 ; p 55

³⁶ Schindler, John. "[The Ugly Truth about Algeria](#)". *The National Interest*. Retrieved January 19, 2013. p130

The National Coordination Committee for Change and Democracy (CNCD) is an umbrella group of opposition parties, unions, and Human-Rights groups that was formed in January 2011 in the wake of the violent suppression of protests in which several people were killed and hundreds injured or arrested.

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The CNCD planned a march in Algiers on January 21, 2011, to demand an end to the state of emergency and a restoration of democracy and freedom. The government sought to prevent the demonstration by blocking roads to Algiers, stopping trains to Algiers, setting up checkpoints and barricades within Algiers, refusing visas to representatives of the international media, detaining government opponents and journalists, and shutting down the Internet. Still, the protest went on, with authorities estimating the number of participants at 800 and the organisers estimating the number at 2000. Many protesters were beaten and cameras confiscated.

The state of emergency was lifted in February 2011, but extensive restrictions on Human Rights remain. ³⁸

³⁷ Ibid.p 133

³⁸ Shetty, Salil (February 2017) Amnesty International Report 2016/17, Part 1: Foreword and Regional Overviews, p. 17

2-2-Laws, articles and Structures of protecting Human Rights

2-2-1-Human Rights in Algerian Constitutions:

Since independence and until now and through many stages, Algeria has adopted several constitutions, including four ordinary constitutions in the following years: 1963, 1976, 1989, 1996 and four constitutions described in the miniaturized Constitution of the National Constituent Assembly of September 1962 and the Order of 10 July 1965 to assign all powers The President of the Republic provided for in the Constitution of 1962, to the Revolution Council, the statement of the Supreme Council of Security issued in January 1992, the ground of national reconciliation on the transitional phase of January 1994 as well as the constitutional amendments.³⁹

Constitutional amendments in all regulations are an urgent need to fill legal gaps and remedy shortcomings, whether these shortcomings have a social or political dimension. As time passes, it becomes clear that the Constitution is fraught with some legal gaps and imbalances, especially with respect to the organisation and functioning of the authorities, as well as the legal nature that must be given to the political system. The constitutional amendment allows us to know and conceive of the developments and their inclusion in this document.

³⁹ Carlier Omar, "Entre Nation et Jihad: Histoire Sociale des radicalisms Algériens" Mayenne (France): presse de Sc.Po, Imprimerie Floch, 1995. p 28

There are motives and backgrounds behind a country's amendment of its constitution. However, the main objective of these amendments is to achieve the compatibility of the Basic Law with political life in all its aspects. However different these motivations differ, whether private motives or public motives, the aim is to change the nature of the regime or To give powers to a particular party without the other party to the public motives to get rid of the completion of the legislative shortfall and the pace of social development, they are based in their entirety according to the rules of the constitutional system governing society and the State on the issues to regulate the various Human Rights protection operations and to make the state for major efforts in order to work on the comprehensive national development and construction in all areas. ⁴⁰

Algeria has adopted through its various constitutions provisions that contain the protection of Human Rights; It is a constitutional restriction on any action or amendment that may affect these texts. Considering the extent of respect for the constitutional amendments that are very sensitive to the provisions and rules governing the field of public rights and freedoms, Historical rights and freedoms across the various constitutions of Algeria.

Algeria has acceded to most international and continental instruments, especially Human Rights. It is therefore natural for its constitutions to include the text on how to accede to and ratify treaties and conventions. The basis for

⁴⁰ Shetty, Salil.op,cit ,p 23

this is the Algerian constitutional institution's keenness on the rights and liberties. In the very essence of the Constitution, makes it superior to all other legal rules existing regardless of the author. This was reflected in the Constitution of 10 September 1963, in which Algeria declared in its Article 11 its approval of the Universal Declaration of Human Rights, recognising all the freedoms contained in this Declaration, and thus one can follow the stages in which the constitutional document was amended, in which people are fully aware of the evolution of the issue of human rights in Algeria.

After July 5, 1962, Algeria began its march towards respect for public rights and freedoms. The first law adopted by the Algerian state on December 31, 1962 was intended to fill the legislative vacuum and extend the French laws, except those inspired by colonialism and those containing discriminatory provisions affecting the normal exercise of freedoms. Democracy.⁴¹

Faced with all these challenges, Algeria chose the socialist orientation and the one-party system. This was reflected in all spheres of life in the country. The socialist option is a political break with colonialism and the concepts adopted by Western countries. International circumstances, especially the Cold War, encouraged this option. This option was enshrined as an important constitutional principle in both the Constitution of 10 September 1963 in its

⁴¹ Carlier Omar.op.cit. p35

Preamble, in which a full chapter of the National Liberation Front was designated as the only vanguard party in Algeria.

And the Constitution of 22 November 1976, which states in its article 1 that Algeria is a socialist state and has another chapter devoted to one party under the title of political function. Article 94 states that the Algerian political system is based on one party. The Constitution states in its articles on amendment that no project Amendment to affect the socialist choice.⁴²

Due to the economic crisis experienced by Algeria in that period , Algeria underwent a radical change after the bloody popular movement known as the events of October 5, 1988 which led to a radical change and to amend the constitution to be based on completely new principles, One Party and the Direction towards a Market Economy rather than Socialism. Thus, these new constitutional principles were established by the Constitution of 23 February 1989.

Thus, it is possible to observe the extent to which constitutional amendments to public rights and freedom are respected in the Algerian constitutions by standing on three important stages of Algeria's history. The first is the extent to which constitutional amendments to public rights and freedoms are respected under the constitution of the First Republic or the so-called constitutions of the one party. Constitutional amendments to the rights

⁴² Benyoub Rachid, "L' Annuaire Politique de l'Algérie". Alger: Impression ANEP, Octobre 1999 .p50

and public freedoms under the Constitution of the Second Republic or what is known as the constitutions of multi-party.⁴³

2-2-2- Human Rights under the single party constitutions

The Algerian State considered the Constitution to be the primary source of rights and freedoms. Therefore, we find that jurisprudence has been used to designate human rights as constitutional rights, with a view to distinguishing them from the similar rights guaranteed by the subsidiary legislations. The Constitution establishes general principles of rights and freedoms. The laws and regulatory texts are intended to enrich them, , And these rights acquired constitutionally may only be modified according to the principles and procedures provided for in the Constitution itself, leading to the adoption of basic methods of organising the defense of human rights under the provisions of the Constitution.

In view of the Algerian Constitutions, after the colonial era, Algeria immediately recognised two important constitutions, which enshrined the socialist approach as well as the provision of respect for public rights and freedoms and the inviolability of any constitutional amendment.

⁴³ Ibid

2-2-3-Constitution of 1963

The first Algerian constitution in the era of independence was the defense of freedom, respect for human dignity, condemnation of torture, racial discrimination or violation of the physical and moral integrity of the human being.⁴⁴

Article 11 states: "*The Republic approves the Universal Declaration of Human Rights and joins every international organisation that responds to the aspirations of the Algerian people, convinced of the need for international cooperation*"

The constitutional founder addressed the question of rights and freedoms in articles 12 to 22.

The first Constitution of the First Republic, however, is fully and explicitly observed in the preservation of Rights and Freedoms within the framework of the socialist approach, and has no effect on any freedom or right that impairs this approach. By quoting article 22, which states: "*No one shall exercise the foregoing rights and freedoms the national institutions, the institutions of the Republic, the aspirations of the socialist people and the principle of the unity of the FLN.*" We find that the Constitution recognises the rights and freedoms of individuals from the perspective of the socialist orientation.

⁴⁴ Benyoub Rachid ,op ,cit p 77

With reference to Section IX, which regulated the provisions of the constitutional amendment, the constitutional founder addressed this section of article 71 to article 74, and none of these articles contained the question of the inadmissibility of prejudice to constitutional amendments to acquired Rights and Freedoms.⁴⁵

This raises many questions about the omission of the constitutional founder of this issue, especially since the Algerian people were recently subjected to a bitter experience in which their rights were violated and their freedoms denied. This may be due to the shortcomings of the newly independent state.

2-2-4- Constitution of 1976

Although it does not refer to the provisions of the Universal Declaration of Human Rights, is in itself a declaration of Human Rights and fundamental freedom, which is dealt with in chapter IV of Part One.

Thus, within the second Constitution of the Algerian Republic we see the continuation of the constitutional text on public freedoms, which also affirmed the socialist orientation of the state. Chapter IV of this Constitution provides for economic, social, cultural and other rights such as protecting the family, motherhood and childhood. In Section I, specifically in Article 8, it was stated that the individual must be modernised and promoted as a

⁴⁵ Shetty, Salil .op.cit .p 35

responsible citizen, and that the State has the duty to ensure the actual guarantee of respect for Human Rights. Article 11 states that "Socialism aims to achieve the development of the country, The socialist revolution defines its main lines of action to accelerate the promotion of Human Beings to a standard of living suited to the conditions of modern life and to enable Algeria to establish a social and economic base free of exploitation and underdevelopment.⁴⁶

Hence, equality has been reaffirmed and that discrimination on the basis of sex, race, color, religion or any other basis is prohibited in order to promote the state of rights and freedoms. Provided that they are not exploited in order to undermine the independence of the nation, and the integrity and unity of the national territory.

