

# **Human rights in the old legal laws and contemporary charters**

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Human rights among older religions  
and contemporary charters  
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## **The first chapter**

# **Civil and Political Rights in the old legal laws and contemporary international charters**

### ***Preamble:***

Civil rights are those rights which determined for the individual, in other words, they are inherent rights or stick to human nature, like the right to life, the right to security, the right to liberty and non slavery and the right to justice.

As for the political rights, they are the rights which are proved to the individual as a member of the particular political group, to enable him to participate in the governance of this group, including the right to a democratic system, the right of election, the right of nomination and the right of access to public service.

These civil and political rights aim at achieving the safety of the moral and the physical presence of the human being, as

well as to secure the safety of the moral and the physical entity of man <sup>(1)</sup>, we will try to address some of these rights in both of the old legal systems and contemporary international charters, through the division of this chapter into the following studies:

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(1) Dr. Faiz Mohammad Hussein, power, freedom and philosophy of human rights, University Publications, Alexandria, 2010, p. 268.

## **The first study**

# **The right to life in the old legal laws and contemporary international charters**

### ***Preamble:***

The right to life is the most precious thing owned by the human being, without it the human being does not exist. We cannot imagine talking about human rights if it did not guarantee the right to life of every human being. Because of the importance of the right to life as the origin of most of the other human rights, we will try to touch the availability of this right in both of the ancient civilizations and contemporary international charters, through the division of this study into the following demands:

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## The first demand

### The right to life in older religions

#### *First: In Pharaonic Egypt:*

the history of Pharaonic Egypt starts in the era of King Mina about 3200 BC and ends with the fall of Egypt under the rule of Alexander the Great in 332 BC (1). In the Pharaonic era, the ancient Egyptians respected the human right to life deeply this appeared in many of their traditions and customs, in the following we will present the position of Pharaonic Egypt towards some issues relating to the right to life:

#### **A-The fetus' right to life:**

The Pharaonic law decided to postpone the implementation of the death penalty on the pregnant woman till she gives her birth; this demonstrates the respect for the right of the fetus to have an opportunity to life, and many of the states have taken this rule from the pharaonic law.

#### **B. None of infanticide or ostracism:**

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(1) Dr. Mahmoud Al-saqqa, the philosophy of the history of social and legal systems, the Arab Thought House, 1978 edition, p. 145, item 317.

Strabo, the Greek geographer in the first century A.D., noted in astonishment that the Egyptians had a private custom which they stick to a Lot, that is the upbringing of all children born to them (1), and the laws have taken from the father each right in killing his progeny. The Egyptians believed that killing a child was a hideous crime, require the direct intervention of the judiciary, this was based on the same principle of respect for the human right to life (2).

### **C- The limitation or elimination of the death penalty:**

Ancient Egyptian Lawmaker limited the application of the death penalty in a narrow area, and did not expand in it like legislators in other countries (3), for example: The Egyptian legislator did not punish the military offenses with the death penalty, but the penalty was the loss of the self esteem. usually, if one of them wiped it out with the deeds of championship so he was honored by self esteem as it was, and Egypt has known the replacement of the death penalty, not only the ancient Egyptian Lawmaker had reduced to a great extent of crimes punishable by death, but also he limited the cases of

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(1) the DIODORUS OF SICILY in Egypt, the house of knowledge, Cairo, the Arabization Wahib, 194, p. 137.

(2) Dr. Yasser Mohamed Ismail al-Hodeibi, the historical development of the philosophical basis of human rights, the Phd thesis submitted by the Faculty of Law Ain Shams University, no date, p.34.

(1) the DIODORUS OF SICILY in Egypt, the house of knowledge, Cairo, the Arabization Wahib, 194, p. 137.

the implementation of the death penalty after the issuance from the competent judicial. He put a condition that required ratification by the king on the judgment of punishment so that it could be implemented (1), some of the kings has resorted to replace it - i.e. the death penalty - to compel the sentenced person to carry out some beneficial work, Such as: constructing bridges and digging of canals (2).

**D. The prohibition of some habits which involve a violation of the human right to life:**

Ancient Egypt had Known, like the other ancient societies, certain habits involving the violation of the human right to life, for example: the habit of Cannibalism, this habit existed in Egypt before the age of the dynasties, and this habit has been existing throughout the era of the first family with the exception of the last dynasty, whose last the king “kaa”, who seems to prohibit this habit at least with regard to the northern part of the country (3).

Here, we should point out two things: that the wars of Egypt, the great majority of them were defensive wars to deter the tribes which were wage wars on Egypt from time to time, or to expel the enemy who occupied its land. The sec-

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(1) Dr. Mahmoud Zinati, human rights in Pharaonic Egypt, no publisher, Fifth Edition, 2008, p.70.

(2) human rights, non-periodic bulletin, issued by the association of human rights, Faculty of Law, University of Assiut, No. 5, January 2002, p.21.

(3) Human rights, non-periodic bulletin mentioned p.22.

ond matter: that the Egyptians did not discard in the exercise of the war to the level that other people discarded from the use of the kinds of cruelty with their enemies.

***Secondly: In Mesopotamia (1):***

Because the ancient societies have known criminal protection of the human right to life, the legislation between Mesopotamia considered the human right to life one of the human rights which should be protected, and to apply that they considered the murder one of the general crimes which the State assumes its punishment, and it was the sentence of the death penalty, whereas the Assyrian law considered murder as a special crime, where it was left to the relatives of the dead man the freedom of choice between retribution or seizure of the funds of the offender, on the other hand, the abortion crime has occupied a lot of space in the interest of Iraqi legislation, since the Covenant Sumerian was the criminalization of abortion, the punishment of the abortion crime financial punishment up to 30 shekels of silver, and in the Code of Hammurabi, although he denied abortion except that he differentiated in the punishment by class to which the abused women belongs, and The Assyrian law elaborated in addressing this crime.

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(2) Faiz Mohammad Hussein, power, freedom and philosophy of human rights, ibid, p.٢٧٧.

## the second demand

### the right to life in the laws of the Old West

#### *First: The Greeks:*

To state the position of the Greeks of the human right to life, we will address the following:

#### **A-The fetus' right to life:**

Diodorus of Sicily the Hellenistic historian visited Egypt in the first century BC, and he was keen on telling us that many of the states of Greece has quoted the pharaonic law of respecting the right of the fetus to have the opportunity of life, to postpone the implementation of the death penalty on the pregnant women till she gives her birth, it is clear from the previous text, according to the Greek historian Diodor the Diodorus of Sicily, that a lot of the Greek states was implementing the death penalty on the guilty women, without distinction between being pregnant or not , and that these States had amended the earlier judgment, they quoted the Egyptian law judgment, which is the closest to justice and respect for the rule of the human right to life.

#### **B. The human laws:**

People in the city of Massalia, were accustomed to the habit

that when the epidemic spread, they brought a poor citizen, feeding him from the house of money, put on him priesthood clothes and decorating him by holy daub, then throw him from over a rock, while the people around him were praying his death would compensate for the sins of the citizens (1), also, it was the habit of the people of Athens if faced drought, or the bubonic plague, or other crises ,they provide to the 'Idol' - the fact or representative - a human victim or more as a cleansing of the city (1).

### **C- The non of infanticide or ostracism:**

The birth did not, even if it was from a legitimate marriage, gives the child the right to be a member of the family of his father, but he must be approved by the head of the family, the head of the family was expressing his approval or rejection by a particular FORMALITY, the child was carried directly after he was born to the Father and placed at his feet, if he lifted him between his hands was proof of the desire to inflict on his family, if he left him indicates that he does not want to accept him in the family, and the head of the family rejected girls most .

As time the ideas progressed and feelings elevated and it ended up with the disappearance of the habit of infanticide , but replaced by another procedure, the ostracism or abandon them

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(1) Dr. Mahmoud Zinati, human rights in Pharaonic Egypt, ibid, edition 2008, p.83.

without killing them, the newborn was placed in a basket or in pottery and was left on the road or in the field or at the entrance of one of the temples, and one of the motives to reject children was the lack the capacity of the father to support the family of a large number, or he did not wish to divide his wealth on a large number of boys, or to avoid the shame if the child was the result of an illegal relationship, or to avoid the payment of the expenses for girls upon marriage, if these common reasons to reject the children, the father can reject his child for any other reason. it was narrated that a wife begged her husband to keep the life of their son and accepted him in his family, , he spit on the ground and said: “this is also mine, however, I am not in need of him” (1).

### ***Secondly: The Romans:***

To show the Roman law of the human right to life, we will present the following:

#### **(a) The non of infanticide or ostracism:**

The birth among the Romans was not, even if it was from a legitimate marriage, it follows that the child becomes a member of the family of his father, but it was necessary for the approval of the head of the family to accept the child to the family, despite his birth from a legitimate marriage, he is considered a stranger from the family, therefore, he is to be get rid of, by

infanticide, and later it had become sufficient to be ostracized. Thus, he is to be put in a basket, and carried to a public place as a temple or a square, where he was left to meet his fate, either to die of hunger or thirst, or to die as a result of the heat or cold, or be consumed by aimless animals, , or anyone who wants to pick him up to bring him up (1), the ostracism happened more for girls, there is a legal text attributed to one of the ancient roman kings saying that the father is obliged to bring up the first girl only.

**(b) Penalties for certain crimes:**

The sanctions in Roman law were characterized by “ tough and cruelty, examples of such sanctions, which reveal the veil of these natures, the thief, if caught while committing a crime of theft and the thief was a slave ,so the victim had the right in throwing the thief from over a high rock, also, if the victim was enabled to catch the thief during the theft- that was in the night or the latter was carrying a weapon - if the victim killed him, no punishment for him (2).

**(c) The treatment of the slaves:**

Roman law looked at the slave as one of the things, or one of the animals. The master, not the slave, had all the rights of the

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(1) Dr. Mahmoud Zanaty: human rights in Pharaonic Egypt, *ibid.*, 2008 edition, p. 66-67.

(2) Dr. Ahmad Abu Al-Wafa: History of legal systems, University of Printing and Publishing House, 1984, p. 132.

owner, and had the right to life and death, and if he killed him, it was as if killing an animal owned by him(1).

The roman masters treated their slaves with all forms of cruelty, some of them were feeding the fish that was kept in special basins with the slaves' flesh. Some were punishing his slaves to burn or cut or distortion, some were putting flaming metal planks on the body of the naked slaves ,(2-3).

It should be noted that the legal status of the slaves may have been improving since the beginning of the seventh century, in Rome, this change in the status of the slaves since the late Republican era was ,in fact, due to the growing of their number after the conquests by Rome, and as a result of these conquests of the increase in the number of prisoners, and that Rome turned from agricultural to commercial empire made the need for increasing the use of slaves, also philosophers, politics and had the role of the deep impact in improving the status of the slaves(4).

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(1) Dr. Mahmud Al-Saqqa: the philosophy and the history of social and legal systems, *ibid*, edition 1978, p.452-453.

(2) Dr. Mahmoud Sallam Zanati deals: the entrance to the historical study of human rights without a publisher, Cairo, 1987, p. 116.

(3) Dr. Mohamed Abdel Moneim al-Badr, woo. Abdel Monem Al Badrawi, Roman law, the first part, in the Persons of ownership and rights in kind in the capital of others, Fouad I University Press, 1949, pp.12-13

(4) Article No. (3) of the Universal Declaration of Human Rights, issued in 1948, see in the explanation of this article: Dr. Ibrahim Ahmed Khalifa, the international obligation to respect human rights and fundamental freedoms, no publisher, edition 2010, p.79.

## The third demand

### The right to life in contemporary international charters

The international charters and documents related to human rights texted on protecting the right to life, as the most important human rights as follows:

**First:** The Universal Declaration of Human Rights says that: Everyone has the right to life, liberty and security of himself (1).

**Secondly:** The International Covenant on Civil and Political Rights says that : (2)

1. The right to life is inherent of every human being, and that this right shall be protected by law and no one shall be arbitrarily deprived of his life.

2. It is not allowed, in countries which have not cancelled the death penalty, to apply this punishment but it may be im-

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(1) Article No. (3) of the Universal Declaration of Human Rights, issued in 1948, see in the explanation of this article: Dr. Ibrahim Ahmed Khalifa: the obligation to respect human rights and fundamental freedoms without the publisher, edition 2010, p.79.

(2) Article No. (6) Of the International Covenant on Civil and Political Rights of 1966.

posed only for the most serious crimes in accordance with the legislation in force at the time of the crime, and not to be contradicted with the provisions of the Covenant and the Convention on the Prevention and Punishment of the crime of genocide, this penalty may not be applied but under a judgment issued by a competent court.

3. Anyone sentenced to death shall have the right to seek the special commutation of the sentence; it may be granted a general amnesty, pardon or commutation of the death penalty in all cases.

4. The death penalty shall not be imposed for crimes committed by persons below 18 years of age, and not to implement the death penalty on pregnant women.

5. There is not any award in this article shall be invoked to delay or to prevent the abolition of the capital punishment by any State as a party to this Covenant.

It is clear from this text that the human right to life is not confined to not to be touched by the State authorities, but also it also requires the State's commitment to the prevention of assault by individuals, authorities and groups, or any other establishment, through the elaboration of laws that achieve such protection and impose punishment for violation of this right (1).

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(1) Dr. Abdul Aziz Sarhan: the legal framework for human rights in international law, the Arab Renaissance Publishing House, Cairo, first edition, 1987, p. 228 and beyond.

**Thirdly:** The Second Optional Protocol attached to the International Covenant on Civil and Political Rights, adopted by the General Assembly in 1989 on the abolition of the death penalty, (it is optional matter for States to ratify this protocol) (1).

**Fourth:** The Code of the behavior rules of the citizens, who are eligible to implement the laws, adopted by the General Assembly of the United Nations on 17 December 1979 that " it is not allowed to the citizens, who are eligible to implement the laws, to use the force but only when strictly necessary and to the extent required for the performance of their duty" (2).

**Fifthly:** The United Nations General Assembly resolution of 26 November 1968, in which it called upon all Governments to ensure a more precise legal proceedings and providing the greatest possible guarantees for those who accused of crimes punishable by the death penalty in the country that still applies this penalty (3).

**Sixth:** The European Convention on Human Rights:

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(1) Dr. Tariq Izzat Rakha: The law of human rights between theory and application in the positive thought of the Islamic Shariah, the Arab Renaissance Publishing House, Cairo, 2006, p.105.

(2) Article No. (3) Of the code of conduct of the police and other law enforcement personnel, approved by the General Assembly of the United Nations on 17 December 1979.

(3) See Fact Sheet No. (11) of the Center for Human Rights at the United Nations Office at Geneva in March 1991, entitled "summary or arbitrary executions".

As stipulated in the European Convention on Human Rights(1):

1. The right of everyone to life, protected by law, and may not be the execution of any person intentionally, but the implementation of a judgment of conviction of a crime where the law provides for imposing this punishment.

2. The murder is not contrary to the rule of this article if it occurred as a result of the use of force which does not exceed the necessity:

A. The defense of any person against violence.

B. The arrest of a person in accordance with the implementation of a legal decision, or to prevent the arrested person from escaping in accordance with the provisions of the law.

c- To take legitimate action to suppress riots or getting out of the legitimate authority.

**Seventh:** The Cairo Declaration on Human Rights in Islam, issued in 1990, declared that (2):

(a) Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to safeguard this right against any violation, and it is prohibited to take away life except

for a shari'ah prescribed reason.

(b) It is forbidden to resort to any means which could result

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(1) Article No. (2) of the European Convention on Human Rights.

(2) Article No. (2) of the Cairo media on human rights in Islam.

in the genocidal annihilation of mankind.

(c) The preservation of human life throughout the term of time willed by Allah is a duty prescribed by Shari'ah.

(d) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a

Shari'ah-prescribed reason.

**Eighth:** The text of the Arab Charter of Human Rights of 15 December 1997 that "Every individual has the right to life, liberty and security of person. These rights shall be protected by law." (3). It should be noted that States have a responsibility to prevent the practices touches the human rights to life in fulfillment of its commitments under the international charters mentioned above.

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(3) Article No. (5) Of the Arab Charter on Human Rights.

## **The second study**

### **The right to justice in the old legal laws and contemporary international charters**

#### ***Preamble:***

Justice is the safety valve for human communities, ensuring the oppressed the right to restore his right, and guarantees for the accused his right in the procedural legitimacy in a manner that preserves his dignity and humanity.(1), due to the importance of justice as a fence shield against the tyranny of power, the researcher will try to show the availability of the right to all of the ancient societies and contemporary international documents, through the division of this study into the following demands:

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(1) Dr. Tariq Izzat Rakha, *ibid*, p. 137.

## The first demand

# The right to justice in ancient Eastern Religions

### *First: In Pharaonic Egypt:*

The ancient Egyptians gave justice a supreme importance, and a prominent position, both with regard to religious faith, or with respect to different systems (1), consequently, the researcher will be exposed to the position of justice in religious belief of ancient Egyptians, then its importance in their civil systems, as follows:

#### **A) Justice in the religious belief of the ancients Egyptians:**

There is no doubt that justice formed, to the ancient Egyptians, the roots of religious belief and its main corollary, as the creator of the universe and the Lord of lords “RA” loves Justice and orders it, he hates injustice and punishes on it. An evidence on this is the text of the twelfth family history came on the tongue of the god “ Ra” in which he says: We

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(1) Diodorus of Sicily, *ibid.* p. 135.

have created the four winds so that every person can breathe as his brother, and the great water so that it can be used by the poor as his master does, we have created every human being similar to his brother, I have deprived the people to do injustice, but their hearts what I said” (1), the ancient Egyptians attention and their interest in achieving justice was very great that they made to it a god they called him the name (maat) in the beginning of era of the old State took the meaning of the word “MAAT”.

**B) Justice and the governance system (civil) systems at the ancient Egyptians:**

At this point it appears the extent of the commitment of the king, the minister and the other rulers of considering justice in their authenticated confirmation of the decisions or their behavioral acts (2), the king, according to the ancient Egyptian doctrine, was physically considered the son of the god “RA” and his representative in ruling of Egypt.

It has already been stated, that in the pharaonic Egypt prevailed the belief that the creator of the universe “RA” was the orders of justice and end the injustice, so it was natural that makes the king from taking account of justice as his first duty in each of legislation or in his decisions, as well as observance of justice imposes on all who follow him or who

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(1) Abdul Aziz Salih, *Ancient near East*, edition 1970, p.367.

(1) Dr. Mahmoud Zinati, *ibid*, p. 141.

are subdued to his orders from the oldest to the youngest, as well as the minister takes the king's orders in the need for and commitment to the side of justice, but it has been the custom that the king give a speech to the minister on the occasion of his inauguration including his advice on what should be the behavior in carrying out his job. As justice was the duty of the king, it was the duty of the provincial governors and other citizens(1).

The ancient Egyptians also took many procedures aiming at the establishment of the jury on a solid foundation of justice, of these proceedings related to the persons of the judges, the good selection and the promotion in the Career, and restriction of the freedom of judges to mingle with others, and making high salaries for them, and exagg eration of punishment on the deviant judge, and free of charge litigation and making the litigation on degrees, and making the plead in writing, the tightening of the penalty for perjury and forgery of official documents (2).

### ***Secondly: In Mesopotamia:***

The Mesopotamian law considered justice as one of the tasks of the Divine missions, the god is the greatest Judge,

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(1) Dr. Yasser al-Hudaibi, *ibid*, p.42, as well as Dr. Mahmoud Zinati, *ibid*, p. 143 and beyond.

(2) Dr. Mahmoud Zinati, *ibid*, p. 148 and beyond.

he assign the kings to do justice on his behalf, so it has been said that the main task of the king was the spreading of justice and the maintenance of order and justice in the countries and eliminate injustice, and the kings in Mesopotamia tried to inspire the idea of justice in their writings under the influence of the fear of punishment of the gods, and due to the desire to put an end to the inequality and social injustice prevailing in society, the protection of individual freedoms, the writings found in Mesopotamia reflect the idea of justice.

For example, we find that the law in the eyes of “Hammurabi” is synonymous with the rule of justice and equity, as the king was Hammurabi derives his ideas, monitored in his code his feeling of two things: The first is the will to achieve equality before the law, and secondly, to give priority to the principle of justice and equity in the provisions. (1), and this is what we find in Hammurabi’ speech: “ That the strong might not injure the weak, in order to protect the widows and orphans, I have in Babylon the city where Anu and Bel raise high their head, in E-Sagil, the Temple, whose foundations stand firm as heaven and earth, in order to bespeak justice in the land, to settle all disputes, and heal all injuries, set up these my precious words, written upon my memorial stone,

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(1) Dr. Suhail Al Fatlawi: *History of legal systems, the house of contemporary thought*, Beirut, no date, p. 105, as well as Dr. Abdul Aziz Shaukat: *The Full Moon shining in the assets of the systems and laws*, library victory, Cairo, 1990, p. 268.

before the image of me, as king of righteousness. “ (1).

Also, saying: “ let the oppressed, who has a case at law, come and stand before this my image as king of righteousness; let him read the inscription, and understand my precious words: the inscription will explain his case to him; he will find out what is just, and his heart will be glad “ (2).

Although the idea of justice represented the basic idea of the Iraqi legal thought, as was the case in ancient Egypt, but it must be noted that the king in the old Iraqi countries, there was not a spring to justice by the gods to spread justice issuing laws and or trying to achieve it . (3), and this is consistent with the philosophy of the rule of Hammurabi that “justice is the basis of ruling” and that justice is the rule which prevailed (4).

In general, the rules contained in the Code of Hammurabi are advanced in many respects as compared with the preceding rules of the codes that preceded by a few centuries in Mesopotamia, but that the rules of the Code of Hammurabi exceeded in its justice and progress the rules contained in many codes that have been issued in the west countries after

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(1) Text copied from the translated texts of the Code of Hammurabi, refer to: Dr. Fayez Hussein, power, freedom and philosophy of human rights, *ibid.*, p. 322.

(2) Dr. Mohamed Badr, the history of social and legal systems, the Arab Renaissance Publishing House, Cairo, 1948, p. 110.

(3) dr. fathi AL Marsafawy, the history of the Iraqi old laws, *ibid.*, p. 166.

(4) Dr. Mahmoud Al-Saqqqa: lights on the history of social and legal systems, the Arab Renaissance Publishing House, Cairo 1997, p.94.

that, such as the Code of 12 panels by the Romans (1), the Iraqi laws has concerned to achieve justice, we refer in the following to the most important guarantee established by the Iraqi legislation in this regard.

1. Increase the penalty for the judge on deviant behavior, it is the legislation of Hammurabi proof, where the response of the crime of tampering the award by the judges (as an attempt to change it, as example).

2. Increase the penalty for the false claim, as well as to crime of the false testimony, and the imposition of the guilt of the perpetrator.

3. The allowance of the right to petition from everyone to the king if he failed to get his right by the competent court.

4 - The obligation of everyone who sees a crime to report it and if they do not, they would be punished.

But, unfortunately, it is a clear violation of human rights in the ancient world is the prevailing of the principle of non-personal punishment, in the old Iraqi community ,the Iraqi legislation did not respect in many of the crimes the principle of personal punishment, where it is clear that in most cases, punishment is imposed on the offender's sons or his wife, and sometimes to punish the governor or the director of the if they don't arrested the thief, the man who stole will official-

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(1) Dr. Sufi Abu Talib: *The History of legal and social systems, the Arab Renaissance Publishing House, Cairo 1967, p.113.*

ly announce what is lost before God, and the city governor who the crime was committed in their territory or province will compensate him for what he lost. In general, examples to non-observance of the legislation of Mesopotamia to the principle of personal punishment are countless.

## The second demand

### The right to justice in the laws of the Old West

#### *First: The Greeks:*

The Athenians did not know the principle of the separation of powers, the judiciary have not, therefore, an independent authority, but remained part of the competence of the General Assembly and the Shura Council, the citizen has the right to contribute to the course of justice, and justice in Athens did not take a limited form or fixed, as a result of increasing people's contribution in its course, ancient Athens has known the jury system, which was introduced by Solon to serve as a court of appeal, the jury was a popular court consists of six thousand citizens who have attained the age of 30 volunteering to perform the role of the juror (1).

With the increasing number of cases - beginning in 462 BC

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(1) Dr. Mohamed al safoori, ancient legal systems to Jews, Greeks and Romans, no publisher, 1996, p. 253.

– it was necessary to divide the jury to 10 courts .each court is composed of five hundred and one judge, in addition to one thousand associates, these courts consider issues of particular importance, and they may all meet for the same reason, but private disputes or which of less importance would be considered only before a court consisting of 200 judges and one(1).

Thus, the jury had been converted to real judges. Their role ended as a court of appeal to become the jurisdiction of governance issues from the beginning and the issuance of the final award, their competence included the of civil and criminal cases, in addition to political issues, and that was effectively as a translation to the firm Athenian principle which provides that "the people are the masters of their own destiny and maker of their policy and legislation and the judge of their disputes" (2), the jury ,in ancient Athens, was characterized by the private nature , the individual is the one who moves his claim, there was no one on behalf + pay a fine and deprived of his civil rights, but he is liable to the same punishment if his claim was not accepted by at least 20% of the judges. (3). If the claim was accepted, another team of judges with expertise in the subject matter would be asked to investigate it, then the

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(1) *Ibid.*, p.253.

(2) refer to: Jean Goudement, *institutions de l'anTiquite*, sirey,, 1967, p. 171. Paris

(2) *The atmosphere of a puppet*, *ibid.*, p. 171

court will be held to issue its judgment by a majority vote and without debate(1).

The Athenians has known the notion of proportionality between crime and punishment, and also they took into account - When deciding the punishment - the intention of the perpetrator, at the end of the fifth century B.C, they get to the right of the assertion of the principle of personal punishment, so the obligatory punishment was not assigned to the perpetrator after that this sanction was extending to his family members (2), ARISTOTLE has included a detailed description of the procedures for drawing lots for the appointment of judges and their distribution among the various courts, and how the vote was taken at trial, and the pronouncement of the judgment, this description limited its importance to highlight the value of the rituals and formalities associated with the appointment of judges in the hearts of the Athenians without the clear religious importance.

### ***Secondly: the Romans:***

The Romans' litigation had been distinguished with accuracy and rigidity, this system includes two phases for the claim to go through, the first stage: this stage is a purely procedural

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(1) Dr. Mohamed al safoori, ancient legal systems to the Jews and Greeks Romans, ibid. p. 254.

(2) Ibid., p.254-255.

performed by an official called the judicial ruling, but the second stage: it is a substantive stage performed by a judge or an arbitrator, according to the cases. (1), this will be shown as follows:

**A) The procedural stage:**

This stage is required initially to accept the case so that it does not accept the case only after this stage, this is a procedural stage so that there is no consideration of the subject of the case, the task in this stage is performed by an official called the judicial ruling, as the task of this ruler varies depending on the type of case, there are two types of cases in Roman law, the first of the so-called the cloak of law, which required such actions need to follow certain legal formulas, for this type of litigation is limited to the mission of the judicial ruling in the review of the legal forms of those proceedings, then after determining the subject of the dispute, and this judicial ruling refers such cases to the judge to decide on its merits.

The second type of proceedings is what was called the claims of the program, the proceedings are not required certain formulas so as to be accepted. these proceedings are accepted without complying with the drafting or certain words, and in such cases the mission of the judicial ruling in the formula-

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(1) Dr. Ahmed Ibrahim Hassan, the history of ancient Egyptian law, with a study in the theory of commitments in Roman law, the house of the new University, Alexandria, 2004, p. 5 and beyond.

tion of these proceedings, and he has absolute freedom in that, where the law does not impose on him any particular formula, if he finished its formulation, he would refer these cases to the judge who decides on its merits (1).

### **B) The substantive phase:**

It is the stage of consideration of the merits of the case by a judge or an arbitrator to examine the facts of the case, then the pronouncement of the judgment, it should be noted that the judge or the arbitrator in this stage is to grant full freedom of liabilities to the opponents in the explanation and clarification of what they claim, and the opponents demonstrate their words, using all the means of proof (1), where the opponents do not adhere to certain ways to prove their claim, they are entitled to resort to writing or other lower means of proof, such as proper proof and evidence and other means of evidence(2).

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(1) DR. SABRI, woo. Ahmed Structure: The History of Law, author of a joint venture, the University of Bahrain, 2008, p. 254.

(1) Dr. Taha Awad Ghazi, a Charter party arbitration in Roman law, the Arab Renaissance Publishing House, Cairo 2002, p. 15.

(2) Dr. Sabri Khater, woo. Ahmed structure, the history of the law, the author of the joint venture, *ibid.*, p. 254.

## The third demand

### The right to justice in contemporary international charters

Many of the international covenants concerned with human rights ensured the right to justice as follows:

**First: The text of the Universal Declaration of Human Rights:** «Everyone has the right to resort to the competent national tribunals to his equity of acts violating the fundamental rights granted him by the Constitution or by law» (1), and provided that: «Everyone is entitled in full equality with others, has the right to consider his case by an independent and impartial tribunal, in a fair and public hearing of his rights and obligations and of any criminal charge against him»(2).

As well as provided that the presumption of innocence to

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(1) Article No. (6) Of the Universal Declaration of Human Rights, see the commentary on the article by Dr. Ibrahim Ahmed Khalifa, the international obligation to respect human rights, *ibid*, p.80.

(2) Article No. (15) Of the Universal Declaration of Human Rights, see the article by Dr. Ibrahim Ahmed Khalifa, the international obligation to respect human rights, *ibid*, p.80.

the accused till he is proved to be guilty and to ensure that the guarantees of the rights of the defense, the principle of the legitimacy of the crime and the sentence considering time by saying (1):

1. Every person accused of a crime to be presumed innocent until proved guilty according to law in a public trial at which he has accepted all the guarantees necessary for his defense.

2. No one shall be held guilty of any penal offense on account of any act or omission which did not constitute an offense, under national or international law, nor shall a heavier penalty be imposed on him than the one that was applicable at the time the penal offense was committed.

**Secondly: The International Covenant on Civil and Political Rights:**

The International Covenant on Civil and Political Rights had put the requirements available in the trial to be fair to achieve the human right to justice, it stressed the covenant on the independence and impartiality of the court, public trial, and openly meetings (with some exceptions to this publicity), as the covenant confirmed the presumption of innocence, the guarantees of the rights of the defense, and the legitimacy of the trial procedures, the provision of special procedures to take into account the age, events and ways to review the

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(1) Article (11) of the Universal Declaration of Human Rights.

provisions, and the inadmissibility of impunity on the one act twice, and compensation for the failure to achieve justice and respect for the principle of authoritative Judicator, concerning this the Covenant says as follows (1):

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be

made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. Vol.999,1-146681976

United Nations Treaty Series. Nations Unies Recueildes

(1) Article No. (14) of the International Covenant on Civil and Political Rights of 1966.

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3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance,

of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

As the text of the International Covenant on Civil and Political Rights to ensure that the principle of legality of crimes and penalties, non-retroactivity of the penalty in the light of

the rules of international and national law and the application of criminal law most favorable to the defendant, saying(1):

1. No one shall be held guilty of any criminal offence on account

of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

**Thirdly: The European Convention on Human Rights:**

Provided by the European Convention on Human Rights(2):

1. Every Person has, in the civil rights and obligations, or in the criminal charge against him - the right to a public hearing within a reasonable time before the Court is an independent, non-biased the problem in accordance with the law and judg-

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(1) Article No. (15) Of the International Covenant on Civil and Political Rights of 1966.

(2) Article No. (6) Of the European Convention on Human Rights.

ment publicly, and may prevent journalists and the public to attend all meetings or some, according to the requirements of public order or public morals or national security in a democratic society, or when the interest of the young children or the protection of the private life of the parties, as well as if the court deems the necessity in special circumstances where publicity would be detrimental to justice.

2. Every person accused of a crime is presumed innocent until proved guilty according to law.

3. Every person accused of a crime, as a minimum, the following rights:

A. To be informed promptly and in detail in a language which he understands of the nature of the accusation against him and why.

B. The given adequate time and facilities to prepare his defense.

C. To provide his own or with the assistance of a lawyer of his choice, if he did not have sufficient means to pay for such legal assistance must be provided to him free of charge, whenever justice so requires.

D. To direct questions to witnesses of proof, and enabling it to summon and question witnesses of exile under the same rules as witnesses of proof.

E. The free assistance of an interpreter if he cannot under-

stand or speak the language used in court.

As stated in the European Convention on Human Rights(1):

1. No person may be convicted of an because of the act or omission was not considered at the time of the act or omission a crime in national law or international law, shall not signing the heavier penalties than those established at the time the crime was committed.

