

Mohamed Lamine Dabaghine- University Setif 2

Faculty of Law and Political Sciences

Department of law

Master Human rights and liberties

Third hexagram

Lectures of civil society institutions for the protection of human rights

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Civil Society Institutions for the Protection of Human Rights

Targeted category: Second-year students in Master of Human Rights and Freedoms.

The overall goal of the scale:

At the end of his study of the scale, the student should be able to apply the knowledge acquired in the field of the role of civil society in protecting human rights to specific models of national and international civil society institutions.

Specific Objectives:

- 1-The student should get acquainted with the concept of civil society.
- 2-The student should clarify the tasks and functions of civil society.
- 3- Distinguish between the concept of civil society and its associated concepts.
- 4-Delineate the legal progression of civil society's role in development.
5. Identify how civil society enforces human rights.
6. Determine the function of civil society in safeguarding human rights.
7. The student must demonstrate the application of civil society's public role in protecting human rights within national institutions.
8. The student must demonstrate the application of civil society's public role in protecting human rights within international institutions.
9. The student must demonstrate the application of civil society's public role in protecting human rights within Arab institutions.

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The content of lectures

The first axis: civil society and its relationship to some concepts

- The concept of civil society and an explanation of its characteristics and functions.
- The relationship of civil society and the concepts of the state, democracy and political parties.

The second axis: constitutional and legal developments for civil society in Algeria

- Constitutional developments
- Legal developments

The third axis: The role of civil society institutions in the field of human rights

- Activating the oversight mechanism by enhancing transparency, accountability, and spreading a culture of human rights
- Activating the mechanism for defending human rights through: monitoring and documenting human rights violations, issuing reports on human rights conditions.

The fourth axis: Applications of the activity of some civil society organizations in the field of human rights protection

- At the national level.
- At the Arabic level.
- At the global level.

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Introduction

The concept of civil society in our time has become one of the most prominent topics on the political scene in the contemporary world. In its conception, civil society has been linked to many political and legal topics, foremost of which is the issue of human rights, given the functional relationship between the role played by civil society organizations and the achievement of human rights or working to achieve them¹.

The advancement of human rights is no longer solely dependent on legal provisions established by the state or protective mechanisms put in place for their safeguarding. Inextricably linked to civil society, human rights cannot be discussed without acknowledging the pivotal role that civil society plays in their promotion and attainment. In Western democracies, civil society organizations have emerged and evolved to become crucial players in various state domains, particularly in the realm of human rights.

However, this role is often diminished in developing countries, particularly in the Arab world. Nonetheless, civil society plays a crucial role in advocating for human rights in the Arab nations, despite its modest presence. This can be attributed to the current state of globalization in the Arab world and the growing consciousness of Arab citizens, who are taking various measures to protect and demand their rights. One such measure is seeking support from civil society organizations, which have been established legally and regulated in several Arab countries or joined by citizens seeking to defend their rights. She seeks to defend his rights to mobilize the necessary support in her favour.²

¹ شافعة عباس و عباسي سهام، دور المجتمع المدني في حماية حقوق الإنسان في العالم العربي دراسة تطبيقية بين المعطيات النظرية والواقع العملي، دفاتر السياسة والقانون، العدد 19، جوان 2018، ص. 635.

² شافعة عباس و عباسي سهام ، مرجع سابق، ص. 635-636.

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First axis: Civil Society and their relationship with other concepts

The idea of civil society has been a subject of debate due to a wide range of doctrines and disciplines that approach it differently. To clarify this concept, we will explore the definition, pillars, and characteristics of civil society in this discussion.

1. The concept of civil society

As we delve deeper into the research surrounding civil society, we come across varying definitions and interpretations of the term, along with the institutions that fall under its purview. These differences arise from the diverse ideas, orientations, and doctrines of the researchers, leading to the adoption of varied criteria for the definition of civil society. These criteria may include factors such as the nature of membership, level of independence from the state, as well as its areas of focus and interests.³

Civil society is defined by Mohamed Abdel Fadil as "a group of institutions, events, and activities that occupy a middle position between the family as the basic unit and the state"⁴ This is a collective of voluntary organizations that strive to promote the welfare of their members, upholding principles of respect, mutual agreement, tolerance, and effective diversity management. These civil organizations serve as a link between individuals and the state, working towards a common goal built on mutual understanding, peaceful coexistence, and shared values.

As for Habermas, he defines civil society as "that public space in which differences, social problems, public policies, the process of governance, collective issues and cultural identities are discussed."

³ صباح حواس، المجتمع المدني وحماية البيئة في الجزائر - واقع وآفاق-، ماجستير، جامعة سطيف 2، 2014/2015، ص. 20.

⁴ المرجع نفسه، ص. 21.

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According to Hisham Younis, civil society comprises political, economic, social, and cultural establishments that function with a degree of autonomy from both state authority and private sector profits. In essence, civil society refers to a non-governmental organization that operates without seeking power or financial gain. They play a role in decision-making processes outside of political institutions and have goals like those of trade unions, such as advocating for their economic interests, enhancing the standards of their profession, and representing the interests of their members. Additionally, civil society groups may also serve cultural purposes, such as those seen in associations of writers and intellectuals, cultural organizations, and social clubs that aim to promote awareness and support the objectives of their respective programs.⁵

Civil society can be confidently defined as a collective action space that revolves around common interests, goals, and values without any coercion. The institutional forms of civil society are different from those found in the state, family, and market, although the boundaries between civil society, the state, the family, and the market are often complex, unclear, or negotiable. Civil society is made up of a wide range of spaces, actors, and institutional forms, varying in terms of formality, autonomy, and influence. It typically encompasses institutions and organizations such as women's organizations, religious organizations, trade unions, self-help groups, social development groups, alliances, and advocacy groups.

Civil society was defined in the civil society symposium organized by the Center for Arab Unity Studies in 1992 as "political, economic, social and cultural institutions that operate in their various fields, independent of the authority of the state, to achieve multiple purposes, including political purposes such as participation in decision-making at the national and national level, for example,

⁵ عباس فاضل محمود، دور منظمات المجتمع المدني في تعزيز البناء الديمقراطي في العراق، الأستاذ، العدد 203، 2012، ص. 620-621.

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political parties, and trade union purposes such as defending the interests of their members, including cultural purposes, as in writers and intellectuals unions and cultural associations that aim to spread cultural awareness according to the trends of members of each group, including purposes to contribute to social work to achieve development."

The World Bank defines civil society as "a wide range of non-governmental and non-profit organizations that have a presence in public life and bear the burden of expressing the interests and values of their members or others based on ethical, cultural, political, scientific, religious or charitable considerations.

Extrapolating from the previous definitions, we can say that the definition of civil society expands at one time and narrows at another.

Recent trends indicate a clear distinction between civil society institutions and political entities that strive to hold power.

On the other hand, civil society organizations are rapidly evolving to become more inclusive and diverse, embracing a vast array of non-governmental, non-family, and non-hereditary entities such as associations, unions, parties, clubs, and cooperatives.

Civil society encompasses a range of voluntary organizations and groups that are formed by members of their own accord. These entities work to safeguard their interests and include political parties, cultural organizations, professional federations, interest groups, civil associations, and non-governmental organizations. It's worth noting that family or genetic blocs, which are natural institutions where one is born and cannot withdraw from, are not included. These institutions and organizations are relatively independent of the state and do not

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seek financial gain. Instead, they focus on regulating the relationships between their members and defending the interests that they were formed to address.⁶

2-The pillars of civil society

Through the previous definitions, we conclude that the pillars of civil society are:

1. **Voluntary free will:** Civil society consists of free will. The characteristic of voluntary joining: that is, it is not possible to participate or enter into civil society through force, pressure and coercion because it is based on the principle of freedom, and one of the requirements of this characteristic is that individuals have the right to withdraw from global civil society, and this is always under penalty of freedom and free action without coercion.

2- **Characteristic of organization:** The validity, permanence, continuity and achievement of the objectives of any conglomerate are based on the element of organization that imposes on civil society the existence of an internal legal system to which it is subject, as well as the existence of an official institution with an internal system that formalizes its work.

3- **Non-profit targeting:** Civil society does not aim behind its various actions and meetings to achieve profit, as much as it aims to achieve lofty principles that have been or are being violated at the head of these principles of human rights, but, this does not prevent that civil society can use ways to bring funds that help to achieve non-profit goals in the end, what is important is that it does not aim to raise funds and achieve profits as a rule, but is an exception to achieve the original.

4-**The moral pillar:** This pillar involves the acceptance of difference and diversity between oneself and others, and the commitment to ‘managing conflict within civil society institutions, and between them and States, and by peaceful

⁶شافعة عباس و عباسي سهام، مرجع سابق، ص.638.

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means, which is embodied in a set of values and standards such as freedom, equality, volunteerism, tolerance, acceptance of pluralism, and ethics in thought, visions and interests, as well as cooperation, integration, participation and peaceful resolution of disputes.