As for the aspects of the constitutional amendment, it was included in Chapter 6 under the heading "Foundational Functionality" in articles 191-196, which gave the President of the Republic individually the right to propose amendments to the Constitution in the provisions of this chapter.

In the light of the text of Article 195 of this Constitution, the constitutional founder has stated for the first time that *no draft amendment to the constitution can affect the fundamentals and constants of the Algerian state, and that fundamental freedoms of man and citizen should not be infringed.*

⁴⁶ Ibid

With this text, he raises another question about the way in which the provisions regulating public Rights and freedoms are modified if the constitutional founder wishes to organise them, whether by limiting these rights and freedoms, by negative regulation or by increasing the rights and freedoms of individuals, and thus positively organising them.⁴⁷

The contemplator of the constitutions following this constitution finds that the issue of constitutional amendment also affected the provisions concerning the organisation of public rights and freedoms but did not detract from freedom or a right that was guaranteed under the previous constitutions. Rather, it added rights and freedoms that were not previously stipulated.

2-2-6-Human Rights under the constitutions of multi-party

The difficult economic and social conditions that Algeria experienced in 1988 caused many radical changes in the ideological and political orientation of the state. This was reflected in the Constitution of February 23, 1989, which gave the impression of changing the regime through its contents and its preamble."It contained material dealing with human rights and fundamental freedoms in chapter IV of Part One, and the glory of the struggle of the

⁴⁷ Karem Mohamed,"la question des droits de l'homme au Maghreb",sous la direction de :Gema Martin MUNOZ, Democracia y derechos humanos en el mundo Arabe,1993 ,pp 62-63

Algerian people for their rights and freedoms, not only during the French colonial period.⁴⁸

2-2-6-1-The Constitution of 1989

This constitution is considered to be different from the two previous constitutions. First, it is a constitution, not a program constitution. It differs from the fact that it explicitly recognised several principles, including the principles of democracy, freedom of expression and pluralism. One-party or one-party system, and the system of free economy based on competition instead of the socialist system based on central administrative planning as well as the adoption of the principles of the organisation of the authorities on the basis of the separation and distribution of a balance between them, and provided for the establishment of a constitutional council assigned to him to monitor the constitutionality of laws and regulations and to review the validity of presidential and legislative electoral processes as well as referendums.

Algeria has known several abuses after the adoption of this Constitution, which came with many rights and freedom, It did not spend a year until the state of emergency was declared (after the resignation of the President Chadli

⁴⁸ Ibid

Benjdid) to intervene National People's Army in order to help the population and maintain security.⁴⁹

In reference to the constitutional text on the issue of human rights, the Constitution of 1989 dealt with the provisions of articles 28 to 56 of chapter IV under the title "Rights and freedoms" and retained all the rights and freedoms acquired in the previous constitutions. Race, sex, opinion or any other personal or social condition or circumstance. However, the addition to this Constitution is embodied in the text of article 40, which states: "*The right to establish associations of a political nature is recognised and can not be invoked The right to strike fundamental freedoms and national unity, safety and purity Endodontic and the country's independence and sovereignty of the people.*"⁵⁰

This Constitution has also added provisions that had no effect under the previous two Constitutions. It is about the freedom of the people to choose who they represent in democratically elected councils, regardless of the party affiliation of the representatives. It also recognised the right to strike and recognised it as a constitutional right exercised in accordance with the

⁴⁹ Amnesty International, Fédération Internationale des Ligues Des Droits de l'Homme Human Rights Watch et Reporters sans frontières. "Algérie: le livre noir". Paris, Edition la Découverte, 1997. pp22-25

⁵⁰ Ibid

requirements of the public interest, all of which were constitutional amendments to the organizational aspect of the issue of Rights and Freedom.

As for the provisions governing the constitutional amendment, they were included under section IV under the heading "Constitutional amendment", and were regulated by articles 163 to 167, which gave the President the power to amend.⁵¹

The new article in this Constitution is the text of Article 164, which stipulates that: *"If the Constitutional Council considers a draft constitutional amendment that does not affect the general principles governing the Algerian society and the rights of citizens and their freedom and does not affect the basic balances of power and constitutional institutions, to issue the law containing the constitutional amendment directly, without being submitted to the popular referendum when three quarters of the votes of members of the National Assembly of People."*

The constitutional founder has for the first time adopted a mechanism to preserve the Rights and Freedom, and to determine the extent to which they are respected in any constitutional amendment. This mechanism was

⁵¹ Karem Mohamed.op ;cit pp 87-92

represented by the constitutional judge as a defender of acquired rights against any negative amendment.⁵²

2-2-6-2 -The 1996 Constitution, including the amendments of 2002, 2008 and 2016

As Algeria has adopted many treaties that provide for the protection, guarantee of public freedoms and learnt how to exercise them and regulate them. The Constitution of November 28, 1996 recognizes these gains, and follows the series of reforms it has drawn. It is also the constitution of a law, not a program constitution, and in that it brought principles and foundations that were not known under the constitutions of the First Republic, such as party pluralism, the place of one party. This is to be the liberal economic system based on freedom of industry, trade and free competition is the place of the socialist approach, central planning and administrative guidance, as provided in Article 37, which affirmed the guarantee of free trade and industry within the framework of the law.⁵³

The addition to this Constitution was reflected in the assertion of greater freedom in the economic sphere under a liberal economic system, which was based on the 1989 Constitution, which provided for the right to private property without elaboration. In the area of the right to establish political

⁵² Ibid

⁵³ Benyoub Rachid ,op ,cit p 85

parties, In the Constitution of 1989, which was provided for under the name of political associations, which once again confirms the hypothesis of the positive amendment of rights and freedoms when the Constitution of 1996 in Article 42 states that: *"The right to establish political parties is guaranteed and can not be invoked to infringe freedoms Basic values and plug-ins Seah national identity and national unity, and the security of the national territory and the integrity and independence of the country* "54

2-3-The institutions of Human rights in Algeria

Algeria has two types of human rights institutions: national institutions and non-governmental organisations. The National Consultative Committee for the Promotion and Protection of Human Rights was established by the presidential decree of 25 March 2001 as an independent public institution with financial and administrative independence, which performs advisory functions on Human Rights monitoring, early warning and evaluation, Disseminates the culture of human rights and reviews national legislation in accordance with principles of Human Rights.It participates in the preparation of reports that the State is obliged to submit to the organs of the United Nations under its agreed obligations. The Committee prepares an annual report to the President of the Republic.Some of them are specialised in promoting the rights of certain groups such as the Algerian League for Human Rights (1987) and the Algerian League for the Defense of Human Rights (1985) :

⁵⁴ Shetty, Salil .op.cit .p 77

"Nour Society for the Protection and Promotion of Human Rights" (2000);
including a branch of Amnesty International / Algerian Society (1989).⁵⁵

⁵⁵ Carlier Omar.op.cit. p47

Chapter Three

“no matter how atrocious the crimes and acts of violence perpetrated by the armed groups, it cannot under any circumstances justify extrajudicial executions, the use of torture and disappearances by the security forces.”

Amnesty International

I believe that this statement summarises the position of Amnesty in what has been defined by Human Rights in Algeria since the beginning of the crisis in 1992. This chapter will review all of what Amnesty argued about the violations of detention, torture and execution, and then will discuss the cases of disappearance and the accusations of the Authority as incapable of protecting Human rights in Algeria. Then as a conclusion; the reactions of the Algerian authorities, and the national organisations of Human Rights.

Chapter three: Attitudes of Amnesty International towards the issues of Human Rights in Algeria.

3-1-Violations of Murder, Arbitrary Arrest, Torture and Death Penalty

*"The death of one man is a tragedy, the death of millions is a statistic ..."***STALINE**

3-1-1-Arbitrary arrests

Amnesty International expressed its appreciation for the situation of Human Rights in Algeria, especially torture that was almost eradicated between 1989 and 1991. However, through its annual reports, and press releases, beginning in 1992, it expressed its concern about the increase in forced extra judiciary arrests.