2. This article shall not prejudice the trial and punishment of any person for the act or omission is the time to do or refrain from doing a crime in accordance with the general principles of law of civilized nations.

Fourthly: The African Charter on Human and Peoples› Rights of 1981:

The text of the African Charter on Human and Peoples› Rights to:

1. Every individual shall have the right to have his cause heard. This comprises:

(a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;

(b) The right to be presumed innocent until proved guilty by a competent court or tribunal;

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(1) Article No. (6) Of the European Convention on Human Rights.

(c) The right to defense, including the right to be defended by counsel of his choice;

(d) The right to be tried within a reasonable time by an impartial court or tribunal.

2. . No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

## **The third study**

### **The right to freedom in the old legal laws of contemporary international charters**

#### ***Preamble:***

There is no doubt that everyone has the right to freedom and liberation, so that not only the rights and freedoms are limited on the ruling class without the public, all are equal in front of right, and everybody have the freedom which is one of the humanitarian supplies, creating a stripe, which is the refocusing of their responsibility and accountable, and to explain the position of the old laws and international conventions of this right, the researcher will be exposed in this study to three demands.

## The first demand

# The right to freedom in the laws of the old East

### *First: In Pharaonic Egypt:*

The position of Pharaonic Egypt for the right to freedom was an ideal position if compared with the position of other civilizations since noon of slavery until its abolition in modern times, in order to detect the position of the Egyptian law in the Pharaonic era of the human right to freedom, it is necessary to address the following topics: sources of slavery, the slaves, the acquisition of freedom <sup>(1)</sup>.

**1 - The sources of slavery:** It means the causes that lead to the loss of the free man his liberty and his turn into a slave, it was the Egyptian Pharaonic law limited the causes of slavery beyond the extent, we find the sources of prisoners of war, or committing very serious crimes <sup>(1)</sup>, the law requires that prisoners of war become the property of the Pharaoh, the pharaoh

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(1) Dr. Yasser al-Hodeibi, *ibid*, p. 135.

(2) See: *The Ancient Zimbabwe* Wilkinson, London, 1994, p. 2.

keeps whom he pleases from them - male and female - and he donates the other prisoners to the different temples and to his leaders and soldiers, and this is the origin of the existence of the special slavery.

It is noteworthy that the ancient Egyptians had not the habit of sacrificing human to their idols, unlike some other ancient civilizations (1).

The law provides for a second source of slavery and the judgment of enslavement of the criminal in some serious crimes where it was punishing the shepherd who steal cattle of entailment by putting him on wood, the confiscation of his money and his wife and sons for the entailment, and of the provisions of the old Egyptian law which respectful of the human right to freedom, the right of limiting the right of a creditor to require the debt on the funds of the debtor without the person this was in the beginning of the family, 24 or 25.

As well as limiting the slavery only on foreigners without the Egyptians, and Diodorus of Sicily compared between the position of the Egyptian law and the laws of the Greek cities, in this regard, he praised the attitude of Egyptian law in this regard, he pointed out that some of the lawmakers of Greece were transferred this sentence of Egyptian law and applied it in their country.

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(1) Dr. Yasser al-Hodeibi, *ibid*, p.36.

**2 - The Slaves' position:** The slaves had, of course, a social and legal framework position is different from the position of the free men, however, the slaves in the pharaonic Egypt enjoyed the best legal and social status that slaves could enjoy in any other place, and this is evident in several things:

**The first is:** The slave like the freeman enjoys an official civil status - for things of life the slave take an Egyptian name, enjoying legal adoption, where his father's name and his mother should record in the civil registry, as well as his nationality, it was recorded on his identity card his owner's name, or the one who controls him (1).

**The second thing:** The slaves had, under the protection and the acceptance of their master, the right to own any Chattels, or buildings and the son inherited them from father, but they had their private servants (2).

**The Third thing:** The law protects the life of the slave as the same functionality that protects the life of the freeman, the death penalty for murder was applicable whether the dead person was a slave or free(3).

**The fourth thing:** The slave had the right to have a legal marriage contract, making of the legitimate family, but the marriage of a slave from a free woman entails the acquisition

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(1) Dr. Yasser al-Hodeibi, *ibid.*, p.36.

(2) Human rights, non-periodic bulletin mentioned p.33.

(3) Human rights, non-periodic bulletin mentioned p.36.

of freedom, also the marriage of a female slave from a free man entails her freedom<sup>(1)</sup>.

**3. The reasons for gaining freedom:** Ancient Egyptian legislator has cope up with all the laws in that time, making it one of the most important reasons for the acquisition of freedom for the slave is that his master frees him, but he had reached the end of the expansion of the reasons for gaining freedom, not only in this manumission alone, one of the most important reasons that acquired by the Ancient Egyptian Lawmaker is the marriage between free and slave, also the marriage of a slave to a free woman entails freedom to him and his children.

In the papyrus from the reign of Thutmose III read as follows: “+in the year twenty seven during the rule of His Majesty the King of the north and south of the best Ra the son of Ra Thutmose, such as the royal brouhaha (Spastit) before the parents of Baheb of the royal palace to announce: The servant who was granted to him a special grant, called (Amin yoyo) I have earned him by the strength of my arm during my accompany to the King: Hear from the temple of (Pastit) this lady Tel Poiastis (tel Pasta) on behalf of the father of the barber (Nip Sahnno) that he would not stop the start the provisions of

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(1) Christian (déroche), *the Pharaonic Women*, interpretation Fatma Abdullah Mahmoud, the General Egyptian Book Organization, Cairo 1995, p. 198.

any section of the King I have given him my sister's daughter (Nipt), As a wife to him, and called (Takment)" (1). But that the acquisition of the status of freedom was not limited to the children born since the wedding was one of the couples was a slave, but extended to the children of the man from his bond-woman whom he did not make a wife (2).

### ***Secondly: In Mesopotamia:***

The Mesopotamian knew, like other ancient societies slavery system, since ancient times, it was the slaves represent the third layer in the liberal society after the free and the public, sources of slavery in Mesopotamia had been varied, the war was the most important source for the slaves, as the rich was common means for getting the slaves (3), it is noteworthy that the slaves in Mesopotamia were not always of foreigners, it was possible to enslave the citizens, there are cases of slavery was due to the state of "Ur" of free citizens turned to slavery either because they sold themselves because of debt, or hunger, or because the creditors seized them because of their inability to fulfill their debts, breeding of slaves was also one of the sources of slaves and slavery, the slave inherits this attribute by his birth of parents carrying this attribute,

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(1) The, Pharaonic Women, *ibid.*, p. 199.

(2) Dr. Yasser al-Hodeibi, *ibid.*, p.37.

(3) Dr. Yasser al-Hodeibi, *ibid.* p. 50.

(4) Dr. Mahmoud Zinati, the entrance to the historical study of human rights, *ibid.*, p.113-114.

or at least of a mother bear it <sup>(4)</sup>, and the slaves in Mesopotamia were form of the funds thus were the subject of the right, Hammurabi's law has referred to the right of the master in renting the slave owned by him to others, or served as collateral, the slave was carrying a special mark (TATTOO) shows that he is owned by others, explicit texts has organized this issue in the Code of Hammurabi <sup>(1)</sup>.

The law protects the rights of the master before his slave, this is evident from the strict sanctions that were expected to harbor a slave on the run, as this act is punishable by the death penalty, and the auricle of the ear the slave who denies his master, the barber who removes without right, the sign of the tattoo carried on the slave would have his hands cut. <sup>(2)</sup>.

Some researchers have estimated that the average of what the family in the free Babylonian state-owned in about 1000 BC was between 2 to 3 slaves, and in the Assyrian state between 3 to 4 slaves <sup>(3)</sup>, the creditor could sell the debtor's wife and children as slaves also, but for a limited period was estimated in Hammurabi's law by three years <sup>(4)</sup>.

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(1) Dr. Abdul Majid Al Al-hefnawi added the history of social and legal systems, Alexandria, no date, p.414-415.

(2) Dr. Sufi Abu Taleb, the history of legal and social systems, *ibid.*, p. 216.

(3) Dr. Mahmoud Zinati, the entrance to the historical study of human rights, *ibid.*, p. 114.

(4) Dr. Mahmoud Al-Saqqa, philosophy and the history of social and legal systems, *ibid.*, edition 1978, p. 378, item 611.

## **The second demand**

### **The right to freedom in the laws of the Old West**

#### ***First: The Greeks:***

Slavery had at the Greeks three sources: birth , war and the rule of law, the number of slaves born in the house was not big because most of the newly-born slaves from a female slave were killed or ostracized, war was the main source, it has been the custom in wars to kill men, women and children, captives were offered for sale, the sources pointed out that one of the pimp victors offered more than 20 thousands of the slaves for sale in the market, the law also contributed to increase the sources of slaves, the law allows the head of the family to abandon the newly-born children, who were picking up these children were targeting their use as slaves for them.

In some Greek cities, the father had the right to get rid of

his children whom he had brought up, and in Athens, the father had the right to sell his detested daughter, in many Greek cities the creditor steals the insolvent debtor with his wife and children, as well as the state judges by servitude the one who commits a crime of certain crimes <sup>(1)</sup>.

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(1) Human rights, non-periodic bulletin mentioned p. 34.

### ***Secondly: the Romans:***

the Roman law did not know, the right to freedom as a whole, as the Romans knew slavery since the dawn of their history until the end of the Roman Empire, the ceiling of slavery appeared to the Romans+ linked to foreign nationality, they have found the correlation between the Romanian citizenship and freedom, a person cannot be free in the eyes of the Romanian society only if he had Romanian citizenship, and who lose the Romanian citizenship necessarily loses the status of freedom (1).

There were several reasons subsequent birth which impose slavery at the Romans, it was one of the causes of slavery selling a Romanian outside the borders of Rome, the Roman governor had the right to sell who escapes deserter, or escapes from the lists of financial taxes or from the military book (2), or who neglected writing his name in the lists of the census, the stolen had the right to sell militarily retaliate as a slave outside Rome, the same thing the creditor for the insolvent city, the father to sell his children outside Rome as slaves, if he wanted to get rid of them or benefit from them, slavery was a subordinate sanction if the free was judged by some

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(1) Dr. Mahmoud Al-Saqqa, philosophy and the history of social and legal systems, *ibid.*, edition 1978, p. 448-449.

(2) dr. fathi al-marsafawy, the history of legal and social systems, the Arab Renaissance Publishing House, Cairo 1985, p. 132.

serious sanctions, and slavery was also the punishment for a free women who cohabits with a slave without the knowledge of his master as well as the freedman who disgraces the blessings of his old master (1).

The social status of slaves, was a dark image, as they were subjected to all kinds of oppression and suffering, but the legal status of the legal personality of the slave was zero (2), also the slave did not have any right of the public or rights of the high class, he had no family or a community or a homeland, but the master was everything for him (3).

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(1) Dr. Mahmoud Al-saqqa, the history of legal and social systems, *ibid*, edition 1978, p. 451.

(2) Dr. Sufi Abu Taleb, the history of legal and social systems, *ibid.*, p.360.

(3) Dr. Yasser al-Hudaibi, *ibid.*, p.84.

## **The third demand**

### **The right to freedom in the international charters**

Slavery was, as we already mentioned, produced from the wars, invasions, and it was widespread in ancient times, in the middle and in early modern times.

The concept of traditional slavery have expanded and entered in its field of trade the “white slavery” which means the trade in women and using them in prostitution, as well as the practices similar to slavery, which was represented in the abduction and sale of children for forced prostitution, trafficking in the organs of their bodies for sale as spare parts for those who want to replace human organs

The researcher will present at the outset the meaning of slavery, servitude, forced labor and similar practices as defined by international conventions, how criminalization and prohibition of international human rights char-

ters for these acts, as follows:

**First:** The Meaning of slavery, servitude, forced labor and similar practices in accordance with international conventions:

***A-the definition of slavery:***

1. Is the status or condition of a person over whom any or all of the powers attaching to the right of ownership of all or some of the.

2. The slave trade includes all acts involved in the capture of a person or possession or intent to reduce him to slavery, and all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange, as well as generally no transport in slaves or them <sup>(1)</sup>.

***B-The definition of practices similar to slavery:***

According to the Supplementary Convention on the Abolition of Slavery, the slave trade, and Institutions and Practices Similar to Slavery meant the norms and practices similar to slavery as follows <sup>(2)</sup>:

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(1) Article No. (1) Of the Convention on the prohibition of slavery and forced labor and slavery-like practices, issued in 1926.

(1) Article No. (1) Of the Supplementary Convention on the Abolition of Slavery, the slave trade, and Institutions and Practices Similar to Slavery of 7 September 1956.

**1. Debt bondage, refers to the case or the situation resulting from the mortgage by a debtor of his personal services or people continued him to guarantee a debt, if the fair value of these services cannot be used to liquidate this religion, or not to the duration of these services or specific nature.**

**2. Serfdom, i.e. if or any person legally binding custom or law or by agreement, that the living and working on the land of another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.**

**3. Any of the usages or practices which result from:**

**- The promise of a woman married or marries without to have the right of refusal, an allowance or the eyes of the parents or guardian raises it, family or any other person, or any other group of people.**

**- Granting the husband or his family or his clan has the right to transfer her to another person for price or rather than another.**

**- The possibility of making women upon the death of her husband to be inherited by another person.**

**- Any of the usages or practices that allow one or both of the parents or guardian to hand over a child, a teenager without the eighteenth of age to another for gain, or with-**

out the intent to exploit the child, adolescent or exploitation of the work.

*C-the definition of forced or compulsory labor:*

forced or compulsory labor is defined as “all work or service which is exacted from any person under the menace of any penalty and for which this person has not offered himself voluntarily, with the exception of compulsory military service, and some specific cases provided for in the Convention.

**Secondly:** the prohibition and criminalization of slavery, servitude, forced labor and similar practices in several sources of this law are as follows:

1-The text of the Universal Declaration of Human Rights the ban by saying: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”.

2. The text of the International Covenant on Civil and Political Rights to this ban. <sup>(1)</sup>:

- No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
- No one shall be held in servitude.

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(1) Article No. (8) Of the International Covenant on Civil and Political Rights of 1966.

- **No one shall be required to perform forced or compulsory labor**

Also the text of the International Covenant on Civil and Political Rights and that “No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.” (1).

3. As stated in the Geneva Convention on the prohibition of slavery and forced labor and Practices Similar to Slavery: “The States parties to the Convention to take all measures to prevent and punish slave traffic gradually work as quickly as possible to eliminate entirely on slavery in all its forms” (2), and also to those States that prohibit forced labor, which turns to frank slaves (3).

4. It also called for the Supplementary Convention on the Abolition of Slavery, the slave trade, and Institutions and Practices Similar to Slavery of 1956, to intensify national and international efforts to achieve the abolition of slavery, the slave trade, and Institutions and Practices Similar to Slavery (4), and recommended that the punishment of participants in the slave trade and the strongest sanctions, as recommended by the Convention, the States

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(1) Article No. (11) Of the International Covenant on Civil and Political Rights.

(2) Article No. (2) Of the Geneva Convention mentioned issued in 1926.

(3) Article No. (5) Of the Geneva Convention mentioned above.

(4) Dr. Tariq Izzat Rakha, *ibid.*, p.134-135.

parties to take all effective measures to prevent their flag vessels and aircraft from the transfer of the slave trade, and to prevent the use of its ports and airports to the coasts of this trade, the Convention also decided that a slave became free as soon as he resorted to any Cruise ships of States Parties <sup>(1)</sup>.

5. As stated in the convention concerning forced labor and forced to criminalize such practices, saying: vows to every member of the International Labor Organization to ratify this Convention to criminalize the use of forced or compulsory labor in all its forms in the shortest possible period <sup>(2)</sup>.

6. The International Labor Organization Convention and to criminalize forced labor on prohibiting and criminalizing forced labor as a punishment or a means of coercion or duress, saying: “Each member of the International Labor Organization to ratify this convention to prohibit any form of forced or compulsory labor, and not resort to it:

A) As a means of coercion or political guidance or as a punishment to embrace political views or opinions contrary to the sectarian political system, economic or social

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(2) Dr. Shafe Yakoub expressed Bashir, *ibid.*, p. 222.

(3) Article No. (1) Of the Convention No. (29) Of 1930, forced labor and forced labor.

**based or authorization for this consensus, or**

**B) A method of mobilizing and using labor for purposes of economic development,**

**C) As a means to impose discipline on workers, or**

**D) As punishment for participating in strikes, or**

**E) As a means of racial, social or religious forces or<sup>(1)</sup>.**

**7. As stated in the International Convention for the Prohibition of Traffic in Persons and of the exploitation of the prostitution of others of the United Nations in 1949: The States Parties to this Convention to stop trafficking in persons of both sexes for the purposes of prostitution and punish seen Pimp<sup>(2)</sup>.**

**Thus trying to international legal sources mentioned above prohibiting practices mentioned distrust and reduction and eliminate them, at both the domestic and international levels.**

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**(1) Article No. (1) of the Convention No. (105) of 1957, which was prepared by the International Labor Organization and the criminalization of forced labor.**

**(2) Dr. Tariq Izzat Rakha, *ibid.*, p.135-136.**

## **The fourth study**

### **The right to a democratic system of governance in the old legal laws and contemporary international charters**

#### ***Preamble:***

The right to a democratic system means that human beings have a right to attend its governing authority, management and implementation of all guidance with regard to, inter alia, the state and its affairs, this implies that every person with legal capacity to exercise political rights in the choice of the Authority, in its monitoring and accountability for such actions, and isolating it if it deviated from the right path, in the light of our study of human rights, we consider the problem of the extent to which the individuals in the ancient world enjoy the

**right to political participation, and the establishment of a democratic system, but at the outset we must distinguish between what was the case in the ancient eastern societies, and what was the case in the ancient western societies.**

## **The first demand**

### **The right to a democratic system in ancient Eastern religions**

#### ***First: in Pharaonic Egypt:***

**1-The foundations of the pharaonic regime:**

**A-religion and governance:**

Since the emergence of the State system in human societies, peoples of different dynasty considered their kings as a link between them and the gods, and what has helped the spread visibility of such thinking the role played by the priests and clerics, where they devoted their efforts to confirm the consolidation of this belief, sometimes persuaded the people that the Governor is the representative of the gods on the earth or their shadow on the earth, and that the governor delegates or part of the people commissioned by God <sup>(1)</sup>.

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(1) Diamond, the evolution of law and order, Paris, 1954, p. 153, as well as Dr. Fayez Hussein, makes assets, *ibid.*, p.9.

But that prevailed among the Egyptian people in the Pharaonic era is that they looked at ruling party a completely different look from what it was of the peoples of the ancient world and their rulers, where the Egyptian people considered the Pharaoh as God living amid the people, and felt that the character of the country's ruler pharaoh had partially melted in the personality of the gods, divinity of Pharaoh has emerged in Egypt since the beginning of the era of the dynasties since the rule of King Mena over the countries after the unification of upper and the lower parts in one state under his rule, the idea continued until the end of the Pharaonic era, but also remained even under the rule of the Ptolemies and Romans to Egypt<sup>(1)</sup>.

B-the absolute monarchical rule: the system of governance in the pharaonic Egypt characterized by that royal power and absolute authority, where the Pharaoh was the sole source of all the legislative and judicial authorities, religious and military and executive powers, the king is the state and his will is the law, and Every officer of the State is not a member but a servant of the King and a transporter of his desires to the people and derives from him his authority and responsible to him alone, the

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(2) Dr. Mahmoud Al-saqqa, the evolution of legal systems, Cairo, 2006 edition, p.23.

pharaonic monarchy was absolute in nature, based on the authority of a single individual, the pharaoh <sup>(1)</sup>, and the theory of the divine right is based on the philosophy of absolute rule in Egypt.

***1 - The results of absolute monarchical rule in Pharaonic Egypt:***

***First: The political results:***

**A-The source of the Authority:** the ruler is a god, so the royal authority is a divine authority, this has led to the requirement of the crowning of the King, and this was by holding religious ceremonies and celebrations which is very complex in some cases, very ambiguous in other times, the king does not acquire legitimate character only after the completion of the coronation ceremony <sup>(2)</sup>.

**B-The widening of the powers of the King:** The philosophy of the absolute monarchy led to on the one hand that the king was the source of all authorities in the state warehouse, where he combines in his hands all authorities, , and, on the other hand, given the nature of the divine ruler, King characteristically preoccupying all religious functions <sup>(3)</sup>.

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(1) Dr. Faiz Mohammad Hussein, the origins of legal systems, *ibid.*, p.10.

(2) Dr. Mustafa Saqr, *ibid.*, p.62, as well as the atmosphere of a puppet, old systems, *ibid.*, p.54.

(1) Dr. Fayez Hussein, the origins of legal systems, *ibid.*, p. 12.

**C-The royal worship : it was the pharaoh of Egypt, as the son of Horus, had a particular worship, during his life and after his death, the worship during the life of the King supervised by a government department called the Red House, which allocated some land revenue property, there are also other department of worship to the king as a royal worship after his death called the house property civil endowments, and which provide the necessary sacrifices of Funeral worship to the spirit of the king in memoriam (1).**

**D-The sovereignty is for the King and not to the people: king Pharaoh is the owner of sovereignty, and derives his power from the ancestors of the gods, not the people, and after his death moves to the kingdom of his ancestors in the sky, and filed his son of power on the ground, resulting in the limitation of the Authority in the descendants of the King, therefore, kings used to marry their sisters, so as the divine Royal Blood to be pure (2).**

**The consequence is that the sovereignty of the King and not the people of depriving Egyptians to contribute to the management of the country's political affairs (3), on the**

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(2) Dr. Mohamed El Shakankiry notes in the history of Egyptian law, the house of the Arab thought, 1976-1977, p. 85-86.

(1) Dr. Mohamed Al Shakankiry, *ibid.*, p.86.

(2) Dr. Mohamed Al Shakankiry, *ibid.*, p.87.

other hand, the idea of the divinity of King focus all the powers of the Kingdom in his hand, of the legislative, executive, financial, and military <sup>(1)</sup>.

**E- The throne inheritance:** The result of the monarchy, the rule of the throne inheritance from parents to children directly, these communities did not know the democratic systems, where ancient Eastern societies as a whole did not know the idea of parliamentary councils or constitutional institutions point to the content of the principle of the separation of powers, and the electoral system, the historical documents has confirmed that the inheritance of the ruling regime in Egypt in the Pharaonic era was based on that the eldest son succeeds his father <sup>(2)</sup>.

***Second: The legal consequences:***

**A- Religious nature of the rule of law:** the King was alone is the owner of the legislative authority, because of the soundness of the divine because the people's noninvolvement with him in the legislature, the ancient eastern empires did not know the system of people's congresses, and therefore the orders of the king is the law as an expression of the divine will +the

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(1) Dr. Mustafa Saqr, philosophy and the history of legal and social systems, *ibid.*, p.69-70.

(2) Dr. Mahmoud Al-saqqa, the evolution of legal systems, *ibid.*, p.35.

law itself or through the Priests (1).

**B- Privacy of making legislation: the personal nature of the regime in ancient eastern empires led to the thawing of the personality of the State in the personality of the ruling party, considering the ruler as the repository of all authorities, therefore, the legislative authority in Egypt in the hands of the Pharaoh, exercised by him alone without that could not be shared by one without being delegated by him (2), king alone is the legislative authority in the country, as long as the Pharaoh Is God ,he is the only lawmaker in the country, people did not participate with him in this authority, where the ancient Egyptian society did not know the system of parliamentary assemblies (3). Since the pharaonic ruling is the owner of the legislative authority, he has the authority of interpretation and authority of cancellation, if a dispute about the interpretation of the law, or of a conflict between the two laws, the king issued a decree an interpretative declaration stamped with the seal of State, resolve this conflict, which provides for the interpretation**

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(1) Dr Faiz Mohammad Hussein, the origins of legal systems, *ibid.*, p.14.

(2) *Ibid.*, p.14.

(3) Dr. Mahmoud Al-saqqa, the emergence and development of legal systems, *ibid.*, p.50.

it deems <sup>(1)</sup>, the king also possesses a repeal of the law<sup>(2)</sup>.

**C- The ownership of the pharaoh of all the territory of the State: based on the results of the former absolute royal rule, based with the idea of the Deification of the king, some think that the pharaoh of Egypt had, at least in theory all the territory of Egypt, re: Pharaoh did not inherit governance from his ancestors of, including not only the power and the rule, but also inherited the earth with what on it, and individuals did not have but the land-use right only, as the grant of the king who remains the property of the neck to him, consequently from this opinion, Pharaonic Egypt did not know individual ownership of real estate <sup>(3)</sup>.**

**D- Religious and political character of the criminalization and punishment system: the philosophy of criminalization and punishment in Egypt in the Pharaonic era, affected political and religious situation which prevailed, this influence was manifested in the privacy of the concept of the general crime,**

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(1) Dr. Mohamed Al Shakankiry notes in the history of Egyptian law, *ibid.*, and p.87.

(2) Dr Faiz Mohammad Hussein, the origins of legal systems, *ibid.*, p.14.

(3) Dr. Mohamed Al Shakankiry, *ibid.*, p.89 and beyond.

where we find that all acts of aggression against the territorial integrity or security of the ruler or related to matters of faith are considered general crimes.

*Secondly: In Mesopotamia:*

### **1 - The philosophy of the system of governance in Mesopotamia:**

**A-the basis of the system of governance:** the governance system in Mesopotamia, was set on the basis of absolute monarchy, where the kings resorts to this system for the unification of the country and to maintain the cohesion of the Babylonian Empire, which was mainly composed of small, separate states and the system of governance in Mesopotamia distinguish by that it was based on the idea of the Absolute divine rule , where authority and sovereignty and all powers are concentrated in the hands of the gods, but the king is a deputy, and therefore he exercise of these powers but he is not a god, but the king is a mediator between the gods and the people <sup>(1)</sup>.

**B-King's powers:** Because the rule in Mesopotamia, on the basis of absolute monarchy, the king as the representative of the gods, that on the one hand, he combines in his hands the three authorities, the legislature, the ex-

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(1) Dr. Ahmed Ibrahim Hassan, woo. Faiz Mohammad Hussein, the origins of legal systems, the joint author, printing and happiness, Alexandria, first edition, no date, p.168.

ecutive and the judiciary, and on the other hand, king is not accountable but only in front of the gods, there were not any pursuer on his provisions (1).

In other words, the king in Mesopotamia was the same time the supreme priest, President of the State, the highest administrative president, only the legislator and the top judge (2).

On the other hand, king's authorities are absolute not constrained but only by the Group of restrictions derived from the gods themselves, as well as to some of the social constraints that often had effect, even if this effect often had not a marked impact (3).

## **2 - Effects of absolute monarchical rule in Mesopotamia:**

The sovereignty system of absolute monarchical rule in Mesopotamia had a range of effects, where the last vision the ruler in Mesopotamia had many results.

In sum these results are:

**A- The separation of the religious authorities from the temporal power:** in Mesopotamia the king is considered as a mediator between the gods and the people, he is not

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(1) Dr. Ahmed Ibrahim Hassan woo. Fayez Hussein, author of the joint venture, *ibid.*, p. 168.

(2) Dr. Mahmoud Zinati, social and legal systems in Mesopotamia and to the Arabs before Islam, and *ibid.*, p. 102-104.

(3) Dr Faiz Mohammad Hussein, the origins of legal systems, *ibid.*, p.17.

a God <sup>(1)</sup>, unlike in the case of Pharaonic Egypt, and the consequent is the lack of personal mixed king of the personality of the gods, and therefore there was a constant conflict between the priests and kings, this conflict has led to separation of the religious authority from the royal authority.

**B-The law is an expression of the Divine Will:** The result of the perception of the idea of the law, considering that the king is a mediator between the gods and the people, because in this capacity he is to receive Divine will impart to the people <sup>(2)</sup>.

**C-The sovereignty of the King and not the people:** The King as representative of the gods that he is the owner of sovereignty, as the gods had chosen him to represent them in the judgment of human beings and gave the power and sovereignty to him and not the people<sup>(3)</sup>.

**D-Clerics enjoy an excellent position:** The men of religion in the society of Mesopotamia Enjoy excellent position, but clerics were the source of the legitimacy of the authority of the ruling in Mesopotamia; this position has been present till the separation of the temporal power

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(1) Ibid., p.18.

(2) Dr Faiz Mohammad Hussein, the origins of legal systems, ibid., p.18.

(3) Dr. Ahmed Ibrahim Hussein, philosophy and the history of social and legal systems, publications, Alexandria University, 2003, p.277.

from religious power in the reign of King Hammurabi (1).

**E. The king is not responsible in front of the people:** The king in Mesopotamia is the representative of the Gods, so his relation to the people is in the excellent and top position whereby not accountable to the people, either in relation to the gods is as their deputy to be asked in front of them (2).

**F- The Existence of restrictions on the authority of the King:** Despite the power of the king is absolute authority but this absolute authority is restricted by two limitations, the first limitation: is a religious and moral limitation, as the king is deputy for the gods, he is restricted to them, where he must follow the orders of the gods, and he is asked in front of them for the mistakes that he made in front of his people.

The second limitation is a social and political limitation, is the role of the Senate and the state layer and the priests as well as some military personnel (3).

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(1) Dr Faiz Mohammad Hussein, the origins of legal systems, *ibid.*, p.19.

(2) Dr. Ahmed Ibrahim Hassan, *woo. Faiz Mohammad Hussein, the origins of legal systems, the joint author, ibid.*, p. 171.

(3) Dr. Faiz Mohammad Hussein, the origins of legal systems, *ibid.*, p.19.

## **The second demand**

### **The right to the system of democratic rule in the laws of the Old West**

#### ***First: The Greeks:***

Athens got the leadership of the Greek cities in the 5th century BC, and had a great amount of sophistication and civilization, historians considered that period of its history as the brightest periods in the history of Athens, but in the history of Greece as a whole <sup>(1)</sup>.

Perhaps the most important thing submitted by Athens of humanity is the idea of democracy despite the difference of its concept of the meaning of democracy in the present times, the word democracy consists of two segments of “demos” in the sense of the people,” crates” in the sense of the ruling, in the Greek language means the “rule of the people,” so Athens is the one which taught us

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(1) Dr. Ahmed Ibrahim Hassan, philosophy and the history of social and legal systems, *ibid*, 2003, p.181-282.

the potentials of “democracy” (1).

What prevails in the laws is that the civil state in Athens was the best form of democratic Constitution, and that the nature of democratic Athens lies in equality and freedom. Equality and freedom, however, cannot be achieved but only in the availability of the level of awareness of the general interest of society as a whole interrelated with these two principles, the Athenian people had reached such a degree of public awareness (2).

Democracy at the Athenians featured with a trait expressed by the participation of all citizens as this only in the mandate of the supreme authority, and that advantage can only based on two pillars, equality and freedom<sup>(3)</sup>, we shall be exposed to each of them, as follows:

**A-Equality:** Equality means that all citizens are equal before the law, and that the law is the same for all of them, the law comes from the people, it is the people Who legislates it through various boards, therefore the people subject to the law on their choice<sup>(4)</sup>, the equality at the Athenians assumes

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(1) Dr. Yasser al-Hudaibi, *ibid.*, p.67.

(2) Kafin Riley, *the west and the world, the First Section, Kuwait, the National Council for Culture, Arts and Literature, July 1985, p.104.*

(3) Dr. Mohamed Ali Al Safory, *looks at the origins and evolution of ancient Athenian Democracy, loyalty to the printing and distribution, the Shebin El Kom, 1991-1992, p. 30 and beyond.*

(4) Dr. Yasser al-Hudaibi, *ibid.*, p.67.

that the sovereignty is for the law, and that his speech is the supreme court, all systems are loyal to it, and they stay up to ensure the proper application of its rules, and all citizens cherish that they are subject to the rule of law alone, not to the individual or collective human will <sup>(1)</sup>.

One of the most important examples of the Athenian Democracy, the equality of all citizens that they had the right to attend the People's Council, the right to speak, the right to vote, and each of them had the right to choose as a judge when he reaches the legal age, each of whom have the right to nominate themselves for membership in the house of senate, or to assume public office, according to the conditions set, and each of them can participate in the celebrations and public processions, games and watch the plays on an equal footing with others, except what the rulers enjoy of the special honor, but equality doesn't mean to match, meaning it is not prejudice the equality that the rich carry more burden and costs than that of the poor.

