
THE EFFECTIVENESS OF IMPLEMENTATION AND COMPLIANCE WITH ICCPR IN THE CASE OF VIOLATIONS OF THE RIGHT TO LIFE AND THE RIGHT TO BE FREE FROM TORTURED IN SYRIA

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ABSTRACT

The case of Syria is closely related to the civil and political rights of its citizens, the Syrian Government has violated the civil and political rights of its citizens, namely the violation of the right to life and the right to be free from torture. But as a member of the United Nations, Syria has ratified the ICCPR on 21 April 1969. ICCPR basically contains provisions on restrictions on use Authority by the state's repressive apparatus. The approach method used in this research is normative juridical which focuses on research on applicable legal provisions, namely on How's the Effectiveness of Implementation and Compliance with the International Covenant on Civil and Political Rights (ICCPR) in the Case of Violations of the Right to Life and the Right to be free from tortured in Syria. The specification of this research is descriptive analysis by showing the lack of legal protection in the field of Syrian immigrants and then conducting an analysis with various related legal sources. Syria as a member country of the ICCPR has carried out its obligations by sending periodic reports on cases of civil and political rights violations in Syria that are likely to experience delays. Syria has not yet ratified Optional Protocol I, so Syria can not be adapted by other ICCPR member states on the rights and politics in Syria, nor can there be any individual complaints by the Syrians against cases of civil and political rights. The author also concludes that in view of recent cases in Syria, it can be said that it violates the provisions of Article 6 & 7 ICCPR.

Keywords; ICCPR, Right to Life, Rights to be Free, Syria.

A. Introduction

In the era of globalization, issues of human rights violations are increasingly being discussed both nationally and internationally.¹ It can be seen from the emergence of various efforts from various circles, both countries and organizations, to respect and maintain human rights that every human being has since birth. In his book, Hamid Awaludin, argues that human rights relate to the basic concepts of human being and rights.² Viewed from an international perspective, human rights belong to the system of

¹ Twiss Sumner B, “History, Human Rights, and Globalization,” *The Journal of Religious Ethics* 32, No. 1 (2004): p. 2.

² Hamid Awaludin, *Human Rights, Politics, Law, and INternational Hypocrisy*, PT Kompas Media Nusantara (Jakarta: PT Kompas Media Nusantara, 2012), p. 60.

international law as established by the international community that consists of countries. The State has a big role in shaping the legal system relating to human rights, especially against the increasing number of acts of human rights violations.³

Conflicts that occur in a country in various parts of the world often cause human rights problems that often impact on the people. The state should act as a guarantor and protector of human rights for its people, but this is inversely proportional to the real reality. History has noted that several cases of human rights violations committed by the state either directly or indirectly, such as acts committed by state officials against their own citizens and other citizens such as war (armed conflict) between countries with the state, Communities and communities with communities often lead to human rights violations.⁴

As a form of respect, many parties participate in human rights enforcement. One of them is the United Nations (United Nations) or United Nations (UN), an international organization, which plays an active role in human rights issues. The United Nations as the highest international organization has an obligation in formulating policies, measures and actions to promote and protect human rights worldwide and for all nations.⁵ In addition, the United Nations has a very important contribution in the promotion and protection of human rights around the world.

Such roles and functions are in accordance with the objectives of the establishment of the United Nations declared in the Preamble of the United Nations in Article 1 paragraph (3) to promote and encourage respect for human rights and fundamental freedoms for all without distinction of race, sex, language, or religion. Furthermore, Article 55 also stipulates that the UN should promote universal respect for, and adherence to, human rights and fundamental freedoms for everyone. This is further reinforced in Article 56, which states that all members of the United Nations undertake to take joint and separate action for the achievement of the objectives set forth in Article 55.

The United Nations General Assembly, which is one of the major organs of the United Nations, has made recommendations in the form of resolutions related to human rights. The resulting resolutions are Resolution A / RES / 217 and Resolution A / RES /

³ Ibid.

⁴ Patra Kulu Tandiderung, "Gross Human Rights Violations in the Conflict in Syria" 2012, Thesis, p. 9.

⁵ Shaw, Malcolm N. *Op.cit.*, p. 267

60/251. Resolution A / RES / 217 on the Universal Declaration of Human Rights (UDHR) and the authority to create subsidiary organs. The Universal Declaration of Human Rights, established on 10 December 1948, has become an important reference in the formulation of human rights clauses at the national constitution level, containing the effective recognition and respect for human rights and freedoms set forth in the declaration.

In addition, the Universal Declaration of Human Rights has also become part of customary law, possessing a politically binding nature of documents, and gradually binding status finally accepted by UN member states.⁶ UDHR became the first instrument of legislation International human rights non-legally binding is not binding on a country in the UDHR.⁷ Rights and Freedoms contained in the UDHR includes a complete set of rights that either the civil, political, cultural, economic and every individual and some collective rights.⁸ Article 28 of the Universal Declaration states that everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. This article has an important role in the protection of human rights internationally to this day. The limits of a country's sovereign territory should not be a barrier to universal human rights enforcement, so that in Chapter VII of the UN Charter authorizes the Security Council to intervene in the sovereignty of the state in the event of human rights violations so as to interfere with world peace.⁹

Then, in an effort to improve law enforcement and the establishment of international human rights standards, the United Nations established the United Nations Human Rights Council (UNHRC) through A / RES / 60/251 resolution.¹⁰ Prior to the establishment of the UNHRC are the Human Rights Commission or the United Nations Commission for Human Rights (UNCHR), which is an agency under the United Nations Economic and Social Council or the United Nations Economic and Social Council which is engaged in human rights. Most international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights are the treaties produced by these additional organs. Subsequently, this

⁶ Shaw, Malcolm N. *Op cit.*, p. 1223

⁷ the Declaration was a joint statement about an issue in the political, economic, or legal. The declaration may take the form of tracts, bilateral agreements, unofficial documents and unofficial agreements.