Amnesty said that 15 dissidents, including prisoners of conscience sentenced in 1987 after an unfair trial, had been released in July 1990. President « Chadli » had also issued an amnesty for persons tried by the former State Security Court in 1989, Who were convicted of political misdemeanors committed before the new constitution came into force in February 1989 and those arrested following the events of 1988. The General Directorate for Documentation and Security was dissolved following sharp criticisms of the events of October 1988, however, demonstrations and

political unrest by some Algerians led to the declaration of a state of emergency.⁵⁶ In June 1991, the siege was imposed for four months after the general strike organised by the Islamic Salvation Front (FIS), which turned into mass demonstrations. In July 1991, more than 1,000 administrative people were detained in desert camps*for periods of up to two months without charge or trial.among Human Rights violations registered during the siege of September 1991, Amnesty International reported the forced arrests, the accompanying ill-treatment, as well as deaths resulting from shooting civilians by the security forces. There were also death sentences against at least 14 persons, including 9 in absentia. The Algiers court has also sentenced four people convicted of major public funds transfer, bribery and mismanagement, to death for the first time since 1969. In addition, at least 10 other people have been sentenced to death for murder. The number of those sentenced to death was at least 85 at the end of the year.⁵⁷

3-1-2-Violations of murder

From the beginning of 1992 until 1996, political violence in Algeria, according to Amnesty, claimed the lives of some 50,000 people. Security forces and armed political groups carried out massive and widespread violations of Human Rights. The state of emergency was declared on 9

⁵⁶ Amnesty International, "Rapport Annuel 1992", (Edition Francophone) Londres:Amnesty International Publications,1992,p7

*Some of these camps are in ouargla,reguane,ain salah,ainmegual at about 3000 kilometres to the South.

⁵⁷ Ibid

February 1992, Authorities In the first two months of 1992, at least 70 civilians were killed by security forces, while government opponents killed 30 security forces. The number of people killed in 1994 was 10,000, killed by security forces and armed groups Without mentioning the number of those killed by the security forces, yet security City claims that there is evidence of civilian deaths at the hands of security forces within campaigns to arrest suspected members of the elements of opposition, Amnesty believes that some of the dead were extrajudicially executed.⁵⁸

3-1-3-Torture and Death penalty

In its 1993 report, Amnesty reported at least 19 people sentenced to death for the reason of participating in armed attacks against members of the security forces. At the end of the year, more than 100 people were awaiting execution but no one had been executed.⁵⁹

Amnesty International reported in a special report for 1993 that since the declaration of the state of emergency, more than 12000 people have been arrested, 9000 of whom have been sent to detention camps, and at least 1,000 detained and tried by civilian and military courts. About 3,000 have been

⁵⁸ Amnesdy international,annual report of 1993.london,p 14

⁵⁹ Ibid,p50

placed in preventive detention for participating in armed attacks and carrying out acts of vandalism.⁶⁰

Amnesty believes that emergency laws allow defendants to be tried for serious crimes and crimes before military courts whose procedures lack some of the guarantees available in civil courts. Some people have been prosecuted without a lawyer for their defense, which violates international fair trial laws.

In July 1991, a military court sentenced Abbasi Madani and Ali Belhadj, leaders of the Islamic Salvation Front (FIS), to 12 years in prison after being convicted of crimes against the security of the state and the destruction of the national economy and distributing leaflets inciting the overthrow of the regime.

Amnesty claims that the Algerian authorities violated their international obligations regarding the termination of the torture; claiming that they received several information about the prevalence of this practice in several centres, both in Algiers and elsewhere, in violation of the Algerian Constitution and the international treaties ratified by Algeria. It is spread throughout Algeria, and is practiced by police, gendarmerie and military security personnel. The security forces use these methods to extract

⁶⁰ Amnesty international reportentitled :algeria :tragedy of human rights,london p10

confessions from detainees, and use these confessions as evidence to convict the detainees.

Similar to abuses committed by the security forces, according to Amnesty, armed Islamist groups were primarily targeting security forces. These groups increasingly killed civilians after the extension of the state of emergency in 1993, often after collective and individual threats of death. The hostages were civilians. They targeted writers, intellectuals, some judges and lawyers. Foreigners were also targeted. From September 1993 to 1994, at least 60 people were killed.⁶¹

Amnesty said that the Shabanieh organisation, also called the Free Algerian Youth Organisation, had threatened to kill 20 veiled women as a revenge to any woman who did not wear the veil that could be hurt or killed. Shortly after that threat, on March 29, two girls from the secondary school were killed in front of a bus stop on the outskirts of the capital. This organisation also adopted the abduction of Mohammed Bouslimani, one of the founders of the Islamic-oriented Hamas Party.⁶²

⁶¹ amnesty international, annual report 1995, london ;1995,p49

⁶² Ibid

3-2-Disappearance cases and inability of authorities to protect citizens.

In addition to the violations of murder, detention, discipline and extrajudicial executions, which increased by 1996, Amnesty spoke of another point that was considered a black issue in the Human Rights record in Algeria. The cases of disappearance did not take the attention of the Algerian media, To more than 4,000 by the end of 2000. The tone of Amnesty became even more acute with the increasing violations committed by the militias and the massacres committed by the armed groups, in view of the inability of the Authority to protect citizens.

Amnesty believes that the arrest, detention and extensive powers of security forces operating outside judicial oversight have contributed largely to disappearances. It asserts that it collected information on hundreds of disappeared persons that detained persons are held in secret outside any legal framework for a period of several weeks or even several months where they may be at risk of being tortured, killed or disappeared.⁶³

In 1998, Amnesty announced that the Algerian authorities have been aware of the existence of disappearances and procedures to register their complaints. This is the culmination of their relentless efforts to determine the fate of missing persons. The opening of the Ministry of the Interior in November

⁶³ Amnesty International, "Rapport Annuel 2000", Londres:Amnesty International Publications,2000

1998 was open to offices in each state In addition to welcoming President Bouteflika's pledge during the presidential election campaign to take steps to ensure that the issue is resolved. The image of Algeria in Ain Anmisti was further enhanced by the release of some 2,000 people under a presidential pardon in July 1999.⁶⁴

However, Amnesty expressed concerns about the approach subsequently taken by President Bouteflika and other authorities to invite the families of the disappeared to close the page, despite the considerable amount of evidence in support of the allegations of the families of the disappeared people that their children had been taken by security forces or paramilitaries.

The phenomenon of disappearance has not been heard in the media due to the restrictions imposed on journalists. And what contributed to the spread of the phenomenon, according to Amnesty is the emergence of the "militias," or self-defense groups which were supported by the government, especially in rural areas where lack of Security forces has made the civilian population an easy target for opposition groups. Amnesty believes that the fact that these militias are not subject to any kind of censorship or accountability in operations of counter-terrorism has led to their involvement in numerous deliberate and arbitrary killings.⁶⁵

⁶⁴ amnesty international, truth and justice obscured by the shadow of impunity, london November 2000, p 23

⁶⁵ Ibid

3-3-Attempt of Internationalisation of the issue of Human Rights in Algeria

« Encore une fois je trouve tout à fait normal ,tout a fait bien de soulager des misères, de sauver des malheureux .quand des hommes de qualités consacrent leur vie à cette activité, je les admire malheureusement, la politique ne s'épuise pas dans ce genre d'activités de samaritain.si la politique était uniquement cela comme se serait mieux »

Raymond Aron

After Amnesty failed to convince the authorities to investigate the various violations committed by the security forces and the militias, she resorted to defaming them and calling on the international community to get out of his "ambiguity", and contribute to the removal of Algerian civilians from their ordeal. The conflict in 1992, without the movement of States and international organisations, had no other issue than to be exposed on the international level.⁶⁶

⁶⁶ Amnesty International,"Rapport intitulé :Dégradation des droits de l'homme sous l'état d'urgence". Londres:Secretariat International ,1993 pp 13-23

Amnesty International has repeatedly raised its concerns with the Algerian authorities about the deterioration of the situation of Human Rights in the country, but claims that the Algerian authorities have never responded to the request of the organisation for information and clarification of any cases it has raised with regard to torture or detention Under consideration and beyond the legal limit, death in custody or extrajudicial executions, and did not conduct independent public inquiries into the multiple cases of Human Rights violations that the Organisation drew attention to. No information was provided as to any internal investigations as they had conducted.⁶⁷

For example, Amnesty claims to have written to the Algerian president, "Liamine Zeroual," to present hundreds of alleged cases of extrajudicial executions, torture and disappearances committed by security forces. it also asked him to conduct serious investigations.⁶⁸

With widespread massacres and widespread violence, Amnesty realised that the reports of condemnation were no longer sufficient. The absence of effective action contributed to the creation of an environment in which makers of massacres and other gross violations of Human Rights enjoyed impunity.