**B-freedom:** The Athenian people had been fond of political freedom and the rule of law and liberty against tyranny, freedom is the objective of the democratic system, a strong link with equality where there is no freedom with-

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(1) Dr. Mohamed Ali Al Safory, looks at the origins and evolution of ancient Athenian Democracy, op. cit., p. 31.

out equality.

Since the democratic system in Athens is based on the pillar of liberty, liberty has acquired several meanings, including the sense of innocence and freedom from slavery, it is one of the conditions for the acquisition of citizenship, freedom means the capacity of individuals to choose freely their political system, what is known as political freedom, it also means the ability of the individual to act in private life as he pleases, what is known as personal freedom <sup>(1)</sup>.

The right to freedom of opinion and the right to expression was one of the main tenets of the Athenian Democracy, the principles of the democratic system in Athens only with the consent of the majority because of the difficulty of unanimity in decision-making; there are many instances of respect for human rights in ancient Athens, which are as follows:

1. The Athenians nautical keen to uphold the principle of equality before the law, as was apparent in ancient Athens to ensure the citizen's rights and freedom and the exercise of political rights by the State, there was a people's assembly of free citizens who are aged 30 years, and then there was the senate, which set the legislation and separates in conflicts, through the reforms introduced by

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(1) Dr. Mohamed Badr, the history of legal and social systems, no publisher, 1974, p.212.

“Cleisthenes” in the 6th century BC and it was possible for the poor layers to join the army, and work in the civil administration.

“Pericles” was also able to achieve more democratic reforms for all free men <sup>(1)</sup> .

2. The Greek city of Athens guaranteed for its citizens the civil rights such as freedom of speech, which is a decided right for every citizen wants to address the Senate or the Assembly of citizens or the court, and the grand jury that was clear in the reforms carried out by Cleisthenes. <sup>(2)</sup>”

3. All documents issued in the 4th century BC Confirm that the restriction of the citizen’s freedom of movement was legally criminalized and punishable by financial penalties <sup>(3)</sup>.

4. Some of the laws have contributed to in the elaboration of human rights in the city of ancient Athens, the most important of these laws the law of “Solon” who declared melting disparities between social classes and equality between the supervisory layer, and the door became open to the public by equality among the people of Athens <sup>(4)</sup>,

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(1) Dr. Yasser al-Hudaibi, *ibid.*, p.69.

(2) Dr. Yasser al-Hudaibi, *ibid.*, p.69.

(3) Dr. Yasser al-Hudaibi, *ibid.*, p.70.

(4) Dr. Al Said Al Araby Hassan, *the lessons in the history of legal and social systems*, no publisher, edition 1996, p.95.

also Solon subjected Athenian Courts under the control of citizens, as the right of the people alone to choose the judges of the courts through the majority of the citizens, is considered an important step in the history of Athens, but they considered the most important characteristics of the Athenian community, emphasizing the importance of the people's courts, Solon has assigned to it an important competence, the right to monitor the ages of all the elected officials and the appointment of governors, and control of their work as well as it was considered the court of appeal for other courts <sup>(1)</sup>.

### ***Secondly: The Romans:***

Rome from the political standpoint, is divided into, as has already been stated, four prehistoric times: The first is called the royal era, and the second is called the republican age, the third is the supreme empire, and last is the era of the lower empire,

The researcher will present briefly the regime during the four political stages, as follows:

#### **A-The system of governance in the royal era:**

The regime in this stage Characterized by the royal nature, where the king assumed power in Rome as the

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(1) Dr. Mustafa Sayed Saqr, philosophy and the history of legal and social systems, ibid., p. 159.

owner of the public authority, and this authority without a certain time, as the mandate of the mission was for life, and not inherited then <sup>(1)</sup>, the choice of the King by his predecessor, if not facilitated the appointment in this way the member of the Senate, called the mediator of the king performs that task, the fact that this mediator makes the nomination who will be the king, and then the Senate to approve the nomination, after choosing the king either by his predecessor, or through an intermediary (the king) directly by broad powers to include all aspects of religious and secular life, the king is the supreme religious leader in the country as well as the head of the Supreme Judiciary Council as well as being the supreme commander of the army, and the King enjoys the absolute authority that did not prevent the presence of assistive devices in the management of the affairs of the country, these devices are surrounding councils, the first of these councils is the senate, which consisted from the heads of tribes in their capacity as members of this council, and the number of those increased to almost 300 Members <sup>(1)</sup>, the king went generally to this Council to take their opinions on

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(1) Dr. Ibrahim Darwish, political theory in the golden age, without a publisher, Cairo, no date, p.39.

(1) Dr. Obaid Al Fatlawi, owner of history of law, culture and publishing house, Amman 1998, p. 115.

any matter, the resolutions of this council is not bound to the king from the legal standpoint, as it was a consulting, however, realistically and practically the king was committed to abide by those decisions in most cases, this is due to that this council was of tribal weight of a significant number <sup>(1)</sup>.

The second council which is the Associate Administrator of the King, is the people's council, which consists of a number of Members who required their affiliation to a layer of supervision, and shall have the ability to carry weapons, so-called a campaign of spears, and this council was not a legislative jurisdiction and not have any power to choose the king, unlike the Shura Council, in which one of its members and is called (an ombudsman of the king) that function as already stated, the mission of the People's Council was confined to take their opinions on some issues, such as the introduction of the amendment or change in the organization of clans, where the Council was in this situation, giving its opinion in the case of entering new clans to the city, it also gives its opinion on the family system, where it was necessary for the approval of this Council on the head of the family's will, in which he

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(1) Dr. Abbas Al-abodi, history of law, Library Culture House for Publishing and Distribution, Amman, 1998, p. 170.

violates the rules of inheritance,<sup>(1)</sup> and later the jurisdiction of this Council were developed to become its task to propose laws and the approval of them <sup>(2)</sup>.

### **B-The system of governance in the republican era:**

This era is distinguished by the vast power of the Romanian State, there was a Romanian society, equality between the supervisory layer and the layer of the public, this of equality upon which the republican system appeared, which replaced the ruling king, and has replaced the king in that era two Governors who are elected annually by the people's council, their management period of the country had a duration of one year from the date of their choice, and they were called by the title (the two consuls), these two rulers enjoy wide powers in the affairs of the country, although such authority is slightly less than the authority of the King, in order to ensure that no deviation of the two ruling authority and not abuse usage, each governor has the right to monitor the other ruling authorities, the matter did not stop at this, but exceeded beyond that by the emergence of the Grievance system from their respective

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(1) Dr. Sabri Khater, woo. Ahmed structure, the history of the law, the author of the joint venture, *ibid.*, p.250-251, as well as Amr Mamdouh Mustafa, Roman law, *ibid.*, p. 134.

(2) DR. SABRI KHATER and Ahmed Hekal, the history of the law, the author of the joint venture, *ibid.*, p.251, as well as Dr. Mohamed Abdel Moneim al-Badr, and. Abdel Monem Al Badrawi, *ibid.*, p. (s), and beyond.

provisions and that before the peoples council in order to achieve impartiality and neutrality in the provisions <sup>(1)</sup> the matter continued like that until the expansion of the Romanian State has grown so large as to become difficult for the two rulers (CONSULS) to manage the affairs of the country on their own, what made them hire a number of senior staff members selected by the people Council, so that they assume the task of administrative and judicial affairs of the country so the two rulers have time to the tasks of the political and military affairs<sup>(2)</sup>.

### **C-The system of governance in the age of the Supreme Empire:**

This era is distinguished by political and economic prosperity in Rome, resulting in noticeable activity in trade relations, while the regime had been focused in the Governor as individual called the emperor, as this ruler enjoyed wide powers, but these authorities did not affect the survival of the Shura Council and the Parliament as assistants in the management of the affairs of the country, although their powers curtailed and all authorities were focused in the hands of the emperor.

And so it is that until the transformation of the system

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(1) Dr. the Saheb Al Fatlawi, *ibid.*, p. 112.

(1) Dr. Sabri Khater, and Ahmed Hekal, *ibid.*, p. 252.

of governance in the late of this era to a single regime based on tyranny and suppression, which led to the deterioration in the political life, which was reflected on the legal entity of Rome, which resulted in the intensification of the conflict between the various strata of society <sup>(1)</sup>.

**D-The system of governance in the age of the lower empire:**

The deterioration of the empire of Rome since the end of the former era even reached its peak in the era of absolute per capita territories, which is characterized by the tyranny where entirely vanished the manifestations of the republican rule, so that the emperor topped the authority to which all focused in his hand alone, and the transformation of the system of governance accordingly to the hereditary system, so that leaves the emperor in this position and his legacy, which eventually led to the deterioration of the Roman Empire and spread chaos in Romanian society<sup>(2)</sup>, which resulted in the fall of that great empire.

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(1) Dr. Sabri Khater, and Ahmed Hekal, *ibid.*, p. 252.

(2) Dr. Saheb Al Fatlawi, *ibid.*, p.118.

## **The third demand**

### **The right to a democratic system in contemporary international charters**

One of the important results of the consequences of the introduction of the idea of human rights, is the recognition of the nation as a source of the authorities, after the power is concentrated in the hands of one ruler, whether he was a prince or a king or an emperor has become the ruling party derives its authority from the governed, this development led to the emergence of the democratic system as a method of working to reconcile the authority of the ruler and the freedom of convicts <sup>(1)</sup>, and democracy means the people to govern themselves, if he wanted to engage all authorities let himself, and if he wanted to do this by the deputies so the selection of those will not be only through the election, so voting is the only way that is consistent with democracy, or, in other

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(1) Dr. Mahmoud Al-Saqqa, philosophy and the history of social and legal systems, *ibid.*, edition 1978, p. 437, item 728.

words, is the only democratic way to choose the rulers (1).

The democratic feature of many properties, which can be summarized as follows (2):

***First: Democracy is a political doctrine:***

That democracy is not only for the people to exercise the authority, and does not go beyond that to attempt to achieve economic or social goals to raise the standard of its living or to achieve a certain amount of guarantees to the laborers.

***Secondly: The individuality of the traditional democracy:***

Traditional democracy was based on the individualism, where the democracy helps on the contribution of individuals in governance as citizens without consideration to any other consideration related to their posts or belongings to a certain social class.

***Thirdly: Democracy and the proving of legal equality:***

Democracy decides the principle of equality before the law as a result its basis of the individual doctrine, so that all citizens share in the affairs of governance and enjoy legal

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(1) Dr. Abdel Wahed Mohamed mouse, human rights law in the positive thought of the Islamic Shariah, the Arab Renaissance Publishing House, Cairo, edition 1991, p. 281.

(2) Dr. Mustafa Abu Zaid Fahmi, *ibid.*, p.36.

protection on an equal footing without distinction of sex, origin, religion or language, or affiliation to a particular social position.

***Fourthly: Democracy ensures, individual rights and freedoms:***

The democracy, in principle, was set to fight absolute rule and the rulers monopolize power without the majority of the citizens and to prevent abuse of the rights and freedoms of individuals.

Therefore, the democracy as a doctrine or system of governance aimed at ensuring individual rights and the protection of the exercise of individual freedoms, and in particular the various political freedoms.

This protection involves putting an end to state interference in the exercise of these rights and freedoms and to organize without prejudice to the content and the decision of certain guarantees to protect it against any abuse or violation from the part of the rulers, and it is noted that the phenomenon was incompatible with the right to participate in the governance and management of public affairs of the country, which was guaranteed by the provisions of international documents as follows:

**1 - The Universal Declaration of Human Rights of 1948:**

The text of the Universal Declaration of Human Rights states the right to participate in the governance and management of public affairs . (1):

1. Everyone has the right to participate in the management of public affairs of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people is the basis of the authority of government; this shall be expressed in periodic and genuine elections by universal suffrage and equal suffrage by secret ballot or by equivalent free voting.

## **2. The International Covenant on Civil and Political Rights of 1966:**

The text of the International Covenant on Civil and Political Rights states to participate in governance and to conduct public life. (1):

Each citizen, without any of the distinctions mentioned in Article, has the following rights, which must be provided with the opportunity to enjoy them without unreasonable restrictions:

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(1) Article No. (21) of the Universal Declaration of Human Rights because in the explanation of this article Dr. Ibrahim Ahmed Khalifa, the international obligation to respect human rights, *ibid.*, p.81.

(1) Article No. (25) Of the International Covenant on Civil and Political Rights.

A) To participate in the management of public affairs, either directly or through freely chosen representatives.

B) To vote and to be elected at genuine periodic elections that shall be by universal and with equal suffrage by secret ballot, guaranteeing the free expression of the will of the voters.

T) To have access, on general terms of equality, to public service in his country.

### **3 - The African Charter on Human and Peoples' Rights:**

The text of the African Charter on Human and Peoples' Rights to <sup>(1)</sup>:

1. All citizens the right to participate freely in the public affairs of their country, directly or through freely chosen representatives in accordance with the provisions of the law.

2. All citizens also have the right to assume public functions in their country.

3. Everyone has the right to make use of public property and services in the framework of full equality of all before the law.

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(1) Article No. (13) Of the African Charter on Human and Peoples' Rights of 1981.

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## **Chapter II:**

### **Social and economic rights in the old legal laws and contemporary international charters**

#### ***Preamble:***

There is no doubt in the importance of social and economic rights in the preservation of human dignity, where these rights include getting the basic human needs, and the right to social progress, and it is the most important of these rights, the right to marriage and forming the family, the right to work, the right to property, the right to education, and other rights, which primarily aimed at the individual enjoyment of an adequate standard of living and, accordingly, the researcher will try to expose to some of these rights in all of the old legal systems and contemporary international documents, through the division of this chapter to the following studies:

## **The first study**

### **The right to marriage and forming the family in the old legal laws and contemporary international charters**

#### ***Preamble:***

The human being cannot live in stability without an associate that he feels assured with him, reunite with him, and his life settles with him, encourage him, gives him strength, and shares with him the burden of life, as well as in marriage and forming the family perseverance of the human species, and accordingly, the researcher will single out, in the following pages, the position of the ancient civilizations and contemporary international conventions of the right to marriage and forming the family, through the division of this study into the following demands:

## The first demand

### The right to marriage and forming the family in the ancient Eastern Religions

#### *First: In Pharaonic Egypt:*

#### **A-The extent of the requirement of the consent of the woman to marriage:**

Commentators disagree about the extent of the requirement of the consent of the woman to marriage, in the strict sense, about the availability of the so-called right to obligation, i.e. the authority of the Father and the marriage of his daughter to whom he pleases against her will or not? Commentators had been divided, in connection with the above into two trends:

**The first trend:** Supporting the non-requirement of the consent of the woman to marriage:

Proponents of this trend see that the marriage was mainly, especially in the early ages of Egyptian history, between the suitor and father of the fiancé as the father or his substitute made his daughter to whom he wants even against her will,

but there is an evolution that, and women had, starting from the twenty-fifth dynasty, the right of the making of the contract of marriage herself, marriage is so happens between man and woman, as they are parties to the marriage, therefore, there must be the availability of their satisfaction (1).

**The second trend:** Supporting the women's capacity to contract marriage herself:

Most of the commentators of history of law agreed that the Egyptian woman enjoyed in most of the legal history of Pharaonic times (except the feudal ages) full competence, and therefore the woman required to reflect expressly her opinion upon marriage, her father had no right to obligation on her. (2).

It was the custom that the suitor goes to the father of his fiancée and agrees with him on the engagement of his daughter, the girl expressing her will by declaring her approval to the father (3).

The probable opinion: We believe that the latter view is correct, as many of the documents show that women have the capacity to contract marriage herself, the marriage was an agreement between the two parties, the expression of will

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(1) Dr. Fakhri Abu Youssef Mabrouk, the stages of the history of the law, no publisher, 1983, p. 190.

(2) Dr. Ahmed Ibrahim Hassan, philosophy and the history of social and legal systems, *ibid.*, 2003, p. 437.

(3) Dr Faiz Mohammad Hussein, the origins of legal systems, *ibid*, 2013, p. 205.

was issued by the man as well as the women, the Egyptian lady like the Egyptian lad have the freedom to choose her life partner, the law did not agree in Pharaonic Egypt to the father authority to get his daughter married despite her nose<sup>(1)</sup>.

### **B-marriage proceedings:**

#### **1 - The marriage contract between two formal and consensual natures:**

Commentators are divided about the nature of the marriage contract in terms of formalities and consensual to three opinions as follows:

**The first View:** See the marriage contract as one of the formal contracts as the writing was of its pillars, and they based their opinion on two arguments:

**First:** The Egyptians knowledge of writing and its popularity and importance in their view.

**Second:** What we have got of marriage contracts, which demonstrate that the Egyptians were coding the marriage contracts <sup>(2)</sup>.

**The second opinion:** Some see that the marriage was in two phases: First: oral expression of the two wills include expressing the two identical wills from both sides, the second stage is documenting the marriage contract, here the focus is

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(1) Dr. Mahmoud Zinati, equality between the sexes in Pharaonic Egypt, Cairo, 2000, pp.16-17.

(2) Dr Faiz Mohammad Hussein, the origins of legal systems, ibid. p.212-213.

to clarify the financial rights of both parties and the children who would be produced by this marriage <sup>(1)</sup>.

**Third opinion:** Finds that marriage in the Egyptian law is a consensual contract. In its existence it depends on the agreement of the two parties <sup>(1)</sup>, but the Egyptians practice on their habit in the codification of what they agree of actions whatever little value, they were unloading their marriage contracts in the written and documented abstractions, and therefore some differentiate in this regard between the two types of marriage: Written marriages (documented), unwritten marriages (undocumented) <sup>(3)</sup>, and accordingly, writing was not one of the terms of the contract, but it is a means of evidence, and supporters of this trend explains what we have got from written marriage contracts as related to the organization of the financial relations between the couples <sup>(4)</sup>.

The preferred opinion: We believe that the marriage in the Egyptian law was consensual contract done by the agreement alone, and that the writing was a means of evidence, the Egyptians used to write marriage contracts because of the proliferation of writing at them, in addition to that through

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(2) See: Seedily the legacy of,, 1953, P. 204.Egypt Oxford

(3) Dr. Abdul Hamid Al-Hefnawi added, the history of social and legal systems, *ibid*, p.224.

(1) Dr. Mahmoud Al-saqqa, in the history of the Egyptian Pharaonic law, *ibid*. p.402.

(2) Dr Faiz Mohammad Hussein, the origins of legal systems, *ibid*, p. 213.

the writing of the contract, the woman had been able to include in the contract any restrictions on the authority of the husband in marriage again or thinking in divorcing her, as well as they were using writing to regulate financial relations arising from marriage (1).

## **2 - The marriage contract between the civil and religious character:**

Commentators are divided on the nature of the marriage contract to three trends:

**The first direction:** They view that marriage is a religious contract in the strict sense, based on the role played by religion in the life of Ancient Egyptians, the marriage was in Egypt a religious contract procedures inside the temple and under the supervision of the priest, and the priest was to participate actively in its composition, and the presence of relatives of the spouses, the contract was recorded in the records of the priests, and therefore the marriage had a religious nature (2).

**The second direction:** They view that a marriage contract was not religious, but it was a civilian contract, as the practice of religious rituals was not a prerequisite for holding or the correctness of the marriage contract in the Egyptian Pharaonic law but, in view of the important role played by

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(3) Dr Faiz Mohammad Hussein, the origins of legal systems, *ibid.*, p. 213.

(1) Dr. Amr Mostafa, the origins of the history of the law, *ibid.*, p. 188.

religion in the life of the Egyptians, it seems that most of the people had the contract of marriage in the temples to be blessed by gods <sup>(1)</sup>, and consequently on this opinion, the marriage contract is purely civil, religious rituals had not an impact in contract formation <sup>(2)</sup>.

**The third trend:** See the way of the marriage contract between the civil and religious nature of all eras of Egyptian law, as they said: It was a civil marriage, but it was completed in the temple, then became a religious marriage after that, there must be certain rituals when holding it otherwise it was not achieve its effects and requirements, however, it appears that the group of Beckhorious, which applied to the contracts indicate that marriage has become civilians like contracts <sup>(3)</sup>.

**The probable opinion:** We believe that the contract of marriage in Egypt had a compound nature, on the one hand, it is a civilian contract, but on the other hand, it must be accompanied by a religious ceremony, which is normal in a society live under the rule of a religious monarchy, fully controlled by religious ideas, until it was said that the Egyptians more religious than the peoples of the world, in addition to the above that the religious trend if controlled the people started

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(1) Dr. Ahmed Ibrahim Hassan, philosophy and the history of social and legal systems, *ibid.*, 2003, p. 455.

(2) Dr Faiz Mohammad Hussein, the origins of legal systems, *ibid.*, p.215.

(3) Dr. Fakhri Abu Youssef Mabrouk, history of law, *ibid.*, p. 194.

to have an impact in the area of personal status, including the system of marriage, because of his close relation to the religious doctrine (1).

### **C-At any age could be the conclusion of a marriage in the pharaonic Egypt?**

The silence of the texts, consensus went in this regard to various doctrines, which leads us to the report that the ancient Egyptians did not know a legitimate age for marriage, the writer's views by comparing between the age of marriage at the Romans and Greeks, and according to this comparison, they said that the age of marriage was between 13-14 years for the girl and between 16-17 years for the lad (2).

Others view that the age of marriage in the Pharaonic Egyptian law is no different from what prevailed in the Egyptian law in the Roman era, which is 12 years for girls and 15 years for lads, and this age was applied since the Pharaonic era and continued its existence until the Roman era (3).

We believe that in the absence of a text that dealt with this matter, on the one hand we cannot determine a definitive way the age of marriage in the Egyptian law in the Pharaonic era, on the other hand, the only thing that is confirmed by the

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(1) Dr Faiz Mohammad Hussein, the origins of legal systems, *ibid.*, p.215-216.

(2) See: G-Paturet, *La Condition La Frmmme dans Jridiquede arclenne L'Egypte*, 188, p. 24.Paris

(3) Dr. Mahmoud Al-saqqa, in the history of the Egyptian Pharaonic law, *ibid.*, p.408-409.

texts that the marriage was at an early age, consequently this it cannot be said that there is a legal age for marriage in the pharaonic law, the age of marriage for the husband or the wife was often identified by their physical growth as some documents proved that many of the girls married at a very early age (1).

The meaning of the above mentioned is that the age of marriage in ancient Egypt was up to reality, the parents appreciated it taking into account the commitment to the marriage standard at an early age, this is confirmed by the existence of marriage contracts concluded for girls in the ages of 12 and 14, in the modern state, the man could marry at the age of 15 (2).

### **D-Polygamy, the brother sister marriage in Pharaonic Egypt:**

Noting that it was the system of polygamy, the brother marries his sister had resulted in the difference of opinions among historians, but they gave the full rights to Pharaoh as the master of the country, on the one hand, for political considerations , the Pharaoh was able to marry more than one, for example, gradually: What happened between king Ramses II and his marriage to the daughter of the King of the Hittites, the same approach taken by each of the Thutmose

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(1) Dr. Mahmoud Al-saqqa, in the history of the Egyptian Pharaonic law, *ibid.* p.406.

(2) Dr Faiz Mohammad Hussein, the origins of legal systems, *ibid.* p.208.

IV and Amnophese III and IV <sup>(1)</sup>, on the other hand, brother sister marriage usually spread between the royal family and gradually: marriage Thutmose the first from his sister Ahmose, “Arat,” was the wife of her brother Thutmose IV, the explanation of that was founding on the special considerations for the strain royal family as the divine blood go through the veins of its members. Hence the brother’s marriage from his sister was to keep the purity of this blood among the royal family <sup>(2)</sup>, as well as some scholars have pointed out that King Snefru, one of the kings of the fourth family had taken his daughter as his wife and Ramses II married more than one of his daughters<sup>(3)</sup>.

### **E –Is the difference in nationality one of the impediments to marriage in Pharaonic Egypt?**

In the era of the old State, the difference of nationality has objection to the impediments to marriage in the Pharaonic Egyptian law, this has been the conclusion based on the following:

On the one hand, we find that one of the papyrus Taurel Papyrology (dating back to the 20th dynasty) shows that the

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(1) Dr. Mahmoud Al-Saqqa, philosophy and the history of social and legal systems, *ibid.*, edition 1978, p.303.

(2) Dr. Mahmoud Al-saqqa, in the history of the Egyptian Pharaonic law, *ibid.*, p.420.

(3) Dr. Mahmoud Al-Saqqa, philosophy and the history of social and legal systems, *ibid.*, edition 1978, p.303.

Egyptian could not conclude a legitimate marriage with foreigner (1), on the other hand, we find that the religious considerations were considered an obstacle to the Egyptians for not to being allowed to marry foreigners, for example, the Egyptians consider some neighboring peoples as impure and may not to mix with them (2).

On the third hand, the documents indicate that the law had not permitted to marry some of the nationalities, as it came on the tongue of the wise (Ani) a lot of advice which urges not to marry foreign woman, and also that the marriage document found by scientists dating back to the 20th dynasty indicate that all the foreigners did not have the right to marriage of the Egyptians, and that marriage between an Egyptian and a Syrian or a Nubian woman is no longer legally valid marriage (3).

In the era of the modern state, the differences of nationality was not one of the impediments to marriage, as there is proven marriage contracts between Egyptians and foreign women and between foreigners and Egyptian women. This is on the one hand, and, on the other hand, in the era of the modern state, Egypt was linked to its neighbors with strong international relations, without a doubt, these relations al-

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(1) Godmia, old systems, *ibid.*, p.71.

(2) Dr Faiz Mohammad Hussein, the origins of legal systems, *ibid.*, p. 209.

(3) Dr. Mustafa Saqr, philosophy and the history of legal and social systems, *ibid.*, p. 515.

lowed foreigners to enter Egypt and the Egyptians to enter to the friendly States, and this, of course, led to social cohesion through marriage, and mixed marriage was therefore common <sup>(1)</sup>, it should be noted that there are documents indicating that the pharaohs of the modern state had married to eastern princess, Amenhotep III was married to the daughter of one of the kings of Babylon, and Ramses II was married to the daughter of the King of the Hittites, these marriages were due primarily for political reasons, the purpose of the consolidation of Egypt's relationship with the kings of the East, where this type of marriages did not exist before, and it was not known, but in the era of the modern state, as Egypt links got closer with the countries of West Asia.

For example, it was one of the kings of Babylon, his son stays in the palace of Akhenaten, he married to the daughter of Akhenaton, as well as a letter was found sent by the widow of Tutankhamun to the king (Hata) asking him to send his son to become the king of Egypt <sup>(2)</sup>.

### **F- To what extent was the class difference one of the impediments to marriage in Pharaonic Egypt? :**

To answer this question, a distinction should be made between the feudal eras and non-feudal eras in Pharaonic Egypt,

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(1) Dr Faiz Mohammad Hussein, the origins of legal systems, *ibid.*, p. 209.

(1) Dr. Mahmoud Zinati, the history of social and legal systems, without a publisher, first edition, Cairo, 1995, p. 238.

as follows:

1 - Non-feudal eras: it is noted that in eras that had prevailed individualism (non-feudal eras) in Pharaonic Egypt, there was a kind of equality among the members of society, there is the supervision of the general public, value of the individual is determined in society, by the competence, skill and the ability of the autonomous to earn and, therefore, it is not imagined in such circumstances that the marriage to be forbidden between layers (1).

2 - the feudal eras: the feudal eras in Pharaonic Egypt characterized by splitting society into closed layers, in it the individual cannot change his social status, the rights of the individual are determined depending on the layer where he belongs, as the belonging to a certain class was one of the elements of the case of a person is determined by it his rights and obligations, it is difficult to imagine the possibility of mixed marriages in these eras (2).

***Secondly: In Mesopotamia:***

**A-Marriage proceedings:**

Parents play an important and vital role concerning marriage in Mesopotamia, it has been the practice that the father and mother introduces the wife to her husband, or any of

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(1) Dr. Mustafa Saqr, philosophy and the history of legal and social systems, *ibid.*, p.504.

(2) Dr Faiz Mohammad Hussein, the origins of legal systems, *ibid.*, p.212.

them does this, in some cases, the brother does this, from this transpires that it was necessary to the validity of a marriage the consent of the parents of the bride and groom, the parents are generally decide the marriage of their children whether the husband or wife (1).

But that does not mean that the future husband does not interfere in the choice of his wife, but the practical life, referring to the frequent interference in the conclusion of a marriage, and therefore, it can be argued that the consent of the bride and groom was taken into account, but that was from habit than submitting a legislative text, on the other hand, some of the texts of Hammurabi's law confirms that the divorced women and the widow was able to choose freely, which the texts describe as " the favorite man to her heart " *L'homme deson Coeur*", the documents of the practical life testifies that women had to choose her husband, in many cases, as well as she came away from the intervention her family and relatives (2), we conclude that the parents did not monopolize the final matter of the marriage of their children (3).

Besides the Terha +the husband was paying his wife the Nadannu is some household furniture or some properties to

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(1) Dr Faiz Mohammad Hussein, the origins of legal systems, *ibid*, p.234.

(2) Godmia, old systems, *ibid.*, p.36.

(3) Dr. Mahmoud Al-Saqqa, philosophy and the history of social and legal systems, *ibid.*, edition 1978, p. 390.

secure the life to the wife and children if the husband died before them, and to prove this Nadannu in written document at the beginning of the marriage or during the life of the marriage itself, it is not only the wife to usufruct of this Act of the Nadannu without right of ownership remain lasting for boys who are the real stakeholders, <sup>(1)</sup>, and the marriage is not valid until the completion of these procedures, but must be drawn up in a written document to have legitimacy, and as the husband sign is binding himself to carry out all the duties, and lead his wife full rights in the case of divorce, as required to the wife no treason and identifies the types of sanctions that descend If it proved her betrayal, and other conditions approved by the prevailing custom, if it ended the writing of the contract started religious and family celebrations, and that the legislative texts did not refer to such celebrations, it is because they did not contain the Legislative context <sup>(2)</sup>.

Women's status has enjoyed an excellent location in the corridors of the society in Mesopotamia, she was able to work in trade and practiced various administrative functions and therefore enjoyed full legal personality, she had had her own funds and she had the right to property, and enjoy the right to full certification as men alike, and has the right to dispose of her mov-

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(1) Refer to articles 171 (b) and 172 of the Code of Hammurabi, also Dr. Fayez Hussein, the origins of legal systems, *ibid.*, p.247 and beyond.

(2) Godmia, *ibid.*, p.42.

able property or real estate funds all kinds of behavior, and was able to resort to courts to witness in animosity or claiming, and was able to sue her husband himself<sup>(1)</sup>.

As well as the husband held no responsibility for the commitments to be entered into by the wife before marriage, but in the opposite purpose, we find that the creditors of the husband, they may sign the money of his wife unless there is no provision to prevent this explicitly in the core of the marriage contract, and that the couples would be responsible in the solidarity of all the debt relief concluded during the marital life, in order to confirm the meaning of participating together in concert in the conclusion of the necessary actions<sup>(2)</sup>.

### **B-Polygamy:**

It can be argued that the husband in the Mesopotamia can take to himself a second wife in three cases: first wife infected with an incurable disease, the sterility of the first wife and his wife's shameful behavior but in this third situation, the husband is required to prove his wife error and her immoral act before the judiciary and proving this judicially<sup>(3)</sup>.

The situation in the Assyrian law: that the above mentioned

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(1) Godmia, *ibid.*, p.42.

(2) Dr. Mahmoud Al-Saqqa, *philosophy and the history of social and legal systems*, *ibid.*, edition 1987, p.386.

(3) Dr. Mahmoud Al-Saqqa, *philosophy and the history of social and legal systems*, *ibid.*, p.386.

law of Mesopotamia is not the same as was the case with the situation that prevailed in the Assyrian community, as it seems to be extrapolated from the Assyrian law texts that the husband was able to marry again without being constrained by the law or the need for a justified reason, and the man marriage to a woman does not prevent him from marrying another wife if he wants <sup>(1)</sup>.

### **C- The impediments to marriage:**

It is noticeable in Mesopotamia that is appreciation of the Legislative Assembly in the face of marriage again only in a very limited scope, the Code of Hammurabi came to end expressly and under the threat of strict criminal sanctions the marriage between father and daughter (article 154) and if this is the case the father punished by exile outside the country.

Also denied the marriage of the son from his mother (articles 155-158) if the son married from his mother, their punishment would be that they are burnt together <sup>(2)</sup>.

But the Assyrian law in article (31) permits the man to marry his wife's sister if she died before he married her, and the same article gave the father of the fiancé who died at the time of the sermon to ask the fiancée as a wife of another son

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(1) Dr. Mahmoud Zinati, social and legal systems in Mesopotamia when the Arabs before Islam, *ibid.*, p.134-135.

