



**GICJ SUBMISSIONS TO  
THE 35<sup>TH</sup> SESSION OF THE HUMAN RIGHTS COUNCIL  
JUNE 2017**



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Geneva International Centre for Justice (GICJ), in cooperation with several other NGOs, submitted twenty written statements in occasion of the 35th session of the Human Rights Council. The statements address the most concerning cases of human rights violations and abuses occurring in Iraq, Syria, Palestine, Yemen, South Sudan, and Myanmar. The written statements also tackle the issues of migration and internal displacement; analyse the status of the independence of judges and lawyers as well as freedom of expression in Iraq, and explore the impact of violent conflict on the human rights of women. Each statement is concluded with a series of recommendations that GICJ and the co-signatories NGOs wish to address to the UN bodies, and particularly to the Human Rights Council.



## GICJ's Submissions on Iraq

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## **GICJ's Submissions on Iraq**

*Written by: Alice Wickens*

With one of the highest rates of executions in the world, Iraq has a well documented and prolific history of human rights abuses. Torture and ill-treatment are widespread in prisons, arbitrary arrests and detention common, and there is a critically flawed criminal justice system that lacks an independent judiciary. In such a damning situation, ordinary Iraqis have been prevented from speaking out, and have no ability to live a life free from violence or fear.

On 15th May 2017, GICJ submitted four written statements addressing these serious issues, and the situation in Iraq, to the 35th Session of the UN Human Rights Council. The first statement summarized the main rights being violated in Iraq, and the latter statements looked more closely at three of those rights; the right to life - abused by state executions, the right to expression - abused by state repression, and the right to a fair trial - abused by state corruption. Finally, these statements made recommendations as to the actions which Iraq and the international community must take to defend those who, today, cannot defend themselves.



### **Iraq: Human Rights Violations**

Successive Iraqi governments have utilized the rise of ISIS to authorize high execution rates, arbitrary arrests and to justify the detention of peaceful demonstrators – all under the guise of “fighting terrorism.” This has given rise to some of the most prolific violations of international human rights law and international humanitarian law of this century.

#### **Enforced Disappearances**

Despite government denials, the number of enforced disappearances in Iraq is not diminishing. Credible information has proved there are over 420 secret detention facilities in Iraq, and between 2-5 June 2016, at least 643 men and boys, disappeared from Saqlawiya, Iraq, in the aftermath of the ‘liberation campaign’ allegedly intended to retake the city of Fallujah from ISIS. As of May

2017, the government has still not released any further information about the status of the investigation into these missing persons, who is conducting it, or any further steps taken. As a result, it is clear there must be an urgent and proper investigation into every person reported missing in Iraq.

## **Torture**

Since 2014, Iraq has stepped up its use of torture, to “combat terrorism.” This has empowered state authorities (militia, police units, security forces, intelligence services and the army) to conduct torture practices and other ill-treatment in detention centers, prisons, and even on the streets. In prisons, interrogators use torture to extract information from detainees and obtain “confessions.” These detainees are tortured until they confess, or until they agree sign a statement which they are not allowed to read. These coerced statements or confessions continue to be relied upon by Iraqi Courts to convict defendants on trial for serious charges, where often, the result is the death sentence.

## **The Death Penalty**

When applying the death penalty, the Iraqi government does not respect due process and fair trial standards. Often, detainees are tortured, forced to confess to crimes or terrorist acts, and shortly thereafter sentenced to death. Moreover, following ISIS’s invasion of Iraq in 2014, “countering terrorism” is increasingly being used to justify rising execution rates and the use of the 2005 Anti-Terrorism law, which mandates the death penalty for vague and not necessarily lethal acts, including ‘threats which aim to bring fear among people.’ In this context, an alarming amount of state executions continue to happen. On Monday 23 January 2017, the Iraqi judicial authorities executed 31 people for terrorism in one day. As in previous cases, no names of those executed were disclosed, and the government publicized no details of the trial.

## **Freedom of Assembly & Expression**

Iraqis who openly criticize officials and their corruption face threats, arbitrary arrest, beatings, harassment and prosecution. Demonstrations are always stormed by the Iraqi police and army, who intimidate protestors with threats of violence – that are often acted upon. In one incident, on 11<sup>th</sup> February 2017, a protest was held in Baghdad’s Green Zone to bring attention to government failings. It ended with Iraqi security forces firing tear gas and rubber-coated bullets at thousands of demonstrators – wounding at least 320 people, and killing seven.

## **Economic, Cultural & Social Rights**

The inadequate provision of basic services cannot be blamed on a lack of funding. Rather, billions of dollars have either been stolen by government officials, or wasted on totally fictitious contracts and projects. This vast corruption has destroyed any trust in public institutions and robbed the country of proper development. As it stands, 60% of Iraqi households suffer from substandard living conditions. There is no proper water source, which facilitates waterborne disease and the spread of illness, and access to healthcare has become impossible for most of the population, reflected in the inadequate number of medical professionals, insufficient equipment, and scant

pharmaceutical supplies. Further to this, electricity provision is on the decline and education is plagued by neglect and mismanagement, demonstrated by the declining literacy rate.

### **Climate of Impunity**

Since the invasion and occupation of Iraq, there has been a total destruction of the notion of justice. The rule of law has now been replaced by a state of anarchy and sectarian violence. This has allowed enforced disappearances, arbitrary arrests, torture and extrajudicial executions to become a part of the everyday lives of ordinary Iraqis – with those brave enough to protest silenced either by force or fear. In these circumstances, GICJ calls upon the UN to immediately enact steps to launch an independent and impartial inquiry into the gross human rights violations in Iraq.



### **Iraq: A Judiciary without Justice**

Iraq’s criminal justice system is plagued with opacity and arbitrariness, with fair trials now almost impossible. Many civilians find themselves arrested, arbitrarily detained, denied legal representation, and subjected to an unfair trial – if they receive a trial at all. This is allowing innocent Iraqis to be punished and killed, while protecting guilty government officials, and punishing and destroying anyone who attempts to uphold the law and pursue justice.

### **Iraq’s Corruption**

The judicial system has become highly vulnerable to political pressure. Many judges are now controlled by the government, either by fear, by threats, or by bribes. This has rendered a true democracy impossible, as it has fostered a situation where biased judges have allowed government leaders and officials to become above the law. This exploitation of the judiciary has resulted in the right to a fair trial being gravely violated.

### **The Right to a Fair Trial**

The government of Iraq does not respect due process and fair trial standards. Iraqis are routinely being detained, convicted on inappropriate evidence, and sentenced to death shortly after being arrested. Individuals who are charged with terrorism charges are held in the worst conditions imaginable, and deprived of the right to an effective defense. At trial, judges use evidence that is gained from secret informants to pursue criminal prosecutions, or confessions made by the

detainee during torture, when they have been forced to confess to crimes or terrorist acts. This allows detainees to be charged with crimes, often with terrorism, without any actual evidence. This has created a weak judicial process that is contrary to international law, which requires that due process is respected in relation to arrest, charge, detention, and trial of all individuals.

## **The Death Penalty**

When applying the death penalty, Iraq does not comply with the fair trial standards required by international human rights law. This includes the rights of the defendant to a proper lawyer, to be presumed innocent until proven guilty, and not to be compelled or forced to confess guilt. Further to this, when Iraqi citizens are executed by the state, the Justice Ministry releases little or no evidence as to their names, their convictions, what they were convicted of, or whether they had a trial at all.

GICJ is dismayed by the fact that, in the past year, hundreds of civilians have been subjected to the death penalty in this way. On 13<sup>th</sup> July 2016, the Iraqi President announced he had ratified a number of new death sentences, without providing the names, or number of people concerned, nor any information or evidence regarding the alleged crimes. Just the next month, on 21<sup>st</sup> August 2016, the state executed 36 persons in one single day for their alleged role in a 2014 terrorist attack. These men, whose “confessions” were extracted under serious allegations of torture, were convicted following deeply flawed and speedy trial. Less than six months later, another trial on 23 January 2017 saw another 31 men executed for the committing the exact same crime.

Unfair trials, torture, and mass executions can never be considered justice. With so many lives at risk, it is urgent that the international community puts pressure on Iraq to abide by the human rights standards it has pledged to, including the right to a fair trial, and the right to life – which the next section will address in greater detail.

## **Iraq: State Executions**

### **Iraq’s Culture of Fear**

The Iraqi government uses the death penalty and extrajudicial executions as tools of political repression, to eliminate political opponents, and to maintain a reign of terror over the Iraqi population at large. These arbitrary and widespread state executions constitute an integral part of the systematic repression felt in Iraq, which the government has used to sustain its rule.

### **The “Terrorism” Pretext**

Since the adoption of the Anti-Terrorism Law No.13 of 2005, the majority of state executions have been justified on the pretext of “fighting terrorism”. This legislation legalizes capital punishment for anyone who commits a terrorist act, or is accused by the government of financing, provoking, planning, or enabling such acts. Under this law, a person can be sentenced to death on any one of 48 terrorism charges, giving Iraqi officials broad justifications for implementing the death penalty.

## State Executions

Iraq has a weak judicial system, plagued by corruption, which puts the lives of many innocent people under threat. In 2016, Iraqi courts handed down 92 death sentences in just six weeks. These trials were grossly unjust, and failed to comply with international fair trial standards, with most defendants claiming to have been tortured into confessing the crimes. This pattern continued in January 2017, when 31 men were executed in one day. Their “confessions” were extracted under serious allegations of torture, following a speedy and deeply flawed trial. This made it the second time in six months the Iraqi government had carried out a mass execution on the basis of terrorism, after an unfair trial.

## Secret Executions

While state executions in Iraq have attracted widespread attention, many of its executions are not publicly known. In thousands of cases, Iraqi security forces arrest and detain individuals without giving them or their families any information about the arrests, where the detainee is being held, or on their physical or mental condition. These detainees are then kept in secret prisons, and as their arrest and detention is not publicly known, they are highly vulnerable to abuse by the security forces, who deny them of any right to justice or accountability. Most often, these detainees are executed in secret, and their bodies are found days, weeks, or even months later, with signs of obvious torture and execution. This practice of ‘secret execution’ vastly increases the number of deaths caused by capital punishment.

This alarming situation shows that the calls for Iraq to stop conducting summary executions, and respect the right to life, have been flatly ignored. As a result, GICJ urges the international community to take action to ensure that Iraq upholds the human rights standards it has pledged to – ending the use of state executions which are so plagued with arbitrariness, prejudice, and error.



## **Iraq: A Silenced Nation**

Iraq has been a party to the ICCPR since 1971, which provides for freedom of expression and peaceful assembly. But 46 years later, these rights remain seriously threatened, and Iraqis who publicly express their views do so at great peril.

### **Restriction of the Right to Assembly**

The Iraqi authorities continue to block and disrupt peaceful demonstrations, which civilians use to protest against corruption and to demand greater civil and political rights. The Iraqi security forces use violence against protesters – often resulting in grave consequences. In one demonstration, in Baghdad’s Green Zone on 20<sup>th</sup> May 2016, government security forces used live ammunition, rubber bullets, and gas canisters against the demonstrators for two hours – injuring over 200 people and killing four protestors. In another protest in Baghdad, on 11<sup>th</sup> February 2017, Iraqi security forces fired tear gas and rubber-coated bullets at thousands of demonstrators – wounding at least 320 people and killing seven.

In addition to using violence to deter demonstrators, the Iraqi government has constantly referred to the peaceful protestors as “terrorists”. By alleging peaceful protestors are terrorists, governmental authorities have been provided with an excuse to target, attack and arbitrarily arrest, detain and execute innocent civilians who profess any kind of anti-government rhetoric. These actions of the Iraqi government, and its security forces, show a clear failure to abide by Article 38 of Iraq’s constitution, which guarantees the right to “freedom of assembly and peaceful demonstration.”

### **Prohibition of Free Press**

There are few truly independent media outlets in Iraq, with most controlled by militias, political parties, or the state. Iraqi journalists who openly criticize officials and their corruption face threats, arbitrary arrest, beatings, harassment and prosecution. While many cases do not come to light, on 24 August 2015, eight cases of assault, expulsion, threats and incitement to murder were registered by the Iraqi Observatory for Press Freedoms against journalists covering anti-governmental demonstrations in Basra, Samawa, Baghdad and Diyala.

In addition to violence, threatened or real, the authorities continue to limit the freedom of the press in a number of other ways. In June

2015, Ala’ Rasul Muhi al-Din, the inspector-general of the Electricity Ministry, was awarded 3 million Iraqi dinars (\$2,696) for ‘defamation’ after journalist Ibrahim Zaidan questioned the integrity of the inspectorate. Media restrictions also extend to television, and in March 2016, al-Baghdadia TV had its operating



license removed by the Iraqi Communications and Media Commission, as did Al Jazeera in April

2016, allegedly because the channel contained ‘media rhetoric that incites sectarianism and violence.’

In 2017, Iraq continues to silence its people. Therefore, while the Iraqi Constitution stresses the right to freedom of expression, in reality, the detention, prosecution, and violence against peaceful protestors and independent journalists shows that this right is nothing but non-existent.

## **Conclusions and Recommendations**

In light of the heinous human rights violations endured by the Iraqi civilians, the corruption that plagues the judiciary system and the climate of impunity and fear that scourges the country, all signatory organizations addressed several recommendations to the United Nations and to the Human Rights Council.

- The UN Human Rights Council should appoint a Special Rapporteur for the human rights situation in Iraq.
- The creation of an independent international commission and dispatch to fully investigate all of the human rights violations committed in Iraq since 2003.
- Relevant UN bodies open an investigation into the allegations that the Iraqi government and its forces have abused the right to freedom of expression and opinion, and the right to freedom of assembly.
- The international community should do all in its power to pressure the Iraqi government to halt executions and stop any future use of the death penalty.
- The international community undertakes all measures to ensure that Iraq protects and guarantees the right of individuals to demonstrate peacefully, and stops the targeting of human rights defenders, peaceful activists and independent journalists.
- Take all measures to amend the flawed justice system in Iraq by ending arbitrary arrests, detention, unfair trials and the extrajudicial imposition of the death sentence.
- Establish an independent oversight body to investigate allegations of corruption, abuse of authority, or breach of professional standards by the judiciary.
- There should be a country visit to Iraq from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and the Special Rapporteur on the independence of judges and lawyers.
- The international community undertakes all measures to ensure that Iraq abides by its international obligations and ends the its human rights abuses once and for all.