⁸ Rhona KMSmith, et al. 2008. *Human Rights Law*. Yogyakarta: PUSHAM UII. hlm.88-89.

⁹ Patra Kulu Tandiderung thesis entitled International Law Review terhadap Gross Human Rights Violations in the Conflict in Syria, 2012, p.8

¹⁰ Widiarto, human rights instruments, accessible from <http://widiarto.lecturer.ub.ac.id>

UNCHR position was replaced by the United Nations Human Rights Council (UNHRC) under the auspices of the UN General Assembly, with the primary task of following up on human rights abuses taking place in the world.¹¹

The ICCPR aims to reinforce the principles of human rights in the civil and political fields contained in the Universal Declaration of Human Rights so that they become legally binding provisions and their elaborations cover other related subjects.¹² Civil rights are rights acquired fundamental freedoms as the essence of the existence of a human being, while political rights are basic rights and absolute inherent in every citizen must be upheld and respected by the state under any circumstances.¹³

In connection with the practice of human rights abuses committed by the state, Syria as one of the countries in the Middle East which is part of the UN member, is considered to have committed gross human rights violations against its people. Yet as a member state of the United Nations, Syria should comply with the rules of human rights that have been formed by the United Nations. Syria is a state that embraces authoritarian system, it is this kind of government that has held such revolutions in North Africa and the Middle East. Syria was ruled by a one-party regime with an iron fist for many years, from the time of Hafez Al-Hassad through the Koreksionist Movement in 1970 had launched a coup and on 12 March 1971, he was declared President of the Syrian Arab Republic until his death in 2000 and replaced By his son Bashar Al-Assad.¹⁴

During the political turmoil in Syria, the United Nations has recorded more than 100,000 Syrians killed in July 2013¹⁵. The security situation in Syria is getting worse and has taken the life of many civilians, making the Syrians choose to flee to some nearby countries of Syria such as Lebanon, Jordan, Turkey Iraq, and Egypt. UN official data shows the number of registered refugees who fled the war in Syria has now reached one million.¹⁵ In addition to the use of firearms and other combat equipment war, it turns out

¹¹UN, Subsidiary Organs of the General Assembly, accessible from <http://un.org/en/ga/about/subsidiary/council.shtml>

¹² Indra, Know the International Covenant on Civil and Political Rights, accessible from <http://hamblogger.org/mengenal-kovenan-internasional-tentang-hak-sipil-dan-politik/>.

¹³ Ifdhal Kasim, 2011, *Civil Rights and Political Rights*, Jakarta: ELSAM, p. 2.

¹⁴ Trias Kuncayono, Spring in Syria, PT Kompas Nusantara, Jakarta, 2012, p. 77

¹⁵ BBC Syrian Refugees from, <http://www.bbc.com>.

the Syrian army using chemical weapons. This has been conveyed by UN Secretary General Ban Ki Moon at UN headquarters.¹⁶

In International Humanitarian Law and International Customary Law, the use of chemical weapons, toxic weapons, biological weapons, hump controls as a way of warfare, herbicides as a way of war is strictly prohibited.¹⁷ Syrian opposition claimed that the death toll due to the use of chemical weapons at 1,300 people.¹⁸ Chemical weapons were used by the Syrian military is Sarin Gas. This sarin gas even in small amounts of sarin gas can be deadly. This gas is absorbed through the eyes and skin. This causes nerve impulses which are then transmitted, and produces nasal fluids, tears flowing from the eyes, muscle cramps occur and eventually death from weakness.¹⁹ Consequently, the Al-Assad regime in Syria continues to protests from various corners of the world because of the violence against its own citizens. The international community is urging the UN to pursue peace and minimize the ceasefire that has claimed many of the victims who are mostly Syrian civilians.²⁰

As an international peacekeeping and security agency, the UN Security Council (DK) then proposed a draft resolution to denounce the violence perpetrated by the Bashar regime against civilians in Syria. However, the resolution failed to materialize because Russia and China as permanent members of the UN Security Council continued to veto the draft resolution three times. The resolution itself is designed to pressure President Assad and stop the conflict that has killed thousands and even hundreds of thousands of people.²¹

Then the United Nations has also sent the former UN Secretary General who is now serving as UN envoy in the Arab League, Kofi Annan. Kofi Annan arrived in Doha, Qatar, to meet with Emir Qatar, Sheikh Hamed bin Khalifa Al-Thani, and Qatar Foreign Minister Sheikh Hamid bin Jasim al-Thani. During the meeting Kofi Annan explained that his talks with President Assad focused on stopping violence against civilians, children, women, access to permits for access to humanitarian aid, and opening political dialogue. But Kofi

¹⁶ Republika. UN to Find Use of Chemical Weapons in Syria from <http://www.republika.co.id>.

¹⁷ Rhona KMSmith, et al. *Op. cit.*, p. 340

¹⁸ Sindonews. The Syrian Opposition of 1,300 Deaths by Chemical Bombs from <http://international.sindonews.com>.

¹⁹ Antaranews. Sarin: Deadly Nerve Gases with tragic effects from <http://www.antaranews.com>.