⁶⁷ Ibid

⁶⁸ Ibid

The first step taken by Amnesty appeared to be the joint statement issued in cooperation with the International Federation of Human Rights (FIDH), Human Rights Watch (HRW) and Reporters Without Borders (RSF), which invites members of the Commission on Human Rights Of the United Nations to conduct an international investigation to uncover the facts and identify those responsible for massacres and other violations, and put an end to the crisis of Human Rights in Algeria.⁶⁹

The Organisation praised the statements made by UN Secretary-General Kofi Annan and the UN High Commissioner for Refugees (UNHCR), which condemned the slaughter of civilians and other Human Rights violations in Algeria. The research opened a gap to answer the questions and called on the General Secretary of the Organisation of African Unity (OAU) To strengthen cooperation between the United Nations and African institutions

Amnesty International welcomed the recommendation of the UN High Commissioner for Refugees (UNHCR) and the European Parliament that international protection should be provided to Algerian asylum seekers at risk if they were forced to return to their country, and were surprised by the statements of the Algerian authorities condemning UNHCR's position. A large

69 Amnesty international and other NGOs –Algérie : le livre noir, paris 1997. pp 71-75

number of Algerians fleeing their country are in fact in need of international protection.⁷⁰

Amnesty reported that the European Union had issued several resolutions on the situation of Human Rights in Algeria in April 1995, in December 1996 and in September 1997, all of which included the call for political dialogue and condemnation of terrorism. While the 1995 resolution referred to the State's responsibility for Human Rights violations, This reference was omitted from the 1996 and 1997 resolutions. The statement of the European Union in 1997 stated:

*"The European Union expresses its deep concern over the human rights situation in Algeria. We condemn the violence and renew our call for full respect for Human Rights. We are particularly concerned about the recurrence of terrorist attacks, including murder and sexual violence against the civilian population. Algeria to work to further develop the democratic process, and to establish stability and peace in the country "*⁷¹

In October 1997, Amnesty International, together with three other NGOs, FIDH, HRW and RSF, issued a joint appeal calling for a special session of the Commission on Human Rights in Algeria. In November of that year, the organisation insisted on a report entitled "Algeria: Algerians are falling in the

⁷⁰ Ibid

⁷¹ Ibid

spiral of escalating violence, "calling for an international inquiry into the facts about Human Rights violations, the identification of those responsible for these violations and the development of a long-term plan to end the crisis of Human Rights.

On November 18, 1997, Amnesty International called on UN member states to desist from ignoring the Algerian constitution and to initiate genuine action to alleviate the suffering of the Algerian people. Stated that the Organisation had called for an international investigation to determine the facts and to identify those responsible for the violations, stressing that they had spared no effort in urging the Governments of the year to adopt this proposal, and sent letters to the Ministers of Foreign Affairs.⁷²

The UN Human Rights Committee also requested the appointment of a special rapporteur for immediate and field visits and the release of Commission reports and recommendations for future actions.

Although the Algerian government has explicitly refused to cooperate with the Commission. And Despite reports of killings in Algeria, Amnesty said during the six-week Commission session - the EU and the United States and Canada eventually recognised their lack of determination to take any action.⁷³

⁷² Ibid

⁷³ amnesty and other ngo s algerie : le livre noir.op.cit p 62

Amnesty International, Human Rights Watch and Reporters Without Borders and the International Federation for Human Rights organised a meeting on Algeria parallel to the meetings of the Commission To urge governments to take action. However, the appeals made for the dispatch of a team to investigate the case was not seriously considered.

While continuing to prevent the United Nations Special Rapporteur on torture and the Rapporteur of the United Nations Special Rapporteur on extrajudicial and arbitrary executions Without trial. in July 1998 ,the Human Rights Committee of the United Nations was presented .as the first United Nations mechanism. to make concrete recommendations to the Algerian Government measures that it must stop serious violations and prevent Occurrence.⁷⁴

On the other hand, the United Nations Commission on Human Rights has examined a report on Algeria. Relating to its implementation of the International Covenant on Civil and Political Rights Which was supposed to be presented in 1995. The Committee expressed its deep concern about the situation in Algeria. The government called for effective measures to prevent the slaughter and attacks against the civilian population, and conduct investigations to identify the perpetrators and bring them to Trial. It conducts an investigation into the attitudes of the security forces in all cases of

⁷⁴ Ibid

massacres and investigation in all allegations of torture and prosecution of personnel involved in torture.⁷⁵

A delegation from the Algerian governments visited Algeria between 2 and 14 May 2000. This delegation consisted of Roger Clarke, Donatelarovera, Philip LUTHER and Fatih Azzam. During the visit, the delegation met senior officials in the government, Human Rights organisations, victims, lawyers and Human Rights activists, as well as various associations. And it seems that the delegation has received all the necessary facilities to carry out its tasks.⁷⁶

There is a consensus that this decrease in the number of deaths, arbitrary and secret detention, and torture and disappearance is due to the law of civil harmony voted by Parliament in both chambers, and voted by the people by a very overwhelming majority in order to establish security and peace. Amnesty expressed her concern about this law. She believes that the law raises several problems. It states that perpetrators of serious crimes such as murder, rape and use of bombs must be brought to justice. The lack of thorough and independent investigations into the circumstances of these incidents means that it is impossible on the ground to verify whether those who surrendered and benefited from a follow-up exemption under the provisions of this law committed such crimes.⁷⁷

⁷⁵ BenyoubRachid,op,cit ,pp 82-85

⁷⁶ Ibid

⁷⁷ Ibid

3-4-Algerian Reactions to Amnesty International.

3-4-1-Reactions of Algerian authorities

The Algerian authorities have always tended to deny Amnesty's allegations of abuses that the security forces and the self-defense forces may have committed. On the other hand, she did not deny the fact that she was responsible for Islamist groups, but this did not stop the two parties from working together and keeping in touch since the beginning of the conflict in 1992. Recently, to provide all possible means to change the position of this non-governmental organisation on issues of Human Rights in Algeria.⁷⁸

The Algerian authorities tried to improve the Human Rights situation in the country with the establishment of a Ministry of Human Rights managed by Mr. Ali Haroun, who visited the detention camps in August of the same year confirmed that measures will be taken to limit and regulate the use of firearms and to administrate the state of emergency.⁷⁹

On 28 february 1992, in a statement of the President Mohamed Boudiaf to the French newspapers , he admitted that the army could have committed two transgressions.And that there would be no future torture.

⁷⁸ Fidh ;annual report 1997.p7

⁷⁹ amnesty international ;annual report 1996.p60

In March 1992, the Algerian authorities enabled representatives of the National League for Human Rights (LADH), Amnesty International and the International Committee of the Red Cross (ICRC) to visit concentration camps. However, in June 1992 the permit to visit prisons and camps was withdrawn from detention in Algeria by the International Committee of the Red Cross.⁸⁰

After the statement of the Algerian Association for the Defense of Human Rights recorded a widespread torture in 1992 and the Ministry of Interior denied receiving any information on this matter.

However, after successful follow-up against police officers, Mohamed Tolba and the Minister of State for Public Security placed phone numbers at the disposal of any person to complain against torture or ill-treatment.⁸¹

As fate did not allow President Boudiaf to do what he promised, as the death was unleashed on 29th June 1992, and with the increase in terrorist acts targeting both security forces and civilians, Amnesty International called on armed groups to put an end to the killings. On the other hand, amnesty ensured that government should take responsibility for this, and accused the security forces of committing many violations.

⁸⁰ El Moudjahid, "la réponse des autorités algériennes au memorandum d'Amnesty International", Vendredi 10 Novembre 2000

⁸¹ El Moudjahid "les réactions aux dernières déclarations d'Amnesty International", 11 Novembre 2000.

In response to an Amnesty report published in October 1994 entitled "Ending repression and violence," the authorities have completely denied the existence of violations that the organisation has dealt with, and accused them of deliberately lying, interfering in Algeria's internal affairs .

On this basis, Algerian officials have welcomed all foreigners, especially officials of international Human Rights organisations, provided that their criticism is not similar to that of Amnesty International. They accuse them of aggression and of intention of participating in a "conspiracy (Complot de l'extérieur), in view of the fact that the violations by armed Islamic groups are to be considered "opposition groups" rather than "terrorist groups" Along with government forces.⁸²

⁸² Ibid

3-4-2-Reactions of Algerian organisations.

Despite the independence of the National Observatory for Human Rights, but some consider it a Human Rights monitoring mechanism rather than defending it. This is because his reactions did not differ from the reactions of the authorities. Similarly, it seems that all Algerian civil society organisations have taken the same position with regard to Amnesty's claims, except for the Algerian League for the Defense of Human Rights and the National Committee against Forgetfulness and Treason.⁸³

In December 1992, the President of the National Observatory for Human Rights informed Amnesty International that his body was following individual complaints of Human Rights violations. The Centre had sent delegations to some of the detention

Centres and appealed to the relevant committees on behalf of the detainees whose families had contacted them. The policy was to seek compensation for these families.