5 - **Independence:** This means that civil society organizations enjoy independence from the state and do not represent a tool to serve its interests, and the nature of the relationship with them is based on partnership and cooperation.

Civil society is distinguished from other organizations by its ability to adapt versus inertia, its ability to be independent versus dependent and subordinate, and it is also characterized by being more organized and more homogeneous from the point of view of Samuel Huntington.⁷

3. Characteristics of civil society

Civil society possesses several defining characteristics, which we outline below:

- **Adaptability:** the ability to adjust to changes in its operating environment. The more adaptable the organization, the more efficacious it is. Inertia can lead to a decline in significance and even elimination. There are three types of adaptability:

- Temporal adaptation: the ability to endure over an extended period.

- Generational Adaptation: the ability to continue functioning as leaders change with each new generation.

- Functional Adaptation: the capacity to modify activities to accommodate emerging circumstances.⁸

⁷ طارق زياد أبو هزيم، المجتمع المدني وبناء الدولة المدنية الديمقراطية، المنارة، المجلد 23، العدد 1/أ، 2017، ص. 194-195.

⁸ صباح حواس، مرجع سابق، ص. 25.

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- **The property of independence:** It means that it is not subject to any political system whatsoever, but is characterized by independence, whether in its internal or financial system that runs its business. It is not subject to any pressure whatsoever but is a free and independent institution.⁹ The degree of independence of civil society institutions is determined by indicators that appear in:

-The emergence of civil society institutions: that is, the limits of state intervention in this process. The origin is that civil society institutions enjoy a margin of independence from the state.

-The financial autonomy of civil society institutions is revealed by examining their funding sources. Are they supported by the government or external entities, or do they operate solely on self-generated income from membership fees, donations, or service and production revenues?

-Administrative independence: refers to the extent of the independence of civil society institutions in the management of their internal affairs by their internal regulations and systems and away from state interference.¹⁰

-**Change and competition by peaceful means:** When civil society seeks change, it must adhere to peaceful means and channels in the exercise of its activity, starting with the expression of opinion, through demand and secondment, and ending with actual involvement in the process of change, as well as in the management of the Commission and the circulation of power and presidency among its members.

-**Adopting democratic methods:** the principles of democracy must be adopted in the organization and practice of its work, so there should be an opportunity for

⁹ فهيمة بلحمري ومعمر فرقاق، المجتمع المدني وحقوق الإنسان، مجلة الدراسات القانونية المقارنة، المجلد 07، العدد 02، 2021، ص. 1081-1082.

¹⁰ أحمد فكاك أحمد وعماد وكاع عجيل، مؤسسات المجتمع المدني في الفكر السياسي المعاصر، مجلة جامعة تكريت للعلوم القانونية والسياسية، المجلد 4، السنة 4، العدد 14، ص. 118.

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plurality of opinions, their free expression, and resort to free elections in the selection of its members.

-Homogeneity: is the absence of conflicts within the institution that affect the exercise of its activity, that is, the acceptance of diversity and ideological, intellectual and sectarian differences within the authority.¹¹

-Transparency: The vision, mission and objectives of civil society organizations and their sources of funding must be clear and legitimate, and there must be a clear mechanism for the accountability and accountability of the leading bodies of those organizations by their public bodies.

-Credibility: It comes from the public's confidence in the role played by civil society organizations, which builds and strengthens the legitimacy of those organizations, which is known as the legitimacy of performance and achievement.¹²

4-General Objectives of Civil Society

The objectives of civil society are to:

- 1- Achieving public benefit and working to establish the values of solidarity, solidarity, fraternity and freedom without restriction or coercion.
- 2- Embodying and establishing the popular contribution and participation in making various decisions and making the individual play a prominent role in crystallizing the decision.
- 3- Activating the principle of common interests is to achieve coexistence between different organizations and take into account the diversity that

¹¹أحمد فكاك أحمد وعماد وكاع عجيل، مرجع سابق، ص. 119..

¹² محمد طراونة، دور منظمات المجتمع المدني في حماية حقوق الانسان، <http://www.fpdf-2012/10/16> <http://www.fpdf-2012/10/16-17-32-07.html>

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exists in them instead of racism and discrimination and the preference of one individual for another.

- 4- Involve civil society in spreading awareness among individuals of belonging and participation, as well as for other civil institutions.¹³

5-Functions of civil society:

The functions of civil society are numerous and can be summarized in the following points:

- 1- Grouping of interests: Through civil society institutions, collective positions are crystallized that relate to the issues and challenges facing members and then move to solve problems and achieve the interest of all.
- 2- The emergence of new leaders: The development of new leaders is essential for the continuity of progress across generations. By fostering membership in associations and unions, individuals are allowed to showcase their abilities through collaborative efforts. This, in turn, leads to the emergence of capable leaders who take on important responsibilities.
- 3- Spreading a culture of volunteerism: respect for teamwork, and a commitment to mutual respect between individuals while adopting accountability and transparency at work.
- 4- Filling the vacuum in the absence of the state and its withdrawal: Civil society is committed to monitoring areas where the state may be unable to fulfil its institutional responsibilities or has withdrawn its involvement. This ensures the basic functions of defence, security, and more are carried

¹³فهيمة بلحمري ومعمرفرقاق، مرجع سابق، ص. 1082.

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out, and prevents societal collapse, particularly for groups that rely on state services to meet their needs during crises or emergencies.¹⁴

5- Types of Civil Society

The types of civil society are:

- **Local civil society:**

consists of institutions and organizations that address social, economic, cultural, religious, and other issues within a specific geographic area. These entities operate within a narrow framework, such as villages or neighbourhoods, to cater to the needs of citizens. Examples include local social clubs, youth clubs, sports and recreational associations, and organizations that manage social and recreational activities.¹⁵

- **National civil society:**

consists of institutions operating on the entire national territory, such as associations, trade unions and professional associations,¹⁶ and civil society organizations that work for the public interest and focus on human rights, women's rights, workers' rights, good governance and accountability, democracy, the rule of law, transparency and integrity, election monitoring, civic education, environmental protection, inheritance protection, or consumer protection.

Within this scope, we can distinguish between two types of organizations, interest groups and pressure groups. Lobbyists work to enter political life to express a certain interest to pressure politicians and competent bodies to issue

¹⁴صباح حواس، مرجع سابق، ص. 27-28.

¹⁵ميرفت رشماوي وتيم موريس، نظرة شاملة عن المجتمع المدني في العالم العربي، انترك، 2007، ص. 14-15.

¹⁶المرجع نفسه، ص. 14.

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legislation. This activity takes place in the face of all public state authorities, whether political, administrative or judicial.

Dr Suad Sharkawi defines pressure groups as "an existing organization to defend certain interests and exerts, when necessary, pressure on public authorities, to obtain decisions that serve the interests of these groups."¹⁷

We should precise that It's not every interest group is a pressure group, it cannot be called this name except when it exerts pressure on the public authorities to reach a decision that achieves its demands. Not all pressure groups are of public interest¹⁸. The best example we mention here is the American Jewish lobby with great influence and power on the US Congress about the interests of Jews in general at the expense of the peoples of the world, and President Trump's recent decision to consider Jerusalem as the capital of Palestine is evidence of the pressure exerted by the Jewish lobby on the president, whose popularity among Americans has declined and needs more Jews to continue in political life, and this is a bad example of lobbying groups. This study aims to focus light on lobbying groups that are interested in public affairs and the public interest and that bear the burden and responsibility of defending the interests of society.

The vital role of professional unions cannot be overstated, as evidenced by the frequent strikes of health workers, teachers, and professors in Algeria. These strikes have brought about positive changes such as improved living conditions, better working conditions, higher wages, and enhanced services. These collective efforts have compelled the state to take necessary actions towards improving the welfare of these groups.

Pressure groups employ a variety of peaceful and democratic tactics to advance their demands, such as organizing demonstrations, strikes, and media statements, as well as hosting seminars and engaging in dialogue with relevant

¹⁷ سعاد شرقاوي، النظم السياسية في العالم المعاصر، جامعة القاهرة، القاهرة، 2008، ص. 243.

¹⁸ سعاد شرقاوي، مرجع سابق، ص. 251.

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bodies. This demonstrates their awareness of their legal rights and the proper channels for pursuing them. These groups are often led by national leaders and can come from diverse backgrounds, including economic, religious, or other groups. Their goal is to exert pressure on politicians to acknowledge new rights or enhance the human rights landscape by upholding existing ones.

- Regional civil society:

These are regional organizations consisting of members from different countries belonging to one region or continent over which the member states have no authority except for some organizational and legal aspects. Examples of these organizations are those that exist in the Arab region, such as the Arab Women Legal Network. Regional civil society has known important activities in the field of holding conferences organized for special public topics in the European region, such as those concluded within the framework of the Euro-Mediterranean Partnership in 1995 and others.

- Global civil society:

Recent years have seen a great deal of circulation of the term "global civil society", whether by the media, academics or politicians.