²⁰ Patra Kulu Tandiderung, *o.p.cit.*, p 12

²¹ Adirini Pujayanti, 2013, *Internationalization of Syrian Conflict and the Role of Indonesia*, Jakarta: DPR RI

Annan acknowledged that his mission has not made progress to end the Syrian crisis in two meetings with President Assad in Damascus.²²

Various attempts have been made by the United Nations and the Arab League (Qatar) in halting a ceasefire between the military-backed Syrian government and the armed Syrian opposition but all of those seemingly still face obstacles.²³ The Syrian regime has always insisted that they are not attacking the opposition but attacking a group of terrorists who are making a chaotic state. As a result of the conflict between the Syrian regime and the opposition, the Syrian people have fled to other countries.²⁴

The classification of gross violation human rights relates to the Syrian case according to the perspective of international law, ie if the state does not seek to protect or exclude the rights of its citizens who are classified as non-derogable rights.²⁵ In addition, the state also can be said to commit gross human rights violations when he let the occurrence or conduct through the apparatus-officers of the international crimes, crimes of genocide, crimes against humanity, aggression or crimes of war.

The case of Syria is closely related to the civil and political rights of its citizens, the Syrian Government has violated the civil and political rights of its citizens, namely the violation of the right to life and the right to be free from torture. But as a member of the United Nations, Syria has ratified the ICCPR on 21 April 1969. ICCPR basically contains provisions on restrictions on use Authority by the state's repressive apparatus. Syria should be obligated to protect all the rights of its people, but in reality, many human rights violations are committed. In addition, the Human Rights Committee (UN) should be able to intervene in cases of human rights violations that occurred in Syria.

B. Research Method

This paper is used normative research method that the research refers to the norms, rules, principles, and legal principles contained in international instruments. The paper used conceptual approach, statutory approach, and case approach. Then this paper is presented in a descriptive-analytic technic, in the form of comprehensive explanation.

²² Patra Kulu Tandiderung, *op.cit.*, p. 13.

²³ *Ibid.*

²⁴ Dina Y.Sulaeman, 2010, *Tempest Syria Dismantling Multinational Conspiracy*, Depok: Reader IIMAN, p. 86.

²⁵ Non-derogable rights are human rights that can not be reduced under any circumstances.

C. Discussion

1. The Theory

a. Overview and Conflict in Syria

President Bashar Asad has ruled the Syrian Arab Republic since 2000. The constitution mandates the primacy of Baath Party leaders in state institutions and society. Asad and Baath party leaders dominated all three branches of government. Neither the 2014 presidential election won by Asad, nor the geographically limited 2012 parliamentary elections won by the Baath Party, reflected the unimpeded or uncoerced will of the electorate. In government- controlled areas, Asad made key decisions with counsel from a small number of military and security advisors, ministers, and senior members of the ruling Baath Party. The government routinely violated the human rights of its citizens as the country witnessed major conflict.

The government maintained effective control over its uniformed military, police, and state security forces but did not consistently maintain effective control over paramilitary; nonuniformed progovernment militias, such as the National Defense Forces; the Bustan Charitable Association; or “shabiha,” which often acted autonomously without oversight or direction from the government.

The government’s use of lethal force to quell peaceful civil protests calling for reform and democracy precipitated a civil war in 2012. The civil war continued during the year. The government-maintained control over the coastal governorates and those in and around Damascus and regularly attacked areas under opposition control. Different opposition groups with varying ideologies and goals controlled several parts of the north and areas in the Golan Heights, in many cases establishing new or reconstituted governance structures, including irregularly constituted courts. Most notably, the terrorist organization Da’esh increasingly took control of the eastern governorates Deir al-Zour and Raqqa in 2014. Subsequently, Da’esh announced the establishment of what it deemed an Islamic “caliphate” with Raqqa as its capital. Da’esh also maintained limited presence in other governorates in the north and south and around Damascus. Other areas of the country remained contested, including the northeastern areas dominated by ethnic Kurds and the Turkish border region.

The Asad government reportedly continued to use indiscriminate and deadly force against civilians, conducting air and ground-based military assaults on cities, residential areas, and civilian infrastructure. Attacks reported against schools, hospitals, mosques, churches, synagogues, and houses were common throughout the country. The United Nations estimated the fighting had resulted in the deaths of more than 250,000 persons since 2011. The Syrian Network for Human Rights (SNHR) reported the government killed 15,748 persons during the year, and Da'esh was responsible for 2,098 deaths. The humanitarian situation reached severe levels. As of December there were more than 4.3 million Syrian refugees registered with the Office of the UN High Commissioner for Refugees (UNHCR) in neighboring countries with more than 6.5 million persons displaced internally. The government frequently blocked access for humanitarian assistance to civilian areas, particularly areas held by opposition groups.

The most egregious human rights problems stemmed from the state's widespread disregard for the well-being of a majority of its citizens. This manifested itself in a complete denial of citizens' ability to change their government, a breakdown in law enforcement's ability to protect the majority of citizens from state and nonstate violence, and the reported indiscriminate use of violence against civilians and civilian institutions. The government arbitrarily and unlawfully killed, tortured, and detained persons on a wide scale. Government forces reportedly conducted attacks on civilians in hospitals, residential areas, schools, and camps holding internally displaced persons (IDPs); these attacks included bombardment with improvised explosive devices, commonly referred to as "barrel bombs" (containing a combination of jet fuel and TNT, usually dropped by a helicopter). The government reportedly continued the use of torture and rape, including of children. It reportedly used the massacre of civilians, as well as their forced displacement, rape, and starvation, as military tactics. Government authorities rigorously denied citizens the ability to exercise civil liberties and freedoms of expression, movement, peaceful assembly and association, and the right to a fair public trial. Government authorities reportedly detained without access to fair trial tens of thousands of individuals including those associated with nongovernmental organizations (NGOs), human rights activists, journalists, humanitarian aid providers, religious figures, and physicians.

