

The Guarantees Adopted for the Protection of Human Rights

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Abstract

This study adopts an examination of non-judicial guarantees for the protection of human rights through reports and diplomatic protection, as well as the examination of judicial protection of human rights at the national and international levels. In preparing the research, the researchers relied on the descriptive approach in determining the description and nature of the protection required the analytical approach in analyzing the elements and pillars of the research, and the historical approach by addressing the historical evolution of the issue of human rights protection. The research has produced a series of results, the most important of which are: Institutional building on human rights at both the United Nations and treaty levels, although it seems somewhat tangible, does not permit political censorship and these organs, despite their diversity, lack judicial character. Several recommendations have been proposed, including the need to operationalize the International Criminal Court's judicial role in the protection of human rights in light of the significant violations of human rights now being committed.

Keywords: Human rights, Guarantees adopted, Permanent International, Criminal Court.

Introduction

General international law is described as the law of relations between States. For a long time, the individual has held a secondary and marginal position in his or her statehood, since human rights and their guarantee are strictly internal to the relationship between a citizen and his or her State. International law interventions have been limited to the protection of the status of aliens, speaking of a diplomatic protection gown that differs in scope depending on existing international circumstances (B 'Siouni, 2001).

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International human rights law has never emerged with the impact of war and the growth of international institutions, and it has been divided into two main types: The former (humanitarian law or the law of war), whose principles have been established in Geneva since the mid-nineteenth century and The Hague since the beginning of the twentieth century, establishes rules that create obligations for States in favor of nationals of other States (Fouda, 1991).

Section II covers international human rights law strict sense and is based on States' inclusion of obligations towards their nationals, sometimes even giving the individual the right to protect his or her rights against the authority of his or her State in the event of a violation of that law (Majid, 2001).

The fate of the human rights movement and the real possibilities for its application everywhere in the world, Not only depends on the implementation of legal rules and judicial, executive, and legislative protection mechanisms. Above all, it depends on how much people believe in it and some want to lead the way towards empowering these rights to be enjoyed by all without distinction, However, this does not diminish the need and imperative for the overall implementation of legal norms and judicial, political and practical protection mechanisms, whether at the national, regional or global level (Aleissa et al., 2023; AL-Hammouri et al., 2023a; Al-Billeh, 2023a).

The importance of the research is the multiplicity of aspects of United Nations human rights care and the objectives it seeks to achieve to provide the greatest possible protection of the human person and to ensure the enjoyment of his rights and freedoms, as well as the great responsibilities and important role of the United Nations in the care of human rights in the international community, all of which have given legal significance to the research topic (Addo, 2010; Al-Hammouri & Al-Billeh, 2023; Al-Billeh, 2023b).

The research problem is focused on the study of the guarantees adopted for the protection of human rights internationally, and what international instruments and conventions may be adopted to achieve this established protection.

Non-Judicial Guarantees for the Protection of Human Rights

Non-judicial guarantees are the pre-existing judicial guarantees However, they have been and continue to be associated with political considerations, and the effectiveness of these safeguards depends on the will of the States concerned with human rights ", which often leads to the risk of human rights suffering some kind of hypocrisy by exploiting them as a pretext for achieving other less noble goals, Non-judicial guarantees cover all actions taken in the field of human rights that do not qualify as judicial action and that would promote or protect human rights, many of which cannot be restricted. Reports, studies, resort to diplomatic

protection, the establishment of the Special Rapporteur's regime office, and sending international supervisors (De Schutter et al., 2012; Al-Billeh & Al-Hammouri, 2023).

The Human Rights Committee has emphasized in the International Covenants that the fundamental principle governing the examination of government reports is to assist States parties in promoting and respecting the human rights contained in the Covenant. and a constructive spirit, bearing in mind the need for friendly relations between States Members of the United Nations as well as progress in the enjoyment of human rights in States parties to the Covenant (Donders, 2010; Al-Billeh & Abu Issa, 2023a; AL-KHALAILEH et al., 2023; Al-Khawajah et al., 2023).