(2) Dr. Mahmoud Al-Saqqa, philosophy and the history of the social and legal systems, *ibid.*, edition 1978, p.388-389.

of his sons (2).

As for the second part of the impediments to marriage, other than the degrees of kinship, already mentioned, there is the class difference, many of the older religions absolutely deny marriage between the free and the slaves.

Some of them also limit the prohibition on marriage of the free woman from the slave, and few of these laws permits the marriage between the free and the slaves without any restrictions, and of these rare laws Hammurabi's law, the articles (175), and(176) included the regulation of marriage, which is between the slave and women entrepreneurship, and considered it a legitimate marriage and organizing for all its effects , and considered the children resulting from this marriage enjoy freedom such as their mother, so it all depends on the mother, not the status of the father when determining the case of the boy of freedom and slavery resulting from mixed marriages (2).

Also the marriage was permitted between Mesopotamians and other races, especially between members of the royal family and princes from other countries, the difference in social status or religious belief does not constitute an obstacle to the marriage in Mesopotamia (3).

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(1) Dr. Mahmoud Al-Saqqa, philosophy and the history of social and legal systems, *ibid.*, p. 389.

(2) *Ibid.*, p. 389.

(3) Goodman, *ibid.*, p.35.

## **The second demand**

### **The right to marriage and the family in the laws of the Old West**

#### ***First: The Greeks:***

The evolution of the concept of the family and the social organization of the Greek movement from the stage of the tribe to the stage of the city, after the family were melted in the entity of the tribe and subjected to the leader of this group, later it became a separate unit under the father who moved to the authority of the President of the clan, and thus the family became the smallest social unit headed by a father has the absolute authority and he has the right to divorce his wife anytime he wants by expressing his desire in the presence of at least one witness and required of the dowry to his wife, and also has the right to life of children <sup>(1)</sup>.

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(1) Dr. Fayez Hussein, woo. Tariq Majzoub, the history of legal systems, the joint author, not available, 2007, p. 163.

The boy did not enjoy the rights of citizenship or to Liberate himself from parental authority, but when he reaches the age of 18, he was not before this age a legal personality, he was not entitled to own property. He cannot marry or held conventions without the consent of his father (1).

The girl did not marry but only from the man chosen by her father, there was absolute authority to the father, then moves to the husband, the girl was to abandon the bondage of the Father to fall in the bondage of the husband, the marriage is usually held by a public celebration of religious ceremonies, begins and ends with handing over the wife to the husband after a formal ceremony, marriage does not acquire the status of full legality but after the complementary of its formalities, after the contract, the husband acknowledge his tribe wit it to complete its publicity and to have the admission of the wife, the wife vows to abandon the religious rituals of her tribe, to practice the rituals of the new tribe acceded to, if there was a difference between the rituals of the two tribes (2).

And taking a mistress was common in Greece, the husband was legitimately entitled to take a mistress for begetting boys if he did not have boys from his wife, on the condition that no housing with the mistress in the marital home, and he was entitled to force his wife to abortion, if not willing to

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(1) *Ibid.*, p.163-164.

(1) Dr. Faiz Mohammad Hussein, woo. Tariq Majzoub, *ibid.*, p. 164.

boys, and if the couple have had children, they would commit themselves to sustain them, the boys are committed to support the parents when they are in a position to do so, they had to respect parents and honoring their remembrance after death (1).

The law in Athens was not allowed to take more than one wife, however, allowed this to the man, in a certain period of its history under the influence of special circumstances, bigamy, this was in the year 411 as a result of the loss of Athens, most of the young people, the purpose of legalizing bigamy was the compensation of Athens what suffered from a severe shortage in the number of young people, and not to keep the majority of the female population without marriage, but these disclosures did not last for long but it has been abolished in the year 403 BC (2), with regard to impediments of marriage in Greeks are represented as follows:

### **1 - Kinship:**

**A- The relative kinship:** The Athenian law was, in significant historical era considers the relative kinship of marriage but only in narrow limits, but that marriage between relatives were not permitted by law, but was favored by the traditions (3), but

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(1) Dr Faiz Mohammad Hussein, woo. Tariq Majzoub, *ibid.*, p. 164.

(2) Dr. Mahmoud al Zinati, *social and legal systems when qaboos, Greeks and Persians, ibid.*, p. 186.

(3) Dr. Mahmoud Zinati, *ibid.*, p. 188.

to allow marriage between close relatives does not mean that this marriage was permissible without restrictions. Marriage was taboo between assets and branches, no matter how original or lower <sup>(1)</sup>, with branches and assets. Other than this, the law was not prohibit of marriage between brothers and sisters and brothers and sisters from the same mother, meaning that the law in Athens allowed for marriage between brother and sister from the same father if they were different from different mothers, if the law allows marriage between brothers under this limitation, it is natural to be allowed among the most distant relatives <sup>(2)</sup>.

**B. Kinship by affinity:** In contrast to the relative kinship, affinity in Athens did not constitute an impediment to marriage, not between assets and branches and between the surroundings, and here there is not what prevents men the marriage from his wife's mother or her daughter from another, there is no preventing man from marriage of the wife's sister (divorced or died), or woman and the marriage to her husband's brother (former) <sup>(3)</sup>.

**C- Kinship by adoption:** The kinship arising from adoption was given the rule of relative kinship and, therefore, could

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(1) Dr. Mahmoud Zinati, *social and legal systems when qaboos, Greeks and Persians*, *ibid.*, p. 188.

(2) Dr. Mahmoud Zinati, *ibid.*, p. 189.

(3) Dr. Mahmoud Zinati, *ibid.*, p.189-190.

not be determined to marry his adopted daughter, and that there was nothing to prevent the marriage of the adopted son to an adopted daughter i.e. adoptive sister (1).

**2 - The different social situation:** It was not the difference in the social situation an impediment to marriage between nobles and the public, the Athenian law did not weigh the different class in the area of marriage between the free, citizens are equal among themselves, and it was not possible that democracy allow the existence of this impediment which would undermine the equality (2), on the contrary, the law did not allow the establishment of a marital association between a free man and a mistress, or between a free woman and a slave, but the law, even if it did not allow the emergence of a marriage between a free man and a mistress, it did not punish on the relationship arising between them (3).

**3 - Differences of nationality:** The Athenian law did not initially prevent the marriage between the Athenians and nationals of other Greek cities, this was normal marriage among noble families, in particular, and many of the most prominent Athenian characters were born of foreigner mothers (4).

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(1) Dr. Mahmoud Zinati, social and legal systems when qaboos, Greeks and Persians, *ibid.*, p. 190.

(2) Dr. Mahmoud Zinati, *ibid.*, p. 190.

(3) Dr. Mahmoud Zinati, *ibid.*, p. 191.

(3) Dr. Mahmoud Zinati, *ibid.*, p. 191.

**4-Younger age:** The Athenian law stipulates a minimum age of marriage for females, and thus had to crown the girl to hold her marriage, even if she was still a little girl, but that the transfer of the bride to her husband was not only happen after becoming an adult, and there is evidence of cases in which the husband and wife meeting his wife in the age 12 or 13, mainly because some of the researchers agree that the law made the age of 12 as the minimum age for puberty which allows the transfer of the Wife to her husband (1).

But for males the law was in the historical times, requires their consent to their marriage, so it was not possible that the boy was a party to the marriage before the age of maturity, which makes parental authority or guardianship mandate expires, it is 18 years of age and above as mentioned before, there are many evidence on marriage contracts concluded and the husband was at the age of 18 (2).

### ***Secondly: the Romans:***

The Romans always maintained the principle of non-polygamy but they knew the two types of marriage: marriage by sovereignty and marriage without the sovereignty, both are legitimate marriage, restricted as a general rule to the Ro-

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(1) Dr. Mahmoud Zinati, *ibid.*, p.192.

(2) Eliaza Homeros, reported by the Arab peace to Anbara khalidi, the house of knowledge, 1947, p.113.

mans, and we will show each type of marriage mentioned above, as follows:

### **1 - The marriage of sovereignty (Cumana):**

This type of marriage has taken different ways to be concluded in order to emphasize the meaning of the supremacy of the husband over his wife; this was represented in the following ways:

**1 - Religious marriage:** This was the old and common way at the Romans; it was restricted to the noble's layer. It was held between the corridors of the temples recited sutras religious terms familiar and sacrificial offerings to the elder God (Jupiter), the procedure is carried out in the presence of the couple that were independent by their rights, or the owners of the Authority over them if they weren't so, besides the requirement of the presence of the temple priest and the high priest in the presence of 10 witnesses (which the texts stipulated to be the priest of the temple as well as the high Priest had been born and married in the same way) <sup>(1)</sup>.

**2 - Procurement marriage:** It is the civil marriage, which became popular among the public and which resulted in the purchase of the wife and using of formal methods of procurement, the most important way is certify, under which the husband has the authority and sovereignty to his wife if he was

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(1) Dr. Mohamed Abdel Moneim al-Badr, woo. Abdel Monem Al Badrawi, Roman law, *ibid.*, p. 77.

independent of his rights, but if he was not, she would subject to the authority of the lord of his family (1).

**3 - Cohabitation marriage:** This image is done by owing a wife for some time, and the time required is like the time to acquire the property on the money, he who cohabitates his wife, whom he married without the two advanced methods for the full year, he would gain the sovereignty over her and his wife would become a member of the family in the rank of her daughters (2).

The effects of marriage of sovereignty: this type of marriage had a result of two effects: firstly, the acquisition of sovereignty over the wife, and as such moves to her husband's family and at the same time severed her relationship with her own family of origin (3).

She is by the first characteristic, become a member of the family of her husband as a girl if he was independent of his rights, or as the granddaughter of the head of household, if her husband was still under the authority of the head of the family and, as such, she is considered a sister to her children, and apply to her all the rules of inheritance and guardianship, and the wife moves in person, with her money and subject

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(1) Dr. Mahmoud Al-Saqqa, philosophy and the history of social and legal systems, *ibid.*, 1978, p. 467.

(2) Dr. Omar Mamdouh Mustafa, Roman law, *ibid.*, p. 197.

(3) Dr. Mahmoud Al-Saqqa, *ibid.*, 1978, p. 467.

to all the dimensions of the authority granted to the old head of household, he has the right to sell her and punishing her and has acquired rights from her, and with time, this image subdued, the wife took place of respect and veneration within the family (1).

**Marriage without the sovereignty (Sinemanu):** This type of marriage appeared as a result of the development of the Romanian society and the progress of the moral ideas, and the trial to reduce the parental authority within the Romanian family, it is a marriage as the name indicated without the wife to be subject to the authority of the husband or his family (2).

Unlike the formalities that prevailed in the legal acts at the Romans, this type of marriage happens by the agreement of the spouses without the intervention of one of the men of religion.

The effects of marriage without the sovereignty: this type of marriage sovereignty is consistent with relation to the father and his sons, but it differs with regard to the relationship between the spouses with each other, as well as the relationship of the mother and their children.

**1 - The father and his relation to the boys:** There is no distinction between marriage with sovereignty and marriage

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(1) Dr. Mohamed Abdel Moneim al-Badr, woo. Abdel Moneim Badrawi, Roman law, *ibid.*, p.78.

(2) Dr. Omar Mamdouh Mustafa, Roman law, *ibid.*, p.199-200.

without the rule of sovereignty for the relation of the Father and the children, as the father gains (or the head of the family), the parental authority over the children in both types of marriage (1).

**2 - The relationship of the mother of boys:** We saw that the wife in the marriage of sovereignty is considered as the daughter of her husband and sister for her children, and then she inherit with them from her husband on this account, the reversal of this situation we find for marriage without the rule of the sovereignty as each of his wife and children belong to a different family, and there was no civilian relation between them (as a result of not participating in submitting to the authority of the head of the family), so there are no duties , rights of inheritance nor guardianship between them (2).

**3. Relationship between the spouses:** Already said that the wife in the marriage of sovereignty comes with her funds to her husband's family and become a member in it , to reverse that we see in marriage without the sovereignty, the wife does not enter in her husband's family, but remained in her family of origin in the same situation as she was before marriage, she was independent of her rights remain under the supervision of her guardian, because it is not the husband in

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(1) Dr. Mahmoud Al-Saqqa, philosophy and the history of social and legal systems, *ibid.*, edition 1978, p. 472.

(1) Dr. Omar Mamdouh Mustafa, Roman law, *ibid.*, p.202-203.

this type of marriage authority over his wife, and there is no civil relation between them, so no inheritance, no custody, if the wife of the other, she would remain under the authority of the head of the Family, and that there was no previously in the Romanian society duties on one of the spouses prior to the other, but with the passage of time and the evolution of the Romanian society, in particular with respect to ethics, the husband had to rise his wife to the same the social level, and the wife must respect her husband and be loyal to him and does her best in his service.

**As for the impediments to marriage at the Romans most notably with regard to kinship, affinity, different layers:**

**A) kinship:** Both natural and civil kinship, marriage was denied in the successive series, i.e. between assets and branches, to the end, but among relatives of multiple series between the surroundings, it was previously taboo between them, including marriage to the sixth grade, and then this rule was modified in the imperial age marriage became possible, including in the fourth degree on condition that is not one of the parties to one degree of the common origin (1), the taboo of marriage between brother and sister and the boy and his aunt, or his aunt and uncle, and the girl or her uncle, but permissible between the children of cousins, but this rule has

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(1), Dr. Mohamed Abdel Moneim al-Badr, woo. Abdel Monem Al Badrawi, Roman law, *ibid.*, p. 85-86.

had an exception: it allowed the marriage of the uncle from the daughter of his brother to enable one of the emperors of the marriage to niece.

**B) The affinity:** The relationship arising from the marriage between each of the spouses and relatives of the other spouse, and affinity, in the republican era, was not legal impediment to marriage.

It is considered as such but only in the scientific era, as it prevented marriage between husband and assets of the other spouse and his branches, as the husband and mother of his wife or a father and his son's wife, after the expiration of the first marriage, in the era of the Empire also Fraternally marriage husband's brothers or wife's sisters was prohibited.

**C) Different layers:** As among the nobles and the public, was in old times, of the impediments to marriage, and then this impediment was canceled by the law of (Canaleia) in 445 BC, as well as previously prohibited the marriage between the original free and the freedmen, in the reign of Emperor August this ban has become limited to the members of the Senate and their families to the third degree, and then canceled in the era of Justinian <sup>(1)</sup>.

**D) Some other impediments:** There were other impediments of marriage established successively in different ages,

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(1) Dr. Omar Mamdouh Mustafa, Roman law, *ibid.*, p. 195.

such as adultery, the adulterer may not be allowed to marry again, but Justinian allowed him to marry after the death of his wife, provided that they do not marry in adultery, as the difference in religion as between Jews and Christians, who became for religious reasons an impediment to marriage in the Christian covenant (1).

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(1) Dr. Mohamed Abdel Moneim al-Badr, woo. Abdel Monem Al Badrawi, Roman law, *ibid.*, p.87.

## The third demand

### The right to marriage and to form a family in contemporary international charters

The family is the first cell in the society and its protection is the protection of the domestic and the international community, therefore, contemporary international documents are keen to ensure that the right to form a family, the beginning with the approval of the right to marry and the protection of the family and the protection of the pregnant mother and taking care of her, and the protection of the child who was born and then the protection of the small child from economic and social exploitation, as follows:

#### ***First: The Universal Declaration of Human Rights:***

**First:** The text of the Universal Declaration of Human Rights on the right to family composition starting from the right to marriage and choice of spouse freely, and satisfaction

between spouses, then the protection of the formed family by saying:

1. Men and women of full age have the right to marry and found a family, without any limitation due to race, nationality or religion, are equal in rights as to marriage, during marriage and at its dissolution.

2. The Marriage shall be entered into only with the consent of the free and full consent of the intending.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State<sup>(1)</sup>.

***Secondly: the International Covenant on Economic, Social and Cultural Rights of 1966:***

The text of the International Covenant on Economic, Social and Cultural Rights on the right to marriage and the family, since thinking about marriage and choice of spouse, then the protection of pregnant women, and then protect the fetus born and upbringing and a decent education, and providing guarantees to his mother be able to take care of the Child, and then the care of minor children against economic and social exploitation, saying <sup>(2)</sup>: The States parties to the present Covenant recognize the following:

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(1) Article No. (4) Of the Universal Declaration of Human Rights of 1948.

(2) Article No. (10) Of the International Covenant on Economic, Social and Cultural Rights.

1. The necessity of granting the family, which is the natural and fundamental group unit of society, the greatest possible protection and assistance, especially to configure this family throughout her responsibility for the care and education of dependent children, marriage must be with the consent of the intending spouses.

2. Special protection and assistance should be provided for the benefit of all children and adolescents, without any discrimination for reasons of parentage or other conditions, and to protect children and adolescents from economic and social exploitation, and should be punishable by law to use in work harmful to their morals or health or dangerous to life or likely to hamper their normal development, States should also set age limits the law prohibits the use of young children who are below which the paid employment of punished.

***Thirdly: The European Convention on Human Rights:***

The European Convention on Human Rights stipulates that “men and women of marriageable age have the right to marry and found a family in accordance with the national laws governing the exercise of this right” (1).

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(1) Article No. (12) Of the European Convention on Human Rights.

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## **The second study**

### **The right to the property in the old legal laws and contemporary international charters**

#### ***Preamble:***

The right to private property of human rights, due to the specificity of social and political organization of ancient societies, we find that this right had had so many ambiguities, but this does not mean that it was not exist, but it was existing, but to the extent permitted by the circumstances of each society separately, on the other hand, the international conventions did not ignore dealing with this right but guaranteed or provided for it and, accordingly, the researcher will show in this study into three demands:

## The first demand

# The right to property in ancient Eastern Religions

### *First: In Pharaonic Egypt:*

There are many evidence on the existence of private property in Egypt since the era of the old state and continued during the Middle Ages, private property was not limited to the Portables but also include properties, whether houses or agricultural lands, while the historians agrees on the existence of private property of the portables we find them disagree on lands, some went to the suspicion that the land was owned by the Pharaoh, and that individuals not only have the right of access, we believe that the ownership of the pharaoh in the land of Egypt was not a private property, but it was public and political ownership<sup>(1)</sup>.

It demonstrates the invalidity of the view that the land of Egypt were all the property of the pharaoh many evidence

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(1) Mahmoud Zinati, human rights in Pharaonic Egypt, *ibid.*, edition 2003, p. 306.

dating back to the Pharaonic history which witnesses that the individuals had the rights to property on land and houses.

With respect to the era of the old state, we find, for example, in the inscriptions, which narrates the life of “Matn”, one of the senior staff in the era of King Snefru, and that he bought from the state 200 arour (Richter space) of agricultural land, and the archeologists found a summary for the sale of the engraved stone witness includes the sale of one of the clerks his house to a priest, this decade goes back to the fourth family, also included one of the remains of a man called “edo” gave a field as a gift to his wife (1).

With regard to the central state era we have some texts that include the actions concerning lands, in one of them, which goes back to the eleventh family, we find a person to buy a piece of agricultural land of about four aurora(Richter space) and he paid for it from what he had received from his father’s money(2).

With regard to the modern state, there are many documents attesting to the existence of private property for real estate in various forms from the houses and agricultural land, in one of them a worker complains of another worker the right to claim ownership of his house , and the court in the name of the king

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(1) Dr. Shafiq Shehata, *the general history of law in Egypt, ancient and modern*, Cairo, 1962, p. 45 and beyond.

(2) Mahmoud Zinati, *human rights in Pharaonic Egypt*, *ibid.*, edition 2003, pp. 306-07.

judged by affirming the ownership to the complaint and in the other we find a special case of a dispute over a piece of land, in which all parties to the proceedings to establish his in the right of ownership of the piece of land<sup>(1)</sup>, the private property in the ancient Egyptian law entitles its owner the same Powers recognized by the owner in modern laws, i.e. the use, dispose and exploitation, the owner has the right to benefit directly from his money by farming the land, or living in his house, he had the right to give his utilization to the others with remuneration or without remuneration such as renting his land or his house, and he had the right to do with it all faces of acts of sale or gift or bequest, so the funds which are property privately owned goes by inheritance to the progeny of the owner and his relatives<sup>(2)</sup>.

***Secondly: In Mesopotamia:***

The legal system in Mesopotamia knew the individual property,<sup>(3)</sup> it was concerning +the contracts and movables, the system of individual property was suitable for the conditions of the old Iraqi society, as it was found in many of the documents that confirm its existence since long time in the

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(1) Arman, Egypt Egyptian life in ancient times, translated by Dr. Abdel Mo-neim Abu Bakr and forbidden Kamal, Cairo, no date, p. 147.

(2) Dr. Mahmoud Zinati, human rights in Pharaonic Egypt, ibid., edition 2003, p. 307.

(1) Dr. Mohammad Jamal Eissa, the history of social and legal systems, Zaga-zig, 2001 edition, pp. 328-329.

country of Iraq, where the old Iraqi community that was commercially society based on free trade and a free economy, and this cannot be existed only under a system that allows the private ownership, ownership of individual +which granted the owner the authority to use and exploitation and disposal, but this does not means that the right to property was absolute or never have restrictions, but on the contrary it was truly bound by a series of restrictions on the right of “pre-emption” where passed to the relatives of the seller to a certain degree to be the buyer, and receive the sold land on condition of payment of the price to the buyer, As well as the restriction provided by the law “code”, whereby a person who sold his house in case of necessity, i.e. the case of severe poverty, to restore it if the buyer tried to sell it (1).

It notes that in addition to individual property, there was a property of the group which belongs to it one family, State ownership of land, land ownership of the gods or temples, which was a general property of a particular type (2).

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(1) Dr. Ahmed Ibrahim Hassan, the history of legal and social systems, publications, Alexandria University, 1999, p.444-445.

(2) Dr. Fayez Hassan, and Tariq Majzoub, the history of legal systems, *ibid.*, p. 119.

## **The second demand**

### **The right to the ownership in the laws of the Old West**

#### ***First: The Greeks:***

Although the land ownership was restricted to citizens in the Greek countries as well as they, in legal the creatures they, i.e. the citizens, were not equal in their economic and social development, as the Greek cities knew, since its inception, the families of the nobles who were monopolize the political influence and economic forces, and as a result of this having large areas of agricultural land, the family continued to increase its holdings of land at the expense of smallholders <sup>(1)</sup>, under the pressure of unfavorable economic circumstances and their desire to get the money that they can cope with such circumstances, small owners are forced to borrow from the landowners on account of what they possess of the fields, since the benefits required by the lenders are expensive, the debtors were mostly

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(1) Dr. Mahmoud Zinati, social and legal systems when Sufism, Greeks and Persians, *ibid.*, p. 106.

from cases find themselves unable to meet their debts, and it was usually end with the seizure of the big owner on the land of the small owner to implement his credentials and fulfilling his debt, the former smallholders are forced to continue their work as leaseholds, and then the gap widened between the rich and the poor (1).

However, the rise of industry and prosperity of commerce and the need for labor made large numbers of peasants who no longer satisfy them the life of misery over the fields to abandon cultivating the lands and engage in trade and industry, and the practice of different industries, and sailed in the sea in pursuit of the tempting trade profits, some engaged in trade and industry was able to achieve enormous profits, and thus the economic force is no longer confined to the owners of agricultural land, but the senior merchants and industries owners had their share in it, and the movable wealth competed the real estate wealth (2).

### ***Secondly: The Romans:***

In Roman law, we find that the beginning of the law of the Twelve panels, the Romans allowed private ownership and put for it several safeguards to protect it.(3), and these guarantees

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(1) Ibid., p. 106.

(2) Ibid., p.106-107.

(3) Dr. Adel Bassiouni, philosophical and historical origins of human rights, ibid., p.30199.

the claim of repossessing, it is by origin a *ainiah* civil lawsuit brought by the owner for claiming the refund of his property, with a view to obtaining the thing or its value, and then it became a personal *ainiah* a kind lawsuit i.e. it is not limited to the claim of the thing and its attachments, but also include compensation related to it <sup>(1)</sup>, also the claim of denial, it is a civil lawsuit brought by the owner against a person not disputes in the ownership, but claims that he had really kind of right as, for example, facilities or the right of utilization in short the owner denies it, hence its name, this right and denies its presence as it is the owner's manual for each eye, and the right of others in the utilization or the right of passage or other rights in rim, which can be determined on the money for the benefit of others <sup>(2)</sup>.

In general, the Romans had known the following forms of ownership: Romanian property ownership , foreign ownership, regional ownership and judicial ownership, but in the age of Justinian was the unification of all the forms of the ownership, so that the ownership has become a prize for everyone is all-inclusive, this was due to several factors: the issuance of constitution of *krakla*, the disappearance of the distinction between the precious funds and non- precious funds and the disappearance of the two ways to transfer ownership: imposter

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(1) Dr. Amr Mamdouh Mustafa, Roman law, *ibid.*, p. 367, and beyond.

(2) *Ibid.*, p.376.

advocacy moot and delivery sustainment.

The recognition is one of the ways of the law of peoples (Jus gentium) which is an informal way to transfer ownership, transfer by hand, and is limited to the handling of the object to be transferred hand in hand.

## **The third demand**

### **The right to the ownership in contemporary international charters**

#### ***First: The Universal Declaration of Human Rights:***

The text of the Universal Declaration of Human Rights:

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property. (1).

#### ***Secondly: The International Covenant on Economic, Social and Cultural Rights:***

The International Covenant on Economic, Social and Cultural Rights did not include any article to confirm the right of ownership, perhaps dropping this right deliberately from that Convention, was intended not to crash into the opposing of socialist states which takes an economic ideology that does not

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(1) Article No. (17) Of the Universal Declaration of Human Rights of 1948.

recognize the right of private property (1).

***Thirdly: The African Charter on Human and Peoples' Rights of 1981:***

The text of the African Charter on Human and Peoples' Rights, "the right of ownership is guaranteed and may not be impaired except for necessity or public interest, in accordance with the provisions of the laws issued in this regard" (2).

***Fourthly: The Arab Charter for Human Rights issued on September 15, 1997:***

The Arab Charter on Human Rights provided that "the right of private property is guaranteed for every citizen, it is prohibited in all circumstances the demilitarization of the citizen from all or some of his assets in an arbitrary or illegal way" (3).

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(1) Dr. Abdel Wahed Mohamed mouse, human rights law, *ibid.*, p. 350.

(2) Article No. (14) Of the African Charter on Human and Peoples' Rights.

(3) Article No. (25) Of the Arab Charter on Human Rights.

## **The third study**

# **The right to the freedom of work in the old legal laws and contemporary international charters**

### ***Preamble:***

The human right to freedom of work, each individual has the right to choose work that fits their capabilities, there is no doubt that the freedom of individual choice to work for his potential talents has many advantages, which is represented in eagerness of the individual to his work, and interest in its performance, and its improvement and upgraded to the level of perfection, and this is the best result for society, on the contrary if the individual has no will to choose his work, as it is thus he is driven to it upset and hating it, so his production reduced, and the spirit of talent and creativity and innovation die out, and the harm would come to him and the community, as well as the advantages of the freedom of individual choice

to work his direction to double his activity, and making every effort to achieve the greatest possible success and excellence over the others in his field of work.

To illustrate the position of each of the old systems and contemporary international conventions and of the right to work, the researcher will be exposed in this study to three demands:

## **The first demand**

### **The right to work in ancient Eastern Religions**

#### ***First: The Pharaonic Egypt:***

Agricultural workers or slaves were working in the territory of the State or under the senior owners in Pharaonic Egypt, especially in the era of the two central and modern state, under a lease is called a lease of persons, documents have been found about leasing slaves for service work for reimburse and specific in the limits of specified hours, the employer not to go beyond <sup>(1)</sup>.

The persons lease generates obligations and the responsibility of the lessee and the lessor, the basic obligation of the lessee is paying the wages agreed upon, which was paid monthly in agricultural land, usually paid at the beginning of the contract in the lease of persons, the wages was like some

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(1) Dr. Faiz Mohammad Hussein, the origins of legal systems, *ibid.*, p.172-173

the movables of livestock yields , clothes, corps and cows always estimated by the customary currency <sup>(1)</sup>, in some cases the wages paid in kind not in cash, agricultural workers were to get a part of the harvest of the land in which they work <sup>(2)</sup>.

The lessor is committed to enable the lessee, this by extraditing the hired slave to perform the work assigned to, as he was also committed to, as texts concerning the slave trade referred to the insurance of downtime and insurance of loss, in order to compensate the lessee for the duration of the hang of the slave by the reimbursement of part of the wages to the lessee in return for that period, in one the papyrology, the lessor declares that he had received the wages of the maid, and if she hanged from work in the duration of the lease he would make an account for this as one by one <sup>(3)</sup>.

***Secondly: In Mesopotamia:***

The legislation of Mesopotamia knew both of the work contract (lease of persons) and Entrepreneurship (a lease workmanship) focused on tackling it, as follows:

**(a) The lease for Persons (Employment Contract):**

The Mesopotamian knew the rent service, or what is called in the current time of the contract of employment, where

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(1) Dr. Said Abdel Hamid Fouda, the pharaonic, the Arab Renaissance Publishing House, Cairo, 2004, p.323.

(2) Dr. Ahmed Ibrahim Hassan, the history of legal and social systems, *ibid.*, edition 1999, p. 466.

(3) Dr. Mahmoud Zinati, history of Egyptian law, *ibid.*, p.194-195.

workers are hired their work in favor of the employer, and subject to a lease of service in the principle of the same rules which the lease contracts subject to in general, and thus it is held between working group (Lessor) and the employer (lessee) for a certain fee for a specific time, however, in cases where the working group subject to the authority of the others, as if he a slave or a boy, the contract, and in that case, held between the employer and the owner of the authority of the person the lessor, i.e. the master of the slave or the boy's father, and thus he was the one who takes the wages and committed to put slave or the son under the employer's orders (1).

The labor contract was held for a year or a month, and sometimes for one day in some cities (like Deblat) workers who work per month right to get three days (Leave with Pay) (2).

The fee deserved when the agreed term.

### **(b) The lease workmanship (entrepreneurship):**

It seems that the lease for workmanship or entrepreneurship was very widespread in Mesopotamia, as evidenced by the legacy and the civilization remained to us by that country of numerous effects that indicates the proliferation of different handicrafts in it, on the contrary, it did not reach us only

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(2) Dr. Ahmed Ibrahim Hassan, the history of legal and social systems, 1999 edition, p.486.

(1) Dr. Ahmed Ibrahim Hassan, the history of legal and social systems, 1999 edition, p.486.

a very few decades for rent workmanship, but in spite of the scarcity of documentation relating to those contracts, scholars have been able to get a clear picture of the for rent workmanship based on the study of some documents that go back to the new Babylonian and Persian covenant, (1).

the contract, in the rent for the workmanship, is the implementation of a specific path of entrepreneurship, in return for the wages agreed upon or determined by the law, such as building a house, or repairing a ship, or the transfer of goods, or the squeeze of the Sesame for oil extraction, in all such cases the workmanship is done by the lessor (contractor) on something provided by the lessee (the employer), the contractor is committed to the implementation of work in the way in the agreed period, his deep commitment here an obligation of achieving a result, therefore, he is liable for his work until the delivery of that thing, and in some cases, he remains responsible for the work until after delivery (2).

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(1) Dr. Ahmed Ibrahim Hassan, *ibid.*, p.486.

(2) Dr Faiz Mohammad Hussein, *the origins of legal systems, ibid.*, p. 183.

## **The second demand**

### **The right to work in the laws of the Old West**

#### ***First: The Greeks:***

Agriculture was the base of the Greek economy, and perhaps some small landowners owned a slave, or even two slaves, the plenty of polite instructions directed to the owners of the land in the book of *economy* by (Zinon), which ascribed by error to Aristotle, shows the presence of dozens of slaves in the broader farms, they were either workers or the heads of the workers, the work of the slaves has spread in the mines and quarries, where the work of the large numbers of slaves who mostly hired by wealthy citizens, it has been estimated that the number of workers in the crude processing by about thirty thousand.

And the use of slaves to the profession of the craftsmen, merchants, and also, the slave did the functions that are beyond the capabilities of the family, and the largest number of

slaves was used in the workshops, and the slaves also worked in the houses, the principal role of the slave in the home is the prosecution of the Trade in behalf of his master and accompany him in travels, and notes that the owners often promise their slaves with freedom in the future to encourage them to work hard, in time of war the slave was turns into a correspondent soldier for the soldiers of infantry, female slave was doing the housework, especially the bread and the textile industry, but only the houses of the poorest citizens were empty of slaves.