Other continuing human rights problems included: restrictions on religious observance and movement; abuse of refugees and stateless persons; prevention of NGOs

and individual activists, especially those working on civil society and democracy matters, from organizing; restrictions on access for medical providers to persons in critical need; rampant governmental corruption; violence and societal discrimination against women and minorities; and restrictions on workers' rights.

Impunity was pervasive and deeply embedded in the security forces and elsewhere in the government, since the government did not attempt to investigate, punish, arrest, or prosecute officials who violated human rights. The government often sheltered and encouraged those in its ranks to commit abuses.

According to credible reports, government-linked paramilitary groups engaged in frequent violations and abuses, including massacres, indiscriminate killings, kidnapping of civilians, arbitrary detentions, and rape as a war tactic. Government-affiliated militias, including the terrorist organization Lebanese Hizballah, supported by Iran, repeatedly targeted civilians.

b. The Concept of Human Right

Human rights are the rights that human beings possess solely. Mankind has it not because it is given to him by society or by positive law, but solely on the basis of his human dignity.²⁶ In this sense, Jack Donnely would like to explain that even though everyone is born with the skin color, gender, ethnicity, religion, culture, language, and citizenship are different, he still has these rights.

According to St. Thomas Aquinas in his writings, he states that the origins of human rights originate from natural rights theory. The natural theory of rights begins with natural law theory, the latter being traced back to the ancient times with the philosophy of Stoika to the modern age. In the theory of natural law, Thomas Aquinas rests on a thomistic view that modulates natural law as part of God's perfect law and can be known through the use of human reason.²⁷

The beginning of the concept of human rights in written form is also often referred to in the development of human rights, namely the birth of Magna Charta, in England on June 15, 1215. The charter issued in England, restricted the British monarchy, from the time of

²⁶ Jack Donnely, *Universal Human Rights in Theory and Practice*, Cornell University Press, Ithaca and London, 2003, p. 7-21.

²⁷ Rhona KM Smith, *op.cit.*, p 12.

King John of absolute power. Magna Charta is the result of a dispute between the Pope, King John and his baron on the rights of the King. Magna Charta requires the king to cancel some rights and respect some legal procedures, and to accept that the wishes of the king may be limited by law. This Magna Charta spirit became the inspiration for the emergence of law in the United Kingdom in 1689, known as the Bill of Rights.²⁸ The emergence of this legislation into the early emergence of the adage "men equal before the law" (equality before the law). This adage is the basis for the development of a state of law and democracy that assures the principle of equality and freedom as a citizen.²⁹

In 1776, in the Declaration of Independence of the United States, John Locke formulated the rights of nature, such as the right to life, liberty, and property. The Declaration of Independence of the United States places the United States as a country that guarantees and protects human rights in its constitution.³⁰

In 1789 in France was born a declaration known as Declaration Des Droits De L'Homme Et Du Citoyen or The French Declaration. In The French Declaration it is stipulated that arbitrary arrest and detention can not be allowed, human beings are born independent and independent, freedom of expression, freedom of religion, freedom of association and assembly, and freedom and protection of property rights. With such detailed human rights, it can be said that the French Declaration already includes the rights that guarantee the emergence of a democratic state as well as a rule of law. Two years later, Trisloganda was born containing (1) liberte, (2) equalite, (3) harmony and brotherhood fraternite. Three principle is then giving birth to the French constitution in 1791.³¹

After the end of World War I, the international community established the League of Nations through the Treaty of Versailles. The main objective of the establishment of the League of Nations (LBB) is to promote international cooperation, achieve international peace and security. Indeed, the league is not mentioned explicitly making provisions on the protection of human rights. However, from its founding document, the so-called Covenant of the League Nations, each member country is required to work towards

²⁸ Hamid Awaludin. 2012. Human Rights, Politics, Law, & International Hypocrisy, p. 78.

²⁹ Fazlur Rahman in the thesis titled Analysis of the Juridical violations of Human Rights (HAM) in Indonesia (Mesuji Case Study in South Sumatra in 2011), 2013. P. 10.

³⁰ Rhona KMSmith, et al, *op.cit.*, p. 15.

³¹ Fazlur Rahman, *op.cit.*, p. 11.

humanitarian goals such as establishing humane working conditions for individuals, the prohibition of trafficking in women and children, the prevention and control of illnesses, Fair to the indigenous population and the colonies. The League of Nations has three main organs, namely the Council, the Assembly, the Secretariat.³²

The League of Nations (LBB) also carries out a supervisory function relating to "obligations of international concern", a procedure and mechanism that allows the protection of minority groups. With this mechanism, a minority group that feels infringed on its rights can complain to the League Council. On 18 April 1946 the League of Nations was officially dissolved.³³

After World War II, the development of modern international human rights law gave birth to the United Nations. It is this world body that first creates a written document on human rights recognized and accepted by all nations.³⁴ As a multilateral treaty which is legally binding on all UN member states, the UN Charter contains explicit provisions on the protection of human rights. In the preamble of the United Nations all UN member states to "restate confidence in human rights, to human dignity and value". Article 1 paragraph (3) stipulates that one of the purposes of the United Nations is to promote and encourage respect for human rights and fundamental freedoms for all without distinction of race, sex, language and religion. A written document that was first created by the United Nations on human rights is the Universal Declaration of Human Rights of 1948.³⁵