Identification of these guarantees is necessary, as the expression is not only the inclusion in national and international constitutions and covenants of many human rights provisions, but also the extent to which the guarantees are established to ensure their implementation and the State's authority to restrict these guarantees are available, and therefore rights with no real or serious safeguards are virtually null and void (Fredman, 2001; Al-Billeh, 2022a; AL-Hammouri et al., 2023b).

The talk of international guarantees in general of human rights is a mere international affirmation of those general principles established in all legal and political systems. as the principle of separation of powers, the principle of the independence of the judiciary and the principle of equality of adversaries, Other similar principles, however, cannot be overlooked by the role played by different oversight bodies and mechanisms at both the national and international levels, such as parliamentary mechanisms, the media, and human rights organizations, in providing legal guarantees to protect human rights and reduce their violation (Hajjar, 1997; Al-Billeh, 2022b; AL-Hammouri et al., 2023c; Al-Billeh, 2023c; Al-Billeh & Abu Issa, 2022).

Most of the international human rights conventions promulgated by the United Nations provide for oversight of their application as well as monitoring of their implementation through reports sent by each State. The Committee examines these reports to determine whether the State has fulfilled its obligations (Lwoff, 2009; Al-Billeh, 2022c; Khashashneh et al., 2023; Al-Billeh & Abu Issa, 2023b).

The method of filing and examining reports with a view to monitoring and ensuring States' compliance with their international obligations is one of the mechanisms already introduced by the United Nations and adopted the labor conventions adopted by the Diplomatic Conference of Bern in 1906, which required each State party to transmit to other States parties its domestic legislation on night and women's work, Reports on the status of applicable laws have also

been followed since the establishment of the International Labor Organization (ILO) in 1919.

The United Nations reporting system has been in operation since 1947 through attempts under Article 64 of the Charter.

In this requirement, we will address the general rules governing government reports and thereafter reports in the Commission on Human Rights.

General Rules of Government Reports

States' obligation to report on legislative and administrative actions and on their human rights-related conduct and other actions taken to ensure the implementation and application of the rights contained in human rights conventions and, if the reports are examined by experts The results of the examination are finally presented to a political organ comprising government representatives, and the final plan of work of the Human Rights Committee is adopted by the General Assembly of the United Nations. (p.45), the Committee against Racial Discrimination (P.9.2), the Committee against All Forms of Discrimination against Women (p.21), and the Committee against Torture (p.24), the Economic and Social Council constitutes the final procedure for the work of the Committee on Economic, Social and Cultural Rights (A16/2), and the role of these political organs is limited to the formulation of general observations and recommendations without exceeding a review of these substantive organs' work.

Types of Reports

International human rights conventions typically include three types of reports:

Preliminary Reports

It represents the beginning of communication between the State and the body responsible for examining the reports and is the primary choice of the extent of the State's obligation. It also allows for a general picture and legal framework of the human rights situation in the State concerned s efforts to implement the provisions of the International Agreement, and the content of these reports has not been specified.

Periodic Reports

Their content is predetermined. Periodic reports allow for comparison and assessment of the evolution of the situation within the State. These reports allow the State's periodic machinery to identify the related concluding observations and to identify the actions or steps taken by the State in particular.

Additional Reports or Supplementary Information Reports

Such reports are submitted at the request of the international machinery and may be submitted voluntarily by States, always aimed at providing the competent organ with information not contained in an international report, or information on an emergency in the State concerned.

Article 40 of the International Covenant on Civil and Political Rights sets the following timeline for submission of reports: a) within one year of the Covenant's entry into force for the States parties concerned. b) At the Committee's request.

Because of the Covenant's failure and its rules of procedure to set a specific date for the periodicity of reports, the Committee, at its meeting No. 303 of 12 July 1981, decided to oblige States parties that had submitted initial reports or associated supplementary information before the end of its thirteenth session to submit a periodic report every five years from the date of submission of the initial report or additional information.