## **GICJ's Submissions on Palestine**

*Written by: Lisa-Marlen Gronemeier*

With the Nakba entering its 70th year, GICJ expresses its grave concern that the plight of the Palestinian people continues under Israel's system of apartheid and institutionalized racial discrimination. Pertinent issues of the ongoing Nakba are forced displacement and the denial of the right to education, which serve as tools of Israeli domination. Notably, Palestinian women are confronted with an integrated system of occupation and patriarchy – one that infringes on all spheres of public and private life. To sustain the system of injustice that collectively oppresses the Palestinian people, Israel wages war against opponents and violates their freedom of expression, assembly and association.

GICJ deplores that Israel's persistent disregard of its international obligations, its non-compliance and non-cooperation, further entrench its system of injustice, under which the most fundamental human rights of Palestinians continue to be systematically violated. In the light of this, Martin Luther King Jr's words resound as loudly as ever because injustice faced by any one population is indeed a threat to justice everywhere.



### **Uncovered at Last: Israel's Apartheid State**

Israel is guilty of policies and practices that constitute the crime of apartheid as legally defined in instruments of international law. The submission necessarily draws on ESCWA's report on Israeli Practices towards the Palestinian People and the Question of Apartheid, whose finding is unequivocal to stakeholders who have witnessed Israeli actions on the ground: The evidence that Israel collectively submits Palestinians, regardless of their residency, to an entrenched system of apartheid and institutionalized racial discrimination is overwhelming.



Israeli apartheid is anchored in the body of laws instituted after the State's establishment in 1948. Israel adopted a series of Basic Laws that do not explicitly guarantee equality and the prohibition of discrimination (Basic Law: Human Dignity and Liberty). Some of the Basic Laws institutionalize discrimination, such as in the field of land policy. Challenging racial discrimination and domination in the "Jewish State" is prohibited by the Basic Law: Knesset. On the basis of the Defense (Emergency) Regulations, incorporated into its domestic legislation and legal system governing the West Bank, Israeli authorities conduct, *inter alia*, house demolitions, deportations, indefinite administrative detentions, and closures and curfews of Palestinian towns and villages.

Further discriminatory laws pertain to entry and residence in Israel and attest to Israel's policy of demographic engineering, which aims at the maintenance of Israel as Jewish State. Notably, Israel passed the Law of Return in 1950, which provides for the entry and reception of Israeli citizenship of Jews regardless of their countries of origin and connection to historic Palestine, while permanently denying the right of return to indigenous Palestinians, including those with documented ancestral property. Israel's discriminatory legislation is buttressed by the parastatal status allocated to right-wing Jewish organizations.

The legislative framework facilitates inhuman acts as described in the Apartheid Convention aimed at perpetuating domination of the Jewish Israeli population over Palestinians, who are collectively and systematically oppressed. This is achieved through Israel's geographic and legal fragmentation of the Palestinian people, which gravely obstructs their resistance to the occupation and obscures the workings of the system to the outside world.

Israel violates Palestinians' right to life and security of person, particularly through the use of excessive and often lethal force and the failure to hold perpetrators accountable. Israel persists in its large-scale arbitrary arrests and detention of Palestinians under untenable conditions of imprisonment and under the use of torture. Moreover, it imposes collective punishment in the form of, *inter alia*, home demolitions, military incursions and curfews, and most deplorably in the form of its blockade on the entire population of Gaza. It also continues to carry out deportations and forcible transfers of Palestinians.



In contravention to the Apartheid Convention, Israel obstructs Palestinians' participation in the political, economic, social and cultural life of their community and deliberately creates conditions preventing the full development of the Palestinian people by perpetuating its control over Palestinian governance, natural resources, and economy and by denying them their fundamental human rights. Moreover, Israel deprives Palestinians of vital infrastructure, essential resources, and social services, as well as of equal access to employment, housing, education, and healthcare. The State enacts discriminatory laws governing entry and residence as well as family reunification and perpetuates practices that discriminate against the Palestinian population, *inter alia*, the denial and revocation of residency statuses. This reveals the nature of the occupation that incarcerates, controls, and oppresses the Palestinian people and seeks to rob them of their human dignity. Forced displacement is central to Israel's system of apartheid that aims to dominate the Palestinian people.

### **Palestinians: A Displaced People**

Palestinians have been facing the harsh realities and constant threat of displacement for seven decades. While the injustices of the 1948 *Nakba* and the 1967 *Naksa* still reverberate, Israeli illegal practices continue to cause extensive displacement among the Palestinian population inside Israel and in Occupied Palestine – which is the focus of this submission.

Forced displacement is a result of Israel's recurrent military actions and its colonialist and apartheid activities disproportionately affecting the Palestinian population. Israel has fragmented the Palestinian people, which it submits to distinct policies and practices that share in common racial oppression and discrimination. The first factor is Israeli military operations, which are in grave breach of humanitarian law and are characterized by disproportionality and non-distinction. Israeli military attacks and operations in occupied Palestine have caused extensive damage and destruction, thereby leading to large-scale internal displacement of civilians.



On basis of discriminatory laws, military orders, and apartheid zoning and planning schemes, Israel has persistently and systematically conducted large-scale confiscation and destruction of Palestinian land and property and has evicted Palestinians for the sake of Jewish settlements in historic Palestine. Whenever Palestinian property is declared Israeli State property without any possibility for compensation, Palestinians are forced to leave. Furthermore, Israel's creation of a coercive environment, particularly its control over the Palestinian economy and discriminatory allocation of vital infrastructure, essential services, and natural resources, is a further factor contributing to widespread displacement. Israeli authorities have rescinded the permanent residency status – which does not entail a constitutional right to residency and is subject to expiration and revocation – of tens of thousands of Palestinian East Jerusalemites, thereby permanently banning them from their home City. Palestinians in the remaining occupied Palestine also see their residency rights arbitrarily revoked.

Regardless of their residence, Palestinians face displacement. This leads to heightened poverty, as people are robbed of their main source of physical and economic security, and imperils livelihoods. The situation of Palestine refugees and displaced persons is precarious, with high levels of unemployment, poverty and economic decline. Families and other social structures are torn apart and cultural and political life is permanently disrupted. The negative psychosocial consequences of displacement cannot be neglected: Anxiety and stress and deep-seated traumas among communities and within households are widespread. As GICJ argued in its written submissions to the 35<sup>th</sup> session of the Human Rights Council, Israel's denial of equal right to education is a further issue underpinning its system of oppression.

### **Education as a Tool of Israeli Domination over the Palestinian People**

Education plays a crucial role in the life of the individual and is fundamental to the development of a country. Contrary to its international obligations, Israel violates Palestinians' access, quality and equal enjoyment of the right to education through systematic illegal policies and practices:

**Restrictions on School Development:** Palestinians face serious challenges with regards to education due to, *inter alia*, inadequate school infrastructure and a chronic shortage of classrooms, building restrictions, and hampered access to educational facilities owing to Israeli-imposed physical, bureaucratic and other obstacles. These factors result in high drop-out rates and low learning achievements.



**Negation of Palestinian Identity in Education:** Not only do the occupying authorities restrict cultural activity in East Jerusalem and the rest of the West Bank, for instance by closing down conferences and events, but they also prohibit the usage of Palestinian curricula and textbooks to deny the right of Palestinian children to be educated with respect to their cultural identity, language and values.

**Restrictions on Access and Movement:** The construction of the Wall, the associated permit regime, the ongoing closures, and the system of checkpoints seriously obstruct students' and teachers' ability to reach schools, delay their journeys tremendously, and expose them to daily verbal and physical harassment. Israel prohibits Palestinian residents of Gaza from studying in the West Bank. The fragmentation of the West Bank and the isolation of the Gaza Strip effected demographic change of the student body in Palestinian universities to the detriment of production and exchange of knowledge and their ability to access programs and courses of their choice and attend conferences and events. The refusal of exit permits denies thousands of students higher education opportunities abroad.



**Settler Violence and Military Action:** The Israeli army regularly invades educational premises and the student accommodation, conducting arbitrary arrest and detention of teachers and students. On their way to and from school, Palestinian children face daily attacks and excessive use of force by Israeli forces and settlers. During military operations, classes are regularly suspended and education interrupted. Educational institutions are damaged or destroyed, and school children injured or killed. The psychological effect on students is devastating, with thousands of children suffering from anxiety, sadness and hopelessness.

### **Integrated System of Occupation of Palestinian Women**

The prolonged illegal Israeli occupation and apartheid – in conjunction with patriarchy – have extremely detrimental effects on the exercise of human rights of Palestinian women of Palestine. This statement submitted by GICJ reveals that Israel’s occupation of Palestine perpetrates gross human rights violations against Palestinian women 1) through legislation, institutions, and practices that disproportionately affect Palestinian women; 2) through submitting the entire Palestinian population to systematic human rights violations, which entrench intra-societal and intra-family violence against women; and 3) through obstructions of Palestinian domestic reform towards women’s rights.

#### **1) Occupation Compounded**

Pervading all spheres of life, the occupation infringes on the economic, social, and cultural as well as civil and political rights of Palestinian women. Due to the intersection of patriarchy with Israel’s system of occupation and apartheid, Israel’s policies and practices have specific and compounded effects on the human rights situation of Palestinian women.



At the hands of the occupying Power, Palestinian women experience harassment, violence, and acts of intimidation and degradation in their everyday lives. Women continue to be injured and killed as a result of Israel’s excessive use of force. Particularly Israel’s military operations inflict indescribable suffering as entire cities lie in ruins and result in psychological traumata and insecurity. Women who lose their loved ones are forced to obtain the role as heads of households, primary caretakers and providers of the family. Palestinian women continue to be arrested and administratively detained for indefinite periods and without charge or trial. Women are not given special considerations as provisioned by CEDAW, but are subjected to ill-treatment, including

beatings, verbal and sexual harassment, and humiliation such as intrusive body searches. Pregnant women have reportedly been forced to give birth chained to their beds.

The closure and permit system leads to women, including pregnant women, being denied access to health care, to infants being born on roadsides, to complications, and to death of infants and/or their mothers. Israel's policy of land confiscation and house demolitions deprives Palestinians of their safety and dignity and forces entire families into homelessness, displacement, and destitution. ´



The psychological harm of witnessing the destruction of one's home and living with the consequences is tremendous. Women are forced to adjust to new conditions and to sustain their family. As a result of the above-mentioned and other violations, women lack socioeconomic rights and record particularly high dropout rates, little representation in institutions of higher education, and high poverty and unemployment rates.

## **2) Entrenched Patriarchy**

Israel's occupation and protracted human rights violations have entrenched patriarchy within Palestinian society and increased intra-societal and -family violence against and oppression of women. First, the violent reality of occupation aggravates violations against women as it has increased poverty, perilous living conditions, and social tensions. In an effort to keep Palestinian society intact, the traditional patriarchal gender contract is reinforced. Gender inequality in Palestine is enhanced on the basis of the societal demand for women to conform to patriarchy, including by maintaining family honor, adhering to gender boundaries, and sustaining everyday life. Violations committed against women include honor killings, domestic violence, and discrimination in education, economy and decision-making processes.

## **3) Impunity and Obstruction of Domestic Reform**

Neither Israeli nor Palestinian legislation and institutions provide protection to Palestinian female victims. The fragmented legal and territorial jurisdiction of the Palestinian Authority (PA) introduced under the Oslo Accords impedes effective governance, law enforcement, and administration of justice in occupied Palestine. Meanwhile, Jewish Israeli citizens, both military

and civilian, are under Israeli responsibility and endowed with impunity when committing crimes against Palestinian women. Furthermore, the Occupying Power obstructs legal reform of Palestinian legislation that discriminates against women by inhibiting Palestinian governance. A further obstacle to the women's rights movement is the prioritization of national struggle, which weakens support for and women's ability to transform unequal gender structures.



In a society confronted with a constant threat to life and safety, the destruction of homes, a debilitated economy, and the loss of livelihood, the struggle for women's rights is arduous. Still, women work tirelessly and intrepidly to achieve their rights along the inalienable rights of the Palestinian people. However, the Occupying Power seeks to silence opposition to sustain the system of occupation and apartheid.

### **Stifling Palestinian National Expression and Resistance to Israeli Domination**

The Israeli State has a long history of severely infringing on Palestinian freedom of expression, association and peaceful assembly, and the right to participate in public and political life across occupied Palestine and in Israel by, *inter alia*, closing down institutions, violently dispersing peaceful protests, and conducting large-scale arrests, in an effort to stifle Palestinian national expression and resistance to the Israeli system of occupation and apartheid. Indeed, GICJ argues that this system would not be sustained if Israel did not persecute opponents and erode their fundamental rights.

**Arrests under Divergent Legal Systems:** Israel's persecution of peaceful activists, Palestinian parliamentarians, political leaders and human rights defenders (HRDs) is facilitated by its imposition of divergent legal systems and courts, including a repressive military regime, that apply discriminatory standards of evidence and procedure to Palestinians as compared to Jewish Israelis, including settlers illegally present in occupied Palestine. These implicate severe, disproportionate and often baseless penalties for Palestinians and thus testify to Israel's entrenched system of apartheid.



**Eroding Freedom of Opinion and Expression:** Palestinians’ freedom of opinion and expression is curtailed by Israel. Palestinian publications must be granted an Israeli-issued military permit and their articles are subjected to approval by the military censor – a procedure that follows censorship laws that are enforced by Israeli military authorities and supported by the Supreme Court. Palestinian press services have repeatedly been raided or closed and their distribution disrupted. Meanwhile, Palestinian journalists face refusal of press cards and denial of the renewal of press accreditation by the Israeli Government Press Office, including for alleged “delegitimization” of the State. Journalists are also subjected to harassment, abuses and attacks by Israeli forces. Israeli forces furthermore engage in the confiscation of equipment and materials, arrest and detention campaigns against journalists, the bombing of media installations, and the shooting of journalists, resulting in killing and injury. Foreign journalists are often banned from Gaza.



