



Integration between national and international justice in the protection of human rights and fundamental freedoms

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Abstract:

The Algerian constitutional legislator, like the legislators of many Arab and Western countries, has established various mechanisms for the protection of human rights through a set of governmental and non-governmental measures, as well as through official and non-official national constitutional institutions. Furthermore, it has emphasized the relationship between international and national mechanisms in ensuring the protection and promotion of human rights and fundamental freedoms.

This paper examines the most significant procedural and institutional mechanisms relied upon in the field of human rights and fundamental freedoms protection at both the governmental and non-governmental levels. It also explores the extent of the interaction and mutual influence between national and international mechanisms in enhancing the protection and promotion of human rights and fundamental freedoms.

Keywords: Human Rights; Fundamental Freedoms; National Judiciary; International Judiciary; Principle of Complementarity.

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Introduction :

Today, human rights have become one of the most prominent subjects attracting considerable attention from researchers across numerous academic disciplines. The growing interest in human rights and fundamental freedoms at both the national and international levels is largely attributable to the fact that these rights and freedoms are primarily intended to protect the individual, safeguard human dignity, and preserve the very essence of human existence. This increasing attention can also be explained by the spread of democratic values, the emergence of democratic movements and revolutions, advances in political and social thought, and the remarkable development of legal, constitutional, and political scholarship across different nations.

Accordingly, both governmental and non-governmental actors, at the national and international levels, have developed a wide range of mechanisms, instruments, and guarantees designed to encourage States to respect and protect human rights, whether within their own territories or in the context of their mutual relations. Despite the significant progress achieved at the international level through the recognition, affirmation, and promotion of human rights and fundamental freedoms, **Jack Donnelly** argues that their effective protection ultimately remains dependent upon national action. This is because human rights originally emerged as an integral component of the domestic legal order. Consequently, the primary responsibility rests with the State to establish an effective national human rights system that begins with legal recognition and culminates in effective implementation.

In light of the foregoing, this study seeks to address the following research question:

To what extent do national and international human rights protection mechanisms influence one another within the framework of protecting human rights and fundamental freedoms, and how effective is this interaction in practice?



THE FIRST TOPIC : National Mechanisms for the Protection of Human Rights and Fundamental Freedoms

These fundamental national safeguards consist of a set of procedural safeguards and institutional mechanisms, whether governmental or non-governmental, established to ensure the effective protection and promotion of human rights and fundamental freedoms.

FIRST REQUIREMENT: Procedural Mechanisms for the Protection of Human Rights and Fundamental Freedoms

the International Covenant on Civil and Political Rights (ICCPR), together with its First Optional Protocol and the Human Rights Committee, provides for a number of procedures and procedural mechanisms aimed at the protection of human rights. These mechanisms include both governmental and non-governmental procedural measures, as outlined below.

Firstly: Governmental Procedural Mechanisms for the Protection of Human Rights

These governmental mechanisms may be identified through the various activities and actions undertaken by official institutions, public bodies, and governmental agencies that have been entrusted by the Constitution or the law with the exercise of public authority within the limits of their subject-matter, functional, territorial, and temporal jurisdiction¹ In general, these activities encompass various types of reports, including official reports prepared by national institutions as well as the periodic reports submitted by the State to the United Nations. They also emphasize oversight in all its forms as an effective mechanism for ensuring the

¹ Chettab Kamal, *Human Rights in Algeria: Between Constitutional Reality and the Lost Reality*, Dar El Khaldounia, Algiers, 2005, p. 126.



implementation of the rule of law and the protection of human rights and fundamental freedoms. In addition, these procedural mechanisms include communications (complaints) and mediation as important means of safeguarding human rights.

