

The Human Rights Violation with Special Reference to Civil War in South Sudan

Dissertation submitted to the Lovely Professional University
in partial fulfillment of the academic requirement
for the award of the degree of
Master of Laws (LL.M)

Submitted by

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May 2017

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LIST OF ABBREVIATIONS

AMISOM	:	African Union in Somalia
APC	:	Armoured Personnel Carrier
AU	:	Africa Union
BBC	:	British Broadcasting Corporation
BSSR	:	Belgium, Byelorussian Soviet Socialist Republic
CEPO	:	Community Empowerment for Progress Organization
CPA	:	Comprehensive Peace Agreement- (in South Sudan)
DMCH	:	Dayanand Medical College and Hospital - (in India)
FGM/C	:	Female Genital Mutilation/Cutting
HRW	:	Human Rights Watch
ICC	:	International Criminal Court
ICCPR	:	International Covenant on the Civil and Political Rights, 1966
ICESCR	:	International Covenant on Economic, Social and Cultural Rights,1966
ICJ	:	International Court of Justice
IEDs	:	Improvised Explosive Devices
IDPs	:	Internally Displaced People
IGAD	:	Intergovernmental Authority for Development/ Africa Union
ISIS	:	Islamic State
JEM	:	Justice and Equality Movement –South Sudan
JMEC	:	Joint Monitoring and Evaluation Commission
LOC	:	Line of Control – (in India)
LTTE	:	Liberation Tigers of Tamil Eelam – (in Sri Lanka)
MDF	:	Maban Self-Defense Force
MILF	:	Moro Islamic Liberation Front – (in Sri Lanka)
NGOs	:	Non-governmental Organizations
NSS	:	National Security Services – (in South Sudan)
PG	:	Presidential Guards
PoC	:	Protection of Civilians sites
PYD	:	Democratic Union Party - (in Syria)
RAW	:	Research and Analysis Wing - (in India)
RPF	:	Regional Protection Force – (in South Sudan)
RSS	:	Rashtriya Swayam Sevak Sangh (RSS),
SANA	:	Syria state news agency
SPLA	:	Sudan People Liberation Army
SPLA-IO	:	Sudan People Liberation Army in Opposition
SPLM	:	Sudan People Liberation Movement
SPLM-IO	:	Sudan People Liberation Movement in Opposition
SSANSA	:	South Sudan Action Network on Small Arms
SSHRC	:	South Sudan Human Rights Commission

SSNPS	:	South Sudan National Police Services
TGNU	:	Transitional Government of National Unity
TUF	:	Tamil United Front –(in Sri Lanka).
TULF	:	Tamil United Liberation Front –(in Sri Lanka)
U.N	:	United Nations
U.S	:	United States
UDHR	:	Universal Declaration of Human Rights
UK	:	United Kingdom
UNESCO	:	United Nations Education. Scientific and Cultural Organisation
UNHCH	:	United Nations High Commissioner for Human
UNICER	:	United Nations Children’s Fund
USA	:	United States of America
USSR	:	Union of Soviet Socialist Republics
WFP	:	World Food Program
YPG	:	People’s Protection Units - (in Syria)

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- ✚ The Penal Code Act, 2008 of South Sudan
- ✚ The Southern Sudan Human Rights Commission Act, 2009
- ✚ Universal Declaration of Human Rights, 1948

CHAPTER 1
INTRODUCTION

CHAPTER 1

INTRODUCTION

1.1 The Brief Introduction

This dissertation study is dedicated on the human rights violation in the civil war in Republic of South Sudan. The South Sudan is the newest nation of the world which obtained its independence from Sudan by the year 2011 after long struggle in civil war with Sudan for almost 40 years. The South Sudan joined United Nations in the same year of its independence but after three years of independence it has involved into civil war which violated the human rights law and humanitarian law.

That made the researcher to study the atrocities of humanitarian law and human rights issues committed in civil war by both parties involved in the war in the year of 2013 in December up to date. The study also involved some countries experiencing the same civil wars like Somalia and Syria where untold human rights violation is happening in these states. The study compared South Sudan civil war with the rest of the states including the Republic of India which had managed maintaining the small military movements without ever experienced big civil war since its independence by 1947.

The objective of study is to analysis the grave human rights violations happening in the Republic of South Sudan and find solution for stopping this civil war. The study will define the origin of the human rights emerging during the establishment of United Nations in 1945 and created Universal Declaration of Human Rights in the year 1948 with its strong articles governing almost the world involved 193 states members of the United Nation. Finally the research will urge UN bodies to find solution

for the Republic of South Sudan civil war by using all means to obtain peace in the state.

1.2 Brief Statement about Human Rights

Human being by virtue of their being human possesses definite basic and inalienable rights which are usually known as human rights. These are the basic rights which are available to the human beings from the time of birth itself. Human rights are available to all the persons irrespective of the caste, creed, race, religion and sex. These are important for the overall holistic development of the person.¹

These rights are vital for all the individuals as they are consonant with their dignity and freedom and are conducive to spiritual, moral, social and physical welfare. They are also necessary as they create an environment in which people can widen their full potential and lead productive and creative lives in accordance with their needs and provide conditions for the moral and material uplift of the people. Due to their immense importance to human being; human rights are also occasionally referred to as basic rights, fundamental rights, natural rights, inherent rights and birth rights.

Presently, the majority of legal scholars and philosophers agree that every human being is entitled to some rights. Thus, there is universal acceptance of human rights in principle in domestic and international plane which ever state should comply with. Human rights are a generic term and it embraces social, economic and cultural rights, civil rights and civil liberties. There is no precise definition of the term “human rights” therefore it is difficult for every person to give comprehensive definition to human rights. However, in the common understanding these are the rights for all people by virtue of their being human. These are the rights which no one can be deprived without a serious affront to justice. It is so because definitely they may affect the human dignity. Thus, the idea of human rights is bound up with the idea of human dignity to achieve his or her respect.

¹ Universal Declaration of Human Rights available at <http://www.un.org/en/universal-declaration-human-rights/> last visited (20/3/2017)

1.3 The Conventions of Human Rights Acceded to by the state of South Sudan

The South Sudan is the youngest state in the world and in October 2013 for candidature to the Human Rights Council, the Republic of South Sudan voluntarily pledged willing for its full capacity to be the candidate. The Republic of South Sudan stated that it is interested in joining Human Rights Council based on the principles that inspired its liberation struggle for 21 years, and to acquire advantage of its membership to develop its knowledge of international human rights and build its capacity to promote and protect those rights and it stemmed from its wish to contribute to the promotion of human rights in its state government to all citizens.

The Legislative Assembly South Sudan in 2013 has acceded to numerous treaties and many are passed for the adoption. The treaties acceded to consist of:

- ✚ Convention against Torture and Other Cruel Inhuman or Degrading Treatment of Punishment 1984
- ✚ Convention on the Prohibition of the Use, Stocking, Production and Transfer of Anti-Personnel Mines and on Their Destruction, 1997
- ✚ International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- ✚ Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, 1979
- ✚ Convention on the Rights of the Child, 1989
- ✚ African Charter on Human and Peoples' Rights, 1981
- ✚ Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969
- ✚ International Covenant on Civil and Political Rights, 1966
- ✚ International Covenant on Economic, Social, and Cultural Rights, 1966

The international human rights treaties which the Republic of South Sudan has ratified in 2015 are five treaties as follows:

- ✚ Convention on the Rights of the child
- ✚ Convention on the Elimination of All Forms of Discrimination against women and its Optional Protocol

- ✚ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol

1.4 Background of the Study

The Republic of South Sudan had struggle from Sudan from dignity, human rights, liberty and freedom for almost 40 years in two war fought by South Sudan against Sudan government. In the civil war against Sudan government and South Sudan insurgents had claimed more than 2.5 million people lives and displaced 4.5 million people to flee outside the country for their safety. Fortunately the South Sudanese dying without ceasing was recognized by the international community and to find the permanent solution which resulted into separation of South Sudan from Sudan in 2011.

The Republic of South Sudan has three regions with 64 tribes: Bahr el Ghazal where the current President of South Sudan Salva Kiir Mayardit, Dinka largest tribe hailed from, Upper Nile region where the rebel leader and the former First Vice President Dr. Riek Machar, Nuer second largest tribe hailed from and now replaced by his region tribe member Mr. Taban Deng and Equatorial region where the current Vice President James Wani Igga hailed from. South obtained independence and created ten states all over the country with the capital city Juba in Central Equatoria state but the president had a plan of increasing States to 32 but still under debate up to date. The Republic of South Sudan came to existence by 2011 as newest state of the world and joined United Nations body with full sovereignty, independence and power to protect her territory. South Sudan has made Human Rights Act, 2009 as its municipal law to be followed by all its citizens and applied by Human Rights Commission but yet it is still violating untold human rights which are prohibited by Universal Declaration of Human Rights 1948.

In these three regions concept in which power struggling started leading to civil war where untold human rights are violated in December 2013 that caused the massive humanitarian law violation was caused by political disagreement in power struggle between existing leaders. This civil war was power struggling debating on who could legible for presidency candidate in the upcoming election of 2015. The disagreement resulted into clash in the capital city Juba next day the fighting escalated to civilians based on ethnic line. The warring parties have been accused of war crime and crimes against humanity because the targeting killing was carried in capital Juab Dinka group against Nuer ethnic group. The fighting overlapped to other states in Upper Nile Region

where the rebel leader hailed from, Nuer tribe made horrible retaliation on President Savla Kiir's tribe, Dinka because hundreds of Nuer of tribe members had been killed capital Juba and they were compelled to evocate the capital from their lives safety.

This civil war has claimed a lot of lives about 10,000 people were killed and around 2.7 people felt displaced by the conflict. The United Nations has sheltered approximately 200,000 people in the compounds granting them humanitarians needs like basic needs food, shelter and necessary things for their living. The United Nations has deployed peacekeepers around the main camp and the other UN's compounds in the affected states like Jongeli, Unity and Upper Nile states.

The South Sudan citizens have fled to neighboring countries as refugees like Uganda, Kenya and Sudan for lives safety. Human Rights Assessment Mission emphasized for Improvement of Human Rights, Reconciliations Accountability and capacity into bringing the ring leaders to book.

The scale of the conflict has intensified and led to rigorousness of human rights abuse and violation of humanitarian law making targeting killing on ethnic line, extrajudicial killing, rape and other acts of sexual arbitrary, detention, enforced disappearance, gender-based violence and they have committed war crimes and crimes against humility because they violated international humanitarian law and the ring leaders deserve the impunity to bring them into the book.

Another problem happening in the war zone the human aids are prevented for free movement to go to those serious affected by civil war. The civilians were displaced during cultivation season since South Sudanese still depends on the rain water for cultivation no irrigation established across the country due to lack of technology.

The development of basic infrastructure, human capital and official civilian institutions in South Sudan government were created only that conflict of 2013 between rebel led by leader and the South Sudan government headed by Salva Kiir Mayardit stalled the initiated development. The Republic of South Sudan is the rich nation with abundant nature resources, including huge petroleum oil in fields from which Sudan had generated 75% of its oil production until severance but yet there is massive, continual humanitarian needs persisted after independence of 2011 because of power struggling in the state.

The president of the Republic of South Sudan is the real warrior who fought for South Sudan independence in two wars against Sudan and he is real believer who uses to go to Church (the house of his God) every Sunday. But in his government there is high-level of corruption even in his presidential office a lot of dollars was stolen twice in which sixteen criminals involved in second stealing were convicted for life imprisonment. Because of the corruption has slowed post-war recovery and development of the state. The war that started in 2013 has made South Sudan the state that needed the largest humanitarian aids comparative to its solidity needed since its independence

Unfortunately the Republic of South Sudan is one of the countries living under severe famine of food need about 3 million people in South Sudan are suffering of hunger in the affected states of this civil war according BBC ².

The international community has tried its best to bring peace agreement in Adidas Ababa the capital of Ethiopia in 2015. IGAD was the mediator of peace talks hosted by Ethiopia government to mediate ceasefire and agreement for peace agreement. The IGAD unveiled in March 2015 a fresh “IGAD-plus mediation machinery with greater responsibility for the African Union, the United States, the United Nations, China and Europeans. A parallel complementary exertion by Tanzania to host intra party dialogue provided avenue. They reached agreement on 17 August 2015 and the formed Transitional Government of National Unity (TGNU) ³ comprised of all rebels, oppositions and the government. The parties acknowledged their collective responsibilities to keep South Sudan country safe, secured from humanitarian issued not resumed the civil war again. The Transitional Government of National Unity formulated the power-sharing among the groups and government of South Sudan as follows: the 7% given to other political parties, 7% given to a group of former political detainees (senior ruling party members arrested at the onset of the civil war), 33% given to Dr. Riek Machar and with 53% of the cabinet posts held by President Salva Kiir’s faction. The leadership of the country was as Vice President James

²South Sudan declares famine in Unity State - BBC News available at :www.bbc.com/news/world-africa-39025927, last visited (20/3/2017)

³Transitional Government of National Unity (TGoNU) of the Republic of South Sudan available at:<http://embassy-southsudan.de/transitional-government-of-national-unity-tgonu-of-the-republic-of-south-sudan/?lang=en>, last visited on (21/3/2017)

Wanni Igga, a new First new First Vice president position was formed for opposition and Dr. Riek Machar was appointed to that position and President salva Kiir Mayardiit maintained his position.

Dr. Riek Machar was given the power to appoint state governors for Unity and Upper Nile States in Upper Nile region. The government with two sides military armed forces were to be cantoned and then unified within 18 months.

This agreement made rebel leader to come back to South Sudan under TGUN government in April 2016. After few months the international monitoring commission was worried and warned that peace agreement is under a threat of collapse and it needed a lot of improvement in the implementation of peace agreement.

Unfortunately suspect on the two parties mounted up, killing their security guards illegally and secretly which led to gunfire exchanged in July 2016 killing three soldiers of Sudan People Liberation Army (SPLA). Mr President Salva Kiir Mayardit called his two Vice Presidents to discuss the situation of security in the capital and the implementation of peace agreement. The fighting erupted outside the presidential palace having meeting inside the palace between the security elements of former First Vice President Riek Machar and President security guards. In the fighting hundreds were killed the former vice President fled to neighboring country Republic of Congo on foot in the forest. He reached Congo in worst health situation and UN helped him by giving him flight to Khartoum for treatment after his discovery the former First vice president declared the collapse of agreement while his members refused for another fight and replaced him.

The violence has prompted an international outcry and raised question about the response of peacekeepers the government forces violated human rights, including sexual assaults and ethnicity targeted killings on civilians and aid workers during the violence. The additional U.N. peacekeepers to be deployed with the immediate aim of as long as a secure environment in the capital and with the expect that the force's presence may generate conditions this proposal was issued by United States at the request of East Africa countries since the fighting needed international effort to stop the civil war. The United States made report and fearing that both parties may be opting for a going back to full scale war and the international community on the position of the peace agreement analyzing the outcome later of the legitimacy of the

TGNU following the President Kiir's replacement of Dr. Machar and many opposition representatives in the government in late July after rebel leader fled the country to Congo. It created great fear in the communities may complicate the way forward to the TGNU and peace agreement which it was based have collapsed agreement according rebel leader. Many international countries were thinking on how they could empower the state in recovery and development efforts in the country in the circumstance of ongoing conflict, donor governments including United States were troubled by South Sudan crisis.

South Sudan's crisis appears set to deteriorate as quoted, "the International Monetary Fund warns that without economic reforms and political reconciliation, economy will further decline and the government may be powerless to meet key in obligations, including salaries for its army". The Republic of South Sudan is one of the top numbers of States which are alleged to be most corrupt state, because officials have abstracted state assets to fuel the war and for their own benefit and made donors concerned about corruption.

Finally the study of South Sudan civil war also involved some states having the current gross human rights violation in their civil war like Somalia and Syria and compared it to the Republic of India how it managed to curb small military movements without going into severe civil war.

1.5 Research Objectives

The importance of the study lies in pursuing the following specific objectives

1. To study the human rights violation in South Sudan during the civil War of 2013
2. To study the legislative provisions relating to human rights violation in South Sudan with reference to UDHR, Geneva Conventions and Additional Protocol.
3. To understand the violation of women and girls rights during the civil war.
4. To examine the role of United Nations (UN) and Non-governmental Organizations (NGOs) is maintaining peace in South Sudan during civil War which started 2013 till date.
5. To compare peace movements in States affected by civil war with South Sudan.

To check how far can the United States most effectively facilitate an end to violence and a path toward peace and reconciliation, both among political factions and rival communities?

6. To highlight the danger that International Agencies faced in the civil war zones.

1.6 Hypothesis

- The violation of human rights in South Sudan are the result of civil war which is going on since 2013
- The laws putting to human rights in South Sudan are in consonance with UDHR, Geneva Convention and Additional Protocols.
- The peaceful movements in states affected with civil war helps in maintaining normalcy in South Sudan.

1.7 Research Methodology

The present study is a doctrinal research which aims to study the various provisions relating to human rights violations in times of war in the State of South Sudan. The major laws that will be examined include the Geneva Convention I to IV and the three Additional Protocols which forms the basis of this study. The study would also examine the violations of human rights in South Sudan where an ongoing war is still in progress which has unsettled the lives' of individuals in the state. The role of the United Nations in curbing the violations of the International Laws will be analyzed. Further, the Humanitarian Agencies like ICRC, Amnesty International have been a source of lifeline in the state in such dire situations.

The sources that will be reviewed include the UN Reports and the internet news article and reports and the UN reports on the situation in South Sudan. Further, documents relating to the Syria, Somalia, and ICC will be examined where similar atrocities have been performed so have a comparison of the situation in those countries along with South Sudan. The Constitution of Republic of South Sudan, Southern Sudan Commission of Human Right Act, 2008 will also be examined to evaluate the extent of human rights violations in the ongoing war in South Sudan.

In addition articles, journals and reports relating to human rights violation in South Sudan and also States where such wars have occurred will be reviewed to enable to understand the issue in a wider ambit.

1.8 Scheme of Chapters

The present dissertation consists of six from chapter one to six.

The first chapter defines the concept of human rights and its violation carried out in progress civil war of South Sudan since 2013 up to date.

Chapter two focuses of the historic background of human rights starting from Universal Declaration of Human Rights of 1948 the product of the United Nations body of 1945. The Chapter three talks about human rights violation in the civil war of the Republic of South Sudan since 2013 and the recent conflict of July 2106 that happened in capital of juba between the government forces and rebel forces after they had signed agreement that resulted to returned of rebel leader to capital Juba.

Chapter fourth compares the human rights violation happening in civil war of Syria, Somalia and South Sudan which the research reveals that United States is the main caused party fueling these three civil wars in the states.

Chapter five studies the Republic of India during partition period of 1947 between Pakistan and India states that resulted into the death of massive people. It focuses on the small military movements that had been overcome by Indian government without experiencing big civil war in India state since its independence day.

The chapter six concludes the whole dissertation and gives suggestion to be done by South Sudan government to maintain peace in the country.

1.9 Scope of Study

The research of dissertation was carried on the Republic of South Sudan human rights violation in civil war and compared with other States like India and other states having civil war in their governments like Syria and Somalia state.

1.10 Limitation of Data Collection

Financial difficulty has rocked my country and is now a major obstacle in making one get assisted by his sponsors. The worse comes when the government is in crisis; in country all the funds are used for security and addressing humanitarian needs of the affected population.

Our university library doesn't have enough books so getting materials that can assist a researcher in obtaining the adequate language and input is a big issue.

Transport was also a big challenge as the researcher was required to move from place to place gathering information from those places. The time for submission of research dissertation was very much competitive with short time given for research dissertation therefore hampering research dissertation in terms of putting enough effort in looking for better information that would bring about good recommendations.

CHAPTER 2

HUMAN RIGHTS HISTORICAL BACKGROUND

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2.1 Background

Human rights are the rights that cannot be alienated from the human being. These are the basic rights which are available to the human beings from the time of birth itself. Human rights are available to all the persons irrespective of the caste, creed, race, religion and sex. These are important for the overall holistic development of the person.

Concept of human rights was not prevalent in the classical period since the international law was focused only on the matter of State and State Sovereignty which was the sole factor determining the earlier period. That theory of state sovereignty marginalized the individual's rights not having the rights to claim legal rights against another state. The states can make rules of international law for the reason rules and laws were only valid for the states alone.

Thus, individuals were left without legal rights important from international law. Therefore individuals were connected to their state through the bond of nationality or citizenship; the state can stand in relation to other states in the role of aliens.

In case of injury that is caused to its individual it was the state where the individual belonged to claim responsibility under the international law to state which has victimized its individual. There are some chances where the individual enjoy particular rights and duties in the conformity to international law those rights where the individuals enjoy while on foreign territory place, rights enjoy by private citizens, diplomatic envoys and Heads of State those individuals are already becoming subjects of international law.

The rights we are talking about were enjoyed by every individual concerned not as rights in international Law but the rights derived from a law of nation.⁴ Therefore both substantive and procedural laws made the states subjects of International Law neglecting other entities comprise of individuals and Non-governmental Organizations were only objects to the states.

⁴ Oppenheim, 'International Law', Vol. I, Ninth Edition (199). P.847

The position of the individual was transformed after the Second World War where most remarkable developments were carried out in the contemporary International Law. After League of Nations the United Nations was created with Charter of United Nation. The Charter of United Nation starts with the words ‘We the People of the United Nations’ it is put in the preamble of Charter and has given the most importance to word individuals.

However this did not change individual’s position in the domain of International Law. They are considered as real subjects and the beneficiaries of International Law having rights and duties ⁵coming from the International Law. There are few rules with direct concerned that regulate the position and activities of individuals with other few affecting individuals indirectly. ⁶ Those rules may be applied to certain inter-relationship of individuals by themselves while inter-relationship involved matters of international concern. As long as the international community is comprised of states only they can exercise their will as states the rights and duties which are conferred to every state. States may sometimes agree conferring particular rights on individuals which is enforceable under International Law, independently of municipal law. For example nationals of Allied and the Associated Power were given power to bring case against Germany in front of the Mixed Arbitral Tribunal in their own names looking for the compensation under Article 304(b) of the Treaty of Versailles of 1919.

The individuals possess the rights and duties being dependent upon the state and they have weaker position than states in the International Law. Coming to Human Rights, they are the rights which are conferred to the individuals by the states in the current modern International Law.

2.2 Meaning and definition of Human Rights

Human beings are considered as rational beings. Human being by virtue of being human carries certain inalienable and basic rights which are normally understood as Human Rights. Therefore, human rights are the rights which every individual is

⁵ The Nuremberg Tribunal Stated that: International Law imposes duties and liabilities upon individuals as well upon states. This was because crimes committed by men, not by abstract entities and only by punishing individuals who commit such crimes can the provision of international law be enforced.

⁶ Oppenheim, op.cit. p. 846

entitled by the virtue of being human. Every human being possesses these rights which are operative by time of birth. Everyone is born free with equal rights and duties on the world. All these rights are inherent by human being or individuals irrespective of their caste, creed, religion, sex and nationality. Human rights are inherent they are important in which no human being can live without them. All these rights are vital for every individual and they are consonant with their dignity and freedom and are conducive to spiritual, moral, social and physical welfare. They create the conducive environment in the individuals can develop their full potential leading to creative and productive lives in their needs and giving suitable conditions for material and moral uplift of people.

By human rights significance to human being; these can be sometimes referred to as basic rights, fundamental rights, inherent rights, natural rights and birth rights. Human rights are always important for being basic or fundamental rights made them necessary to be set out in every constitution of every state to protect individuals or citizen's rights of the state. The fundamental or basic rights no legislation can take them away by every parliament because they are recognized by the United Nations Charter and it created them as compulsory respected and protected by the state.

The concept of human rights does not provide itself easily with any precise definition. Human rights in the general language may be categorized as those fundamental rights to whichever man and woman living in part of the world is entitled by virtue of having been born as human being. The preamble of the Universal Declaration of Human Rights states “⁷...it is necessary if man is not compelled to have alternative, as a final resort to rebellion against tyranny and oppression that human rights should be protected by the rule of law from the dictators”.

The New Encyclopedia Britannica, Micropedia Volume IX rights though to belong to the individual under natural law as a result of his being human. The United Nations Charter affirms a “faith in which fundamental human rights, in the dignity and worth of the human person, in the equal rights of women and men and of all nations large and small”.

⁷Preamble of the Universal Declaration of Human Rights states , available at http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf, last visited on (20/3/2017)

Lexicon meaning of the term “human rights” is: claims asserted or those which should be or occasionally stated to be those which are legally recognized and protected to secure for each individual the fullest and freest development of personality and spiritual, moral and other independence. The rights relating to dignity, liberty, equality and life of the individual guaranteed by the constitution are embodied in the international covenants and enforceable by the domestic courts.

Currently a lot of legal scholars and philosopher officially agree that every human is already entitled to some basic rights and fundamental rights by birth. Therefore, the human rights are universal accepted at the international plane and domestic level which makes the states to put the human rights in their domestic laws like constitution of the state the main law and the law of land. Human rights in its generic term and it include civil rights, civil liberties and social, economic and cultural rights. Therefore it is very difficult to bring the precise definition of human rights. Nevertheless, it can be understood these are rights that all people have by the virtue of being human are human rights. These are the rights in which cannot be deprived from human being without serious and grave affront of justice,⁸ done legally, reasonably, fairly in the present of his advocate representing him in the court of law.

It is so for protecting human dignity, liberty and freedom not to be affected by the arbitrate arrest of every citizens or individuals of the state. Thus, the idea of human rights is bound up with the idea of human being dignity. The idea of human rights was rightly stated by Chief Justice of India that ‘human dignity is the quintessence of human rights.’⁹ All these human rights are created for protection of human dignity of individual which can develop his personality to the fullest extent called human rights. In fact no precise definition of dignity on the basic consensus by legal scholars but it can merely be termed as justice and good society.¹⁰ When dignity and rights human being are humiliated there will no longer dignity in the citizen.

By 1993 the World Conference on Human Rights was held in Vienna stated in the Universal Declaration that “all human rights derive from the dignity and worth

⁸ Maurice Cranston quoted in L.J. Macfarlane, ‘The Theory and practice of Human Rights’ (1985) p.7

⁹ The New Universe of Human Rights’, P.3

¹⁰ David P.Forsythe; The International Conference of Human Rights’, P.1

inherent in the human person, and that the human person is the central subject of human rights and fundamental freedom.”¹¹

Human rights can be defined as “those minimum rights which every individual must have against the State or public authority by the virtue of his being a member of family, irrespective of any consideration”.¹²

Human rights are those rights that belong to any individual for the consequence of human being. Some rights are needed for elemental of sheer health and physical survival of human being as whole with all rights not humiliated by the state or public authority. Thus, human rights are meant for health and physical survival and it can be conceptualized as human rights. The human rights in the real sense are associated traditionally with Natural Law of Roman people, the laws that come from God direct to human being. The Natural law was first the law that ruled, regulated and governed the whole world before the development of some schools of law in the jurisprudence. The law was supreme law where Greek and Roman Jurists preached to their extent to public to obey the law of Church but at last it was changed by modern legal scholars.