**Curtailing Political Assembly, Association and Participation:** Military legislation prohibits public gatherings of ten persons or more without a permit issued by the Israeli military commander and punishes acts interpreted as breaches of this provision with violent dispersal and arrests. Verbal and physical assaults, including defamation and harassment, are carried out with impunity by Israeli soldiers and settlers. Many Palestinian political parties and popular committees have been declared illegal, while allegedly associated institutions, including charities and cultural organizations, are closed down and attacked. Inside Israel, the participation of Palestinian politicians and political parties is curtailed and attempts to challenge such restrictions or Israel’s

existence as a “Jewish and democratic state” is prohibited. Student groups affiliated with political parties and movements are also prohibited, rendering student leaders especially vulnerable to arrests on basis of their political engagement. NGOs promoting the rights of Palestinians face obstacles in obtaining official registration status and funding and operate under substantial risk.

**Life, Liberty and Security under Threat:** Israel has escalated its repressive and restrictive practices towards Palestinian HRDs and civil activists, especially targeting and arresting leading Palestinian human rights activists, prominent figures such as mayors and teachers, and members of the Popular Committees instrumental to protests and advocacy. They encounter threats, violent attacks, stigmatization, intensified movement restrictions, and arrests. Prolonged and indefinite arbitrary detention without charge or trial continues to be carried out unabated, with Palestinian prisoners being subjected to deplorable conditions of imprisonment, ill-treatment and torture. Severe movement restrictions significantly hamper the work of HRDs by obstructing field activities, the documentation of violations and assistance to the victims, as well as the attendance of conferences and events, and thereby networks of information sharing and mutual support.

### **Silencing Dissent: Israel’s Persecution of Political Opponents**

The recent years have seen an increase of restrictions, criminalization, and violence targeting anyone opposing the occupation and focusing on associated abuses – including Israeli and international actors. As GICJ argued in this submission, the space for civil society in occupied Palestine and in Israel is therefore further diminishing. Human rights groups have experienced severe interference with their work by the Israeli government, the military, and hostile Israeli organizations and individuals, including through harassment, violence, and arrests.



**Anti-Democratic Legislation:** Notably, legislation that drastically restricts the freedom of expression and work by Israeli human rights and anti-occupation organizations includes the Boycott Prohibition Law, the Budget Foundations Law, and the “NGO Disclosure Law”, which criminalize and impose drastic restriction and economic sanctions on individuals and institutions that “act against state policies” and express opposition to Israeli policies and practices in occupied Palestine. Israeli NGOs opposing their State’s policies and practices are discredited and criminalized as “terror or terror supporting organizations”.

**Criminalization of Political Dissent:** Israeli criminal law's arbitrariness is strategic, and is directed against anyone considered enemy of the state. Numerous Israeli dissidents have already been incarcerated. Such arrests are entirely political, with the purpose of undermining the activities against Israeli violations. During interrogation and imprisonment, political arrestees face ill-treatment and psychological and physical torture methods. Under the invocation of the activists as national security threats, the Israeli State retains authority over unprecedented forms of surveillance in dissidents' private and political lives. The targeting by the government and Israeli right-wing groups of those actors that dare to stand up for human rights and democratic values in an effort to silence them further entrenches the occupation and places in jeopardy the enjoyment of human rights for everyone in the region.



## **Conclusions and Recommendations**

The system of occupation and apartheid – one that negates humanity, erodes the rule of law, scorns international commitments, and persecutes defenders of fundamental rights – must be disassembled to give way to real democracy and peace in the region for the benefit of all citizens. The liberation of Palestinians from the shackles of racial oppression and the dissolution of discrimination against ethnic and increasingly political minorities within Israel would give way to real democracy and just peace in the region. In the light of this, the signatories to the statements call on the UN, in particular the HRC, and Member States to take all necessary measures to ensure that Israel:

- Take all necessary measures to finally end the prolonged occupation of Palestine and fulfill Palestinians' right to national self-determination, which involves the end of all annexationist and settlement activity and the destructive blockade on Gaza;
- Scrupulously abide by its obligations as UN Member State, implement its international human rights obligations, and fully cooperate with relevant treaty bodies and mechanisms, particularly with the fundamental provisions of equality and non-discrimination;
- Cease its policies of apartheid that degrade, dispossess, and discriminate against Palestinians in occupied Palestine and in Israel;
- Cease and rescind its anti-democratic and racist practices and laws, and guarantee the fundamental rights and freedoms of ethnic and political minorities in Israel.

The signatories reaffirm that the rights of **Palestinian refugees and displaced persons**, including their right of return, do not diminish with the passage of time and remain cornerstone of a future solution to the Palestine question. Therefore, they call upon the UN and its relevant bodies to:

- Urge Israel to cease its discriminatory planning, development, and land system in occupied Palestine and within Israel and to rescind all policies and practices resulting in the forced eviction and transfer of Palestinians, including demolitions, confiscations, settlement and wall construction, and the creation of a coercive environment;
- Ensure the voluntary return and property restitution of Palestinian refugees and internally displaced persons in safety and dignity and compensation for suffered losses.

Israel's denial of the right to education is rooted in its apartheid system. This finding is underpinned by the parallel maintenance by Israel of a superior Jewish Israeli school system and infrastructure, particularly the West Bank's that is exclusively allocated to Jewish settlers. With special regard to the **right to education**, the signatories recommend to the HRC to:

- Take the necessary action to guarantee the enjoyment of the right to education by Palestinians and ensure that its actions do not contradict or obstruct this right.

The signatories are convinced that only an end to the occupation and the realization of Palestinians' inalienable rights, including self-determination in their independent State of Palestine, can bring about an end to the violations and substantive change towards gender equality and women's rights. With specific regards to the **situation of Palestinian women**, they call on the HRC to ensure that Israel:

- Puts an immediate end to its occupation and apartheid policies and practices that disproportionately affect Palestinian women.
- Fully complies with the fundamental provisions of CEDAW in all areas under its effective control, thus in Israel, in occupied Palestine, and the Syrian Golan.

Israel's erosion of the fundamental rights and freedoms of Palestinians and Israelis peacefully seeking to end an inhumane system of occupation and institutionalized discrimination provides further evidence for the State's intention to perpetuate its domination and control over the Palestinian people. These activities constitute part of Israel's breaches of international criminal law, which defines apartheid as a peremptory norm (*jus cogens*) of international customary law from which no derogation is permitted. In light of this, we, the signing civil society organizations, call upon the United Nations, and in particular the Human Rights Council and all Member States to take all necessary measures to ensure that Israel:

- Fully respect the fundamental freedoms of assembly, association, expression and movement in occupied Palestine and in Israel;
- End the use of the criminal, legal and security tools to obstruct legitimate opposition, including the use of arbitrary arrests and detentions, and ensure fair and speedy trials for anyone charged with an offence;
- Prevent incitement and attacks against dissidents and HRDs, thoroughly investigate violations, and bring perpetrators to justice.

We furthermore recommend to the United Nations take the following steps:

- Ensure accountability for Israel's longstanding violations of international law and human rights law as well as for its non-cooperation with UN human rights mechanisms;
- Call on Member States to cease all forms of military, police or intelligence cooperation with the Israeli authorities;
- Advise Member States to impose political and economic sanctions on Israel.



## GICJ's Submissions on South Sudan

- ❖ Urgent Call on the Situation in South Sudan



## GICJ's Submissions on South Sudan

*Written by: Mutua K. Kobia*

Since the outbreak of violence in December 2013 between the rival forces of Sudan People's Liberation Army (SPLA) in support of President Salva Kiir and Sudan People's Liberation Army In-Opposition (SPLA-IO) backing former First Vice-President Riek Machar there have been many efforts to cease the violence. However, peace agreements (Cessation of Hostilities in January, 2014 and a Peace Agreement in August, 2015) have been issued and signed and promises by the government have been made without keeping. The Geneva International Centre for Justice (GICJ) is appalled at the grave human rights abuses and violations in South Sudan, condemns the actions of the warring parties, and notes the continued impunity.

GICJ is aware that despite the above-mentioned endeavours the situation has worsened in all aspects. Innocent families and communities have greatly suffered at the hands of the warring parties. While violence persists, other catastrophes have ensued as a result of the ongoing conflict that continues to spread towards unaffected areas. Moreover, efforts to protect and secure civilians are minimal and face many challenges.

### Continued violence

On April 3, 2017 violence broke out in Pajok area in Eastern Equatoria that is populated by some 50, 000 people. Reports have told of “grave violations against civilians” and has caused mass displacement into Uganda (approximately 10,000 refugees) and other surrounding areas in the preceding days<sup>1</sup>. the journeys they make are a matter of concern as they lack necessary financial means for safe and adequate transportation. In May 2017, violence in the towns of Tonga and Kodok have cause people to leave their homes by foot for “up to 150 kilometres in searing temperatures” where unfortunately, according to on the ground sources many died en-route and others, after arriving weak and exhausted found themselves facing more violence and little to no “food, water and healthcare” in Aburoc county<sup>2</sup>. Civilians already in Aburoc are apparently in danger of being subjected to “gross human rights violations” and this region already suffers from severe shortages of drinking water risking outbreaks of diarrhoea and cholera. United Nations High Commissioner for Human Rights, Mr. Zeid Ra'ad Al-Hussein added, “These are women. children and men at the mercy of military



*Photo 1. South Sudanese civilians accessing water and shelter in Aburoc*

<sup>1</sup> <http://reliefweb.int/report/south-sudan/south-sudan-situation-regional-update-1-15-april-2017>

<sup>2</sup> <http://www.un.org/apps/news/story.asp?NewsID=56679#.WRLPoeWGOUk>

commanders, on both sides of the political divide, who have consistently shown little or no regard for the protection of civilians”<sup>3</sup>

## Refugees

*“No refugee crisis today worries me more than South Sudan,”*

Valentin Tapsoba, the African chief for the United Nations High Commission for Refugees (UNHCR)

Approximately 1.7 million refugees from South Sudan have fled to neighbouring countries since the start of the conflict and violence in December 2013. Almost 900,000 have sought refuge in Uganda, close to 400,000 in Sudan, 300,000 in Ethiopia, over 70,000 in Democratic Republic of Congo (DRC), and approximately 65,000 in Kenya<sup>4</sup>. Already over 350,000 refugees have fled South Sudan from January 2017 to April 2017 due to the renewed violence around the country. UNHCR has taken this information into consideration and has already re-planned for the emigration of at least 477,000 refugees from 330,000 for the year of 2017. These large numbers of refugees have put accommodation and funding in a serious situation as most agencies and organisations did not expect such a high number in such a short of time.

Moreover, almost 2.3 million South Sudanese have been displaced with roughly 1 million children forced to flee their homes due to the conflict and violence-related occurrences<sup>5</sup>. Concern and consideration for the physical and mental fatigue as well as trauma that the children must endure has to be seriously taken into account.

## Internally Displaced Persons

While it is necessary and important to account for and pay attention to refugees it should also be the case for internally displaced persons (IDPs). According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) nearly 2 million IDPs have been displaced by violence (may also include famine caused by the violence) where 223,895 are in Protection of Civilians (PoC) sites<sup>6</sup>.



*Photo 2. Thousands of South Sudanese flee famine and civil war.*

<sup>3</sup> <http://www.un.org/apps/news/story.asp?NewsID=56703#.WRMso-V96Uk>

<sup>4</sup> <http://data.unhcr.org/SouthSudan/regional.php>

<sup>5</sup> <http://reliefweb.int/report/south-sudan/2016-south-sudan-humanitarian-needs-overview>

<sup>6</sup> <http://reliefweb.int/report/south-sudan/south-sudan-situation-regional-update-1-15-april-2017>

## Famine

In addition to the violence, starvation is another serious issue thousands and perhaps millions of South Sudanese face. Earlier this year UN agencies declared famine in Leer, Mayendit, and parts of Unity State (North-Central South Sudan) with worries that it may spread to other countries that are already food insecure (formal declaration of famine means that deaths are directly attributable to hunger<sup>7</sup>).

Ensuing armed-conflict further complicates improving the situation as it endangers and restricts humanitarian aid from reaching people in need, particularly in terms of food, water, and health<sup>8</sup>.

Moreover, while famine ensues in many parts of the country the government of South Sudan is using its oil revenues to proliferate the conflict<sup>9</sup>. This demonstrates clear mismanagement of revenue. Majority of capital is being allocated to arms instead of ensuring security (for instance food security) and rights of South Sudanese people and communities according to a confidential UN report<sup>10</sup>.

In its submission, GICJ argued that the international community must also bear some responsibility, particularly states, businesses, and companies that are involved with South Sudan's oil industry and business that helps finance and perpetuate the violence. If indeed the "protracted conflict" helped bring about famine and food insecurity, and that the conflict is indirectly financed by foreign partners/players then it follows that they have played a part in not only the ethnic violence but also the augmenting food insecurity leading towards famine, and therefore, are partly responsible.