According to Professor Zaki Alaidi, an expert in political science and researcher at the European Center for International Relations (CERI), the concept of global civil society encompasses two interrelated aspects. Firstly, it refers to the accumulation of various civil societies around the world. Secondly, it represents a distinct actor in its own right - "un acteur à part entière" in Professor Alaidi's words. He views global civil society as a diverse collection of decentralized networks operating across multiple domains to generate knowledge and shape public discourse. To achieve these goals, they leverage the power of speed, information, and individual perspectives.

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The modern era is defined by the previous qualities that stem from the widespread use of information technology. Swift transmission of information, easy communication, and the ability to gather expert opinions have brought significant issues to the forefront, making them accessible to everyone regardless of their affiliations. This is what empowers global civil society, according to the author's perspective.¹⁹

Regarding the emergence of global civil society, there are differing opinions as to its origin. Some attribute its beginnings to the Rio de Janeiro Summit in 1992, also known as the Earth Summit. Others assert that it first emerged during the preparations for the Convention on the Prevention of Anti-Personnel Mines in 1998 and gained momentum through popular gatherings such as the one in Seattle in 2000 and later in Porto Alegre. These gatherings aimed to address the negative impacts of globalization on human life.

The global civil society began to take place by its participation in global and regional forums, where it engages in consultations and discussions on public and global issues. It aims to tackle these issues based on universal values such as peace, equality, justice, and the protection of human rights. This marks a significant milestone in democratic freedom in the era of globalization.

To strengthen this actor, other concepts such as "Global Civil Citizenship" and "World Democracy" were introduced to organize the new society, independent of states. Additionally, thinkers and senior officials like former United Nations Secretary-General Kofi Annan and Secretary-General of UNCTAD Rubinz Ricero have started discussions about the World Parliament (Parlement Mondial).

Global civil society is formed through a collaborative agreement among various parties, such as non-governmental organizations, trade unions,

¹⁹Zaki Laidi, La Société Civile Internationale Existe-t-elle ? Défaillances et Potentialité, Cadres CFDT, N°410-411, mis en ligne en Juillet 2004, p11. http://www.cadres-plus.net/bdd_fichiers/410-02.pdf

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associations, and individuals. This collective represents a shared set of values and perspectives on the interests of these parties, such as the condemnation of the Iraq war.

Jonathan Schell aptly described this as "another great power of the world", while women's rights organizations have been particularly vocal in their opposition.²⁰ Additionally, Islamic non-governmental organizations, Saudi and Iranian preachers and jurists, and Christian associations all condemn various forms of abortion.

He also²¹ highlights the growing global pressure by civil society towards climate change and imbalances that could compromise human rights and the rights of future generations, including the right to a clean environment and self-determination.

As a result, there are significant movements worldwide, including in the biggest countries, to change their policies. The conferences held by the UN Environment demonstrate the role of civil society in close monitoring and pressuring for agreements that benefit all of humanity.

To effectively perform their tasks, civil society organizations must have conducive factors. These organizations play an active and vital role in exposing gross human rights violations committed by various parties. These parties may include state agencies, non-state actors like multinational corporations, or private non-profit entities.

The modern democratic system supports the crucial role of civil society, as per Habermas, which presupposes the presence of interaction, also known as "Le Jeu Combiné," between political legislation and civil society. This interaction establishes democratic rules and foundations upon which civil society can

²⁰Richard Folk, *Global Civil Society Actors and 9/11*, In: G. Anderson et al (eds), *Non-State Actors in the Human Right Univers*, Kumarian Press, USA, 2006, p. 117.

²¹Samy Cohen, *op. cit.*, p13,14,15.

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discharge its responsibility of safeguarding human rights. Among democratic principles, there are:

- First, the principle of publicity: dictates that the state must openly declare all its actions to ensure their validity. Therefore, laws and regulations are enforced only after being published in the Official Gazette. Similarly, judicial decisions must also be issued in a public session to maintain their legitimacy.

- The second principle is preventing the use of force, coercion or intimidation to monitor or influence the course of public debates, and due to the importance of this characteristic, Habermas described it as "la sanctuarisation de l'espace publique".

-The third principle is freedom of the media or rules that include media pluralism in addition to freedom of expression.

Based on these principles, civil society actors can effectively carry out their activities. The state's actions are made public, which allows for monitoring and discussion from anywhere. Additionally, if violations occur, meetings and organizations can be formed to address them.

Thanks to constitutional rules, civil society actors enjoy both freedom and protection and cannot be subjected to undue pressure.

Conversely, they can put pressure on countries to exercise their rights to peaceful demonstrations and protests which can exert pressure on countries to uphold their citizens' rights. In numerous instances, such actions have significantly influenced countries' policies, particularly in light of the current audio-visual communication revolution, which has made the world more transparent. Any event occurring in

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any part of the world can now be witnessed and its intricacies known instantaneously.²²

II-Distinguish civil society from other concepts

1-Civil society and democracy

In this regard, several important questions require our attention, including whether civil society is a prerequisite for democracy or the other way around. It's also worth considering whether democracy is necessary for the development of a civil society.

Additionally, if we define civil society in today's context as the collective of non-governmental organizations (NGOs), we cannot overlook the fact that these organizations alone do not fully encompass the concept of civil society. By reducing civil society to merely these organizations, we would distort both the concept and the phenomenon itself, which holds not just in Algerian society, but in the wider Arab world as well.

The concept of "civil society" has historically meant something different from its current interpretation. In the past, it encompassed civil rights, contractual agreements, the right to free suffrage, parliamentary elections, and citizenship rights. In this historical context, it played a crucial role in shaping democracy in Western societies. However, it is crucial to avoid simplistic thinking. Stating that civil society led to democracy doesn't imply a linear cause-and-effect relationship; rather, it suggests that the process of its emergence and formation is intricately connected to the development of democracy.

Considering civil society as synonymous with the institutions and organizations of modern society, without considering its historical evolution,

²²Benoit Fraydman, *Vers un Statut de la Société Civile dans l'Ordre International*, Philosophie du Droit, Dalloz, Paris, 2001, pp. 152-153.

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reflects a level of naivety. The assumption that non-governmental organizations will guide Arab societies toward democracy can be misleading. In such a scenario, it becomes a mistake to believe that "civil society is a prerequisite for the existence of democracy."

This understanding of civil society deviates from the actual challenges it should address in countries yet to establish the foundations of democratic governance. The battle for democratic construction is essentially a struggle to establish modern power institutions and build a democratic state. Importing the idea of civil society in its contemporary sense (referring to non-governmental organizations) detached from its historical context carries several risks, including the false belief in the presence of democratic political action, while the reality indicates its absence.

In the best-case scenarios, the political field is constrained, showing a high degree of restriction and manipulation by the ruling regime. Worse still, the broader societal sector might become detached from the democratic construction process due to a misguided belief that it concerns only a minority of society. This is influenced by the practices of elite groups and misconceptions about civil society, reducing it primarily to modern non-governmental organizations.²³ The concept of civil society has become synonymous with democracy and the rights of the citizen.

The concept of civil society has now become synonymous with democracy and citizen rights. Civil society cannot be effective politically, culturally, economically, or socially in the absence of an environment, thought, and culture of democracy. The concept of civil society is closely tied to democratic principles, ensuring freedom of political engagement, the right to observation, criticism, and

²³ عنصر العياشي، ماهو المجتمع المدني؟ الجزائر نموذجا، انسانيات، العدد 13، 2001، ص. 03-04.

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the disclosure of the shortcomings of the state and its apparatuses in the processes of development, planning, and local administration²⁴.

2- Civil society and the state:

Civil society organizations are entities that aim to achieve the hopes and aspirations of society within the framework of activating the principles of freedom, equality, and dignity. These are goals that individuals aspire to achieve in the face of state domination or oppression, or to address deficiencies in meeting the needs of citizens and others. Therefore, the relationship between civil society and the state is determined by the political system's view of the efforts undertaken by civil society organizations in economic, cultural, ethical, and political fields, within the context of their interaction with the reality of individuals.

Generally, there is no consensus on the relationship between civil society and the political state with its legal institutions. Some see it as a relationship of contradiction and conflict and argue against the usefulness of these organizations due to their disruption of the state's general system. Others see the necessity of regulatory frameworks that give civil society organizations the right to monitor everything the state does towards citizens, reducing its arbitrariness and ensuring justice, equality, and the enjoyment of human rights. Currently, the existence of civil society organizations has become inevitable. Therefore, for organizing their activities and benefiting from them effectively, it is necessary to establish regulations and laws that define their scope of authority, activities, and working as partners with the state to achieve a fundamental goal, which is human freedom and proximity.

Even if the modern state recognizes the independence of its institutions from society, this does not mean restricting or imposing society's subordination

²⁴ طارق زياد أبو هزيم، مرجع سابق، ص. 198.