There are several main theories relevant to human rights, namely Natural Law, Positivism, Anti-Utilitarian, Legal Realism, and Marxism. The natural law aspect perceives that everyone is an autonomous individual, meaning the rights that each individual possesses comes from God. Meanwhile, positivists argue that the existence and content of rights can only be derived from state law. Utilitarianism states that utilitarianism prioritizes the welfare of the majority. Minorities or individuals whose preference is not represented by a majority within a country will be less cared for and as a result they may be severely disadvantaged or deprived of their rights. Empirical realism thinking frameworks do not have a general theory of rights in the true sense, they regard the theory as part of their

³² Rhona KMSmith, et al, *op.cit.*, p. 33

³³ *Ibid.*

³⁴ Hamid Awaludin, *op.cit.*, p. 81

³⁵ *Ibid.*

study package of processes and interactions between policy and law and legal institutions. In contrast to Marxism, Marx states that the so-called natural law is idealistic and ahistorical and thus the natural right can not be uprooted or eliminated and can not be tolerated and maintained.³⁶

There is a kind of hierarchical right classification of Fundamental Rights, Civil and Political Rights, and Third Generation Rights. This fundamental human rights existed prior to its recognition by the Preliminary Charter and before that right was revealed to be a positive law through various UN instruments. These rights menlandasi the international community, as how represented today in the United Nations and, in the world and regional organizations. The strongest argument for endorsing this fundamental right rests with the fact that rights in the ICCPR are described as rights that should not be violated in the sense that they should not be diminished even in times of war or emergency in their country. The rights included in this list are the right to life, freedom from torture and inhumane behavior, freedom from slavery, freedom from retroactive laws, freedom of thought, conscience and religion.³⁷

In addition to civil and political rights, Cranston concluded that civil and political rights are human rights in the true sense, whereas economic and social rights do not get such cases. The next logical conclusion, these second generation rights do not require protection or implementation because economic and social rights are not a real right. Then the emergence of third generation rights or the right of solidarity is associated with the rise of third world nationalism and the perception of developing countries that the existing international order tends to be hostile to them. It can also be seen as the demands of developing countries for fairer treatment and building a world system that will facilitate distributive justice in the broadest sense of Rawls's model. But the basis for these demands is not merely moral but the legal basis in a number of international instruments.³⁸

c. The Right to Life

Assuring the right to life is undoubtedly the pivotal point in the concept of the protection of human rights. Physical survival is a prerequisite for benefiting from various rights and liberties included in the European Convention for Human Rights and other

³⁶ Scott Davidson, *Human Rights*, Jakarta: PT Pustaka Utama Grafiti, 2008, p. 36-52

³⁷ *Ibid*, p. 57.

³⁸ *Ibid*, p.58.

international documents. For this reason, those framing the Universal Declaration of Human Rights gave primary emphasis to the protection of human life and made direct reference to everyone's right to life. The United Nations adopted the Universal Declaration of Human Rights in 1948 and the International Convention on Personal and Political Rights, which reaffirms the same idea, in 1966. The same provision, expressed as "Everyone's right to life shall be protected by law" is included in Article 2 of the European Convention for Human Rights and this is the central theme of this study.³⁹

States, public institutions and those acting on behalf of them (e.g. security forces) have the express burden of protecting human life (withholding the exceptions provided in Article 2 of the European Convention for Human Rights). States are further liable to take measures to protect human life against unlawful assaults by third parties (e.g. terrorists, various legal or illegal institutions) as well as respecting the right to life.

The right to life represents a fundamental human right, which, due to its importance, goes beyond personal interest, being relevant for the whole society. Therefore, this fundamental right acquires a social dimension, so it is necessary to guarantee it by international treaties and conventions, as well as norms of domestic law. It is interesting to establish the moment when the protection of the right to life begins, an aspect which entails in different legislations the incrimination or not of abortion. It is also important to determine the content of this right, namely to establish whether it includes the right of a person to death.

Protecting the right to life by internal and international norms constitutes a requirement and a necessity at the same time, since it represents a fundamental attribute of the person, whose protection is strongly connected with and determines the protection of the other attributes of the person: bodily integrity, health, liberty, etc. As previously shown,⁴⁰ human life as social value protected by legal norms appears not only as an absolute right to life of the individual, as opposed to all citizens, but also as a social value which the objective law protects for the interest of the whole society.

³⁹ Perceptions Journal Of International Affairs December 1998 - February 1999 Volume III - Number 4.

⁴⁰ T. Vasiliu, D. Pavel, G. Antoniu, D. Lucinescu, V. Papadopol, V. Rămureanu, Codul penal comentat și adnotat (The Penal Code, comments and notes), Ed. Științifică și Enciclopedică, București, 1975, p.68.