The Committee may also, at any time, request additional reports or information under the article. (40) of the Covenant and the submission of reports on each of the three rights contained in the Covenant every two years, ensuring that a comprehensive vision of the Covenant's provisions is presented every six years. The Economic and Social Council decided, in 1985, to extend the periodicity to a total of nine years, by a report on each category every three years.

Government Reports to the Commission on Human Rights

The Committee's competence under Article 40 to examine government reports differs from its competence under Article 41 of the Covenant to receive and examine individual complaints. The second jurisdiction involves the functions of investigation and conciliation. The competence contained in Article 40 of the Covenant does not require the Committee to have a court and does not make it a jurisdiction with the power to make judgments against Member States.

However, by examining reports, we should recognize all the powers associated with this task. s competence to exchange information and encourage cooperation between States, maintaining dialogue among States, as the nature of the examination involves results, evaluation, and assessment. This is not an interference in the State's internal affairs because the intervention is made up of an organ composed of representatives of Governments. The Committee is composed of experts. The intervention is legitimate.

The Committee begins its examination functions after receiving reports from the Secretary-General and per the Committee's order of arrival.

The Committee holds three meetings per year of three weeks' duration in (New York or Geneva) These sessions are devoted to examining individual reports and

communications of the report is examined through a dialogue between the Committee and the representative of the Government of the State, the format of the dialogue varies according to the report. In initial reports, each member of the Committee has the right to ask questions relating to all reports. For periodic reports, the working group is composed under rule 82 of the Committee's rules of procedure.

- The status of the Covenant in the domestic legal order.
- The State's difficulties.
- How to give effect to the Covenant's articles.

Through dialogue and discussion of reports, members of the Committee seek the greatest amount of information to eliminate ambiguity, and answers allow for some violations to be detected (for example, through responses that Australian law allows executions of persons under the age of 18).

The dialogue phase is followed by the preparation of the Committee's reports and the drafting of its comments and by article 40/4, the Committee shall transmit such reports and such observations as it deems appropriate to States parties and may transmit the report to the Economic and Social Council.

The task of examining government reports was the Committee's main and substantive one, but it was usually not done in a grass-roots context, but through procedures of a general political nature, and States did not consider the examination procedure as a legal review but rather as a diplomatic one.

At the outset, the Committee was not authorized to make general comments on the reports before it, but the Economic and Social Council subsequently allowed it to do so. The Committee's comments include an account of the experiences gained from examining government reports, with a view to making use of these comments by all States.

The Committee is expanding the information base it uses when examining government reports, through information from NGOs, by allowing it to participate in public debates as experts and the day of general discussion.

The Committee uses the specialized agencies in their respective fields. The specialized agencies send an observer who participates in the work of the Committee on Economic Rights in an official capacity, as well as brief reports on the International Covenant. Article 17 (3) of the Covenant exempted the State that had sent information to a specialized agency from repeating such information in the report.

Diplomatic Protection as a Guarantee of the Protection of Human Rights

At the outset, the term "diplomatic protection" refers to that procedure whereby a State initiates an action of international responsibility against another

State, She or some of her nationals caused damage of any kind to one or some of the First State's nationals by the commission of an internationally wrongful act and the injured person was unable to remedy the injury suffered by the rules of the internal law of that State from which the wrongful act was made, In this regard, it would be tantamount to physical or moral damage, as in the case of a violation of a person's rights (Al-Billeh, 2022d; Alkhseilat et al., 2022; AL-KHAWAJAH et al., 2022).

Diplomatic protection is one of the most important means of applying international responsibility. If the breach of an international obligation occurs against individuals -- natural or moral -- who have been injured, under this system, a State or an international organization defends the exercise of functional protection against or against an official of the State or organization. s right to respect for international law in the person of the latter (Al-Billeh, 2022e; Al-Billeh, 2022b; ALMANASRA et al., 2022).