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to it. It means that civil society has a broad space and a defined legal field in which it can operate independently from the state. Considering civil society and the state as separate scientific domains does not mean that the relationship between them is based on conflict and competition, or that the existence of civil society is a result of the state's retreat or failure. Instead, it is a result of cooperation and integration between the state and society. As Montesquieu sees it, civil society is a product of the state's power, which determines its authority and regulates public affairs with it. Therefore, just as civil society is a condition for the existence of the state, the state is also a condition for the existence of an effective civil society.²⁵

3-Civil society and globalization

The advent of globalization has presented challenges to the welfare of marginalized communities, especially those struggling with poverty. The expansion of societies and the heightened emphasis on security have made it difficult for governments to remain attuned to the needs of their citizens and tackle the numerous social, environmental, and economic issues that arise from globalization. In response, governments have sought to partner with private entities like civil society groups to share the burden and safeguard their interests. This delegation of responsibilities has become necessary to navigate the complex challenges that arise in a globalized world.

Nevertheless, these organizations have consistently pursued autonomy and self-governance, independent of state institutions. Their pursuit of independence does not suggest a complete disconnection between civil society and the state but rather indicates that civil society institutions should have the liberty to function without direct intervention from the state. This involves establishing their

²⁵عباس فاضل محمود، دور منظمات المجتمع المدني في تعزيز البناء الديمقراطي في العراق، الأستاذ، العدد 203، 2012، ص. 633-635.

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principles and mechanisms, such as safeguarding their freedom of action. The most important principles are:

First: It is crucial for the state to provide a political and legal framework that supports civil society. This is because civil society plays a crucial role in shaping the political landscape, and the stability and success of various institutions and political relationships depend on how closely they align with the existing social structures and cultural formations within society.

Second: The forces and institutions of civil society should exert influence on the policies and decisions taken by the state through many tools and mechanisms such as parliamentary councils, monitoring and control institutions and pressure groups.²⁶

4-Civil society and political parties:

An urgent question that arises is the extent to which civil society institutions can independently sustain themselves. Are political parties and non-governmental organizations capable of self-reproduction, or do they rely on state resources or external aid to survive? The reality is that their weakness and fragility make them vulnerable to being exploited by those who finance them, whether domestically or abroad. This underscores the importance of ensuring their autonomy and resilience. There is a sharp debate about the credibility of these organizations, as well as it allows all their opponents to underestimate, restrict, monitor and restrict them²⁷.

It is widely acknowledged that the primary goal of political parties is to acquire and maintain power. Unfortunately, some parties resort to undermining

²⁶ بن عثمان فوزية، دور المجتمع المدني في حماية حقوق الانسان-منظمات حماية البيئة نموذجا-،مجلة الحقوق والعلوم السياسية، العدد08، ج. 01، جوان 2017، ص. 238-239.

²⁷ عنصر العياشي، ماهو المجتمع المدني؟ الجزائر نموذجا، انسانيات، العدد 13، 2001، ص. 03-04.

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civil society to achieve this objective. While this approach may be prevalent in third-world countries, particularly in the Arab world, there are numerous examples of parties across the globe that have successfully separated their institutional identity from their governance responsibilities.²⁸

Concerning the Algerian system, Law No. 90/31 on associations, Article 11 states the following: "Associations are distinguished by their purpose, name and work from any association of a political nature and cannot have any relationship with them, whether organizational or structural, nor can they receive any subsidies, gifts or bequests from them, whatever their form, and they may not also contribute to their financing."

As for the framework of Law 12/06, which includes the Law on Associations, Article 13 states: "Associations shall be distinguished by their purpose, name and work on behalf of political parties, and they cannot have any relationship with it, whether organizational or structural, as they cannot receive subsidies, gifts or bequests of any form from them, and they may not contribute to their financing."

Accordingly, The Algerian legislature has taken steps to disassociate political parties from civil society organizations. This includes refraining from meddling in their affairs or dictating their actions, as well as prohibiting external funding that could lead to undue influence and a departure from their intended goals.

5-Challenges and obstacles facing civil society in achieving its objectives:

One of the most important challenges facing civil society organizations in their pursuit of their responsibilities is the prevailing culture that governs the perception of state institutions towards NGOs.

²⁸ محمد طراونة، دور منظمات المجتمع المدني في حماية حقوق الانسان، 2012/10/16.

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Despite the state's acknowledgement of civil society organizations as partners, their activities continue to be viewed with caution and subject to monitoring. Legislation and procedures aimed at controlling their movement within the framework of official policies are imposed, resulting in interventions by some government agencies in their administrative body elections and sudden decisions to dissolve organizations.

Civil society in many third-world countries faces some challenges and obstacles that must be given special attention, which are summarized in the following issues: democracy and good governance, sustainability, weak political roles, and national alliances.

a. **Democracy and Good Governance:**

Civil society plays a vital role in ensuring democratic progress and political transparency. However, it's concerning that many organizations within civil society do not adhere to democratic principles or good governance practices, such as participation, accountability, and transparency. This lack of adherence is evident in various ways, such as noncompetitive elections and leaders chosen by acclamation, low membership rates in civil society groups including political parties, mandatory membership in certain sectors of civil society in exchange for voluntarism, and a failure of public civil society institutions to exercise their entrusted powers.²⁹ It's crucial to address these issues to strengthen civil society's role in promoting democracy and good governance.

B. Sustainability:

One of the greatest challenges facing civil society organizations is sustainability. In certain countries, such as those with high numbers of charities, social groups, and cultural forums, these organizations may emerge and become

²⁹محمد طراونة، دور منظمات المجتمع المدني في حماية حقوق الانسان، 2012/10/16.

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active for a brief period before disappearing. This can result in a loss of trust and credibility amongst the groups they serve.

C. Weak political role:

It is worth noting that civil society organizations face opposition from two distinct factions. One faction advocate for avoiding any political involvement, while the other seeks to leverage its professional status to engage in political activities. This dynamic may be attributed to government efforts in certain countries to prevent party activists from assuming leadership roles in civil society groups such as labour unions, charities, cultural organizations, and sports clubs.

D. Weakness of national alliances:

Although civil society sectors in various countries are members of regional or global networks, establishing national alliances and networks has proven to be a difficult task. The existence of traditional national umbrellas, such as public federations that bring together similar organizations like trade unions, charities, and professional bodies, may hinder progress. Despite the importance of human rights and democratic development organizations partnering with similar groups to protect themselves from government interference and monitor human rights, they have not yet found an efficient way of working together.³⁰

Second axis: The Historical Development of Civil Society

The twentieth century is often viewed as an era of intergovernmental organization, during which governmental organizations played a prominent and increasingly influential role in managing and distributing the benefits of society to its members. However, the last two decades of the century and the beginning of this one saw a significant shift towards the inclusion of non-governmental civil

³⁰ محمد طراونة، دور منظمات المجتمع المدني في حماية حقوق الانسان، 2012/10/16..

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society organizations as partners with international organizations. This period could be considered the golden age of civil society organizations.³¹

Researchers and thinkers have been interested in explaining the reasons for the development of civil society organizations and the increase in their role at the internal and international levels, among these explanations:

Some believe that this is only a response to increasing awareness and awareness of the necessity and importance of building a contemporary and global civil society, within an increasingly complex world that includes achieving the concept of citizenship, by allowing participation and expressing opinion by opening the way for everyone to participate in decision-making while representing everyone, supporting individuals and giving them power, and radically removing inequality, repression and violence.

– The intricacy of global and domestic issues exceeds the capacity of governments alone, highlighting the importance of non-governmental organizations. These organizations are known for their adaptability, effectiveness, and independence from political pressures and bureaucratic obstacles. They are equipped to swiftly respond to urgent situations with efficient action.³²

1-The development of civil society in Western thought

Throughout history, Western thinkers and philosophers have explored the concept of civil society. In his renowned work "The Republic," Plato (427-347 BC) argued that civil society arises from the necessity for human beings to work together to satisfy their needs. Similarly, John Locke (1632-1701 AD) believed that civil society emerged as individuals sought to protect their equal rights within

³¹. محفوظ بن صغير، دور منظمات المجتمع المدني في حماية وترقية حقوق الانسان في الجزائر، مجلة القانون والمجتمع، عدد 03، 2014، ص.140.

³². زينب عبد العظيم، الدور المتغير للمنظمات غير الحكومية في ظل العولمة، مركز الدراسات الاسيائية، جامعة القاهرة، 2002، ص. 53.

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natural society. George Friedrich Hegel (1770-1831 AD) distinguished civil society from the state, defining it in his 1821 publication "Philosophy of Rights" as an independent space that accommodates interests beyond the reach of government. In this view, civil society stands as an arena where individual interests can converge in the interest of the collective.³³

The concept of civil society originated in classical Western thought during the European Renaissance in the 18th century. It referred to societies that surpassed the state of nature and reached a civil status through a political body that was formed by a contractual agreement based on a social contract. Both society and state were encompassed by this phrase during this period.