*Photo 1. Refugees in Jamam Camp, Upper Nile dig for water.*

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<sup>7</sup> <http://www.un.org/apps/news/story.asp?NewsID=56205#.WRRoEOV96Uk>

<sup>8</sup> <http://www.npr.org/sections/goatsandsoda/2017/03/14/520033701/why-the-famine-in-south-sudan-keeps-getting-worse>

<sup>9</sup> <http://www.reuters.com/article/us-southsudan-security-un-idUSKBN1600DB>

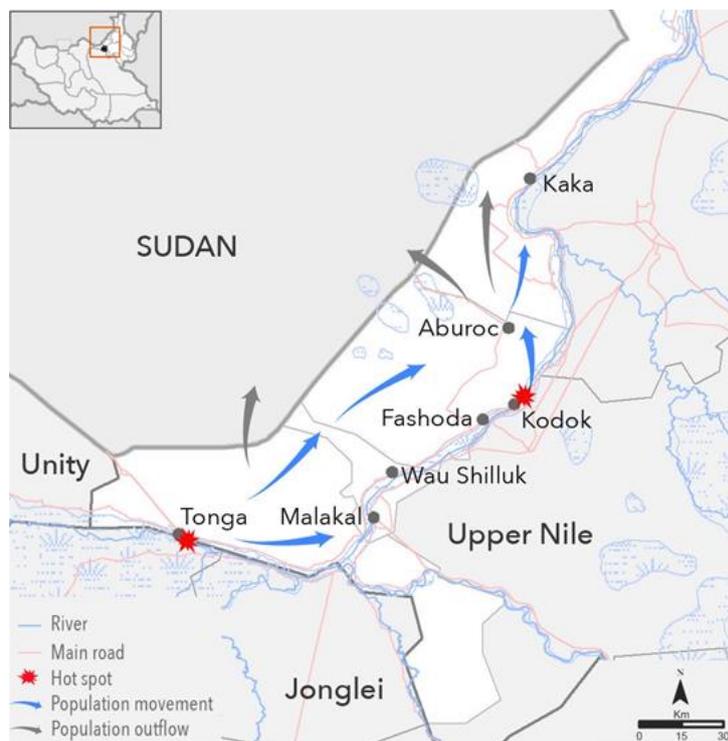
<sup>10</sup> Ibid

## Humanitarian security

In addition to food insecurity, farmers have lost livestock and farming tools amidst the famine catastrophe and the damage to agriculture. Additionally, malnutrition has become a serious problem that approximately 1 million South Sudanese children face<sup>11</sup>. Further, access to emergency public health is nil let alone regular health and sanitation facilities.

Humanitarian assistance and workers are facing major challenges due to the extending conflict along the Nile's West Bank and attacks on humanitarian workers in previous months where humanitarian organizations have been forced to relocate staff from Kodok to Aburoc (North-East). Clashes by the warring parties in Shilluk have forced residents to seek shelter and protection in and around Aburoc. Moreover, looting of vital humanitarian assets have been reported in Aburoc according to Mr. Serge Tissot, Food and Agriculture Organization (FAO) Representative in South Sudan<sup>12</sup>, thereby adding to the major challenges of protecting and assisting civilians and humanitarian workers.

These dire situations are testament to how complex and convoluted the crisis has become as it has clearly adversely affected a multitude of security areas that eradicates the most basic human rights of South Sudanese people.



Map 1. Conflict in the North have forced thousands to seek refuge in Sudan.

<sup>11</sup> <http://www.un.org/apps/news/story.asp?NewsID=56205#.WRM2u-V96Uk>

<sup>12</sup> <http://www.un.org/apps/news/story.asp?NewsID=56662#.WRLReeV96Uk>

## Accountability

*“I can confirm that, as of Sunday, nobody is being detained in connection with this attack against civilians,”* said Human Rights Minister Eugene Nindorera who interviewed several witnesses.<sup>13</sup>

Accountability efforts need to be enhanced by all parties involved. Perpetrators continue to commit grave crimes with impunity further encouraging similar or worse crimes. Though long overdue, it appears that effective strategic steps are being taken to ensure accountability. According to Mr. Nindorera, the Governor of Wau State is working with an established committee to produce a comprehensive report in order to “determine the motive for the attacks and identify the perpetrators in order to hold them accountable.”

Political solutions in tandem with local authorities, leaders, and people must take place to ensure cessation of hostilities and more importantly to re-build a South Sudan for the security and prosperity for South Sudanese.

## Noteworthy developments

UNMISS has undertaken significant work in the last five months that has produced results with regards to protecting civilians and preparing and responding to crisis situations. According to “Note to Correspondents: Implementation of recommendations from investigation into Juba violence” on 19<sup>th</sup> April, 2017 there has been a “significant drop in reported crime and violence, including sexual and gender-based violence”. The note accredits the implementation of recommendations that helped enhance the capacities of UNMISS to better protect civilians by establishing a weapons-free zone nearby POC sites including dismounted day and night patrols and “cordon-and-search operations” to obstruct arms trafficking among other strategic actions<sup>14</sup>. This is sure sign that strategic and practical actions can be implemented to ensure safety of civilians and staff, which was a major concern since the outbreak of violence.

In UN Security Council Resolution 3401 (2016) the deployment of a 4,000 strong force to South Sudan was permitted to provide and strengthen protection and security around PoC sites and its first wave of the Regional Protection Force of UNMISS begun to arrive in the country on 29 April, 2017<sup>15</sup>. Acknowledgement should also be given to the peacekeepers in South Sudan, especially the more than 850 Mongolian peacekeepers who were critical in securing the safety of approximately 50 IDPs from abduction, women and children from harassment, and defending PoC sites. In addition, particular tribute was made to the 41 female peacekeepers who “are critical because they reduce the chances of sexual exploitation and abuse. They empower women in local communities, provide a greater sense of security for women and act as role models” said David Shearer, Head of UNMISS<sup>16</sup>. Additionally, local staff have remained in conflict areas to give as much assistance as possible to the people in need.

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<sup>13</sup> <http://www.un.org/apps/news/story.asp?NewsID=56609#.WRLqyOV96UI>

<sup>14</sup> <https://www.un.org/sg/en/content/sg/note-correspondents/2017-04-19/note-correspondents-implementation-recommendations>. The observations in the letter are based on an independent follow-up mission last month led by Major General (retired) Patrick Cammaert.

<sup>15</sup> <http://www.un.org/apps/news/story.asp?NewsID=56654#.WRLPqOWGOUk>

<sup>16</sup> <https://unmiss.unmissions.org/mongolian-peacekeepers-awarded-un-medal-south-sudan>



*Photo 2. Lieutenant Colonel T.Munkh-Orgil involved in Peacekeeping operations in South Sudan.*

Such examples of empowerment towards the locals should be encouraged and highlighted more often. As well, the recognition and acknowledgement of local peace initiatives, forums, and associations should be used to empower locals, spread awareness, provide opportunities for willing donors, and used as examples of good practices.

## **Conclusions and Recommendations**

While the efforts of UNMISS deserve acknowledgement, we must remain mindful that this is only the beginning of security operations and that even more work and effort is needed and warranted to ensure further safety and positive results regarding the plight of now millions of innocent South Sudanese. The ethnic violence, famine, torching of villages, and other horrendous atrocities has already produced millions of displaced people who deserve the attention of the international community.

Three years of conflict have already devastated the people of South Sudan and put the country's future into serious risk. All areas that amount to peace and security have either been destroyed or are in peril. From rural livelihoods, crop and food production, the economy and agriculture of the country, health and nutrition, to water and sanitation and more; all have been adversely affected.

The very spirit of the UN Charter has been shaken under such crises and the determination of the peoples of the united nations is in question. The Preamble and Article 1 of the UN Charter are not reflected in the actions and determinations of the peoples and states of the United Nations.

In light of the prolonged conflict, the increasing violence and the threats posed by the famine, the organizations signatories to the statements addressed several recommendations to the United Nations and to the Human Rights Council.

- The United Nations should *urge* all relevant stakeholders to support local peace initiatives, groups, and associations in any way possible;

The government of South Sudan should:

- *hold themselves accountable* over previous promises and commitments of a cease-fire;
- *uphold commitments* of protection and security of its citizens;

States and relevant stakeholders should:

- *provide assistance* (monetary, technical etc.) to humanitarian aid, missions, workers, and to improve POC sites as per their requests;
- *investigate* sources of arms and war funds, particularly in South Sudan's oil industry and hold contributors and participants accountable who indirectly finance the conflict.



## GICJ's Submissions on Hate Speech and Discrimination

- ❖ Follow-up and Implementation of the Durban Declaration
- ❖ Hate Speech in the Context of Political Leaders and Parties



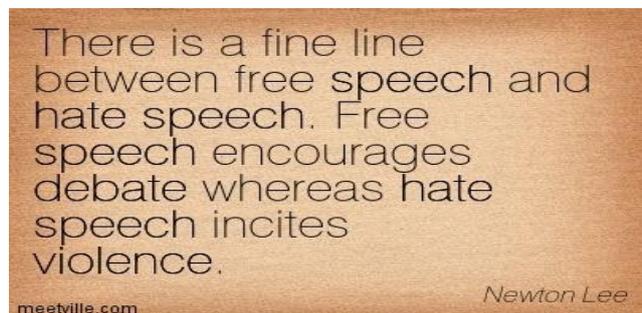
# GICJ's Submissions on Hate Speech

*Written by: Mutua K. Kobia*

During recent unrest or turmoil, the midst of a crisis or during elections there appears to be a rise in hate speech in public discourse. The issue of “hate speech” and “racial discrimination and intolerance in the media” is of growing concern as there have been violent consequences and responses, particularly, by extremist groups. The Geneva International Centre for Justice (GICJ) recognizes these adverse developments as they contribute to the growing phenomenon of discrimination towards migrants and refugees and further exacerbates the intolerance towards Muslims and people of African descent. Moreover, it also demonstrates the growing trend of contemporary forms of racial discrimination as media is used as a platform to spread hatred instead of tolerance and diversity.

In addition, the United Nations High Commissioner for Human Rights Zeid Ra'ad Al-Hussein made a statement on 21 March, 2017 (International Day for the Elimination of Racial Discrimination), in which he cautioned about the “dangers of demonising particular groups”. Hate speech has led to polarised ethnic identities in South Sudan and fuelled its current ethnic war. Anti-Semitism persists in the US, Europe (in addition to anti-Roma), Middle East and beyond. Increasing verbal and physical abuse on Muslims is on the rise, particularly towards Muslim women and the Rohingya. Indigenous people, especially in Latin America, “continue to endure stigmatization, including in the media”.

Hate speech is generally defined as “speech that attacks, threatens, or insults a person or group on the basis of national origin, ethnicity, colour, religion, gender, gender identity, sexual orientation, or disability”. The term has been used around the globe for various purposes including vilification of, or discrimination against certain groups (usually minority groups), hatred and xenophobic tendencies and propaganda purposes amongst others. The intentions seemingly stem from intolerance, discrimination and lack of accurate information.



## **Hate speech under international law**

International law has several provisions that prohibit or attempt to regulate speech based on hatred or discrimination against others. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees “freedom of expression”.

### ***ICCPR - Article 19***

*1. Everyone shall have the right to hold opinions without interference.*

2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

(a) *For respect of the rights or reputations of others;*

(b) *For the protection of national security or of public order (ordre public), or of public health or morals.*

While freedom of expression allows for content and ideas that may “shock, offend and disturb” it is prohibited when it advocates “national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. Article 20 of the ICCPR provides limitations to Article 19’s “freedom of expression”.

#### ***ICCPR - Article 20***

1. *Any propaganda for war shall be prohibited by law.*

2. *Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*

Furthermore, the International Convention on the Elimination of Racial Discrimination (ICERD) under Article 4 states:

#### ***ICERD – Article 4***

*States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:*

(a) *Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;*

(b) *Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;*

(c) *Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.*

It should be noted, perhaps even explicitly mentioned, that prohibition of “hate speech” does not mean prohibition of “expression of hate”. Additionally, “hate speech” consists of hate specifically directed and/or targeted towards a group of people that share certain characteristics, expressed or

otherwise. It is necessary then, to distinguish between “hate speech” that is prohibited by law and freedom of expression that may contain offensive content but is nevertheless protected by law.



Left: Anti-refugee protests illustrating refugees as rapists. Right: Anti-Rohingya event. [Irrawaddy]

### Hate Speech in political contexts

Hate speech in political contexts carries weight and significance especially coming from politicians due to their position in society, influence, and audience. As Hiba Birat notes, “hate speech, as a term, does not have a specific definition”, therefore, better understanding and clarity is necessary when investigating the elements that warrant prohibition or regulation of hate speech. Elements in this case constitute, “intent”, “incitement”, “causation”, “context”, and “proscribed results”<sup>17</sup>; additionally, Mercy Muendo adds the elements of “the speaker”, “audience”, “content”, and “historical context”<sup>18</sup>.

*Intent:* the statement is meant to incite hatred;

*Incitement:* several factors may be present with regards to incitement that require investigation. Language that invokes taking action should be taken into consideration;

*Causation:* with regards to the International Tribunal for Rwanda, causation though slightly different from incitement creates “an actual risk of harm” that is directly or indirectly related to the statement;

*Context:* the statement in context has a “racist nature”, is discriminatory and inflammatory towards or targeting a particular group;

*Proscribed results:* the statement has propagated into illegal activities;

*The speaker:* the person or group presenting the message has influence to their followers, listeners, or audience;

<sup>17</sup> “Hate Speech: International Law v. U.S.A Law”, Birat. H. 2017: <http://www.paccusa.org/hate-speech-international-law-v-u-s-law/>

<sup>18</sup> “The Options for Kenya as an impending election fuels fear of hate speech”, Muendo M. 2017: <http://theconversation.com/the-options-for-kenya-as-an-impending-election-fuels-fear-of-hate-speech-71913>

*Audience:* audience may be known or have the tendency to act/react in a violent manner or ways that violate law;

*Content:* content can be discriminatory and/or “hostile towards a targeted group”;

*Historical context:* similar statements may have led to violations or violence in the past.

Majority of hate speech by politicians is accompanied by sweeping statements of a particular group that are usually untrue, contain fabricated information, or are exaggerated. Moreover, political parties with anti-immigration agendas that use hate speech as a propaganda tool to win votes and support are becoming more popular. In this context, they are doing a disservice to society and undermining the principle of dignity in that not everyone in society is regarded as equals. Dignity is a precondition to other rights that everyone is entitled to<sup>19</sup>.

Dutch prosecutors found Geert Wilders guilty of hate speech and hatred towards Moroccans as he attempted to isolate Dutch citizens of Moroccan origin and called his comments “unnecessarily offensive”<sup>20</sup>. Mr. Wilders comments do not ameliorate the situation or crisis at hand but rather creates divisions.



*Photo 3. Dutch Politician, Geert Wilders appears in court and was found guilty of inciting discrimination.*

Hate speech legislation originally came into inception, through the European Convention on Human Rights (ECHR), ICCPR, and ICERD to help prevent the type of hatred that transpired previous to, during, and right after the second world war. Unfortunately, however, there have been incidents, for example the Rwandan genocide, where language that vilifies and discriminates in a racist manner has been used to directly incite violence. The purpose of such Conventions was to curtail these types of incidents by prohibiting the use of irresponsible speech that can lead to negative consequences.