1- Various Forms of Oversight :

the discussion of the various forms of oversight in this context does not concern oversight as a domestic legal principle, which constitutes one of the fundamental guarantees for the protection of human rights. Rather, it addresses oversight as a procedural mechanism adopted by national human rights institutions in the exercise of their practical functions. Consequently, oversight is classified as an official procedural mechanism for monitoring the activities of public authorities and the public administration. These oversight mechanisms take various forms, including

a-Oversight of the Legislative Authority:

In Algeria, constitutional oversight has been entrusted to an independent constitutional body, namely the Constitutional Council. It is empowered to review legislation upon referral by the President of the Republic, the President of the National People's Assembly, or the President of the Council of the Nation. This constitutional review takes two forms: mandatory review, which applies to organic laws and the internal rules of the parliamentary chambers before their promulgation, and optional review, which applies to ordinary laws and presidential ordinances upon referral by the competent constitutional authorities²

b- Parliamentary Oversight :

This specialized mechanism, established and regulated under organic laws in accordance with the constitutional and legal requirements and procedures, is intended to safeguard the supreme and vital interests of society and the State, as well as to protect the human rights and fundamental freedoms of individuals and citizens. It is exercised by the constitutionally competent parliamentary bodies

² kashkash Youssef Ahmed. *Public Freedoms in Contemporary Political Systems*. Ph.D. Dissertation, Faculty of Law, Cairo University, Cairo, Egypt, 1987, p. 441.



through their oversight of the activities of the executive branch, whose foremost responsibility should be to serve and protect the interests of the nation as a whole.³

Accordingly, parliamentary oversight is primarily intended to safeguard the public interest in its broad and comprehensive sense by protecting it against the various causes and risks of bureaucracy, administrative and political misconduct, corruption, sabotage, and other forms of abuse and manipulation.⁴

c- Administrative Oversight

Judicial oversight is regarded as the most effective and efficient means of regulating administrative action, ensuring compliance with the law, and consequently safeguarding the rights and freedoms of individuals. As a procedural mechanism, it seeks to provide the natural protection of individual liberty. This principle is reflected in Article 8 of the Universal Declaration of Human Rights, which recognizes the right to an effective remedy before the competent national tribunals for acts violating fundamental rights. It is likewise affirmed in Article 143 of the Algerian Constitution, which provides that: “The judiciary shall examine appeals against decisions issued by the administrative authorities.”⁵

Accordingly, the judiciary compels the administration to comply with the law either by annulling administrative decisions that are inconsistent with legal provisions or by awarding appropriate compensation where the administration incurs legal liability toward individual

2-Education:

Respect for human rights fundamentally requires the active participation of individuals in political and social life and the development of citizens who are fully integrated into their society. In this regard, educational institutions play a

³ c heriet, El Amine. *The Oral Question as a Mechanism of Oversight in the Parliamentary System*. Paper presented at the Study Day on “**The Oral Question as a Mechanism of Parliamentary Oversight,**” Algeria, 2001, p. 68

⁴ Aouabdi, Ammar. *Judicial Review of the Acts of Public Administration in Algeria under the Algerian Legal System*, 3rd ed., Office des Publications Universitaires (OPU), Algiers, 1999, p. 9

⁵ Article 8 of the Universal Declaration of Human Rights provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to them by the Constitution or by law.



pivotal role, as they constitute the primary environment in which individuals acquire knowledge, values, and awareness. Through the educational process, individuals develop an understanding of their rights and responsibilities, thereby fostering a culture of respect for human rights and fundamental freedoms.

3- Diplomatic Protection :

Diplomatic protection constitutes one of the principal mechanisms for safeguarding the rights of a State's nationals abroad. It also serves as a means of giving effect to international responsibility, whereby the State of nationality intervenes through its government, diplomatic missions, or, where appropriate, by resorting to international adjudication to present a claim against the State of residence when an internationally wrongful act has resulted in the violation of the rights of natural or legal persons.⁶

Secondly: Non-Governmental Procedural Mechanisms for the Protection of Human Rights and Fundamental Freedoms

Pressure exerted by national non-governmental institutions—such as political parties, civil society organizations, and trade unions, collectively referred to as civil society—constitutes a non-governmental procedural mechanism for the protection and promotion of human rights and fundamental freedoms. These entities exercise significant influence over decision-makers with regard to policies affecting the rights of citizens. The principal non-governmental procedural mechanisms may be summarized as follows:

1- Boycott :

A boycott constitutes a negative means of expressing dissatisfaction with the position adopted by the governing authorities regarding issues that have a significant impact on public opinion. Historical examples of political boycotts include the decision of the French Communist Party to boycott the 1969 presidential election, arguing that there was no meaningful choice "between cholera and the plague." Another example is the 1992 parliamentary elections in

⁶ Alwan, Mohammed Youssef, and Mohammed Khalil Al-Mousa. *International Human Rights Law: Sources and Means of Supervision*, Vol. 1, p. 18.