In modern Western thought, Hegel believed that civil society emerged after the formation of the state. It is composed of individuals who prioritize their interests and interact with each other to fulfil their material needs. As a result, civil society requires continuous monitoring by the state and includes economic and social relationships, administration, judiciary, and police.

Karl Marx posits that the arena in which classes engage in a struggle with conflicting interests is predominantly centered around economics. Meanwhile, Antonio Gramsci maintains that a portion of the state's structure is divided into two distinct sectors: a civil society that is dominated by ideology and culture, and a political society that is governed by control and coercion.

2-Civil society in Arab thought:

During the 1980s, civil society institutions experienced growth in Arab countries for several reasons. These included a rise in education rates, the growth

³³ حسام شحادة، المجتمع المدني ، ط1 ، بيت المواطن ، دمشق، 2015، ص. 14-1. -إيمان حسن، المجتمع المدني والدولة والتحول الديمقراطي، ط2 ، معهد البحرين للتنمية السياسية، 2017، ص.17. _ مصطفى عطية جمعة ، تعريف المجتمع المدني .على الرابط : 3 /https://www .alukah.net/sharia/0/107726

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of a new middle class in many Arab nations, an increase in financial resources among a large segment of citizens in both oil and non-oil countries, and a degree of relative freedom in some Arab nations (which varied from country to country).

Additionally, the expansion of social, economic, health, and cultural demands among Arab citizens exceeded the ability of governments to meet them. As a result, voluntary organizations emerged to fill the vacuum left by the state's inability to address these issues, or its withdrawal from doing so to alleviate its burdens and obligations.³⁴

It is possible to start looking for the origins and practices of civil institutions in the Islamic religion from the Holy Verse, where God Almighty says in his revelation: "Let there be among you a nation that calls for good and enjoins good and forbids evil. These are the successful ones."

Since its inception by the Prophet Muhammad, peace be upon him, the Islamic State has been built upon the concept of the civil society, established in the city of Medina after changing its name from Yathrib in a deliberate manner. This change signifies civilization and refinement based on mutual support, cooperation, tolerance, participation, volunteering, and peaceful conflict resolution. The governance system is founded on the essential principle of Shura, serving as the fundamental basis for decision-making within the state's institutions, guided by the Quranic verse: "And those who have responded to their Lord and established prayer, and whose affair is [determined by] consultation among themselves" .

This approach is aimed at encompassing all segments of society under the umbrella of the state, laying the groundwork for the concept of democracy that modern states are built upon. Examining Islamic history reveals the existence of

³⁴ أحمد فكاك أحمد وعماد وكاع عجيل، مؤسسات المجتمع المدني في الفكر السياسي المعاصر، مجلة جامعة تكريت للعلوم القانونية والسياسية، المجلد 4، السنة 4، العدد 14، ص. 130.

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voluntary organizations not driven by profit motives, exhibiting a degree of independence from the state. These organizations can be considered as the nucleus of the Islamic civil society, and they play a significant role in achieving social welfare and community development. As highlighted by Dr Sabri Muhammad Khaleel Khayri, these associations are:

01 -**Endowments**: They are institutions established by people with their gifts to provide various social and cultural requirements for society, including schools, mosques and hospitals ... etc, and this is what was witnessed during the fourth century AH , as well as what the cities of the Levant witnessed before the Ottoman era.

02 – **Crafts and industries unions**: This form was known during the seventeenth century AH so that each professional group was supervised by a sheikh to monitor the quality of industry the defense of rights and the resolution of disputes.

03-**Groups of scholars, judges and muftis**: These are entities that had relative independence from the authority, and had the role of education, awareness-raising and instilling moral values. people used to resort to them to meet their needs and protect them from injustice and harm.

04 -**Trade unions**: where each group of traders is a sufficient representative who serves traders defends their rights and reduces the burden of tax collection.

05 -**Mosques**: Their role was not limited to worship only, but also extended to the cultural, educational and pedagogical role, with its moral and social values.

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06 - **Sufi methods:** It is a sufficient party that has a political, social and liberating role, as it was taking the corrective approach in line with religious values. It was opening a way to prevent the harm of the rulers to all those affiliated with it.³⁵

The third axis: Civil society in Algeria

In this axis we follow the historical development of civil society. Then, We will discuss the legal regulation of the activity of civil society organizations within the constitution and national laws.

1. Historical development of Algerian civil society

The development of civil society in Algeria has progressed through various stages, both during and after the colonial period.

1/Colonial period:

Civil society history can be traced back to ancient times when Islamic values played a significant role in the formation of community organizations such as mosques, Quranic schools, and endowment resources. Notably, during this time, around 40% of Algerian youth were literate.³⁶

Following the arrival of French colonialism in 1830, efforts were made to erase the cultural and religious identity of Algerian society by promoting Christianization, Judaization, the building of churches and markets in major cities, and the elimination of traditional practices. However, the French Law of Associations in 1901 marked a significant turning point in Algerian society,

³⁵صبري محمد خليل خيرى , "مفهوم المجتمع المدني في الفلسفة السياسية الغربية و الفكر السياسي الاسلامي"،
2018/03/18.

<https://drsabrihalil.wordpress.com/2011/06/30>

³⁶ حواس صباح، المجتمع المدني وحماية البيئة في الجزائر -واقع وآفاق-، مرجع سابق، ص.30 .

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allowing for the establishment of various associations that fostered a collective sense of anti-colonialism and worked to combat oppression. These included:

-First, cultural, sports, and intellectual organizations, as well as professional federations such as the Promotion Club in Algeria, the Rashidiya Association (1902), and the Saleh Bey Club in Constantine (1907).

-Secondly, the political parties that have arisen in Algeria and France, such as the North African Star Party led by Maysali al-Hajj (in France), the Ahbab al-Bayan Movement and the Democratic Union of the Algerian Statement, led by Farhat Abbas (in Algeria), as well as the Association of Muslim Scholars, under the leadership of Abdelhamid bin Badis.

However, following the revolution and the formation of the National Liberation Front party, France suppressed these organizations due to suspicions of their involvement in libertarian revolutionary activities, leading to the disappearance of various civil society organizations.³⁷

2/Period after independence:

During this stage, the focus was on establishing a constitutional framework and organizational structure for the recently independent state. This included implementing provisions and regulations that enable civil society institutions to gradually become more involved in the social, political, and economic aspects of the state's governance, by the models followed during each phase.

Second: Civil society within the laws of the Algerian state

Throughout the different stages of the Algerian regime, civil society has undergone numerous developments. Whether during the one-party period or the

³⁷أمين رحال، المرتكزات الدستورية للمرصد الوطني للمجتمع المدني، مجلة الدراسات القانونية والاقتصادية، المجلد 05، العدد 01، 2022، ص. 414.

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adoption of multi-partyism, legislative and regulatory texts have played a crucial role in shaping social phenomena and promoting societal growth.

The Constitution stands as the supreme basic law, outlining public perceptions and safeguarding individual and collective rights and freedoms. Subsequently, laws and executive decrees determine the application of constitutional principles and clarify mechanisms of work.

Among the most important laws is that of associations, governing a crucial phenomenon that promotes a prosperous society, where civility and citizenship thrive.³⁸

A- The development of civil society within the state constitutions

The Algerian state has known several constitutions and amendments that included the approval of principles that regulate or restrict the activity of civil society institutions, which will be detailed as follows:

- Constitution of 1963:

Following the ratification of the First Constitution of the State in 1963, the French Law of Associations of 1901 continued to be enforced. However, this was mainly done to promote national unity and uphold the legitimacy of the newly established institutions. One of its key provisions, Article 19, guaranteed freedom of association, expression, and public address. Nevertheless, Article 22 placed certain limitations on these rights by imposing strict conditions on the activities of associations. These conditions were put in place to prevent the exploitation of Article 19 for purposes that could undermine the independence of the nation, the safety of the national territory, the aspirations of the socialist people, and the unity of the National Liberation Front. Given the newness of the state's independence

³⁸ حواس صباح، المجتمع المدني وحماية البيئة في الجزائر - واقع وآفاق -، مرجع سابق ، ص.34.

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and its commitment to maintaining national safety and stability under a one-party socialist system, these conditions were deemed necessary and reasonable.

- Constitution of 1976:

The 1976 Constitution acknowledged Article 56's freedom of association but with less leniency than its predecessor, which had fully guaranteed that right. Additionally, any actions that compromised the national group's interests, unity, national territory, internal and external security, or the socialist revolution, as stated in Article 73, could result in the loss of that right. The Constitution did, however, implicitly recognize the right to form trade unions, as it acknowledged the right of workers to join the General Union of Algerian Workers.

-Constitution of 1989:

The constitution has enshrined party pluralism and democratic openness through Article 39, which guarantees the right to freedom of expression, association, and assembly for citizens. Furthermore, Article 40 expands this right to include the recognition of political associations, thereby allowing for party pluralism. As a result, citizens are free to form and join associations and political parties, which has been done extensively and extensively.