*Photo 4. Indian MP, Tapas Pal threatened that if any of his ruling party workers were attacked he would send his brothers to kill the opposition and rape their women.*

In another written statement to the HRC35, GICJ also raised concerns of ongoing racism, racial discrimination, xenophobia and related forms of intolerance regarding the media and in relation to Item 9 of the HRC agenda.

### **News and politics**

In this statement GICJ noted how France and the United States engaged in anti-Muslim rhetoric to garner support and votes during presidential-elections and that anti-Muslim hatred continues to grow and spread throughout the European Union.

<sup>19</sup> “The Regulation of hate speech”, Pesinis A. Central European University. Budapest, Hungary. 2015

<sup>20</sup> <http://www.politico.eu/article/prosecutor-demands-fine-for-geert-wilders-hate-speech/>

Journalists and mainstream media are part of the problem as reporting of Muslim/Islamist attacks has garnered much attention while similar crimes by Nationalists, which are rising and more prevalent, receive little to no attention<sup>21</sup>. Right wing terrorist attacks and attacks on refugees are rarely mentioned as compared to attacks by religious extremists. This type of unbalanced journalism brings about a disservice to the people.

In France, there have been 400+ anti-Muslim hate crimes in 2016 and a 223% increase in 2015 from 2014 including sustained targeting of Jews according to the Commission Nationale Consultative des Droits de l'Homme (CNCDH). In the UK, there have been 800+ anti-Muslim cases in July 2014-July 2015; and 878 anti-Muslim attacks in Paris by November 2015. In Germany, the number of recent racial hate crimes has been the highest since WWII considering the rise in immigration and rise in anti-immigrant sentiments (especially towards refugees, Muslims and Africans); 2013-2015 racially motivated crime increased by 87%. Currently in the EU there has been some demonization of anything international or foreign<sup>22</sup>.



*A vigilante association, the Organisation for the Protection of Bulgarian Citizens (OZBG), have taken matters into their own hands to “hunt” and arrest refugees.*

## **Racism, discrimination and hate speech**

### **Incitement to genocide**

Though not as prevalent, hate speech with incitement to genocide does exist. In South Sudan, for instance, the ongoing ethnic cleansing was fuelled by hate speech and incitement to violence as reported by civilians on the ground. Radio is used to send hate messages urging civilians to take up arms and attack neighbours of a particular group and “vengeful sexual violence” was promoted<sup>23</sup>.

In a statement to the Security Council, Adama Dieng, reporting on his visit to South Sudan stated that “*The media, including social media, are being used to spread hatred and encourage ethnic polarization, and letters threatening particular ethnic groups, telling them to leave, face violence or be eliminated from specific areas...*”<sup>24</sup> Incitement to genocide is recognised under international law as a crime, and therefore, is prohibited and punishable under Article 3 (c) of the Genocide

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<sup>21</sup> <https://www.europol.europa.eu/activities-services/main-reports/eu-terrorism-situation-and-trend-report>

<sup>22</sup> <https://www.aclu.org/bans-sharia-and-international-law>

<sup>23</sup> <http://famagusta-gazette.com/ethnic-killings-and-radio-hate-speech-deplored-in-south-sudan-p23228-69.htm>

<sup>24</sup> UN Press Release: [http://www.un.org/en/genocideprevention/documents/our-work/Doc.8\\_2016-11-17.AD.Statement%20to%20SC.South%20Sudan%20-%20final.pdf](http://www.un.org/en/genocideprevention/documents/our-work/Doc.8_2016-11-17.AD.Statement%20to%20SC.South%20Sudan%20-%20final.pdf)

Convention as well as customary law and other international principles including the International Criminal Court.

## **Migrants**

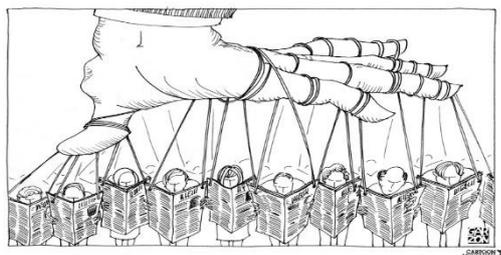
Currently, anti-immigrant sentiments have been on the rise especially after the 911 event in 2003, particularly towards Muslim migrants and after the 2008 global financial crisis where unemployment rose and the far-right in particular blamed this phenomenon on immigrants<sup>25</sup>. These sentiments turned to hate speech where the main medium, according to respondents, is the media (especially television). The internet has also turned into a “nest for xenophobic comments”. Bulgaria’s SKAT and Alpha, for example, base their content on racist terms calling asylum seekers “Taliban’s”, “jihadists”, “terrorists” etc. Additionally, much media exposure has been given to political speech where Magdalena Tasheva, for example, accused refugees of being cannibals. Political bias as highlighted by Lord Leveson regularly discriminates due to press hostility and xenophobia while engaging in anti-migrant political agendas.

*“Some negative reporting can be understood – and criticised – when it is motivated by commercial considerations in newspapers, but uncritical reporting without context of racist speech by leading political figures is inexcusable.”<sup>26</sup>*

In some instances, the reports in the media started with hate speech, followed by threats, and eventually attacks.

## **Platform for political leaders to spread hate-speech, discrimination, and xenophobia**

Politicians or political parties who have the means and power to influence or control media take advantage of this position as they are well aware of their target audience. They use media as their platform to spread information that will further their political agenda and ambitions (consider the above examples of Dutch politician Geert Wilders and Indian MP Tapas Pal amongst others).



In Hungary many attribute the landslide victory of Prime Minister Viktor Orbàn to the influence of media and he allegedly paid off a number of media outlets who in return produced, published and gave him extended media attention and coverage. This ensured Orbàn’s right wing views that include negative and unfair portrayals of refugees would be widely dispersed and viewed by many without the opportunity to compare other viewpoints or candidates<sup>27</sup>.

## **Migrants and refugees in Europe**

<sup>25</sup> Anti-immigration sentiments and Far-right Political Parties in Europe”. Jung-Eun O. IOM. 2014

<sup>26</sup> “Moving Stories: International Review of How Media Cover Migration”. Y. Macannico. EJN. 2015

<sup>27</sup> <http://www.reuters.com/article/us-hungary-orban-media-idUSKBN13V1FL?il=0>

According to the ‘International Review of How Media Cover Migration’ report of 2015, when the “alert” of mass migration in 2015 was predicted, majority of the reporting and forecast was on social media and by civil society while being largely ignored by mainstream media. This led to a host of problematic issues ranging from misinformation to sensationalist reporting by various media outlets.



Photo 5 Former UKIP MP candidate, Mr. Bucklitsch, distorting information.

On this aspect, much of the media has mainly focused on two themes, numbers and emotion. Negative outcomes are sometimes the result of a politically driven approach without a balanced scale and with “an agenda dominated by loose language and talk of invasion and swarms”<sup>28</sup>. It is evident that there has been a struggle for balanced reporting when political leaders respond with bigotry and panic to this issue. In Turkey, the media is “under the thumb” of the government whereas in the US, racist exchanges in politics have been a recent focus of mainstream media.

Several factors account for the effectiveness, albeit with negative consequences, of this approach. Terminology plays a huge role as, for instance, migrants in general are often characterized under the same umbrella and “illegal migrants” has been widely used despite no such legal term<sup>29</sup>.

### Disinformation a.k.a “Fake News” and sensationalism



Photo 6. Columnist, Katie Hopkins expressing her views in the papers.

Disinformation, also known as “fake” or “false” news is prevalent and on the rise and the reasons for its design and spread vary and are interlinked. Propaganda in order to mislead a population, interfere with their right to know, right to information and ideas, and an individual’s right to seek and receive information is the prevailing rationale<sup>30</sup>. Moreover, journalistic sensationalism (presentation of stories intended to provoke interest or excitement, at the expense of accuracy) for profit, sales and exposure is sometimes coupled with propaganda and political agendas. The objectives and results range from vilifying, discriminating, and spreading hatred towards particular groups to

inciting and waging violent attacks on said groups. The methods vary from slander, intimidation and threats (persuasion or silence) to bribery, blackmail, or buying out media companies.

Sensationalist headlines fail to distinguish meanings that are otherwise apparent in international law as opposed to common understandings. In other words, headlines devise phrases without providing meaning or context thus confusing the reader instead of informing the reader and leaving uninformed, ignorant, or unwary readers to lose sight.

<sup>28</sup> “Moving Stories: International Review of How Media Cover Migration”. EJN. 2015

<sup>29</sup> Migrants are people who exercise their right to move freely. “Undocumented” migrant is the proper legal term for people who may not have the legal right to reside in a particular country. There has also been interchangeability with smuggling and trafficking.

<sup>30</sup>

[http://www.ohchr.org/\\_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Expression/JointDeclaration3March2017.doc&action=default&DefaultItemOpen=1](http://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Expression/JointDeclaration3March2017.doc&action=default&DefaultItemOpen=1)

Exaggerated headlines with unverified information misinforms, changes mood and direction and brings about xenophobia amongst readers. For instance:

- “The Prime Minister: 2 million refugees are waiting on the Bulgarian-Turkish border”;
- “Expert: The Newly arrived refugees are future ISIS fighters”;
- “Islamic State floods Europe with Refugees”;

Such headlines fail to comply with journalistic ethical codes resulting in a disservice to the reading community, and thus should be prohibited. *“And, of course a commercial interest in favour of sensationalist headlines that generate more hits in online media, which gains more and more influence both in terms of audience and advertisers. As a result, some editors are less inclined to strive for authenticity and objectivity”*<sup>31</sup>.

Additionally, the International Organisation for Migration (IOM) Director said, “with populist leaders and elements of the media increasingly portraying migrants in a negative light, IOM points that fear of the unknown is deepening community divisions and endangering the very people seeking a better or safer life”. The media needs to a better job of reporting in context to avoid mismanagement of certain crises. In addition, media has failed in holding the EU, its members, and other leaders to account despite having the ability and prerogative to do so.

## Conclusions and Recommendations

Hate speech, therefore, warrants and requires regulation. Hate speech regulation is not about eradicating conflicts nor correcting passions but rather preventing incitement and “affirming the value of equality in view of existing conflicts and heated emotions.”<sup>32</sup>

The ICCPR clearly states under Article 20(2) that “*any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law*”. States parties thus are required to prohibit let alone engage in hate speech. Politicians should also be in keeping with the dignity of all people of society. Hate speech undermines this crucial aspect.

Considering the above examples, it is apparent that there is a reporting crisis as or more serious than the migration crisis. Since 1973 the **Durban Declaration** has continuously called for and provided practical solutions for the international community and especially national legislation to use media as a means of education on racism, racial discrimination, hatred, xenophobia and other related forms of intolerance and also as a means to dispel false information and warn about the evils of racism.

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<sup>31</sup> “Moving Stories: International Review of How Media Cover Migration”. EJN. 2015

<sup>32</sup> “The Regulation of hate speech”, Pesinis A. Central European University. Budapest, Hungary. 2015

In light of the dangerous spread of hate speech and discriminatory behaviour in several countries, in their submission to the 35th session of the Human Rights Council, all signatory organizations recommended to the United Nations the following:

– *Develop* a set of standards for journalists and media on the use of derogatory language, use of words and imagery that incite racism, hatred, discrimination, and xenophobia backed by a media complaint mechanism.

- *Increase* availability of resources for more accurate journalistic research and exercise freedom of information that journalists can provide the audience in ways they can understand.

- *Pressure* states to ensure false (disinformation) or unverified information (propaganda) does not get distributed or support from the state itself. Further, state actors should ensure dissemination of accurate and necessary information to the public in accordance with international standards.

- *Support* the Durban Declaration as contributes to ending racial discrimination, incitement to hatred, xenophobia and related forms of intolerance in the media. States should also highlight the negative effects and impacts of disinformation and propaganda as recommended in the Declaration.

- *Ensure* that the international clearly defines a universal concept of “hate speech”,

- *Encourage* states to ratify and apply the ICCPR and CERD without reservations,

- *Enhance* human rights discourse on hate speech and its regulation at the international and national level;

- *Study* the causes and effects of hate speech.



## GICJ's Submissions on Syria

- ❖ Syria: Summary Executions
- ❖ Syria: Internally Displaced Persons
- ❖ Syria: Conditions of Women
- ❖ Syria: Peace Negotiations



## **GICJ's Submissions on Syria**

*Written by: Giulia Squadrin*

In 2011, one of the deadliest conflicts of the last decades violently broke out in the Syrian Arab Republic. Since then, the frontlines have repeatedly shifted, and the conflict has provoked unimaginable suffering to the Syrian population.

Six years after the outset of the civil conflict, Syria is reduced to smoke and rubble. Magnificent ancient buildings have been barbarically destroyed, and the colourful markets have been replaced by blood and desolation. Thousands of innocent civilians; men, women, and children have been tortured, abducted, unlawfully detained, brutally executed and killed by indiscriminate attacks. Millions of people have been forced to flee their country, hundreds of thousands have been killed, wounded and maimed, millions are internally displaced and up to 13.5 million civilians are in need of humanitarian help. Despite the intensification of the UN-led peace talks, deadly attacks continue to be carried almost on a daily basis and the brutal fighting has provoked almost 500,000 civilian casualties.

In light of the tremendous suffering of the civilian population and the devastating consequences of the endless conflict, Geneva International Centre for Justice (GICJ) submitted four written statements to the 35th session of the Human Rights Council focusing on specific aspects of the Syrian war: namely, the appalling number of summary executions committed by armed groups and governmental forces, the conditions of internally displaced persons, the conditions of women, and the violent episodes that hinder the achievement of peaceful negotiations.

### **Syria: Summary Executions**

Since the outset of the conflict in 2011, the Syrian civilian population has been subjected to horrific human rights violations and abuses, including torture, mass killings, sexual and gender-based violence, arbitrary detention, enforced disappearance, and summary executions perpetrated by all parties involved.