The protection of the right to life is first of all consecrated by international norms, but also internal norms under criminal law, taking into account the importance the life of a person has, not only for him or her, but also for the whole society. Thus, in art. 3 of the Universal Declaration of Human Rights, it is stipulated that "Everyone has the right to life, liberty and security of person." In art. 6 of the International Covenant on Civil and Political Rights, it is specified that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

The European Convention on Human Rights⁴¹ guarantees the right to life of any person, but it concurrently regulates the cases when it can be prejudiced. In art. 1, it is specified that "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

d. Declaration of Human Rights

The Universal Declaration of Human Rights (DUHAM) is the first element of the International Bill of Rights, a tabulation of fundamental rights and freedoms.⁴² UDHR was formed on 10 December 1948 when the UN General Assembly proclaimed the Universal Declaration of Human Rights. This DUHAM is the pillar and breath of all international legal instruments on human rights that are born next.⁴³ of the Universal Declaration was accepted by 49 countries, none against, 9 abstentions and contains civil rights and their traditional political and economic rights, social and cultural.⁴⁴

This declaration can be said to be a milestone for the development of human rights, as a common standard for achieving success for all peoples and all nations.⁴⁵ The Universal Declaration of Human Rights (UDHR) is composed of 30 chapters have been echoing the call to the people to promote and ensure the effective recognition of and respect for human rights and freedoms set out in the UDHR.⁴⁶

⁴¹ The Convention was ratified by Romania by Law 30 of May 18, 1994, published in Monitorul Oficial (the Official Record) no. 135 of May 31, 1994.

⁴² Rhona KMSmith, et al. 2008. Human Rights Law. Yogyakarta: PUSHAM UII, pp. 87-88

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Boer Mauna, *International Law Understanding the Role and Function in an era of Global Dynamics*, Bandung: PT. Alumni, 2011) p. 169.

⁴⁶ Boer Mauna, *op. cit.*, P. 679.

The rights and freedoms contained in the Universal Declaration of Human Rights shall include a complete set of rights be it civil, political, cultural, economic and social rights of each individual or several collective rights. Articles 1 and 2 of the Universal Declaration of Human Rights affirm that:⁴⁷ Article 1: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Article 2: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

e. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights contains essential democratic rights, mostly related to the functioning of a country and its relationship with its citizens.⁴⁸ of the Covenant was born in 1966, was adopted on December 16, 1975, and is valid on 23 March 1976. And until December 2003 International Covenant on Civil and Political Rights has been ratified by 151 countries.⁴⁹

The International Covenant on Civil and Political Rights is a product of the Cold War war which is the result of a harsh political outcome and compromise between the power of the Socialist Bloc state against the capitalist Bloc. The ICCPR is the result of the separation of civil rights politics by rights in the economic, social and cultural categories into two international covenants or agreements, commonly known as the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

The Universal Declaration of Human Rights (UDHR) in Articles 3 through 21 has placed the civil and political rights that all people are entitled to. These rights include: Right to live; The right to self-determination; Personal freedom and security; Free from

⁴⁷ The Universal Declaraation of Human Right.

⁴⁸ Rhona K.Smith, et al, *op.cit*, p 93.

⁴⁹ Boer Mauna, *op.cit*, p 682.

slavery and servitude; Free from torture or cruel, inhuman or degrading treatment or punishment; The right to obtain legal recognition wherever as a person.⁵⁰

f. Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment or Degrading Dignity

Torture is one of the most serious human rights violations and in fact shows a direct attack on human dignity. Article 1 of the present Convention defines torture as meaning any act of causing extraordinary pain or suffering, whether physical or mental, and intentionally committed to a person for the purpose of obtaining information or acknowledgment of him or a third person, punishing the person or a third person conducting Or allegedly doing anything, or by threatening or coercing that person or a third person, or all grounds based on discrimination in all forms, when such pain or suffering is committed by an instigation, or approved by the knowledge of the apparatus of the State or other person having authority official. It does not include pain or suffering arising only from, attached to or caused by legal sanctions.⁵¹

The General Assembly resolution to this Convention is GA Res.39 / 46 on 10 December 1984 and entered into force on 26 June 1987, of which the Convention has been ratified by 134 countries. The Convention categorizes torture as an international crime and calls on the state to be responsible for preventing torture and punishing its perpetrators. The Convention on Torture's on-duty not only examines reports of States on the implementation of the Convention, but also conducts investigations in countries that are thought to practice systematic torture.⁵²

2. The Result

The effectiveness of Implementation and Compliance with the International Covenant on Civil and Political Rights (ICCPR) in the Case of Violations of the Right to Life and the Right not to be tortured in Syria. The ICCPR basically contains provisions on restrictions on the use of authority by state repressive apparatuses, in particular the state repressive apparatus that becomes the countries of the ICCPR. Hence the rights collected in it are also often referred to as negative rights, meaning that the rights and freedoms in

⁵⁰ Boer Mauna, *op.cit*, pp 679-680.

⁵¹ Article 1 of the Convention against Torture and Degrading Treatment or Punishment Other Cruel, Inhuman, or Degrading Treatment (CAT)

⁵² Boer Mauna, *op.cit.*, p. 684.

them will be fulfilled if the role of the state is limited or seen minus. The negative rights contained in the ICCPR can be divided into two classifications of the rights and freedoms set forth in the ICCPR.⁵³

The first classification is rights in the kind of non-derogable, that is, the rights of an absolute nature which should not be diminished by the State party, even in an emergency. The rights included in this type are: (i) the right to life; (ii) right to be free from torture; (iii) free right of slavery; (iv) the right to be free from detention for failing to fulfill the agreement (debt); (v) the right to freedom from criminal prosecution; (vi) rights as legal subjects; And (vii) the right to freedom of thought, belief and religion. States Parties that violate rights in this type, will often be criticized as a country that has committed gross violation of human rights.⁵⁴