Judicial Protection of Human Rights

Undoubtedly, an effective international system of criminal accountability for violations of human rights, particularly in times of war and armed conflict, is one of the strongest guarantees that these rights are respected and not compromised (Al-Billeh & Al-Qheiw, 2023; Alshible et al., 2023; Al-Billeh et al., 2023a).

In adapting the judiciary, the International Court of Justice has made clear that it is those whose judgment has the validity of the judgment, and thus the judicial sanctions in that court are obtained by a court whose decision acquires the authority of the judgment that is not the case with decisions of quasi-judicial bodies such as human rights commissions (Isa et al., 2022; Al-Billeh et al., 2023b).

While there was currently no international human rights tribunal, the existence of such a court was limited only to the European and American regional conventions which provided for the establishment of a human rights court, there were no human rights protection applications in the International Court of Justice and the International Criminal Court.

However, the major step taken in this area is the convening of the international diplomatic conference in the Italian capital of Rome held from 14 June to 17 July 1998 under the auspices of the United Nations with the participation of delegations representing 160 States, 31 international organizations and 136 governmental organizations, which ended with the adoption of the Statute of the International Criminal Court, marking the largest and unprecedented event on the road to strengthening the safeguards necessary to ensure due respect for

human rights and fundamental freedoms nationally and internationally, and addressing grave violations of these rights and freedoms, especially in times of armed conflict, both international and internal.

While Article 2 of the Universal Declaration of Human Rights stipulates that: "Everyone has the right to have recourse to national courts for redress for acts of infringement of the fundamental rights conferred upon him by law", it fails to mention any procedure or international tribunal carrying out the duty of international control and protection to safeguard these rights and freedoms.

It is well established that judicial guarantees have a national origin, but international human rights agreements, covenants, and declarations have affirmed this, as some international laws and conventions to examine violations of certain international rights have required the exhaustion of domestic methods, namely, recourse to national justice first.

This principle is the most important safeguard of the freedom of individuals, especially since this guarantee is at the same time a restriction on the State's various authorities, including the judiciary.

Judicial protection of human rights at the national or local level will therefore be addressed in the first claim, and then the International Criminal Court's injustice to the protection of human rights will be addressed in a second.

Judicial Protection of Human Rights at the National Level

It is well established that the enjoyment of human rights is usually within the State, and the existence of internal remedies of appeal is one of the main factors respecting it, as stipulated in international instruments of the United Nations. Article 8 of the Universal Declaration of Human Rights stipulates that (Everyone has the right to have recourse to the competent national courts for effective redress for acts that violate the fundamental human rights conferred upon him by the Constitution or by law.) The Basic Principles on the Independence of the Judiciary also stipulate that: "Everyone has the right to be tried by ordinary courts or tribunals applying established legal procedures.

It should be noted that there is a correlation between domestic and international recourse methods: the former must be used first. international law ", an individual injured must exhaust permissible internal remedies in the State responsible for the internationally wrongful act before his or her international dispute arises by applying the regime of diplomatic protection or by resorting to the competent international organs.

The need to exhaust internal recourse methods as a precondition for the State's exercise of diplomatic protection has been justified by several arguments:

1. The desire to give the State responsible for the wrongful act a means to remedy it by its own means (through its national courts).
2. To avoid many conflicts at the international level, by resorting to internal methods in the State concerned, thereby reducing such conflicts.
3. It is an application of the principle that determines that an individual must do everything possible and available before resorting to his or her State to defend him or her.

He stressed the need to exhaust domestic remedies of appeal from numerous United Nations documents, including the article (22/5/b) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that the Committee against Torture shall not consider communications submitted by an individual unless it has verified (The individual has exhausted all available domestic remedies, and this rule does not apply if the application of the remedies of appeal is unreasonably prolonged, or if the person who has been the victim of an effective violation of this Convention is not likely to be remedied).

In this requirement, we will address the role of national courts in the protection of human rights through three basic principles.