In response to Amnesty's 1994 report, the President of the National Observatory for Human Rights said that the report is based on information

⁸³ Ibid

from Algerian sources and missions that visited Algeria, which means that there is a bridge between democracy and pluralism.

With regard to Amnesty's reports, which indicated the formation of militias in the fight against terrorist crime, the self-defense groups are not militia because their establishment is based on a legal order resulting from the state of emergency. Thanks to the work of these groups, peace was restored in rural areas in September 1995 and 1996, The lifting of curfews across the entire national territory, the abolition of exceptional judicial councils and the closure of administrative detention centers. Mr. Abdul Razzaq Barra also stressed that the designation of terrorists who are killed and vandalised by armed opposition groups wants Amnesty to have the political coverage of terrorist groups.

With regard to her criticism of the policy of Amnesty and civil harmony, Mr. Barra considered that this organisation seeks to implement its mission in a way that provides basic elements of civil harmony and that this novel tends to prolong the conflict... At the same time he lied to all the accusations that bear the responsibility of kidnapping the security forces.

In addition to the reactions of the various organisations and national societies, the positions of Amnesty aroused the discontent of the national political parties, especially the RND party which strongly condemned and accused her(Amnesty) of betraying the universal principles of Human Rights by

choosing to stand by the terrorist groups, where Amnesty mentioned all the assassinations and massacres the RND party also expressed its dismay at the criticism of patriots whom Amnesty described as militias, and urged them to take up arms to defend their families and their homeland.⁸⁴

⁸⁴ BouakkazSalim, "les Familles des disparus manifestent sous le regard d'Amnesty", le Quotidien d'Oran. 8 Mai 2000.

Summary and Conclusions

In the light of the above, one can say that Amnesty has contributed to uncovering some of the Human Rights issues in Algeria, by raising issues that no one else has dared to address before as a matter. On the other hand, we believe that it deliberately exaggerated its statistics about the violations committed, and the issue was so exaggerated that it was portrayed as a civil war. And as a proof of that, naming things without naming them. For example, the self-defense groups were called "militias"; in contrast, they did not dare to say that Islamist groups were terrorist groups, but said they were armed opposition groups.

What is also to be said is the decline of Amnesty International. While it sought to internationalise the issue of Human Rights in Algeria by insisting on the need to send an international investigation commission, It rejects all the results of the reports of the delegations that visited Algeria, claiming that the latter was deeply influenced by politics and violated the principles of Human Rights.

Its contradiction is also demonstrated by its rejection of the Law of Civil Harmony and the decree of presidential amnesty. Also, its argument are believed to not be strong enough. It sees an attempt by those responsible for the violations.

By virtue of our experience of the plight of Algeria - and not in defense of the Algerian authorities – one can say that the Law of Civil Harmony has been and remains the only way to extinguish the flames of sedition. Amnesty International can not pass the Authority's intentions arbitrarily because this is a popular choice.

General Conclusion

At the end of this study, and through the presentation of the position of Amnesty International and the Algerian reactions and the tendency towards it, many analysts say that Amnesty International as an international NGO is still far from having a strong impact on Algeria. It has spotted focus only on the credibility of the system and its violent reactions forgetting the many questions raised at that time about itself doubtfully sponsoring a thing which should not be taken as a justification to different violations of Human Rights.

President Abdelaziz Bouteflika seems to have a new vision of Human Rights in Algeria. He called on international NGOs to show them that Algeria has nothing to hide and that the issue of Human Rights in Algeria or other countries of the world is in fact the issues of poverty and unemployment, environment and health resulting from underdevelopment.

Some believe that President Bouteflika has used this organisation and others only to put pressure on the military to change what can be changed, and to proceed with the program of economic and political reforms.

Finally, one can only hope that the study has added even a little bit to this thorny, complex and sensitive subject. We hope that it will be the beginning of similar studies that will enrich the subject of international non-governmental organisations.

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Appendices

Appendix 1

Summary Universal Declaration of Human Rights

(from Human Rights Education Associates)

Article 1. Everyone is free and we should all be treated in the same way.

Article 2. Everyone is equal despite differences in skin colour, sex, religion, language for example.

Article 3. Everyone has the right to life and to live in freedom and safety.

Article 4. No one has the right to treat you as a slave nor should you make anyone your slave.

Article 5. No one has the right to hurt you or to torture you.

Article 6. Everyone has the right to be treated equally by the law.

Article 7. The law is the same for everyone, it should be applied in the same way to all.

Article 8. Everyone has the right to ask for legal help when their rights are not respected.

Article 9. No one has the right to imprison you unjustly or expel you from your own country.

Article 10. Everyone has the right to a fair and public trial.

Article 11. Everyone should be considered innocent until guilt is proved.

Article 12. Every one has the right to ask for help if someone tries to harm you, but no-one can enter your home, open your letters or bother you or your family without a good reason.

Article 13. Everyone has the right to travel as they wish.

Article 14. Everyone has the right to go to another country and ask for protection if they are being persecuted or are in danger of being persecuted.

Article 15. Everyone has the right to belong to a country. No one has the right to prevent you from belonging to another country if you wish to.

Article 16. Everyone has the right to marry and have a family.

Article 17. Everyone has the right to own property and possessions.

Article 18. Everyone has the right to practise and observe all aspects of their own religion and change their religion if they want to.

Article 19. Everyone has the right to say what they think and to give and receive information.

Article 20. Everyone has the right to take part in meetings and to join associations in a peaceful way.

Article 21. Everyone has the right to help choose and take part in the government of their country.

Article 22. Everyone has the right to social security and to opportunities to develop their skills.

Article 23. Everyone has the right to work for a fair wage in a safe environment and to join a trade union.

Article 24. Everyone has the right to rest and leisure.

Article 25. Everyone has the right to an adequate standard of living and medical help if they are ill.

Article 26. Everyone has the right to go to school.

Article 27. Everyone has the right to share in their community's cultural life.

Article 28. Everyone must respect the 'social order' that is necessary for all these rights to be available.

Article 29. Everyone must respect the rights of others, the community and public property.

Article 30. No one has the right to take away any of the rights in this declaration.

Appendix 2

The African Human Rights System: An eventful journey from doom and gloom

Background: An era of the unwilling horse(s)?

Notwithstanding scholarly debates on the place of human rights in the pre-colonial societies that make up what is now known as Africa,²³ the modern history of the African regional human rights system only dates back to the post-independence era.²⁴ Torn between what could be described as a need to jealously protect newly gained flag independence along with the accompanying claim to sovereignty on the one hand, and the call by pan-Africanists for African states to integrate into a formidable ‘United States of Africa’ on the other hand, African leaders settled for a middle-ground-styled Organisation of African Unity (OAU). Founded in 1963, the OAU was supposed to allow African political leaders unite to pursue common goals without ceding newly acquired sovereignty or allowing any states to interfere with the domestic goings-on in any other state.²⁵ Accordingly, article 3 of the Charter of the OAU declared the principles of the organisation to include: the sovereign equality of all member

²³See AE El-Obaid and A Appiagyei-Atua, ‘Human Rights in Africa – A New Perspective on Linking the Past to the Present’ (1996) 41 McGill LJ 819, who demonstrate that the scholarship on human rights in Africa can be classified into two broad groups – those who contend that pre-colonial conceptualization of human rights in African societies was communal and those who deny the idea that the concept of human rights predate colonialism.

²⁴Although, Ghana gained independence in 1957, becoming the first African country to do so, most African states gained independence from colonial authorities between 1960 and 1962. Also see M Ssenyonjo, ‘An introduction to the development of the African regional human rights system: 30 years after the adoption of the African Charter on Human and Peoples’ Rights’ in M Ssenyonjo (ed) *The African Human Rights System* () 5.

²⁵ The tension between guarding sovereignty and pursuing the benefits of a united front is expressed in the preamble to the Charter of the OAU, which proclaims the need to unite yet expresses a determination to ‘safeguard and consolidate the hard-won independence as well as the sovereignty and territorial integrity of our states’. See generally F Viljoen, *International Human Rights Law in Africa*, (2012) (2nd ed) Oxford: Oxford University Press, 156 – 159; also see O Ojo and A Sesay, ‘The O.A.U and Human Rights: Prospects for the 1980s and Beyond’ (1986) 8 *Human Rights Quarterly*, pp.89–103.