#### *Governmental forces*

The largest number of arbitrary killings and summary executions by the hands of governmental forces occurs in government-run detention facilities, where prisoners – both alleged terrorists and innocent civilians – are held captive in inhuman conditions.

Until 2013, there was little evidence on the fate of detainees and the conditions in detention centres. In August 2013, a military defector identified as “Caesar” smuggled thousands of pictures outside the country: the shocking collection contained brutal images representing tens of thousands of bloody and beaten dead bodies. From the images, it is clear that the prisoners were subjected to inhuman and degrading treatments. International independent monitoring mechanisms are not allowed in the Syrian detention centres; therefore, it is impossible to obtain accurate statistics on the number of deaths. However, thanks to the smuggled pictures and the

information provided by former detainees, local activists and non-governmental agencies, it has been possible to identify the patterns of violations as well as the main causes of death.



*Mass deaths and torture in Syrian detention facilities*

### *ISIS and Jabhat Fath al-Sham (former Jabhat al-Nusra)*

According to the United Nations Commission of Inquiry on the Syrian Arab Republic, ISIS, and the former Al-Qaeda affiliate in Syria, Jabhat al-Nusra, which changed its name to Jabhat Fath al-Sham, have been found responsible for systematic and widespread human rights violations, including targeting civilians with torture, abductions, and executions. While information about the brutal actions and abuses of the two terrorist organisations is hard to obtain because of the difficulties independent monitors have accessing areas under their control, both groups have largely publicized their unlawful attacks. Circulating images and shocking videos showing the merciless executions of innocent civilians has become a means of propaganda and a weapon used to spread terror and instil fear.

Furthermore, the terrorist activities of the two groups include the abduction and detention in inhuman conditions of scores of civilians – both men and women – the forcible recruitment of children for combat and the brutal torture of detainees, which often leads to death. According to UN sources, ISIS and Jabhat al-Nusra have established makeshift courts and detention centres; civilians and government soldiers are unlawfully detained and often subjected to unfair trials. The prisoners are often executed by gunshot, are beheaded or hanged.



*Mass executions in Syria*

## Syria: Internally Displaced Persons

The unfolding of the violent conflict in Syria and the subsequent social and economic hardships forced millions of people to leave their homes and seek safety and stability elsewhere. While the number of refugees is constantly rising, the statistics concerning internally displaced persons appear to be even more worrisome.

Internally displaced people flee their homes to escape *inter alia* war, violence, starvation, economic hardship and lack of medical facilities and supplies but, unlike refugees, they do not cross borders and, therefore, remain under the protection of their own government – even though the government is often the reason of their displacement.

Besides the huge exodus of refugees, the Syrian conflict has provoked massive waves of displacement within the country. Internally displaced people flee from violence, human rights violations and armed conflict, but, as they do not leave the country, they remain under the legal protection of the Syrian government. As such, IDPs enjoy the same rights as all other citizens.



*IDPs camp after attack*

However, as GICJ argued in its submission, remaining within the Syrian borders entails the same degree of suffering and difficulties faced when trying to seek refugee elsewhere, and the wave of displacement caused by the six-year-long conflict has reached unprecedented magnitude. To date, 6.3 million people, including 2.8 million children are displaced inside the country, and the pace of displacement is of 50 Syrian families forced to move every hour of every day, with an average of 6,150 people displaced per day in 2016: according to UN sources, this may be the biggest internally displaced population in the world.

IDPs are just as vulnerable as migrants and asylum seekers: in fact, they are often forced to flee their places at short notice or after destructive aerial attacks, thus leaving behind many of their belongings. 1.1 million IDPs live in camps, informal settlements and makeshift shelters, the majority find refuge with host families and neighbouring communities, and 20% has no shelter at all. Shelters and camps often lack the basic infrastructures and amenities, and are extremely overcrowded, to the point that three or more families are frequently forced to share the same dwelling. According to UN statistics, 57% of collective centres are without sufficient water, 50% lack sufficient sanitation facilities, and 54% are over-crowded. Many IDPs face protracted displacement as the frontlines of the combat shift, and as their financial resources become depleted and are forced to move into cheaper, poorer quality and more crowded accommodation.

IDPs face incredible challenges and barriers in accessing cash, food, essential items and livelihood opportunities, especially because hosting communities as well often struggle with economic

hardships. Security issues and vulnerability increase with every displacement, and two direct attacks to IDPs camps were registered in 2016. On 5 May, two rockets struck a civilian IDP settlement in Idlib, killing 26 people and wounding 23 others, and on 14 April, ISIS destroyed the IDP settlement near the border with Turkey in Aleppo. Luckily, there were no casualties as the settlement had been evacuated no long before, but all tents were burned and damaged.

Collecting accurate data and statistics on the actual number of people internally displaced poses several challenges: 4.5 million Syrians are estimated to be stuck in out-of-reach areas, and some governorates in the north east of the country are extremely hard to enter because of the presence of terrorist groups. In addition, secondary and tertiary displacements are harder to track, and it is almost impossible to know the exact number of people in besieged areas who have had their homes destroyed but are unable to flee. The growing pace and magnitude of displacement as well as the volatility of the conflict's frontlines represent additional barriers that may prevent from obtaining accurate information; as such, all data concerning IDPs may be not completely reliable.

## **Syria: Conditions of Women**

In another submission, GICJ called the attention to the conditions of women in conflict-affected areas. In conflict and post-conflict countries, women and girls suffer heavily from the consequences of the fighting. In war-torn areas, in fact, women are increasingly vulnerable to poverty, they are marginalised and neglected, they suffer for the lack of adequate health care systems and they are subjected to violence and abuses. Such abuses include rape, trafficking, sexual violence, gender-based violence, exploitation and psychological violence. Moreover, in conflict situations, rape is often used as war-tactic: such heinous technique has the power to subjugate entire communities, to affect societies at their very core and to instil fear and in the population.

The six-year-long Syrian conflict has had – and continues to have – a devastating impact on the Syrian society. The destruction of infrastructures, the appalling number of casualties, the use of prohibited weapons (i.e. chemical weapons) and the brutal and inhuman treatment to which detainees and civilians are subjected have provoked an unprecedented humanitarian crisis that has caused one of the biggest waves of IDPs and refugees of the last decades.

The endless conflict has dramatically affected the enjoyment of fundamental rights and basic freedoms of the Syrian population, and has overly affected the safety of women and girls of all ages. While the Syrian judicial and legal system in place before the beginning of the war already included discriminatory provisions against women, the conflict has caused a dramatic worsening of their conditions.

Syrian women face threats, violence and discrimination both within and outside the



*Figure 1 Syrian woman protesting on International Women's Day*

country. Those who have managed to flee their homes, often end up in IDPs and refugees' camps where health care conditions do not meet the adequate standards. For instance, the lack of medical facilities and health care supplies has forced over 200,000 to give birth in unsafe conditions. many others are denied necessary reproductive health access, as well as treatment specific to those victimized by gender-based violence

Furthermore, it is believed that both in camps and outside camps, women face an incredibly high risk of sexual harassment and sexual violence perpetrated by governmental forces and terrorist groups. Allegedly, security forces often rape and abuse women in detention, during interrogatories and at checkpoints, while armed groups engage in sexual violence and rape, they sell women and girls, they promote sexual enslavement, and abuse them in any possible way.

As GICJ argued in its submission, while the international community – led by the United Nations – is providing funds and basic supplies to the civilian population and is assisting in the creation of IDPs and refugee's camps, the humanitarian response has failed to provide women and girls with the adequate redress and protection.

## **Syria: Peace Negotiations**

All relevant bodies of the United Nations have taken steps and adopted resolutions to promote a peaceful settlement of the Syrian conflict and to protect civilians. Since 2011, the Human Rights Council has adopted over twenty resolutions condemning the grave human rights violations occurring in the country, an Independent Commission of inquiry on the Syrian Arab Republic has been set up, and a special session has been called on October 2016 to discuss the deteriorating



*Security Council meeting*

situation in Eastern Aleppo. The General Assembly and the Security Council have been active in this regard as well, but the disagreement among the Permanent Five members has hindered the ability of the United Nations to take decisive and definitive measures to alter the course of the fighting. As such, millions of Syrians have lost faith in the international community and feel abandoned to their dire fate.

During the last rounds of peace talks held in Geneva and Astana, Mr. Staffan de Mistura, Special Envoy for the Syrian Arab Republic, repeatedly noted that the peace process needs to be inclusive and all-encompassing. Failing to address the needs and listen to the voices of all stakeholders, including rebel groups, women and minority groups, will only lead to partial and fragile settlements.

The United Nations has provided an appropriate ground and a legal framework for the peace talks to take place. In this regard, Mr. de Mistura insisted the peace process should follow the guidelines set out in Security Council Resolution 2254. In fact, in line with the guiding principles set out in

OP2 and OP4, the last rounds of peace talks have focused on governance, on the drafting of a new constitution, on counter-terrorism strategies and on the holding of elections as the basis for a Syrian-led, Syrian-owned process to end the conflict. However, despite an intensification of the negotiations during the months of March and April 2017, there has been no concrete and substantial progress towards the resolution of the conflict and the recent attacks have been among the most concerning and deadly ones, and have perilously affected the positive momentum.

In fact, the effective and constructive development of the peace process continues to be hindered by deadly and horrific attacks. For instance, on April 4, 2017, rebel-held civilian neighbourhoods in Southern Idlib and Northern Hama were hit by a series of suspected chemical attacks which killed approximately 70 to 100 people in the city of Khan Sheikhoun, including 11 children. More than 500 people were injured, and the Rahma (Mercy) hospital in Darkush where civilians were taken to be treated – and the last one in the region – was targeted by barrel bombs few hours later.

Following the attack, Mr. de Mistura declared “every time we have a conference or a meeting or something that can give some hope or some perception of hope about the future of Syria, there is a temptation by some, through horrific acts, to kidnap the event, divert it to send some form of cruel statement, not so much to us, but to the people of Syria.”



*U.N. envoy Staffan de Mistura shakes hands with Syria's Ambassador to the United Nations Bashar al Jaafari (L) during the Syria peace talks in Geneva*

Such temptation has led to another devastating and horrific attack on April 15, only few days later the chemical attack in Idlib. On that date, a suicide car bomber killed over 100 people, including 60 children, and wounded over 200 on a crowded bus convoy outside Aleppo. The convoy was carrying at least 5,000 people including civilians and several hundred pro-government fighters, who were granted safe passage out of two villages that had been besieged by the rebels for over three years.

Continuous attacks on civilian-inhabited areas and on humanitarian convoys have a dire impact on the peace process. While building trust between the parties requires time and constant efforts from all stakeholders – including the United Nations – one single attack has the power to dismantle the fragile results achieved after months of negotiations.

## **Conclusions and Recommendations**

In light of the dramatic consequences of the endless conflict and with respect to the topics tackled in its submissions to the 35<sup>th</sup> session of the Human Rights Council, the signatory organizations addressed several recommendations to the United Nations and its relevant bodies.

- Pressure the Syrian government to comply with human rights and humanitarian law standards; particularly, put an end to illicit trials, torture and summary executions of persons deprived of their liberty;
- Pressure the Syrian government and all Member States involved in the Syrian conflict to distinguish military from civilian targets and refrain from disproportionate and indiscriminate attacks that may amount to summary executions and war crimes;
- Constructively work alongside the Syrian government on political, technical and financial issues related to the protection, dignified return and integration of IDPs;
- Pressure the Syrian government to find adequate solutions for the most vulnerable groups of people who are still accommodated in collective centres, tented camps or other makeshift accommodation;
- Call on the Syrian government – as well as on all actors involved in the conflict – to cease the hostilities, to halt the violence and to allow the safe return of internally displaced persons;
- Ensure that all women, including those living in rural areas, in besieged or hard-to-reach areas, and in refugee camps can access appropriate health care, including reproductive care;
- Urge the Syrian government to provide immediate redress to victims of sexual and gender-based violence, including immediate access to legal remedies to hold perpetrators accountable and provision of access to appropriate, gender-sensitive medical care;
- Continue to provide a legal and institutional framework as well as an appropriate ground for the progress of the peace talks:
- Pressure all parties involved in the conflict to abide by their international obligations and to avoid targeting civilian-inhabited areas;
- Promote inclusive, comprehensive, Syrian-led negotiations and ensure that women and minority groups are included in the decision-making and reconstruction process;
- Pressure all parties involved to respect ceasefires and to halt all attempts to boycott the smooth proceeding of the peace talks;
- Urge the Syrian government to ensure that adequate reparation and redress is provided to all victims – including the relatives of victims of torture, killing and arbitrary detention – and that perpetrators are held accountable; and
- Assist the Syrian government in the creation of adequate Transitional Justice mechanisms to allow the transition to a peaceful and inclusive society



## GICJ's Submissions on Myanmar

### ❖ Transnational Corporations in Myanmar



## GICJ's Submissions on Myanmar

*Written by: Gulnoz Saydaminova*

In Myanmar, abuses and violence are intrinsic part of the daily reality. In particular, the armed hostilities in Kachin and Shan, widespread violence and abuses, the dire conditions in the IDPs camps, and the increasing intercommunal tensions and religious violence represent serious threats to the enjoyment of human rights in the country.

In fact, despite the democratization process and the reconciliation efforts initiated in 2011, the Burmese government has been accused of systematic and organized violence and abuses against the Rohingya population, including widespread killings, rape and other forms of sexual violence, extrajudicial and summary executions, torture, enforced disappearance, segregation, blockages of humanitarian assistance, excessive use of force, restriction of freedom of movement, and denial of citizenship.

Rohingya are the Muslim ethnic minority group in Burma of approximately 1 million members that have been living in Burma for centuries but the intensification of Buddhist nationalism and the systematic abuses committed by state agents have provoked a dangerous and discriminatory environment for the Muslim minority. Despite the calls of the Special Rapporteur and of the international community, the Burmese government has failed to conduct impartial and effective investigations and to ensure reparation and accountability for the Rohingya that have been killed, tortured, abused or that have been forcibly displaced.