Human rights being immunities denote that there is guarantee that certain rights cannot be humiliated from individual against his will like arresting the individual without legal procedures provided by the state, making arbitrary arrest of a person without knowing the reason for arrest.

According to Natural law concept, human being by their nature and virtue of their humanity must be protected from the unjust and degrading treatment no human rights can be deprived from person without law applied legally. The human rights are exemptions from the state operational arbitrary power against individual or person who is not confirmed as criminal. The organized community, i.e., state or civil social order exist can let any individual seek human rights as human being. There is principle of the protection of human rights which is derived from the concept of man as the real person and his relationship to the organized society which cannot be separated from universal human nature.

Human rights since being essential to all persons around the world and for development of personality of the individuals in every society ought to be protected

¹¹ For detail see Chapter two, Internationalization Conferences on Human Rights,’

¹² D D Basu, Human Rights in Constitutional Law’, Page No.5. Prof. S.R. Bhansali, 3rd Edition 2008.

and make it available to all individuals. The human rights must be preserved, defended and cherished in peace and prosperity which can be achieved by every human being in the organized society which is state. Human rights are the ultimate purpose of the every government to maintain human dignity to its meaningful essential as universal law accepted globally and domestically as law.

There is a need for protection human rights has arisen because inevitable due to the increase of government control upon man's action or activities which is not desirable by man in the state. There many states where fundamental standards of human behaviors are not observed by the state having power over its subjects. Where there is consciousness on the human rights as to their human being rights are necessitated to protections of the States. Human rights however have been realized that the functions of all law whether rules of international law or municipal law must be protected for the interest of humanity.

Presently there is widespread and the acceptance and the significance of the human rights in the international system level because of being legal, moral and political bearing. Human rights are legally involved because of the implementation of treaties signed by all states in the United Nations body.

2.3 Historic Background of Human Rights

The historic background of human rights may start with the creation of the main and key human rights instruments comprise of political and social situations it provided dynamic perspective. The perception of the human rights is to protect those instruments. We have a testament to this historic development of human rights are commonly divided into three different-generations- assisting the comprehension of their three evolutions over a period of time.

The first generation contains civil and political rights and linked with the old age of the revolutions and enlightenment of that time. At this contemporary period of the materialization of liberal constitutionalism, is enshrining liberal values supporting non-intervention of states in the recognition of such human rights. This first generation includes the right to liberty, the right to freedom of expression, the rights to opinion and religion, the right to property, the right to privacy, the right to life and

the rights to political participation. The first generation rights basically represent what are so-called positive liberties and it allows the state intervention to guarantee equal distribution of rights and creation of new rights, liberties and opportunities for individuals.

The second generation pertains of economic, social and cultural rights (ESC) these rights got flourished in mid-twentieth century when they were elaborated during interwar period as the reaction to unregulated development of the capitalism at that era¹³. This second generation contains the rights to work, the rights to education and the rights to an adequate standard of living.

And finally there exist emergence of the third distinguishable generation which pertain human rights to the concept of solidarity and international collaboration for their full realization.

The period of First World War put the whole European countries in a tremendous with a need for transformation of Europe and the whole the world which resulted into formation of League of Nations to stop the destructive and devastative war destroying the whole world. The League of Nations was tasked for bringing peace in the whole Europe as predecessor to the United Nations. The League of Nations was striving towards peace of Europe and the whole world. The main point of League of Nations was to protect the minorities consequently it was adopted by handful countries. One of the League of Nations objectives was to achieve homogeneity with aim to eliminate possible doubt of future war again. Unfortunately there was no finest approach that was used to secure peace in Europe which led to losing hard work indirectly sparked into Second World War. The reason was lack of efficient enforcement approach for guaranteeing the several international obligations and that time of First Word War put the whole Europe limping more chaotic.

The time between these two world wars has changed the perception of the organization and the fundamental values of society. It was known as liberal state and it was transformed into welfare state which the essential premises for its existence. The emergence of the concept of social rights was during the first time of the Great Depression which started 1929, created a lot of radical changes in the perceptions in

¹³ Note the early manifestations of such rights in the Constitution of Mexico of 1917, and the Weimar Constitution (Constitution of the Weimar Republic) of 1919.

the state position and society relationship. The replacement of ‘the Laissez-faire mentality of the past era was because of its inability in deciding problems of the new society which led into social inequality and economical crisis era.

The whole world was left into so cute need of sorts of international initiatives due to the Second World War problems and took initiatives to change of the situation and to reconstruct the inalienable and fundamental freedoms rights for everyone on equal term of the world.¹⁴

After Second World War that resulted into world astonished of the atrocities done during the war gave light to the world and imposed human rights obligation on the Axis powers to establish the United Nation to underline the gravity of their activities at the universal level to assist those affected by the Second World War. By 1942 the Prime Minister Winston Churchill of England and the President Franklin D. Roosevelt of the United States of America (Unites States) met in the Atlantic Ocean¹⁵ to resolve the atrocities of the Second World War. This meeting led to formation of United Nations and consequently the creation of the UDHR. Again in 1944 ...the well known ... Big Three...Comprised of the Great Britain, Soviet Union and the United States met along with representative from China at Dumbarton Oaks with the aim to discuss the possibilities of creating international organization which is United Nations to maintain world peace and security following the Second world War.¹⁶ Again the Big Three met at Yalta in the Crimea. By this time around Prime Minister Winston Churchill, President Franklin D. Roosevelt together with Premier Joseph Stalin to make reunification of the concrete arrangement of peace of the world and to resolve remaining questions with regard to United Nations structure later.¹⁷

¹⁴ Article 29 of the UDHR (see note 31) and primary the preamble and article 29(c)of the ACHR (see note 65). Reference to the importance of democracy as a precondition for the realization of human rights can also be found in the preamble of the America Declaration on the Rights and Duties of man (see note 52). Furthermore the two UN covenant; the International Covenant on Civil and Political Rights and the International Covenant on Economic, social and Cultural Rights, both refer to the democratic society as a given precondition in the member states.

¹⁵ The Atlantic Charter of the 14th of August,1914. The full text is available at

http://www.natio.int/cps/en/SID-2788FECF-8F/natolive/official_text_16912.htm [2017/ 03/28]

¹⁶ Four freedoms were expressed by President Roosevelt in his –four freedom speech ”of January 6th ,1941;freedom of speech and expression, freedom of every person to worship God in his own way, freedom from want and freedom from fear.

¹⁷ In discussions regarding the structure of the organization, the use of veto in the Security Council was an important point of convergence. As it eventually turned out, the Big Three ended up holding 3/5 of the permanent seat in the UN Security Council, consequently wielding a continuously great

2.4 The Formation of the United Nations

After League of Nations failed the new international organization United Nations was created to replace League of Nations to deal with the devastating issues caused from the two Second World Wars.¹⁸ This was not simple task but through international consensus had resulted into creating United Nations Charter (UN Charter) which is enshrining fundamental notions of dignity and equality of all the people of the world.¹⁹ The United Nations had support from the international community gave it important ideological consensus for it to be able managing such difficult tusk.²⁰

The main objectives of the United Nations are voiced out in the preamble of the United Nations Charter making clear reference to the horrors of the two world wars it was the one which led to the international organization creation.²¹ Further, its main objectives of peace and security the Charter again reaffirm the vital of human rights worth to every human person and acknowledge the importance that deserves to be protected and respected as fundamental rights crucial for reaching the said objectives. In the UN Charter there are several provisions that give the human rights international recognition to protect human rights as fundamental freedom.²²

In article 68 of UN Charter there was great degree of lobby of the NGOs (Non-Governmental Organizations) giving the big pressure to the political leaders involving

influence at the core of the UN to this day. Note the replacement of the Soviet Union for Russian Federation and the remaining to permanent members of the council; China and France.

¹⁸ For the text of the agreement reached at the Yalta Conference, see <http://avalon.law.yalta.edu/2017/3/28>

¹⁹ Charter of the United Nation, signed 26 June, 1945, 59 stat. 1031. T.S. No.993.3 Bevans 1153 (entered into force 24Oct. 1945).

²⁰ The atrocious circumstances of the Second World War consequently served as the foundation for the creation of the Charter of the United Nations, affirming the importance of the promotion of human rights, and subsequently resulting in the adoption of the UDHR; La Declaration Universal de los Derechos Huanos; Comentario articulo por articulo, Xavier Pons Rafols (coard). Association par alas Naciones Unidas en Espana, Icaria Antrazy, 1998

²¹ "...Whereas disregard and contempt for human rights have resulted into barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human being shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, whereas it is essential, if man is not to be compelled to have recourse as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by rule of law".

²² For examples, see article 1, 13(1), 55, 62(2), 68, 76©, of the UN Charter, Supra, note 13

the drafting process.²³ Article 68 signified anchoring the Commission of Human Rights and enshrined in the United Nations itself, that entails enormous respect to all member states of the United Nations bodies drawing authority from the Charter.²⁴

The creation of United Nations brought a lot of changes and the new era in the International Law. In the International Law doesn't deal alone with the interstate but included the protection of the convicted individual guilty of variety of crimes and the individual rights and duties. The creation of United Nations has changed the perception of state sovereignty. The new understanding of International law has included global community with freedoms and rights for all individuals. It generated the regional and international system supervising implementation of the human rights and enforcing mechanisms to guarantee all parties who signed it complied with its obligations.²⁵

In this current century now the United Nations is enjoying the privilege giving all resolutions, conventions, declaration, opinions and other information originating from the direct level organization's authority and has productive area in the International Law because their resolutions are binding all over the world as International Law. The old perception of separating people from state putting people behind has changed in favor of one who sees all equal individuals in one world. This perspective has pointed out the departure from old to new perspective that promotes and protects human rights as all. The new development of human rights is the concept stemming from the United Nations Charter preamble with its undoubtedly advance importance. Furthermore, despite this promising primary steps, we have lack of definition identifying of the human rights which the organization strives for protection as fundamental rights to every individual.

²³ UN Charter, supra note 13, article 68 that reads as follows; "the Economic and Social Council shall set up commissions in economic and social fields and for the promote human rights, and such other commissions as may be required for the performance of its functions".

²⁴ The Commission on Human Rights has subsequently been replaced by the UN Human Rights Council, see G.A.Res A/RES/251 (March 15, 2006), establishing the Council

²⁵ The UN established the International Court of Justice (ICJ), which succeeded the Permanent Court of International Justice, in 1945. In 1946 it commenced its activities and has since acted as a world court and an important part of the United Nations system. Concerning the court's jurisdiction, it is concisely put by the official website of the court; "The Court has a dual jurisdiction; it decide in accordance with international law, disputes of a legal questions at the request of the organs of the United Nation or specialized agencies authorized to make such request (advisory Jurisdiction)". The statute of the International Court of Justice as annexed to the Charter of the United Nations, 3Bevans 1179; 59 stat. 1031; T.S.993; 39 AJIL Supp. 215 (1945), it also available at <http://www.icj-cij.org/> [2017/3/28].

The foundation of the United Nations and set of its objectives created it to be protection of international system of human rights. For this reason the committee was created, given the tusk of drafting bill of human rights at the international level. Which was anticipated as universal applying to each and every person in the world, is modeled after the most renowned bill of rights in the history like the United States “Bill of Rights, (1791) “²⁶ and the French Declaration of the Rights of Man and of the Citizen (1789).

In comparing these two predecessors it resulted into creation of UDHR which prefaced social rights into tabularization of rights analyzing the contemporary fundamental freedom and human rights paving the new way to the coming generation human rights of the world. The first creation of UDHR has resulted into two other covenants consequently in 1966, the creation of ICESCR and ICCPR and proved it massive accomplishment of the human rights. The worldwide level of United Nations association has truly proved it to be international scope with the recognition that hasn't been equaled.

The UN unique position has afforded the organization possibilities of achieving enormous development in the human rights field and conferring on its responsibility and constructing potent enforcement system to its treaties.

2.5 The Formation of the Universal Declaration of Human Rights

As it is discussed above nothing new in the concept of fundamental rights and inalienable rights; but social and political context was very distinctive which has appeared in mid-twentieth century and left an exceptionally noticeable mark on the evolution of human rights. When time was going with the society the perception of human rights was imposed making drastic changes in the society. At the end of Second World War, the Holocaust has shed inevitably light on the rights issues and brought concerns to foreground in the drawn of the post-war era.²⁷ As the consciousness was growing of the blatant disregard the basic human values was

²⁶ Concerning the connection between the Bill of Rights and international human rights in general, see Lillich, *The Constitution and International Human Rights*, *The American Journal of International Law*, Vol. 83, No.4, *The United States Constitution in its Third Century Foreign Affairs* (Oct.1989), pp. 851-862, *American Society of International Law*, 1989.

²⁷ Concerning the importance of Second world War as catalyst for the UDHR's creation, in general see Morsink; *Universal Declaration of Human Rights; Origin Drafting and Inter.* Universal of Penny Press, Philadelphia, 1999, in particular, chapter 2.

revealed and represented by a series of the events in that era. For this reason two things occurred especially interesting since the said evolution forward and consequently led to the creation of UDHR.

The first thing was the formation of International Military Tribunal which came to existence in the Nuremberg trials.²⁸ It was formed to try those important captured leaders of Nazi Germany it was intended after the end of war. The trials were successful in convicting the main offenders despite the fact that trials were much debated deficiencies and eventually end up setting a precedent with the international format that was used in the trials. The goodness in the Nuremberg trial has set the principles and created the definition which constitutes the word called war crimes, considered viable up to this date.²⁹ The new concept of war crimes given in the Nuremberg trials has given credibility which consequently confirmed by a Commission set by the General Assembly of the United Nations in 1947.³⁰ This Tribunal must be considered as a catalyst because it has served as inspiration of creating other Tribunal led consequently of the founding International Criminal Court (ICC).³¹ Nevertheless the Nuremberg Tribunal has acknowledged basic human values and manifested advance important of human values consequent recognition of the certain fundamental freedom and human rights as something innate in human nature that deserves and needs protection.³² The creation of UDHR did not merely contribute to the indication for the recent progress on the human rights but rather set a direct condition for its existence mainly the founding of the United Nations. The vision of the UDHR was made clear by drafting committee as the new truthfully international organization would serve at global level which had appeared after the

²⁸ The trials were held from the 20th of November of 1945, to the 1st of October of 1946 in the town of Nuremberg, Germany.

²⁹ In 1945 the Allies set forth guidelines of international criminal law, the so-called Nuremberg Principle. See Principle of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, 5 UN GAOR Supp (No.12 at 11, U.N.Dec.A/1316 (1950) ILC Yb 374, vol.II;44 AJIL 126, (1950) Glendo, A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rightss, New York; Random House,2001, page 9.

³⁰ UN General Assembly Resolution 177 (II) of the November of 1947 available at <http://www.u.org/documents/ga/res/2/ares2.htm> (2017/3/28).

³¹ The ICC was founded in 2002 and has its permanent seat at the Hague, the Netherlands. It is an independent international organization that concerns itself with serious crimes of relevance to the international community. See Rome Statute of the International Criminal Court, U.N. Doc. 2187 U.N.T.S. 90 entered onto force July 1, 2002.

³² Gill, Sjoberg, Williams, A Sociology of Human Rights, Social Problems, Vol, 48, No.1.50th Anniversary Issue (Feb. 2001), pp. 1147, University of Calofornia Press on behalf of the Society for the Study of Social Problems, page 13.

Second World War era. The drafting of UDHR process was so complex since it was the moment of the beginning of cold war available in the world. In this circumstance has shown a lot of hardship in drafting the UDHR and resulted into forceful debates of government responsibility, racial, gender, cultural difference and individual freedoms that resulted eventually in the provisions prohibiting discrimination on these bases. The significant part in drafting UDHR was played actually by Eleanor Roosevelt³³ as the chairwoman of the Commission of Human Rights that was tasked in drafting the document.³⁴ The important assignment that was given to her gave her credit with strong conviction in drafting human rights document led her to be recognized now as driving force behind the text of triumphant drafting and adoption in 1948. Mrs. Roosevelt along with the rest of world was not until the end the Second World War, completely comprehended the actual extent of the Holocaust. The million of civilians and combatants to a convinced degree in the war had been accounted for but visits to Displaced Camps in Europe opened the eye of everyone. Another factor taken into account was Atomic bomb that constituted big factor on the world. The Atomic bomb has placed humankind into total self-destruction and in passion of massive powerful destructive weapon which post the impending threat to individual and nations worldwide.

The conclusion was that something must be done to solve great fear of possibilities of another conflict in the nearer future. The initiative agreement was done how to prevent future war, there exist the general agreement shared by Mrs. Roosevelt all the opinions were put forwards before Mrs. Roosevelt. There lies declaration of man need for peace in the world. The flagrant violation of human rights by Fascist and Nazi countries in the understanding has sowed the seeds of the last war supplying the impetus for the job which brings us the achievements of human rights of today.³⁵ The United Nations by its General Assembly adopted the UDHR on December 10th of

³³ Eleanor Roosevelt (1884-1962), widow of the former US President Franklin D. Roosevelt (1882-1945), was a delegate of the UN General Assembly and a world-renowned advocate for human rights amongst other things.

³⁴ The members of the specific drafting committee were Eleanor Roosevelt, Peng-chun Chang, Charles Habib Malik, William Hodgson, Hernan Santa Cruz, Rene Cassin, Alexander E Bogomolov, Charles Dukes (Lord Dukeson and John Peter Humphrey, list available at http://www.un.org/Depts/dhl/udhr/members_eroos.shtml (2017/3/28)

³⁵ Eleanor Roosevelt in her speech "Adoption of the Declaration of Human Rights", of the 9th of December, 1948 in it is available at <http://www.udhr.org/history/bioer.htm> (2017/3/26).

1948 as a legally non-binding document, the nature of declaration.³⁶ The UDHR was adopted serving the main outline objectives of fundamental freedoms and human rights to be interpreted through the world the international set of standard recommendations. The elaboration of the document had been carried out by an internationally acclaimed organization; the United Nations for such universal body (UDHR) intention be meaningful. It was difficult in the debate involving participant countries from different cultures guaranteeing their things in the formulation, concerning great signatory countries made it hard to reach the consensus of the document.

The drafting commission forced the participants to overcome all these imaginable differences for the admirable reason for the diverse concerning culture, religion politics and language.³⁷ The elaboration and required articulation of sufficiently of UDHR took a long time to bring broad provisions embracing all world religions and cultures and to allow for distinct interpretations. Such agreement provided impressive achievement the much needed respect recognition of the international community. There were three types text with the original goal to be drafted. The declaration was immediately followed by covenant planned to be binding on the signatory state as legal to present version with elaborated and extensive rights from declaration and finally the implementation mechanism. It turned out at last that the rest would stay and the first thing was to adopt UDHR on the 10th December of 1948. All member states had taken human rights in the Declaration serving up as a beacon, illuminating the pathway. The declaration of UDHR included in the preamble the Second World War recent experience of the permanent and undeniable scars it left horrendous memory to serve as the key incentive of declaration creation.

Throughout the declaration the essential concept was the equality to protect tabulated freedoms and rights by claiming to provide voice to global understanding also

³⁶ Universal Declaration of Human Rights, adopted 10th Dec.1948, G.A.Res.217A (II), U.N. GAOR, 3d Sess. (Resolutions, pt,1), at 71, U.N. Doc.A/810(1948).

³⁷ Although representation in the UN Human Rights Commission, which drafted the Universal declaration, was not global, it was not limited to Western states and includes a wide range of countries elaborating and discussing its formation. The Commission would include five Great Powers (USA, UK, USSR, China and France) and an addition in 1946 thus consisted of delegates from Australia, Belgium, Byelorussian Soviet Socialist Republic (BSSR), Chile, China, Egypt, France, India, Iran, Lebanon, Panama, Philippine Republic, Ukraine, United Kingdom, United States of America, Union of Soviet Socialist Republics (USSR), Uruguay and Yugoslavia Glendon, *supra*, note 24, page 32.

widening the aspiring and perspective towards world peace friendly relationships.³⁸ The commencement of the Cold War (as mentioned above) coincided with the declaration mere approval of the UDHR not to be mentioned its resulting success, was not uncomplicated task. There were different ideological and hostilities threatening the outcome yet another cataclysm which might evoke into larger war more than ever before especially considering the Atomic bomb the last war. This circumstances of undeniable political act might have negative impact on the evolutions of human rights interrupting the concept of development likely did not happened in the way it was anticipated by many people. The Europe continent rose and achieved remarkable advances in difficult time showing and proving the successful way of providing individual protection on an international level. The newly created Council of Europe in 1950 has drafted the European Convention on the Human Rights (European Convention)³⁹ and entered into force immediately as the 3rd September of 1953. The Council adopted Complementing the European Convention for protection system counting an enforcement mechanism which still in use today.⁴⁰ The Europe has set as the example to United Nations and encouraged further development of human rights effort to strengthen its promotion of the UDHR internationally.⁴¹ These efforts ultimately become the quintessential international bill of human rights which led to the establishment of the UDHR as the core of human rights.

The United Nations is ensuing covenants of human rights despite the fact that they adopted and ratified by large number of the states still quite a few have not ratified them. The UDHR which renders the Declaration applicable signed by majority of the states and exceptional significant human rights instrument. The Universal Declaration together with United Nations is that moment considered defining the general human rights obligations of all the United Nation member states. The two international covenants of 1966 were created to specify the obligations and elaborate the UDRH Declaration of 1948.

³⁸ For example, see the UDHR, supra, note 31, the preamble and and article 1, 26 and 28.

³⁹ The Convention is formally known as the European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 UNTS 211

⁴⁰ The European human rights system is centered on the legally binding nature of the European Convention and the establishment of the European Court of Human Rights.

⁴¹ Additionally, the European model inspired the was yet to be fully developed at the time.

2.6 The Formation of the International Covenants

These two covenants do not have the same legal status of UDHR but documents composed of legally binding nature for the states parties that have ratified or ascertained them. These covenants were created post Declaration as solidification to take into account these two covenants were created as legal instruments for efficient protection of the rights but they do not enjoy the same amount of the authority as the UDHR. They lack the deeper influence of the UDHR but they provide the actual provisions that are the basis of the state party liability.

Even though the passage of time affected certain aspects of the articulation of some rights yet the basic historic context that generated the covenants is the same as for the UDHR since they rose out of the same initial political consideration and similar debate and they were intended to be adopted at the same time.⁴² It could be considered what allowed an ever more miscellaneous debate behind the drafting of the covenants than that leading up to UDHR one must bear in mind was the membership of the United Nations which has the expanded scope of international activities.⁴³ The **scope** of the fundamental freedom and rights general the covenants are originating from UDHR Declaration.

The original purpose of the drafters was to present the text of the Declaration together with the text of the covenant to the General Assembly of the United Nations. However the framed time did not permit leading to postponing the realization of the legally binding text corresponding to the UDHR. The General Assembly took eight years to present the important human rights instrument legally binding divided into two parts including an enforcement mechanism. The General Assembly adopted the International Covenant on Economic, Social and Cultural Rights (ICESC) together

⁴² For example, article 19 of the UDHR supra, note 31, the rights to freedom of expression, is elaborated upon in article 19 of the ICCPR (see note 39). Concerning the ICESCR (see note 39), an interesting example is Article 25 of the UDHR that has been elaboration upon to such an extent that its correlative in the ICESCR is divided in three distributed in article 10 (to some extent), 11 and 12. Interesting enough, article 1 of both covenants, the rights to self-determination, represents an aversion from the main scheme of the covenants tabulation of rights as mirroring those included in the UDHR.

⁴³ The declaration process was under way, noticeably affecting the growing membership of the organization. For the growth in the UN membership, see <http://www.un.org/en/universal-declaration-human-rights/index.html> (2017/3/25).

with International Covenant on the Civil and Political Rights (ICCPR) on date 16th of December in 1966 along with the Optional Protocol to the ICCPR.⁴⁴

The scope of states in the existing human rights obligation and consolidation of the international human rights regime were enshrined into these two covenants along with the resultant human rights treaties and treaty bodies that have been adopted. These two covenants took another ten years to enter into force in 1976. The formulation of the provisions of the covenants and of unwillingness of behalf of the states caused significant delay and difficulties but at last states committed themselves and made it legal and obligations on the state. The declaration had considered generating creation the holocaust and had less complicated to articulate considering the forceful catalyst that led to ensuing general consensus behind it. The UDHR was deliberated the commitment status of the states involved not just mere declaration had undoubtedly drafting process of the UDHR. Currently the drafting of the UDHR contained legally binding provisions, sensitive subject for states since they would entail serious repercussions if the obligations were not fulfilled. The concept of national sovereignty was another factor restraining the control exercised from exterior authority.

The two-parts of two covenants were opposite because voices were raised in favor saying that it was simply not appropriate to attempt an incorporation of all dimensions of UDHR in single document and to achieved more elaboration version of rights in the UDHR. This reason led to separation of covenant texts; divided into two each

⁴⁴International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976), supplemented by ECOSOC Res. 17, 28 May, 1985 establishing a so-called “treaty body” that had been excluded in the original version of the covenant; International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976). Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, *entered into force* March 23, 1976. In 1989 the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, G.A. res. 44/128, annex, 44 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/44/49 (1989), *entered into force* July 11, 1991. The current figures on accessions and ratifications of the covenants and other international human rights treaties are available at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> [2017-03-9].

covenant has been ratified by distinct states parties though the core of both groups coincides. The multifaceted political consideration occasionally created by these two covenants circumstances led to the ratification of the one covenant but not the other.⁴⁵ Not all United Nations members have ratified the covenant simply enhances the important of the UDHR.⁴⁶

The adoption of the UDHR indeed has taken several years since passing time and society and its political context had changed a enormous deal. The United Nations is keeping eyes on the target focusing on the drafting of text destined and managed mirroring the values elaborated rights and freedoms enshrined in the Declaration. The UDHR had articulated the rights in such a manner that could be inherent in human and universal in nature enjoy by majority of the international community but still to this day.

2.7 The Creation of the International Covenant on Civil and Political Rights

The first generation of human rights are generally in the ICCPR contains the more traditional rights and freedom has acknowledged somewhat smooth acceptance. These rights considered traditionally not to require most assistance from the states than as other rights since they adhere to non-intervention principle and proved by many governments of the states. The rights and freedoms are recognized obviously in the covenant and put the obligation upon the states parties and the ratification of it entails an immediate realization. This covenant may be conceived of having extra efficient instrument comparing it with its companion-ICESC-albeit no more important.