CE Welch, ‘The African Commission on Human and Peoples’ Rights: A five year report and assessment’, (1992) 14 *Human Rights Quarterly* 43.

states; non-interference in the internal affairs of states; and respect for the sovereignty and territorial integrity of each state and its inalienable right to independent existence. In the struggle to find a balance amidst the tension, the promotion and protection of human rights received scant attention in the OAU scheme of things. Human rights only managed to find a place in the preambular acknowledgement that ‘freedom, equality, justice and dignity are essential objectives ... of the African peoples’ and in the affirmation of adherence to ‘the Charter of the United Nations and the Universal Declaration of Human Rights’ which the leaders were persuaded, provides a ‘solid foundation for peaceful and positive co-operation among states’. Thus, even though optimistic views declare that the OAU ‘laid the foundation for future promotion and protection of human rights,²⁶ it was not until nearly two decades after the founding of the OAU that an African regional human rights catalogue would emerge. The OAU was transformed into the African Union (AU) in 2001 when the Constitutive Act of the AU was adopted.

The African Charter on Human and Peoples’ Rights (African Charter or Charter), the normative framework upon which the African human rights system (AHRS) stands, was adopted in June 1981.²⁷ Legal historians point out that the African Charter is the result of a series of non-state actors’ inspired seminars and meetings that began with the 1961 Law of Lagos Conference.²⁸ According to at least one commentator, the meetings, seminars and conferences that followed the Law of Lagos Conference ‘were essentially led by African jurists, non-governmental organisations (NGOs), the United Nations (UN) and the OAU Secretary General’.²⁹ Apparently, based on their perceived or actual attachment to the safeguard of their respective sovereignties, Africa’s post-independence

²⁶Ssenyonjo, *supra* n 2 above, 6.

²⁷O.A.U. Doc. CAB/LEG/67/3/Rev. 5, reprinted in Report of the Secretary General on the Draft African Charter on Human and Peoples’ Rights, O.A.U. Doc. CM/1149 (XXXVII) (Annex II) (1981); 21 LL.M. 58 (1982). The African Charter was adopted on 27 June 1981 and entered into force on 21 October 1986.

²⁸See UO Umuzoruike, ‘The African Charter on Human and Peoples’ Rights’ (1983) 77(4) *American Journal of International Law*, 902, at 903; KO Kufuor, *The African Human Rights System: Origin and Evolution*, (2010) Palgrave Macmillan, p 2.

²⁹Ssenyonjo, *supra* n 2 above, 5.

political leaders were understood to have either been opposed to, or at least extremely reluctant to entertain the idea of adopting a regional human rights instrument. Thus, notwithstanding the fact that the actual process for the making and adoption of the Charter under the platform of the OAU was based on a motion by former President LS Senghor of Senegal, there is near consensus that the AHRS has developed in spite of, rather than because of the good intentions of Africa's post-independence political leaders.³⁰ Seeking to understand 'why members of the OAU, a collective with a dismal human rights record and also so jealous of their state sovereignty, decide to draft and adopt the African Charter and so lay the grounds for the development of the African human rights system'³¹, scholars have offered a number of reasons that may solve the puzzle. According to Ssenyonjo, factors that drove Africa's political leaders to adopt the African Charter include the emphasis that UN gave to the need for regional mechanisms to address regional human rights issues in Africa, a growing global awareness of, and focus on human rights in the 1970s, the fact that former President Carter of the United States placed emphasis on human rights in US international relations and a number of serious human rights abuses in African States such as the Central African Empire, Equatorial Guinea and Uganda.³² To these, Kufuor has added the anxiety of Africa's political leaders to address a raging crisis of legitimacy and the 'profound influence' of NGOs which resulted in a compromise between political leaders and 'an emerging class of NGO activists committed to human rights'.³³ In other words, like the proverbial horse that can be dragged to the stream but may not successfully be forced to drink from the stream, Africa's post-independence political leaders were late and unwilling converts to the idea of an African regional human rights system.

³⁰Generally see F Viljoen, *International Human Rights Law in Africa*, pp 156 – 159;

³¹Kufuor, *supra* n 5, p 12

³²Ssenyonjo, *supra* n 2 above, 6.

³³Kufuor, *supra* n 5, pp 31 – 33.

A consequence of the foregoing narrative is that the AHRS along with its normative and supervisory frameworks was widely considered to be doomed from the onset. For instance, some early commentators held the view that ‘the Charter is evidently too state-centric. There is too much emphasis placed on the role of the state that it is questionable whether individual rights will be adequately protected now or in the future under the present Charter’.³⁴ Others were concerned about the inclusion of duties of the individual in the Charter, leading to the observation that ‘It is not clear whether a state would be entitled to refuse to respect the rights of certain individuals who have failed to carry out any of the individual rights owed to the national community’.³⁵ In fact, for some, it was ‘doubtful whether the Charter will ever come into force in the 1980s given the apparent lack of enthusiasm on the part of the vast majority of African states in ratifying the document’.³⁶ Representative of the early concerns, these commentators were equally worried about the enforcement potential of the Charter and the AHRS generally. Against the expectation of some stakeholders, the Charter only provided for an African Commission on Human and Peoples’ Rights (African Commission or Commission) – a quasi-judicial supervisory body with a mandate to promote and protect human rights and interpret the Charter. In the words of Umozuruike, ‘an avalanche of criticism greeted the Commission from its inception’.³⁷ Regarding enforcement as ‘one of the basic problems’ of the African Charter, Amoah questioned ‘How, do the ordinary Africans whose rights have been enshrined in the Charter realise them in practice?’³⁸ In relation to the Commission’s protective mandate, some took the view that ‘the provisions made for petition by non-state actors, especially individuals, are to say the least, inadequate. Such petitions will be entertained only if it (sic) secures a

³⁴Ojo and Sessay, n 3 above, 97.

³⁵See Philip Amoah, ‘The African Charter on Human and Peoples’ Rights – An effective weapon for human rights?’ (1992) 4 African Journal of International and Comparative Law, 226.

³⁶Ojo and Sessay, n 3 above, 101.

³⁷UO Umozuruike, ‘The African Charter on Human and Peoples Rights: Suggestions for more effectiveness’ (2007) 13 Annual Survey of International and Comparative Law, 179, at 180.

³⁸Amoah, n 13 above, 227.

simple majority of the eleven men commission. ... Given the fact that members of the African Commission are in the final analysis nominees of their national governments, this requirement could easily open them to undue political pressure or influence'.³⁹One commentator is quoted to have' regarded the Commission as "a façade, a yoke that African leaders have put around our necks" which deserves to be cast away'.⁴⁰ In summary, while there were optimistic views regarding the prospects of the AHRS generally and the Charter specifically, a common view was that Africa's political leaders who had cajoled, forced and hounded into accepting an African regional human rights system had bobby-trapped the system and set it up for failure.

The Current State of the System: Not yet Uhuru but a long way from doom and gloom

To be fair, early sceptics had good reason to be sceptical about the prospects of the AHRS. Viewed from a comparative lens, particularly one that was based on a reading of the socio-political realities that prevailed in the post-independence era, the fears expressed were definitely not unfounded. In fact, three decades after the entry into force of the African Charter, human rights issues abound in nearly all African states. However, bearing in mind that no human rights system has successfully eliminated cases of human rights violation within every state in its system, it is important to evaluate the current state of the AHRS as it has evolved over the years. The evolution of the AHRS will be considered in five broad subheadings that capture ways in which African states, the Commission (and to a limited extent, the African Court on Human and Peoples' Rights (African Court) and national civil societies have contributed to the advancement of the system.

The reinforcing role of African states and Africa's political leaders

³⁹Ojo and Sessay, n 3 above, 97.

⁴⁰MakauwaMutua, quoted by Umozuruike, n 15 above, 181.

Despite the initial criticism that Africa's political leaders were unwilling participants in the regional human rights protection project, these actors have contributed in no small way, to reinforcing the place of human rights protection in the continental scheme of things. This has occurred in two broad ways: (i) reaffirmation of commitment to the African Charter through universal ratification and the expansion of the AHRS by adoption of new instruments and establishment of more invasive supervisory/implementation mechanisms and; (ii) reproduction of Charter obligations (and reinforcement of individual rights) in other regional and subregional contexts.