-Constitution of 1996:

In addition to the gains achieved under the 1989 Constitution, the constitutional amendment of 1996 added an expansion of the activity of associations through the text of Article 33, which states that "the right to defend through the association the fundamental rights of the human being and that individual and collective freedoms are guaranteed". It also distinguished between associations and parties and explicitly recognized the right to establish parties. It also stipulated that the state encourages the associative movement and supports its prosperity (Article 43).

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- Constitutional Amendment of 2016:

It maintained the same approach that was found in the 1989 Constitution and the 1996 Amendment, where it maintained the same previous articles (Articles 48-52-54), added freedom of the written and audiovisual press, and prevented restricting its work to tribal censorship (Article 50).

- The Constitutional Amendment of 2020:

The constitutional amendment of 2020 raised a new issue that was not addressed by previous constitutions.³⁹, in response to the demands of the popular movement of February 2019, after it recognized in its preamble that civil society is an effective partner of the state in the conduct of public affairs. Article 213 "The National Observatory of Civil Society established an advisory body to the President of the Republic. The Observatory provides opinions and recommendations related to civil society concerns. The Observatory contributes to the promotion of national values, democratic practice and citizenship and participates with other institutions in the achievement of national development goals. The President of the Republic shall determine the composition and other functions of the Observatory. "

Hence, the National Observatory of Civil Society is the one that embodies the institutional framework for consultation, dialogue, proposal, analysis and foresight in all matters related to civil society, as it is an advisory body to the President of the Republic and an intermediary between civil society institutions and the state that works to promote and evaluate its activity⁴⁰.

³⁹ The constitutional amendment of 2020. Issued by Presidential Decree No. 20-442 dated December 30, 2020. related to the issuance of the constitutional amendment, ratified in the referendum of November 1, 2020, Official Gazette No. 82 dated December 30, 2020.

⁴⁰ رمال أمين، المرتكزات الدستورية للمرصد الوطني للمجتمع المدني، مجلة الدراسات القانونية والاقتصادية، المجلد 05، العدد 01، 2022، ص. 1007.

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B- The development of civil society within the laws of the state

Many laws have accompanied the development of constitutional legislation in the consolidation of civil society institutions. We can summarize them as follows:

- In 1971, the enactment of Decree No. 71-79 brought about a strict requirement for associations seeking accreditation. This decree mandated tripartite approval, which means the association had to get the blessing of three official entities: the Ministry of the Interior, the local representative of the Ministry of the Interior (known as the Wali), and the association itself. With this accreditation, associations were able to establish themselves in the fields of culture, arts, sports, and religion.
- On July 21, 1987, Law 87-15 regarding non-political organizations was introduced. While it was more lenient, it still had limitations, outlining the guidelines for associations. Article 4 mandates that associations must not work against national unity, state religion, or the national language. Unfortunately, these criteria can be exploited by public authorities to justify their unjust treatment towards the associative movement.
- On December 4th, 1990, Law 90-31 was implemented, which outlined the process for establishing and operating associations. This law was created in response to the events of 1988, which included the suspension of the electoral process and a rise in terrorism and violence. Law 90-31 addressed various issues, including the definition of an association. Article 02 states that an association is an agreement between individuals or entities for mutual assistance and a non-profit purpose. They work together to apply their knowledge and abilities to promote professional, social, scientific, religious, educational, cultural, and athletic activities for a definite or indefinite period.

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To obtain legal recognition, associations must submit a declaration of establishment to the appropriate authorities. Local associations must register with the governor of their state, while national associations must register with the Minister of Interior. Thanks to Article 07, which outlines the conditions for acquiring legal status, associations have become more widespread. These conditions are:

- Applying with the competent authorities.
- Obtaining the registration receipt within a maximum period of 60 days from the date of deposit.
- Publishing the decision to establish the association in at least one national newspaper.

Regarding the grounds for denying registration of the association, Article 04 outlines three specific cases:

- Membership consisting solely of individuals of foreign nationality.
- Members who are deprived of their civil rights.
- Those whose actions are deemed harmful to the cause of national liberation.

The law now prohibits the imposition of penalties on associations through dissolution or activity suspension, save for cases filed before judicial authorities that oversee the association's adherence to internal regulations and intended purpose or its violation of public order and morals. As a result, this law is a welcome development for the National Association movement.⁴¹

⁴¹ نور الدين سعدون، الجمعيات المدنية في الجزائر بين القانون 31/90 والقانون 06/12، المجلة الجزائرية للأمن الانساني، عدد 01 ، لسنة 2016 ، ص193-194.

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According to Article 02 of Law 12/06, which governs the establishment, organization, and operation of associations, an association is defined as a voluntary group of natural and/or legal persons who come together on a contractual basis for a specified or unspecified period. Their goal is to pool their knowledge and resources for non-profit purposes, particularly in fields such as professional, social, scientific, religious, educational, cultural, sports, environmental, charitable, and humanitarian activities. While the definition expands the scope of associations to cover environmental and humanitarian concerns, it is important to note that their activities must not violate national values, public order, public morals, or existing laws, in line with the State's international commitments to protecting the environment and human rights.

This law is distinct in that an association's accreditation relies on obtaining a constitutive permit and a registration receipt. The permit is granted based on the association's activity scope (municipal, state, interstate, or national) and is included in its incorporation file. The file is then submitted to the head of the Municipal People's Assembly, the governor, or the Minister of Interior for review and approval. If the administration fails to respond, according to Article 11, the association will be accredited and required to obtain a registration receipt. It's worth noting that the law's vagueness allows for arbitrary rejection without specifying the real reason for denial.

Furthermore, Article 45 of Law 90-31 has sparked controversy as it imposes imprisonment on individuals who lead unregistered associations, posing a significant threat to activists belonging to associations that have not acquired a legal receipt from the authorities. Furthermore, Article 46 of the new Law 12-06 imposes penalties not only on representatives of "illegal" associations, but also on those who belong to associations that have not yet been registered, whose activities have been suspended, or those that have been dissolved. While Law 12-06 reduces the duration of the penalty and increases the fine from 100,000 to

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300,000 DZD, it is unfortunate that Law 90-31's provision of granting the judge the right to choose between the two penalties has been repealed.

B Funding associations

According to Law 12-06, associations acquire resources through the consensus of the state or municipality. However, this vague definition can be interpreted arbitrarily by authorities, who have the power to monitor funding in the associative sector.

In contrast to Law 90-31, which permits associations to receive grants and donations from foreign associations with prior authorization, Law 12-06 prohibits accepting grants, donations, and contributions from any foreign commission or non-governmental organization, except within the framework of cooperation relations with prior permission from competent authorities. This law has significantly limited the vital sources of funding for associations and grants authorities a new means of imposing additional control over their activities and partners. By imposing this framework of cooperation, the authorities interfere in the internal affairs of associations and direct their work.⁴²

D- The conditions for suspending or dissolving associations

The conditions for suspending or dissolving associations have been strengthened by new measures. If associations interfere in the internal affairs of the state or infringe on national sovereignty, their activities may be subject to deeper control. As per Article 43, an association may be dissolved if it receives funding from a foreign commission or NGO or engages in activities not specified in its statute.

⁴² حواس صباح، المجتمع المدني وحماية البيئة في الجزائر - واقع وآفاق-، ماجستير، جامعة سطيف 2، الجزائر، 2015/2014، ص. 42.

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However, this law could deprive associations of their essential role in analyzing, criticizing, and supporting the state's public policy, which is crucial for any democratic society. There are concerns that the authorities may interpret this law arbitrarily. It would be more appropriate to dissolve an association if its activities contradict its stated goals.

Moreover, paragraph 2/43 of Law 12-06 allows parties with conflicting interests to request the dissolution of an association, implying that state-supported or established associations could prevent independent associations from functioning through legal means.

The newly implemented law regarding the suspension of association activities has unfortunately resulted in a loss of crucial legal protection. Previously, a judge's intervention was required to suspend association activities under Law 90-31.

However, Law 12-06 has relinquished this protection, allowing for administrative decisions to suffice in such cases. This has hurt the rights of Algerian associations, hindering their ability to effectively carry out their important work and limiting their influence in the field.⁴³

. However, the increased flexibility granted to associations under Law 31/90 has also led some of them astray, leaving room for outside interference through the exploitation of said associations. Thus, the regulations implemented in Law 06/12 are a logical step towards correcting this deviation and establishing optimal guidelines for organizing associations, guaranteeing they fulfil their intended purposes.

⁴³ حواس صباح، مرجع سابق، ص.43.

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The third axis: The Role of civil society to protect human rights

Civil society organizations use many methods to achieve the purposes for which they were established in the framework of pushing countries and organizations to further enable human rights to activate their protection in the event of violation, and inform citizens of the best means they can use to protect their rights, which fall into four basic categories, which we summarize as follows:

(a)Spreading the culture of human rights:

Civil society organizations play a crucial role in promoting and embedding the values of human rights. By increasing awareness of these rights, they drive States to establish mechanisms and safeguards that empower individuals. This, in turn, ensures that people can effectively exercise their rights and reap the benefits they offer.