⁴⁵An example of this occurrence is the case of the United States. It signed the ICCPR on the 5th of Oct. 1977 but ratified it as late as the 8th of June, 1992. However, the signing of the ICESCR also took place on the 5th of Oct. 1977 but has to this day *not* been ratified. See section 2, 2.8 *The Creation of the American Convention on Human Rights*, and note 67 where I further examine the influential actions of the United States regarding its accession to human rights treaties. In general one should note that out of the 192 UN member states only 165 have ratified the ICCPR and a mere 160 the ICESCR. For the current status of UN human rights treaties, figures available at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> [2017-03-9].

⁴⁶ See section 2, 2.4 The Creation of the Universal Declaration of Human Rights.

Recent horrors of the Second world wars are the evident reference in the UDHR's preamble that gave inspiration to article 20 of the ICCPR which serves as the reminder of the atrocious events leading to the creation of these texts. These two instruments are essentially connected by this article and reinforced the sense of a unified International Bill of Rights.

Report system is primary presented by concerning implementation of the ICCPR. Human Rights Committee supervising envisaged the structure of inter-state and individual complaints enshrined in the covenant itself.⁴⁷

2.8 The Creation of the International on Economic, Social and Cultural Rights

Unfortunately the ICESCR covenant was not received and accepted as twin covenant. The term... Second Generation...has occasionally suffered lack of acknowledgement and misinterpretation that represent the huge majority of the rights gathered in this covenant. Anyway they failed to understand as second rights simply categorization in terms of their origin in time.⁴⁸

Furthermore the covenant struggle with states unwillingness to acknowledge certain rights protected because it was associated and necessitated with a certain amount of economic and social assistance demand on that party state. The states numerous occasions have evoked the exterior observation of the state in question holding the ideal of non-intervention and individuality too high that frequently refer to lack of resources. Recognition of all the rights of the ICESCR was dependent on the state in question resources and upon goodwill and perhaps even more corresponding recognition of the ICCPR. The proportional inversions of the state in the rights in later

⁴⁷ See Part IV of the ICCPR and the Optional Protocol to the ICCPR, *supra* note 39, principally article 1 of the latter: "A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee *to receive and consider communications from individuals* subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol." (my italics).

⁴⁸ See section 2, 2.2 *Historic Background*.

covenant are not as dependent on a favorable economic climate. The equal importance of two sets of rights does not affect this circumstance simply the ease with which they may be realized. Their full realization of several civil and political rights required state funds.⁴⁹

The ICESCR implementation system envisaged for is like companion base on the state action the supervisory organ; the Committee on Social Council of the United Nation and Economic, Social and Cultural of the Economic (SCRE).⁵⁰ In realizing the ESC rights consequently nurturing international collaboration and taking a step forward towards the aim of globally friendly relations and the report system entails the opportunity for the United Nation organs and agencies or smooth exterior organizations and entities to offer assistance.

2.9 Views of the Legal Scholars on Human Rights

The human rights according to natural theory are natural rights and the product of history of the world. The civil rights or individual rights like the right to liberty, property and life were characterized as inviolable natural rights of man. They are rooted in the ethical perception that man is a spiritual being and his life is sacred. He has an inherent dignity and worth and they must be preserving forever. It is thus propounded that man is endowed with those inalienable rights sacrosanct. According to Hobbes, the man's ethical duty is to seek his own happiness by himself. The pursuit of happiness is an important postulate of right to life.

Hobbes, Aquinas and Locke have propounded this theory of natural law. Rousseau in his doctrine of Social contract has affirmed that the man is born free, but everywhere he is in chains. He thereby reveals that though he is borne free, he is

⁴⁹ An illustrating example is the right to vote in modern society; elections require extensive administrative machinery and no such system finances itself.

⁵⁰ See Part IV of the ICESCR, *supra* note 39, as supplemented by ECOSOC Resolution 1985/17 of 28 May 1985. Regarding individual complaints, the General Assembly unanimously adopted Optional Protocol (GA resolution A/RES/63/117) on the 10th of Dec. 2008, open for signing on the 24th of Sept. 2009. The future ratification of this protocol will undoubtedly improve the protection of the rights included in the covenant and signify a rapprochement of the two covenants.

shackled with solemn constraints which stand as impediments in his way to blossom forth into his full personality.

But the industrial revolution in England revealed up its own problems to protect the welfare of the workman. It came into difference with the absolute laissez-faire theory. Bentham attempted to harmonize these competing or contradictory theories enunciating the utilitarian philosophy of the greatest good of the greatest number under this disadvantaged are given rights as also the means to seek their happiness. Rights can of course be outweighed by other rights- even by less important ones if these are to a large extent seriously threatened in a particular case. However rights- even the important ones – can also be overridden in order to prevent disaster; for example, important political rights might be suspended in times of emergency. And rights can sometimes be outweighed by important social and economic policies; for example the policy of discouraging monopolization power sometimes outweighs the right to enter freely into contracts.⁵¹

Hobbes regarded the government, as a Leviathan, which is at great to interfere at, will with the freedom of the subjects and Hegel also held the same view. But Bentham has propounded that the function of the government, is to transport about a greater good. His emphasis is on 'social and economic rights' by magnification of governmental functions.

Prof. C.K. Allen in his book 'Law in the Making' refers to Prof. Duguits view that law is the consequence of the principle of social interdependence. All society is discipline and man cannot survive apart from society. John Stuart Mill and Hebert Spencer, champions of laissez faire, regarded freedom from government interference as a new economic liberty- having for its foundation the text of Adam Smith, the profounder of New economic theory in his Wealth of Nations, according primacy to volition for individual excellence without intervention by the State.

Immanuel Kant accorded due consider to the reason individual a moral responsibility of the State and society. But the theory of liberalism of J.S. Mill and as Spencer, viz; 'to live one's own life, developing one's native traits and capacities, is not just a way to

⁵¹ Theodore M. Bendit in his 'Law as a Rule and Principle' [1978].

happiness; it is really a substantial part of happiness.⁵² Therefore, Kant has advocated as the touchstone and Kant hated inequality and hierarchies, oligarchies, paternalism, however benevolent they may be. According to Kant liberal nationalism is the goal. His main theme is that man is a rational being and he would command himself to do or not to do and that State would devote theory resources to education, culture, the moral development of their citizens and not to increase their material power and conquest, thereby heralding the birth of individual and collective rights. According to Kant, to deprive a human being of the power to choice is to do him the greatest imaginable injury. This will be so no matter benevolent the intent with which it is done.

What is the mainly important human right? For John Milton, the most significant human right was the freedom of any person to think and talk and publish without interference from the State or from other person. Immanuel Kant agreed on the first step but in fact reversed the formulae. For Kant the main important human virtue was to refrain from interfering with the self-expression of other persons, where as Milton stressed freedom of speech and thought. Kant stressed out tolerance of the freedom speech and thought of others and Milton's view was right's based and Kant was duty based.

Susan Muller Okin defines human rights as a claiming to something whether a freedom, or a good or a benefit of crucial importance for human life. The things crucial for human existence, according, to her, are claims to fundamental physical goods, to physical security and to be treated with respect by persons. Susan's description of human rights hence includes both the values of freedom and welfare. If human rights are viewed as respect for persons these will comprise rights life, freedom from arbitrary coercion and to be respected as human person.⁵³

Prof. Louis Henkin of Columbia University in his article 'Rights Here and There' defined human rights as: ...claims, which every individual has, or should have, upon the society in which she or he lives. To call them human rights suggests that they are universal; they are owe of human beings in every society. Human rights do not differ

⁵² Prof. C.K. Allen in his book 'Law in the Making'.

⁵³ 'Liberty and Welfare; Some Issues in Human Rights Theory', in J.R. Pennock and J.W. Chapman [edn 1985].

with geography or history, culture or ideology, political or economic system or stage of development. Human rights do not depend on gender or race, class or status. In other words around, human right is the genus of which humanitarian law is the species. The former relates to the basic rights of all-human beings everywhere, at all times and later relates to the particular categories of human beings particularly, the sick, the wounded, prisoners of war during armed conflict and hostility. In most of the western legal material the expression 'human rights' is used in the sense of freedom of speech, religious freedom, liberty of person and freedom from arbitrary coercion and torture.⁵⁴

In the third world countries, people talk of human rights in terms of development and basic needs satisfaction. Professor C.J Friedrich in his book 'Constitutional Government and Democracy' [1968] defines human rights as a capacity, as a power of man to achieve self realization enabling him a rounded self and a fully developed person. The right to development is deemed to be an inalienable human right of all human beings and in and people to contribute in enjoying economic, social, cultural and political development.⁵⁵

The important philosophical question that should be asked is: What does it mean to say that there are human rights or that persons have them?

Are human rights primarily claiming rights in the sense that they entail correlative duties of other persons or the government to take action or refrain from acting in certain ways? Are the rights dissimilar in theory and content with the old family of civil or political rights? Can the human rights be restricted for the accomplishment of collective goals or general welfare? Are these rights are real moral properties of the individuals?

As Prof. Joel Feinburg in his scholarly article titled 'Duties, Rights and Claims', published in American political quarterly in 1966 puts it: Rights are not simple gifts or favour.... for which gratitude is the sole fitting response. A right is something, which a man can stand on, something that can be demanded or insisted upon without

⁵⁴ Prof. Louis Henkin of Columbia University in his article 'Rights here and There'.

⁵⁵ Professor C.J Friedrich in his book 'Constitutional Government and Democracy' [1968].

embarrassment, fear or shame. It is doubtful whether several claims advanced in the guise of human rights fulfill the characteristics of a right as defined by Feinberg.⁵⁶

Professor Paramanand Singh of Delhi University [India]⁵⁷ says, the mere thing that the contemporary discourse on human rights points out is that the new claims represent a response to a new situation of people frustrated by the existing inequities of the political economy and repressive nature of modern capitalist society.

Professor Paramanand Singh further contends that a model of economic development based on multinational capital and privatization of economy will have a negative impact on human rights contributing to increased inequalities, dismantling of social services with adverse effect on the poor and restrictions on trade union rights. It is also suspected that implementation of developmental projects will have a negative impact on local population, indigenous people.

⁵⁶ Prof. Joel Feinburg in his scholarly article titled 'Duties, Rights and Claims', published in American political quarterly in 1966.

⁵⁷Prof. Parmanand Singh, Former Dean, DU Faculty Of Law, Passes Away... available at: <http://www.livelaw.in/prof-parmanand-singh-former-dean-du-faculty-law-passes-away/>, last visited on (22/3/2017)

CHARTER 3

3.0 HUMAN RIGHTS VIOLATION IN THE REPUBLIC OF SOUTH SUDAN CIVIL WAR

CHARTER 3

3.0 HUMAN RIGHTS VIOLATION IN THE REPUBLIC OF SOUTH SUDAN CIVIL WAR

3.1 Background

The Republic of South Sudan got her independence on July 9th, 2011 from North Sudan. But within short period the senior politicians involved into civil war on 15 December 2013 fighting on power struggling to be the president of the Republic of South Sudan. Fighting was on the tribe basis especially Dinka tribe where the current president of the Republic of South Sudan Mr. Salva Kiir Mayardit hailed from and Dr. Riek Machar rebel leader from Nuer tribe.

In South Sudan there is United Nations Mission in the Republic of South Sudan (UNMISS) with the Human Rights Division which always deals with human rights violation done in the territory of South Sudan state. The Human Rights Division made report and presented the finding of investigation and documentation conducted concerning the civil war that occurred in the capital city Juba date 15th Dec. 2013.⁵⁸ The Human Rights Division of UNMISS first released interim report on 21st Feib.2014. They made report after investigating the grave human rights violation done in the violence by interviewing a lot of people around 900 people in the capital city Juba. In their findings they found that massive violation of humanitarian law had taken place in the violence by targeting killing ethnic line between Nuer and Dinka tribe.

Initially the conflict began between the presidential guards of Mr. Salva Kiir Mayardit evening hour on 15 December 2013 in the capital city Juba between the Sudan People Liberation Army (SPLA) the national army those who were loyal to President Salva Kiir Mayardit and the soldiers loyal to rebel leader Dr. Riek Machar. The shooting started to each other when SPLA split basis on the tribe Nuer and Dinka because there was political tension in Sudan People Liberations Movement (SPLM) the political wing. After big fights in the capital using heavy weapons those forces loyal to loyal to Dr. Riek Machar were defeated and they fled the capital city to their origin state Upper Region to join their tribe members for reinforcement.

The fighting escalated rapidly where groups of Security Forces searched the civilians of Nuer tribe targeting killing started next morning upon Nuer tribe. The Human Rights Division witnessed this killing of Nuer members where they arrested and taken away to be killed at Gudele One city western city of Juba. One incident witnessed around 300 men from Nuer tribe in neighborhood city Gudele were detained by several security forces by joint operation in one room and started shooting them randomly. The serious humanitarian violations had occurred upon Nuer tribe's members in the capital a lot of Nuer tribe civilians were killed by security forces joint operation.

United Nations Mission in the Republic of South Sudan (UNMISS) Human Rights Division, un.org available at https://unmiss.unmissions.org/.../unmiss_conflict_in_south_sudan_-_a_human_rights...last visited on (15/3/2017)

Large number of defection forces of Dr. Riek Machar went back to their original place Upper Nile region. In Upper Region the rebel leader Dr. Riek Machar got reinforcement from the white army (the community untrained army) from Nuer tribe and made serious retaliation on the few Dinka elements in Bor on 18 December capital of Jongeli State, Malakal on 25 December capital of Upper Nile State and Bentiu on 19 December capital of Unity State leading to a massive dying of few Dinka tribe members who were there in three states of Upper Nile Region.

The national army SPLA came for rescue of few Dinka members displaced in Bor, Makal and Bentiu and they recaptured the capital cities of these three states again but all capital cities in three states were subsequently changed hands in hands numerous times and the fighting continues up date.

The rebel leader Dr. Riek Machar created his own party in bush named it Sudan People Liberations Movement in Opposition (SPLM-IO) and Sudan People Liberation Army in Opposition (SPLA-IO). The fighting parties signed their agreement in August 2015 and the rebel leader Dr. Riek Machar returned back to capital city Juba in April 2016 following the agreement.

The Transitional Government of National Unity (TGoNU) was created after peace agreement to resolve the issues which were unresolved included demilitarization of the capital city Juba where former First Vice President Riek Machar would be living in, the restructuring of the security services and the unilateral decision of President Salva Kiir Mayardit deciding to increase the number of states from 10 to 28 states which was not in the interest of rebel leader Dr. Riek machar. Now the president issued another decrees to increase states up to 32 states without equivalent money in the country to run the government efficiently.

All these disagreements caused tension between the security guards of President Salva Kiir Mayardit with former First Vice President Dr. Riek Machar killing each other secretly which led to a big fight in the Presidential Palace in July 2016. Where three presidents, Mr. President Salva Kiir Mayardit, former First Vice President Dr. Riek Machar and the Vice President James Wani Igga were having meeting to solve current insecurity happening while having meeting the big shooting erupted outside and escalated to fleeing of capital city Juba by rebel leader Dr. Riek Machar. Right now he is living in South Africa in exile.

3.2 The History of Civil War of the Republic of South Sudan

The Republic of South Sudan had gone a long war twice with North Sudan after getting their independence from England Government in 1956. The rebellion of Anyanya One started in 1955 to 1972 when Addis Ababa capital city of Ethiopia peace agreement was signed in 1972 between the Sudan Government and rebel leader Mr. Joseph Lagu. The main articles in the peace agreement were abrogated by Sudan Government leader which caused the second rebellion of South Sudan army fighting against Sudan government from 1983 to 2005. In these war about 2.5 million people lost their lives in struggle and peace agreement was signed in 2005 between Sudan Government and rebel SPLM/A and were given Interim Period for six years.

At last they got the full independence on 9th September, 2011 bringing 11 million people of South Sudan population within 64 tribes with 80 linguistic groups together and formed their beloved country the Republic of South Sudan. The government of South Sudan made Sudan People Liberations Movement (SPLM) the Political wing and Sudan People Liberation Army (SPLA) the national army. The SPLM the ruling party elected Mr. Salva Kiir Mayardit the chairman of the party and elected as the first President of the Republic of South Sudan in the same year of its independence 2011 before independence date. The president Mr. Salva Kiir Mayardit had fought two wars against North Sudan Government and he is from Bahr el Ghazal Region Dinka by tribe the largest tribe in South Sudan among 64 tribes.

The rebel leader Dr. Riek Machar hailed from Nuer tribe second larger tribe also in South Sudan he joined the SPLA during struggling period in 1983 but he defected and created his faction in 1991 and killed a lot of Dinka Bor in Jongeli State around 2000 people and he joined SPLA again in 2002. When South Sudan signed peace agreement in 2005 they were given Interim Period for six years government and he was appointed as Vice President of South Sudan.

The Republic of South Sudan achieved independence with ambition for national building within short time they had tried their best because they have big petroleum oil in Upper Nile Region the rebel leader Dr. Riek Machar region given their 2 % in oil direct to local population of Dr. Riek Machar. South Sudan is rich country with

natural wealth not yet explored by the developed countries. Despite all these there is historical division among South Sudan communities especially Dinka and Nuer in military and political elites.

The main party SPLM/A has controlled the whole country coming from guerrilla movement from struggle in the civil war in Sudan and loosely organized themselves with various militias forces following their independence but retained their distinct identities in the country. The military wing Sudan People Liberation Army (SPLA) of South Sudan has created critical aspects of life undermining governance and state institution without respect to the rule of law. The main problem with SPLA is lack knowledge because they do not have professionalism and proper training couple up with commanders' weakness leading to lack of accountability.

Social cohesion among the 64 tribes has been immense challenge and manipulated the advance discord that served in the political interest of the large tribes first ambitions. As the reminder the conflict that occurred in 1991 between Nuer under Dr. Riek Machar's SPLA-Nasir faction and Dinka civilians Bor in Jongeli State which claimed 2000 lives of Dinka people.

The national elections was scheduled for 2015 it appeared that senior leadership in political rivalries were based on ethnicity between the current President Mr. Salva Kiir Mayardit and the rebel leader Dr. Riek Machar. It set big pressure who could be the chairman of Sudan People Liberation Movement (SPLM) party who would eligible as the candidate for presidency in the coming national election of 2015. Accusation of unilateral decision-making by president, corruption, ethnic patronage and bad faith against the background of fundamental disagreement and future direction of the party, its leadership selection procedures and relationship with the government made situation big tension in the country 2013 leading to fighting.

Mr. President Salva Kiir Mayardit dismissed the Vice president Dr. Riek Machar on date 6 December, 2013 with almost entire Cabinet of Ministers of the South Sudan government. This where the accusation of Dr. Riek Machar against Mr. President Salva Kiir Mayardit intensified saying that Mr. President is moving towards dictatorship ruling like the rest of most African Presidents. The serious opposition movement started against the president because some officials jointly started fighting the president not to be the next coming president in the coming national election.

Dr. Riek Machar and some senior SPLM party politicians accused president of dictatorial tendencies by making unilateral decision-making at a press conference that Mr. President adopted in his government system. The president kept on postponing the vital meeting of the SPLM's National Liberation Council to discuss and approve the four key documents: the Code of Conduct and Regulations, the Party Manifesto and Constitution meeting held at Nyakuron Cultural Centre on 14 and 15 December in Juba capital city.

Dr. Riek Machar boycotted the next day meeting which intensified the tension in the capital city because the president manipulated the whole meeting procedures the meeting was done according to his wishes and direction. Some members of National Liberation Council also boycotted the next meeting because of heated debate done on date 14, Dr. Riek Machar with others member did not turn up in the of 15 meeting where the members present at that time adopted the documents in absence of Dr. Riek Machar. The same day evening the shooting started at president residence place between presidential guards known as Tiger Division of soldier, those soldiers loyal to Dr. Riek Machar and those soldiers loyal to Mr. President Salva Kiir Mayardit. The hostilities escalated rapidly another day over the capital city Juba and the president gave the press saying it was attempted coup de' etat plotted by Dr. Riek Machar with his political members. But Dr. Riek Machar denied that allegation of coup de etat and appealed to SPLM the ruling party and national army SPLA to remove Mr. President in power to leave his office with immediate effect.

But nothing was done according to his order and 11 former ministers members associated with him were arrested and detained in jailed not to join him in bush. Dr. Riek Machar fled to his home state in Upper Nile Region and defection happened in his region making serious revenge killing Dinka civilians who were there in three states of Upper Nile Region.

3.3 Legal Framework

In the situation of South Sudan civil war several legal regimes apply to the existing human rights violation where the international criminal law, international human rights law, international humanitarian law and domestic laws are applicable. In every government the state is obligated including South Sudan to protect, respect and fulfill and the human rights given to every person living its jurisdiction and its territory as its

subject. Army forces group must respect human rights standard and control it in its territory when exercising government functions not to affect human rights conduct against person concerned in their control. All parties in the armed conflict are governed by relevant provisions of international humanitarian law to control all the behaviors in the armed conflict not to violate any provision will be war crimes direct.

The conflicting happening now in the Republic of South Sudan between Government forces Sudan People Liberation Army (SPLA) and Sudan People Liberation Army in Opposition SPLA-IO is a non-international armed conflict and both parties are obligated to respect, protect and fulfill humanitarian law not to victimize the mere civilians in the existing armed conflict. In the humanitarian law all armed forces are bound by article 3 whether Government forces SPLA, the opposition forces SPLA-IO and pro-government militias must respect the common Article 3 in four Geneva Conventions of 1949⁵⁹ which set minimum standard for proper treatment of non-combatants as well as addition protocol II relating the protection of victims of non-international armed conflict happening in one state.

The domestic laws are also applicable in the armed conflict happening in South Sudan like the Transitional Constitution of South Sudan provisions, relevant national criminal laws and the SPLA Act 2009 obligate set of rules in SPLA Code of Conduct.⁶⁰

3.4 International Human Rights Law

It is the responsibility of every state to preserve and protect international human rights law and fundamental freedom at all time whether in peace time or war period. Despite the Republic of South Sudan didn't yet ratify of human rights treaty at the regional or core international level. Even if South Sudan did not ratify human rights treaty yet it is bound by provisions of international human rights laws that have attained customary status of international law if not all the rights in the Universal Declaration of Human Rights.

⁵⁹ Common article 3 to the four Geneva Conventions of 1949,

⁶⁰ SPLA Act 2009, and in the SPLA Code of Conduct of South Sudan soldiers.

In 2013 May, South Sudan Council of Ministers acceded the human rights of the following the regional and international treaties as follows: Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, 1988; Convention Governing the Specific Aspects of Refugee Problem in Africa, 1969; International Convention on All Forms of Racial Discrimination, 1979; International Convention on Elimination of All Forms of Discrimination against women and Optional Protocols, 1979; Africa Charters on Human and Peoples' Rights, 1981; International Covenant on Civil and Political Rights 1966; and lastly International Covenant on Economic, Social and Cultural Rights, 1966.

The Convention on the Rights of the Child Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment is approved ratification by National Legislative Assembly which is pending the president ascent. In particular those basic human rights are obligations on the state those rights emanating from peremptory International Law obligates both the armed opposition group and the state in all the times during armed conflict and peace time. International human rights law in particular binds armed groups and state to respect the prohibitions of extrajudicial rape, killing, other conflict related sexual violence, torture, sexual and other forms of slavery, cruel inhuman or degrading treatment or punishment, the recruitment and use of children in hostilities, enforced disappearance, war crimes, genocide, crimes against humanity and arbitrary detention as well as of any violations that sum up to war crimes.

3.5 International Humanitarian Law

The armed conflict happening in South Sudan is civil war the non-international armed conflict between state government and opposition armed force group.⁶¹ All the parties in the armed conflict are governed by international humanitarian law the conduct and behaviors carried out during conflict time are regulated by International Humanitarian Law of four Geneva Convention of 1949. In which South Sudan state has acceded and became party to all four Geneva Convention of 1949 and additional two protocols of 1977. Both fighting parties opposition forces and State Government of South

⁶¹ICRC, *South Sudan: ICRC President emphasizes needs and urges stronger donor commitment*, available at <http://www.icrc.org/eng/resources/documentnews`-release-2014-01-06-south-sudan-juba-peter-president-visit>, last seen on 12/03/2017.

Sudan participating in the armed conflict consequently are bound by common article 3 of four Geneva Conventions of 1949. There are most fundamental principles of respect for human dignity in common article 3 together with prohibition of violence to person and life as well.

In common article 3 it says the persons not taking active parts in the conflict or hostilities like combatants who laid down their weapons in the conflict not longer taking part in the conflict, civilians without weapons must be protected from violence, torture, hostage-taking, murder, cruel treatment, mutilations, executions, extra judicial convictions and outrages upon personal dignity such as humiliating and degrading treatment. Additional Protocol II obligates legal rights, responsibilities on the state in non-international armed conflict and imposes the protections for individual civilians and civilian population and prohibits certain act against the civilians of the fighting state. These acts comprise of the targeting killing which now happening in South Sudan state; rape against female; indecent assault, the recruitment and use of child soldier, enforced prostitution; terrorizing of civilians; abduction; forced displacement; starvation; pillage and collective punishment similar to 300 Nuer civilians shot dead in one room in Juba also 30 women Dinka civilians shot dead in the church of God in Bor Jongeli state by Nuer tribe members.

The opposition forces and government forces are bound by additional II protocol when carrying out fighting in their territory all commanders in military operations must observe the four Geneva conventions with Additional II Protocol. Binding rules of how conflict should be carried out are in International Humanitarian Law which includes non-international armed conflict conduct of its soldier how the different actors in the conflict must treat the mere civilians of the state. Civilians must be protected all the times in the war zone which is the most fundamental principle ever in the International Humanitarian Law.

This principle of protecting civilians all the times obligates both parties in the armed conflict to distinguish between the military armed elements and civilian elements also distinguish between the military's objects and civilian's objects during conflict time all the times. In the fighting generally the armed elements who are not longer taking part in the fighting may be they are wounded or surrendered both parties are bound to give minimum treatment to those opponents and civilian as well.

Under the International Humanitarian Law those who are giving supply to victim must be protected from hostilities like humanitarian workers, agency organizations and United Nations peacekeepers must be protected from hostilities all the times like civilians. As mentioned above during the conflict operations there must discriminative attack to strike the military objectives protecting civilians and civilians object as well. By International Humanitarian Law, military operation must employ accurate method or means of combat effect which can be directed to specific target on military objects only and not inflicting unnecessary effect on mere civilians. It needs steady care when planning and conducting military operation in war zone to target military objectives and strike it while protecting civilian population and civilian population' objects.

The International Humanitarian Law needs feasible precautions to void any event of incidental lost of civilian life, injury, damage of civilian objects during operation time and require each party regardless must comply with the International Humanitarian Law provisions. In South Sudan conflict each party must guarantee respect to International Humanitarian Law whether opposition forces SPLA-IO or state government forces SPLA must direct every soldier under their control or any group acting under their control to respect the provisions of International Humanitarian Law on non-international armed conflict.