The Principle of the Independence of the Judiciary

It is recognized that the principle of the independence of the judiciary is one of the general and established legal principles, not only in all national constitutions, but also in the various international instruments on human rights and fundamental freedoms. It is a fundamental safeguard for the promotion and protection of human rights and is a violation of the principle of the independence of the judiciary, inter alia: (Interference in the process of the administration of justice, refraining from executing judicial decisions, expanding the interpretation of what is termed "acts of sovereignty", to remove some of the executive branch's actions or decisions from judicial control, confer broad jurisdiction on military courts and extend their jurisdiction).

The Universal Declaration of Human Rights states in articles 8 and 10 of the Declaration that everyone has the right to have recourse to national courts for redress and to have his case heard by independent and impartial courts.

Article 14 of the International Covenant on Civil and Political Rights affirms this principle: (Everyone shall have the right, when considering any criminal charge against him or his rights and obligations in a legal case, to a fair and public trial by a competent, independent and impartial tribunal based on the law...).

The Constitutional Court, through the Constitutional Court, conducts the protection and promotion of human rights at two main levels (Van den Berghe, 2010).

It proceeds by promoting the unconstitutionality of any provision relating to rights and freedoms that is not based on constitutional foundations. This method presupposes the existence of a case pending before a court or a competent body, in which it is invoked as unconstitutional in law or in a regulation that is inherently required in such proceedings.

It is indirect to the effect that by recognizing the existence of such oversight mechanisms, the ordinary legislator ensures, to the extent possible, that these rights are guaranteed by the framework guaranteed by the Constitution. for fear of the unconstitutionality of the laws and decisions it makes, and the judiciary may derive new rights not explicitly provided for based on its conviction that they are necessary for democratic development and by the principle of the rule of law.

In order not to be merely theoretical and futile, some jurisprudence rightly advocated the idea of extending sanctions for breaches of rights and freedoms recognized by constitutions.

International Criminal Court and Protection of Human Rights

The drafters of the Statute of the International Criminal Court are keen to achieve the principle of a balance between the interests of the international community and those of national societies. The most prominent manifestation of this balance is to give priority to national courts. The role of the International Criminal Court here is a standby role if the State concerned fails or fails to fulfill its function in the administration of criminal justice. (Legislation and practice) properly evaluate and does not waste human rights s jurisdiction ", which entails a failure to fulfill the legal obligations due to investigate and prosecute persons suspected of committing any of the crimes falling within the jurisdiction of the Court, it also involves another situation in which the State appears unable to fulfill its said function. legal system ", whether because it did not already have a reliable legal system in this regard, or because of the complete collapse of this system by the collapse of this State's own institutions (Okere, 1984).

Personal Jurisdiction of the International Criminal Court and Protection of Human Rights

This means persons brought before it for trial for acts committed by them that constitute crimes within the court's jurisdiction.

According to Article I of the Statute, the International Criminal Court's jurisdiction applies only to natural persons without legal persons such as States and international organizations.

The statute has been presented in various places to detail this general provision as follows:

- 1- The Criminal Court's jurisdiction is limited only to persons over the age at the time of the commission of the offense. 18 years of age, which in the sense of the offense means that persons below this age cannot be tried before this Court, although they may and must be tried by the national laws of either the State of nationality or the State in whose territory the offence was committed, or the State to which the victim belongs.
- 2- There is no possibility of invoking any official status or location to disqualify the Court's jurisdiction. The provisions of the Statute apply to all persons, without any discrimination whatsoever, as regards official status or established immunity, whether the enjoyment of such official status or immunity is attributable to national or international law.
- 3- A person shall be criminally liable and therefore liable to be punished for any offense within the jurisdiction of the Court if he or she is found to have performed any of the acts provided for.
- 4- Criminal liability shall not be precluded for persons above the age of 18 if it is established that he has committed crimes within the jurisdiction of the court unless there are grounds for doing so.

Substantive Jurisdiction of the Criminal Court in the Protection of Human Rights

Article 5 of the Statute defines the types of such offenses:

(1) The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community. Under this Statute, the Court shall have jurisdiction over the following crimes:

- a. The crime of genocide.
- b. Crimes against humanity.
- c. War crimes.
- d. Crime of aggression.