The Geneva International Centre for Justice (GICJ) condemns the abuses and discrimination endured by the Rohingya minority and remains concerned for the lack of accountability in the country. In this regard, GICJ has submitted a written statements concerning the situation of Rohingya and the impact of transnational corporate accountability in the enjoyment of human rights in Myanmar.

### **Longest running civil war**

The world's "longest running civil war" in Myanmar results in large number of civilian death, refugee crisis and mass human rights abuses. Since the end of British colonial rule in 1948, the fight between the ethnic minority groups and the government with the main fronts are in Kachin, Kayah, Kayin, Shan and Rakhine States. Numerous attempts of ceasefire failed, including the last effort of signing the Nationwide Ceasefire Agreement in October 2016. The intensifying hostilities are described with serious violations of international humanitarian law by all parties: indiscriminate killings, enforced disappearances, rape and crimes of sexual violence, forced labour and trafficking in human beings, involvement of child soldiers among state and non-state forces, widespread displacement and continuous denial of full and sustained access for humanitarian



workers. The UN estimates that between 1996 and 2006, around 1 million people were displaced inside Myanmar.

Besides, the Burmese authorities arbitrarily arrest and imprison protesters, political activists, media workers and human rights defenders for peacefully exercising their rights, including freedom of expression, association and peaceful assembly. The inadequate legal framework undermines corporate accountability and businesses contribute to human rights abuses, especially protection is not ensured from forced evictions as well as environmental safeguards on water, air or soil pollution caused by extractive and manufacturing industries. The general environment in Myanmar is rare investigations into human rights violations and total impunity of security forces, victims and their families denied their rights to justice, truth and reparation.

### **The Case of Rohingya**

Myanmar with population of more than 60 million hosts 135 distinct ethnicities practicing religions as Buddhism, Christianity, Islam, Hinduism and other tribal religions. However, most of the ethnic and religious minority groups endure gross systematic human rights violations by the government and security forces over the past several decades. The minorities are targeted within the so-called “Burmanization” policy. The most shocking is the case of Rohingya. The Rohingya are a Muslim ethnic minority group in Burma of approximately one million members who mostly live in Rakhine State, which is near the border of Bangladesh. Rohingya community have lived in Burma for centuries and has historical roots in the country dating back to ancient times. Nevertheless, the government refuses to give them the nationality and instead it uses the term “Bengali” to refer to Rohingya as foreigners. Between 300,000 and 500,000 Rohingya Muslim fled to Bangladesh over the last 20 years; the UN OHCHR estimates about 66,000 Rohingya have crossed the border with Bangladesh since October 2016.



Within the general context of anti-Muslim rhetoric, the Burmese government and security forces implement the persecution policy for decades now. Since 1982, the Citizenship Law severely violates the rights and freedoms of the Rohingya minority: restricts their right to freedom of movement, limits access to lifesaving health care and denies them rights to education and equal employment opportunities. Moreover, the revocation of all “white cards” (Temporary Registration Cards) in February 2016 upon President’s decree was an effective impediment to the

participation of Rohingya community members in the November elections simply due to lack of any form of identity document.

The year of 2016 in Myanmar was marked with a frightening rise in religious intolerance, especially anti-Muslim sentiment. Incidents of hate speech, incitement to hatred and violence and religious intolerance is very alarming. The growing influence of nationalist Buddhist groups and the adoption of discriminatory laws by the Parliament between May and August further aggravated the situation of minority groups. The new laws with the objective of “protecting race and religion” - Religious Conversion Law, the Buddhist Women’s Special Marriage Law, the Population Control Healthcare Law and the Monogamy Law - were enacted despite provisions violating human rights, including discrimination based on religious and gender grounds.

The situation in Rakhine State is outrageous. The waves of violence between Rakhine Buddhists and Muslims, especially Rohingya brought to the curfew imposed in 2012 that remains in place these days and further widens space for abuse by the authorities, security forces and Rakhine civilians. Whilst the national state and local government authorities carry out discriminatory policies, the security forces implement so called “clearance operations”. The Myanmar armed forces (Tatmadaw) and the Border Guard Police Force of Myanmar deliberately kill the Rohingya civilians, including women and children, by grenades, random and targeted shootings, stabbings and throat slit, by beaten them up to death and burning them in houses. The most disturbing reports note the killings of babies and small children, in many cases in front of the eyes of their raped mothers.

Rohingya children, pregnant women, persons with disabilities and others are subject of widespread and systematic torture and ill-treatment in public, in their houses and make-shift detention locations. It includes brutal physical assaults, death threats, forcing to sit in so called ‘stress positions’ for hours up to 3 days, psychological torture by forcing victims, even children, to watch suffering of their relatives. It is reported that hundreds of Rohingya boys and men are randomly “rounded up” by the Myanmar security forces, fertile women and girls separated from them and taken away; their whereabouts are unknown. Women and girls, including pregnant, are raped and sexually abused either at home in front of their family members or in the places of displacement, in many cases gang rapes, as punishment or with the aim to extract information about insurgents or simply to be used as domestic service. Moreover, the Rakhine villagers dressed either in military uniform or in civilian clothing joined the abuses against the Rohingya community members by looting houses, beating, raping and other sexual abuse. There are recounts of cases when fire brigades poured petrol to fire spread on burning houses of Rohingya.



Despite the limited access to the victims, the UN Office of the High Commissioner on Human Rights and non-governmental organisations have documented the following horrendous crimes committed by the Burmese government, police, army and ordinary people against Rohingya based on their ethnic and religious belonging:

- widespread killings in an organised and systematic manner;

- rape and other forms of sexual violence;
- torture, cruel, inhuman or degrading treatment;
- extrajudicial and summary executions;
- excessive use of force, arbitrary arrests and detention, inhumane conditions and ill-treatment in detention facilities;
- enforced disappearance;
- occupation, looting and deliberate destruction of housing and food sources;
- blockages of humanitarian assistance;
- segregation and retaliation;
- denial of citizenship;
- restrictions on freedom of movement, limited or lack of any access to education, to emergency and basic healthcare.

According to GICJ, the widespread, systemic and organised abuse of Rohingya minority in Myanmar with an obvious intent to destroy amount to the international crime of genocide. The persecution of this ethnic group since 1982 in combination with the widespread criminal acts committed against them since 2012 fulfil the elements of genocide as defined by the Rome Statute of the International Criminal Court and the Genocide Convention. Namely, killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part and imposing measures intended to prevent births within the group.

In response, the government formed the Central Committee on Implementation of Peace, Stability and Development of Rakhine State in May 2016 chaired by the State Counsellor Aung San Suu Kyi (leader of the National League for Democracy, Nobel Peace Prize winner) to work on the issues of security and citizenship proved to be useless. The Advisory



Commission on Rakhine State composed of local and international experts and chaired by the former UN Secretary General Kofi Annan with the aim “to propose concrete measures for improving the welfare of all people in Rakhine State” is to present recommendations to the State Counsellor by the end of 2017. Myanmar government impedes any access to humanitarian aid and international observers.

## **Transnational corporations in Myanmar**

In its submission, GICJ focused on the intensive exploitation of Myanmar's natural resources started in the 1990s when the military regime began to finance and equip the military machine fighting battles against its own people. In 1988, the Burma Action Group stated that the regime "began to sell Burma's natural resources like fast food". The Burmese government's budget was bankrupt following decades long war and foreign investments were considered as a way out. Burma started selling oil and gas, later expanded to selling rights on mining of mineral reserves of timber, tin, tungsten, copper, lead and zinc, as well as deposits of precious stones such as jade, rubies and sapphire and clear-cutting teak forests. The Burma Rights Movement for Action, an opposition group based in Bangkok, Thailand, estimates that oil exploration contracts have accounted for 65 percent of the foreign investment in Burma since 1988. To date, the extractive sector is the second largest source of foreign direct investment and represent close to 40% of exports, with gas and gems being the two-main revenue generating commodities.

In 1988, the military regime that called itself the State Law and Order Restoration Council (SLORC), later renamed as the State Peace and Development Council (SPDC), abolished a 26-year-old policy that banned foreign participation in onshore oil exploration and development and signed contracts with multinational corporations. Since then the transnational oil companies such as Amoco, Unocal, Texaco, Royal Dutch Shell, Petro-Canada, Total and Idemitsu, Premier Oil, Nippon Oil Exploration, ELF, Petronas, International Petroleum Corp, Apache Oil, Tyndall International, Texaco and others rolled out their operations in Myanmar. Multinational oil companies based in the United States, Canada, England, France, Japan, Malaysia and Australia invested millions and millions in Myanmar.

### **Transnational corporate activity and human rights**

In this challenging moment, Myanmar's government is undertaking measures and actions to achieve peace as well as political, economic and social development. It is well-known that "in economies heavily dependent on extractive industries, multinational enterprises operating in this sector typically provide large revenues to governments in the form of taxes, royalties and other payments. In countries with severe public governance and fiscal control problems, these payments can contribute to both the means for violence - by providing funding for the organisational and material requirements of conflict - and the motive - by providing financial stakes for conflict." However, the exploration, extraction and distribution of natural resources in violation of human rights and the endangerment of the environment to achieve peace and development goals is not acceptable.



The Burmese military regime and several transnational corporations operating in Myanmar were seriously accused by the United Nations and human rights groups for gross violations of international humanitarian law and international human rights law. The alleged abuses related to the transnational corporate activity were murders and arbitrary executions, torture and other ill-treatment, rape, forced relocations and forced labour. These accusations were not investigated, perpetrators enjoy impunity and victims are not compensated.

The abuses and human rights violations further worsen in conflict-affected areas. “The Burmese military government has forced entire villages to work on the railroad [for Unocal's pipeline] without pay... People in the region have named the railroad the ‘New Death Railway’. The government has burned villages in the pipeline path.” Moreover, the exploitation of oil resources in Burma had a direct impact on the armed offensive and indigenous people. Green November 32 statement noted: “Genocidal offensives are being carried out as part of the junta's efforts to clear potential oil bearing areas of their indigenous inhabitants. Tens of thousands of Burmese people are being forced to labour on roads for less than subsistence wages for the benefit of the oil multinationals and the junta. SLORC troops have been particularly active in oil concession areas, and have launched heavy offensives in areas where concessions have been offered but not sold, such as the Kachin and Arakan States”. These are serious violations of 1949 Geneva Conventions that Myanmar has ratified in 1992. These heinous crimes should be investigated, the perpetrators should be brought to justice and the victims should be provided with retribution and reparation as it is clearly prescribed by the provisions of international law and well described in “Protect, Respect and Remedy: Framework for Business and Human Rights”.



Myanmar has ratified the Convention on Forced Labour in 1955. However, the International Labour Organisation (ILO) found that forced labour was practised in its various forms in areas affected by military presence and especially in border areas where fighting may still be ongoing; ILO expressed “profound concern” regarding the very limited impact of this new legislation to date and, in particular, on the persistent impunity with regard to criminal prosecution of persons who have committed violations, despite the provisions of this legislation.

Even if the military regime was replaced by democratically elected government in Myanmar,



human rights abuses with direct or indirect involvement of transnational companies continue to take place in a widespread and systematic manner. Firstly, abuses are related to the armed violence in the areas rich with oil, gas and other minerals and in the immediate vicinity of TNCs’ operations. Secondly, the conditions of labour in the TNCs are in serious violation of international standards. Thirdly, funding provided to the government by the TNCs directly impacts the inadequate decisions and illegal actions by

state agents and armed forces. Finally, the lack of government accountability, poor governance and malfunctioning rule of law contribute to the prevention and delay of corporate responsibility.

## **Conclusions and Recommendations**

In light of the constant threats and abuses faced by Rohingya, the inability of the Burmese government to ensure protection and accountability and the heinous abuses committed by transnational corporations operating in the country, all signatory organizations addressed several recommendations to the United Nations and to the Human Rights Council.

- The Human Rights Council should urgently endorse an international independent investigation into alleged genocide in northern Rakhine State;
- The Burmese government should ensure that the Rohingya community members have access to basics as food, shelter, water and ability to return to their place of origin;
- The Government should grant full access for international humanitarian aid workers, observers and journalists to conflict areas, especially Rakhine State;
- The Government should repeal discriminatory legislative and policy measures targeting religious and ethnic minorities, lift restrictions on movement that impede access to health and education services, intensify its efforts to address discrimination, to counter incitement to hatred and hate speech leading to violence and should enact legislation and implement policies to grant Rohingya the Burmese nationality and promote equality, tolerance and peaceful coexistence;
- The Government should work with the UN agencies and special-mandate procedures to coordinate strategies to address the current and prevent future mass atrocities
- The Burmese government should adopt a comprehensive legal framework to prevent multinationals from committing human rights abuses and to ensure that corporate activity on its territory, especially in extractive industry, follows national and international norms;
- The home states of transnational corporations should issue instructions to businesses prohibiting any activity in a foreign country that would lead to or contribute to existing human rights abuse;
- The Government should work with the UN agencies and special-mandate procedures to coordinate strategies to address the transnational corporate social responsibility and accountability.



## GICJ's Submissions on Yemen

*Written by: Gulnoz Saydaminova*

The Republic of Yemen is facing an unprecedented humanitarian crisis. The devastating effect of the war coupled with the worsening famine, the embargo and the recent spread of cholera have led the country on the verge of collapse. While the need for humanitarian assistance in the country has never been more urgent, the political impasse is hindering the achievement of peaceful settlements and the number of civilians – men, women and children – in need of help continues to grow. The brutal acts of the Iranian-backed al-Houthi militias, the constant airstrikes of the Saudi-led coalition and the advance of terrorist organizations have transformed Yemen in one of the deadliest battlefields on the planet – and, as usual, civilians are paying the highest toll.

In light of the worsening situation on the ground, Geneva International Centre for Justice (GICJ) submitted two written statements to the 35th session of the Human Rights Council concerning the involvement of the international community in Yemen and the impact of the armed conflict on children – the most vulnerable segment of society.