3.6 International Criminal Law

Notably international criminal law may constitute the gross human rights violations and grave violation of international humanitarian law will definitely constitute crimes against humanity and war crimes. The perpetrators under International Law need to hold them accountable for international crimes comprised of military commanders who committed war crimes upon civilians who ordered such commissions in war zones. In the criminal law all commanders shall be held responsible for any actions done by their soldiers: if they failed to have proper control on their soldiers during operation of war; they failed to do necessary and reasonable measures in his power to stop such acts of his soldiers. The commander must know or owing to know such circumstances crimes will be committed by his soldiers.

In the case of South Sudan it non-international armed conflict a lot of crimes against humanity are committed such as sexual violence; murder; torture committed as

systematic attack, simply state officials and organized armed forces group may also committed crimes against humanity in the Republic of South Sudan.

3.7 The Republic of South Sudan's Laws

In the Transitional Constitution of the Republic of South Sudan, 2011 obligates the government to uphold, promote and respect human rights principally enshrined in the Bill of Rights.⁶² The Bill of Rights protect numerous fundamental human rights, including the right to life and human dignity; including the rights to be free from arbitrary arrest and detention; the rights to liberty and security of the person; the rights to a fair trial and rights to equal protect of the law. The Transitional Constitution of the Republic of South Sudan of 2011, stipulates with respect to all people of the Republic of South Sudan, all organs of the government including armed forces shall uphold, promote and respect the non-derogation rights and protects: the prohibition against slavery; religions creed; sex; prohibition against torture; fair trial and the rights of non-discrimination on the basis of race. The Transitional Constitution of the Republic of South Sudan prohibits any infringement of this particular set of rights during emergency of a state. The Transitional Constitution of the Republic of South Sudan contains emergency of state provisions, declaring state emergency whereas Bill of the rights in the Transitional Constitution of the Republic of South Sudan may not be suspended, the rights to litigation; the protection of the rights to life; the rights to fair trial; prohibition on torture and the rights of non-discrimination.

Other rights derogation are permitted only when they are plainly proclaimed accordance to law of land and is strictly required by that situation and not discriminatory in nature. The State Emergency was declared in 2013 by president in the three states: Jongeli state; Unity state and Upper Nile but president didn't specify which provisions of the Bill of Rights in the Transitional Constitution of the Republic of South Sudan were suspended which provisions were not.

3.8 Internal Regulations and Legislation

⁶² The Bill of Rights of the Transitional Constitution of Republic of South Sudan, 2011.

South Sudan's criminal law in a number of provisions of Penal Code Act, 2008 also protects the rights to physical integrity and the rights to life.⁶³ The ordinary criminal law provisions prohibit bodily injury; murder; kidnapping; intimidation; offences related to sexual offences; damage to or destruction of property; abduction; violation of personal liberty; armed robbery and other crimes prohibited by the Penal Code Act'2008 are applied in armed conflict zones in South Sudan.

In the Republic of South Sudan there is discipline and governance law of the SPLA which the Sudan People Liberation Army Act, 2009. The law that guides and punishes the armed forces elements who have infringed the law of South Sudan but in war zones this law is not applied on the soldiers who rape females without accountability on them. There are military courts which establish system of military for both criminal and disciplinary offences provide for purpose criminal offences done by soldiers. It also provides in support of exclusive civilian jurisdiction over crimes committed by soldiers against the mere civilians.

In the Republic of South Sudan it is stipulated in South Sudan's Geneva Conventions Act, 2012 that any person who is in South Sudan commits or aids and abets some breach Protocols or relevant Geneva Convention shall be subject to imprisonment for his guilty of an indictable offense immediately.

In South Sudan there is child's law which defines somebody to be considered as a child is someone below 18 years of age stipulated in Child Act of 2008 and specifies minimum age for a child for recruitment or conscription into armed forces, not child shall be used in any activities of paramilitary or military. Section 22 of the SPLA Act, 2009 and the Transitional Constitution of the Republic of South Sudan under article 17 codified the military activity is the South Sudan state.

The Agreement on Cessation of Hostilities was signed on 23 January 2014 between the Sudan People's Liberation Movement/ Army in Opposition and the Government of the Republic of South Sudan (GRSS) under the auspices of IGAD by Hon. Gen. Taban Deng Gai (SPLM/A-IO) and Hon. Nhial Deng Nhial (GRSS) they were the chairmen of peace negotiators. Both Parties managed on date 17 August 2015 to sign agreement on the Resolution of the Armed Conflict in the Republic of South Sudan.

⁶³ The Penal Code Act, 2008

The provisions of the SPLA Act and the SPLA's Rules and Regulations issued in 2009 also subject Government armed forces to work in accordance the laws in the war zones. The personnel to facilitate to commit the offense of mistreating a detainee under the SPLA Act, 2009 shall be charge and be tried by a competent court martial and subjected to imprisonment for a proscribed period under the law. The proscribed "Major Disciplinary Offences" in the Rules & Regulations, the actions as categorized as follows: 1-unlawful detention of individuals; 2- assault or insulting prisoners of war; 3-committing or attempting to commit any act that is cruel 4-verbal or physical conduct that denigrates, humiliates or shows hostility against other based on gender, religion, social origin and race.⁶⁴

The SPLA issued a General Punitive Order on 14 August, 2013 underscoring the ban on the recruitment of child soldiers as the violation on mandate of armed forces administration unit. Also the Republic of South Sudan government issued Ministerial Orders on 26 May, 2015 demanding members of the refraining from the intentional attacks against civilians: the use of child soldiers and along with rape or sexual violence against female elements.

3.9 Use of Excessive Force and Other Abuses in Internal Conflicts in 2013

During the armed conflict between the government and antigovernment forces aligned with former vice president Dr. Riek Machar that began in 2013, security forces, opposition forces, RMGs, as well as civilians committed in armed conflict-related abuses and violations in, Jonglei, Unity, Upper Nile, Central EquatoriaLakes, Warrap, and Western Equatoria states. At final of the year at least 10,000 individuals had been killed in the conflict and approximately 1.91 million persons were displaced. In this civil war that took place in the capital city Juba, 2013, International NGOs and the United Nations had reported atrocities.⁶⁵

⁶⁴ Section 30, SPLA's Rules And Regulations,2009

⁶⁵ SOUTH SUDAN 15 Country Reports on Human Rights Practices for 2014 United States Department of State Bureau of Democracy, Human Rights and Labor website<https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> available at <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/> last visited on (15/3/217)

In January, President Kiir declared a state of emergency in Unity, Upper Nile and Jongeli states, ordering the SPLA to fight opposition forces. Targeted ethnic killings, ethnic tension, and retaliatory violence in these states as well contributed to widespread abuses.

Civilian casualties frequently occurred when cattle raiders stole cattle, which defined power and wealth in many traditional communities, in Warrap, Lakes and Unity states, resulting in revenge attacks. SPLA and police sometimes busy in the revenge killings that took place both between and within ethnic groups.

Inter-communal tensions in Lakes State worsened through the year, with dozens killed at a time. When SPLA soldiers deployed to Lakes State in September to quell the violence between Dinka clans, clan members killed about two dozen SPLA soldiers.

Killings: Between January 1 and 18, opposition forces occupied and controlled Bor town. In Bor fighting International NGOs reported large-scale targeting killing of Dinka civilians by opposition forces. Witnesses fleeing to Awerial County in Lakes neighboring state stated armed men from opposition forces chased and shot at them as they escaped.

After the government deployed more soldiers and regained control of Bor on January 18, it reported the hospital had been attacked; they discovered 14 dead bodies, including those of two pregnant women. Dead bodies of patients were found in their beds killed by opposition forces.

In the beginning January while Bor was under opposition control, opposition forces killed at least 13 persons hiding their lives in St. Andrews Episcopal Church in Bor town. Witnesses reported armed men came to the church and shot a number of women. According to human rights reports the worst thing was that opposition forces committed sexual violence against women hiding in the church the house of their God during the same time. Local authorities collected the bodies of people and stated 2,007 individuals were killed in Bor County during January. UNMISS near to their

place identified the bodies of more than 100 civilians, including women and children.

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Government forces, jointly with the South Sudan Liberation Army and Justice and Equality Movement (JEM) forces, regained control of Bentiu as well as Rubkona in Unity State during the first week of January. Witness reports stated they targeted Nuers and several civilians were killed as they fled to the UNMISS PoC site. UNMISS human rights officers was recording the hostiles and observed the SPLA shooting at civilians just outside the UNMISS base on January 10 and saw more than 20 dead bodies, including a child, in Bentiu and Rubkona. Some arrested people alive they had their hands tied behind their backs waiting for their death later.

There was large-scale destruction, including burning, of Beintu, as well as Rubkona. In January, 2014 heavy fighting occurred in Baliet County in Upper Nile State. Witness reports stated opposition forces of Dr. Riek Machar attacked Abwong Payam District on January 1 and 2; they targeted and killed Dinkas. Opposition forces also reportedly deliberately opened fire on people fleeing for safety in Baliet town, with children among the casualties. On April 17, 2014, a UNMISS PoC site with Dinka Bor youths making revenge with approximately 5,000 primarily ethnic Nuer IDPs came under attack when Dinka youth needed UNMISS turn over members of the Nuer White Army, shot into the site, and threw rocks and fired rocket-propelled grenades over the walls. During that incident UN reports stated at least 51 persons were killed during the incident and many other wounded in the UNMISS Camp. NGOs reported government soldiers comprised a lot Dinka soldiers had targeted and harassed Nuer in the camp during March and April of 2014.

Government and opposition forces exchanged control of Malakal town, in Upper Nile State, six times between December 2013 and April, leading to displacement of

⁶⁶ South Sudan civil war, available at https://unmiss.unmissions.org/.../unmiss_conflict_in_south_sudan_-_a_human_rights... last visited on (15/3/2017)

approximately 157,000 persons throughout the state. Between December 2013 and April, in Malakal, Upper Nile State, both the SPLA and opposition forces conducted intensive house-to-house searches resulting in extrajudicial killings on an ethnic basis and sexual violence. On January 2 2014 SPLA forces reportedly conducted searches for ethnic Nuers with loyalties to Dr. Riek Machar, and from January 15 to 17, as well members of the White Army (untrained communities soldier) primarily young Nuer men, conducted searches for ethnic Dinkas.⁶⁷

Near the beginning January, 2014 UNMISS reported at least 218 persons killed in Malakal, and fighting resumed on February 18, killing another six. Both SPLA and opposition forces acknowledged in January, 2014 that looting, indiscriminate shooting, and targeted killings of Nuers and Dinkas occurred inside Malakal.⁶⁸ Satellite imagery indicated the massive destruction of approximately 25 percent of Malakal town. On January 19, government forces reportedly informed civilians to leave Leer County--the home county of Dr. Riek Machar. The next day on 20 January, 2014 observers reportedly heard shooting throughout the day around Leer town. One source reported this was the product of Nuer armed elements shooting to warn civilians of government forces, reportedly composed of SPLA, SSSA, and JEM, were approaching Leer. Several civilians began to flee Leer town. On 21 January, opposition forces reportedly looted the compound of an international NGO, according to one source, using heavy weapon tanks and including two of the NGO's vehicles were reportedly stolen. One observer and witness indicated that, by January, 26 2014 all NGO compounds in Leer town had been looted. Observers reported shelling with big rockets into the town before the arrival of government forces. One witness reported that as soon as government forces full of Dinka members arrived in Leer town and the surrounding areas , they started burning and shooting indiscriminately and government forces caused massive destruction in Leer town, with only two churches left unburned.

⁶⁷ Ibid 61

⁶⁸ South Sudan 2014 Human rights report-US department of state available at :<https://www.state.gov/documents/organization/236620.pdf> last visited on (23/3/2017)

Government forces followed civilians into the bush chasing of opposition forces who had escaped along with civilians. About 20 vehicles belonging to humanitarian NGOs were looted.

Again on February 18 and 19 opposition forces of Dr. Reik Machar got into Malakal Teaching Hospital (where a January 26 estimate indicated 3,000 ⁶⁹ persons were sheltering) and targeted Dinka and Shilluk IDPs. UN integrated team missions identified at least 15 dead and found several more bodies later. There was no reported final death toll recorded yet.

On April 15, opposition forces advanced on government-held Bentiu and, during two attacks, killed many hundred civilians sheltered at the Kali-Ballee Mosque since February. According to reports opposition forces divided Ethiopians and Eritreans from the population and escorted them out of the mosque. Opposition forces reportedly shot and killed several Darfurians people North Sudan living in Malakal – Upper Nile State. There were also reports civilians sheltering at Bentiu Hospital were killed. Radio Bentiu FM aired out messages from opposition force commanders advice young men to meet up at the SPLA Fourth Division Headquarters to rape Dinka women--“as the Dinkas had did with Nuer women as revenge.” Authorities removed 148 bodies from the hospital and the area around the Kalibalik Market and following these events, the UNMISS Bentiu PoC site population swelled from 5,000 to 25,000 people in 10 days.

The fighting became rampant on April 26, Dinka SPLA soldiers attacked unarmed Nuer SPLA soldiers at the Mapel Military Training Center in Wau- Western Bahr El Ghazal State. A Quantity of reports indicated Dinka SPLA soldiers killed approximately 190 unarmed Nuer soldiers.

In May the SPLA killed additional 63civilians inside Pakur Payam, Rubkona County, Unity State on orders of an SPLA commander. There was no investigation conducted by the ended of the year.

On August 4 and 5, a militia group named the Maban Self-Defense Force (MDF)--a government-supported local defense force--killed six South Sudanese humanitarian workers in Maban County, Upper Nile State. Relief personnel reported that SPLA

⁶⁹ Ibid

with MDF elements went to NGO compounds and ordered the organizations surrender Nuer staff members. MDF cadres carried lists of every one Nuer workers, which they used to identify Nuer staff. The incident made it compulsory to the United Nations to evacuate temporarily 220 humanitarian workers from the county. On October 29, UNMISS reported the SPLA-in-Opposition (SPLA-IO) targeted Nuer civilians inside a Roman Catholic church for alleged support to the government during an attack on Bentiu. SPLA-IO fighters named the civilians “Dinka” and removed at least 15 men from the church to meet with an SPLA-IO official. UNMISS reported one man was shot while going to the church and SPLA-IO soldiers shot and killed many men and injured two when they heard an SPLA tank approach. Several witnesses also reported SPLA-IO forces killed two women with a six-month-old baby in their homes approximately 650 feet from the church.

In December 2013 PG with other security force members reportedly conducted targeted killings of numerous hundred ethnic Nuer civilians in Juba. Witnesses reported targeted ethnic killings occurred inside the city throughout the remainder of 2013, which sparked retaliatory attacks and killings through the year.

In December 2013 witnesses reported around 250 Nuer men were gathered based lying on their ethnicity in the Gudele neighborhood and taken to a police station holding cell. PG forces shot repeatedly into the cell from the windows, killing all except eight men, who survived by lying under dead bodies for approximately 24 hours. The government did not conduct an investigation by the end of the year until when the former Chief Justice Wol Makach was selected by President Salva Kiir MAYardit to look into 2013 hostiles that happened in the capital city Juba in which report was made without enforcement carried out up to date.

In December 2013 Nuer youth killed three UN peacekeepers while attacking the UN compound in Akobo, also killing 20 Dinka civilians who had sought refuge there. NGOs as well reported killings of Dinka in Malakal, Upper Nile State, when antigovernment forces took control of the city. The government had failed conducted an investigation by year’s end because of current war around state South Sudan but a lot human rights violated occurred in this civil war.

3.10 Abductions

An unidentified number of Nuer civilians in Juba disappeared during the year. Government security forces reportedly detained them intended for being potential supporters of the political or military opposition.

On February 3, 214, Nuer students published an open letter to the University of Juba concerning the abduction of two Nuer students who attempted to attend classes at the university on February. The letter stated Nuer students feared for their lives also they would not be able to attend the university during the armed conflict. The abducted students' whereabouts and condition were unidentified at year's end.

One Nuer person reported that in March he went to meet a Dinka friend upon the friend's invitation. Soon after his arrival, SPLA soldiers came to the location arrest him and took him to prison. The SPLA later shared with him that his Dinka friend had betrayed him to the SPLA and told them the man had been staying at an IDP camp and was Nuer. Police released him after a period of six-month detention because he did not disclose to police he was Nuer. A lot of his fellow inmates were Nuer, including Nuer SPLA soldiers.

Authorities inside Renk reported opposition forces abducted many girls, other children, and one Darfuri businessperson in September.

On October 16, a UN agency national staff member was also abducted at the Malakal airport while waiting for an UNMISS flight to Juba. Observers reported government security forces were involved in abducting UN agency. The United Nations mad it serious and expressed concern about the abduction and called for his immediate release. The staff member's whereabouts and condition were unknown at year's end.

During the SPLA-IO's short occupation of Bentiu on October 29, the SPLA-IO abducted and raped women following government forces withdrew. UNMISS reported at least 20 women were abducted from Dere, Souq Sabi, and Lich University and taken to Guit and Nhialdiu.

3.11 Physical Abuse, Punishment, and Torture

Government, opposition forces and RMG forces raped, tortured and otherwise abused civilians in conflict areas during the year.

The SPLA carried out harassment campaigns against Nuer IDPs departing UNMISS PoC sites inside Juba and Bentiu. NSS officers too harassed IDPs in Juba. IDPs experienced harassment, arbitrary arrest, illegal detention, abduction, beatings and rape as they left the sites to purchase food, grind sorghum from food distribution centers, and bathe. Violence among camp residents resulted in injuries, rape and occasionally death.

Conflict-related sexual violence was rampant as women were frequently targeted for revenge following skirmishes and attacks on towns. Women faced rape by fellow IDPs inside PoC sites and by SPLA soldiers outside Malakal, Bentiu and Tomping PoC sites when leaving to conduct daily activities. The UN special representative to the secretary-general on sexual violence reported “widespread sexual violence” inside Bentiu against women, men, and children, including gang rape, sexual slavery, rape, abduction and forced marriage.

Both SPLA with opposition forces harassed many thousand persons who sought refuge in the Presbyterian Church, St. Joseph Roman Catholic Cathedral, and Christ the King Church inside Malakal in January and February. Witness accounts indicated at least single incident at the cathedral in mid-February involved the targeted killing of Shilluk men with boys.

In mid-July the SPLA attacked Nhialdiu, Unity State, during a WFP food distribution intended for 37,000 persons. Per standard operating procedure, the WFP had already previously notified the government and opposition forces of the time and location of the distribution. It was indistinct who was responsible for looting 300 metric tons of relief food that followed the attack.

In beginning of September a WFP team in Ngop, Unity State, had to flee from its distribution site and await evacuation through helicopter due to violence from members of the local community, primarily armed youth. These armed youth also stole some 23 metric tons of food, forcing a reduction in rations and, as a result, further violence against the team. The forced downing of an UNMISS helicopter outside Bentiu the previous day appreciably delayed evacuation of the team.

In late September fighting between the SPLA and the SPLA-IO forced international NGOs to evacuate staff from Renk town, Upper Nile State, while insecurity forced a humanitarian quick response team to cease activities.

3.12 Women's Rights Violation

Rape and Domestic Violence: Rape is big crime punishable by up to 14 years' imprisonment and a fine in Penal Code 2008 of South Sudan. The government failed not effectively enforcing the law, and rape was thought to be widespread. Having Sexual intercourse within marriage is defined as "not rape" in the law but it is adultery. There was no information available on the number of persons prosecuted, convicted, or punished for rape, and convictions of rape were hardly ever publicized. According to observers sentences for persons convicted of rape were frequently less than the maximum. Since the conflict began in December 2013, conflict-related sexual violence was rampant and often underreported throughout South Sudan, as women and girls increasingly became targets of revenge following skirmishes and attacks on towns. Women also faced rape while living inside PoC sites and at times when leaving PoC sites to conduct daily activities.

The law failed to prohibit domestic violence. Violence, including spousal abuse, against women was ordinary, although there were no reliable statistics on its prevalence. Women were regularly reluctant to file a Form 8 formal complaint, and police seldom intervened in domestic disputes. According to NGOs, some women reported police tried to charge them SSP 20 (seven dollars) while they attempted to file the criminal complaint of rape or abuse. While the official form is not mandatory, police habitually told women they needed to complete it prior to receiving medical treatment. The SSNPS placed the complaint forms in Juba Teaching Hospital to help reduce the time it took women to file a complaint and receive medical attention. No statistics on the number of abusers prosecuted, convicted, or punished were not presented. When a single girls are raped the families of rape victims encouraged marriage to the rapist to avoid public shaming.

Female Genital Mutilation/Cutting (FGM/C): FGM/C is a criminal offense under the penal code of South Sudan. There was a 1.3 percent prevalence rate of FGM/C in the country because FGM/C is for Muslim people in North Sudan.

3.13 Child Rights Violation in Civil War

Child Soldiers: Following the outbreak of conflict in 2013, enforced conscription by government forces and recruitment and exploit of child soldiers by both government and antigovernment forces increased. As of September, UNICEF probable there were nearly 10,000 children fighting in the war, with around 70 percent recruited by the White Army, a civilian force fighting for the opposition.

In June the government signed a recommitment to the 2009 Action Plan to stop grave human rights violations against children. On August 26, the government endorsed a work plan supported by UNICEF detailing implementation steps for the recommitment to stop child soldier. The primary goal of the work plan was to finish the recruitment and use of children by armed forces, sexual violence, killing and maiming of children and the use of schools for military purposes by July 2015. As decided as part of the work plan, the government made a “Children, Not Soldiers” public campaign in October 2015 in the Capital Juba. Opposition leader Dr. Riek Machar signed a pledge in May to stop grave violations of children’s rights. Despite their commitments, neither side implemented their commitments and halted the use and recruitment of child soldiers.

An SPLA spokesperson affirmed that, due to the ongoing conflict, it was impossible to prove whether children were fighting. An SPLA-IO spokesperson confirmed the nature of war was such that children were caught up in it and had to fight, adding up that demobilization during wartime was impossible. Some military officials claimed that some children received soldiers’ uniforms for protection, and others claimed even when they had no formal affiliation with the government, children sought out and wore original uniforms.

In June the Lakes State military caretaker governor, Major General Dhuol, issued an ordered that forced recruitment of youth, and NGOs reported this resulted in the forced recruitment and exploit of child soldiers.

The SPLA occupied an increasing number of schools and made them as military barrack. In May UNMISS patrols observed the occupation of a university as well as primary school in Unity State and in July observed occupation of several schools in Western Bahr el Ghazal State.

The National Disarmament, Demobilization, and Reintegration Commission continuous to monitor adherence to the law, which prohibits the use of child soldiers,

with limited success due to the conflict. In September 2015 the Ministry of Defense of South Sudan issued a punitive order against any commander who had recruited children in his unit. The same month the SPLA released 32 children from its barracks in Wau, as well as the SPLA commander released 43 children in Jonglei. While David Yau Yau consent to integrate his militia into the SPLA and de-enlist children, his militia but had failed to discharge any children from its ranks by the final of the year.

Opposition forces and RMGs recruited child soldiers, with some groups such as the White Army in rural villages relying on youth as their primary fighting force. No specific of numbers of juveniles in RMGs was made available up to date.

3.14 Governmental Attitude towards International and Nongovernmental Investigation of Alleged Violation of Human Rights

The government of South Sudan resists being published variety of domestic and international human rights groups investigating the cases of human rights violation done in the state or country. For the duration of the a year the government registers all the requirements of NGOs to collect fees for registration intended for the public services provided for NGOs location where they operation. In that location where NGOs work the security services are offered to provide 'protection' for registered NGOs beyond what the police offered. Thought this varied by sector and location yet government officials sometimes cooperate and respond the view of NGOs operating in their country South Sudan. The prison officials always allow the international organization and NGOs enough access to prisons where they found lack of basic needs in prisons and needs transformation.

The security force usually limits great access and prohibits monitoring of NGOs and United Nations activities with the suspicions regularly. Their properties sometimes without judicial authorization confiscate personal documents and equipments as the NGOs reported the government representatives occasionally confiscate their properties for no legal reason. For instance one of the government bodies responsible for registration of NGOs the South Sudan Relief Commission habitually demands assets legally belonging to NGOs at end of project. The requirements were

burdensome the time consume and costly to NGOs and donors to permit registration of the NGOs to work in the field of its operation.

United Nations and Other International Bodies: There is connection with the investigation of abuses or monitoring of human rights problem where the government sometimes cooperates with the representative of United Nations and new international organizations allow the visiting.

Anyhow, Sudan People Liberation Movement (SPLA) soldiers occasionally harass the UNMISS staff for instance SPLA soldiers on 19 October 2014 badly beat a UNMISS representative during traffic accident in Juba. The international organizations are treated with suspicions by security forces especially when they operate near Sudan border the conflicting state with South Sudan or in the conflicting areas with rebel forces. There is agreement that allows UNMISS to access areas of suspected of human rights abused and violation but yet the security forces prevent any access to those areas where this is abused of human rights violation in the country like war zones in Upper Region's three states. Evidently the SPLA soldiers shot down the UNMISS helicopter in December 2014 flying over a conflicting area in Pibor County but the government failed to release report of investigation of the UNMISS shot down helicopter.

Sometimes the government agencies blocked or restricted the humanitarian supplies to be delivered to the needy population in the conflict areas. The African Union's Union Peace and Security Council on 30 December, 2013 issued a communiqué calling for the creation of a commission to investigation crimes committed on the human rights violated during armed conflict of 15 December, 2013.

Government Human Rights Bodies: The South Sudan Human Rights Commission (SSHRC) was appointed by president to operate independently given the mandate to investigate human rights abuses, to make research and monitoring education. The human rights abuses resting on the SSHRC were mandated to investigate any human rights abuses upon own initiative of the request of the victim whom had gone under grave violation. The International Human Rights, Civil Society, International Organization and SSHRC operate independently from the government advocating for Human Rights violation they cooperate together and present reports and recommendations to the government. The resources constrained and prevented the

SSHRC, commission from meeting its mandate during the year, this Commission is the competent body advocates independently for human rights violation in the country. The SSHRC doesn't have enough resources for monitoring or investigating the cases of human rights abuse because of little money about 90 percent of its resources are dedicated for its officials salaries leaving the rest uncovered by the budget. The SSHRC as well always failed to transport its representatives to UNMISS sites outside Juba because of lack of resources. The government established a National Committee for the prevention and punishment of Genocide in September, 2014 under the auspices of the International Conference of the Great Lakes Region where there is often fight among the communities but the committee became inactive for the whole year because of lack resources for its operation.

3.15 The Political and Security Context in 2016

The civil war in the Republic of South Sudan began on 15 December 2013 when Dr. Riek Machar attempted coup to overthrow the President Kiir Mayardit administration of the government but it failed due president tribe Dinka majority group in South Sudan. The war continued for about two years but fortunately peace agreement was signed on 17 August 2015 in Addis Abba Ethiopia and the rebel leader Dr. Riek Machar was made as First Vice President followed Vice James Wani Igga.