It should be noted that the Athenian Democracy, in order to improve the conditions of the poor and the provision of employment opportunities, resulted in the distribution of feudalizations on farmers and the establishment of various public facilities to provide work to the handicrafts and extending the hand of aid to those unable to work such as the granting of prostheses for war pensions at the expense of the public treasury, and subsidies for those suffering disabilities because of work (1).

### ***Secondly: the Romans:***

The Roman law organized both the lease for service and the lease for workmanship, as follows:

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(1) Dr. Mahmoud Zinati, social and legal systems when qaboos, Greeks and Persians, *ibid.*, p.156.

**(a) The lease for service:** The Service lease is a contract whereby a person renting work (and here the so-called working group) to another person (the employer) in return for payment, and called on the lease for service in the modern laws term first pillar of this contract is the service performed by the person during a certain period of time <sup>(1)</sup>.

The spread of a lease of service was limited because of the system of slavery, where slaves do all the work, as well as the freedmen who in turn are committed to carry out some work for their former boss some time, in addition to the above that the Romans were getting out of the concept of rent business that requires special skill, if it is within the scope of the contractors' contract or rent workmanship and, above all, free works such as medicine, engineering, business and lawyers were not included in the rent service, and the one who does this was not called a lessee, and therefore it was not worth the wages but a payment which called fee<sup>(2)</sup>.

### **The lease of rent service properties, pillars and its effects in Roman law:**

Rent service lease is a consensual contract held by mutual consent not accompanied by certain formalities, and it is one

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(1) Dr. Shafiq Shehata, *the theory of commitments in Roman law*, Cairo, 1961, p. 265.

(2) Dr. Shafiq Shehata, *ibid.*, p. 265.

of contracts of goodwill, and of the contracts binding the two sides, but its pillars are the consent and the service by a tenant (Working Group) in favor of the employer, as well as the wages, which are required to be in cash <sup>(1)</sup>.

As for its effect, this contract of the mutually binding contract obligations rests with each of the parties as follows <sup>(2)</sup>:

- On the one hand, the employer committed to pay the wages for the worker; on the other hand, the working group committed to perform the work required from him in time, this is associated with the commitment to the employer to pay the wages.

- On the other hand, the employer committed to compensate the working group who suffers during work even if the injury was due to the negligence of the Working Group, on the other hand, the Working Group committed to that the attention of the head of the family+ good governance, accordingly to be asked the small error is easily according to the promise in situ.

- On the third hand: the renting lease lawsuit protects this contract (case which raised from the working group on the employer) and the hiring lease (which raises from the employer on the Worker).

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(1) Dr. Shafiq Shehata, the theory of commitments in Roman law, *ibid.*, p. 266.

(2) Dr. Mahmoud Zinati, Roman law systems, the Arab Renaissance Publishing House, Cairo, edition 1966, p. 218.

**(b) The lease of workmanship:** A contract according to it a person entrusted with something he vows to do certain work on this thing for a certain fee <sup>(1)</sup>, the content of this contract like the contract of entrepreneurship in modern law <sup>(2)</sup>.

The first pillar of the contract is the employer to deliver something to another person, the manufacturer, the fee is the second pillar of the contract, and the third pillar of the contract is the work of the manufacturer in the thing which he received <sup>(3)</sup>.

The most common form for Entrepreneurship (for rent workmanship in Roman law) was: To give one of the craftsmen to fix clothes or clean them, or giving a land to a construction contractor to build a house on it, or the delivery of goods to a haulage contractor for transfer from one place to another <sup>(4)</sup>, and it noted that the manufacturer here is called the lessee, but required to be the material of the thing from the lessor, because if a thing was from manufacturer (here he is the lessee) we were in connection with the lease for the service accompanied by the sale, and this was considered by the Romans a real contract of sale <sup>(5)</sup>.

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(1) Dr. Mahmoud Zinati, Roman law systems, *ibid.*, p. 218.

(2) Dr Faiz Mohammad Hussein, and Ahmed Abu al-Hassan, the history of the law, a joint author, no publisher, without date, p. 183.

(3) Dr. Mahmoud Zinati, Roman law systems, *ibid.*, p.218-219.

(4) *Ibid.*, p. 218 and beyond.

(5) Dr. Shafiq Shehata, the theory of commitment in Roman law, *ibid.*, p. 267.

The lease for the craft is from the contracts of obligation to the two sides, a consensual contract, whereby the contractor is required to perform the work required in the time according to what has been agreed upon in advance in the contract, the customer shall pay the wages agreed upon the contractor, the payment system to be determined according to the agreement, the parties agree to pay once or in installments, and it is noted that the obligation of the employer or client to pay fees is closely linked to the commitment of the manufacturer and, therefore, the employer discharged from paying if the thing lost <sup>(1)</sup>, but Justinian entered an amendment, the client committed to (the employer) to pay fees if the manufacturer acquitted pending to deliver the thing because of it is perished by majeure force <sup>(2)</sup>.

With regard to the responsibility of the contractor is as follows <sup>(3)</sup>:

- The contractor committed to the consequential loss of the thing while it was handed over to the customer, but he is not asked if the loss was due to majeure force, in this case, the customer is liable for the loss (owner of the thing).

- The contractor is asked for his personal sin as well as the mistake of his assistants.

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(1) Dr. Mahmoud Zinati, Roman law systems, *ibid.*, p.218-219.

(2) Dr. Shafiq Shehata, the theory of commitments in Roman law, *ibid.*, p. 269.

(3) *Ibid.*, p. 269.

- In the case of the sub-lease, the contractor would remain accountable to the customer for each error of the sub-contractor, the repertoire has claimed is that the contractor had abused the selection of a sub-contractor, whom he entrusted to carry out the work.

- It noted that the responsibility of the contractor (or manufacturer) in a lease workmanship is stronger than the responsibility of the employee in a lease (lease for service - the employment contract); because if the thing perished afford, the contractor had the risk of loss in the eyes of some of the scholars of the Romans, the others had differentiated between the two cases; the loss of thing by force majeure or because of deficiencies in skill manufacturer or contractor, and they said that the contractor is not asked in the first case (the loss of force majeure) but is asked in the second.

## **The third demand**

### **The right to work in contemporary international charters**

States are obliged to provide adequate job opportunities suitable for the individuals per capita income living to be enough and of his choice, that there to be equality of opportunity, fair wages and conditions and reserves that worker safety and maintain the physical and spiritual health, including the limitation of working hours and paid holidays and times of rest, leisure and promotion opportunities and rewards the level of technical and vocational training to the worker through training and extension programs under the standards of human rights law on civil liberties and political rights and economic, social and cultural rights, and this will be illustrated by the following:

#### ***First: The Universal Declaration of Human Rights:***

The text of the Universal Declaration of Human Rights to ensure that the right to work of the aforementioned standards, saying:

(1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity,

and supplemented, if necessary, by other means of social protection. (1).

As the text of the Universal Declaration of Human Rights that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay) (2).

***Secondly: the International Covenant on Economic, Social and Cultural Rights:***

The text of the International Covenant on Economic, Social and Cultural Rights and the right to work, the conditions and guarantees and specifications mentioned by saying:

1. The States parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or

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(1) Article No. (23) Of the Universal Declaration of Human Rights of 1946, see in the explanation of this article: Dr. Ibrahim Ahmed Khalifa, the international obligation to respect human rights, *ibid.* p.81-82.

(2) Article No. (24) Of the Universal Declaration of Human Rights.

accepts, and will take appropriate steps to safeguard this right.

2. Must include measures taken by each of the States parties to the present Covenant to achieve the full exercise of this right to provide guidance and training to technicians and professionals programs, policies and techniques to achieve steady economic, social and cultural development, and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

As the text of the International Covenant on Economic, Social and Cultural Rights that the States parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

1 - Remuneration which provides all workers, as a minimum:

1) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work,

2) A decent living for themselves and their families in accordance with the provisions of this contract,

(b) The conditions of work safety and health.

(c) Equal opportunity for everyone to upgrade, within their work to an appropriate higher level, subject to no considerations other than those of seniority and competence.

(d) Rest, leisure and reasonable limitation of working hours

and periodic holidays with pay, as well as remuneration for public holidays <sup>(1)</sup>.

***Thirdly: the Employment Policy Convention No. 122 issued in 1964:***

To overcome the problem of unemployment and lack of employment, approved by the General Conference of the International Labor Organization, the Employment Policy Convention 1964, under this Convention, States Parties undertake to pursue an active policy designed to achieve full ignition and product based on free choice.

This policy is aimed at ensuring that <sup>(2)</sup>:

A) That there is available to all those who are willing to work and researchers,

B) That this action to be as productive as possible,

C) That there is a freedom to choose the type of work and made available to each worker complete the opportunity to welcome the work suits, devise in the service of this work skills and talents, whatever his race, color, nationality, religion or political opinion or social affiliations, and the stated policy should take into account the stage and level of economic development, and the interrelationship between the objectives of the stage of em-

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(1) Article No. (7) Of the International Covenant on Economic, Social and Cultural Rights.

(1) See Article No. (1) Of the employment Tourism Agreement No. 122 of 1964.

ployment and other economic and social objectives, and to take action on the application of the methods in accordance with national conditions and practices.

***Fourthly: The Arab Charter for Human Rights issued on September 15, 1997:***

The Arab Charter on Human Rights provided that “States shall ensure that every citizen has the right to ensure a work that the standard of work to secure the basic demands of life, and ensure the right to comprehensive social security “ (1).

As the text of the Arab Charter for Human Rights to freedom of choice of employment was guaranteed, and forced labor are prohibited, such as forced labor is not forcing a person to perform work pursuant to a court judgment .

Also provided that the State guarantees the citizens equal opportunities in employment fair pay equal remuneration for work of equal value (2).

***Fifthly: the African Charter on Human and Peoples’ Rights of 1981:***

The African Charter on Human and Peoples’ Rights provided that “the right to work is guaranteed under equal conditions and favorable for equal pay with equal work”(3).

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(1) Article No. (30) Of the Arab Charter on Human Rights.

(2) Article No. (31) Of the Arab Charter on Human Rights.

(3) Article No. (15) Of the African Charter on Human and Peoples’ Rights.

## The Legislative Human rights sources

### *The world international source:*

The emergence of the international source for the area of human rights in the aftermath of the Second World War, since 1945, where human rights violations have tumbled from in these wars from many parties, especially from the German Nazis, and they were conducting scientific experiences on human bodies of prisoners of war seem to laboratory mice.

So the conscience is waken up, the conscience of the international community, and stressed that respect for human rights and the indispensable basis for political and social peace within each state, the peace of the world at the same time.

This international movement of two sections: the first section came through the General Assembly of the United Nations, and named the global sources, the second section came through regional international organizations and named the regional sources, such as: the organization of the Council of Europe, the Organization of American States, the African Union, the League of Arab States and others.

### **First: Global sources:**

They include public and private binding international instru-

ments adopted by the General Assembly of the United Nations, the Universal Declaration of Human Rights and the International Covenants (the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights endorsed by the General Assembly of the United Nations 16/12/1966 The three as a whole, this is called the international legitimacy of human rights.

**The General charters:-**

Through the general charters, we introduced the Charter of the United Nations for human rights, which was issued in December 1948, which included 30 articles are:-

Article 1: all human beings are born free and equal in dignity and rights, and they are endowed with reason, and they have to treat each other in a spirit of brotherhood.

Article 2: The right of everyone to the enjoyment of all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language or religion, political or other opinion, without any distinction between men and women, in addition to the above, there will not be any discrimination on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether this country or that the spot exploiting or under guardianship or non-self-governing or under any other limitation of sovereignty.

Article 3: Everyone has the right to life, liberty and security of person.

Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment.

Article 6: Everyone has the right to recognition as a legal personality.

Article 7: All people are equal before the law, and they have the right to equal protection of the law without discrimination, and that they have the right to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8: Everyone has the right to resort to remedy by the competent national tribunals for acts violating the fundamental rights granted him by the law.

Article 9: the arrest, detention or exile arbitrarily.

Article 10: Everyone has the right to full equality with others, to consider his case before the court and public hearing by an independent and impartial adjudication of his rights and obligations and of any criminal charge against him.

Article 11:

1. Every person accused of a crime to be presumed innocent until proved guilty according to law in a public trial at which he

has had all the guarantees necessary for his defense.

2. No one shall be held guilty of any penal offense on account of any act or omission which did not constitute an offense, under national or international law, nor was any penalty heavier than the one that was applicable at the time the penal offense committed.

Article 12: No one shall be subjected to arbitrary interference in private life or the affairs of family, home or correspondence, or attacks upon his honor and reputation; everyone has the right to the protection of the law against such interference or attacks.

Article 13: Everyone has the right to freedom of movement and residence within the borders of the State.

Article 14:

1. Everyone has the right to seek and enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15: Everyone has the right to a nationality, and may not be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16:

1. Men and women of full age have the right to marry and found a family without any limitation due to race, nationality or

religion; they are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. The marriage only with the consent of the free and full consent of the INTENDING.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

Article 17: Everyone has the right to own property alone or in association with others, and no one shall be arbitrarily deprived of.

Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom to manifest one's religion in worship, observance, practice and teaching, alone or in community with others and in public or separately.

Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20:

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21:

1. Everyone has the right to participate in the management

of public affairs of his country; either directly or through freely chosen representatives.

2. Every person equally with others the right to public service in his country.

3. The will of the people is the basis of the authority of government; this will shall be expressed in periodic and genuine elections by universal suffrage and equal suffrage by secret ballot or by equivalent free voting.

Article 22: Each person as a member of society has the right to social security and is entitled to realization, through national effort and international cooperation, and in conformity with the structure and resources of each State, of the economic, social and cultural rights indispensable for his dignity and to increase his personality.

Article 23:

1. Everyone has the right to work, to free choice of work and just and favorable conditions of work and to protection against unemployment.

2. All individuals, without any discrimination, have the right to equal pay for equal work.

3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family a decent living human dignity, and supplemented, as appropriate, by other means of social protection.

4. Each person has the right to establish and join trade unions with others for the protection of his interests.

Article 24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25:

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance and to all children the right to enjoy the same social protection, whether born in or out of wedlock.

Article 26:

1. Everyone has the right to learn, education shall be free, at least in the elementary and fundamental stages, and the compulsory primary education, technical and vocational education shall be made generally available and higher education shall be equally accessible to all, depending on their competence.

2. Education shall be directed to the full percentage of the human personality and to the strengthening of respect for human rights and fundamental freedoms and must promote understand-

ing, tolerance and friendship among all nations and all racial or religious groups, and supported the activities of the United Nations peace-keeping operations.

3. The priority of the right of parents to choose the type of education which gives their children.

Article 27:

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of.

Article 28: everyone is entitled to a social and international order can be achieved in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29:

1. Everyone has duties to the community in which alone the free and full development of his personality is.

2. Is not subject to any individual in the exercise of his rights and freedoms only to such limitations as are determined by law, the target of securing due recognition and respect for the rights and freedoms of others, and to fulfill the requirements of morality solely for the purpose of public order and the general welfare in a democratic society.

3. In no case that these rights should be exercised contrary to the purposes and principles of the United Nations.

Article 30: Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein.

### **The Special charters.**

A set of international charters that have been developed through the efforts of the United Nations and its specialized agencies, and offered to States to sign and ratify it as a source of legally binding and in specific areas of human rights, from these Conventions:

1) The charters to protect the rights of the most vulnerable groups such as women, children and the mentally disabled and elderly members of religious and linguistic minorities (nationality) and foreign workers and migrants, refugees and stateless persons.

2) The charters for specific rights: such as the elimination of all forms of racial discrimination, the prevention of slavery, prevention of forced labor, freedom of association and protection of the right to organize, labor relations, employment policy, the prevention of genocide, the prevention of torture and inhuman and degrading treatment.

3) Codes applicable during armed conflict (Geneva Law):

such as the improvement of the condition of the Wounded and Sick in Armed Forces in the field, improving the condition of the wounded and sick members of armed forces at sea, on prisoners of war, the protection of civilians in time of war, the protection of victims of international armed conflicts, the protection of victims of non-international armed conflicts.

This, after the Universal Declaration of Human Rights with its previous thirty articles and covenants that caused by, the General Assembly of the United Nations to undertake follow-up processes of the different countries of the world to determine how to activate these rights, and stand on the commitment of those States and respected the terms of the Declaration and the extent of the significant improvement of human rights in their countries, and this is what we see clearly and forcefully in (the Tehran Declaration).

### **The Tehran Declaration:**

It was held in the Iranian capital Tehran International Conference on Human Rights in the period from April 22 to May 13, 1968, to review the progress achieved since the Universal Declaration of Human Rights.

The terms of the Declaration came with a lot of severe criticism of the violations against human rights which is still practiced in many countries of the world, especially those that had been committed to the respect of human rights and these items

are:

1. It is imperative that the members of the international community fulfil their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all without distinctions of any kind such as race, color, sex, language, religion, political or other opinions;

2. The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community;

3. The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the International Convention on the Elimination of All Forms of Racial Discrimination as well as other conventions and declarations in the field of human rights adopted under the auspices of the United Nations, the specialized agencies and the regional intergovernmental organizations, have created new standards and obligations to which States should conform;

4. Since the adoption of the Universal Declaration of Human Rights the United Nations has made substantial progress in defining standards for the enjoyment and protection of hu-

man rights and fundamental freedoms. During this period many important international instruments were adopted but much remains to be done in regard to the implementation of those rights and freedoms;

5. The primary aim of the United Nations in the sphere of human rights is the achievement by each individual of the maximum freedom and dignity. For the realization of this objective, the laws of every country should grant each individual, irrespective of race, language, religion or political belief, freedom of expression, of information, of conscience and of religion, as well as the right to participate in the political, economic, cultural and social life of his country;

6. States should reaffirm their determination effectively to enforce the principles enshrined in the Charter of the United Nations and in other international instruments that concern human rights and fundamental freedoms;

7. Gross denials of human rights under the repugnant policy of apartheid are a matter of the gravest concern to the international community. This policy of apartheid, condemned as a crime against humanity, continues seriously to disturb international peace and security. It is therefore imperative for the international community to use every possible means to eradicate this evil. The struggle against apartheid is recognized as legitimate;

8. The peoples of the world must be made fully aware of the

evils of racial discrimination and must join in combating them. The implementation of this principle of non-discrimination, embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, and other international instruments in the field of human rights, constitutes a most urgent task of mankind at the international as well as at the national level. All ideologies based on racial superiority and intolerance must be condemned and resisted;

9. Eight years after the General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples the problems of colonialism continue to preoccupy the international community. It is a matter of urgency that all Member States should co-operate with the appropriate organs of the United Nations so that effective measures can be taken to ensure that the Declaration is fully implemented;

10. Massive denials of human rights, arising out of aggression or any armed conflict with their tragic consequences, and resulting in untold human misery, engender reactions which could engulf the world in ever growing hostilities. It is the obligation of the international community to co-operate in eradicating such scourges;

11. Gross denials of human rights arising from discrimination on grounds of race, religion, belief or expressions of opinion outrage the conscience of mankind and endanger the founda-

tions of freedom, justice and peace in the world;

12. The widening gap between the economically developed and developing countries impedes the realization of human rights in the international community. The failure of the Development Decade to reach its modest objectives makes it all the more imperative for every nation, according to its capacities, to make the maximum possible effort to close this gap;

13. Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development;

14. The existence of over seven hundred million illiterates throughout the world is an enormous obstacle to all efforts at realizing the aims and purposes of the Charter of the United Nations and the provisions of the Universal Declaration of Human Rights. International action aimed at eradicating illiteracy from the face of the earth and promoting education at all levels requires urgent attention;

15. The discrimination of which women are still victims in various regions of the world must be eliminated. An inferior status for women is contrary to the Charter of the United Nations as well as the provisions of the Universal Declaration of Human

Rights. The full implementation of the Declaration on the Elimination of Discrimination against Women is a necessity for the progress of mankind;

16. The protection of the family and of the child remains the concern of the international community. Parents have a basic human right to determine freely and responsibly the number and the spacing of their children;

17. The aspirations of the younger generation for a better world, in which human rights and fundamental freedoms are fully implemented, must be given the highest encouragement. It is imperative that youth participate in shaping the future of mankind;

18. While recent scientific discoveries and technological advances have opened vast prospects for economic, social and cultural progress, such developments may nevertheless endanger the rights and freedoms of individuals and will require continuing attention;

19. Disarmament would release immense human and material resources now devoted to military purposes. These resources should be used for the promotion of human rights and fundamental freedoms. General and complete disarmament is one of the highest aspirations of all peoples;

***Secondly: source derived from the terri-***

***tory:***

The regional source is a regional international organizations arise between a group of States with whom one geographical area, or gathering, including one language, or one religion or common interests and objectives.

It is these organizations: the organization of the Council of Europe (now the European Union), the Organization of American States, the Organization of African Unity (African Union), the League of Arab States.

In the light of those organizations concluded several international human rights charters these charters and legal status of the sources as well as global sources.

**The organization of the Council of Europe:**

The European regional organization is a unique model of theory and practice in the prohibition against violations of human rights, in the organization of the Council of Europe took place in twenty-one European country on the Convention on the charter of human rights and fundamental freedoms in the countries of Western Europe, in Rome on the 4th of November in the 1950m, those States committed to the European human rights law, and amended their constitutions, laws, and to comply with the Convention, but more than that made these rights belong to the European family as a whole, so that the right of any European state is a party to the Convention that accuses other European country

of violating human rights, even if it was not the first state any nationals of their rights were violated, and makes complaint to the International Court of Human Rights based in Strasbourg.

### **The Organization of American States (Latin America):**

In the Organization of American States (Latin America), the regional organization continued to the same approach of the international regulation of the European Union in the prohibition against violations of human rights, signed nineteen out of thirty one countries on the American Convention on Human Rights in San Jose, capital of Costa Rica in the period from 7 to 22 November 1969 to Become Binding International Law for all member states signed it.

However, there is still a significant difference between the European continent and the American continent in the extent of commitment to the terms of the Convention, the difference is calculated in favor of the European continent.

### **The Organization of African Unity:**

In the Organization of African Unity approved the Law on Human Rights in June 1981, after a long struggle for human rights defenders claims and several started since the year 1960m at the request of the Senegalese President Senghor, then in 1966, the year 1967 and the year 1969, the year 1971, and in 1979, the African Human Rights Topics stench of the rulers of Africa, most of the military personnel who have assumed the military

coups and practiced all kinds of human rights violations.

### **The League of Arab States:**

In the League of Arab States was still motionless following the defeat of June 1967, at the request of the United Nations, which in 1968 as the International Year for human rights, especially that this year marks the 20th anniversary of the Universal Declaration of Human Rights, the Arab League council decided on 3 September 1968 the establishment of a Permanent Arab Commission for Human Rights, the Committee prepared its project, which contained a preamble and three doors, the project 65 article, section I (article 1 to article 43) Human rights and fundamental freedoms by international documents on human rights, and the section II (article 44 to article 49 of the collective rights of the Arab people, and allocated section III thereof (article 50 to article 65) The procedures for ensuring human rights, she referred the Committee responsible for this project to the Arab States for comment, the Arab states did not enthusiastic about the matter, and did not take action until today and decided to ink on paper.

### **The organization of the Islamic Conference:**

We have the Council of Ministers of Foreign Affairs of the Organization of the Islamic Conference meeting in Cairo on the 5th of August 1990 under the name of the Cairo Declaration on Human Rights in Islam, to discuss human rights in Islam, claim-

ing the Islamic Sharia as a reference and prompted this declaration.

The Conference recognized that the fundamental rights and public freedoms in Islam is part of the Muslim religion, no one initially disable wholly or partly or violated or ignored, it is the provisions of the divine Near verbatim press briefing transcript which God has written and sent the seal of his messengers, by amplifying the heavenly messages, and sponsorship of worship, and neglect or aggression by denying in religion, and every human being responsible alone, the nation and the official in charge of solidarity.

The announcement was made at this conference of 25 articles included the right to equality and non-discrimination, the right to life and the rights of the weak (Sheikh, a woman , a child or a captive), the right to the protection of private life, the right of the composition of the family, the rights of women, the rights of the Child, the civil right of legitimate human, the right to education, religious freedom, the right to liberty, the right to movement within a State or another State, the right to work, the right of legitimate gains and preventing monopoly, fraud, property, moral rights and cultural rights, the right to social security and health care, the right to security and safety, the right to justice in litigation, the prevention of torture, the custody rights for any purpose, the right to call and reporting and expression, the right

to political and executive participation.

**National source:**

National source for legislation (within each country) called the legislative authority; the legislative authority is the authority that has issued general binding rules which govern the behavior of the group in the state.

The authority of the legislation comes in legislating according to two systems:

**A) A system of semi-direct democracy:** Which is involved in the development of legislation within each of: Voters (citizen has the right to vote), the head of state (the king or sultan or prince or the President or the leader or otherwise), the parliament (the parliaments or legislative councils or parliaments or the Congress or the people's councils or national councils and the names calling within each State to the place where the representatives of the people to review and issuance of constitutions and laws under which the matters within the State, and manifestations of this order within the countries in which the right of referendum is the existence of the right to challenge the right of proposal within that State).

**B) A system of purely parliamentary democracies:** Where the legislation is the legislative authority alone, members of the electors of the legislation (in the case of semi-direct democracy) and the head of state (the king or sultan or prince or the President

or the leader or otherwise), parliaments whatever method configured (by election or appointment or election and appointment together).

The national source for human rights a priority on the international source in the national protection of human rights, when a violation of the human rights of the victim or his lawyer goes to search for means of protection in the law of the State where they live, whether stemming from the constitution or legislation or binding custom, because it is the applicable law first before resorting to any international source of protection.

This is required by the international charters and resolutions on human rights as requiring the State or an individual who complains of assault on the human rights of the exhaustion of local defense before resorting to the means of defense.

The regional source is supplementing the source of regional source, as those comprising general rules and private exporters to deal with human rights and to ensure the promotion and protection of the rights by the Governments of the States themselves to sign, ratify, and then applied by National Authority National 225 on an equal footing with other national laws, and also supports national source for the protection of human rights in the country when the constitutions include provisions that would ensure these rights translate national legislation with the provisions of the criminal, civil and other clear and frank for the protection

of human rights.

The national sources of legislation in the countries of the organization of Europe more flexible and easy sources in legislation and faster response, where the national societies of West Europe to amend domestic legislation to bring it into line side by side with what has been agreed upon within the framework of the Convention on Human Rights as soon as the announcement of this Convention, any State to become the Western European legislation in the field of human rights very similar legislation with that of the rest of the countries of the organization.

And the path to follow the rest of the States, the States of different international organizations, where the rapid and stunning the world around them make it pay attention to those human rights which ignore or postpones the decision in its themes.

### **The Religious source:**

That religion in the lives of nations and peoples is the spiritual source taking from it what rest their consciences, it is the balance of physical and psychological comfort with the issue of compliance with the orders and prohibitions, these commands and prohibitions are the legislative source in front of which surrender to it all, it is a binding force in itself, in its provisions, because it addresses the conscience of the minds and beliefs of human rights.

Previously in Europe of kings and emperors ruled their peoples by the support of the Christian clergy, the rulers layer were dis-

tinguishing the church men in bidding, grants and gifts to please them even spread in the beliefs of the people (taking advantage of their ignorance) that these rulers would rule over them in the name of heaven as they are delegates of Allah on the earth.

In the countries of the Islamic world, the Islamic religion came as a whole legislation enshrines approach to the Islamic nation, ruled by the Prophet, peace be upon him, and recommended his companions with it, the Prophet peace be upon him sent Mu'adh Bin Jabal with the messengers of the kings of Yemen to teach people their religion and recommend him with some things (the Prophet peace be upon him asked him with what you judge, Mu'adh? Mu'adh said: The Book of Allah. The Prophet peace is upon him: if you did not find? Mu'adh said: The way of the messenger of Allah. The Prophet peace is upon him: if you did not find? Mu'adh said: plied my opinion and united, the messenger of Allah (pbuh) said: Praise be to Allah, who made the messenger of Allah's messenger to the satisfaction of the messenger of Allah.

The Prophet peace be upon him also ordered who are in charge after him to uphold the legislation of this religion, as he said: "I left among you, that it will never go astray after me; the book of Allah and my sonnat the way of the prophet (pbuh):

In this regard, to quote the words of Imam Muhammad al-Ghazali, which wrote in his book: (Human Rights in Islam be-

tween the teachings of Islam and the United Nations declaration), where he said: “the latest humanitarian hoped the rules and safeguards the dignity of the human race was one of the basics of Islam, and that the United Nations Declaration of Human Rights, chanting the normal noble commandments received by the Muslims from the great human and the sealed Prophet Mohamed Bin Abdullah, peace be upon him).

It was a substantial period of time, not initiated nor sentenced only according to the Islamic Shariah, then the ambitions intervened, in the Abbasid era after juristic doctrines formed and scientific research diversified in the assets and provisions of Shariah, some authors have resorted to innovation tricks to evade some of the provisions of the Shariah, through action or behavior, and the resulting termination of the right or duty, such as the person gives his money to his son or his wife a period before the completion of the year then takes it again, thus eliminated the necessary condition for the Zakat of money which is staying of it for a year in the hands of the owner, Pastor on this the rest of the legislative matters.

And then came the eras of seditions and wars and colonialism, and the loss of the identity of the Islamic caliphate state in the late 19th century after the disintegration of the dismemberment of the Ottoman Empire, replaced by national identity, now every State has its own shariah, which apparently may be Islamic but

within it secular, or taken from the law of the Colonized state that separates religion and state and control is known as secularism.

Of the Islamic states that adopt the Islamic Shariah as a source of formal constitutional and legislative framework is: The Kingdom of Saudi Arabia.

Perhaps, the Islamic Shariah is one of the most laws which cared for human beings and human rights, it established human rights before the declaration of the United Nations, including nearly a thousand and three hundred and sixty five years, and to assert that we recall what came in the Universal Declaration of Human Rights and its corresponding in the Islamic legislation , for example:

**1) The right to freedom:**

Omar Bin Khattab said, may Allah be pleased with him, the Caliph who supports the Holy Quran in many positions, in his speech to Amr Bin Al-Aas the governor of Egypt, blamed him when one of the members of the parish filed a complaint against him to the prince of the believers: (when did you enslaved people as they were born free?), this approach is taken from the messenger of Allah, peace be upon him, in his call for the liberation of slaves from slavery, he peace be upon him freed the slaves and encourages his companions to purchase of slaves and free them for the sake of Allah the Almighty.

## **2) Prevention of discrimination:**

God Almighty says in the Sura of the Romans (verse 13): “the most righteous for Allah is the most pious from you” And Prophet, peace be upon him says: “Allah does not look at your bodies nor to your appearance, but rather to your hearts”, he also says: “your Lord is one and your father is one, but no favor for the ajami, difference between Persians, Arabs, and black to red, and black, except in piety.”

## **3) The right to life:**

God Almighty says: “Whoever killed a person for no right and corrupted land it is as if he killed all the people of the world”. The Almighty says: “Do not kill yourselves, Allah is merciful to you.”

## **4) Prevention of slavery:**

When Islam came slavery was widespread among members of the community, so the work of Islam was to free those slaves by a very decent way, as Islam emanates from within his followers of full conviction, the Almighty says: “you free a slave”, also the Almighty says: “It is not for a believer to kill a believer unless (it be) by mistake. He who hath killed a believer by mistake must set free a believing slave, and pay the blood-money to the family of the slain, unless they remit it as a charity. If he (the victim) is from people hostile unto you, and he is a believer, then (the penance is) to set free a believing slave. And if he is cometh

of a folk between whom and you there is a covenant, then the blood-money must be paid unto his folk and (also) a believing slave must be set free. .”

### **5) The right to protection from torture:**

God Almighty says: “And those who annoy believing men and women undeservedly bear a calumny and”, God Almighty says: “And we don’t chastise until we raise a messenger.” And Surah Taha, is a witness to the types of torture the pharaoh ruler of Egypt of the Israelites, which stated: “The enchantment, your hands and crucify you on the trunks of the palm trees and ye will who is the most doom and kept”, Allah the almighty so send Moses and Aaron, peace be upon them to Pharaoh to rid Israel of their anguish, where Allah Almighty said: “Go both to Pharaoh, surely he” who had argued they said to him: “send with us the children of Israel and don’t torture them”.