To promote a culture of human rights and prevent potential violations, societal institutions prioritize education on the matter. This is because the understanding of one's rights, as protected by the law, can play a significant role in preventing certain violations, such as the right to a fair trial or access to legal representation. Additionally, in the event of a violation, the victim's knowledge of avenues for rehabilitation and submitting complaints can serve as a crucial deterrent against further misconduct.

Within the context of promoting education and awareness surrounding human rights, civil society organizations employ a variety of effective tools and methods. These include publishing materials in the media, hosting seminars and lectures, offering training courses at their headquarters, organizing public events in educational institutions, universities, and cultural centers, as well as producing informative publications such as leaflets and books. By utilizing these approaches, civil society organizations can effectively foster a better informed and educated society, ultimately contributing to the promotion and protection of human rights and freedoms.

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In addition to legal assistance from attorneys, there are specialized organizations that offer counselling services to individuals whose rights have been violated. These services educate individuals on how to restore their rights and seek compensation for any injustices they have experienced. For those who anticipate potential violations of their rights, counselling services can also provide valuable information on the most effective legal avenues to address their concerns.

Dedicated organizations strive to integrate the concepts and principles of human rights into official curricula, as well as offer extracurricular programs in the form of activities both inside and outside of schools. Additionally, technical means such as theatre, music, and plastic arts institutions may be utilized to effectively teach human rights.⁴⁴

(b)Monitoring and documenting violations:

The monitoring and documentation mechanism serves as a crucial tool for civil society organizations to uphold, advocate for, and advance human rights. Through meticulous fact-finding, organizations gather, verify, and utilize precise documented information to swiftly address any infringements on human rights. Human rights monitoring includes gathering information on incidents and observation events (elections, trials, demonstrations, etc.), visiting sites such as places of detention and refugee camps, discussions with government authorities to obtain information, follow-up on remedies, and other immediate follow-up procedures.⁴⁵

This approach involves a thorough fact-finding process that gathers extensive information to uncover the truth behind allegations of human rights violations. This includes gathering complaints and testimonies, conducting

⁴⁴ بن حسين ليلي، مرجع سابق، ص. 111-112.

⁴⁵ مفوضية حقوق الانسان، دليل التدريب على رصد انتهاكات حقوق الانسان، الأمم المتحدة، جنيف ونيويورك، 2001، ص. 11-22.

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interviews and investigations, and establishing connections with local officials and organizations. By doing so, it ensures the credibility, integrity, and impartiality of the body conducting this process, ultimately leading to a full and accurate understanding of the violation.

The roles and tasks of these NGOs in the field of monitoring and documenting violations vary, the most important of which are:

- Collecting information on human rights violations by hearing the statements of those affected and victims.
- Conducting interrogations and sending teams of trainees and volunteers to collect information and testimony regarding human rights violations. They are also not satisfied with oral information as they can use other mechanisms to verify the validity of the information, such as sending committees to investigate facts or sending private informants to specific places such as court sessions, prisons, shelters and other places where human rights are likely to be violated. They can also use specialized experts to prove violations.
- Submitting petitions and lawsuits and assisting victims.
- Conducting voluntary campaigns within the framework of protecting the environment, climate and public issues.
- Conducting mediation processes between victims and violators.⁴⁶
- Observation as a negative act is limited to the presence of observers to observe events, happenings and facts related to trials, elections, demonstrations and others to inspect the events on the site.
- NGOs collaborate to synchronize their efforts and share insights. After gathering data, these organizations record it for various purposes, including generating reports for public consumption, referencing it in public policy declarations made by governments, or creating counter reports to challenge false information submitted by governments to United Nations entities. They also use this

⁴⁶ Monique Prindeviz, op. Cit., pp.156- 159.

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information as a tool to pressure governments to rectify any harmful actions and to file complaints with pertinent authorities. Additionally, they can input the data into the early warning system to predict potential issues and prevent them from escalating into humanitarian crises or disasters.

- In the United Nations, certain intergovernmental organizations hold an advisory role concerning their organs. As part of this role, accredited non-governmental organizations may attend meetings of the relevant bodies and provide written or oral remarks, request official statements or documents, and submit recommendations or reports to highlight violations. By doing so, these organizations aid international bodies in achieving their desired objectives.⁴⁷

One example of such a mechanism is the universal periodic review introduced by the Human Rights Council in 2006. This mechanism enables non-governmental organizations to submit written interventions to the body four months before the review of a specific country's complaints⁴⁸.

In addition to the possibility of individuals and groups resorting to national bodies such as courts and government organizations to respond to violations of their fundamental rights, many international covenants allowed them to submit complaints before international bodies, including:

- The International Covenant on Civil and Political Rights under its Optional Protocol.
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment under article 22 thereof.
- The Convention on the Elimination of All Forms of Discrimination against Women under its Optional Protocol.

⁴⁷ Angela Hegarty, op cit, p.270-272.

⁴⁸ آلية المراجعة الدورية العالمية، موقع منظمة العفو الدولية. <https://www.amnesty.org/ar/>

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- The International Convention on the Protection of the Rights of All Migrant Workers or Members of Their Families under Article 77.
- Convention on the Rights of Persons with Disabilities under the Optional Protocol to the Convention.
- International Convention for the Protection of Persons from Enforced Disappearance, Article 31.
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

Any person in any state has the right to submit a complaint to the established bodies under these agreements, if they have already exhausted all domestic remedies for the violations they have suffered at the hands of their state or another state. If the violation is found to be true, the state in question must comply with the recommendations of the relevant body. Additionally, the body may take interim measures to preserve the status quo while the final decision is being made and may also issue guidelines to prevent similar violations from occurring in the future.

In addition to these treaty bodies, individuals may also submit a complaint to institutional bodies such as the Human Rights Council (which receives complaints of all violations either through the special procedure or the regular procedure)⁴⁹, the International Labour Organization (ILO), which may receive individual complaints by workers about the violation of trade union freedom, and issue recommendations binding on the State concerned. UNESCO may also receive complaints about violations in the fields of education, science, culture and information. Individuals may also submit complaints before the International Court of Justice about human rights violations.

Through this mechanism, civil society can contribute significantly, first, to the application of international human rights law. Secondly, by exposing the

⁴⁹ دليل للمجتمع المدني، المفوضية السامية لحقوق الإنسان، الأمم المتحدة، نيويورك وجنيف 2008، ص. 137-144.

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countries that cover up these violations. And thirdly, civil society not only exercises its rights and freedoms but also empowers individuals and groups to fully enjoy their rights.⁵⁰

In addition to these global bodies, the individual may file his complaint before regional bodies, including:

- The African Commission on Human and Peoples' Rights, where it issues recommendations to the States concerned according to the type of violation.
- The European Court of Human Rights where individuals may file complaints and the court tries to make a settlement between the parties, if it cannot, it issues a binding decision in the case.
- The European Committee for the Prevention of Torture, where any citizen of the Council of Europe may demand the implementation of Torture Charter.⁵¹

D-Participation in the preparation of reports

Civil society institutions play a crucial role in the preparation of various reports, including annual reports that assess progress in the realm of human rights and identify any violations that have occurred.

Additionally, there are counter or parallel reports meant to provide an alternative perspective to government reports submitted to different United Nations human rights committees. Some reports may concentrate on a specific right or a particular category.

All these types of reports must maintain objectivity and seriousness to ensure the credibility of the information they present. These reports serve as essential tools for promoting transparency, accountability, and advocacy in the realm of human rights, contributing to a more comprehensive understanding of the status of human rights within a given context.

⁵⁰الطاهر بوجلال، دليل الآليات المنظومة الدولية لحماية حقوق الإنسان، المعهد العربي لحقوق الإنسان، مصر 2004، ص114- 417.

⁵¹سانامناراجي وأندرييني و جولين شوميكر، حقوق الانسان.

www.international-alert.org/pdfs/tk_HUMAN_Right_Arabic.pdf

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Furthermore, some reports concentrate on a specific right or a particular category. Regardless of the type of report, they must be objective and serious to accurately reflect the information they contain. Civil society actors also play a critical role in the universal periodic review process, which was created after the establishment of the United Nations Human Rights Council through the General Assembly resolution 60/251 of 15/03/2006.⁵²

The process involves a regular evaluation of how United Nations Member States fulfil their responsibilities and commitments in the realm of human rights. This is accomplished by compiling reports that highlight specific human rights concerns within the country under review. The report is developed following a consultation process at the national level, which provides an opportunity for civil society organizations to contribute to its preparation before submission.

Civil society can play also an active role in the periodic review process by leveraging the Human Rights Council. This council gathers reliable and unbiased information on the country in question and produces a comprehensive summary. This report sets the stage for a discussion among attendees including NGOs, who should submit their input about four months before the review date. During these sessions, civil society can win the backing of countries present to elevate human rights concerns. They can follow up on interactive dialogues and participate remotely via online broadcasting services available on the United Nations website.