In April the rebel leader Dr. Riek Machar and chairman of SPLM/A-IO returned to capital city Juba as First Vice President of South Sudan in accordance with the peace agreement on the resolution on the Conflict in the Republic of South Sudan-peace agreement. After his returned to Juba capital city the Transitional Government of Unity (TGoNU) was created although of these all efforts there were some issues unresolved but they were bound under peace agreement. These included the demilitarization of capital city Juba where the First Vice President Dr. Riek Machar would be living in, the restructuring of the security services and the unilateral decision by PresidentSalva Kiir by increasing states from 10 to 28 states by president decree order No.36/2015 issued in October 2015 was against Dr. Riek Machar interest. The division of the country along ethnic lines would be caused by president decision

creating 28 states without approval of Dr. Riek Machar several observers warned the president for his unilateral decision.

Between SPLA and SPLA-IO despite the return of Dr. Riek Machar with the hope of political solution yet the tension was still high between the security guards of President and Vice President. There was distrust climate between two parties in the TGoNU government in the capital city Juba. It started with one security guards of Vice President Dr. Riek Machar shot dead on 2 July 2016 by the government security forces of President Salva Kiir Mayardit. The situation in capital city tension increased rapidly which led to 7 July 2016 fire ex-changed between SPLA and SPLA-IO which resulted into three soldiers of SPLA killed and an officer of SPLA-IO sustained injury in the fighting at Gudele checkpoint Juba west city. The UNESCO Country Representative was shot at the same day by the unknown gunman and he sustained injury but he managed to escape to nearby Diplomatic Mission residence. After the incident the SPLA soldiers surrounded the embassy and prevented the United Nations from giving emergency treatment to victim after a long negotiation with SPLA administration and UNMISS administration the UNMISS were allowed to treat the victim at Tonthing UNMISS Hospital.

The security situation made the President Salva Kiir Mayardit, Vice President Dr. Riek Machar and Vice President James Wani Igga on date 8 July 2016 to hold a press conference at the palace to discuss the articles in peace agreement of August 2015 and to commit themselves to solve the security situation deteriorating in the capital city Juba between two parties SPLM/A and SPLM/A-IO. Three presidents met also to discuss the TGoNU government issues pursuing the united and firm in peace and security in the Republic of South Sudan.

Unfortunately the fighting erupted at 5.30 between the President Salva Kiir Mayardit guards and First Vice President Dr. Riek Machar guards outside the President Palace while they were having meeting in palace. The goodness the President Salva Kiir Mayardit saved the First Vice President Dr. Riek Machar life in his office after the First President guards were defeated the fighting stop and the president Salva Kiir Mayardit ordered his vehicle and his security guards to take Dr. Riek Machar to his residential place. The fighting escalated next day where SPLA consequently attacked SPLM/A-IO cantonment site at Jebel (mountains) near the UNMISS house base

SPLA were using helicopter gunships and heavy artillery, gunfire and mortar across Juba but mostly in areas surrounding the UN House base in Jebel Kujur area.

On date 8 July 2016 Mr. President Salva Kiir Mayardit after the incident made statement broadcasted on national television at 8 evening expressing following announcement “what happened outside some hours ago is something that we cannot give explanation to you. Three of us were sitting within the meeting, discussing the situation of yesterday what happened in Gudele and then discussion about what we can do in the implementation of the peace agreement and to build confidence among the armed forces plus the civil population.”⁷⁰

Next day on 9 July 2016 the fighting muted because it was the Independence Day of the Republic of South Sudan when it got freedom from Sudan after long war of two decades. The president issued the Republican Decree of creating Joint Investigation Committee chaired by Minister of Interior Alfred Lado Gore to probe the incident that happened in Gudele and bring the report to the President Salva Kiir Mayardit.

On date 10 July 2016 there was another serious fighting of gunfire heard all over the capital city Juba in which UNMISS assets, personnel and premises caught in the crossfire. The shooting was indiscriminately for instance two UNMISS houses were attacked in different places lurching numerous ammunitions in UNMISS compounds at UN House in Tonping. The fighting increased the number of civilians running to UNMISS premises for their safety. The UNMISS has strengthened the strong measures of access control through screen searching for people entering PoC sites and enacted weapons free zones established outside the UN perimeter. The fighting of July 2016 has displaced approximately 42,000 civilians had fled their residential places about 7,000 civilians mostly women and children on date 10 July 2016 have arrived to UNMISS UN House and Tonping basis fleeing from various areas of the capital city Juba for their safety. On the date about two Chinese peacekeepers were killed and wounded four other soldiers of peacekeepers when United Nations armoured personnel carrier (APC) was hit by rocket-propelled grade (RPG).

Large control of Juba area was regained by SPLA on date 11 July 2016 when the SPLA soldiers made strategic location near former SPLM/A-IO cantonment site in

⁷⁰ President Salva Kiir declared in statement broadcasted on 8 July by the South Sudan Broadcasting Corporation (SS BC)

Jebel area. The SPLA soldier stabilized the city from SPLA-IO by chasing them away in the city and SPLA soldier started shooting again for their celebration all over Juba for hours.

Unilateral ceasefire was announced by Mr. President Salva Kiir which was later endorsed by First President Dr. Riek Machar who asked “all the troops to remain where there and respect the ceasefire”. That was good news to the world and international community with other members of UNMISS all of them welcomed the president announcement of ceasefire and argued parties to respect and adhere to ceasefire. Although Presidential announcement of ceasefire yet SPLA soldiers continued to rape women, looting items, torturing the SPLA-IO soldiers captured during fighting. The spokesperson of the president Salva Kiir Mayardit stated on 12 July 2016 that president is willing for any dialogue from the SPLM/A-IO for peace situation to be reconfirmed in the capital city Juba.

Dr. Riek Machar fled Juba for his safety and no one knew his whereabouts and SPLA soldier made huge celebration in the city and control the whole parts of Juba to be stable again. For the absence of Dr. Riek Machar for time the president Salva Kiir Mayardit on date 23 July 2016 replaced Dr. Riek Machar with Gen. Taban Deng Gai (former chief negotiator for the peace in the SPLM/A-IO) as the faction of SPLM/A-IO designated to President. Suggestion made by SPLM/A-IO was accepted by president and duly appointed Gen. Taban Deng Gai as the First Vice President of the Republic of South Sudan up to date. The Dr. Riek Machar managed footing for about 47 days to reach Congo where his life was rescued by United Nations members to take him to Khartoum for urgency treatment. After his recovery from exhaustion and high blood pressure treatment he went to South Africa where he is now a days.

The renounced politician Dr. Lam Akol Ajawin the representative to the joint Monitoring and Evaluation Commission (JMEC) and the Minister of Agriculture resigned from his post accusing the president Salva Kiir. The JMEC partners Group argued the Mr. President Salva Kiir Mayardit government to establish security environment for peace agreement to be implemented peacefully.

Dr. Lam Akol Ajawin in his public statement stated his resignation from TGoUN, JMEC and political party was the death of peace agreement signed in August 2015 and lack of political space implementing of the peace agreement. The fact is that Dr.

Lam Akol Ajawin hailed in the same region with Dr. Riek Machar Upper Nile Region with different tribes but his political interest collides together. He wanted the whole regime to be changed and restored the genuine peace agreement.

At the present the Republic of South Sudan is not completely at peace because of a lot small rebels militias disturbing civilians and the serious famine of food affecting about 3 million people in South Sudan. The civil war of 2103 up to date has ruined the country's economy for lack of money if the country. Dollar rate ex-change has worsened the situation because the Republic of South Sudan is the newest nation of the world depending of neighboring countries' goods which demands dollar money. Before the civil war of 2013 the dollar rate was so low which cannot be compared to the highest rate of dollar ex-change currently.

CHAPTER 4

4.0 COMPARATIVE ANALYSIS OF THE HUMAN RIGHTS VIOLATION IN THE STATES WITH CIVIL WAR

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4.1 Background

Comparative analysis would study the grave human rights violations done in three countries where human rights violation has reached to the worst level in violations of humanitarian law particularly Somalia, Syria and South Sudan.

In Somali civil war has lost a lot of lives in Somali Country around 500,000 people have been killed according to Necrometrics in the civil war which started 1991.⁷¹ Somalia's civilians have experienced humanitarian's abuse in the hands of both fighting parties in long running conflict happening up to date. The government of Somalia had pledged in 2016 for civilians' security improvement in the areas under its control by limiting bore results, and build capacity of rule of law in the country. The

⁷¹In Somali civil war, available at <http://www.globalsecurity.org/military/world/war/somalia.htm> last visited on (16/3/2017)

Islamist armed group Al-Shabab (youth) are the current warriors now in Somalia making targeting killing on civilians and civilian infrastructure especially with suicide bombings, improvised explosive devices (IEDs) making a lot destruction with devastating impact in the attack carried out by group or one person having suicide bombing. The civil war has led to extremely limited access to basic services and about over 1 million people internally displaced facing grave abuse of human rights and lack of humanitarians supply. The running civil war has involved clan fighting over resources, political power with Al-Shabab that is leading to civilian casualties and displacement because it forced evictions of all civilians in the affected areas in Somalia state.

The worst humanitarian law and human rights law violated in the current civil war in Syria state death toll from the conflict of 2016 around 470,000 people have been killed according to the report of Syrian Center for Policy Research and the an independent Syrian Research Organization have found the exact number of the people are killed in Syria. According to UN Office for the Coordination of Humanitarian Affairs report the fighting in Syria intensification has left dire humanitarians crisis with 6.1 million people internally displaced and 4.8 million yearning for safety looking for going abroad as refugees in safe countries which are in peace.⁷²

An estimated 1 million people in mid-2016 were living in besieged areas denying them humanitarians aid and life-saving assistance. According to the Syrian News for Human Rights report more than 117,000 people have been disappeared or detained in the unknown places including 4,557 people who had been detained in the unknown place in the months between January and June 2016. Thousands of people have died in the detention; ill-treatment and torture are rampant in detention facilities.

The responsibility of systematic and extensive violations of humanitarian law and human rights law including targeting killing of civilians with artillery, executions and kidnapping people is in the hands of Islamic State (ISIS) and the former Al-Qaeda affiliate in Syria, Jabhat al Nusra, which they had changed its name to Jabhat Fath al Sham. In Syria civil war not only the government is abusing humanitarian law and human rights law the Non-state armed group opposing the government involved also

⁷²The human rights watch , Syria events of 2016, available at <https://www.hrw.org/world-report/2017/country-chapters/syria> last visited on (17/3/2017)

in torturing people, kidnapping, indiscriminate attacks against civilians, unlawfully blocking humanitarian aid and using child soldiers in their army.

In the Republic of South Sudan's civil war that began in the year of 2013 started for power struggling among the senior politicians base on the big tribes' advantages between Dinka the largest tribe in South Sudan and Nuer the second larger tribe in the same South Sudan. The conflict has claimed more than 10,000 people lives and continues up to date. A lot of sever abuse of humanitarian law and human law against civilians are rampant done by both parties in the war, the government forces SPLA and the oppositions forces SPLA-IO, fortunately the peace agreement was signed on 17 August, 2015 but there was another fight in the capital city Juba in July 2016 after peace agreement. In July, 2016 fighting both sides committed a lot of abuse against civilians around Juba and other areas, government forces killed, tortured and raped people during counterinsurgency operation in the Southern and Western parts of the country and the soldiers were destroying with pillaging civilian property. The recent war in Juba July 2016 has forced 200,000 citizens fled their homes bringing to total 2.4 million displaced in the country and the people of disabilities have face grave abuse of their humanitarian law and human rights violated by soldiers.

4.2.1 History of the Somalia Civil War

The civil war in Somalia has been on for two decades thus has made Somalia the battlefields between the United States global war on the terror with Afghanistan and Iraq. The chaotic situation currently in the country has further complicated the situation of long and devastating war between different clans and sub-clans in Somalia while the main regional powers including Ethiop and Eritrea have taken different sides helping, supporting rival sub-clans and clans fighting to each other in Somalia for their own interests.⁷³

Thus the Somalia civil war has involved many players which turned it into regional and global conflict, players in the Somalia civil war include: the Arab League, the United Nations, the Africa Union, IGAD, Sudan, Egypt, Yemen, and al-Qa'ida the most active player in terrorist suicide bombing attack in Somalia. The Somalia State

⁷³ History of the Somalia Civil War available at <https://www.google.co.in/search?q=History+of+the+Somalia+Civil+War&oq=History+of+the+Somalia+Civil+War&aqs=chrome..69i57j0.2223j0j7&sourceid=chrome&ie=UTF-8> last visited on (18/3/2017)

has witnessed in its history a lot of conflicts with main regional Ethiopia and between the rival sub-clans with clan. The common characteristic of all the conflict happening in Somalia has turned into regional conflict between the Arab world and Ethiopia, and it has developed into religion war between Christians and Muslims. The current conflict in Somalia has got difference from the past conflict; it involved the global, continental, regional and local players with most significant role played in the conflict by radical Islam group.

The Somalia state officially is known as the Somali Republic and former name is the Somali Democratic Republic its location is between the India Ocean on the east and the Gulf of 'Aden on the north with longest coastline in Africa mainly at the coast of Africa East. Somalia state area resembles on the map to rhinoceros's horn where it referred to Horn of Africa with Ethiopia, Djibouti and Eritrea. It is bordered with Ethiopia on the west, the India Ocean on its East, the Gulf of 'Aden with Yemen on its north, Djibouti on the northwest and Kenya on its southwest. Due to its strategic location of the world's major trade route and maritime arteries has made Ethiopia and Arab world struggled over expanding their influence zones over Somalia, and it connects middle East and Europe with the far East, and on the shore of the Gulf of 'Aden and the India Ocean now across the Gulf of 'Aden from the Arabian Peninsula. The Ethiopian state constantly striven for an outlet to world commerce to the sea to control and has influence on its territory but Arabs from Egypt and Arabian Peninsula, control the gate for the proliferation of Islam influence especially at East Africa countries. The same strategic location of Somalia has developed into battlefield between the al-Qa'ida and the United States and also battlefield onwards unstoppable conflict between Ethiopia and Arab world.

4.2.2 Human Rights Violation in Somalia Civil War

In Somali civil war has lost a lot of lives of in Somali Country around 500,000 people have been killed according to Necrometrics in the civil war which started 1991. Somalia's civilians have experienced humanitarian's abuse in the hands of both fighting parties in long running conflict happening up to date.⁷⁴The government of

⁷⁴ Ibid 66

Somalia had pledged in 2016 for civilians' security improvement in the areas under its control by limiting bore results, and build capacity of rule of law in the country. The Islamist armed group Al-Shabab (youth) are the current warriors now in Somalia making targeting killing on civilians and civilian infrastructure especially with suicide bombings, improvised explosive devices (IEDs) making a lot destruction with devastating impact in the attack carried out by group or one person having suicide bombing. The civil war has led to extremely limited access to basic services and about over 1 million people internally displaced facing grave abuse of human rights and lack of humanitarians supply. The running civil war has involved clan fighting over resources, political power with Al-Shabab that is leading to civilian casualties and displacement because it forced evictions of all civilians in the affected areas in Somalia state.

Their international partners and Somali authorities have been on the electoral process greatly focused on it. The federal and regional authorities mainly detracted from progress in justice and security sector reform on the ongoing deadlines of political maneuvering and infighting around the electoral process. The human rights commission was established by president of Somali in August and was the positive step towards human rights protections in the war zone. The state of Somalia has failed to address violations against the internally displaced and attacks on journalists, among other serious abuses while the government has pledged its commitment to human rights protection during its Universal Periodic Review at the United Nations. The Somali government are using abusive tactic to sway media coverage both with the Islamist armed group Al-Shabab.

4.2.3 Abuses by Government and Allies Forces

There is a lot of arrest or detention done by Somali's national intelligence agency, NISA carrying out the conduct massive sweep despite having no legal mandate issued by the court of law. The NISA on occasionally beat suspect during interrogation and held the detainees for prolonged periods without charges or judicial review. The five members of a policy, Mogadishu Center for Research and Studies were arrested and detained for long period without charges or legal counsel and released them before 6 September.

The security force-NISA exploited the children to arbitrarily detained and recruited children as media reported that children in their custody as informants to identify Al-Shabab members, where all these allegations were corroborated with United Nations Investigation carried out found existing in Somalia state.

There is lack of international fair trial standards carried out by military court in Mogadishu to try case no legally under jurisdiction without legal proceeding to be carried out first which resulted into 64 people convicted for death sentence as the United Nations reported the finding in 2016. The large-scale Al-Shabab offensive attack carried out in Galmudug and Puntland as resulted into 43 people sentenced to death by military court charging them with association with Al-Shabab in those areas, in which 12 children were involved in death sentence confirmed by United Nations Mission in Somalia. The first eight months of 2016 according to United Nations report about 80,000 people were forced to evict their homes because of private actors, principally in Mogadishu and government forces also involved.

The creation of new federal states leading into the destruction of property, injury and civilian's deaths were caused by primary inter-clan and inter-regional fighting tensions around the country Somalia. In October 2016 the fighting broke out between Galmudug interim administration which was established in 2015 and Puntland forces, according United Nations report about 22 civilians were killed injured dozen and around 90,000 people were forced to leaves to their home in fighting.

4.2.4 Al-Shabab Abuses

There are targeted killing committed, executions, especially of those accused of spying and collaborating with the government and beheading of people carry out by Al-Shabab fighting the government of Somalia. There is severing restriction of basic rights in the areas under Al-Shabab control and continues to recruit children and severely administer arbitrary justice. Some young men and boy from Sakoow and

Buale who returned from Kenya's refugee camps have pressure from Al-Shabab and they were forced to join their group as a soldier.⁷⁵

There are a lot of casualties resulting from the frequent targeting attacks by Al-Shabab against civilian's structures and civilians in hotels, restaurants and school in Mogadishu. There was complicated attack done in the restaurant on January 21 2016 by Al-Shabab which led to the death of 20 people and dozens injured involved women and children. The restriction of movement of goods and assistance caused by Al-Shabab control and attacks over several supply routes and imposes blockages on towns captured by AMISOM and government forces. Al-Shabab target journalists in government areas and threatening them and prohibit media in its control.

4. 2.5 Abuses by Foreign Forces

The AMISOM and other foreign forces during operation against Al-Shabab and airstrikes attack were carried out indiscriminately killing number of the civilians. Another operation against Al-Shabab in Somalia's Bay region done by Ethiopia forces on July 17 2016 killed 14 civilians in the fighting area. The public, survivors and community have not received any compensation from the leadership of AMISOM so far as the public commitment for it. The January 15, 2016 attack on its base in El Adde resulted in major civilian's displacement, destruction of livestock and civilian property and death was carried out by Kenyan airstrikes in the Gedo region. The Kenya denied the use of cluster munitions in Gedo and the United Nations is serious concerned of it used and United Nations Security Council has called the troops contributing countries to track analysis research cell but this did not frequently occurred.

4.2.6 Sexual Violence

The government soldiers and militia force made internally displaced girls and women vulnerable to rape by armed forces the full scope of sexual violence in Somalia remains unknown and the proportion of the vulnerable women and girls is non-

⁷⁵Human rights watch, Somalia: Civilians at Serious Risk
Available at <https://www.hrw.org/news/2016/01/27/somalia-civilians-serious-risk> last visited on (19/3/2017)

existence. On the sexual exploitation and abuse was tried by AMISOM to strengthen its capacity to follow it with measures. The capacity remains at the headquarters' level within mission and limiting investigation of sexual abuse but gang-rape on two girls done by AMISOM soldiers was reported by United Nations Mission and the allegations were found groundless.

4.2.7 Displaced persons and Access to Humanitarian Assistance

There are currently 1.1 million people internally displaced in the Somalia state, around 400,000 people remain vulnerable and reliant on assistance of Human Rights in Mogadishu alone.⁷⁶ There are a lot of cases of abuse rapes and forced evictions against civilians living in the government controlled areas as Human Rights Watch and other organization solemnly documented it. The refugees returning from Kenya ended up in informal displacement camps which were done by United Nations as part of supported repatriation.

Due to insecurity, restriction imposed by the parties to the conflict and targeted attacks are the challenges faced by Humanitarian agencies accessing the needy population for help.

4.2.8 Attacks on Media, Human Rights Defenders, and Political Opposition

Al-Shabab, federal and regional authorities continue for harassment, intimidation and targeted attack on media.⁷⁷ Dozens of journalists were killed in 2016 like Sagal Salad

⁷⁶Human Rights Watch, Somalia Events of 2016, available at <https://www.hrw.org/world-report/2017/country-chapters/Somalia>, last seen on 20/03/2017

⁷⁷ Human Rights watch, Somalia events 2016,.Available at <https://www.hrw.org/world-report/2017/country-chapters/somalia> last visited on(20/3/2017)

Osman and Abdiaziz Mohamed Ali were killed by the unknown gunmen. The Somali authority hardly investigate the case of journalist killed, the government only prosecute the journalist associated with the Al-Shabab the government's intelligence arrest and take him for investigation and tried by the military court in the country. Hassan Hanafi journalist was sentenced to death for his association with Al-Shabab which killed five journalists by Al-Shabab. The President Hassan signed the latest new law of law of media which risks and hampering the freedom of expression with vague restriction on media. The Daljir FM Radio in Puntland was closed down for interviewing the critic of the government by the minister of information.

4.2.9 The Somaliland

It is part of Somalia country with its own independent government in the country like Mogadishu government. The government of Somaliland with their government and policies restrict public criticism a lot. One of human rights lawyer his license was revoked by minister of justice doubting his position as a lawyer and chairman of human rights organization were not incompatible and legal in the country. The regularly detention of journalist some resulted in criminal charges were later revoked and suspended and authorized the journalist rights by chief justice. Somaliland authorities have negative trend by executing seven people in 2016 and have not sufficient control to regulate private mental health centers the patients are subjected to beating chaining them up occasionally.

4.2.10 Key International Actors

The financial and other assistance to AMISOM, the United States paid the salaries of the Somali national army and United Kingdom is paying in the money contribution as the foreign and region partners provide financial assistance. The police forces and region security get their direct support for the donors. The Gulf States primary the United Arab Emirates increased their military and political support to Somalia in addition to Turkey's ongoing economic, humanitarian and political engagement. In 2016 the United States has significantly increased airstrikes and ground operations

against Al-Shabab. The United States Defense Department acknowledged a September 28 strike in November which had killed local militias not Al-Shabab members the targeted group instead. On the constant recruitment and use of child soldiers barring commercial arms sale and many other categories of military assistance for the 2017 fiscal year, has made the United States in September 2016 imposed partial military sanctions on Somalia state.

4.3 The Cause of Syria Civil War History

The Syria has been living with Minority collectively very much in harmony during the history of ancient and modern, Syria has played host to ethnic and religious. The original sense of “Greater Syria” what is known encompassed greatly of the Levant-today’s states of Lebanon, Syria, plus a portion of Turkey, Israel and Jordan. In Syria there are three major monotheistic religions Christianity, Islam and Judaism, Islam was found its way there very early in its existence and two were born in Syria. The Syria has been often battleground from foreign powers for its geopolitical position and brought it into several superpowers attention.⁷⁸

Right now the United States of America is standing with rebel group, last week the United States of America Donald John Trump bombed Syria airport with 59 missiles accusing the Syria government of manufacturing chemical weapons. The another superpower the Russian is supporting Syrian government which causes great fear of the Third World War happening soon, if they failed to reach agreement and involved another clash later. North Korea is warning United States not to interfere into its country affairs, like on last Sunday 16 April 2017 North Korea has launched five atomic missiles test after its has displayed all its missiles to the world on Saturday 15 April 2017. And the young leader Kim Jong-un of North Korea is warning the world of atomic war happening soon unless North Korea is respected.⁷⁹

The liberation of Syria from foreign occupation, the smaller minorities worked hands in hands with majority Sunnis to secure the real liberation and got their independence

⁷⁸ The Cause of Syria Civil War History available at <https://www.worldwatchmonitor.org/2013/08/what-caused-syrias-civil-war/> last visited on (21/3/2017)

⁷⁹ Ibid 73

in 1946. When a faction of military leaders from Alawites an Islamic section took power in 1970 the political situation in Syria started dramatic changed. They found themselves being ruled by one of their own minorities after several years being ruled by outsiders. The country was pushed into uncertainty and military conflict and started hoping the ruling family of Assads will bring freedom and stability of the country after 1950s and 1960s troubles. The president Hafez al Assad joined with Egyptian president Anwar al Sadat in the new war against Israel in 1973 just three years following his seized of power. There was division of the world, the United States of America back up the Israel and the Soviet Union supplied Syria and Egypt with arms. The heart of the bloodshed through direct and indirect military intervention caused by ruling minority dragged Syria into this situation.

The members of president own family and intelligence services were left to run Syria government while the president Hafez al Assad focused mostly on the foreign politics particularly the on-going conflict of Israel.

The beginning of the terrible corruption that has infected Syria started when the world trade was tightly controlled by the Assad regime and several benefitted from the Lebanese Civil War through establishing smuggling black markets and rings all over the Syria – Lebanese border with the support of many of those in power. Even the vegetables, fruits and daily products like butter, tea, sugar, bananas and tissues had to be smuggled into Syria from Jordon and Lebanon when smuggling became the norm and extremely closed economy of the Syria state. All people who took advantage of the corruption situation got closer to the Alawite regime when corruption intensified creating new upper class of people from all religions. The fomenting anger and hostility towards the regime and towards Alawites general was created by serious corruption that squeezed the middle class and deprived them of mostly their income. As the prominent politician of Syria quoted, “what is happening in current Syria is not just of merely the result of a minority ruling a majority. Some of those who are supported by external power would like the conflict to be seen in this way, but the changes th-e people demand, need and seek have nothing to do with Assad coming from a minority”.

The Assad regime became dictatorship silencing and eliminating the opponents, the regime has killed tens of thousands in the western city of Hama to silence and stop

Muslim Brotherhood of Sunni group. In 2000 the president Hafez al Assad died and his son Bashar al Assad living in London replaced him. He had married an intelligent and charming Syria-British woman who could transform the situation which his father had created, that was the general hope of all Syria people for a young president who studied in the west world London. But everything quickly slipped back to the old corrupt ways but indeed president Bashar al-Assad began to restore proper international trade and he started to reform the country at first attempt. The president Bashar al-Assad during his inauguration speech evaporated when he made promises of changing the country. The current source of tension and conflict now in Syria is not the problem of religion Muslim, Alawite and Druze are friends with different beliefs it never been the issue.

Sadly sectarianism has been imported from abroad; it has never been in Syrian lifestyle until it is recently taken from the foreign religion fanatic. The people needed radical reforms in Syria government and started protesting against the corrupt government that blighted every aspect of people's lives, no freedom in the Syria state. Some opposition seeks support from foreign governments in the region due to rigorous and sustained military actions against the protestors. The oppositions gained a lot of support from the foreign governments hoping that stepping down of the Assad regime in power would help them greatly and they offered financial and military assistance to the opposition military on the condition that no link with Hezbollah in South Lebanon and Iran. The Christians sadly are also targeted because they are wrongly seen being protected by Alawite but Sunni big religious leaders in abroad are calling to bring down the minority ruling group Alawites government by force.