Lebanon, which were widely boycotted by the Lebanese population, particularly by Christians, on the grounds that the electoral law was unjust. Algeria has likewise witnessed notable instances of electoral boycotts, particularly by the Socialist Forces Front (FFS), which has repeatedly called for the boycott of elections, maintaining that they lack transparency, produce a questionable political reality, and ultimately reinforce authoritarian rule.⁷

2-Party Press

One of the distinguishing features of democratic societies governed by the rule of law is the absence of censorship over the press and the media. Freedom of the press is a fundamental freedom. This explains why press freedom has consistently been a central demand of political opposition movements and a matter of concern for governments, which often regard it as a serious challenge to their authority. This principle is expressly affirmed in Article 9 of the African Charter on Human and Peoples' Rights.

3- Monitoring and Observation

Monitoring constitutes one of the principal procedural mechanisms through which civil society organizations advocate for human rights, document violations, and oversee those responsible for such abuses. This process begins with the systematic collection of information through the various activities carried out by civil society activists. It involves identifying issues requiring monitoring, conducting investigations into the facts and evidence gathered, and evaluating the information obtained. Where an investigation confirms that a human rights violation has occurred, activists undertake the necessary measures and practical

⁷ hodr, Khodr. *An Introduction to Public Freedoms and Human Rights*. Modern Institution of Books, Tripoli, Lebanon, 2008, p. 254.



steps to prevent, reduce, or at least mitigate the recurrence and impact of such violations.⁸

SECOND REQUIREMENT: Institutional Mechanisms for the Protection of Human Rights and Fundamental Freedoms

The efforts of the Algerian State to protect human rights have not been confined to the establishment of procedural mechanisms; they have also extended to the creation of governmental and non-governmental national institutions dedicated to the protection of human rights and fundamental freedoms against various forms of violation.

Firstly: Institutional mechanisms are governmental mechanisms for the protection of human rights

These fundamental governmental mechanisms consist of:

1- The Advisory Commission for the Promotion and Protection of Human Rights

The establishment of this Commission came after a series of institutional experiences undertaken by the State in the field of human rights. The first of these was the Delegated Ministry responsible for Human Rights, created under Presidential Decree No. 91-92 of 18 June 1991, relating to the appointment of the government team following the formation of Mr. Ahmed Ghazali's government. The responsibility for this portfolio was assigned to Mr. Mohamed Ali Haroun. This ministry represented the first governmental human rights institution of its kind in the Arab world, emerging during the state of emergency that Algeria was experiencing

2- Parliament

⁸ Office of the United Nations High Commissioner for Human Rights (OHCHR). Training Manual on Human Rights Monitoring, Professional Training Series No. 7, United Nations, New York and Geneva, 2001. Available at: Aman Jordan



As an institution representing the will of the people and embodying their aspirations, Parliament carries out two essential functions: the legislative function and the oversight function. Being a constitutional and political institution composed of two chambers, it enjoys decision-making powers with varying levels of significance. Its proximity to the source of authority, as well as its independence, is demonstrated through the legal status granted to parliamentarians. Furthermore, its participation in various constitutional institutions and national bodies dedicated to the promotion and protection of human rights qualifies it as one of the institutional mechanisms for safeguarding and advancing the rights and freedoms of Algerian citizens

3-The Constitutional Council

It is considered one of the official governmental institutions responsible for protecting the State from contradictory laws. Its sole mechanism for ensuring respect for rights and freedoms lies in constitutional review, through ensuring compliance with the hierarchical order of legal rules. It contributes to defending individuals' freedoms against the arbitrary actions of the legislator. This principle was adopted in Decision No. 01/08 dated 7 November 2008⁹.