Notwithstanding the slow pace of ratification in the early days of the African Charter, enough states ratified it for it to come into effect within five years of its adoption. However, even more commendable is the fact that as at May 2016, all fifty four (54) member states of the AU have voluntarily ratified or acceded to the African Charter.⁴¹ With such universal ratification of the Charter, citizens of all AU member states potentially enjoy the protection of guaranteed by the Charter and as supervised by the African Commission. In addition, either on their own initiative or at the prompting of other stakeholders, African states under the leadership of the continent's political leaders have managed to make and adopt more dedicated region-specific human rights instruments. In this regard, human rights instruments adopted on the auspices of the AU include:

Apart from adopting new instruments, Africa's current crop of political leaders have equally established additional (and often more invasive) supervisory mechanisms for the enforcement of the African Charter and the host of newly adopted other human rights instruments. Prominently, the African Court on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child (African Children Committee) stand out as dedicated human rights supervisory bodies established and empowered by

⁴¹South Sudan became the 54th state party to the African Charter on 19 May 2016 when it deposited the instrument of accession even though South Sudan had acceded on 23 Oct 2013. See the ratification table at

African states to monitor and recommend and/or trigger sanctions for non-implementation of rights. These institutions which, together with the originally established African Commission, are funded by the states through the AU, extend the enforcement regime of the AHRS. Although, these new instruments have not yet achieved universal ratification, states have responded fairly in terms of ratification and accession. For instance, the African Charter on the Rights and Welfare of Children in Africa (the African Children Charter) attracted forty four (44) signatures but has been ratified by forty seven (47) states. For its part, the Protocol to the African Charter on Human and Peoples' Right on the Right of Women in African (African Women Protocol) has been signed by 49 African states but has only been ratified by thirty seven (37) states. In a similar manner, the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (African Court Protocol) has been signed by fifty two (52) of the fifty four (54) member states of the AU. However, only thirty (30) states have ratified the African Court Protocol out of which eight (8) have made the declaration required for the African Court to be directly accessible to individuals and NGOs.⁴² In essence, Africa's political leaders have begun to show something akin to enthusiasm towards the AHRS.

Further, African states have taken the Charter and its norms beyond any institutional boundaries that its founding fathers may have dared to dream. Beginning with express and robust extension into the Constitutive Act – a paradigm shift from the scant mention of human rights in the Charter of the OAU, contemporary political leaders in Africa have either directed or at least, accepted and endorsed the transmutation of the Charter and its normative content into other AU initiatives such as New Partnership of Africa's Development (NEPAD)'s African Peer Review Mechanism (APRM). The

⁴²Generally see the ratification status of each of these instruments at www...

African Charter has equally been made relevant in the context of the African Economic Community, creating the path for further adoption of the Charter as a common African standard⁴³ in the regional economic communities (RECs) in Africa. Currently, at least two of Africa's RECs have explicitly (in the case of the Economic Community of West African States (ECOWAS) or implicitly (in the case of the East African Community (EAC) developed budding human rights regimes partly hinged on the African Charter.⁴⁴ Significantly, by allowing direct or indirect use of the African Charter as the catalogue of choice in human rights and rights-related claims before the subregional courts, African states in East and West Africa have to an extent, neutralised the limiting effect of the requirement for a specific declaration for individual and NGO access under the Protocol establishing the African Court.⁴⁵ Further, RECs have also become platforms for encouraging states to ratify continental human rights instruments.⁴⁶

Overcoming Charter obstacles for rights protection: The strides of the African Commission

Although the popular perception has been that 'the Commission has clearly been designed to accomplish very little',⁴⁷ there are at least two clear ways in which the Commission has advanced the course of the AHRS. Recalling that the Charter has been criticised for its vagueness and state-centeredness, evidenced by the clawback clauses, the inclusion of duties and lack of textual clarity on the individual complaints mechanism, one way in which the Commission has advanced the system has been in the brave adoption of an expansive and purposive approach to interpretation of the Charter. Taking advantage of articles 60 and 61 of the Charter which allows it to draw inspiration from far and near, the Commission has, in appropriate cases, resorted to progressive interpretations

⁴³See Viljoen

⁴⁴Generally see ST Ebobrah, 'Human rights realization in the

⁴⁵See art 34 (6) of the African Court Protocol.

⁴⁶For instance, of the 8 states that have made the art 34(6) declaration, 5 are West African states compulsorily subject to the human rights jurisdiction of the ECOWAS Court and generally encouraged on the ECOWAS platform to ratify regional and global human rights instruments.

⁴⁷See Viljoen, n above, 293

that favour protection of alleged victims of human rights violation.⁴⁸ In so doing, the Commission pushes the boundaries of the Charter, tilting towards quasi-judicial lawmaking that avoids the perils of intergovernmental treaty making. In this regard, for instance the Commission invoked the principle of implied rights in the matter of SERAC v Nigeria to establish a right to food.⁴⁹ The Commission has also applied its function of interpretation to whittle down what would have been the severely limiting effect of clawback clauses in the Charter.⁵⁰ Finally, on this point, as some commentators have pointed out, the Commission's individual communications procedure has evolved out of the Commission's creative and bold interpretation of 'other communications' as individual communications.⁵¹ By adopting such progressive and purposive interpretative approach, the Commission has gradually allayed the early fears held on the Charter, albeit with acquiescence of the political leaders who put up no active resistance to the actions of the Commission.

A second way in which the Commission has advanced the AHRS is by its resort to the use of special mechanisms for expanding the enforcement and supervisory work beyond what is possible in the context of an eleven man part time body that sits for only a limited period of time in the year.⁵² The African Commission currently has fourteen special mechanisms comprising of Special Rapporteurs, Committees and Working Groups. The operative special mechanisms include the Special Rapporteur on Prisons and Conditions of Detention; Special Rapporteur on Rights of Women in Africa; Special Rapporteur on Freedom of Expression and Access to Information; Special Rapporteur on Human Rights Defenders; Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons; Committee for the Prevention of Torture in Africa; Committee on the Protection of the Rights of People Living with HIV

⁴⁸For instance, see *Legal Foundation Resources v Zambia* (2001) AHRLR 84.

⁴⁹Some commentators decry the resort to implied rights as superfluous.

⁵⁰See for instance, *Media Rights Agenda and others v Nigeria* (2000) AHRLR 2000.

⁵¹Umuzoruike

⁵²

and Those Vulnerable to and Affected by HIV; the Working Group on Indigenous Population and Communities in Africa; Working Group on Economic, Social and Cultural Rights; Working Group on Specific Issues Related to the Work of the African Commission; Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa; Working Group on Extractive Industries, Environment and Human Rights Violations; and the Working Group on Communications.

Applying the special mechanisms in both its protective and promotional mandates, the African Commission has further developed and elaborated the African Charter through the adoption of supplementary instruments such as Declarations, General Comments, Guidelines, Model Laws and Resolutions.⁵³ Significantly, the Commission has been able to undertake these initiatives with little or no resistance from the State Parties to the Charter, thereby enhancing dynamism of the Charter with little or no fanfare.

Creative use and application of the Charter and Charter-based resources by ‘activist forces’.

A third category of (generally unnoticed) stakeholder that has advanced the reach of the African Charter and the AHRS in general is what Prof Okafor has described as ‘activist forces’.⁵⁴ While the supervisory mechanisms of the AHRS formally target the state as an aggregate, higher and lower level officials with critical decision-making powers at the national level remain under the radar of the mechanisms and commonly have no direct or indirect interactions with the Charter and its procedures. As Okafor eminently points out, although this does not happen frequently enough, critical ‘activist forces’ at the national level including lawyers and judges have begun to creatively bring the Charter and its

⁵³For instance, the Robben Island Guidelines and the Model HIV Law are products of these special mechanisms.

⁵⁴See Okafor

consequences indirectly into some national legal systems even without formal domestication (translation) by government actors. Invoking Charter provisions and the jurisprudence of the African Commission, the African Court and to a limited extent, the African Committee of Experts directly before national institutions, these ‘activist forces’ have also contributed to expanding the reach of the Charter and the system.

Milestones and achievements of the African human rights system

Despite the challenges identified and fears expressed at the inception of the AHRS, a number of milestones and significant achievements have been recorded by the system as a whole. In general terms, the human rights discourse has been centralised in the agenda of the AU, forcing a move from the periphery such that human rights issues are directly and indirectly addressed at the highest level of political decision making on the continent. Relatedly, the evolution of the AHRS has forced a paradigm shift within continental structures causing an abandonment of fierce attachment to the principles of sovereignty and non-interference in the domestic affairs of other states.⁵⁵ The AHRS has also witnessed the subtle expansion of both its normative and supervisory framework, including the commandeering of non-human rights organs and institutions of the AU and RECs for the use of the AHRS. Further, from a regime of isolation of civil society actors from the core procedures of the system, the AHRS now witnesses an explosion of NGO and CSO participation in all aspects of the work of its main mechanisms.

In more specific terms, the African Commission has successfully consolidated and strengthened its protective and promotional processes and procedures, particularly the individual complaints mechanism. With the operationalisation of the African Court in 2006, that Court has also begun to entrench itself as a formidable institution for human rights protection notwithstanding the fact that

⁵⁵Generally see the fundamental principles in the Constitutive Act of the AU, clearly showing a major shift away from the OAU era.

only eight (8) states currently allow for individual and NGO access to the court. As at June 2016, 101 cases have been filed at the Court, with 27 cases finalised and 4 cases transferred to the African Commission while 70 cases still pend. The Committee of Expert has also begun to improve its procedures, addressing communications while ironing out its position in the overall AHRS.