### **6) The right to recognition of human as an independent identity:**

The Almighty says: “And every man’s augury have We fastened to his neck,” The Almighty says: “Everyone, including gain depends,” He says in his book: “The Almighty God commands a soul only to its capacity to earn and have acquired,” Almighty says: “men is allotted what they earn, and”, the Prophet peace and prayers be upon him says: “Each of you is a shepherd and responsible for his people.”

### **7) The right to justice:**

God Almighty says: “If you judge between people you judge with justice”, He also says: “and sentenced them with equity; surely Allah loves, God Almighty says: “If you said say the justice even if he from the relative”, The Almighty says: “Allah commands justice charity”, He also says: “Not the hatred of others make you swerve to piety”.

### **8) The right of recourse to the judiciary:**

The Almighty says: “We have sent down to thee the Book right to judge between people including Allah, The Almighty says: “Down with them the book right to judge between people differed about it,” The Almighty says: “the Harkens tighten them”, The Almighty says: “and to judge them by what Allah has revealed, and do not follow their low desires,” The Almighty says: “judge between the people the right to follow not desire.”

### **9) The right to protection from abuse of authority:**

The Almighty says: “The way is only against those who oppress men and revolt in the earth unjustly; these shall have a painful chastisement,” he says, the messenger of Allah, may Allah bless him peace be upon him: “Oh God, the first is when something they have rebelled and make them hardships, and who was in charge of something and became kind so be kind to them.”

### **10) The right to a fair trial:**

The Muslim is not punishable only fixed penalty offense; the testimony of witnesses or the confession of guilt, God Almighty says: “You have bear witness of the best among you and set the witness for the sake of Allah The Almighty says: “and do not conceal testimony, and whoever conceals it, the sin of his heart.”

**11) The right to non-conviction without proof of guilt:**

The Almighty says: “O YOU who have attained to faith! If any iniquitous person comes to you with a [slandering] tale, use your discernment, lest you hurt people unwittingly and afterwards be filled with remorse for what you have done.”, The Almighty says: “O you who believe, avoid suspicion as much as some think a sinner,”

the messenger of Allah, may Allah bless him and grant him salvation): “Avert the legal penalties from the Muslims as much as possible, if he has a way out then leave him to his way, for if the Imam makes a mistake in forgiving it would be better than making mistake in punishment.””

**12) The individual's right to privacy:**

The Almighty says: “O YOU who have attained to faith! Do not enter houses other than your own unless you have obtained permission and greeted their inmates. This is [enjoined upon you] for your own good, so that you might bear [your mutual rights] in mind.”, The Almighty says: “and do not spy upon one another, and neither allow yourselves to speak ill of one another

behind your backs. Would any of you like to eat the flesh of his dead brother? Nay, you would loathe it! And be conscious of God. Verily, God is an acceptor of repentance, a dispenser of grace!

The messenger of Allah, may Allah bless him and grant him salvation): “A Muslim on Muslim is forbidden; His blood, honor and money,” he says, the holy messenger: “Who killed without his money is a martyr, and killed without his blood is a martyr, and killed without religion is a martyr.”

### **13) Freedom of movement within the state:**

The Almighty says: “those whom the angels have gathered in death while they were still sinning against themselves!” Then will they [who are thus arraigned] proffer their submission, [saying:] “We did not [mean to] do any evil! [But they will be answered:] “Yea, verily, God has full knowledge of all that you were doing!” The Almighty says: “In Allah’s way, he will find in the earth and capacity”, often forsakes the Almighty says: “So go about in the land”.

### **14) The right of asylum:**

The largest Islamic witness on the right of asylum to another country is what the prophet, peace be upon him, or companions of the Organization of Migrations; the first of these was the first Muslim delegation called rogue states, and the second was to the city of Medina and the Prophet, peace be upon him, and a

large crowd of his companions, The Almighty says: “And if any of those who ascribe divinity to aught beside God seeks your protection, grant him protection, so that he might [be able to] hear the word of God [from thee]; and thereupon convey him to a place where he can feel secure: this, because they [may be] people who [sin only because they] do not know [the truth].”

**15) The right to the nationality of the state:**

the Islamic religion has honored who is born in the territory of the state of Islam; whether Muslim or not nationality of Islam, this is the view of Islamic jurisprudence, the argument is that the Islamic religion is the religion of the instinct, counterproductive to Almighty Allah’s saying: “your face upright for religion instinct of God that there is no altering of Allah’s creation, religion, but most people do not know”, and telling the Prophet, peace be upon him: It is his parents who make him a Jew or a Christian or a Polytheist”.

**16) The right of family building:**

The Almighty says: “And among His signs is that he created for you mates from among yourselves, that you may dwell in them, and he put between you love and compassion,” The Almighty says: “The love of desires, of women and boys”, says the Prophet: “O young men, whoever among you can afford it, let him get married,”.

**17) The right to the protection of the property:**

The Almighty says: “and do not swallow up your property among yourselves by false to a portion of the property of others wrongfully while you know.” The Almighty says: “and do not swallow up your property among falsely, only be the compromise you trade”, The Almighty says: “O you who believe, fulfilled contracts”, The Almighty says: “Allah commands you to make over trusts if you judge between people you judge with justice”, says the Prophet: “If anyone revives dead land, it belongs to him, and the unjust root has no right”.

**18) The right to freedom of thought, belief and expression:**

Islam urges on thinking and deliberation and prudence and learning, The Almighty says: “Say: Travel through the earth and see how the creation”, The Almighty says: “And among His Signs is the creation of the heavens and the earth and the diversity of your tongues and colors; most surely there are signs in this for.”

The Almighty says: “no compulsion in religion”, The Almighty says: “You have your own religion, and I”, he also says: “And [thus it is:] had thy Sustainer so willed, all those who live on earth would surely have attained to faith, all of them: dost thou, then, think that thou couldst compel people to believe,” The Almighty says: “ Had God willed, He would have gathered them to the guidance; so do not be of the ignorant ones.

The Almighty says: “And so, [O Prophet,] exhort them; your

task is only to exhort: you are not one to manage (men's) affairs.

### **19) The right to call and propagation of religion:**

God Almighty says: "O Messenger, convey that which has been revealed to you from your Lord, and if you do not, then you have not conveyed His message.," The Almighty says: "Say: This is my work to call to God with the insight and I with who follows me", says the Prophet, peace be upon him: "Convey from me even an Ayah of the Qur'an; , says the Prophet peace and prayers be upon him: Whoever amongst you sees an evil, he must change it with his hand; if he is unable to do so, then with his tongue; and if he is unable to do so, then with his heart; and that is the weakest form of Faith", he says, peace be upon him: "He who is asked something he knows and conceals it will have a bridle of fire put on him on the Day of Resurrection. "

### **20) Freedom of association:**

The Almighty says: "But those who feared their Lord will be driven to Paradise in groups," also says: "Those who disbelieve to hellfire in groups), the Almighty says: "and let you be a party who invite to good and enjoin what is right and wrong and it is they who will prosper.", says the Prophet: "Religion is the advice, we say to those who? He said: Allah, His Prophet and to the leaders and ordinary Muslims".

### **21) The right to participate in public life:**

The Almighty says: "their affairs are Shurah among them",

He also says: consult them, the prophet, peace be upon him, the companions in many worldly things such as he did not take the decision of war in Badr only after wide consultation and careful, gently in the conquest of one and mount one, on the day of the trench he dug a trench around the city on the advice of one of them, and taking into account the advice of his wife the Hudai-biyah, Umm Salama, God bless them, in the story of falsehood and other, in many situations.

### **22) Economic rights:**

For those who can work and earn and ensure themselves and their dependants God Almighty says: “For in thereof, and eat of His sustenance, and to”, The Almighty says: “If the prayer finished, then disperse in the land of the bounty of Allah, The Almighty says: “Allah is He Who made subservient to you the sea that the ships may run therein by His command, and that ye may seek of His bounty, and he has made subservient to you whatsoever is in the heavens and on earth, all of it”.

For those unable to work and earn is provided Islam with the offer of Zakat donation and House of Money Muslims, God Almighty says: “but righteous is the one who believes in Allah, and the Last Day, and the angels and the Book and the prophets, and gives away wealth out of love for Him to the near of kin and the orphans and the needy and the wayfarer and to those who ask and to set slaves free and keeps up prayer and pays the poor-

rate,” The Almighty says: “but alms to the poor and the needy and the workers whose hearts and in the necks and Debtors in the way of Allah and the son of the obligatory way of Allah , and Allah is Knowing , Wise . .,” says the Prophet: “ If somebody dies (among the Muslims) leaving some property, the property will go to his heirs; and if he leaves a debt or dependants, we will take care of them

### **23) The right and duty of the working group:**

The Almighty says: “And say: Allah will see your work and His Messenger and the Believers,” The Almighty says: “Say to those who do not believe: Act according to your state; surely we too are acting,” The Prophet (pbuh) said, “Allah, the Exalted, says: ‘I will contend on the Day of Resurrection against three (types of) people: One who makes a covenant in My Name and then breaks it; one who sells a free man as a slave and devours his price; and one who hires a workman and having taken full work from him, does not pay him his wages.’” the Prophet, may Allah bless him and grant him peace, said, “If the Final Hour comes while you have a palm-cutting in your hands and it is possible to plant it before the Hour comes, you should plant it.” Messenger of Allah (pbuh) ( said, “It is better for anyone of you to carry a bundle of wood on his back and sell it than to beg of someone whether he gives him or refuses.”, the Messenger of Allah (pbuh) said:

“Give the worker his wages before his sweat dries.”

### **24) Hours of work:**

The Messenger of Allah (pbuh) said: “Messenger of Allah (pbuh) said, “By Him in Whose Hand is my life if your state of mind remains the same as it is in my presence and you are always busy in remembrance (of Allah), the angels will shake hands with you in your beds and in your roads; but Hanzalah, time should be devoted (to the worldly affairs) and time should be devoted (to prayer)”. He (the Prophet (pbuh) said this thrice.

According to the progress of Islam is the first to select the hours of work eight hours a day, where the day of twenty-four hours, if the lack of him eight hours sleep, what remains of the day six of ten hours, if we take the previous text to talk; the hours of work and rest, then the number of hours of work equal to the hours of rest, dividing the rest of the day equally between work and rest, then the share of work eight hours, the share the comfort of eight hours.

### **25) The right to health and human services:**

Islam in the correct care approach is clear since the beginning of the call to Islam, and documented that the Holy Quran and the PROPHETIC sayings, Almighty God: “Forbidden to you is that which dies of itself, and blood, and flesh of swine, and that on which any other name than that of Allah has been invoked, and the strangled (animal), and that beaten to death, and that killed

by a fall, and that killed by goring with the horn, and that which wild beasts have eaten -- except what you slaughter; and that which is sacrificed on stones set up (for idols), and that you seek to divide by arrows; that is a transgression,” Almighty God:: “They ask you about wine and gambling. Say, “In them is great sin and [yet, some] benefit for people. But their sin is greater than their benefit.” And they ask you what they should spend. Say, “The excess [beyond needs].” Thus Allah makes clear to you the verses [of revelation] that you might give thought says: “The Almighty said:” And they ask you about menstruation. Say, “It is harm, so keep away from wives during menstruation. And do not approach them until they are pure. And when they have purified themselves, then come to them from where Allah has ordained for you. Indeed, Allah loves those who are constantly repentant and loves those who purify themselves.”, as well as the talk of the Prophet, peace be upon him, many in the medical aspect where people are asking if the disease shows them how foods once again black seed, etc. There are even books in markets named “Medicine of the Prophet”, which is derived mostly from Just talk about the messenger of Allah, may Allah bless him and grant him salvation).

### **26) The right to education:**

The Almighty says: “Proclaim! (Read!) In the name of your Lord and Cherisher, Who created- (1) created the human from a

(blood) clot. (2) recite, and your Lord is the most Generous - (3) who taught by the pen, (4) taught man what he did not know. (5).the Almighty says: “fear Allah and He will teach you,” The Almighty says “Also showing signs for people who know.”

### **27) The right to participate in the cultural life of the community:**

the Holy Quran raises in many verses degree a sense of beauty of perception and moral human beings to stimulate questioned the verses of the beauty of the to feel it in the areas of various arts, which constitute the cultural character of the civilization of the community, we believe in the Almighty God: “”(13) Reclining in the (Garden) on raised thrones, they will see there neither the sun’s (excessive heat) nor (the moon’s) excessive cold. (14) And the shades of the (Garden) will come low over them, and the bunches (of fruit), there, will hang low in humility. (15) And amongst them will be passed round vessels of silver and goblets of crystal,- (16) Crystal-clear, made of silver: they will determine the measure thereof (according to their wishes). And they will be given to drink there of a Cup (of Wine) mixed with Zanjabil,- A fountain there, called Salsabil.◊(19) And round about them will (serve) youths of perpetual (freshness): If you see them, you would think them scattered Pearls(20) And when you look, it is there you will see a Bliss and a Realm Magnificent..” [Sura insan].

### **28) The human right in the care of the state for him:**

Omar Bin Al-Khattab said: “If God bless me I wouldn’t leave the widows of Iraq, need to one of after me), in Ramada event, he put all the potential of the State to solve the crisis and satisfy the hungry bellies, for overhauls of Ramada until the rain, when it created the office of the tender to make every Muslim in the Badr until the birth, the birth of a child, one of the Muslims as records his name in his registry book and imposes its bounty, he said: “if I remained in my position, the shepherd in Sanaa will not abandon his rope to take this money, he will be in his place and I will deliver it to him without seeking his it.”

### **29) The attack on the freedom of others:**

The Prophet says: “There is neither injury nor return of injury.” the Prophet says: “Avoid sitting by the road side.” The people then said, ‘O Allah’s Messenger (pbuh), we cannot do without those meeting places in which we converse” So he said, “Well, if you insist (on that) give the road its due rights.” They asked, ‘What are the road’s due rights?’ He replied, “Lowering your gaze, abstaining from anything offensive, returning salutations, enjoining the right (Ma’ruf) and forbidding from evil deeds (Munkar).”

### **30) These rights are fixed and do not change by the change of the authorities:**

God Almighty says: “ Allah rules and there is none to revise

His decrees and He is swift at His reckoning”, The Almighty says: “The decision is only for Allah ; upon Him I have relied, and upon Him let those who would rely [indeed] rely the Almighty says: “ And whoever does not judge by what Allah has revealed – then it is those who are the disbelievers.”, he also says: “And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers..”, He also says: “Those who do not judge according to that which Allah has sent down are the evildoers”

## **\* The Vienna Declaration:**

### ***Adopted by the World Conference on Human Rights in Vienna on 25 June 1993***

The World Conference on Human Rights,

Considering that the promotion and protection of human rights is a matter of priority for the international community, and that the Conference affords a unique opportunity to carry out a comprehensive analysis of the international human rights system and of the machinery for the protection of human rights, in order to enhance and thus promote a fuller observance of those rights, in a just and balanced manner,

Recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms,

Reaffirming their commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights,

Reaffirming the commitment contained in Article 56 of the

Charter of the United Nations to take joint and separate action, placing proper emphasis on developing effective international cooperation for the realization of the purposes set out in Article 55, including universal respect for, and observance of, human rights and fundamental freedoms for all,

Emphasizing the responsibilities of all States, in conformity with the Charter of the United Nations, to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Recalling the Preamble to the Charter of the United Nations, in particular the determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women and of nations large and small,

Recalling also the determination expressed in the Preamble of the Charter of the United Nations to save succeeding generations from the scourge of war, to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained, to promote social progress and better standards of life in larger freedom, to practice tolerance and good neighborliness, and to employ international machinery for the promotion of the economic and social advancement of all peoples,

Emphasizing that the Universal Declaration of Human Rights,

which constitutes a common standard of achievement for all peoples and all nations, is the source of inspiration and has been the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,

Considering the major changes taking place on the international scene and the aspirations of all the peoples for an international order based on the principles enshrined in the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity,

Deeply concerned by various forms of discrimination and violence, to which women continue to be exposed all over the world,

Recognizing that the activities of the United Nations in the field of human rights should be rationalized and enhanced in order to strengthen the United Nations machinery in this field and to further the objectives of universal respect for observance of international human rights standards,

Having taken into account the Declarations adopted by the

three regional meetings at Tunis, San José and Bangkok and the contributions made by Governments, and bearing in mind the suggestions made by intergovernmental and non-governmental organizations, as well as the studies prepared by independent experts during the preparatory process leading to the World Conference on Human Rights,

Welcoming the International Year of the World's Indigenous People 1993 as a reaffirmation of the commitment of the international community to ensure their enjoyment of all human rights and fundamental freedoms and to respect the value and diversity of their cultures and identities,

Recognizing also that the international community should devise ways and means to remove the current obstacles and meet challenges to the full realization of all human rights and to prevent the continuation of human rights violations resulting therefrom throughout the world,

Invoking the spirit of our age and the realities of our time which call upon the peoples of the world and all States Members of the United Nations to rededicate themselves to the global task of promoting and protecting all human rights and fundamental freedoms so as to secure full and universal enjoyment of these rights, Determined to take new steps forward in the commitment of the international community with a view to achieving substantial progress in human rights endeavors by an increased and

sustained effort of international cooperation and solidarity,

***Solemnly adopts the Vienna Declaration and Program of Action:***

**First**

1. The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfill their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.

In this framework, enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations.

Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.

2. All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.

Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the World Conference on Human Rights recognizes the

right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination. The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.

In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, this shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

3. Effective international measures to guarantee and monitor the implementation of human rights standards should be taken in respect of people under foreign occupation, and effective legal protection against the violation of their human rights should be provided, in accordance with human rights norms and international law, particularly the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 14 August 1949, and other applicable norms of humanitarian law.

4. The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community. The organs and specialized agencies related to human rights should therefore further enhance the coordination of their activities based on the consistent and objective application of international human rights instruments.

5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

6. The efforts of the United Nations system towards the universal respect for, and observance of, human rights and fundamental freedoms for all, contribute to the stability and well-being necessary for peaceful and friendly relations among nations, and to improved conditions for peace and security as well as social

and economic development, in conformity with the Charter of the United Nations.

7. The processes of promoting and protecting human rights should be conducted in conformity with the purposes and principles of the Charter of the United Nations, and international law.

8. Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.

9. The World Conference on Human Rights reaffirms that least developed countries committed to the process of democratization and economic reforms, many of which are in Africa, should be supported by the international community in order to succeed in their transition to democracy and economic development.

10. The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the

Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.

As stated in the Declaration on the Right to Development, the human person is the central subject of development.

While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.

States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development.

Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favorable economic environment at the international level.

11. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. The World Conference on Human Rights recognizes that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone.

Consequently, the World Conference on Human Rights calls on all States to adopt and vigorously implement existing conven-

tions relating to the dumping of toxic and dangerous products and waste and to cooperate in the prevention of illicit dumping.

Everyone has the right to enjoy the benefits of scientific progress and its applications. The World Conference on Human Rights notes that certain advances, notably in the biomedical and life sciences as well as in information technology, may have potentially adverse consequences for the integrity, dignity and human rights of the individual, and calls for international cooperation to ensure that human rights and dignity are fully respected in this area of universal concern.

12. The World Conference on Human Rights calls upon the international community to make all efforts to help alleviate the external debt burden of developing countries, in order to supplement the efforts of the Governments of such countries to attain the full realization of the economic, social and cultural rights of their people.

13. There is a need for States and international organizations, in cooperation with non-governmental organizations, to create favorable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights. States should eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of these rights.

14. The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate al-

leviation and eventual elimination must remain a high priority for the international community.

15. Respect for human rights and for fundamental freedoms without distinction of any kind is a fundamental rule of international human rights law. The speedy and comprehensive elimination of all forms of racism and racial discrimination, xenophobia and related intolerance is a priority task for the international community. Governments should take effective measures to prevent and combat them. Groups, institutions, intergovernmental and non-governmental organizations and individuals are urged to intensify their efforts in cooperating and coordinating their activities against these evils.

16. The World Conference on Human Rights welcomes the progress made in dismantling apartheid and calls upon the international community and the United Nations system to assist in this process.

The World Conference on Human Rights also deplores the continuing acts of violence aimed at undermining the quest for a peaceful dismantling of apartheid.

17. The acts, methods and practices of terrorism in all its forms and manifestations as well as linkage in some countries to drug trafficking are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately

constituted Governments. The international community should take the necessary steps to enhance cooperation to prevent and combat terrorism.

18. The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.

The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.

The World Conference on Human Rights urges Governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of

human rights of women and the girl-child.

19. Considering the importance of the promotion and protection of the rights of persons belonging to minorities and the contribution of such promotion and protection to the political and social stability of the States in which such persons live,

The World Conference on Human Rights reaffirms the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

The persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion and to use their own language in private and in public, freely and without interference or any form of discrimination.

20. The World Conference on Human Rights recognizes the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development. States should ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them. Consider-

ing the importance of the promotion and protection of the rights of indigenous people, and the contribution of such promotion and protection to the political and social stability of the States in which such people live, States should, in accordance with international law, take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination, and recognize the value and diversity of their distinct identities, cultures and social organization.

21. The World Conference on Human Rights, welcoming the early ratification of the Convention on the Rights of the Child by a large number of States and noting the recognition of the human rights of children in the World Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children, urges universal ratification of the Convention by 1995 and its effective implementation by States parties through the adoption of all the necessary legislative, administrative and other measures and the allocation to the maximum extent of the available resources.

In all actions concerning children, non-discrimination and the best interest of the child should be primary considerations and the views of the child given due weight. National and international mechanisms and programs should be strengthened for the defense and protection of children, in particular, the girl-child,

abandoned children, street children, economically and sexually exploited children, including through child pornography, child prostitution or sale of organs, children victims of diseases including acquired immunodeficiency syndrome, refugee and displaced children, children in detention, children in armed conflict, as well as children victims of famine and drought and other emergencies. International cooperation and solidarity should be promoted to support the implementation of the Convention and the rights of the child should be a priority in the United Nations system-wide action on human rights.

The World Conference on Human Rights also stresses that the child for the full and harmonious development of his or her personality should grow up in a family environment which accordingly merits broader protection.

22. Special attention needs to be paid to ensuring non-discrimination and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society.

23. The World Conference on Human Rights reaffirms that everyone, without distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from persecution, as well as the right to return to one's own country. In this respect it stresses the importance of the Universal Declaration of Human Rights, the 1951 Convention relating to the Status of Refu-

gees, its 1967 Protocol and regional instruments. It expresses its appreciation to States that continue to admit and host large numbers of refugees in their territories, and to the Office of the United Nations High Commissioner for Refugees for its dedication to its task. It also expresses its appreciation to the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

The World Conference on Human Rights recognizes that gross violations of human rights, including in armed conflicts, are among the multiple and complex factors leading to displacement of people.

The World Conference on Human Rights recognizes that, in view of the complexities of the global refugee crisis and in accordance with the Charter of the United Nations, relevant international instruments and international solidarity and in the spirit of burden-sharing, a comprehensive approach by the international community is needed in coordination and cooperation with the countries concerned and relevant organizations, bearing in mind the mandate of the United Nations High Commissioner for Refugees. This should include the development of strategies to address the root causes and effects of movements of refugees and other displaced persons, the strengthening of emergency preparedness and response mechanisms, the provision of effective protection and assistance, bearing in mind the special needs

of women and children, as well as the achievement of durable solutions, primarily through the preferred solution of dignified and safe voluntary repatriation, including solutions such as those adopted by the international refugee conferences. The World Conference on Human Rights underlines the responsibilities of States, particularly as they relate to the countries of origin.

In the light of the comprehensive approach, the World Conference on Human Rights emphasizes the importance of giving special attention including through intergovernmental and humanitarian organizations and finding lasting solutions to questions related to internally displaced persons including their voluntary and safe return and rehabilitation.

In accordance with the Charter of the United Nations and the principles of humanitarian law, the World Conference on Human Rights further emphasizes the importance of and the need for humanitarian assistance to victims of all natural and man-made disasters.

24. Great importance must be given to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable, including migrant workers, the elimination of all forms of discrimination against them, and the strengthening and more effective implementation of existing human rights instruments. States have an obligation to create and maintain adequate measures at the national level, in particular in

the fields of education, health and social support, for the promotion and protection of the rights of persons in vulnerable sectors of their populations and to ensure the participation of those among them who are interested in finding a solution to their own problems.

25. The World Conference on Human Rights affirms that extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.

26. The World Conference on Human Rights welcomes the progress made in the codification of human rights instruments, which is a dynamic and evolving process, and urges the universal ratification of human rights treaties. All States are encouraged to accede to these international instruments; all States are encouraged to avoid, as far as possible, the resort to reservations.

27. Every State should provide an effective framework of remedies to redress human rights grievances or violations. The

administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, is essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development. In this context, institutions concerned with the administration of justice should be properly funded, and an increased level of both technical and financial assistance should be provided by the international community. It is incumbent upon the United Nations to make use of special programs of advisory services on a priority basis for the achievement of a strong and independent administration of justice.

28. The World Conference on Human Rights expresses its dismay at massive violations of human rights especially in the form of genocide, “ethnic cleansing” and systematic rape of women in war situations, creating mass exodus of refugees and displaced persons. While strongly condemning such abhorrent practices it reiterates the call that perpetrators of such crimes be punished and such practices immediately stopped.

29. The World Conference on Human Rights expresses grave concern about continuing human rights violations in all parts of the world in disregard of standards as contained in international human rights instruments and international humanitarian law

and about the lack of sufficient and effective remedies for the victims.

The World Conference on Human Rights is deeply concerned about violations of human rights during armed conflicts, affecting the civilian population, especially women, children, the elderly and the disabled. The Conference therefore calls upon States and all parties to armed conflicts strictly to observe international humanitarian law, as set forth in the Geneva Conventions of 1949 and other rules and principles of international law, as well as minimum standards for protection of human rights, as laid down in international conventions.

The World Conference on Human Rights reaffirms the right of the victims to be assisted by humanitarian organizations, as set forth in the Geneva Conventions of 1949 and other relevant instruments of international humanitarian law, and calls for the safe and timely access for such assistance.

30. The World Conference on Human Rights also expresses its dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. Such violations and obstacles include, as well as torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid,

foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law.

31. The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services. The World Conference on Human Rights affirms that food should not be used as a tool for political pressure.

32. The World Conference on Human Rights reaffirms the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues.

33. The World Conference on Human Rights reaffirms that States are duty-bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and in other international human rights instruments, to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms.

The World Conference on Human Rights emphasizes the importance of incorporating the subject of human rights education programs and calls upon States to do so. Education should promote understanding, tolerance, peace and friendly relations between the nations and all racial or religious groups and encourage the development of United Nations activities in pursuance of these objectives. Therefore, education on human rights and the dissemination of proper information, both theoretical and practical, play an important role in the promotion and respect of human rights with regard to all individuals without distinction of any kind such as race, sex, language or religion, and this should be integrated in the education policies at the national as well as international levels. The World Conference on Human Rights notes that resource constraints and institutional inadequacies may impede the immediate realization of these objectives.

34. Increased efforts should be made to assist countries which so request to create the conditions whereby each individual can enjoy universal human rights and fundamental freedoms. Governments, the United Nations system as well as other multilateral organizations are urged to increase considerably the resources allocated to programs aiming at the establishment and strengthening of national legislation, national institutions and related infrastructures which uphold the rule of law and democracy, electoral assistance, human rights awareness through training,

teaching and education, popular participation and civil society.

The programs of advisory services and technical cooperation under the Centre for Human Rights should be strengthened as well as made more efficient and transparent and thus become a major contribution to improving respect for human rights. States are called upon to increase their contributions to these programs, both through promoting a larger allocation from the United Nations regular budget, and through voluntary contributions.

35. The full and effective implementation of United Nations activities to promote and protect human rights must reflect the high importance accorded to human rights by the Charter of the United Nations and the demands of the United Nations human rights activities, as mandated by Member States. To this end, United Nations human rights activities should be provided with increased resources.

36. The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.

The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the “Principles relating to the status of national institu-

tions” and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.

37. Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of cooperation with the United Nations human rights activities.

The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and sub regional arrangements for the promotion and protection of human rights where they do not already exist.

38. The World Conference on Human Rights recognizes the important role of non-governmental organizations in the promotion of all human rights and in humanitarian activities at national, regional and international levels. The World Conference on Human Rights appreciates their contribution to increasing public awareness of human rights issues, to the conduct of education, training and research in this field, and to the promotion and protection of all human rights and fundamental freedoms. While recognizing that the primary responsibility for standard-setting

lies with States, the conference also appreciates the contribution of non-governmental organizations to this process. In this respect, the World Conference on Human Rights emphasizes the importance of continued dialogue and cooperation between Governments and non-governmental organizations. Non-governmental organizations and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights, and the protection of the national law. These rights and freedoms may not be exercised contrary to the purposes and principles of the United Nations. Non-governmental organizations should be free to carry out their human rights activities, without interference, within the framework of national law and the Universal Declaration of Human Rights.

39. Underlining the importance of objective, responsible and impartial information about human rights and humanitarian issues, the World Conference on Human Rights encourages the increased involvement of the media, for whom freedom and protection should be guaranteed within the framework of national law.

## **Second**

### **A. Increased coordination on human rights within the United Nations system**

1. The World Conference on Human Rights recommends in-

creased coordination in support of human rights and fundamental freedoms within the United Nations system. To this end, the World Conference on Human Rights urges all United Nations organs, bodies and the specialized agencies whose activities deal with human rights to cooperate in order to strengthen, rationalize and streamline their activities, taking into account the need to avoid unnecessary duplication.

The World Conference on Human Rights also recommends to the Secretary-General that high-level officials of relevant United Nations bodies and specialized agencies at their annual meeting, besides coordinating their activities, also assess the impact of their strategies and policies on the enjoyment of all human rights.

2. Furthermore, the World Conference on Human Rights calls on regional organizations and prominent international and regional finance and development institutions to assess also the impact of their policies and programs on the enjoyment of human rights.

3. The World Conference on Human Rights recognizes that relevant specialized agencies and bodies and institutions of the United Nations system as well as other relevant intergovernmental organizations whose activities deal with human rights play a vital role in the formulation, promotion and implementation of human rights standards, within their respective mandates, and

should take into account the outcome of the World Conference on Human Rights within their fields of competence.

4. The World Conference on Human Rights strongly recommends that a concerted effort be made to encourage and facilitate the ratification of and accession or succession to international human rights treaties and protocols adopted within the framework of the United Nations system with the aim of universal acceptance. The Secretary-General, in consultation with treaty bodies, should consider opening a dialogue with States not having acceded to these human rights treaties, in order to identify obstacles and to seek ways of overcoming them.

5. The World Conference on Human Rights encourages States to consider limiting the extent of any reservations they lodge to international human rights instruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the relevant treaty and regularly review any reservations with a view to withdrawing them.

6. The World Conference on Human Rights, recognizing the need to maintain consistency with the high quality of existing international standards and to avoid proliferation of human rights instruments, reaffirms the guidelines relating to the elaboration of new international instruments contained in General Assembly resolution 41/120 of 4 December 1986 and calls on the United

Nations human rights bodies, when considering the elaboration of new international standards, to keep those guidelines in mind, to consult with human rights treaty bodies on the necessity for drafting new standards and to request the Secretariat to carry out technical reviews of proposed new instruments.

7. The World Conference on Human Rights recommends that human rights officers be assigned if and when necessary to regional offices of the United Nations Organization with the purpose of disseminating information and offering training and other technical assistance in the field of human rights upon the request of concerned Member States. Human rights training for international civil servants who are assigned to work relating to human rights should be organized.

8. The World Conference on Human Rights welcomes the convening of emergency sessions of the Commission on Human Rights as a positive initiative and that other ways of responding to acute violations of human rights is considered by the relevant organs of the United Nations system.

### **Resources**

9. The World Conference on Human Rights, concerned by the growing disparity between the activities of the Centre for Human Rights and the human, financial and other resources available to carry them out, and bearing in mind the resources needed for other important United Nations programs, requests the

Secretary-General and the General Assembly to take immediate steps to increase substantially the resources for the human rights program from within the existing and future regular budgets of the United Nations, and to take urgent steps to seek increased extra budgetary resources.

10. Within this framework, an increased proportion of the regular budget should be allocated directly to the Centre for Human Rights to cover its costs and all other costs borne by the Centre for Human Rights, including those related to the United Nations human rights bodies. Voluntary funding of the Centre's technical cooperation activities should reinforce this enhanced budget; the World Conference on Human Rights calls for generous contributions to the existing trust funds.

11. The World Conference on Human Rights requests the Secretary-General and the General Assembly to provide sufficient human, financial and other resources to the Centre for Human Rights to enable it effectively, efficiently and expeditiously to carry out its activities.