Secondly: Non-governmental institutional mechanisms for the protection of human rights

Non-governmental organizations working in the field of promoting human rights and freedoms have become one of the important social phenomena in Algeria, particularly after the adoption of the Associations Law and the development of the associative movement under Law No. 90-31. Among the main non-governmental mechanisms are the following

1- Political parties

⁹ Regarding the latest constitutional amendment relating to Article 31 bis, which provides for the promotion of women's rights and the enhancement of their chances of representation within elected assemblies, this amendment was considered to stem from the democratic principle enshrined in Article 8 of the Preamble to the Constitution (Official Gazette No. 63 of 16 November 2008, p. 5)



Political parties represent a fundamental institution and a political necessity for every democratic system that aims to safeguard and advance human rights. They initially appeared in the form of electoral committees tasked with supporting candidates and ensuring their representation. Nevertheless, the institutional features that characterize political parties have transformed them into the most suitable framework for organizing and exercising political participation rights. They provide various social groups with the opportunity to express their aspirations and orientations in an organized and effective manner

2- Other institutions for the defence of human rights

These institutions are primarily represented by the following:

- ✓ **The Algerian League for the Defence of Human Rights**, founded by the prominent lawyer Ali Yahia Abdenmour on 30 June 1985.
- ✓ **The Algerian League of Human Rights**, established in 1987.
- ✓ **The Association for the Promotion of Citizenship and Human Rights**, created on 1 March 2002

THE SECOND TOPIC : International guarantees for the protection of rights and freedoms

Since its creation, the United Nations has endeavoured to establish effective mechanisms to address human rights violations. It has developed an institutional framework dedicated to monitoring and overseeing States' compliance with their international obligations concerning the respect and protection of human rights

FIRST REQUIREMENT: Human rights protection mechanisms within the framework of the United Nations.

Since its creation, the United Nations has endeavoured to establish effective mechanisms for dealing with human rights violations. It has distinguished itself as an institution entrusted with monitoring and overseeing the implementation by States of their international obligations relating to the respect for and protection of human rights



Firstly: United Nations bodies specialized in the field of human rights protection

The respect for and protection of human rights have constituted one of the primary concerns of the United Nations since its creation in 1945 to the present day. The Organization seeks to safeguard human rights through its various organs and mechanisms, which include the following

1- The General Assembly

As the principal organ of the United Nations, the General Assembly plays a major role in the field of human rights. It adopted the Universal Declaration of Human Rights in 1948, which has become a fundamental reference and a model guiding States in their relations between governments and individuals.¹⁰

2- The Security Council

In addition to the General Assembly, the Charter of the United Nations has vested the Security Council with important and sensitive powers, in accordance with Articles 24, 26, 39, 41, 48, and 49

3- The Economic and Social Council

The Economic and Social Council is likewise regarded as a key body concerned with human rights. Article 62 of the Charter of the United Nations empowers the Council to issue recommendations relating to the promotion of respect for human rights and fundamental freedoms and their observance

Secondly: International monitoring mechanisms in the field of human rights.

¹⁰ Al-Shafi'i, Mohamed Bashir. Human Rights Law: Sources and National and International Applications. 3rd ed., Alexandria: Mansha'at Al-Maaref, 2004, p. 288



These mechanisms take three main forms or procedures, namely: the system of reports, the system of inter-State complaints, and the system of individual complaints or communications

1- The Reporting System

It is the most widely used procedural mechanism of a non-judicial nature by various international institutional mechanisms, both governmental and non-governmental, for the protection of human rights

2- The Individual Complaints or Communications Procedure

Individual communications are not provided for in all international human rights conventions; rather, they are included only in some of them. The Optional Protocol to the International Covenant on Civil and Political Rights allows individuals under the jurisdiction of States Parties, who claim to be victims of a violation by one of those States of any of the rights set forth in the Covenant, to submit a complaint against their State.