The ruling minority over majority is the consequence of the government killing its own citizens today in Syria state. This has led to seeking external support to the opposition because it is seen as the way to free from the corrupt government. The great benefit of all Syrians will be the change from dictatorship, from corruption, from oppression to freedom this is what the Syrians people desire with all their hearts for democracy.

4.3.1 Human Rights Violation in Syria Civil War

The significant reduction of egregious violations of human rights and humanitarian law that have come to characterize the armed conflict, in 2016 the Russian and Greater United States engaged on Syria had tried their efforts to reach a political settlement but it definitely failed.

The worst humanitarian law and human rights law violated in the current civil war in Syria state death toll from the conflict of 2016 around 470,000 people have been killed according to the report of Syrian Center for Policy Research and the an independent Syrian Research Organization have found the exact number of the people are killed in Syria.⁸⁰ According to UN Office for the Coordination of Humanitarian Affairs report the fighting in Syria intensification has left dire humanitarians crisis with 6.1 million people internally displaced and 4.8 million yearning for safety looking for going abroad as refugees in safe countries which are in peace. An estimated 1 million people in mid-2016 were living in besieged areas denying them humanitarians aid and life-saving assistance. According to the Syrian New for Human Rights report more than 117,000 people have been disappeared or detained in the unknown places including 4,557 people who had detained in the unknown place in the months between January and June 2016. Thousands of people have died in the detention; ill-treatment and torture are rampant in detention facilities.

The responsibility of systematic and extensive violations of humanitarian law and human rights law including targeting civilians with artillery, executions and kidnapping people is in the hands of Islamic State (ISIS) and the former Al-Qaeda affiliate in Syria, Jabhat al Nusra, which they changed its name to Jabhat Fath al Sham. In Syria civil war not only the government is abusing humanitarian law and human rights law the Non-state armed group opposing the government involved also in torturing people, kidnapping, indiscriminate attacks against civilians, unlawfully blocking humanitarian aid and using child soldiers in their army.

⁸⁰Human Rights Watch ,Syria events 2016, .available at <https://www.hrw.org/world-report/2017/country-chapters/syria> last visited on (21/3/2017)

The United Nations finalized that Syrian government forces had used chemical weapons attack in Idlib in March 2015 in the fourth report released recently this year 2017, the Joint Investigative Mechanism between the organization for the Prohibition of Chemical Weapons (OPCW). Finally the last week chemical weapons used by Syrian government which triggered the United State President Daniel John Trump angry to fired the Syrian airport with 59 missiles on 6 April 2017. The Syrian government failed to respond to the critical query but could not identified the military units responsible for fights involved in the attacks carried out by Syrian military force. The conclusion was similar in that 2014 and 2015 attacks of the chemical weapons reported by the joint inquiry. In August 2015 on the areas held by opposition groups the Syrians government (ISIS) had used sulfur mustard gas during an attack.

For re-election of the United Nations member states carried out on 28 October 2016 Russian lost its seat at the Human Rights Council following failing to secure enough votes. The Russian is involved in possible war crimes and made several humanitarian relief organizations and human rights as well as Human Rights Watch had urged United Nations member states to hold Russian accountable for war crimes. In Aleppo in the months of September and October 2016 the Russian-Syrian coalition committed a lot of war crimes bombing the opposition controlled territory.

4.3.2 Targeting Civilians, Indiscriminate Attacks, Use of Incendiary Weapons, Cluster Munitions and Chemical Weapons

All parties to the conflict persisted during the year airstrikes and artillery bombing which led to the death of civilians in the country, little decreased following internationally brokered ceasefires in February and September 2016 have briefly reduced unlawful attacks on the civilians.⁸¹ Syria and Russian coalitions involved in airstrikes to target homes, markets, hospitals, and schools and indiscriminately strikes civilian areas using wide-area explosives flammable incendiary weapons, cluster munitions and barrel bombs.

⁸¹ Human rights watch, Syria events, available at <https://www.hrw.org/world-report/2017/country-chapters/syria>, last visited on (21/3/2017)

The Syria-Russian coalition has struck a lot of hospitals like the hit of al Quds Hospital and surrounding areas on April 27, 2016, resulted in the killing of 58 civilians and patients, the Human Rights Watch documented many attacks in 2016, on schools, homes, markets and medical facilities and appeared to be targeting strikes on the civilian's in daily attacks. In the areas controlled by opposition forces like Homs, Hama, Idlib and Aleppo there were many attacks on medical facilities especially in August alone. Upon the opposition attacks by the government forces controlled areas of opposition between July 2012 to August 2016, a lot of killing and injuring including children, in over 400 attacks carried out by government forces using at least 13 types of internationally prohibited and banned cluster munitions. The international banned cluster munitions have been extensively used by Syria-Russian Joint military operation which started on September 30, 2015. Many submunitions fail to explode and become de facto land mines that can explode, if disturbed even after several years but not clear, and that is why cluster munitions have been banned and outlawed by most countries since their submunitions fall over a wide areas, fail to distinguish between fighters and civilians.

At least 18 documented attacks on the opposition-held areas in Aleppo and Idlib between June 5 and August 10, 2016 the government forces with their allies rapidly resorted to the use of incendiary weapons. The Russian broadcasted footage of incendiary weapons used in the ground attack aircraft at a Syria airbase they used particularly RBK-500 ZAB-2.5SM bombs.

There are incendiary weapons that cause painful burns that are difficult to treat they induce a chain of chemical reactions that ignite fires which are tough to extinguish and cause excruciatingly painful burns. The Convention on Conventional Weapons protocol prohibiting the use of air-delivered incendiary weapons in areas with a "concentration of civilians in which big number of 113 countries including Russian (but not Syria) have already ratified that convention. Syria has determinedly ignored calls to sign the protocol and its military forces use of incendiary weapons has been documented since the end of 2012 and the Russian insists to deny its involvement in incendiary weapons attacks in Syria. Many barrel bomb attacks in violation of the Chemical Weapons Convention the government forces use toxic chemicals. Evidently on the residential neighborhoods in opposition controlled parts of Aleppo city on 10

August 2016 and 6 September 2016 the government forces' helicopter dropped destructive barrel bombs with toxic chemicals.

4.3.3 Unlawful Restrictions of Humanitarian Assistance

The worst thing that is happening in the areas controlled by opposition forces, the humanitarian aid since 2016 are blocked by government forces and cordoned off civilians no humanitarian aids can reach in them in their dangerous places. The humanitarian aids must obtain permit before accessing these areas from Syria government through bureaucratic approval system. The Syria government has removed life saving items from convoys as the United Nation secretary-general stated that even in areas allowed humanitarian aids by the Syria government. The United Nations stated that government prevented and stopped 80,000 medical treatment items from going into besieged areas in February, items including antibiotics, emergency health kits, diarrhea kits and other medicines. .

A lot of civilians are forced to leave their homes because of quick deteriorated of humanitarian aids conditions in the areas besieged by government and pro-government forces. On August 25 2016 after four-year siege residential areas of Daraya, Damascus countryside civilians were forced to evacuate the city. The killing of 20 civilians and one staff member as they unloaded truck on September 19, 2016 airplanes struck down a United Nations humanitarian aid convey and a Syria Red Crescent warehouse in Aleppo. According to Syria Red Crescent statements at least 78, 000 people got humanitarian aids mainly food and medical supplies were distributed to civilians. In advance the UN had received proper permits to cross from government-controlled Aleppo to parts of opposition held western Aleppo to deliver the aid the permission taken from Syrian government.

4.3.4 Arbitrary Arrest, Enforced Disappearances, Torture, and Deaths in Custody

In Syria state there is widespread and systematic arbitrary detention, ill-treatment, forced disappearance and torture inside a climate of impunity carried out by government forces of Syria. According to the local monitors at least 12,679 persons

dying in custody between March 2011 and June 2016 for the problem extensive widespread abuse, starvation, beating, torture and diseases. There were cases documented of sexual violence against female and male detainees by government official, reported in September 2016 by United Nations Independent International Commission of Inquiry on Syria distinguished that stigma and trauma underreporting sexual violence.

Again according to prisoners who spoke to Human Rights Watch the security forces of the government used excessive force to quell a riot which began on May 2016 within the Hama Central Prison.

Syria forces at a border checkpoint to Lebanon arrested the Judai Abballah Nawfal on April 2016 the director of the Syria Center for Civil Society and Democracy on his way home. Judai Abdallah Nawfal was first held by military intelligence and previously detained in 2014 and 1992 and prevented and banned to meet any family member and lawyer to defend him in court. Likewise notorious Quboun Syria Military police headquarter make closed-door proceedings with deficient in fairness arrested Bassel Khartabil a 34 years old the free speech advocate remains unconfirmed and unidentified information whether he might have tried by military court and sentenced to death punishment.

4.3.5 Jabhat al-Nusra and Islamic State (ISIS) Abuses

In the city of Manbij in northern Syria dozens of children and hundreds of civilians were injured and killed by the homemade landmines. Jabhat al-Nusra has formed Jabhat Faith al-Sham after announcing its splitting on July 2016 from Al-Qaeda group. In 2016 unlawful sieges, abductions, arbitrary detention, execution, and internally bombing civilian targets, Islamic State- ISIS- and Jabhat al Nusra were responsible for these abuses. Both groups have publicized their unlawful attacks and made it tough to obtain abuses of ISIS and Jabhat al Nusra because it was difficult for the independent monitors accessing the areas.

Islamic State (ISIS) announced that it was targeting places where 'Alawite gather' the ruling section of Syria group and it claimed all bombing and suicide attacks in Latakia governorate on May 23, 2016 responsible for them including the near bus stations and hospital. For Human Rights Syria observatory report about 145 civilians killed in the

attacks. Another media reports about 109 people killed and 235 injured including children in the sequence bombing of ISIS targeting the Shia religious site in Damascus and civilians neighborhood in Homs. The People's Protection Units (YPG) military forces and Kurdish police (the Asayish) in northern Syria, the ISIS claimed to have bombed Qamishli their place on July 27, 2016. About 48 people were killed and injured 140 others in the truck bomb exploded near a PYD security center.

The areas under ISIS they used discrimination and severe restriction on women and girls when conducting military operations and according to United Nations Independent International Commission of Inquiry on Syria report, they forcibly married Sunni women. Islamic State (ISIS) fighters come from Iraq and North Syria they used to capture women from Iraq and taken to Syria where they sexually enslave Yazidi women and children, murdered, tortured and rape.

In 2016 report the small boy of 15 years Deir al-Zour accused of gay and he was stoned to death, the ISIS also execute men accused of homosexuality in the areas under their controlled. According to the Syria Observatory for Human Rights report the ISIS has executed about 25 men who have been on top of suspicion of homosexuality or sodomy they were sentenced to death.

4.3.6 Abuses by Other Non-State Armed Groups

In the neighborhoods areas under the government controlled in Latakia, Idlib, Damascus and Aleppo, the Non-state armed groups have launched artillery strikes and indiscriminate mortar which killed a lot of civilians together with schools, mosques and markets being attacked repeatedly destroying civilian objectives instead of military objectives.

On Friday prayers in Aleppo city when Muslims were praying in mosque on April 29, 2016 the opposition armed group shelled the mosque killing 16 civilians and injured 41 people according to the Syria state news agency (SANA) report. The opposition armed group fired rockets on government held parts of the public part, al-Midan, the Electricity Company and al-Ramouseh and also hitting an Armenian church according to SANA as led to killing five people and 77 injured by opposition armed groups.

According to media report maternity hospital in a government held district of Aleppo on May 3, 2016 was hit by opposition armed group.

4.3.7 Areas under Kurdish Democratic Union Party (PYD) Control

In Northern Syria a local governance structure in huge parts is set up by the Democratic Union Party (PYD) to rule themselves independently. The people's Protection Unit (known as the YPG affiliated with the PYD) is still not meeting its commitment to demobilize children and stop boys and girls under the age of 18 in combating, the child soldiers in 2014 and 2015 despite some progress in the demobilization still the disciplining officer allowed the children to serve in YPG.

4.3.8 Displacement Crisis

In the International Humanitarian Aids funding has been further aggravated by shortfall despite relentless airstrikes, both externally and internally displacement, forced disappearances have exacerbated a displacement, arbitrary detention, torture, ill-treatment and widespread and systematic shelling. Jordan, Turkey and Lebanon sought to curb the massive inflow of refugees with unlawful administrative even physical barriers and legal entry to their countries.

The Lebanon early 2015 has imposed visa-like restrictions for Syrians seeking entry and maintained stringent residency renewal regulations, negatively impacting refugees' access to education, access to healthcare and freedom of movement despite the a bilateral open-door treaty signed between Lebanon and Syria in present of all international community.

Only in summer period when the Jordan state allowed 20,000 people of Syrians entry for security screening but Jordanian border during the year has been blocked the entry of migrants and asylum seekers along the eastern border of Syria. In Jordan border doesn't allow to enter except for one delivery of aid lowered from a crane early August, 2016 but the border was blocked even humanitarian assistance to nearly 70,000 Syrians stranded at the border because of ISIS attack on June 21, 2016 on the Rukban crossing which led Jordan to stop Syrians.

Likewise Turkey border authority had blocked the border and pushed back asylum seekers and refugees and Turkish border authority killed 5 Syrians seeking asylum smuggling illegally including children trying to enter the country. In discussing 2016 supporting Syria funding money raised over US\$ 12 billion and half and the conference was held in London on February 4, 2017. The increase in resettlement places for refugees was not commitment of attending countries of UNHCH's Geneva Conference on March 30 2016.

Several Syrian refugees chose to attempt entering into European Union by sea because of restrictions on access to the European Union by land was hard and lengthy procedures, limited number of resettlement places and coupled with dwindling aid resources civilians preferred moving by sea.

4.3.9 Key International Actors

The International Syria Support Group held peace talks to resolve the conflict of Syria some bilateral meetings between the Russian and United State were resuming because the United Nations Security Council failed to bring the meaningful action against Syria state. Finally date 6 April 2017 the United States of America fired the Syria Airport with 59 missiles accusing Syrian government of manufacturing chemical weapons banned by the international community.

A cessation of hostilities collapsed rapidly which negotiated for the ending in February 2017 for decreasing civilians casualties which was seen better to civilians. An airstrike hit a United Nations aid convoy killing at least 20 people has broken another cessation of hostilities negotiated in September 2016. Security Council resolutions demanding safe and unhindered humanitarian access are constantly violated by Syria government including aerial shelling and bombardment, such as the use of barrel bombs, including across conflict lines and across borders, that all parties cease 'indiscriminate employment of weapons in populated areas' the practices of disappearance and release of everyone who has been arbitrary detained, arbitrary detention and abduction of civilians.

Russian along with the Iranian governments continued to provide the Syrian government with military assistance which is discouraging the steadily or pre-emptive

rejecting suggestions for meaningful Security Council action to curb violations of humanitarian law and human rights law by the Syrian government.

In Syria and Iraq the United States leads the coalition of other states targeting Islamic State (ISIS). After ISIS claimed a sequence of attacks in Paris the France promised to increase its airstrikes in ISIS controlled areas. The Syria Commission of Inquiry was mandated to conduct and make comprehensive, independent special inquiry into the events in Aleppo, identifying perpetrators of alleged violation and abuse, and report to the council no later than March 2017, when United Nations Human Rights Council has held on October 21, 2016 the special session to discuss the grave human rights condition in Aleppo, adopting a resolution which call for an end to aerial bombardments, affirms the need for humanitarian access, highlights the require for accountability.

4.4 The Effect of Human Rights Violation in South Sudan in Civil War

In the Republic of South Sudan's civil war that began in the year of 2013 started for power struggling among the senior politicians base on the big tribes' advantages between Dinka the largest tribe in South Sudan and Nuer the second larger tribe in the same South Sudan. The conflict has claimed more than 10,000 people lives and continues up to date.⁸² A lot of sever abuse of humanitarian law and human law against civilians is rampant done by both parties in the war, the government forces SPLA and the oppositions forces SPLA-IO fortunately the peace agreement was signed on 17 August, 2015 but there was another fight in the capital city Juba in July 2016 after peace agreement. In July, 2016 fighting both sides committed a lot of abuse against civilians around Juba and other areas, government forces killed, tortured and raped people during counterinsurgency operation in the Southern and Western parts of the country and the soldiers were destroying with pillaging civilian property. The recent war in Juba July 2016 has forced 200,000 citizens fled their homes bring to

⁸²Human rights watch, World Report 2015: South Sudan
Events of 2014, available at <https://www.hrw.org/world-report/2015/country-chapters/south-sudan> last visited on (23/3/2017)

total 2.4 million displaced in the country and the people of disabilities have face grave abuse of their humanitarian law and human rights violated by soldiers.

When peace agreement was signed on August 17, 2015 the rebel leader Dr. Riek MACHAR came back to capital city Juba and they created the national unity government and Dr. Riek Machr was appointed as First Vice President of the Republic of South Sudan. In the July 2016 fighting the former First Vice President Dr. Riek Machar fled the country to different countries currently in South Africa. The remaining group of opposition- Sudan People Liberation Movement SPLM-IO suggested to President Salva Kiir Mayardit to appoint Gen. Taban Deng Gai (former Chief Negotiator of peace agreement) to replace Dr. Riek Machar to stop massive war again leading to genocide. The president Salva Kiir accepted their suggestion and he appointed Gen. Taban Deng Gai as the First Vice President of the Republic of South Sudan follows by Vice President James Wani Igga.

In November 2016 the United Nations Special Advisor on the Prevention of Genocide in South Sudan warned the public that the ongoing conflict had transformed into ethnic, warning of potential genocide to happen if there is no serious solution obtain. The current conflict is fuelled up by lack of accountability in sever crimes committed by both sides in war. No hard investigation ever done to lead to a concrete and lasting accountability measures by the government. The Africa Union and the South Sudanese government are obliged to form hybrid court envisioned by the peace agreement but not yet established to investigate and prosecute international crimes committed during the recent conflict of 2016.

4.4.1 Attacks on Civilians and Civilian Property

After July 2016 fighting in the capital city Juba the rebel groups clashed with government forces and conducted counterinsurgency operations in the Western Bahr el Ghazal region and Equatoria region. In the military operations carried out in towns of Yei, Yambio, and Wau soldiers used targeting killing of dozens of civilian base on ethnicity of the population and committed range of others abuses including torture of detainees, sexual violence, enforced disappearance, and arbitrary detention in poor conditions and beating the detainees. Thousands of civilians were forced to flee

because soldiers burned their homes and pillaged civilian property. In different other locations in the Equatoria region the government forces clashed with rebel forces but still abuses against civilians were carried out. In Western Bahr el Ghazal- Wau there was a tension when the President Salva Kiir Mayardit in June 2016 sacked Elyas Waya Nyipuch for criticizing abuses committed by the army over civilians and he was jailed at the same time.

In Juba clashed from 8 to 11 July 2016 after opposition leader Dr. Riek Machar was defeated and fled the city the president declared ceasefire in his government with remaining opposition- SPLM/A-IO members. In July fighting a lot civilians were killed and injured due indiscriminately firing and shelling in the populated areas in Juba. The patients were forced to be relocated because the main United Nations compound in Juba was hit by shelling destroying a clinic for patients. After the July fighting the movement of United Nations Mission in South Sudan (UNMIS) peacekeepers was controlled by Sudan People Liberation Army (SPLA) the national army.

A United Nations base hosting more than 45,000 particularly Nuer and Shilluk displaced people were attacked killing at least 30 civilians on February 17 and 18, 2016 in Malaka- Upper Nile State by armed group of Dinka SPLA. More than thousands shelters were burned to the ground systematically by the attackers. The armed Dinka SPLA uniforms had been held responsible for the use of violence and destruction and had breached the United Nations Compound stated by United Nations special investigation.

4.4.2 Sexual and Gender-Based Violence

In July 11, 2016 fighting a lot government soldiers attacked a residential compound in Juba soldiers made gang raped and raped many women, they beat national staff of humanitarian organization, executed a prominent Nuer journalist when Dr. Riek Machar retreated from the capital city Juba to the bush.⁸³ Hundreds women were raped mostly Nuer displaced women near the main United Nations base in Juba by government soldiers after the day of ceasefire announced by President Salva Kiir

⁸³ Human Right Watch , South Sudan events 2016 ,available at <https://www.hrw.org/world-report/2017/country-chapters/south-sudan> last visited on (23/3/2017)

Mayardit. Government soldiers raped girls and women selected as targets based on their ethnicity in parts of the country as additionally reported. Many people failed due to insecurity and limited availability of services but some survivors were able to access basic mental healthcare and physical. No prosecution for the sexual violence crimes committed in July 2016 by SPLA soldiers was carried out by the government court.

4.4.3 Recruitment and Use of Child Soldier

Since the beginning of the conflict 2013 both opposition forces and government forces recruited and exploited child soldier. More than 2,500 children are recruited or used mostly by government forces as reported by United Nations secretary-general in April on the children and armed conflict distinguished a sharp increase in the number of incident of child recruitment. The opposition forces also carry out recruiting and using children with its aligned forces.

In August 2016 the affiliated politicians to government in Unity State forcibly recruited children without their will as the United Nations Mission reported hundreds of children were recruited. Also in Western Equatoria and Western Bahr el Ghazal regions the opposition fighters reportedly used child soldier in their forces. Children were prevented from accessing the premises of school and attending classes because soldiers or armed actors regularly use schools as their homes.

4.4.4 Restriction of Freedom of Expression

There is a lot of harassment, arbitrarily arrestment, detention and intimidation on the journalists carried out by National Security Services (NSS) authorities particularly by

South Sudan's government.⁸⁴ Evidently Joseph Afandi the prominent newspaper writer of *the Arabic daily Al-Tabeer newspaper* in March 2016 has being abducted by security forces and found beaten bearing signs of torture in a Juba cemetery. Another journalist with Al-Maugif newspaper Mr. Malek Bol on October 2016 was later dumped at graveyard after he was abducted for two days with serious torture on him. One of journalist publishing a op-ed calling for the replacement of the South Sudan leadership on date 16 July 2016 Mr. Alfred Tanan, a veteran journalist and editor of *the Juba Monitor newspaper* was arrested and detained for 13 days. For the day resulting to his arrest his newspaper was shut down immediately. On September 14, 2016 for publishing texts critical of President Kiir Mayardit by *the Nation Mirror newspaper* it was shut down indefinitely. The security forces harassed and threatened the civil society actors. The government threatened to shut down or deny registration to a number of civil society organizations including the South Sudan Action Network on Small Arms (SSANSA) and the Community Empowerment for Progress Organization (CEPO) shortly before a visit to South Sudan - Juba by the UN Security Council in September.

4.4.5 Legislative Developments

There was fear raising from the new division of 10 states and increased them to 28 another 4 states added by the President Kiir Mayardit decision by giving republican decree in December 2015 which was contested by Dr. Riek Machar when he returned to capital Juba not in his interest leading to the new clashes that happened in July 2016. Another bill was passed amid controversy which gives the government sweeping powers to shut down, regulate and seize assets of non-government and civil society organizations based on declaration or activities deemed politically by the South Sudan Legislative Assembly on February 1, 2016.

4.4.6 Accountability and Justice

The government has rarely made the reports on such investigation publically, acted on their recommendations, thoroughly investigated and held perpetrators to account in

⁸⁴ The state of World human rights – amnesty international, available at https://www.hrw.org/sites/default/files/wr2014_web_0.pdf last visited on (24/3/2017)

civil court despite official investigations ordered by President Kiir Mayardit in alleged crimes and human rights violations committed in July 2016 by soldiers in Juba, Wau and Malaka.⁸⁵ In accordance to human rights norms the government has failed to prosecute soldiers for crimes committed against civilians in civilian courts. Their trials did not reach international fair trial standards despite two dozen soldiers were tried for crimes committed in Wau and Juba in July and August 2016 clashes. Because the accused were barely investigated prior to their trial and the victim could hardly access the proceedings. Military court for murder in Wau at the end of July 2016 they were convicted to death. In the August

Only two soldiers of SPLA reported were executed by a 2015 peace agreement there is article that allows special court to investigate also prosecute international crimes committed in the conflict but the African Union Commission has yet to establish the hybrid court envisioned in peace agreement. The UN Security Council visited Juba after fighting in July 2016 but the government expressed renewed commitment to court judgment over perpetrators on human rights and humanitarian law.

4.4.7 Key International Actors

The implementation of the peace agreement signed in August 2015 the Intergovernmental Authority on Development (IGAD), as well as the European Union, United States, China, Norway and the United Kingdom continued to monitor peace agreement to provide stabilities in the country.⁸⁶ The UN human rights commission to South Sudan was created to monitor the human rights situation and efforts to promote transitional justice established on March 2016 by UN Human Rights Council. Peacekeepers of UNMISS struggled to protect civilians outside their compounds and continued to shelter more than 200,000 civilian who fled their homes due to July 2016 fighting in the capital city Juba.

⁸⁵Human rights watch , South Sudan events of 2106,.Available at <https://www.hrw.org/world-report/2017/country-chapters/south-sudan> last visited on (25/3/2017)

⁸⁶The African Union looks forward to the early signing of the Peace Agreement on South Sudan by the government of the Republic of South Sudan – available at: <http://www.peaceau.org/en/article/the-african-union-looks-forward-to-the-early-signing-of-the-peace-agreement-on-south-sudan-by-the-government-of-the-republic-of-south-sudan#sthash.F8HNtTVz.dpuf> , last visited on (26/3/2017)

Throughout 2016, amid increasingly hostile rhetoric against the international community marked raised in attacks against the property and staff of UNMISS and humanitarian organizations. The deployment inside UNMISS of 4,000 strong Regional Protection Force (RPF) tasked with protecting civilians and key infrastructure in the capital city Juba were ordered by UN Security Council to be added in August 2016. Should South Sudan carry on to restrict the movement of UN peacekeepers or blocked the deployment of the RPF South Sudan State was threatened by UN Security Council to imposed an armed embargo. But South Sudan did not welcome that proposal of UN Security Council of RPF up to now no new soldiers of UNMISS have come to South Sudan despite the official acceptance by the state government.

The UN secretary-general sacked the Kenyan force commander for UNMISS in October damning report from an independent UN investigation into the peacekeepers' failure to respond to the July 2016 crisis in Juba. The whole contingent mission of Kenya in UNMISS was pulled out by Kenyan government as the retaliation. The peacekeeping mission continued obstructed by government forces also authorities as reported by UN secretary-general. There was announcement in November that would a proposal for an arms embargo over South Sudan, as well as extra targeted individual sanctions were suggested by United States Mission to the United Nations. That proposal happened last month but Security Council had to approve draft resolution but the United States Mission to United Nation proposal was voted out last month by UN Security Council.