### **Civil war and political crisis**

In the past decade, Yemen was in constant political crisis along with simultaneous armed hostilities between various state and non-state actors. Since the victory of Ali Abdullah Saleh in presidential elections of September 2006, the security situation was tense in Yemen with suicide bomb attacks against police, government officials, diplomats, foreign businesses and tourists in 2007-2008. Moreover, the opposition protest in Sana'a that demanded electoral reforms faced police gunfire. The Yemeni army offensive with the support of Saudi Arabia against the Houthis insurgency (that began in 2004 with the goal to overthrow government and implement Shia religious law), resulted in death and displacement of thousands of people despite the reached ceasefire in 2010.

The Yemeni revolution (Intifada) during the Arab spring mass protests in 2011 against corruption, dire economic conditions, unemployment and the government's proposals to modify the constitution, which would lead to Saleh's inheriting the presidency, faced brutal response. In March 2011, hundreds of people were killed by police firing at the prodemocracy camp and army troops clashes with tribal fighters in Sana'a. In November 2011, Saleh signed the plan of the Gulf Co-operation Council on political transition and thus legally agreed to pass the office and presidency powers to his Vice President Abd Rabbuh Mansur Hadi and ending his 33-years rule. The 2012 Presidential election put Hadi to be an interim president for the period of 2 years.



The Shia insurgency grew stronger with Hadi in power, the anti-government force under the leadership of Abdul-Malik al-Houthi pressured for unity government but then refused to participate. The shelling of the president's private residence and placing him under house arrest by the Houtis resulted in resignation of Hadi and his overnment in January 2015. The parliament was dissolved and the Revolutionary Committee under Mohammed Ali al-Houthi was established as interim authority in Yemen. The transition process after the coup d'état prompted the Yemeni Civil War that continues to these days. The conflict is between Sana'a-based Houthi forces allied with forces loyal to the former president Ali Abdullah Saleh and the forces loyal to the government of Abdrabbuh Mansur Hadi, based in Aden.

The internal struggle for power attracted the involvement of regional and international actors, including Al-Qaeda in the Arabian Peninsula (AQAP) and ISIS in Yemen. In January 2009, the Saudi Arabian and Yemeni al-Qaeda branches merged to form AQAP, which is based in Yemen, and many of its members were Saudi nationals who had been released from Guantanamo Bay. Since December 2009, the US joined the fight against terrorists with drone attacks in Yemen. By 2012, the U.S. military presence increased to "small contingent of U.S. special-operations troops" in response to terror attacks by AQAP. As of 2015, Shi'a Houthis are fighting against the Islamic State, Al Qaeda, and Saudi Arabia supported by the United States.

### **The extent of the Yemeni humanitarian catastrophe**



In March 2017, the UN Human Rights Office confirmed that at least 4,773 civilians have been killed and another 8,272 injured by the violence – a total of 13,045 civilian casualties since 26 March 2015 and noted that these figures reflect only those deaths and injuries that the Office has managed to corroborate and confirm to be civilians; the actual death toll is certainly considerably

higher. The number of vulnerable persons in need of humanitarian aid and protection

continuously increase. The UN Office for the Coordination of Humanitarian Affairs reports of nearly 20 per cent increase since late 2014: 18.8 million people out of 27.4 million total population of Yemen; half of the population effected by the armed conflict are children under the age of 18 (estimated 9,6 million). Humanitarian needs are growing daily in key sectors such as food security, sanitation, water, nutrition, health, shelter and education. Children are dying of famine and curable deceases. To date, 3.2 million Yemenis are displaced, and the number of children forcibly recruited for combat and maimed by conflict-related violence has dramatically increased throughout 2016. Moreover, the situation in Yemen contributes to destabilising the situation and further expansion of the terroristic activity in the Middle East.

### **Grave breaches of international law**

In its submission, GICJ condemned the widespread, systemic and organised human rights violations amount to war crimes and crimes against humanity. The perpetrators from all parties that violate the provisions of international human rights law and international humanitarian law, including the coalition forces, should be brought to justice. The Yemeni government is either unable or incapable to ensure accountability. Therefore, the international community must act. The year of 2011 marked with the Arab spring protests resulted in increase of mass human rights violations in Yemen:

- extrajudicial killings and excessive use of force
- arbitrary arrests and detention
- torture and other forms of ill-treatment
- lack of effective remedy and accountability
- limited freedom of expression and opinion
- limited freedom of movement
- forced displacement



In 2015 – 2017, the following violations of the international humanitarian law were observed by the parties to the conflict:

- indiscriminate killings
- indiscriminate attacks on civilians and civilian objects
- air strikes by the coalition forces on civilians and civilian objects
- attacks on markets, weddings, residential buildings and on public and private infrastructure
- allegations of the use of cluster munitions and landmines
- attacks on objects benefiting from special protection
- drone attacks
- sieges and blockades
- arbitrary deprivation of liberty, torture and enforced disappearance
- sexual and gender-based violence
- forced displacement and eviction.



### **The response of the international community through the United Nations**

The measures undertaken by the international community through the United Nations to address widespread and massive violations of international humanitarian law and international human rights law perpetrated in Yemen for a decade are widely assessed as total failure. During the period of 2007-2017, the **UN General Assembly** adopted zero number of resolutions in regards to the situation in Yemen. The highlights of the **UN Security Council** actions in Yemen during the past decade include the resolutions that demanded the Houthis to withdraw from all seized areas and to relinquish all seized arms, established an arms embargo on the Houthis and forces loyal to former president Ali Abdullah Saleh in April 2015, strongly deplored the Houthis' actions to dissolve parliament and to take over government institutions and urged the acceleration of negotiations to reach a consensus solution regarding the political impasse and decided on the sanctions against those threatening the peace, security or stability of Yemen under Article 41 of the Charter, i.e. the assets freeze and travel bans, in 2014 and extended in 2015.

The **Special Envoy to Yemen**, Ismael Ould Cheikh Ahmed facilitated the UN-brokered peace talks. In June 2016, he presented a roadmap that provides for the implementation of resolution 2216 and the establishment of a national unity government, but that the sides were divided over the “sequencing” of the steps in the roadmap. Some of the Security Council members conducted numerous field missions to assess the situation in Yemen and the implementation of resolutions.

The **UN Human Rights Council** has issued numerous press statements to express serious concerns at the deteriorating situation and support of the implementation of an unconditional humanitarian pause by all parties, condemned and called parties for action or cessation of hostilities. On 24 June 2011, the Council issued the first press statement expressing grave concern at the deteriorating situation and welcomed the mediation efforts by the Gulf Cooperation Council. The Council has regularly received briefings from the head of OCHA and the UN Secretary-General's Special Envoy to Yemen and adopted several presidential statements. For example, in March 2015, the Council condemned the Houthi's unilateral actions and reaffirming its readiness to take further measures.

In 2015, the UN Human Rights Council resolution requested the High Commissioner for Human Rights to provide Yemen with technical assistance in the field of human rights and to assist a national commission of inquiry. The Panel of Experts that monitors compliance with the 1737 Iran sanctions regime also was involved, particularly to investigate the 23 January 2013 incident during which the Yemeni coast guard intercepted a ship carrying missiles and rockets allegedly

sent by Iran for the purpose of undermining the transition. In October 2011, the Council unanimously adopted a resolution with key elements focusing on the GCC initiative for a transfer of power in Yemen, concern over the activities of Al-Qaida in the Arabian Peninsula and the need for humanitarian assistance.



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### **Denial of the right to education**

Following the escalation of the conflict in September 2014, the humanitarian situation in Yemen keeps deteriorating and the efforts of the international community to ensure the protection of civilians and to promote resolution of the political crisis have proved ineffective. Moreover, the Yemeni government is unable and incapable of ensuring the observance of international humanitarian law. Consequently, as GICJ argued in its submission, we continue to witness widespread indiscriminate killings, attacks on civilians and civilian objects, use of cluster munitions and landmines, drone attacks, sieges and blockades, arbitrary deprivation of liberty, torture and ill-treatment, enforced disappearance, sexual and gender-based violence, forced displacement and evictions.

The number of civilians in need of humanitarian aid and protection grows continuously. The UN Office for the Coordination of Humanitarian Affairs reported an increase of nearly 20 percent since late 2014, and half of the population affected by the armed conflict comprises children under the age of 18 (estimated 9,6 million). Children, the most vulnerable group disproportionately affected by the armed conflict, pay the highest toll. Armed hostilities led to widespread and systematic violations and abuses against children, including indiscriminate killings, maiming, recruitment and use of children by armed forces and armed groups, attacks on schools and use of schools for military purposes. Children are used as human shields, are raped and subjected to other forms of sexual and gender-based violence. Moreover, destroyed infrastructure, shortage of basics

such as water, food, sanitation and lack of safety contributes to hardship and prevents children from attending schools. Yemeni children are denied of their right to education and are deprived of their future.



### **Killing and recruitment of child soldiers**

The Monitoring and Reporting Mechanism (MRM) verified 1,309 cases of child death as a result of the conflict between January 2015 and September 2016, in addition to 1,950 cases of child injury. Further 1,275 cases of child recruitment by armed groups were verified in the same period. The numbers continue to increase in 2017 as the armed hostilities intensify in Yemen in complete disregard of international humanitarian law. Mr Hamzah Al-Kamaly, Coordinator of National Organization for Defending



Human Rights, former member of the Yemen National Dialogue Conference, and speaker at the side event co-organised by Geneva International Centre for Justice (GICJ) and the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD) during the 33rd session of the Human Rights Council, gave a comprehensive overview on the impact of the armed conflict on the educational system in Yemen. Mr Al-Kamaly emphasised that children in Yemen are abused by the militia groups who enrol students straight from their school bench oftentimes using force. It should be stressed that Yemen has ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict that explicitly prohibits compulsory recruitment of persons who have not reached the age of 18 years into armed forces.

### **Attacks on schools**

The frequent reports on aerial attacks on schools, teachers and students and on the use of schools for military purposes by armed forces are very disturbing. In January 2017, the UNICEF

Representative in Yemen stated that the UN verified the death of 1,400 children and over 2,140 injured since the escalation of the conflict and noted that the actual numbers are likely to be much higher. Saudi Arabia-led forces are conducting attacks against the Iran-allied Houthis; such indiscriminate shelling often hit civilian-inhabited areas, including schools and education buildings. Moreover, the US drone strikes on Al-Qaeda militants hit schools and result in numerous death and injuries of civilians, mostly children. Moreover, Houthi militias and troops loyal to the ousted President Ali Abdullah Saleh continue deliberate bombing of schools and place children at grave risk. Intentional attacks on schools and misuse of educational buildings for military purposes are grave breaches of international humanitarian law and amount to war crimes. The airstrikes on civilian objects used by armed groups is unacceptable. Different techniques of warfare should be employed to minimise the collateral damage on civilians.

### **Conditions of schools**

Children trapped by armed conflicts are not beyond reach; however, Yemen children are denied their right to education. About 2 million school-age children are out of school and need support to fulfil their right to education; more than 1,600 schools are currently unfit for use due to conflict-related damages, hosting of internally displaced persons or occupation by armed groups. The Coordinator of National Organization for Defending Human Rights estimates that 70% of schools have been closed before the end of the academic year of 2015-2016 and that more than 350,000 children are unable to attend school because of closures. Moreover, the Coordinator added that the militia imposed budget cut on education in Yemen by 10 million dollars in 2016. Furthermore, parents are afraid to send their children to school for obvious security reasons. All parties to the conflict should prioritise the protection of civilians, especially children who are disproportionately affected by armed hostilities. Already deeply traumatised by man-made catastrophe, Yemeni children should be given the chance to continue their normal life without having to renounce to their education.

### **Education of displaced children**

It is well known that more than half of the world's refugees are children and Yemen is not an exception. Getting children away from zones of conflict should be the first step. Secondly, children should be provided with education in the place of displacement. Yemen is party to all four 1949 Geneva Conventions and 1977 Additional Protocols I and II. The Fourth Geneva Convention and the Additional Protocol on non-international conflicts obliges the duty-bearers, i.e. the State as well as armed and warring groups "to protect civilians and ensure that children who are orphaned or separated from their families as a result of war have access to education and that their education shall, as far as possible, be entrusted to persons of similar cultural tradition." Moreover, the Guiding Principles on Internal Displacement (1998), a non-binding set of principles, provides for legal protection offered to internally displaced children as well as for those living in conflict



zones: “it is children who are nationals of the State on which territory they are residing and thus enjoy the same rights and entitlements as before, even if displaced from their home”.

## **Girls and education**

The dire consequences of the civil war added up to chronic challenges in the education of Yemeni girls. The initiatives on the fight against discrimination and women’s empowerment, including the implementation of CEDAW recommendations, were disregarded by the Houthi-Saleh groups since the beginning of the armed conflict. Gender parity in primary and secondary education was low and decreased even further. In addition to hardship faced by children, from overall insecure environment to famine and discrimination against women, Yemeni girls are disproportionately exposed to conflict-related sexual abuse and abduction.

## **Conclusions and Recommendations**

In light of the deteriorating human rights situation on the ground, the abysmal suffering endured by Yemeni civilians, the constant denial of fundamental rights, including the right to education, and the spread of famine and cholera, the organizations signatories to the statements addressed several recommendations to the United Nations and the Human Rights Council.

- All parties to conflict should ensure compliance with international humanitarian law, particularly on protection of civilian objects and civilians;
- Human Rights Council should urgently endorse an international independent investigation into alleged war crimes in Yemen;
- The situation in Yemen should be referred to the International Criminal Court;
- The Yemeni government should ensure that the civilians have access to basics as food, shelter, water and ability to return to their place of origin;
- All parties to conflict should ensure protection of children and cease actions that impede children’s safe access to education in compliance with international law.
- The Coalition members should reconsider their modes of combat and means of warfare to prevent attacks on civilians and civilian objects, schools in particular. The armed groups should immediately cease acts of intimidation and threats against teachers and students, use of human shields and schools for military purpose;
- The ongoing recruitment and use of children by all parties to armed conflict should stop immediately and all children released from their ranks; released children should be provided with rehabilitation and re-integration programs;
- The Government should work with the UN agencies and special-mandate procedures to coordinate strategies to address the current and prevent future mass atrocities;
- Donors and humanitarian community are encouraged to provide more funding support for programs on education of children in Yemen to empower them and prevent their recruitment and abuse by all parties.



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