3- The Inter-State Complaints Procedure

It is a mechanism of a political nature that seeks to reconcile the parties and bring closer their conflicting views. It is responsible for supervising the implementation of human rights treaties, such as the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture, among others

SECOND REQUIREMENT: Protection Mechanisms within the Framework of International Non-Governmental Organizations

Among the most important areas of joint cooperation between non-governmental organizations, as an important mechanism in the field of human rights and fundamental freedoms protection, are the following:

Firstly: Amnesty International



It is the most famous non-governmental organization and is considered one of the non-official mechanisms for the protection of human rights. It was established in 1961 following an article published by a British lawyer in the newspaper The Observer. The organization defines itself as a global movement whose members strive to promote human rights. It is composed of national branches and ordinary individuals, and it seeks to ensure respect for the human rights provided for in the Universal Declaration of Human Rights. It also obtains its information from various sources, including complaints submitted by concerned persons in different countries, as well as letters sent by the families of individuals whose rights have been violated.

Secondly: The International Committee of the Red Cross (ICRC)

The International Committee of the Red Cross (ICRC) is considered an independent, impartial and non-governmental international organization that carries out a purely humanitarian mission, consisting of protecting and assisting civilian and military victims of armed conflicts and safeguarding their fundamental rights, such as the right to life and the right to physical integrity.

It was established in 1859 during the Italian War of Unification. The Committee ensures the application of the four Geneva Conventions of 1949 in international armed conflicts, advocates for the provision of assistance without discrimination, and receives complaints concerning alleged violations of international humanitarian law. It also bases its activities on purely legal principles and rules.

THE THIRD TOPIC : The Relationship between International Mechanisms and National Mechanisms in the Field of Protecting Rights and Freedoms.

This relationship is usually manifested through mutual influence and interaction, with its causes and forms.

FIRST REQUIREMENT: Forms of Mutual Influence and Impact



The forms of mutual influence and interaction between international and national mechanisms, including procedural and institutional mechanisms, can be summarized into direct and indirect forms. The direct form is manifested through cooperation between international and national institutions for the protection and promotion of human rights, as is the case with the cooperation between the National Consultative Commission for the Promotion and Protection of Human Rights in Algeria and the United Nations Human Rights Committee or the Human Rights Council, through the periodic reports submitted by the former to the latter.

As for the indirect form, it appears through the measures adopted by national human rights institutions regarding their internal functioning, which are primarily derived from the Paris Principles of 1991. These measures fall within the framework of strengthening and promoting the national human rights protection system.

The national human rights protection system, as stated by Professor Ramcharan, “is one of the most important means for rationalizing human rights and has six fundamental dimensions,” namely: the constitutional dimension, the legislative dimension, the judicial dimension, the institutional dimension, the supervisory or monitoring dimension, and the educational dimension

Firstly: National institutions are an intermediary tool between international mechanisms and internal mechanisms for the protection and promotion of human rights

These institutions are considered one of the most important elements that constitute the relationship of mutual influence between national and international mechanisms. The idea of establishing them as an intermediary body between authority and society dates back to the Paris Principles of October 1991, which were endorsed by the United Nations Commission on Human Rights through Resolution No. 54/1992 and adopted by the General Assembly under Resolution No. 48/134 dated 20 December 1993, following the World Conference on Human Rights’ support for this idea.¹¹

¹¹ Rach Murry, the role of national human right, institution at the international and regional l evls: the experaence of Africa oxford: Hart Publishing 2007 p: 36



From this, we conclude that all official and non-official, national and international actors concerned with human rights constitute a network of relationships whose central objective is the strengthening of human rights protection and promotion. This network is constantly evolving and dynamic, as evidenced by the emergence of many new institutions, whether national or international, such as the Office of the High Commissioner for Human Rights, the International Coordinating Committee, and the working groups established by some treaty bodies, among others

Secondly: The Supervisory Dimension and the Responsibility of Each State for Its Conduct

The monitoring procedure, together with the complaints and communications procedure and other procedural mechanisms, collectively constitute tools for supervising the State and its conduct with regard to human rights. The monitoring procedure also reflects the nature of the relationship between national and international mechanisms, as well as the exchange of reports between States and international committees. Moreover, States are required to monitor their own conduct when they feel that they are subject to international or regional supervision. This constitutes one of the fundamental guarantees for the protection and promotion of human rights through mutual influence and interaction.