12. The World Conference on Human Rights, noting the need to ensure that human and financial resources are available to carry out the human rights activities, as mandated by intergovernmental bodies, urges the Secretary-General, in accordance with Article 101 of the Charter of the United Nations, and Member States to adopt a coherent approach aimed at securing that re-

sources commensurate to the increased mandates are allocated to the Secretariat. The World Conference on Human Rights invites the Secretary-General to consider whether adjustments to procedures in the program budget cycle would be necessary or helpful to ensure the timely and effective implementation of human rights activities as mandated by Member States.

### **Centre for Human Rights**

13. The World Conference on Human Rights stresses the importance of strengthening the United Nations Centre for Human Rights.

14. The Centre for Human Rights should play an important role in coordinating system-wide attention for human rights. The focal role of the Centre can best be realized if it is enabled to cooperate fully with other United Nations bodies and organs. The coordinating role of the Centre for Human Rights also implies that the office of the Centre for Human Rights in New York is strengthened.

15. The Centre for Human Rights should be assured adequate means for the system of thematic and country rapporteurs, experts, working groups and treaty bodies. Follow-up on recommendations should become a priority matter for consideration by the Commission on Human Rights.

16. The Centre for Human Rights should assume a larger role in the promotion of human rights. This role could be given shape

through cooperation with Member States and by an enhanced program of advisory services and technical assistance. The existing voluntary funds will have to be expanded substantially for these purposes and should be managed in a more efficient and coordinated way. All activities should follow strict and transparent project management rules and regular program and project evaluations should be held periodically. To this end, the results of such evaluation exercises and other relevant information should be made available regularly. The Centre should, in particular, organize at least once a year information meetings open to all Member States and organizations directly involved in these projects and programs.

Adaptation and strengthening of the United Nations machinery for human rights, including the question of the establishment of a United Nations High Commissioner for Human Rights

17. The World Conference on Human Rights recognizes the necessity for a continuing adaptation of the United Nations human rights machinery to the current and future needs in the promotion and protection of human rights, as reflected in the present Declaration and within the framework of a balanced and sustainable development for all people. In particular, the United Nations human rights organs should improve their coordination, efficiency and effectiveness.

18. The World Conference on Human Rights recommends

to the General Assembly that when examining the report of the Conference at its forty-eighth session, it begin, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights.

## **B. Equality, dignity and tolerance**

### **1. Racism, racial discrimination, xenophobia and other forms of intolerance**

19. The World Conference on Human Rights considers the elimination of racism and racial discrimination, in particular in their institutionalized forms such as apartheid or resulting from doctrines of racial superiority or exclusivity or contemporary forms and manifestations of racism, as a primary objective for the international community and a worldwide promotion program in the field of human rights. United Nations organs and agencies should strengthen their efforts to implement such a program of action related to the third decade to combat racism and racial discrimination as well as subsequent mandates to the same end. The World Conference on Human Rights strongly appeals to the international community to contribute generously to the Trust Fund for the Program for the Decade for Action to Combat Racism and Racial Discrimination.

20. The World Conference on Human Rights urges all Governments to take immediate measures and to develop strong

policies to prevent and combat all forms and manifestations of racism, xenophobia or related intolerance, where necessary by enactment of appropriate legislation, including penal measures, and by the establishment of national institutions to combat such phenomena.

21. The World Conference on Human Rights welcomes the decision of the Commission on Human Rights to appoint a Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The World Conference on Human Rights also appeals to all States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to consider making the declaration under article 14 of the Convention.

22. The World Conference on Human Rights calls upon all Governments to take all appropriate measures in compliance with their international obligations and with due regard to their respective legal systems to counter intolerance and related violence based on religion or belief, including practices of discrimination against women and including the desecration of religious sites, recognizing that every individual has the right to freedom of thought, conscience, expression and religion. The Conference also invites all States to put into practice the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

23. The World Conference on Human Rights stresses that all persons who perpetrate or authorize criminal acts associated with ethnic cleansing are individually responsible and accountable for such human rights violations, and that the international community should exert every effort to bring those legally responsible for such violations to justice.

24. The World Conference on Human Rights calls on all States to take immediate measures, individually and collectively, to combat the practice of ethnic cleansing to bring it quickly to an end. Victims of the abhorrent practice of ethnic cleansing are entitled to appropriate and effective remedies.

## **2. Persons belonging to national or ethnic, religious and linguistic minorities**

25. The World Conference on Human Rights calls on the Commission on Human Rights to examine ways and means to promote and protect effectively the rights of persons belonging to minorities as set out in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. In this context, the World Conference on Human Rights calls upon the Centre for Human Rights to provide, at the request of Governments concerned and as part of its program of advisory services and technical assistance, qualified expertise on minority issues and human rights, as well as on the prevention and resolution of disputes, to assist in existing or potential situa-

tions involving minorities.

26. The World Conference on Human Rights urges States and the international community to promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities in accordance with the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

27. Measures to be taken, where appropriate, should include facilitation of their full participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development in their country.

### **Indigenous people**

28. The World Conference on Human Rights calls on the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to complete the drafting of a declaration on the rights of indigenous people at its eleventh session.

29. The World Conference on Human Rights recommends that the Commission on Human Rights consider the renewal and updating of the mandate of the Working Group on Indigenous Populations upon completion of the drafting of a declaration on the rights of indigenous people.

30. The World Conference on Human Rights also recommends that advisory services and technical assistance programs

within the United Nations system respond positively to requests by States for assistance which would be of direct benefit to indigenous people. The World Conference on Human Rights further recommends that adequate human and financial resources be made available to the Centre for Human Rights within the overall framework of strengthening the Centre's activities as envisaged by this document.

31. The World Conference on Human Rights urges States to ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them.

32. The World Conference on Human Rights recommends that the General Assembly proclaim an international decade of the world's indigenous people, to begin from January 1994, including action-orientated programs, to be decided upon in partnership with indigenous people. An appropriate voluntary trust fund should be set up for this purpose. In the framework of such a decade, the establishment of a permanent forum for indigenous people in the United Nations system should be considered.

### **Migrant workers**

33. The World Conference on Human Rights urges all States to guarantee the protection of the human rights of all migrant workers and their families.

34. The World Conference on Human Rights considers that the creation of conditions to foster greater harmony and toler-

ance between migrant workers and the rest of the society of the State in which they reside is of particular importance.

35. The World Conference on Human Rights invites States to consider the possibility of signing and ratifying, at the earliest possible time, the International Convention on the Rights of All Migrant Workers and Members of Their Families.

### **3. The equal status and human rights of women**

36. The World Conference on Human Rights urges the full and equal enjoyment by women of all human rights and this is a priority for Governments and for the United Nations. The World Conference on Human Rights also underlines the importance of the integration and full participation of women as both agents and beneficiaries in the development process, and reiterates the objectives established on global action for women towards sustainable and equitable development set forth in the Rio Declaration on Environment and Development and chapter 24 of Agenda 21, adopted by the United Nations Conference on Environment and Development (Rio de Janeiro, Brazil, 3-14 June 1992).

37. The equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity. These issues should be regularly and systematically addressed throughout relevant United Nations bodies and mechanisms. In particular, steps should be taken to increase cooperation and promote further integration of objectives

and goals between the Commission on the Status of Women, the Commission on Human Rights, the Committee for the Elimination of Discrimination against Women, the United Nations Development Fund for Women, the United Nations Development Program and other United Nations agencies. In this context, cooperation and coordination should be strengthened between the Centre for Human Rights and the Division for the Advancement of Women.

38. In particular, the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The World Conference on Human Rights calls upon the General Assembly to adopt the draft declaration on violence against women and urges States to combat violence against women in accordance with its provisions. Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and

forced pregnancy, require a particularly effective response.

39. The World Conference on Human Rights urges the eradication of all forms of discrimination against women, both hidden and overt. The United Nations should encourage the goal of universal ratification by all States of the Convention on the Elimination of All Forms of Discrimination against Women by the year 2000. Ways and means of addressing the particularly large number of reservations to the Convention should be encouraged. Inter alia; the Committee on the Elimination of Discrimination against Women should continue its review of reservations to the Convention. States are urged to withdraw reservations that are contrary to the object and purpose of the Convention or which are otherwise incompatible with international treaty law.

40. Treaty monitoring bodies should disseminate necessary information to enable women to make more effective use of existing implementation procedures in their pursuit of full and equal enjoyment of human rights and non-discrimination. New procedures should also be adopted to strengthen implementation of the commitment to women's equality and the human rights of women. The Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women should quickly examine the possibility of introducing the right of petition through the preparation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination

against Women. The World Conference on Human Rights welcomes the decision of the Commission on Human Rights to consider the appointment of a special rapporteur on violence against women at its fiftieth session.

41. The World Conference on Human Rights recognizes the importance of the enjoyment by women of the highest standard of physical and mental health throughout their life span. In the context of the World Conference on Women and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the Proclamation of Tehran of 1968, the World Conference on Human Rights reaffirms, on the basis of equality between women and men, a woman's right to accessible and adequate health care and the widest range of family planning services, as well as equal access to education at all levels.

42. Treaty monitoring bodies should include the status of women and the human rights of women in their deliberations and findings, making use of gender-specific data. States should be encouraged to supply information on the situation of women de jure and de facto in their reports to treaty monitoring bodies. The World Conference on Human Rights notes with satisfaction that the Commission on Human Rights adopted at its forty-ninth session resolution 1993/46 of 8 March 1993 stating that rapporteurs and working groups in the field of human rights should also be encouraged to do so. Steps should also be taken by the

Division for the Advancement of Women in cooperation with other United Nations bodies, specifically the Centre for Human Rights, to ensure that the human rights activities of the United Nations regularly address violations of women's human rights, including gender-specific abuses. Training for United Nations human rights and humanitarian relief personnel to assist them to recognize and deal with human rights abuses particular to women and to carry out their work without gender bias should be encouraged.

43. The World Conference on Human Rights urges Governments and regional and international organizations to facilitate the access of women to decision-making posts and their greater participation in the decision-making process. It encourages further steps within the United Nations Secretariat to appoint and promote women staff members in accordance with the Charter of the United Nations, and encourages other principal and subsidiary organs of the United Nations to guarantee the participation of women under conditions of equality.

44. The World Conference on Human Rights welcomes the World Conference on Women to be held in Beijing in 1995 and urges that human rights of women should play an important role in its deliberations, in accordance with the priority themes of the World Conference on Women of equality, development and peace.

#### **4. The rights of the child**

45. The World Conference on Human Rights reiterates the principle of “First Call for Children” and, in this respect, underlines the importance of major national and international efforts, especially those of the United Nations Children’s Fund, for promoting respect for the rights of the child to survival, protection, development and participation.

46. Measures should be taken to achieve universal ratification of the Convention on the Rights of the Child by 1995 and the universal signing of the World Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children, as well as their effective implementation. The World Conference on Human Rights urges States to withdraw reservations to the Convention on the Rights of the Child contrary to the object and purpose of the Convention or otherwise contrary to international treaty law.

47. The World Conference on Human Rights urges all nations to undertake measures to the maximum extent of their available resources, with the support of international cooperation, to achieve the goals in the World Summit Plan of Action. The Conference calls on States to integrate the Convention on the Rights of the Child into their national action plans. By means of these national action plans and through international efforts, particular priority should be placed on reducing infant and maternal mor-

tality rates, reducing malnutrition and illiteracy rates and providing access to safe drinking water and to basic education. Whenever so called for, national plans of action should be devised to combat devastating emergencies resulting from natural disasters and armed conflicts and the equally grave problem of children in extreme poverty.

48. The World Conference on Human Rights urges all States, with the support of international cooperation, to address the acute problem of children under especially difficult circumstances. Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against female infanticide, harmful child labor, sale of children and organs, child prostitution, child pornography, as well as other forms of sexual abuse.

49. The World Conference on Human Rights supports all measures by the United Nations and its specialized agencies to ensure the effective protection and promotion of human rights of the girl child. The World Conference on Human Rights urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child.

50. The World Conference on Human Rights strongly supports the proposal that the Secretary-General initiate a study into means of improving the protection of children in armed conflicts.

Humanitarian norms should be implemented and measures taken in order to protect and facilitate assistance to children in war zones. Measures should include protection for children against indiscriminate use of all weapons of war, especially anti-personnel mines. The need for aftercare and rehabilitation of children traumatized by war must be addressed urgently. The Conference calls on the Committee on the Rights of the Child to study the question of raising the minimum age of recruitment into armed forces.

51. The World Conference on Human Rights recommends that matters relating to human rights and the situation of children be regularly reviewed and monitored by all relevant organs and mechanisms of the United Nations system and by the supervisory bodies of the specialized agencies in accordance with their mandates.

52. The World Conference on Human Rights recognizes the important role played by non-governmental organizations in the effective implementation of all human rights instruments and, in particular, the Convention on the Rights of the Child.

53. The World Conference on Human Rights recommends that the Committee on the Rights of the Child, with the assistance of the Centre for Human Rights, be enabled expeditiously and effectively to meet its mandate, especially in view of the unprecedented extent of ratification and subsequent submission

of country reports.

5. Freedom from torture

54. The World Conference on Human Rights welcomes the ratification by many Member States of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and encourages its speedy ratification by all other Member States.

55. The World Conference on Human Rights emphasizes that one of the most atrocious violations against human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their activities.

56. The World Conference on Human Rights reaffirms that under human rights law and international humanitarian law, freedom from torture is a right which must be protected under all circumstances, including in times of internal or international disturbance or armed conflicts.

57. The World Conference on Human Rights therefore urges all States to put an immediate end to the practice of torture and eradicate this evil forever through full implementation of the Universal Declaration of Human Rights as well as the relevant conventions and, where necessary, strengthening of existing mechanisms. The World Conference on Human Rights calls on all States to cooperate fully with the Special Rapporteur on the

question of torture in the fulfillment of his mandate.

58. Special attention should be given to ensure universal respect for, and effective implementation of, the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations.

59. The World Conference on Human Rights stresses the importance of further concrete action within the framework of the United Nations with the view to providing assistance to victims of torture and ensuring more effective remedies for their physical, psychological and social rehabilitation. Providing the necessary resources for this purpose should be given high priority, inter alia, by additional contributions to the United Nations Voluntary Fund for Victims of Torture.

60. States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law.

61. The World Conference on Human Rights reaffirms that efforts to eradicate torture should, first and foremost, be concentrated on prevention and, therefore, calls for the early adoption of an optional protocol to the Convention against Torture and

Other Cruel, Inhuman and Degrading Treatment or Punishment, which is intended to establish a preventive system of regular visits to places of detention.

### **Enforced disappearances**

62. The World Conference on Human Rights, welcoming the adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearance, calls upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearance. The World Conference on Human Rights reaffirms that it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators.

### **6. The rights of the disabled person**

63. The World Conference on Human Rights reaffirms that all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities. Every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society. Any direct discrimination or other negative discriminatory treatment of a disabled person is therefore a violation of his or her rights. The World Conference on Hu-

man Rights calls on Governments, where necessary, to adopt or adjust legislation to assure access to these and other rights for disabled persons.

64. The place of disabled persons is everywhere. Persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers, be they physical, financial, social or psychological, which exclude or restrict full participation in society.

65 Recalling the World Program of Action concerning Disabled Persons, adopted by the General Assembly at its thirty-seventh session, the World Conference on Human Rights calls upon the General Assembly and the Economic and Social Council to adopt the draft standard rules on the equalization of opportunities for persons with disabilities, at their meetings in 1993.

### **C. Cooperation, development and strengthening of human rights**

66. The World Conference on Human Rights recommends that priority be given to national and international action to promote democracy, development and human rights.

67. Special emphasis should be given to measures to assist in the strengthening and building of institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable. In this context, assistance provided upon the request of Governments

for the conduct of free and fair elections, including assistance in the human rights aspects of elections and public information about elections, is of particular importance. Equally important is the assistance to be given to the strengthening of the rule of law, the promotion of freedom of expression and the administration of justice, and to the real and effective participation of the people in the decision-making processes.

68. The World Conference on Human Rights stresses the need for the implementation of strengthened advisory services and technical assistance activities by the Centre for Human Rights. The Centre should make available to States upon request assistance on specific human rights issues, including the preparation of reports under human rights treaties as well as for the implementation of coherent and comprehensive plans of action for the promotion and protection of human rights. Strengthening the institutions of human rights and democracy, the legal protection of human rights, training of officials and others, broad-based education and public information aimed at promoting respect for human rights should all be available as components of these programs.

69. The World Conference on Human Rights strongly recommends that a comprehensive program be established within the United Nations in order to help States in the task of building and strengthening adequate national structures which have a direct

impact on the overall observance of human rights and the maintenance of the rule of law. Such a program, to be coordinated by the Centre for Human Rights, should be able to provide, upon the request of the interested Government, technical and financial assistance to national projects in reforming penal and correctional establishments, education and training of lawyers, judges and security forces in human rights, and any other sphere of activity relevant to the good functioning of the rule of law. That program should make available to States assistance for the implementation of plans of action for the promotion and protection of human rights.

70. The World Conference on Human Rights requests the Secretary-General of the United Nations to submit proposals to the United Nations General Assembly, containing alternatives for the establishment, structure, operational modalities and funding of the proposed program.

71. The World Conference on Human Rights recommends that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights.

72. The World Conference on Human Rights reaffirms that the universal and inalienable right to development, as established in the Declaration on the Right to Development, must be implemented and realized. In this context, the World Conference on

Human Rights welcomes the appointment by the Commission on Human Rights of a thematic working group on the right to development and urges that the Working Group, in consultation and cooperation with other organs and agencies of the United Nations system, promptly formulate, for early consideration by the United Nations General Assembly, comprehensive and effective measures to eliminate obstacles to the implementation and realization of the Declaration on the Right to Development and recommending ways and means towards the realization of the right to development by all States.

73. The World Conference on Human Rights recommends that non-governmental and other grass-roots organizations active in development and/or human rights should be enabled to play a major role on the national and international levels in the debate, activities and implementation relating to the right to development and, in cooperation with Governments, in all relevant aspects of development cooperation.

74. The World Conference on Human Rights appeals to Governments, competent agencies and institutions to increase considerably the resources devoted to building well-functioning legal systems able to protect human rights, and to national institutions working in this area. Actors in the field of development cooperation should bear in mind the mutually reinforcing interrelationship between development, democracy and human

rights. Cooperation should be based on dialogue and transparency. The World Conference on Human Rights also calls for the establishment of comprehensive programs, including resource banks of information and personnel with expertise relating to the strengthening of the rule of law and of democratic institutions.

75. The World Conference on Human Rights encourages the Commission on Human Rights, in cooperation with the Committee on Economic, Social and Cultural Rights, to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights.

76. The World Conference on Human Rights recommends that more resources be made available for the strengthening or the establishment of regional arrangements for the promotion and protection of human rights under the programs of advisory services and technical assistance of the Centre for Human Rights. States are encouraged to request assistance for such purposes as regional and sub regional workshops, seminars and information exchanges designed to strengthen regional arrangements for the promotion and protection of human rights in accord with universal human rights standards as contained in international human rights instruments.

77. The World Conference on Human Rights supports all measures by the United Nations and its relevant specialized agencies to ensure the effective promotion and protection of

trade union rights, as stipulated in the International Covenant on Economic, Social and Cultural Rights and other relevant international instruments. It calls on all States to abide fully by their obligations in this regard contained in international instruments.

#### **D. Human rights education**

78. The World Conference on Human Rights considers human rights education, training and public information essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace.

79. States should strive to eradicate illiteracy and should direct education towards the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. The World Conference on Human Rights calls on all States and institutions to include human rights, humanitarian law, democracy and rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings.

80. Human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights.

81. Taking into account the World Plan of Action on Educa-

tion for Human Rights and Democracy, adopted in March 1993 by the International Congress on Education for Human Rights and Democracy of the United Nations Educational, Scientific and Cultural Organization, and other human rights instruments, the World Conference on Human Rights recommends that States develop specific programs and strategies for ensuring the widest human rights education and the dissemination of public information, taking particular account of the human rights needs of women.

82. Governments, with the assistance of intergovernmental organizations, national institutions and non-governmental organizations, should promote an increased awareness of human rights and mutual tolerance. The World Conference on Human Rights underlines the importance of strengthening the World Public Information Campaign for Human Rights carried out by the United Nations. They should initiate and support education in human rights and undertake effective dissemination of public information in this field. The advisory services and technical assistance programs of the United Nations system should be able to respond immediately to requests from States for educational and training activities in the field of human rights as well as for special education concerning standards as contained in international human rights instruments and in humanitarian law and their application to special groups such as military forces,

law enforcement personnel, police and the health profession. The proclamation of a United Nations decade for human rights education in order to promote, encourage and focus these educational activities should be considered.

### **E. Implementation and monitoring methods**

83. The World Conference on Human Rights urges Governments to incorporate standards as contained in international human rights instruments in domestic legislation and to strengthen national structures, institutions and organs of society which play a role in promoting and safeguarding human rights.

84. The World Conference on Human Rights recommends the strengthening of United Nations activities and programs to meet requests for assistance by States which want to establish or strengthen their own national institutions for the promotion and protection of human rights.

85. The World Conference on Human Rights also encourages the strengthening of cooperation between national institutions for the promotion and protection of human rights, particularly through exchanges of information and experience, as well as cooperation with regional organizations and the United Nations.

86. The World Conference on Human Rights strongly recommends in this regard that representatives of national institutions for the promotion and protection of human rights convene periodic meetings under the auspices of the Centre for Human Rights

to examine ways and means of improving their mechanisms and sharing experiences.

87. The World Conference on Human Rights recommends to the human rights treaty bodies, to the meetings of chairpersons of the treaty bodies and to the meetings of States parties that they continue to take steps aimed at coordinating the multiple reporting requirements and guidelines for preparing State reports under the respective human rights conventions and study the suggestion that the submission of one overall report on treaty obligations undertaken by each State would make these procedures more effective and increase their impact.

88. The World Conference on Human Rights recommends that the States parties to international human rights instruments, the General Assembly and the Economic and Social Council should consider studying the existing human rights treaty bodies and the various thematic mechanisms and procedures with a view to promoting greater efficiency and effectiveness through better coordination of the various bodies, mechanisms and procedures, taking into account the need to avoid unnecessary duplication and overlapping of their mandates and tasks.

89. The World Conference on Human Rights recommends continued work on the improvement of the functioning, including the monitoring tasks, of the treaty bodies, taking into account multiple proposals made in this respect, in particular those

made by the treaty bodies themselves and by the meetings of the chairpersons of the treaty bodies. The comprehensive national approach taken by the Committee on the Rights of the Child should also be encouraged.

90. The World Conference on Human Rights recommends that States parties to human rights treaties consider accepting all the available optional communication procedures.

91. The World Conference on Human Rights views with concern the issue of impunity of perpetrators of human rights violations, and supports the efforts of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine all aspects of the issue.

92. The World Conference on Human Rights recommends that the Commission on Human Rights examine the possibility for better implementation of existing human rights instruments at the international and regional levels and encourages the International Law Commission to continue its work on an international criminal court.

93. The World Conference on Human Rights appeals to States which have not yet done so to accede to the Geneva Conventions of 12 August 1949 and the Protocols thereto, and to take all appropriate national measures, including legislative ones, for their full implementation.

94. The World Conference on Human Rights recommends the speedy completion and adoption of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms.

95. The World Conference on Human Rights underlines the importance of preserving and strengthening the system of special procedures, rapporteurs, representatives, experts and working groups of the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, in order to enable them to carry out their mandates in all countries throughout the world, providing them with the necessary human and financial resources. The procedures and mechanisms should be enabled to harmonize and rationalize their work through periodic meetings. All States are asked to cooperate fully with these procedures and mechanisms.

96. The World Conference on Human Rights recommends that the United Nations assume a more active role in the promotion and protection of human rights in ensuring full respect for international humanitarian law in all situations of armed conflict, in accordance with the purposes and principles of the Charter of the United Nations.

97. The World Conference on Human Rights, recognizing the important role of human rights components in specific arrange-

ments concerning some peace-keeping operations by the United Nations, recommends that the Secretary-General take into account the reporting, experience and capabilities of the Centre for Human Rights and human rights mechanisms, in conformity with the Charter of the United Nations.

98. To strengthen the enjoyment of economic, social and cultural rights, additional approaches should be examined, such as a system of indicators to measure progress in the realization of the rights set forth in the International Covenant on Economic, Social and Cultural Rights. There must be a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels.

### **F. Follow-up to the World Conference on Human Rights**

99. The World Conference on Human Rights on Human Rights recommends that the General Assembly, the Commission on Human Rights and other organs and agencies of the United Nations system related to human rights consider ways and means for the full implementation, without delay, of the recommendations contained in the present Declaration, including the possibility of proclaiming a United Nations decade for human rights. The World Conference on Human Rights further recommends that the Commission on Human Rights annually review the progress towards this end.

100. The World Conference on Human Rights requests the

Secretary-General of the United Nations to invite on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights all States, all organs and agencies of the United Nations system related to human rights, to report to him on the progress made in the implementation of the present Declaration and to submit a report to the General Assembly at its fifty-third session, through the Commission on Human Rights and the Economic and Social Council. Likewise, regional and, as appropriate, national human rights institutions, as well as non-governmental organizations, may present their views to the Secretary-General on the progress made in the implementation of the present Declaration. Special attention should be paid to assessing the progress towards the goal of universal ratification of international human rights treaties and protocols adopted within the framework of the United Nations system.

## The United Nations Millennium Declaration

That the General Assembly adopts the following declaration:  
The United Nations Millennium Declaration.

### *First: the values and principles:*

1. We, heads of State and Government, have gathered at United Nations Headquarters in New York from 6 to 8 September 2000, at the dawn of a new millennium, to reaffirm our faith in the Organization and its Charter as indispensable foundations of a more peaceful, prosperous and just world.

2. We recognize that, in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. As leaders we have a duty therefore to the entire world's people, especially the most vulnerable and, in particular, the children of the world, to whom the future belongs.

3. We reaffirm our commitment to the purposes and principles of the Charter of the United Nations, which have proved timeless and universal. Indeed, their relevance and capacity to inspire have increased, as nations and peoples have become increasingly interconnected and interdependent.

4. We are determined to establish a just and lasting peace all over the world in accordance with the purposes and principles of the Charter. We rededicate ourselves to support all efforts to uphold the sovereign equality of all States, respect for their territorial integrity and political independence, resolution of disputes by peaceful means and in conformity with the principles of justice and international law, the right to self-determination of peoples which remain under colonial domination and foreign occupation, non-interference in the internal affairs of States, respect for human rights and fundamental freedoms, respect for the equal rights of all without distinction as to race, sex, language or religion and international cooperation in solving international problems of an economic, social, cultural or humanitarian character.

5. We believe that the central challenge we face today is to ensure that globalization becomes a positive force for the entire world's people. While globalization offers great opportunities, at present its benefits are very unevenly shared, while its costs are unevenly distributed. We recognize that developing countries and countries with economies in transition face special difficulties in responding to this central challenge. Thus, only through broad and sustained efforts to create a shared future, based upon our common humanity in all its diversity, can globalization be made fully inclusive and equitable. These efforts must include

policies and measures, at the global level, which correspond to the needs of developing countries and economies in transition and are formulated and implemented with their effective participation.

6. We consider certain fundamental values to be essential to international relations in the twenty-first century. These include:

- Freedom: Men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice. Democratic and participatory governance based on the will of the people best assures these rights.

- Equality: No individual and no nation must be denied the opportunity to benefit from development. The equal rights and opportunities of women and men must be assured.

- Solidarity: Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most.

- Tolerance: Human beings must respect one other, in all their diversity of belief, culture and language. Differences within and between societies should be neither feared nor repressed, but cherished as a precious asset of humanity. A culture of peace and dialogue among all civilizations should be actively promoted.

- Respect for nature: Prudence must be shown in the manage-

ment of all living species and natural resources, in accordance with the precepts of sustainable development. Only in this way can the immeasurable riches provided to us by nature be preserved and passed on to our descendants. The current unsustainable patterns of production and consumption must be changed in the interest of our future welfare and that of our descendants.

- Shared responsibility: Responsibility for managing worldwide economic and social development, as well as threats to international peace and security, must be shared among the nations of the world and should be exercised multilaterally. As the most universal and most representative organization in the world, the United Nations must play the central role.

7. In order to translate these shared values into actions, we have identified key objectives to which we assign special significance.

### ***Second Peace, security and disarmament***

8. We will spare no effort to free our peoples from the scourge of war, whether within or between States, which has claimed more than 5 million lives in the past decade. We will also seek to eliminate the dangers posed by weapons of mass destruction.

9. We resolve therefore:

- To strengthen respect for the rule of law in international as in national affairs and, in particular, to ensure compliance by Member States with the decisions of the International Court of

Justice, in compliance with the Charter of the United Nations, in cases to which they are parties.

- To make the United Nations more effective in maintaining peace and security by giving it the resources and tools it needs for conflict prevention, peaceful resolution of disputes, peace-keeping, post-conflict peace-building and reconstruction. In this context, we take note of the report of the Panel on United Nations Peace Operations and request the General Assembly to consider its recommendations expeditiously.

- To strengthen cooperation between the United Nations and regional organizations, in accordance with the provisions of Chapter VIII of the Charter.

- To ensure the implementation, by States Parties, of treaties in areas such as arms control and disarmament and of international humanitarian law and human rights law, and call upon all States to consider signing and ratifying the Rome Statute of the International Criminal Court.

- To take concerted action against international terrorism, and to accede as soon as possible to all the relevant international conventions.

- To redouble our efforts to implement our commitment to counter the world drug problem.

- To intensify our efforts to fight transnational crime in all its dimensions, including trafficking as well as smuggling in human

beings and money laundering.

- To minimize the adverse effects of United Nations economic sanctions on innocent populations, to subject such sanctions regimes to regular reviews and to eliminate the adverse effects of sanctions on third parties.

- To strive for the elimination of weapons of mass destruction, particularly nuclear weapons, and to keep all options open for achieving this aim, including the possibility of convening an international conference to identify ways of eliminating nuclear dangers.

- To take concerted action to end illicit traffic in small arms and light weapons, especially by making arms transfers more transparent and supporting regional disarmament measures, taking account of all the recommendations of the forthcoming United Nations Conference on Illicit Trade in Small Arms and Light Weapons.

- To call on all States to consider acceding to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, as well as the amended mines protocol to the Convention on conventional weapons.

10. We urge Member States to observe the Olympic Truce, individually and collectively, now and in the future, and to support the International Olympic Committee in its efforts to promote

peace and human understanding through sport and the Olympic Ideal.

### ***Third Development and poverty eradication***

11. We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone and to freeing the entire human race from want.

12. We resolve therefore to create an environment – at the national and global levels alike – which is conducive to development and to the elimination of poverty.

13. Success in meeting these objectives depends, inter alia, on good governance within each country. It also depends on good governance at the international level and on transparency in the financial, monetary and trading systems. We are committed to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system.

14. We are concerned about the obstacles developing countries face in mobilizing the resources needed to finance their sustained development. We will therefore make every effort to ensure the success of the High-level International and Intergovernmental Event on Financing for Development, to be held in

2001.

15. We also undertake to address the special needs of the least developed countries. In this context, we welcome the Third United Nations Conference on the Least Developed Countries to be held in May 2001 and will Endeavour to ensure its success.

We call on the industrialized countries:

- To adopt, preferably by the time of that Conference, a policy of duty- and quota-free access for essentially all exports from the least developed countries;

- To implement the enhanced program of debt relief for the heavily indebted poor countries without further delay and to agree to cancel all official bilateral debts of those countries in return for their making demonstrable commitments to poverty reduction; and

- To grant more generous development assistance, especially to countries that are genuinely making an effort to apply their resources to poverty reduction.

16. We are also determined to deal comprehensively and effectively with the debt problems of low- and middle-income developing countries, through various national and international measures designed to make their debt sustainable in the long term.

17. We also resolve to address the special needs of Small Island developing States, by implementing the Barbados Program

of Action and the outcome of the twenty-second special session of the General Assembly rapidly and in full. We urge the international community to ensure that, in the development of a vulnerability index, the special needs of Small Island developing States are taken into account.

18. We recognize the special needs and problems of the landlocked developing countries, and urge both bilateral and multilateral donors to increase financial and technical assistance to this group of countries to meet their special development needs and to help them overcome the impediments of geography by improving their transit transport systems.

19. We resolve further:

- To halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people who are unable to reach or to afford safe drinking water.