Despite these achievements, it has to be noted that the system continues to experience a slow pace of ratification, domestication and implementation of instruments and decisions of the AU organs and institutions exercising human rights mandates. There is also a perception that capacity and resources allocated by states do not match the numerous instruments adopted by the states. Most significantly, it would be observed that whereas Africa's political leaders appear to have turned a corner in terms of their formalistic support for the system, there is no sign of enthusiasm in implementing treaty obligations and the decisions of supervisory mechanisms at the national level. Critically, the involvement of the wider civil society in the functioning of the AHRS remains unclear and unexplored, denying the system of a crucial ally in its bid to consolidate the gains of the last three decades.

Cooperation and coordination with the OHCHR

In the evolution of the African regional human rights system, the UN generally, and the Office of the High Commissioner for Human Rights specifically, have played significant roles in support of the budding system. As already shown, scholars agree that the UN's encouragement of regional systems for human rights was a positive force for the adoption of the African Charter and the ultimate emergence of the AHRS. In more specific terms, the AHRS, particularly the African Commission, has benefited from close interactions and cooperation with the OHCHR and its procedures and mechanisms. All these were formalised in January 2012 with the adoption of a roadmap for cooperation between Special

Procedures Mandate Holders of the UN Human Rights Council and the African Commission.⁵⁶ In furtherance of this roadmap, a joint working group has been established and there has been appointment of focal points at the Secretariat of the African Commission and the Office of the UN High Commissioner for Human Rights. Officials and mandate holders in each system has participated in the activities of the other just as there has been collaboration resulting in joint activities, joint meetings and the conduct of joint visits to selected African states. There has also been fairly regular sharing of information between the two systems. Very importantly, the institutions have complemented each other in the follow up of recommendations. On the part of the African Court and the Committee of Experts, there is no evidence of the existence of an equivalently robust working relationship.

Going forward: How can the OHCHR support the AHRS?

Critical questions remain whether and how much access to regional bodies has improved since the adoption of the numerous human rights treaties. Whether and how a culture of respect for human rights can be enthroned on the African continent. In the meantime, consider who really owns and who takes ownership of the African human rights system? How does the system deal with unwilling and recalcitrant states? How can cooperation between the systems help to enhance effectiveness of the AHRS and promote its legitimacy?

⁵⁶See the Outcome of the Dialogue between the Special Procedures Mandate Holders of the UN Human Rights Council and the African Commission on Human and Peoples Rights, meeting held in Addis Ababa, Ethiopia from 17 – 18 Jan 2012.

Appendix 4

The Role of NGOs in Girl's Education: Advocating, Complementing and Partnering

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It is widely acknowledged that the empowerment of women must begin with the empowerment of girls through education, and that financing of gender equity in education is a critical starting point. Regrettably, while we all acknowledge this, we don't always finance it like we believe it. ,

Girls still remain less likely to enroll and graduate than boys and women still account for two-thirds of adults without literacy skills. There are many reasons; ranging from poverty to patriarchy, but included is the lack of prioritization and financing by government, donors and NGOs. This has to change!

As the representative for the Non-Governmental Organizations (NGOs), World Vision International would like to discuss the responsibility of the State to finance girls' education and the unique role that NGOs can play in helping governments through advocating, partnering and complementing the work of the State in order ensure that all children enjoy their right to a quality gender-equitable education

I want to begin by reminding us that the primarily responsibility for financing education for girls' is that of the State. Governments are morally, socially and legally required to ensure the entire population enjoys their human rights-including the right to education. These responsibilities are reinforced by most national constitutions and laws and various international conventions, which are ratified by states and binding to all future administrations.

Yet despite these rights and obligations of governments, and all the promises past, women, and girls, as well as boys, in all parts of the world, are still denied the right to a quality education .

Our education goals have been missed in large part due to a lack of dedicated funding. The Special Rapporteur on the Right to Education stated in 2006 “Rhetoric in favour of girls’ rights has not prevented education from continuing to be one of the lowest budget priorities and one of the least favoured areas in public policy.” (Economic, Social and Cultural Rights; Girls’ right to education. Report submitted by the Special Rapporteur on the right to education, Mr. V. Munoz Villalobos, E/CN.4/2006/45)

Governments need to re-examine macroeconomics policies and start viewing education not as a service or expenditure, but as a human right, and seriously fund quality education.

We should also keep in mind that financing education for girls requires redress for all the reasons girls are not in school; only some of which are directly finance related.

Often prohibitive, indirect costs prevent girls from attending school, even where education is supposed to be free. Such costs may include: school uniforms, transportation, textbooks, sports days and clothing, Other indirect costs may include the reliance of parents on their daughters to help with family chores, contribute to the household income, or childcare in order for parents to work.

States and NGOs can play a role in eliminate these fees or underwriting their costs through efforts like scholarships, bicycles to get to class, or creative micro-enterprise development projects that, for instance, might produce school uniforms at a low cost while providing income to parents.

States must go beyond measuring only the financial resources that are allocated towards securing children’s rights, to also include non-financial resources such as technical assistance, human resources and political will.

While the responsibility of government is to ensure all children are included in quality education systems-no matter what their gender, ability, identity, context of emergency, etc. NGOs can and do help them achieve this, through the following ways:

As NGOs we use can advocacy to influence the financing for education, by looking at the amount of money allocated as well as how it is spent.

NGOs can collectively advocate for relief of debt and loan restrictions that limit education financing.

NGOs can advocate:

- For donor governments to allocate their fair percentage of Overseas Development Aid to education-prioritizing girls

- For developing nations to appropriately fund education with at least 6% of their Gross National Product.

In this way NGOs can help to hold governments and donors accountable to achieving their promises and obligations. NGOs can play a role as stakeholders in gender responsive budget initiatives, ensuring girls and women's needs and rights are addressed and they are included and involved in decision-making.

Because NGOs work with children, parents and communities often in a very personal way, they have the unique chance to map who is not in school and influence and empower communities to take on many of the factors that keep girls from school.

At the local, grassroots level, NGO-led advocacy can play a very significant role in challenging harmful traditional practices and attitudes that keep girls from completing their education.

However, we must keep in mind that the role of the NGO is not to take the responsibility from the state. If NGOs step between citizens and government in a primarily service delivery role, it can lead to the erosion of accountability and the contract between elected governments and their citizens. So instead, strengthening the relationship between citizens and their governments is crucial for long-term, sustainable solutions that empower communities. The primary role of most NGOs should be to empower communities, including girls, to know their rights to education and work with their government at various levels to ensure all people are educated.

NGOs can also partner with States through sharing work, and in-kind, and human resources. One way NGOs can partner with governments is through research collection. Working with communities and universities we can collect sub-national data on girls to best focus resources and estimate the necessary costing to include all children in gender-equitable education. Often NGOs work

closely with communities of marginalized and left-out children, and thus they can serve as critical partners for inclusion.

Working together we have greater power. The example of UNGEI demonstrates the strength of partnerships between NGOs, governments and intergovernmental institutions.

Another example of partnership comes from World Vision Mexico where we have partnered with the Mexican national government to strengthen education quality through offering supplementary teacher training and resource development. Over 14,500 students have benefited through developing critical thinking skills, self-esteem, math, language, and sciences skills and awareness of gender equality and human rights.

In some indigenous community of Mexico, WV found girls did not have the same critical thinking skills as boys because their traditions about gender appropriate behavior, kept them from exercising, playing outdoors and moving like boys. Critical thinking and speaking requires interaction between both sides of the brain and moving the body helps develop those pathways. But with the introduction of these training and exercises, the girls' critical thinking skills were developed and school performance grew significantly.

Partnering with the Mexican government has ensured more girls in the mainstream school system are learning quality outcomes and all children are learning about gender equity.

Patricia Hartasanchez, who designed and leads the program says, "We are giving girls the opportunity to know the potential they have. They get to move their body, have some fun, enjoy themselves, and see the potential they have inside."

NGOs can also complement the work of the government through redressing many of the less direct financial costs and social barriers that keep girls from school. As an example, in the rural district of Kigoma, Tanzania, thanks to the Virginia Gildersleeve International Fund, primary school enrollment of girls is growing after the Fund provided the first two-toilet facilities for the village's primary school

Finally, NGOs have a role to play here at the CSW reminding governments that empowerment of women and gender equity has to be built on the foundation of quality education for girls. The only mention of girls in the entire first draft CSW agreed conclusions, is in regard to the multiplier effect investing in girls has on productivity, efficiency and sustained economic growth (12 February 2008, Draft presented by the Bureau of the Commission on the Status of Women). But girls are not just a piece of an economic formula. They are rights bearing, beautiful, precious lives, that demand our care-and our resources.

NGOs should never replace the role of States as duty bearers responsible for financing girls' education, but we also need to see ourselves as partners with the State and communities. As partners, we all must prioritize funding for education that creates inclusive, quality, safe and gender equitable learning environments that ensure girls and boys flourish and become agents of gender equality.