(2)- The Court shall exercise jurisdiction over the crime of aggression whenever a provision is adopted by articles 121 and 123, defining the crime of aggression, and establishing the conditions under which the Court exercises jurisdiction in respect of this crime, which must be consistent with the relevant provisions of the Charter of the United Nations.

The International Criminal Court's Temporal Jurisdiction

About the Court's temporal jurisdiction, article 11 of the Statute made it clear that:

- 1- The Court has jurisdiction only in respect of crimes committed after the entry into force of these Regulations.
- 2- If a State becomes a Party to the present Statute after it enters into force, the Court may exercise its jurisdiction only in respect of crimes committed after the entry into force of the present Statute for that State, unless the State has made a declaration accepting such jurisdiction under article 12 (3) (1).

Accordingly, the said text fails to provide adequate criminal protection of human rights, as well as a substantial legal clause allowing perpetrators of human rights crimes not to be punished internationally (Spielmann, 2014).

Substantive Conditions for the Court's Exercise of its Jurisdiction

These conditions can be summarized in:

- 1- The Court's jurisdiction vis-à-vis all States Parties, as well as against States not Parties which declare their acceptance of this jurisdiction, shall be determined in respect of a particular offense in question.
- 2- The convening of the Court's jurisdiction in the case of a separate offense provided for in Article 5 above is not automatic, but must be referred to it by the person entitled to do so, namely:
 - a. States parties to the Statute.
 - b. Security Council.
 - c. Any State not party.
 - d. Prosecutor's Office.
- 3- The Court is not competent to hear the case, even if it is brought by one of these four persons in the following circumstances:
 - a- If a State is conducting an investigation and this State has jurisdiction in this regard (art. 17.2).
 - b- If there is an investigation into the case, the State with jurisdiction has concluded a decision not to prosecute the person concerned, unless the decision is the result of the State's unwillingness or inability -- indeed -- to act on the right to litigate.
 - c- If the person is concerned - or is accused of the offence in question - has already been tried for the conduct in question, and the court may not, as a result, re-conduct the trial, in the application of the principle of double jeopardy.
 - d- If the case is not of sufficient gravity, the Court's action is justified.

4- In any event and by Article (6) of the Statute, the Security Council shall request the Court not to initiate/proceed with the investigation or realization of the right to litigation for twelve months, which shall be under Chapter VII of the Charter, and the Council may determine such request under the same conditions.

The authors of the Court's Statute should have limited the intervention of the Security Council to, for example, filing a case or referring to the Court without having the hand or authority to interfere in the functioning of the Court, as this might imply a predominance of political considerations and thus did not guarantee the necessary and due protection of human rights (Ploeger & Groetelaers, 2007).

Conclusion

Increased attention to human rights and fundamental freedoms at the national and international levels can be interpreted in the light of several considerations. First, the individual or human being for whom these rights and freedoms were established, is almost the target asset behind every positive development please achieved for any society, in the sense that the provision of guarantees, maintaining the enjoyment of an appropriate amount of rights and freedoms is seen as an important entry point for achieving the goals of any project or development agenda for the advancement of any society.

Human rights -- nationally and internationally -- can be attributed to the proliferation of many democratic ideas and values. international relations ", both internally and in general, nor can it be overlooked that the current human risk of internal or regional conflicts is increasing environmental balance ", or even by derogating from the requirements for maintaining environmental balance. Thus, the growing interest in human rights and fundamental freedoms has begun both at the domestic and international levels, and the question of human rights and fundamental freedoms has become one of the most important subjects of international relations.

As the world's largest and oldest international organization, the United Nations has paid attention to the issue of human rights and fundamental freedoms. Human rights, "which took care of it from its Charter and through the Universal Declaration of Human Rights and the International Covenants human rights", ending with conventions on the environment as human rights, and in our study, we have addressed this grassroots aspect of human rights and the competent organs for their protection within the framework of the United Nations After study and research.

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