The ICCPR is substantially related to the European and American Human Rights Convention in some respects. Due to resistance from socialist countries, the ICCPR does not contain ownership rights, while some rights such as rights such as the right to freedom and individual privacy are not set in detail as in the two regional conventions. The ICCPR contains the essential civil and political rights which include the right to self-determination contained in Article 1. In addition, Article 26 also provides for the right to equality and non-discrimination, rights held by minorities in Article 27 And the prohibition of war propaganda and provocation against discrimination and hostility or violence provided for in Article 20. The contents of the ICCPR also provide for the Second Optional Protocol aimed at the abolition of the death penalty (GA, Res. 44/128 of 15 December 1989 entered into force on 11 July 1991).⁵⁵

Although some rights protected by the ICCPR should not be restricted under any circumstances, but Article 4 provides that in a general emergency that threatens the life of the nation other rights may be limited provided that such restrictions are in proportion to the threats encountered and are not of a nature discriminatory. The right restriction must also be promptly informed in writing to the ICCPR countries through the Secretary-General of the United Nations, including the reasons why it is done. This provision gives a

⁵³ Ifdal Kasim, *Civil and Political Rights*, Jakarta: ELSAM, 2001, p. X

⁵⁴ *Ibid*, p. IX

⁵⁵ Manfred Noak, *Introduction On International Human Rights Regime*, England: Martinus Nijhoff Publishers, 2003, p. 86.

country limit greater freedom, a freedom that can be abused, but this is offset by the Article 5 Paragraph (1),⁵⁶ which incorporates elements of balance and also specify that these rights should not be restricted beyond what is set of this Convention.⁵⁷

The ICCPR is reserved for all individuals within its territory and subject to its jurisdiction without any discrimination. If the rights set forth in this Convention have not been respected and guaranteed in the jurisdiction of a State, then the state is required under Article 2 Paragraph (2) to make laws or other measures necessary to make those rights effective. Please note that this obligation is absolute and must be executed immediately. In addition, such rights shall be granted to all individuals who are under the jurisdiction of that State, regardless of nationality. This not only covers the territorial jurisdiction of the country, but also the jurisdiction of the state against the private citizens who are abroad.⁵⁸

Countries that have ratified the ICCPR, have a number of obligations. First, the state should be responsible for respect, protection and compliance with all rights in the ICCPR. The exercise of respect, protection and fulfillment shall be undertaken without discrimination of any kind. " Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."⁵⁹

Second, the obligation of States Parties to take the necessary measures to ensure the protection and fulfillment of rights, if a State (party) in its jurisdiction has not guaranteed the rights contained in the ICCPR. "Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant."⁶⁰

⁵⁶ Article 5 (1) of the ICCPR: Nothing in the present Covenant may be interpreted as giving the right to a state, group or person any right to engage in activities that aimed to destroy the rights and freedoms recognized herein, or to Limiting it more than has been stipulated in the present Covenant.

⁵⁷ Scott Davidson, *op.cit.*, hlm.107.

⁵⁸ *Ibid*, p. 107-108.

⁵⁹ Article 2 (1) ICCPR.

⁶⁰ Article 2 Paragraph 2 of the ICCPR.

Third, the state is obliged to undertake effective remedies to victims whose rights have been violated. States should provide effective remedies to ensure the fulfillment of the rights of victims.

Syria as one of the states parties of the ICCPR itself should have implemented and adhered to the rules contained in the ICCPR. Syria ratified the ICCPR on 21 April 1969 and made the ICCPR of law bound in Syria in force in March 1976. The ICCPR is an international treaty that establishes legally binding obligations on States Parties to respect the numerous human rights set forth in the Universal Declaration of Human Rights.

Article 40 of the ICCPR requires all States Parties to submit periodic reports to the Human Rights Committee in relation to the efforts they have made to the benefit of the recognized rights collectively and in connection with the progress made to perceive those rights. Periodic reports are conducted every 1-2 years, but many countries do not adhere to the accuracy of such periodic reporting.⁶¹ “The States Parties to the present Covenant undertake to submit reports on the content of this article: (a) Within one year of entry into force of the Present Covenant for the States Parties concerned; (B) Thereafter whenever the Committee so requests.”

According to the Directorate of Human Rights and Humanitarian Affairs of the Ministry of Foreign Affairs of the Republic of Indonesia, Syria has complied with its obligations as a member of the ICCPR by conducting and sending periodic reports on violations of civil and political rights occurring in Syria and has implemented the rules in the ICCPR into national law Syria, the periodic report is then submitted to the Human Rights Committee which is a treaty body or regulatory body of the ICCPR. In the UN Human Rights website, Syria often experiences delays in delivering its periodic reports on violations of civil and political rights in Syria.

After the periodic report of Syria was received by the Human Rights Committee, the Human Rights Committee reviewed and studied the periodic reports, after which the Human Rights Committee would then respond to the Syrian periodic report and provide

⁶¹ Article 40 paragraph (1) of the ICCPR: The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and, on the progress, made in the enjoyment of those rights: (a) Within one year of the entry into force of the present Covenant for the States Parties concerned; (b) (b) Thereafter whenever the Committee so requests.

some recommendations to the Syrian periodic report. Syria has so far reported up to three periods of civil and political rights violations to the Human Rights Committee.

Syria has not yet ratified Optional Protocol I and Optional Protocol II, as seen from the official website of United Nations Human Rights showing the status of Syria's ratification of the ICCPR. In accordance with the explanation of Ifdal Kasim in his book "Civil and Political Rights" that the complaints between countries are optional, and in this case Syria has not ratified Optional Protocol I and Optional Protocol II then other party countries in the ICCPR can not complain or report their opinion Related violations of the ICCPR taking place in Syria.