4.5 The Common Comparative Study of Human Rights Violation in Civil Wars of Somalia, South Sudan and Syria States

There is gross violation of human rights law and humanitarian law done by both rebel forces and government forces. In Somali civil war has lost a lot of lives in Somali Country around 500,000 the civil war which started 1991.⁸⁷ Somalia's civilians have experienced humanitarian's abuse in the hands of both fighting parties in long running conflict happening up to date.

⁸⁷In Somali civil war, available at <http://www.globalsecurity.org/military/world/war/somalia.htm> last visited on (16/3/2017)

The Islamist armed group Al-Shabab (youth) are the current warriors now in Somalia making targeting killing on civilians and civilian infrastructure especially with suicide bombings, improvised explosive devices (IEDs) making a lot destruction with devastating impact in the attack carried out by group or one person having suicide bombing. The civil war has led to extremely limited access to basic services and about over 1 million people internally displaced facing grave abuse of human rights and lack of humanitarians supply. The running civil war has involved clan fighting over resources, political power with Al-Shabab that is leading to civilian casualties and displacement because it forced evictions of all civilians in the affected areas in Somalia state.

In Syria civil war the humanitarian law and human rights law are violated in the current civil war death toll from the conflict of 2016 around 470,000 people have been killed according to the report of Syrian Center for Policy Research and the an independent Syrian Research Organization have found the exact number of the people are killed in Syria. According to UN Office for the Coordination of Humanitarian Affairs report the fighting in Syria intensification has left dire humanitarians crisis with 6.1 million people internally displaced and 4.8 million yearning for safety looking for going abroad as refugees in safe countries which are in peace.⁸⁸

The Syria civil war involved a lot of parties causing humanitarian law violation including super powers United States and Russian and Syria Government against the rebel societies. The Islamic ISIS is part of Syria civil war using targeted killing against civilians and indiscriminate attacks. While super power state use of incendiary weapons, cluster munitions and chemical weapons violating the law set to govern the use of the big destructive weapons ban by the whole the world earlier.

In the Republic of South Sudan's civil war that began in the year of 2013 for power struggling among the senior politicians base on the big tribes resulted into dead of 10,000 people and displaced more than 2.7 million people in the country. A lot of sever abuse of humanitarian law and human law against civilians are rampant done by both parties in the war, the government forces SPLA and the oppositions forces SPLA-IO. The civilians have suffered in fighting zones targeting their tribes especially Dinka and Nuer. Both sides committed a lot of abuse against civilians

⁸⁸The human rights watch , Syria events of 2016, available at <https://www.hrw.org/world-report/2017/country-chapters/syria> last visited on (17/3/2017)

around Juba and other areas, government forces killed, tortured and raped people during counterinsurgency operation in the Southern and Western parts of the country and the soldiers were destroying with pillaging civilian property. The recent war in Juba July 2016 has forced 200,000 citizens fled their homes bringing to total 2.4 million displaced in the country and the people of disabilities have face grave abuse of their humanitarian law and human rights violated by soldiers.

All these three states have restricted freedom for expression which disappearance, torturing, detaining and killing of the prominent journalists of their states. These states are not complying with Universal Declaration of Human Right and the United Nations laws.

CHAPTER 5

INDIAN INSURGENCY (INTERNAL DISTURBANCE)

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5.1 Background

The official name of India is the Republic of India in South Asia and it is the second most populous country with 1.3 billion of people in the world. The Republic of India is seventh largest country of area in the world. The India country is bounded with Arabian Sea in the southwest and India Ocean in the south direction of the country and Bay of Bengal at southeast. The Republic of India shares the borders with Myanmar (Burma) and Bangladesh to east, Bhutan, Nepal and China to the northeast, Indian Ocean at the south of the country and Pakistan to the west. The Republic of India is in the vicinity of the Maldives and the Sri Lanka. The Republic of India shares maritime border with Indonesia and Thailand at Nicobar Island and Andaman.

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The goodness that India enjoys is that the Republic of India had never gone into the big civil war like what is happening now in Syria, Somalia, South Sudan and the rest of the countries having devil civil war. The Republic of India is sometimes involves in others states' civil war for help in the agreement with that state and involves in the international organization like United Nations where two peacekeepers Indian soldiers were in South Sudan civil war in 2015.

The Republic of India had conflict with some small military movements but India has strong democracy and with big army in which no small movement can claim war

⁸⁹The Republic of India Office of the Registrar General & Census Commissioner, India available at <http://censusindia.gov.in/> last visited on (23/4/2017)

against India state, end up with some security agencies and police forces always to solve the problem at easy. The Republic of India had experienced dying of its citizens during the partition of in India in 1947. The India was one country comprised of Pakistan and India before 1947 under British Government. The British India Empire had seen a lot of differences in the country base religious demographics between Muslims at northern side of country and Hindu in the southern side of the country. The British separated Pakistan from India, on the process of dividing Muslims and Hindu people had resulted into the death of 1 to 2 million people and displaced 12 million people.

The Republic of India involved in conflict with Pakistan and the local population of Jammu and Kashmir sometimes. The partition of British India in 1947 into modern and Pakistan has created the conflict between these two states each state claiming to have power over Kashmir and Jammu. Subsequently both countries claim base on the history, religion and political affiliations of the people of Kashmir and Jammu. The princely state of Jammu and Kashmir was formerly ruled by Maharaja Hari Singh under the paramount of British India, it lies strategically in the north-west of the subcontinent border bordering China and Afghanistan. But now Muslim majority Kashmir Valley are seriously abused according to surveyed districts of Muslims because they desire their own independent state is their strongest ambitions. The Indian forces tortured, disappearance and extra-judicial executions these are serious abuse of human rights in Kashmir carried out by Indian forces and they were seriously condemned by several human rights organization like Amnesty International and Human Rights Watch (HRW).

The India had involved in the conflict in 1984 with the Khalistan movement is a Sikh Nationalist movement, which seeks to create a separate country called Khalistan (Punjabi the Land of the Pure) in the Punjab region of South Asia. Khalistan the proposed country territorial definition ranges from Chandigarh the capital city of Khalistan, Kutch, half Rajasthan, some parts of Gujarat, Himachal Pradesh, Haryana, Punjab and some neighboring states of Indian. The traditional homeland of Sikhs has been the Punjab region.

Sikhs movement assassinated the Indian Prime Minister as revenge of what Operation Blue Stars did in Punjab region in the Golden Temple when the soldier of Prime

Minister killed the leader militants in the Golden Temple. In the capital city New Delhi in retaliation for Operation Blue Star operations carried out in “the Golden Temple” on the morning of 31 October 1984 Indira Gandhi was shot dead by two Sikhs security guards (Beant Singh and Satwant Singh). This resulted into massacre of Sikhs and was carried out by anti-Sikhs riots that claimed 10,000 lives of people.

The Republic of India had also involved in the conflict of Sri Lanka civil war when India offered forces to completely disarm the militants LTTE in Sri Lanka but unfortunately Indian forces failed and they were withdrew in 1990. The Liberation Tigers of Tamil Eelam (LTTE) were separatist militant organization fighting for independent homelands for Sri Lanka’s Tamil minority in northern Sri Lanka well known as the Tamil Tigers. The late 1980s was the dominant Tamil militant group in the Sri Lankan and Velupillai Prabhakara founded the group in 1972. The Sri Lankan government declared an all-out offensive against the LTTE in 2006 after a number of failed negotiations. Between the LTTE and the Sri Lankan government in May 2009 the LTTE were defeated by the Sri Lankan government force and killed the leader Prabhakara with estimated 70,000 people were killed during the conflict.

The LTTE used to assassinate the big political leaders including the assassination of Sri Lankan President Ranasinghe Premadasa in 1993 and the former Indian Prime Minister Rajiv Gandhi in 1991 these deaths have been carried out by LTTE with number of high-profile of assassination.

5.2 Partition of India in 1947

The India was one country comprised of Pakistan and India before 1947 when there was no partition under British Government. The British India Empire had seen a lot of differences in the country base religious demographics between Muslims at northern side of country and Hindu in the southern side of the country. There was heated debate for solution of the country because Muslim members in the political wing wanted the country to be ruled by Muslim member whiles the same the majority Hindu religion wanted the country to be ruled by Hindu member. All Muslims elements were demanding their own independent state Pakistan from India that was last resort to be free with their own religion Islam in their country. Because

indifferences between religions led the creation of two sovereign states the Union of India (later Republic of Indian) and the Dominion of Pakistan state (that later split into the Islamic Republic of Pakistan and the People's Republic of Bangladesh). The Pakistan came into existence before the date of partition, it came to existence date 14 August, 1947 and the following day 15 August, 1947 was the selected date by Indian Independence Act 1947 as the independence of India state.

The British India Empire came to an end of the British Raj as the result of dissolution of Empire by partition of India between the Pakistan and India.⁹⁰ The newly constituted states of Pakistan and India resulted into struggle and displaced most estimated of the numbers of people who crossed the boundaries between Pakistan and India displaced was around 12.5 million and almost 1 to 2 million people died on the way crossing border between. There was massive evocation done to exchange Hindu families in Pakistan to India and Muslim families in India to go to Pakistan caused a lot suffering among the civilians travelling to different state as the whole family without any properties carried. That partition has created atmosphere between Pakistan and India remained hostile up to day.

Any way the partition violence that erupted was popular but can't be considered as a general phenomenon because the large-scale organization did not involve, the violence was clearly underline the organized and planned character attacks by small number of people making their revenge to their people they lost on the other state whether in India or Pakistan. There were some involvements of private armies such as the Rashtriya Swayam Sevak Sangh (RSS), the Akal Fauj and Muslim League National Guard they were killing civilians on the way. The state didn't participate in the violence because political leadership rejected involvement in the violence.

The partition was done to stop genocide between Hindu religion members and Muslims-Islam religion members and to give political, economic and social peace to all civilians in two states India and Pakistan but it resulted in contrary condition making themselves the enemy states for life.

⁹⁰PAUL R. BRASSd, The partition of India and retributive genocide in the Punjab, 1946–47: means, methods, and purposes1, on Journal of Genocide Research (2003), 5(1), 71–101, available at :<http://faculty.washington.edu/brass/Partition.pdf> , last visited (24/4/2017)

5.3 The Conflict of Jammu and Kashmir

Early History

The partition of British India in 1947 into modern India and Pakistan has created the conflict between these two states each state claiming to have power over Kashmir and Jammu. Subsequently both countries claim base on the history, religion and political affiliations of the people of Kashmir and Jammu.⁹¹ The princely state of Jammu and Kashmir was formerly ruled by Maharaja Hari Singh under the paramount of British India, it lies strategically in the north-west of the subcontinent border bordering China and Afghanistan. The Maharaja was asked to join either one of the two new countries according to geographical legal terms. The leader was requested to determine the future of his state before transfer of power took place, but in October 1947 Pakistan made incursions leading to division of Jammu and Kashmir between India and Pakistan.

5.3.1 The Beginning of the Conflict

The partition of India 1947 created the territorial conflict of Jammu and Kashmir between India and Pakistan. These two states India and Pakistan had fought for three wars including the Kargil war and Indo-Pakistani Wars of 1947 and 1956 but China had played little role in these wars. These two countries involved in several skirmishes over control of the Siachen Glacier.⁹²

In 2010 administration of Jammu and approximately 43% of the region was claimed by India the entire area of state of Jammu and Kashmir. The India state controlled the Siachen, Ladakh, Kashmir and Jammu areas. Pakistan state contested the India claims approximately 37% of Jammu and Kashmir administration is in Pakistan control such as Gilgit-Baltistan and Azad Kashmir areas are ruled by Pakistan state. The Aksai Chin region, the Shasgam Valley and the Demchok district are currently under China

⁹¹Kashmir: Why India and Pakistan fight over it available at <http://www.bbc.com/news/10537286> last visited on (25/4/2017)

⁹² the Origins of the Kashmir Conflict, available at <https://www.thoughtco.com/origins-of-the-kashmir-conflict-195474>, last visited on (23/4/2017)

administration. Aksai Chin region was taken during the Sino-India War of 1962 and China claimed over these territories disputed with India since.

The current conflict of the Indian government and the Kashmir insurgents is tied with local autonomy to independent from the Indian government claiming of having different religion and culture because 95% population in Jammu and Kashmir are Muslim-Islam faith. The fact that they incited and supported by Pakistan state inviting them to join Islam State Pakistan to feel free, in the religion and share Pakistan's wealth with the people of Jammu and Kashmir. The people of Jammu and Kashmir are demanding their independent because they claim that Indian government is not taking good care of them because their faith Islam it prefers independent state.

The Indian military have been active in Jammu And Kashmir State since 1989 it was created by Indian government to voice Kashmir's dispute and grievances. The conflict has become less deadly in the recent years despite thousands of people have died as a result of the turmoil in Jammu and Kashmir. In 2008 election despite of calls by separatist militants for boycott general it was fair as regarded by the United National High Commission for Refugee good number of voters turnout for voting.

Many human rights abuses and acts of terror against Kashmir's civilian population including enforced disappearances, extrajudicial killing, torture and rape have been committed by Indian forces. The Indian forces crimes are not comparable with the crimes done by militants to civilians of Jammu and Kashmir. There have been military court martial held but according to Amnesty International as of June 2015 no member of the Indian military deployed in Jammu and Kashmir has been tried for human rights violations in a civilian court. The constant delivery of justice and prosecution of security forces personnel must be held in court civilians and that move was welcome by Amnesty International to be cautioned in justice to civilian population. The Indian government has refused to prosecute the perpetrators of human rights abuses and a lot of crimes committed by Indian forces in Jammu and Kashmir State as Amnesty International accused the Indian government.

The Kashmir has different constitutional status to other Indian states because Kashmir accession to India was Provisional and conditional on a plebiscite. Article 370 of Indian constitution gives special status and limited sovereignty as stated in October 2015 by Jammu and Kashmir High Court that "article 370 is permanent and Jammu

and Kashmir did not merge with India the way other princely states merged with other states but retained special status and limited sovereignty”.

5.3 2 Nehru’s Plebiscite Offer

India could not hold Kashmir “at the point of bayonet” with India’s abridged authority in Kashmir Nehru decided that settle must be found. Kashmir people have their own right to decide their own future as Nehru asserted several times since 1947 the time of India partition. The plebiscite option in discussion with Pakistan started in July 1953 and he made renewed push. He proposed that a plebiscite administrator be appointed within six month in August 1953. The plebiscite administrator must not come from major powers that were another condition thought not objection on that conditions. He suggested that the plebiscite could be held in all regions of the state and the state would be partitioned on the basic of the results, he decided it when reversing his earlier policies. The free vote was allowed, he was open to different approach to the scaling back of troops in the state. By now Pakistan was moving different direction was pursuing American military aid and the Pakistan sent delegation to Washington to get much military equipment after two days of Liaquat Ali Khan’s assassination which led to plebiscite offer withdrawal.

5.3.3 Operation Gibraltar and 1965 Indo-Pakistani war

In 1947 the Pakistan failed in the war and resorted to supporting numerous covert cells in Kashmir using the operative based in New Delhi embassy after United States military in 1950s had studied guerrilla warfare with the engagement of United States Military support to train the soldiers. In 1965 the code named Operation Gibraltar after they decided that conditions were ripe for Kashmir war success in their hands ready and they dispatched into Kashmir India-administration.⁹³

The decided to incite the infiltrators with the local populace and mingle with public for rebellion be accepted by public majority. They planned the guerilla warfare would started to destroy highways, tunnels, bridges, also airfields and Indian Army Installations making it difficult for an armed insurrection in Jammu and Kashmir.

⁹³ Ibid 87

The Kashmir did not revolt and the Operation Gibraltar ended in the failure and they turned infiltrators to the Indian authority and the Pakistan Army regulars ended up fighting with the Indian Army. International media contradicted the Pakistan claimed that the captured men were Kashmir freedom fighters against Indian government. The Pakistan launched an attack across the Cease Fire Line to cut Indian communication into Kashmir by targeting Aknoor. India Launched an attack on Pakistani Punjab across the international border after the India broadened the war.

The war between India and Pakistan ended up into Tashkent Agreement on a condition not interfere into each other's internal affairs and they agreed both sides withdrew to their pre-conflict positions.

5.3.4 1971 Indo-Pakistani War and Simla Agreement

In 1971 Indo-Pakistan war the Pakistan lost war against India and its military surrendered at eastern Pakistan leading to creation of Bangladesh as separate state with help of Indian state.⁹⁴ India pushed for peace in South Asia and bilateral summit was held at Simla following the war. India was ready to return 90,000 prisoners of war held in Bangladesh on the condition on exchanged for a durable solution to the Kashmir problem. The negotiations at Simla were painful and tortuous and almost broke down as the Diplomat J.N.Dixit stated in the peace agreement talks. The "Line of Control" was formulated and signed in the Simla Agreement by two countries whereby the countries resolved to settle their differences in peaceful negotiation and maintain sanctity of Line of Control. The two sides would meet again for durable peace as stated in Simla Agreement negotiations.

5.3.5 Human Rights abuse in Jammu and Kashmir

Indian forces in Kashmir abuse human rights by committing rapes and extrajudicial killings. The crimes committed by Indian forces cannot be compared with the crimes committed by Militants also. In Kashmir Valley which is the location of the present

⁹⁴1971 Indo-Pakistani War and Agreement available at https://en.wikipedia.org/wiki/_Agreementlast last visited on (23/4/217)

conflict a lot of crimes are done there by state forces.⁹⁵ Over human rights abuses was 43% in the entire state of Indian administered Jammu and Kashmir found in the 2010 Chatham House opinion poll in Jammu and Kashmir State. There was a high rate of the concern over human rights abuse about 55% in Badgam, 73% in Anantnag, 87% in Srinagar and 88% in Baramulla because Muslim majority Kashmir Valley were seriously abused according to surveyed districts of Muslims because they desire their own independent state is their strongest ambitions. The torture, disappearance and extra-judicial executions the abuse of human rights in Kashmir carried out by Indian forces were seriously condemned by several human rights organization like Amnesty International and Human Rights Watch (HRW). There are wide powers given to destroy property, the right to shoot to kill, arrest in counterinsurgency operation all these rights are granted to military by Armed Forces Special Power Act. When nation security is at risk from armed combatants the troops need such power only deployed at that situation as officials claimed it.

5.3.6 Human Rights Violation in Jammu and Kashmir

India asking for the permanent seat trying its best to secure a permanent seat at the United Nations, back in Kashmir its armed forces are introducing new weapons to be used on civilians. In October, a flash grenade was used during protests in the capital city of Srinagar.

A striking feature of such reports is the impunity enjoyed by these perpetrators under the law of the land, the Armed Forces (Special Powers) Act (AFSPA). In the majority of the cases, justice has never been delivered despite overwhelming evidence and eyewitness accounts. One such example is the mass rape case of February 23, 1991, in which dozens of women claimed they had been raped by Indian army personnel, while the male family members of the women were tortured.⁹⁶

⁹⁵Jammu and Kashmir Human Rights Abuse
https://en.wikipedia.org/wiki/Human_rights_abuses_in_Kashmir last visited on (24/4/2017)

⁹⁶The armed forces (Jammu and Kashmir) special powers Act, 1990 available at,
http://mha.nic.in/sites/upload_files/mha/files/pdf/Armedforces%20J&K_%20Splpowersact1990.pdf.
last visited (28/4/ 2017)

The Articles in the Constitution of India empower state governments to declare a state of emergency due to one or more of the following reasons:

- Failure of the administration and the local police to tackle local issues
- Return of (central) security forces leads to return of miscreants/erosion of the "peace dividend"
- The scale of unrest or instability in the state is too large for local forces to handle.

Under these circumstances the government may call the special task forces like BSF and CRPF to control the position. But under exceptional circumstances such as continued unrest, militancy and insurgency when any area is considered as disturbed area the AFSPA can be enacted in the whole state or part of it. In Jammu and Kashmir the AFSPA has been enacted by passing the Armed Forces (Jammu and Kashmir) Special powers Act, 1990 in September, 1990.

If the Governor of the state or the Central Government opinioned any area to be so disturbed then it can be enacted in whole or any part of the state. But the powers given under the said act have been misused by the authorities to a greater extent and hence it has been causing human rights violation.

5.3.7 Kashmir Unrest 2016

The security forces of India killed the popular militant leader Burhan Muzaffar Wani on 8 July 2016 when he was cornered and shot dead by security soldiers. In the Kashmir valley a lot of demonstrations and protests have taken place, leading to an amplified instability due to the death of militant leader Burhan Muzaffar Wani. The police forces in Kashmir killed about 40 civilians and 2,000 injured in the clashes and curfews have been imposed in all 10 districts of Kashmir state. In many parts of the state of Kashmir they have restricted newspapers, cell phone and internet services, blocked to prevent rumors around and who may lose their eyesight more than 600 civilians have been injured.

5.4 Punjab – Khalistan Movement 1984

The Khalistan movement is a Sikh Nationalist movement, which seeks to create a separate country called Khalistan (Punjabi the Land of the Pure) in the Punjab region of South Asia. Khalistan the proposed country territorial definition ranges from Chandigarh the capital city of Khalistan, Kutch, half Rajasthan, some parts of Gujarat, Himachal Pradesh, Haryana, Punjab and some neighboring states of Indian. The traditional homeland of Sikhs has been the Punjab region. Punjab has been ruled by Sikhs for 82 year before the British conquest and from 1767 to 1799 the Sikhs Misls ruled over the entire Punjab and Maharajah Ranjit Singh made the confederacy and unified Punjab into Sikhs Empire.⁹⁷

During the partition of India between Muslims and Hindus the Sikhs leaders grew concerned about their community would be left without homeland since Muslims are demanding their own independent state leaving India to Hindus religion and Sikhs leaders decided to look for own new state. They created the idea of forming Khalistan state envisaged it as theocratic state covering the small part of greater Punjab region.

Majority of Sikhs migrated from Pakistani provinces to India province of India after the announcement of partition of India into two sovereign states including Pakistan and India the migrating Sikhs from Pakistan province of Punjab settle into Himachal Pradesh and Haryana currently living in these states. The Punjab Suba Movement led by Akali Dal aimed at creation of a Punjabi-majority state (Suba) in the Punjab region of India in the 1950s was formed after the Indian's independence in 1947. The Indian government initially rejected the demand but they concerned that creating a Punjabi-majority state would effectively mean creating a Sikhs-majority state. Finally government agreed to partition the state, creating a new Sikh-majority Punjab state and splitting the rest of the region to the states of Himachal Pradesh, the new state Haryana after series of protests, violent clampdowns of the Sikhs and the Indo-Pakistani War of 1965. Subsequently the Sikhs were alleging the Central Government was discriminating against Punjab and the Sikhs leaders started demanding more autonomy for the states. The issues raised by were used as a premise for the creation of a separate country by the proponents of Khalistan although the Akali Dal explicitly

⁹⁷ Khushwant Sigh, Hindu-Sikh relations — I

Independence changed equations, **Monday, November 3, 2003, Chandigarh, India**, <http://www.tribuneindia.com/2003/20031103/edit.htm#5> last visited on (26/4/2017)

opposed the demand for an independent Sikhs country. The proponent of Khalistan Jagjit Singh Chauhan travelled to the United States in 1971 with the plan to collect millions of dollars from the Sikhs diaspora he placed advertisement in the New York Times proclaiming the formation of Khalistan which was so welcomed by Sikhs in United States and contributed a lot of dollars to accomplish the mission at home later.⁹⁸

Before declaring the formation of National Council of Khalistan, at Anandpur Sahib on 12 April 1980 the Jagjit Singh Chauhan held a meeting with the Indian Prime Minister Indira Gandhi. The Jagjit Singh Chauhan declared as the president of the council and Balbir Singh Sandhu as Secretary General of Council. The formation of Khalistan was announced in London May 1980 when Jagjit Singh Chauhan travelled to London and declared it in news of London. By hearing London news of formation of Khalistan State announced by Jagjit Singh, Balbir Singh Sandhu made another announcement in Amritsar and released the new currency of Khalistan state immediately.

The Punjab which has a Sikhs-majority population and the traditional homeland of the Sikhs religion they formed Khalistan movement and reached its zenith in the 1970s and 1980s flourishing in the Indian state. Unfortunately the Indian security forces in the 1980s in counter-militancy operations when some of the Khalistan proponents turned to militancy resort. The militant leader Jarnail Singh Bhindranwale encountered one of such operations in 1984 when the Indian Army-Operation Blue Star led by Indira Gandhi forcibly entered the Harimandir Sahib (the Golden Temple) to overpower the armed militants' leader and he was killed. In that operation led widespread criticism of the Indian Sikh shrine which resulted into assassination of Indian Prime Minister Indira Gandhi in 1984 by her two Sikhs bodyguards as the revenge. The anti-Sikhs riots resulted also into massacréd of Sikhs in the capital city Delhi as the congress activists and mobs termed it genocide.

The recent unrest in the Punjab region for the response in November 2015, a Sarbat Khalsa or congregation of the Sikhs community was called to discuss the solution. The Sikhs community in Sarbat Khalsa or congregation 13 resolutions was adopted to strengthen Sikhs tradition and institutions and 12th resolution reaffirmed the

⁹⁸ Ibid 92

resolutions adopted by the Sarbat Khalsa of 1986 including the declaration of the Sovereign state of Khalistan.

5.4.1 Assassination of Indira Gandhi and Massacre of Sikhs

In the capital city New Delhi in retaliation for Operation Blue Star operations carried out in “the Golden Temple” on the morning of 31 October 1984 Indira Gandhi was shot dead by two Sikhs security guards (Beant Singh and Satwant Singh).⁹⁹ Across north India the anti-Sikhs attacked Sikhs because the assassination of Indira Gandhi triggered fulminate violence against Sikhs which led to massacre of Sikhs. It was alleged that the congress member had planned a pogrom against the Sikhs but the ruling party congress maintained that the violence was due to spontaneous riots carried by anti-Sikhs but not the congress plan. There were some leaders accused of inciting public against Sikh leading to massacre of Sikhs the Senior Congress leader such as Sajjan Kumar, H.K.L. Bhagat and Jagdish Tytler. The spontaneous riots were strongly condemned by other political parties. Sixteen important politicians, thirteen police officers and one hundred and ninety-eight others accused by survivors of Sikhs and eyewitnesses were arrested by two major civil-liberties and issued joint report on anti-Sikhs riots to Indian authority.

5.4.2 The Rise of Militancy in 1984

The assassination of Indira Gandhi in 1984 and the anti-Sikh riots the resulted from her death pave the way for the rise of Sikh militancy and acts of terror because of the Operation Blue Star acts carried out in the Golden Temple killing the leader of Militants. The sociologist Mark Juergensmeyer refers the war to as a cosmic war in which he argues that the presence of certain conditions increases the likelihood of violence undertaken in the name of religion because the brutality of the violence that spanned the next fifteen years in Punjab region was understood in that context. The killing of movement leader Jarnail Singh Bhindranwale may well have been the single most critical developments in the framing of the Sikhs struggle as a cosmic war due to

⁹⁹Assassination of Indira Gandhi and Massacre of Sikhs available at <https://www2.warwick.ac.uk/newsandevents/features/indira-gandhi-assassination>, last visited (26/4/2017)

Operation Blue Star of 1984 operation storming the Golden Temple gave sadness for the Sikhs members for humiliating the their believe God.