SECOND REQUIREMENT: Causes of Influence and Interaction

Human rights specialists, including professors of international law, agree that the issue of protecting and promoting human rights is a national matter that always requires strengthening the national protection system and linking it to the international system in order to achieve greater international cooperation and coordination between various efforts and experiences. This is particularly important in a world where the principle of sovereignty and non-interference has declined, while the principles of cooperation and partnership have gained greater importance.



This cannot be achieved without establishing a link between the work of international human rights treaty bodies, the activation of special procedures, and the practical work of United Nations institutions, such as the United Nations Development Programme (UNDP), which plays a significant role in exploring various means of strengthening human rights protection. Its 1994 annual report addressed, for the first time, the right to sustainable development. This also includes the Office of the High Commissioner for Human Rights and other bodies.

The need for international protection remains present for several reasons, including

- First and foremost, there may be a collapse of government, leading to harmful practices and acts committed against individuals under the government's jurisdiction. For such individuals, international protection becomes the only line of defense.

- National laws or judicial policies may, in reality, be incompatible with internationally recognized human rights standards, and the only way to change these laws may be through the international forum.

- National justice systems may simply fail, for example, when an individual is unable to obtain any remedy for a violation of his or her rights.

- In a world witnessing political, economic, social, and cultural transformations, governments face multiple pressures that can easily lead to the harsh treatment of certain segments of society. This brings to mind crises related to refugees, indebtedness, and privatization.

- There are certain vulnerable groups whose international protection is necessary. This applies particularly to victims of institutional racism, racial discrimination, human trafficking, and minorities, as well as indigenous peoples. The situation of indigenous communities provides a clear example, as does the case of the people of Bosnia and Herzegovina, who, without international protection, would have been exposed to complete genocide.¹²

¹² Reference may be made to the proceedings of the Algiers Conference of Arab National Human Rights Institutions on: "Human Rights and Development: The Role of National Human Rights Institutions," Office of the High Commissioner for Human Rights, Algeria, March 2008, p. 19.



Conclusion:

The legislator has the authority to regulate rights and freedoms based primarily on national values and internal priorities, followed by the priorities of the international community. For example, the exercise of trade union rights or the enjoyment of political rights takes place within national circumstances and remains subject to the State's discretionary power. However, the power of assessment and adaptation may become a restriction on the exercise of these rights and may also constitute an obstacle to the international human rights system, opening the door to criticism or even the threat of international intervention in internal affairs. Accordingly, we propose the following:

- The necessity for the government to support, encourage, and provide these bodies, whether governmental or non-governmental, with all the means necessary for the success of their missions in order to achieve more effective human rights protection.
- The necessity for non-governmental organizations to enjoy the freedom to carry out their human rights activities, which requires that they possess genuine independence in relation to the State.
- There should be a relationship of connection, communication, dialogue, and cooperation between the government and all official bodies concerned with human rights, on the one hand, and non-governmental organizations and their members who are genuinely concerned with human rights issues, on the other hand.
- Public authorities should not merely allow the establishment of associations by recognizing the right to assembly; rather, they should encourage their creation and support the exercise of their activities, given their effective role in promoting and protecting human rights.
- The establishment of democratic governance must be recognized as a fundamental right, and not merely as a slogan, a façade, or simply a method of governance.
- Finally, without a genuine and substantial democratic transformation, there can be no real renewal of rights and freedoms, even if additional human



rights institutions are established. This highlights the relationship between the concepts of guarantees and mechanisms on the one hand, and democratic governance on the other, which is the subject examined in this research paper.

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