After the interactive dialogue comes to the stage of issuing the review report, and here the civil society organizations accredited by the Economic and Social Council can carry out the following activities:

- Submitting written statements in advance before the session of commenting on the outcome of the review.

⁵² دليل للمجتمع المدني، مرجع سابق، ص.71.

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- Attending the session of the Board and making an oral statement on the outcome of the review.
- Advocacy for the expeditious implementation of the audit findings.

The significance of the latter sets it apart from other control procedures utilized by various entities, including the former Commission on Human Rights. It plays a crucial role in the review process, as it allows for expedited implementation of recommendations designed to uphold human rights. Following this review, civil society organizations have the option to request that the government convene a meeting that includes all relevant parties to discuss the necessary steps for implementing the recommendations.⁵³

Benefits of NGO reporting include:

- Assess the levels of implementation of international human rights law conventions ratified by the State.
- Monitoring institutional and legal impediments.
- Monitor levels of breaches and violations.
- Measuring government programs in the field of human rights protection.
- Developing proposals and alternatives for the protection and promotion of human rights.
- Evaluating levels of performance, professional, analytical and propositional function of human rights organizations.

⁵³ دور المجتمع في المراجعة الدورية العالمية، منظمة العفو الدولية.

www.amnesty.org/ar/united-nations/universal-periodic-review/role-of-civil-society

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The fourth axis: examples of civil society organizations in the field of human rights protection

In this part we will present three examples of civil societies at all levels, national, regional and international.

1-Algerian League for the Defense of Human Rights as civil society organizations at national level

Algerian League for the Defense of Human Rights is an independent non-governmental organization active in Algeria. It was established in 1985 by a group of human rights activists, headed by Ali Yahya Abdel Nour, the first president of the association and currently its honorary president. It is concerned with spreading human rights awareness and educating citizens about new concepts.

Among the League's tasks in the field of human rights there are:

- Defending individual and collective freedoms in accordance with the Universal Declaration of Human Rights issued by the United Nations.
- Combating arbitrariness, intolerance, injustice, tyranny, persecution and various types of discrimination and racism.
- Defending the political rights of citizens outside of any partisan activity.
- Condemn, regardless of the reasons, attacks on human rights, freedom of thought and expression, the right to assembly, and the right to cultural and trade union organization.
- Serving democracy, by working to build a state of law, where authority is subject to the law, limited by the law, and subordinated to the law.
- Working on the independence of the judiciary so that it remains safe from pressures and so that it does not know any limits other than the law.
- Helping every person whose rights are violated and whose freedom is threatened.
- Publicly denounce the use of torture methods and their practitioners, and work to eliminate this scourge.
- Defending the economic, social and cultural rights of the individual.

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- Working for equal rights between men and women.
- Defending and promoting children's rights
- In general, promoting and defending human rights, which are universal and indivisible.

2- The Arab Organization for Human Rights as a model of non-governmental organizations active at the Arab level

The Arab Organization for Human Rights is an international non-governmental body operating at the regional level in the Arab region. It was established in 1983 after the Constituent Assembly was held in Cyprus. It seeks to protect, promote and respect human rights stipulated in the International Bill of Human Rights, which the Arab countries have ratified. It is headquartered in Cairo.⁵⁴

The organization works to respect and promote human rights and the fundamental freedoms in the Arab world for all citizens, as well as all people on its territory. It is based on the rights announced in the Universal Declaration of Human Rights and the relevant international covenants, especially the International Covenants on Civil and Political Human Rights and Economic, Social and Cultural Rights. This is done by defending all individuals (men and women) and groups whose human rights have been violated.⁵⁵

The organization is active in all Arab countries and accepts individuals and institutions as members, whether in the form of active members or members of the organization's network.

In order to achieve its goals and seek to deepen citizens' awareness of their legitimate rights, the organization adopts several means, like communication and media tools such as publications, seminars, conferences, and others.⁵⁶

⁵⁴ المادة 01 من النظام الأساسي للمنظمة العربية لحقوق الإنسان المعدل وفق قرار الجمعية العمومية العاشرة ، 2018/10/01. <https://aohr.net/portal/wp-content/uploads/2015/11/%D8%A7%D9%84%D9%86%D8%B8%D8%A7%D9%85-%D8%A7%D9%84%D8%A3%D8%B3%D8%A7%D8%B3%D9%89-%D8%A72018.pdf>

⁵⁵ المادة 14، 15 من النظام الأساسي، مصدر سابق.

⁵⁶ المادة 03 من النظام الأساسي، مصدر سابق.

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Among the activities carried out by the organization to protect human rights there⁵⁷ are:

- Strengthening ties of cooperation and coordination with all Arab, African and international organizations, bodies and groups working in the field of human rights.
- Working to release individuals who have been detained or imprisoned, solely due to their political views, religious beliefs, or other personal convictions that go against their conscience.
- Working to help those who have been subjected to coercion, torture, or other forms of inhumane treatment or punishment, including abduction, enforced disappearance, and unknown fate.
- Working to enhance and respect the independence of the judiciary, the legal profession, and the rule of law.
 - Providing legal assistance to individuals and objecting to any procedures or trials in which there are no guarantees of a fair trial for the accused before their natural judge.
- Providing legal, financial and social assistance to victims of human rights violations and their families, including refugees and displaced persons.
- Improving the conditions of victims of human rights violations and their families in accordance with international standards. It also visits prisons, detention centers, refugee and displacement camps, disaster-stricken areas, and crisis fields.
- Disclosing the cases of prisoners of conscience and political detainees if they are subjected to treatment that violates the rule of law or violates any of the rights recognized in constitutions¹ or human rights charters.
- Communicate with responsible bodies after verifying allegations of basic human rights violations.
- Providing data to governments, international organizations and other parties that are involved in violation of human rights and requesting information about them.

⁵⁷ المواد من 08 إلى 13 من النظام الأساسي، مصدر سابق.

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Accordingly, we note the broad and active role played by this organization at the Arab level, seeking to respect human rights and basic freedoms in general.

2-Amnesty International example of a non-governmental organization active at the international level

Amnesty International is a globally recognized non-governmental organization that works tirelessly to defend human rights on a global scale. This includes addressing individual cases of human rights violations, as well as larger issues like torture, women's rights, and refugee rights. Throughout its history, Amnesty International has played a vital supervisory role in the cases it has taken on. Its early focus was on prisoners of conscience, working to secure their release or ensure they received a fair trial. Additionally, the organization has been dedicated to expanding the right to asylum and aiding political refugees in areas such as work and housing. Amnesty International continues to advocate for effective international mechanisms that ensure freedom of expression and opinion around the world.

In addition to these activities in which this body began its struggle in the field of human rights, it has expanded its competencies to all human rights violations with the authorization of the International Federation of Non-Governmental Organizations, which is one of its members.

So, it can be active in many violations, including solitary confinement in prisons, forced exile of political activists, indiscriminate killings in times of war, negative discrimination in legal systems, physical attacks on women, hostage-taking by armed opposition groups, genocide crimes in Central Europe and Latin America, child trafficking, combating impunity and opposing amnesty laws issued by governments.

This organization was also active in the field of lobbying, awareness-raising and proactive work, as it issued a decision in 1979 to focus its branches on the work of members of the police, observers and military bodies for possible involvement in human rights violations.

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It issued a decision in 1991 focusing on the promotion of human rights through educational, awareness-raising, and educational work and imposed on its branches the establishment of an action plan in this framework so that the results would be positive.

The Commission has actively advocated States and international bodies for the advancement of human rights on a global scale, including the creation of a permanent International Criminal Court. Additionally, it has engaged with international economic organizations like the International Monetary Fund and the World Bank to ensure that their practices do not perpetuate human rights violations or exacerbate suffering through the imposition of stringent standards and conditions.

Thanks to its numerous and precise endeavours, this organization has earned a prominent place on the global stage. It now assumes comparable responsibilities to those of international entities, allowing it to provide recommendations to governments and regional organizations, as well as publish yearly reports on the state of human rights worldwide⁵⁸.

Conclusion

At the end of these lectures, we emphasize the important role played by civil society institutions in protecting human rights. However, their role cannot be effective except through providing a regulated legal framework for their work that aligns with their activities, incentivizes them, and does not include restrictions that limit their scope of intervention. Moreover, providing legal and institutional channels within which they can operate to exercise their oversight on state institutions that may violate human rights, and providing the information they require with full transparency without restricting their work through censorship,

⁵⁸ Peter Pack, *Amnesty International: An Evolving Mandate in Changing World*, In: A. Hegarty and S. Leonard (eds), *Human Right_ An Agenda for the 21st Century*, Cavendish Publishing, London, 1999, pp. 233-240.

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funding constraints, or other practices that national government organizations may resort to.

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