It was taken as insult by Sikhs members that was profoundly made worse by the careless en masse cremation of the dead whose number went unrecorded due to the many unidentifiable pilgrims who had gather at the Golden Temple to worship God but the Indian government conducted military operation in so sacred place and deeply offended many Sikhs including the militants leader. The religious centre was heavily damaged and destroyed irreplaceable library manuscripts because the battle continued for almost three day causing the irreversible damages in the Golden of Temple the Sacred place of Sikhs believe God.

Following the Operation Blue Star the army occupied Punjab region to enrage and alienate the Sikhs because the authority subjected the young of Sikhs to abuse and torture designed to elicit confession and if they were unsatisfied with their answers they jailed them for further questioning because the Indian government combed the countryside in a guest to quell resistance. Further inflammable of Sikhs possession and heightened their collective sense of injustice against Sikhs was caused by anti-Sikh riots that ensued after the assassination of the Indian Prime Minister Indir Gandh in 1984 by her two Sikhs bodyguards. The gripped of Punjab with many Sikhs being tortured and killed by mobs headed by Congressional leaders leading to the death of the estimated in the aftermath of Gandhi's murder some 10,000 people were killed in the violence¹⁰⁰. Once they witnessed the violence being visited on their brethren consequently many who had previously been unsympathetic to the militants felt compelled to join the struggle. The war was seen as divinely necessary in order to restore balance to the world and resulted in an escalation of violence on the part of both sides they became part of numerous militias in order to carry out revenge killings as a mission for the young of Sikh members.

The Mark Juergensmeyer's cosmis war rubric was supported by some factors discussed above. Whereupon the Sikh resistance became a matter of preserving religious identity and honour where the actions that Indian Government overall were viewed as profound attack on the symbols of Sikhs faith. The defeat was unacceptable

¹⁰⁰ Ibid 94

whatever the cost as the attack launched against their temple and their persons was perceived as threat to their very existence in their homeland Punjab region.

5.4.3 The Current Situation of Punjab

The militant Khalistan Movement is weakened considerably and the present situation in Punjab is generally regarded as peaceful. The socially assimilated in cosmopolitan areas of Sikhs community is still maintained in its own unique identity. In India minor political parties Khalsa Raj Party and few others seek to establish Khalistan state through non-violent means and some organizations claim that social divisions and problems still exist in rural areas, but the present situation remains largely peaceful, though support for an independent homeland may remain strong among the separatist Sikhs leaders popular in the expatriates Sikhs community largely from outside (mainly Europe and North America).¹⁰¹

Recent developments are troubling and signal bad news for India although the situation in Punjab appears to be normal. The Khalistan Movement run by Sikhs extremist groups operating from other countries surfaced the news of about revival with Indian government to separate Punjab region- Khalistan state as the independent country. The pro-Khalistan elements have launched of a Sikh Congressional Caucus inside the United States itself and notably India has warned the United States of that role played by pro-Khalistan members in United State without warning those elements and stop it immediately. An outstanding fear was created by an attempt to revive the Khalistan Movement by the attack of 2015 Gurdaspur. The Sikhs resurgence is imminent given the increased activities of Sikh radical organizations globally allegedly in the countries such as Malaysia, Pakistan, United States, France and Germany according to India's intelligence agency Research and Analysis Wing. A fiery speaker who has delivered anti-India speeches has been noticed according to the Research and Analysis Wing (RAW) report. Around 6,000-8,000 people in other parts of California participated in anti-India protests while in other in San Francisco around 60-70 people attended the same meeting.

In support of the Khalistan Movement recently many slogans were raised in several places. The pro-Khalistan state slogans were raised in Punjab during the 31st

¹⁰¹ Ibid 94

anniversary of the Operation Blue Star. The police in the retaliation about 25 Sikhs youths were detained in jail. During the Punjab CM Parkash Singh Badal's function the pro-Khalistan slogans were raised in Punjab State. The pro-Khalistan and anti-Badal slogans were raised during the chief minister's speech by two persons of SAD-A, identified as Rajindr Singh Channa and Sarup Singh Sandha. When SAD (Amritsar) president Simranjeet Singh Mann came to meet Surat Singh Khalsa who is admitted to Dayanand Medical College and Hospital (DMCH) moreover slogans in favor of Khalistan were raised again.

There is a strong sense of attachment among Sikhs to their culture and religion despite residing outside India country. At the peak of the Khalistan Movement there is persistent demand for justice for the Sikh victims when the Indian government wants to victimize the Sikhs element. In the Khalistan Movement in some ways the Sikhs Diaspora is seen as a torch bearer of the movement because they sponsor the activities of Khalistan Movement with a lot of dollars. The Sikhs Diaspora overseas, which can revive the secessionist movement, was seen in the recent report clearly indicate a rise in the pro-Khalistan sentiments.

5.5 The Liberation Tigers of Tamil Eelam (LTTE)

The Liberation Tigers of Tamil Eelam (LTTE) were separatist militant organization fighting for independent homelands for Sri Lanka's Tamil minority in northern Sri Lanka well known as the Tamil Tigers. The late 1980s was the dominant Tamil militant group in the Sri Lankan and Velupillai Prabhakara founded the group in 1972. The Sri Lankan government declared an all-out offensive against the LTTE in 2006 after a number of failed negotiations. Between the LTTE and the Sri Lankan government in May 2009 the LTTE were defeated by the Sri Lankan government force and killed the leader Prabhakara with estimated 70,000 people were killed during the conflict.¹⁰²

¹⁰²The Liberation Tigers of Tamil Eelam (LTTE) available at <http://www.satp.org/satporgtp/countries/shrilanka/terroristoutfits/Ltte.htm> last seen on 26/04/2017

The assassinations of big political leaders including the assassination of Sri Lankan President Ranasinghe Premadasa in 1993 and the former Indian Prime Minister Rajiv Gandhi in 1991 have been carried out by LTTE with number of high-profile of assassination. The LTTE has two wings the political and military wing. The military wing is advance in military tactics it has four units as follows: the naval unit so specialized in sea fighting or ocean war, it has an airborne unit specialized in shooting military opponent jets or helicopters, intelligence wing and even specialized suicide terrorist unit and that why LTTE groups are so expert in committing assassination of big political leader.

The LTTE received supplies and training from the Indian Intelligence services by 1980 and the LTTE was largely supported by the Tamil diaspora overseas. The LTTE were mostly suspected to have connection with several Islamic groups such as the Taliban in Afghanistan and the Moro Islamic Liberation Front (MILF) and the link was strictly with arms transports to LTTE. The LTTE extorted taxation in the areas control by LTTE northern and eastern Sri Lanka and earned a portion of their annual \$200-300 million. In 2011 the Sri Lankan government stated that, the international network of the LTTE was still searching to revive the organization after 2009 the LTTE military defeat by Sri Lankan government and rehabilitated and re-integrated into society some 600 of LTTE soldiers and killed an estimated 70,000 people in the conflict including their leader.

5.5.1 The LTTE Targets and Tactics

The LTTE organization hierarchically was under the leadership of the group's founder Prabhakaran. The LTTE group consisted of so many units, including special armed group called the black Tigers, air capabilities but is most well-known for its use of suicide operations by a small, navy and maintain army in all corners of the war. The bad tactics in army of LTTE they had assassination tactic of the big elements of the countries, guerilla warfare and targeted bombing as well as the used traditional land and sea tactics all these carried out by Black Tiger army. These tactics are carried out especially in east and north Sri Lanka areas. The LTTE carried out about 168 suicide attacks between 1980-2000 in accordance to Jane's Intelligence Review because the LTTE organizations were the first to utilize suicide bomb attack at large

scale of areas in Sri Lanka. The female suicide bomber from LTTE who assassinated the former Prime Minister of India in 1991 as it was plotted by LTTE military members to be carried out by simple female.¹⁰³

The LTTE attacking targeted persons including various civilian populations, police, Sri Lankan and the Indian politicians and Sri Lankan military these were the individuals who did not support their overarching goals of attaining an independent Tamil state. The LTTE also attacked targeting other rival Tamil militant groups in Sri Lanka and the LTTE attacked targeting Sri Lankan Tamil politicians who did not support the LTTE and their goals. The assassination of the former Sri Lankan President Ranasinghe Premadasa and the former Indian Prime Minister Rajiv Gandhi were most controversial suicide attacks carried out by LTTE elements. The Sri Lanka Central Bank and the country's world trade center these symbolic of national importance of Sri Lanka state were mostly attacked by LTTE army. The LTTE project and its influence procure funds from these overseas Sri Lankan Tamil diaspora communities and then used these funds to purchase arms and the primary tactics was to create front organization and gang's robbery project to get huge money in the Central Bank of Sri Lanka. The Sri Lankan government lost a lot of lives from LTTE because of adoption of guerilla tactics which were effective on government forces. The LTTE would first swarm the enemy and then engaged in suicide bombings which would often confuse and scare Sri Lanka government forces the LTTE would often ambush government troops and attack in the "wave" that was LTTE tactics.

5.5.2 Community Relationships with the LTTE

In the north of Sri Lanka and later the Tamils who escaped to the south population were supporters of the LTTE were primarily based around the disenfranchised Tamil population. The LTTE has some structures collect taxes and administer the rule of law in the areas controlled by LTTE had established some civil administration such as radio, banks, police, courts, postal services and so on. The Tamil community were recruited by the notorious LTTE the recruited members included the children, women and men. During the 26 years of the Sri Lanka conflict an estimated of 4,000 female

¹⁰³ Ibid 97

member were killed in the war because it was thought that women constituted 20-30% of the LTTE fighting cadre. The assassination of former Indian Prime Minister Rajeev Gandhi was carried out by female bomber. The children under age 18 people were also used by LTTE actively and used them as part of their front-line soldiers in the fighting against government forces. The Tamil community became annoyed the LTTE's recruitment of child soldiers this resulted to others members discontented the LTTE movement. Since 2011 the LTTE has recruited over 5,800 child soldiers according to UNICER reports. The LTTE had collected children from Tamil-controlled areas of the Sri Lankan government and many of these children were abducted from refugee camps and orphanages. These acts were condemned seriously by international community particularly UNICEF taking care of all child rights over the global. This led to LTTE defeat in 2009 by Sri Government forces.

5.5.3 The LTTE Political Actives

The Tamil United Liberation Front (TULF) formerly the Tamil United Front was the producer of the new group of LTTE one of several violent offshoots of the old group. The Tamil Congress and the Federal Party were the one that formed Tamil United Front (TUF) in 1970s. The group named was changed to the Tamil United Liberation Front when it officially called for the formation of an independent Tamil state in 1976. The Prabhakaran's LTTE emerged from the TULF when several more radical militant in Tamil groups appeared.

During the time in which the LTTE was in negotiation with the Sri Lankan government the LTTE formed its political wing in 1989 called The People's Front of Liberation Tigers. The party's General Secretary was Yogaratnam Yogi. They have rarely been active in local politics and their party was recently registered as political party but their party was deregistered in 2011 by government, although they were listed on few local ballots in 2008.

Although the LTTE often used talks and agreement to enhance its position, re-arm and get rid of its competition, the LTTE demonstrated its willingness to negotiations with the Sri Lankan government on several occasions. There were first set of talks of peace agreement carried out in year of 1985 in Bhutan and second talks was followed by an accord between the Sri Lanka and India in 1987. The Peacekeeping force to ensure that the LTTE forces were disarmed completely to stop conflict and the Indian

government agreed to intervene in Sri Lankan conflict and supply forces to Sri Lankan government. The LTTE were given time to re-group and eliminate dissenters among the Tamil population when the Indians were unable to subdue the LTTE and withdrew in 1990. Unsuccessful peace talks continued for the whole 1990s but large peace talks failed. Peace talks were alternated with bouts of violent and clashes between the government forces and LTTE because during this period the LTTE adopted “hit-and-run tactics. The ceasefire between the LTTE and the Sri Lankan government was secured 2002 when Norway serving as mediator of ceasefire and peace agreement. The LTTE announced the suspension of further talks in 2003 after six rounds of additional talks in Thailand and Japan. Some experts believed this was good tactic move against the Sri Lankan government to garner further concession. The LTTE continued military occupation of Tamil-settled areas and marginalization in government economic policies as the primary reasons for the breakdown of the ceasefire since LTTE cited the Sri Lankan government’s exclusion of the group from an international aid conference.

The Sri Lankan government launched an all-out offensive against the LTTE forces after breakdown of another round of peace talks in 2006. The defeat of the LTTE by government forces was conceded on May 17, 2009 by the LTTE representative. On May 18, 2009 the government killed the leader Mr. Prabharan and marked the end of LTTE conflict against the Sri-government by the year of 2009.

5.6 The Common Comparative Study of Human Rights Violation in the India Insurgency (Internal Disturbance)

The Republic of India had experienced dying of its citizens during the partition of in India in 1947. The India was one country comprised of Pakistan and India before 1947 under British Government. But during separation of Muslims from Hindu had resulted into death of 1 to 2 million people and displaced around 12 million people between the two countries. The separation of Pakistan from India also created the current problem of Jammu and Kashmir in which both countries struggle to have the power over it. People in the Jammu and Kashmir state are Muslims under India country and they are demanding the independence state which led grave human rights abuse against the females

and men members. There in Jammu and Kashmir the AFSPA has been enacted by passing the Armed Forces (Jammu and Kashmir) Special powers Act, 1990 in September, 1990. This act is against the will of Jammu and Kashmir people and resulted into causing of human rights violation by committing rapes and extrajudicial killings carried out by India forces. If the Governor of the state or the Central Government opinioned any area to be so disturbed then it can be enacted in whole or any part of the state. But the powers given under the said act have been misused by the authorities to a greater extent and hence it has been causing human rights violation.

The Khalistan movement of Sikhs religion people also emerged after partition of India demanding their own independence state from India and the movement developed to military movement by year 1984. That concerned the Prime Minister of India Indira Gandhi and ordered her army Operation Blue Stars to curb the militants by killing the leader of militants in the Golden Temple. That operation angry Sikhs people and made retaliation by killing India prime minister that caused huge riots of anti-Sikhs and massacre occurred, around 10,000 people of Sikhs were killed by mobs.

Finally there is Liberation Tigers of Tamil Eelam (LTTE) were separatist militant organization fighting for independent homelands for Sri Lanka's Tamil minority in northern Sri Lanka well known as the Tamil Tigers. This movement is expert in assassinating prominent politicians like Sri Lankan President Ranasinghe Premadasa in 1993 and the former Indian Prime Minister Rajiv Gandhi in 1991 have been assassinated by LTTE with number of high-profile of assassination. They recruited children and women in the army and fortunately the LTTE was defeated by Sri Lankan forces in 2009 and resulted into the death of estimated 70,000 people of LTTE during the conflict.¹⁰⁴

¹⁰⁴The Liberation Tigers of Tamil Eelam (LTTE) available at <http://www.satp.org/satporgtp/countries/shrilanka/terroristoutfits/Ltte.htm> last seen on 26/04/2017

CHAPTER 6
CONCLUSION AND SUGGESTIONS

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The civil war of South Sudan both warring parties have violated humanitarian and human rights law especially in the war zones, raping, targeting killing tribal line between Nuer and Dinka.

The Republic of South Sudan had struggled from Sudan from dignity, human rights, liberty and freedom for almost 40 years in two wars fought by South Sudan against Sudan government. In the civil war against Sudan government and South Sudan insurgents had claimed more than 2.5 million people lives and displaced 4.5 million people to flee outside the country for their safety. In 2013 South Sudan involved civil war that caused huge human rights and humanitarian laws violation.

The scale of the conflict has intensified and led to rigorousness of human rights abuse and violation of humanitarian law making targeting killing on ethnic line, extrajudicial killing, rape and other acts of sexual arbitrary, detention, enforced disappearance, gender-based violence and they have committed war crimes and crimes against humanity because they violated international humanitarian law and the ring leaders deserve the impunity to bring them into the book.

The Republic of South Sudan has violated the important of Universal Declaration Human Rights of 1948. South Sudan did not consider it but they have Bill Rights in their Transitional Constitution of 2011. They violated human rights significance to human being; these can be sometimes referred to as basic rights, fundamental rights, inherent rights, natural rights and birth rights. Human rights are always important for being basic or fundamental rights made them necessary to be set out in every constitution of every state to protect individuals or citizen's rights of the state. The fundamental or basic rights no legislation can take them away by every parliament because they are recognized by the United Nations Charter and it created them as compulsory respected and protected by the state.

The research also compare the devil civil war happening now a days in Somali civil war has lost a lot of lives in Somali Country around 500,000 people have been killed according to Necrometrics in the civil war which started 1991.¹⁰⁵ Somalia's civilians

¹⁰⁵Necrometrics in the civil war which started 1991.

have experienced humanitarian's abuse in the hands of both fighting parties in long running conflict happening up to date.

Never the less research consulted the existing civil war that has reached to worst humanitarian law and human rights law violated in the current civil war in Syria state death toll from the conflict of 2016 around 470,000 ¹⁰⁶ people have been killed according to the report of Syrian Center for Policy Research and the an independent Syrian

Finally, the goodness that India enjoys is that the Republic of India had never gone into the big civil war like what is happening now in Syria, Somalia, South Sudan and the rest of the countries having devil civil war. The Republic of India is sometimes involves in others states' civil wars for help under the agreement with that state and involves in the international organization like United Nations where two peacekeepers Indian soldiers were in South Sudan civil war in 2015.

The Republic of India had conflict with some small military movements where there is human rights violation but India has strong democracy and with big army in which no small movement can claim war against India state, end up with some security agencies and police forces always to solve the problem at easy.

Finally the civil war progressing in the Republic of South Sudan need to find the permanent solution of peace agreement by United Nations and IGAD because the civil war has ruined the economy of the country leading to current famine around 3 million people ¹⁰⁷ in South Sudan are suffering of hunger.

The blame in South Sudan civil war goes against the United States is the main state standing with the rebel leader Dr. Riek Machar because South Sudan government does not cooperate with United States. The United States of America was rejected by late President Dr. John Garang de Mabior to be part of the oil companies saying, "how can I accept United States to produce my petroleum oil while United States is the judge if this is problem happening later between states, where will I open my case if the United States eats my money of Petroleum oil?" Dr. John Garang died of

¹⁰⁶ Syrian Center for Policy Research and the an independent Syrian Research Organization

¹⁰⁷ Africa drought and famine fund available at: https://www.globalgiving.org/projects/east-africa-drought-and-famine-relief-fund/?rf=ggad_17&gclid=Cj0KEQjwxbDIBRCL99WIs-nLicoBEiQAWroh6nMoQK2x0pX6JRbqejRzVvGzfE8OckUsia4pHNOZ_W4aAIJ-8P8HAQ , last visited (28/4/207)

helicopter crashed after 30 days in office returning from Uganda using the president of Uganda's helicopter. Again the current President Salva Kiir Mayardit rejected the United States in oil petroleum which made the United States to backup the rebel leader Dr. Riek Machar to overthrow the South Sudan government but coup attempt failed twice plot by United States Representative in South Sudan. United States Representative in South Sudan tried during war to supply big modern weapons to rebel group writing on the truck carrying weapons as UN assistance items to affected people in war. Likely the weapons were detected by security forces at the final station to reach areas controlled by rebel groups. Last month the United States Representative Mission to Union Nations draft sanction on arms embargo and on the targeted individuals on in South Sudan to be sanction but the UN Security Council voted it out.

The common factor that fuelled the civil war in these three states is the United States of America. According to findings the United States is participating Somalia civil war fighting Al-Shabab. The United States in Somalia Civil War, the United States has a lot of commercial ships, shipping to Africa through Somalia port which is controlled by Al-shabab terrorists that hijack ships in the India Ocean and take them to unknown places demanding a lot of money on the ship to be released to that state having flag on it. Right now United States is paying the whole national army of Somalia who protect US ships in the India Ocean to reach Somalia state in save condition, for commercial purpose the United States is taking part in the civil war.

The United States is fighting with the Syria government and Islamic States (ISIS) and supporting rebel group in Syria. The main problem of the United States of America is the petroleum oil, in every state the United State will demand to be a part oil companies.

United States claimed to be leading state in development while it's destroying the developing states with its advanced technology manufacturing the big modern weapons to threat the whole world with them and sell them with huge dollars. The United States mainly depends of the commercial benefit to be gained by United State because it doesn't send its troops without income to United States. It needs the ruling party in the state to be standing with United States government if your state has petroleum oil underground in your state territory.

In Syria the United States is standing with the rebel groups using the principle “divide and rule” because the United States formed coalition of states fighting against ISIS and the same time fighting Syrian government. Last week on 6 April 2017 the United States president Mr. Donald John Trump fired 59 missiles on Syrian’s airport accusing the government of manufacturing chemical weapons because the President Bashar al-Assad is standing with another superpower Russian government. Therefore United States looks like virus of the world claiming to be first state with democracy, respecting human rights and humanitarian law while it is the one destroying and bringing sever dying in the developing states.

The great threat is atomic war of the Third World War to be caused by the United States President Donald John Trump attacking another superpower states like Russian and North Korea.

6.1 Suggestions

According to the research made on human rights violation with special reference in civil war of South Sudan, there are of grave humanitarian law and human rights violated in the civil war of South Sudan of 2013.¹⁰⁸ For the important findings experienced by the researcher may need improvement be carried out to find out the accurate solution of civil war that has claimed lives of 10,000 people and around 2.7 people felt displaced by the conflict. The United Nations has sheltered approximately 200,000 people in the compounds granting them humanitarians needs like basic needs food, shelter and necessary things for their living. The scale of the conflict has intensified and led to rigorousness of human rights abuse and violation of humanitarian law making targeting killing on ethnic line, extrajudicial killing, rape and other acts of sexual arbitrary, detention, enforced disappearance, gender-based violence and they have committed war crimes and crimes against humanity, therefore there are suggestions as follows:

1. It would suggest all five states permanent members of the United Nations mastering the power and affecting almost the world, the 193 state members of UN should find

¹⁰⁸ humanitarian law and human rights violated in the civil war of South Sudan of 2013 available at https://unmiss.unmissions.org/.../unmiss_conflict_in_south_sudan_-_a_human_rights... last visited on 27/04/2017

solution to them from destroying the developing countries and stop happening of the Third World War giving red indications.

2. In the civil war of South Sudan there is abuse and violation of International Human Rights Law and International Humanitarian Law and the ring leaders deserved the impunity to bring them into the book.
3. The Republic of South Sudan should have knowledge, respect and protect the Universal Declaration of Human Rights of 1948 with all its International Covenants and International Conventions of Human Rights that South Sudan had acceded to in 2015.
4. The Republic of South Sudan should stop solving things military instead of solving differences politically by negotiation of both by sides peacefully.
5. The Republic of South Sudan has wasted the country's money on buying big advanced modern weapons use for killing themselves forgetting that they are brothers and sisters of one nation, this method of buying big modern should be stopped and improve the economy crisis of the country first.
6. The Republic of South Sudan should respect and protect the International Community with special reference to United States and International Organization specially UNIMSS peacekeepers in the country.
7. The South Sudan civil war has brought economy of the country down and caused insecurity in the country and disunited the South Sudan citizens hating their political leaders including the current president Salva Mayardit and the rebel leader Dr. Riek Machar and shows that the citizens need their rights to be respected and protected by Republic of South Sudan and should give chance in the upcoming election in 2018 to elect the president of South Sudan by their own choice revealing democracy in country not dictatorial ship ruling.
8. The political leaders must try their best to campaign for unity and reconciliations in all three regions Upper Nile, Bahr el Ghazal and Equatoria regions to stop killing themselves secretly and illegally.
9. The commanders in the army who allowed their soldiers to apply raping ladies as tool of war showing defeat of enemy on the opponent ladies during war must be traced out and got punished because they have broken article 3 of Geneva Convention of 1947 and protocol II of 1977.

10. The government of South Sudan must bring peace in all the corners of the country for improvement of humanitarian suffering in the affected states of civil war especially to stop high rate malnutrition of children.
11. The literate population of South Sudanese is very low only 20% and 80% population is illiterate and needs serious arrangement of the government to educate the upcoming generations without civil war among the citizens, any tribalism line, discrimination, corruption and greed.
12. The important suggestion among all these is to stop tribalism war which is major cause of our country collapsed now socially, culturally, economically and political, the coming president should try to abolish tribal line by eliminating these word tribe in all official document like nationality and passport, and should recommend the spirit one people and one nation to look like Europeans who cancelled tribal line in the old age.
13. In the Republic of South Sudan citizens still use bride wealth (dowry) in marriage which completely affects the female rights in the country because the family depends on her as property bring income and takes serious care not to go to school and maintains her in the house waiting for rich man to bring wealth first before getting marriage and this must be stopped by National Assembly of South Sudan.
14. Child soldier is affecting the children not to go to school and join army while under age of 15 years and the Republic of South Sudan had ratified in 2015 child rights with child rights act in the country guiding the all citizens against child rights.
15. The women rights in the Republic of Sudan must be improved economically, socially and politically to increase 25% rights of the women in the South Sudan must reach 30% rights to bring up the developing women to participate in the government.
16. The Republic of South Sudan should not compare itself with Syria and Somalia in devil civil war without objective of war.
17. Not the last the Republic of South Sudan should imitate the advanced policies of the developed countries rejecting the civil war in the country like United Kingdom, United States and rest of the developed countries.
18. Finally the live example is the Republic of India with huge population of 1.3 billion people, superpower nation and had never gone under civil war in the country have strong democracy in the state.

The citizens of South Sudan should not surrender their dignity and humanity violated in this civil war of South Sudan everyone is living as the first class citizen in his or her state as our Hero late Dr. John Garang declared to all civilians of South Sudan in 2005 after signing peace agreement with Sudan and he opted for Separation of South Sudan in the coming 2011 as fulfilled by 99% population of South Sudan. He says, “I and those who joined me in the bush and fought for more than twenty-one years have brought to you Comprehensive Peace Agreement (CPA) in a golden plate. Our mission is accomplished. It is now your turn, especially those who did not have a chance to experience bush’s life. When the time comes to vote at the referendum, it is your golden choice to determine your fate. Would you like to vote to be second class citizens in your own country? It is absolutely your choice”.¹⁰⁹The citizens of South Sudan should remain united for peace in the country, “One People One Nation”.

¹⁰⁹ Dr.John Garang quotation of South Sudan freedom fighter available at <https://paanluelwel.com/documents-sreports/famous-quotations/> last visited on (27/4/2017)

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