In addition, the impact of not being ratified by the Syrian Optional Protocol is that Syrian people or residents who have been infringed on their rights as set out in the ICCPR can not perform individual reporting, since this individual reporting is optional and can only be carried out if the parties have ratified Optional of the Protocol.

In addition to ratifying the Covenant on Civil and Political Rights, Syria has also ratified several other Conventions dealing with human rights and civil rights. One is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) Treatment or Punishment. Syria has ratified the CAT on August 19, 2004. This Convention emphasizes more on acts of violence, torture, inhuman treatment or degrading of human dignity towards the people of a country.

Syria as a member country of the ICCPR has carried out its obligations by sending periodic reports on cases of civil and political rights violations in Syria even though such reporting is often delayed. Syria has not yet ratified Optional Protocol I, so Syria can not be reported by other ICCPR member states against civil and political rights violations in Syria, nor can there be individual complaints by Syrians against cases of civil and political rights violations.

In such cases, the authors assume that when viewed from the recent case in Syria, it can be said that Syria violated Article 6 on the right to life and Article 7 on the freedom of torture. In connection with Article 6 of the ICCPR, the right to life represents a fundamental human right, which, beyond the personal interest, becomes relevant for the whole society. Therefore, this fundamental right acquires a social dimension, so it is

necessary to guarantee it by international treaties and conventions, as well as the norms of domestic law. It is interesting to establish the moment that the protection of the right to life begins, an aspect which entails in different legislations the incrimination or not of abortion. It is also important to determine the content of this right, that is to say it belongs to the right of a person to death.

Protecting the right to life by internal and international norms constitutes a requirement and a necessity at the same time, since it represents a fundamental attribute of the person, whose protection is strongly connected with and determines the protection of the other attributes of the person: bodily Integrity, health, liberty, etc. As previously shown,⁶² human life as social value protected by legal norms Appears not only as an absolute right to life of the individual, as opposed to all citizens, but Also as a social value the which the objective law protects for the interest of the whole Society.

The protection of the right to life is first of all consecrated by international norms, but also internal norms under criminal law, taking into account the importance of the life of a person, not only for him or her, but also for the whole society. Thus, in art. 3 of the Universal Declaration of Human Rights, it is stipulated that "Everyone has the right to life, liberty and security of person." In art. 6 of the International Covenant on Civil and Political Rights, it is specified that "Every human being has inherent right to life. This right shall be protected by law. No one will be arbitrarily deprived of his life."

The right to life referred to in this article is not the freedom to live as one desires and also not to set a reasonable standard of living. The right in question is the right to be protected from murder (arbitrariness). Then in Article 7 of the ICCPR which guarantees to be free from torture: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." Article 5 Declaration of Human Rights: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Syrian domestic law prohibits torture and other cruel, inhuman, or degrading treatment or punishment, and the penal code provides up to three years' imprisonment for

⁶² T. Vasiliu, D. Pavel, G. Antoniu, D. Lucinescu, Papadopol V., V. Rămureanu, Codul penal comentat și adnotat (The Penal Code, comments and notes), Ed. Științifică și Enciclopedică, București, 1975, p.68.

violations. Nonetheless, activists, the COI, and local NGOs reported thousands of credible cases of government authority in frequent torture to punish perceived opponents, including during interrogations. Observers reported most cases of torture or mistreatment occurred in detention centers operated by each of the government's security service branches. Human Rights Watch (HRW) and the COP on the checkpoints and facilities run by the Air Force, the Political Security Division, the General Security Directorate, and the Military Intelligence Directorate. They identified specific detention facilities where the torture occurred, including the Mezzeh airport detention facility, Military Security Branches 215 (the "raids branch"), 227 (the Damascus regional branch), 235 (the "Palestine branch"), 248 and 291 (the Intelligence branches in Kafr Sousa), Adra and Sednaya Prisons, the Harasta Military Air Force Intelligence Branch, Harasta Military Hospital, Mezzeh Military Hospital 601, and Tishreen Military Hospital. The COI also reported the Counterterrorism Court and field military courts' reliance on forced confessions and information acquired through torture to obtain convictions. A large number of torture victims reportedly died in custody; The SNHR reports that 1.546 individuals died due to torture in government facilities during the year.⁶³

Based on the above, the effectiveness of Syria's implementation and compliance with the ICCPR has not been so effective as it can be seen from the numerous violations of civil and political rights in Syria between its violations of Article 6 and Article 7 of the ICCPR, although Syria has ratified and implemented the regulation - the ICCPR arrangements against national law in Syria. And in this case, in my opinion, Syria must be obligated to perform effective remedies if it has been proven to violate the ICCPR to victims who have violated their civil and political rights. Syria must provide an effective recovery system to ensure the fulfillment of the rights of victims.

D. Conclusion

Syria as a member country of the ICCPR has carried out its obligations by sending periodic reports on cases of civil and political rights violations in Syria that are likely to experience delays. Syria has not yet ratified Optional Protocol I, so Syria can not be adapted by other ICCPR member states on the rights and politics in Syria, nor can there be any individual complaints by the Syrians against cases of civil and political rights. The author also concludes that in view of recent cases in Syria, it can be said that it violates the

⁶³ *Ibid.*

provisions of Article 6 ICCPR which states "Every human being has inherent right to life. This right shall be protected by law. No one will be arbitrarily deprived of his life." And finally, the content of Article 7 which guarantees "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation". But the effectiveness of Syria's implementation and compliance with the ICCPR has not been so effective.

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