- To ensure that, by the same date, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education.

- By the same date, to have reduced maternal mortality by three quarters, and under-five child mortality by two thirds, of their current rates.

- To have, by then, halted, and begun to reverse, the spread of HIV/AIDS, the scourge of malaria and other major diseases that afflict humanity.

- To provide special assistance to children orphaned by HIV/AIDS.

- By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers as proposed in the «Cities without Slums» initiative.

20. We also resolve:

- To promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable.

- To develop and implement strategies that give young people everywhere a real chance to find decent and productive work.

- To encourage the pharmaceutical industry to make essential drugs more widely available and affordable by all who need them in developing countries.

- To develop strong partnerships with the private sector and with civil society organizations in pursuit of development and poverty eradication.

- To ensure that the benefits of new technologies, especially information and communication technologies, in conformity with recommendations contained in the ECOSOC 2000 Ministerial Declaration, are available to all.

### ***Fourth: Protecting our common environment***

21. We must spare no effort to free all of humanity, and above all our children and grandchildren, from the threat of living on a planet irredeemably spoilt by human activities, and whose resources would no longer be sufficient for their needs.

22. We reaffirm our support for the principles of sustainable development, including those set out in Agenda 21, agreed upon at the United Nations Conference on Environment and Development.

23. We resolve therefore to adopt in all our environmental actions a new ethic of conservation and stewardship and, as first steps, we resolve:

- To make every effort to ensure the entry into force of the Kyoto Protocol, preferably by the tenth anniversary of the United Nations Conference on Environment and Development in 2002, and to embark on the required reduction in emissions of greenhouse gases.

- To intensify our collective efforts for the management, conservation and sustainable development of all types of forests.

- To press for the full implementation of the Convention on Biological Diversity and the Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa.

- To stop the unsustainable exploitation of water resources by developing water management strategies at the regional, national and local levels, which promote both equitable access and adequate supplies.
- To intensify cooperation to reduce the number and effects of natural and man-made disasters.
- To ensure free access to information on the human genome sequence.

### ***Fifth: Human rights, democracy and good governance***

24. We will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development.

25. We resolve therefore:

- To respect and uphold the Universal Declaration of Human Rights.
- To strive for the full protection and promotion in all our countries of civil, political, economic, social and cultural rights for all.
- To strengthen the capacity of all our countries to implement the principles and practices of democracy and respect for human rights, including minority rights.
- To combat all forms of violence against women and to im-

plement the Convention on the Elimination of All Forms of Discrimination against Women.

- To take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in many societies and to promote greater harmony and tolerance in all societies.

- To work collectively for more inclusive political processes, allowing genuine participation by all citizens in all our countries.

- To ensure the freedom of the media to perform their essential role and the right of the public to have access to information.

### ***Sixth: Protecting the vulnerable***

26. We will spare no effort to ensure that children and all civilian populations that suffer disproportionately the consequences of natural disasters, genocide, armed conflicts and other humanitarian emergencies are given every assistance and protection so that they can resume normal life as soon as possible.

We resolve therefore:

- To expand and strengthen the protection of civilians in complex emergencies, in conformity with international humanitarian law.

- To strengthen international cooperation, including burden sharing in, and the coordination of humanitarian assistance to, countries hosting refugees and to help all refugees and displaced

persons to return voluntarily to their homes, in safety and dignity and to be smoothly reintegrated into their societies.

- To encourage the ratification and full implementation of the Convention on the Rights of the Child and its optional protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

### ***Seventh: Meeting the special needs of Africa***

27. We will support the consolidation of democracy in Africa and assist Africans in their struggle for lasting peace, poverty eradication and sustainable development, thereby bringing Africa into the mainstream of the world economy.

28. We resolve therefore:

- To give full support to the political and institutional structures of emerging democracies in Africa.

- To encourage and sustain regional and sub regional mechanisms for preventing conflict and promoting political stability, and to ensure a reliable flow of resources for peacekeeping operations on the continent.

- To take special measures to address the challenges of poverty eradication and sustainable development in Africa, including debt cancellation, improved market access, enhanced Official Development Assistance and increased flows of Foreign Direct Investment, as well as transfers of technology.

- To help Africa build up its capacity to tackle the spread of the HIV/AIDS pandemic and other infectious diseases.

### ***Eighth: Strengthening the United Nations***

29. We will spare no effort to make the United Nations a more effective instrument for pursuing all of these priorities: the fight for development for all the peoples of the world, the fight against poverty, ignorance and disease; the fight against injustice; the fight against violence, terror and crime; and the fight against the degradation and destruction of our common home.

30. We resolve therefore:

- To reaffirm the central position of the General Assembly as the chief deliberative, policy-making and representative organ of the United Nations, and to enable it to play that role effectively.

- To intensify our efforts to achieve a comprehensive reform of the Security Council in all its aspects.

- To strengthen further the Economic and Social Council, building on its recent achievements, to help it fulfill the role ascribed to it in the Charter.

- To strengthen the International Court of Justice, in order to ensure justice and the rule of law in international affairs.

- To encourage regular consultations and coordination among the principal organs of the United Nations in pursuit of their functions.

- To ensure that the Organization is provided on a timely and

predictable basis with the resources it needs to carry out its mandates.

- To urge the Secretariat to make the best use of those resources, in accordance with clear rules and procedures agreed by the General Assembly, in the interests of all Member States, by adopting the best management practices and technologies available and by concentrating on those tasks that reflect the agreed priorities of Member States.

- To promote adherence to the Convention on the Safety of United Nations and Associated Personnel.

- To ensure greater policy coherence and better cooperation between the United Nations, its agencies, the Britton Woods Institutions and the World Trade Organization, as well as other multilateral bodies, with a view to achieving a fully coordinated approach to the problems of peace and development.

- To strengthen further cooperation between the United Nations and national parliaments through their world organization, the Inter-Parliamentary Union, in various fields, including peace and security, economic and social development, international law and human rights and democracy and gender issues.

- To give greater opportunities to the private sector, non-governmental organizations and civil society, in general, to contribute to the realization of the Organization's goals and programs.

31. We request the General Assembly to review on a regular

basis the progress made in implementing the provisions of this Declaration, and ask the Secretary-General to issue periodic reports for consideration by the General Assembly and as a basis for further action.

32. We solemnly reaffirm, on this historic occasion, that the United Nations is the indispensable common house of the entire human family, through which we will seek to realize our universal aspirations for peace, cooperation and development. We therefore pledge our unstinting support for these common objectives and our determination to achieve them

8th plenary meeting

8 September 2000

## **The African Charter on Human and Peoples' work experience regional charter in developing countries**

Discussed the Arab Organization for Human Rights at the end of its annual report each year, one of the general issues associated with the ways of promoting human rights in the Arab world, has been addressed in the past two years, the objective of the Arab Movement for Human Rights), and the Arab human rights discourse), while this year's report of the African Charter on Human and Peoples' Rights to extract a regional charter work experience in developing countries, where the Charter presents a pattern of problems will confront us when our Arab necessarily succeed in overcoming chronic differences and removing its charter regional to come into existence, and secondly, by virtue of the accession of seven of our Arab this charter (1). One of Mauritania - is linked to this Charter is the only form of its commitment to international human rights charters.

It was suitable for five years after the entry of the African

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**(1) Each of Morocco and Djibouti have not yet acceded to the Charter, the First had withdrawn from membership of the Organization of African Unity in 1984 because of the position of the crisis of Western Desert.**

Charter on Human and Peoples' Rights entered into force in the year 1991 an extensive discussions on the evaluation of the Charter and the mechanisms of its application, and the African Commission on Human and Peoples' many African organizations in conducting this assessment, and contributed to the International Commission of Jurists and the ICI played a prominent role in making this assessment the intensive search workshop called by on the sidelines of the meeting of the 10th session of the African Commission in Banjul, the Gambia) in the year 1991, where the seminar brought a meeting of dozens of concerned organizations and experiences and discussed in detail the various aspects of the subject.

### ***1. The African Charter: texts and mechanisms:***

Hit the idea of the conclusion of the African Charter of Human Rights are rooted in the African political thought, since the 1940s a number of special initiatives and popular to conclude such a treaty, as from the second half of the 1960s moved to the initiatives of some African countries, the effects of some of the demands related to this issue through the United Nations committees, in 1979 the Organization of African Unity officially opened the file of this case, completed the Conference of Heads of State and Government of the Organization of African Unity in Monrovia (capital of Liberia) a recommendation for the prepa-

ration of an African Charter on Human and Peoples' Rights, in particular the structures of the development of human rights and peoples and their governments, and on 28 June 1981, the Conference of Presidents of the Organization approved the charter, on 21 October 1986, entered into force of the Charter to complete the quorum of states needed to enter into force, the number of ratifying States On the charter in the year 1991 (41) of the (51) a member state of the Organization of African Unity, including seven Arab countries.

The Charter consists of a preamble and 68 articles divided into three parts: Part I contains the rights, duties and the second includes protection measures, and the composition of the African Commission on Human and Peoples' terms of reference, procedures and principles that can be applied, the third and last part contains provisions relating to the Charter, such as the certification and registration of languages.

The Preamble is an integral part of the Charter, and reflect a compromise between the principles of giving priority to the rights of indigenous peoples on individual rights, or confirmation of the natural rights of the individual, without regard to the community to which he belongs, as well as the harmony between the supporters of civil and political rights on the one hand, advocates of economic, social and cultural rights on the other.

The first part of the rights and obligations, thus dividing into

two parts, the first consisting of 26 items allocated for Human and Peoples' Rights, the second includes three items relating to the duties, and is subject to the Charter of the rights of the peoples in articles 19-24, and recognizes that all people are equal and have the same rights, and that all have the right to existence and self-determination and to determine freely their political, economic and social development as the choice of their own volition and right of colonial peoples to free themselves from the shackles of control by resorting to all internationally recognized means, and that all peoples have the right to access to the political, economic and cultural assistance to States parties in their struggle for liberation from foreign domination.

The Charter of Economic rights to all peoples, to act freely in the natural wealth and resources, provided that the exercise of this right for the benefit of the population alone, with a view to strengthening African unity without prejudice to the commitment to the development of international cooperation, and that it has the right to recover property that was raped, as provided for in the Charter of the right of peoples to development and economic, social and cultural rights and the right to peace and security at the national and international levels, and the right to a satisfactory environment in a comprehensive manner suited to their development.

The individual rights have been formulated in the Charter in

some cases in the broadest sense of the significance of the corresponding provisions in the International Covenant on Civil and Political Rights, for example, dealt with (the right to a fair trial) contained in article 7, the Charter provides explicitly for the details concerning this right, unlike the International Covenant on Civil and Political Rights, which determined by the detailed such as the text on the public, and time to prepare the defense strategist familiar with, the appointment of counsel and the examination of witnesses, and compel the individual to testify against himself, the right to appeal to a higher court ... Etc..

As well as the right to liberty and security of person deals with the Charter this right in general, deprives the arbitrary arrest or detention, but he did not elaborate on this right, as reported by the International Covenant on Civil and political rights such as the right to inform the individual at the time of his arrest of the reasons for, and to inform him of the charges against him, and the right to be brought promptly before a judicial authority, and to submit to trial within a reasonable time or to be released, and the right to challenge the lawfulness of his detention... Etc...

The African Charter also differs from other international and regional human rights treaties in that it provides for certain duties for the individual toward the State (not endangering state security) and the preservation of national independence and territorial homeland ahead, and contribute to the defense of his

country, texts which can be misused by the government that does not respect the basic rights of individuals and that the African Charter to protect them.

The researchers also draws attention to the fact that the African Charter of provisions that allow States to derogate from some of the obligations of the treaties in situations of public emergency, and go some analysis that the use of the restrictive provisions of the Charter and broad formulation which she sang a special emergency provisions along the lines of what in dealing with freedom of expression, the right of association, freedom of movement, as it provides for the exercise of these freedoms in the framework of the law”, texts which may allow Governments to enact restrictive laws limit the fundamental freedoms of the dedication of the safeguards mentioned in the Charter of meaning.

The second part of the Charter deals with the composition of the African Commission on Human and Peoples’ Rights and procedures and principles applied by articles 30-63 occupies, this committee was established in July 1987, the dates of the twenty-third session of the Conference of the heads of State and Government of the Organization of African Unity, held in Addis Ababa, based in Banjul (Gambia) consists of its rules of procedure of the 120 articles dealing with the organization of the work of the Committee, this system was adopted unanimously

in Dakar (Senegal) in February 1988.

The Committee is composed of 11 members chosen from among African personalities (which demonstrate the highest degree of respect, portfolios have ethnocentrism associated with ethics, integrity, impartiality, competence in the area of human and peoples' rights, with particular attention to the participation of persons with expertise in the field of law, the members are to be nominated by the States parties to the African Charter, but elected not only in the Conference of the Organization of African Unity as a whole, the members of the Committee are elected for a term of 6 years in their personal capacities and not as representatives of their governments, and may be re-elected, and the Progression in the elections for the first time the formation of the Committee until the election of one third of the members of almost every two years.

The Committee shall normally hold two regular sessions annually, but its Chairman that calls for special sessions in consultation with Member States, the Commission held until the end of the year 1991 Ten periodic meetings, and an extraordinary session, five at headquarters, and the rest of Ethiopia and Senegal and Gabon, Egypt, Libya and Nigeria.

The agenda of the meetings is determined on the basis of the proposals made by the secretary of the Commission, and its president, the Conference of the O.A.U (2) liberation movements rec-

ognized by the non-governmental organizations, are entitled to make proposals to include in the agenda and representatives of international governmental and non-governmental organizations granted observer status to the Commission to participate in the discussion of issues of interest to them, without the right to vote.

Since its establishment, the Committee has been granted observer status for 58 African and international organizations, including the Arab Organization for Human Rights, and human rights organizations in the Arab and African countries.

The Committee's functions include activities aimed at the promotion and protection of human rights, the activities aimed at the promotion of human rights include the elaboration of studies and organizing conferences and the dissemination of information, promotion of national institutions on human rights, the interpretation of the provisions of the African Charter at the request of a Member State or an institution of the Organization of African Unity, and the principles and rules aimed at resolving legal problems relating to human rights by Governments as a basis of legislation, and perform any other tasks entrusted to it by the Conference of the Organization of African Unity.

It also includes strengthening activities also dispatch missions of States members of the Committee to meet with officials and non-governmental organizations and members of the public, to

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**(2) Organization of African unity**

urge States to ratify the charter, or to urge the States that have ratified its implementation, the Commission is working on the establishment of information and documentation center with the assistance of the United Nations Center for Human Rights and the European Community, and intends to publish a magazine on Human and Peoples' Rights.

The protection activities that could be undertaken by the Commission include conducting investigations, is empowered by article (46) The Commission broad powers to investigate matters in the field of competence.

As the retreat of the periodic reports submitted by States parties every two years under article 62 of the Charter, it invited non-governmental organizations and individuals to provide them with information to assist in the examination of reports and appoint one of its members as rapporteur for each report received from the States Parties, observers are entitled to make comments at the conclusion of the examination of the report, but are not entitled to participate in the reorientation of the questions, the Committee has discussed in recent sessions, two reports of two African Arab States joining the charter, namely Egypt and Tunisia.

The Committee may also review the complaints sent by each of the States parties to the Charter asserts that the violation of another State in accordance with the procedures specified in ar-

articles 47, 48, 49 that the Commission could not address a complaint only if it has exhausted all local remedies, if any, unless it is clear that the procedures required by means of redress these take longer and should seek to settle it amicably first, in fact, he did not resort to any of the States parties to implement these measures until the end of the year 1991.

The Committee could also consider the complaints sent by individuals and non-governmental organizations in accordance with articles 55 and 58 of the Charter, to meet 7 Conditions: namely, that carries the name of the consignee, in line with the Charter of the O.A.U or the African Charter, does not contain obscene words or offensive of the State concerned, and should not be the only attachment news published in the media, and send after the exhaustion of local remedies, if any, and to provide within a reasonable period of time from the exhaustion of equity, otherwise relating to areas of the State concerned and settled in accordance with the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the African Charter, the Committee may request further information, the author, and that the State party give a deadline for comment before it decides to accept the message, it may also Suggests that the State party concerned to take interim measures to avoid the victim of the alleged violation suffered irreparable damage before the final views to the Conference of the Organi-

zation of African Unity.

If the Committee decided to accept the letter, it must so inform the author of the communication and the State concerned to expeditiously, the State party should provide the Committee within four months, a written response to explain the issues, if possible, to indicate any steps taken to address the situation, the Commission sends a copy of the reply to the author that he has the right to make additional information and observations within the time period established by the Committee, and then ... The Committee considered the communication in the light of all the information provided by the author and the State party's observations on the message sent to the Conference of the Organization of African Unity, which had authorized the Commission to publish its observations.

If the Committee that there is a message or more than dealing with specific cases appear to reveal serious violations or mass violations of human rights and peoples, it must draw the attention of the Conference of Heads of State and Government to these conditions, in this case, the Conference of the heads of state and government to ask the Commission to prepare a thorough study of these situations, and that raises a separate report containing findings and recommendations, to the President of the Conference to request the preparation of a study in urgent cases, and remains "all measures" taken under this procedure secret until

the Conference decides its declaration.

The researchers also draws attention to the fact that the commission did not declare in their statements, but the number of recorded messages under this procedure, and does not reveal the names of the letters or States parties complained of, so far has not published its final views on any of the communications received under this procedure, did not decide the manner in which you will use in conducting extensive studies.

The researchers also draw attention to the fact that the Charter of the provisions relating to judicial review, other than what was contained in the other regional treaties, while the human rights courts established under the American Convention on Human Rights, the European Convention on human rights and fundamental freedoms, to the authorities of the review of the cases that had been presented to one of the committees, the African Charter on such ADJUDICATION in any form, and proclaims the many human rights experts to amend the charter in order to avoid this gap, and called for some of the re-interpretation of the Charter, which allows the development of the work of the Committee.

## ***2. The experience of the African Charter:***

In the view of the Arab organization for human rights researchers, starting, and that the African Charter on Human and Peoples' Rights, which is the third among the regional charters, after the European Convention on Human Rights (1953), the American

Convention on Human Rights (1969), despite all the criticisms that have been reviewed, an important addition to the international conventions on human rights, including the adoption of the rights of peoples, and his assurance of collective rights to development and other which represents the strength of the third generation of the thought of the rights of indigenous peoples, although the Charter has the text of the peculiarity of the African continent, the reference to agreements and covenants.

But on the other hand, the Charter in some respects less specific and clear about certain rights compared with the fulfillment of other international agreements, it is also devoid of judicial review, put in return for the rights including the duties of individuals toward the state to be abused.

The African Commission on Human and Peoples' Rights, which is the main mechanism for the application of the African Charter, suffers, as we have seen, many of the procedural constraints emanating from the charter establishing it, and a list of internal procedures, constraints related to the nature of the composition, role and powers and procedures to be followed, and funding, this indicates that many of the questions, the extent of the independence of the members of the Committee, as long as they were elected by the Assembly of Heads of State and Government of the Organization of African Unity, and the extent of the incompatibility between the posts of some characteristics in

their country and their role as commissioners of the Commission (the appointment of one of the commissioners of the interior ministers of his country), and also the length and complexity of the procedures to be followed regarding complaints, which required a long time, and the need for the introduction of the reports of the Committee to the Conference of Heads of State and Government of the Organization of African Unity before its publication, the nature of confidentiality imposed on some of the activities of the Committee, In particular contacts with Governments on the complaints, as well as the nature of the funding and management of the staff of its secretariat.

It has led the gaps contained in the Charter and the constraints and difficulties imposed on the Committee to systemic weaknesses in the organization and functioning of the Committee during the first five years of its activity, but, fortunately, the year 1991 witnessed important developments for the Committee whether the efforts of self-development, or the momentum that had been generated by the efforts of non-governmental organizations concerned with the support of the Committee.

That is, briefly, a summary of the assessment of the experience of the African Charter of Human Rights, and the mechanism for its implementation, the African Commission, what can be drawn for our countries?

The first such summaries lies in the answer to the question

of what was achieved by such regional charter of obligations of States parties as well as the guarantees of human rights and what is available through the international human rights system, and for the African Charter, the agenda two tasks; first, it made its contribution in the case of (Privacy) the approval of the rights of peoples, resolving the final reference replied covenants and conventions, and second, that he played the role of mediator between some countries located in its territory and the international human rights regime, with those additions have acquired the justification for its existence as an addendum to the international human rights system.

The practical effect of this experience on the Arab arena differs to some extent, the issue of cultural privacy in the Arab world is linked to that of the Islamic concept of human rights, and some countries in the region to deepen this privacy policy in accordance with the jurisprudence might not allow by a straightforward combination between the international obligations of these concepts, and this was the obstacle that prevented the Arab Charter for Human Rights, and it is not resolved in the Arab political thought first, it can provide Arab Charter for Human Rights, as well as it is not the function of the regional Arab system can perform distinct human rights, whatever our enthusiasm to approve the Arab Charter for Human Rights of the Organization reflects the cultural privacy and guarantees for both the extent to which

or the degree of specificity and clarity.

The second extraction is important in this regard to the mechanism for the work, the mechanism of action approved by the African Charter on Human and Peoples' was in fact a reproduction repeatedly working mechanisms in the international system, without access to the general climate or prevailing circumstances and capabilities necessary to perform its functions, the Committee may, as we have seen, the limited capacity and performance is modest, had it not been for the developments of the last year 1991 the African Commission for possible for any observers to record any degree of optimism about its future or its role.

This experience should be taken into account when studying the mechanism of action emanating from the Arab Charter for Human Rights, and there was no way to create good mechanisms for fit with reality, and can interact with the issue of human rights, the adoption of a mechanism independent of the international system is ineffective, the principle remains crucial in this regard, irrespective of any form could end him, mingling between the international treaty committees emanating from the outskirts of the governments, and the role that could be played by non-governmental organizations concerned with human rights.

## Appendix

## Human rights in the old legal laws and contemporary charters

The State	The International Covenant on Economic, Social and Cultural Rights	The International Covenant on Civil and Political Rights	The optional protocol to the International Covenant on Civil and Political Rights	The International Convention against Torture	The International Convention on the Elimination of All Forms of Racial Discrimination	The International Convention on the Suppression and Punishment of the Crime of Apartheid
Algeria	x	x	x	x	x	x
Bahrain					x	x
Djibouti	x					
Egypt	x	x		x	x	x
Iraq	x	x			x	x
Jordan		x		x	O	x
Kuwait	x				x	x
Lebanon	x	x			x	
Libya		x	x	x	x	x
Mauritania	x				x	x
Morocco		x		O	x	
Amman					O	
Qatar					x	x
Saudi Arabia	x					
Somalia	x	x	x	x	x	x
Sudan	x	x		O	x	x
Syria	x	x			x	x
Tunisia		x		x	x	x
The U.A.E	x				x	x
Yemen		x		x	x	x

The symbols used in the table (x) (O) Signature

## Human rights in the old legal laws and contemporary charters

The International Convention on the prohibition and Punishment of the Crime of genocide	The Convention on the Elimination of All Forms of Discrimination against Women	The Convention on the political rights of women	The Convention on the Rights of the Child	The Convention relating to the Status of Refugees	The Protocol relating to the Status of Refugees	The African Charter on Human Rights
×			<b>O</b>	×	×	×
×						
			×	×	×	×
×	×	×	×	×	×	×
×	×					
<b>O</b>		×				
			×			
×		×	×			
×	×	×	<b>O</b>			
	×	×	×	×	×	×
×		×	<b>O</b>	×	×	
×			×			
			×	×	×	×
			×	×	×	×
×			<b>O</b>			
×	×	×	<b>O</b>	×	×	×
×	×	×	×	×	×	

ratification Add to schedule this year ratifications by African countries to the Charter on Human and Peoples' Rights

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# Chapter 1

## The first historical roots of human rights

### First study

#### *Preamble:*

The philosophical and the legal march for human rights did not start suddenly from history; there is the assets of the foundations on which modern civilization, the previous concepts of human rights.

This chapter aims to attempt to answer an important question, which is whether there is something we call the human rights effectively in ancient times?

If so, what tools or mechanism provided by the legal system in ancient times to save those rights? If there is no such thing as human rights old so what are the reasons?

## **The first demand**

# **Human Rights in the civilization of Mesopotamia**

That justice, as the ideal of human behavior parameters and the power of kings, princes and leaders of different human groups, an old date deeper than the Greek thought, it does not proceed from Plato's Republic, it is clearly defined in the laws and the laws of Mesopotamia, if the issue of fear which man suffers since that was found on the surface of the earth is an important factor in urging him with others of his sex to the search for a fixed center to meet and stability, which entailed, with the help of other factors, the emergence of different organizations of the human being at the political, social and economic levels that have been organized by the laws and codes that have emerged over the ages.

It is the political destination notes that political power has always been in the hands of the Senate of the city or village,

after thousands of years was still in Babylon, the Council of the gods in the style of the ancient village, and thus with the development of the city has become a distinctive layer in society controls the other layers, when kings and leaders claimed that they derive their authority from the divine sources, where they became the link between heaven and earth, thus mixed religious and temporal authorities as it was in the ancient civilizations, a fact that include the civilization of Mesopotamia as the ancient Egyptian civilizations other Chinese, Indian and Japanese) (1) .

That these new conditions granted to the governor to autocracy and enslavement of others while it was extended to include the entire layers within his society, therefore, was not a human right only to the extent approved by the ruling party only, and may be based on the interpretation of the phenomenon of war captivity over subsiding, murder, destruction, as all the king of kings, he aspires to more physical and moral force which cannot be obtained to fighting others or kill them and seize their money, this situation has led to the existence of a minority at the expense of the many armed governor, often deprived of their human rights, if the appearance of the king in war had achieved the Security Council through his royal regime, on the other hand, may impose a harsh on his

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(1) Dr. Ahmed Gamal, Human right, 1988,page 73

birthday. As far as the matter is in between the two rivers, one of the book indicates that terrorism was the general character of the community, at the height of the atrocities in the person of Ashur ban pal, king of Assyria, the doubling of this cruelty arrived in the era of late Hammurabi, where the provisions of the law which contains a list of the countless sins, many of them slightly, but it was punishable by death, or the literal text Disfigured pursuant to the principle of an eye for an eye and a tooth for a tooth) (1).

Life has increased the severity when a man came and presented on a piece of land, said this bed, which resulted in dividing people into rich and poor, however, the real division of the property did not begin only when the Rulers began distributing them until their donations to intimates, property rights did not show the details of the legal, but in the second millennium BC, which is the Code of Hammurabi, which dealt with details of the property and the right to transfer, here can be a real note, is that most of the ancient civilizations had one way or another on the shoulders of the slave trade, similarly, it is not possible to say that the revolutions sums collected by the members of the dominated only through slavery, cruelty, devoid of a sense of humanity toward others.

Thus, the first period in the prehistoric ancient civiliza-

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(1) Ibid, page 74-75

tions was not exposed to the cause of human rights in the true sense of the terms of their right to self-determination and its right to exist, so that the laws of Hammurabi lead only to be all people without eyes and without the tongue and without parties, and in the end, we find under these laws within the humanitarian community, followed by a punishment not only go unpunished, followed by human rights.

Thus, the rights recognized by the old laws were not collective rights in the sense known at the present time, but individual rights enjoyed by the ruling party, and hence, the ancient civilizations and the absence of freedom, where there was only one person is free is the ruler <sup>(1)</sup>. The ideas represent one view of human rights and assets in the ancient societies in general, and in the Mesopotamian civilization in particular and, therefore, we are entitled to ask whether the picture list to this extent? It is necessary to note that the real beginnings of legislation and law but appeared in Mesopotamia created the first human settlements, the problem of the forms of the State in every meaning of the political, economic and social organization.

Therefore, there is another face, the rapid development of the laws in Mesopotamia is certain compared with other civilizations, which said that the Ancient Iraqi civilization, the

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(1) Iraq civilization, part2,1985.page 63-71

fact is that the development of the law is inseparable from the evolution of thought in general, which in turn is a reflection of the happenings in the physical aspects of life, the law on the basis, the basis for regulation of relations, and install the rights and duties of the parties to the relationship in the forms of social and economic relations, among the relations between people, individually and collectively in the side, and between the ruling party and is represented by the powers of the departments and bodies on the other hand, because the king in the look of the veterans of the Iraqi people is not much different from the rest of the people, entrusted with the task of governing the gods to human beings and the management of their own affairs, are his duties as to the rights of the people, so the need for the urgent need to appoint The rights and obligations of the parties to the relationship of the King by the people from the other side.

Although the perception of the relationship did not reach us writing directly, but we are telling us from the words of the kings and some key texts, king is charged with upholding the oppressed, cropping, a sponsor of the unjust distribution, but did not represent the image of the divine rule (if it is not keen on the application of justice fact trustworthy, God whatever capacity) in the sense that the fate of the King Saleh Sultan rested his position of justice and his work on the application,

because it is the will of the gods, the aspect of this truth refers to the Hammurabi code, as we read through this king (then Anu wanil preferred me, I Hammurabi Prince kind slave of gods, the position of justice in the country, spend on evil and fraud, and block the forces of oppression of the weak).

As far as the human rights aspects noted in the old Iraqi laws approved some strict sanctions, or dependence on some trendy principles which do not conform with the norms of civilized human beings in the current era, for example, the circulation of responsibility or conclusion of evidence through the examination, etc., but if it reminds us that we review the legal process almost four thousand year old, necessarily accept some shortcomings that register on the aspects of the laws, not forgetting that the old Iraqi laws constitute the first experiment in the history of human beings, and it compared with many of the subsequent legal acts, constitute the basis for the legal and proper human experience <sup>(1)</sup>, and the legal texts of the Code of Hammurabi, which is not in line with the foundations of human rights text, which dealt with the case of any citizen of another citizen A crime punishable by death and then did not prove it to be executed rather than him, and this Code the text on the right of the warrior who captured in Diyarbakir, the enemies in to recover his wife if returned to

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(1) Ibid, page 74-75

his country, even if they had married another man during his capture, it is imperative that the wife of prisoner to his home as long as the evaluation of the cope if she married a man, it is in the river, there are, however, the texts expressed respect for some of the foundations of human rights even in the modern era, as the State is responsible for its failure to protect persons and property, and for this reason, if a citizen was killed and his murderer was not possible to know the city governor cooperated to pay blood money to his family, if stolen could not arrest the citizen Thank you for your continued interest and retrieval of stolen items offset by the city governor what was stolen from him.

As well as from the provisions of the other features of human rights can be referred to the definitions attributed to the governor of the city of lagash Orokogina, which focus on the tax reforms to address the situation to poke mainly, however, confirmed these reforms on some important principles as an idea of freedom within the limits of the law, and that the high functional positions in the government and the administration does not exempt the holder of the legal limits, all of which aim to provide a legal basis to punish employees who violated tax collectors of traditions, the rights of citizens and their property <sup>(1)</sup>, it should be recalled that reforms of Orokogina

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(1) Salah El Den Al Nahy, *Justice in Justice in the heritage of Mesopotamia and in Greek, Arab and Islamic thought*, Page 39

is the first document in the history of mankind, which mentioned the word freedom <sup>(1)</sup> .

The other law is the law (Nunatsiaq), one of the oldest code of laws in the history of mankind, and has adopted the principle of compensation in the sanctions unlike the principle adopted by the law of Hammurabi is impunity.

In a further sign of the judicial justice, as evidenced in the document that the courts ALSUMARIA was not entitled to be issued to the person who raises him to what was not present at the trial or the summons did not attend <sup>(2)</sup>.

Based on the foregoing, the ancient origins of the idea of human rights can be primitive form with notes the emergence of the old Iraqi legislation financial and social reforms in the old Iraq, there can be no talk of rights and duties within the society, but under the law or the norms applied by human beings, Iraqis in a way or another to understand these humanitarian need warlords -laws which ensured that all the parties of their rights within the social and economic structure of human society at that time.

### ***The guarantees of justice:***

The guarantees of achieving justice in the civilization of Mesopotamia could be a response to the principle of the rule

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(1) Ibid page 30-40

(2) Ibid page 35-36

of law and eradicating the rulers, the principle of subordination of the rule of law, the governor was and still is one of the fundamental principles of justice, it is one of the most important goals of the states to be achieved at the present time, the idea of equality be achieved in part by the accrual principle, which means the authority's submission to the individual and to the rule of law of the State, the State where the individuals and the governor of the rule of law called the designation of legal state.

At this point, one of the book indicates that he does not know the old or newly legislation includes such advanced concept which aims to achieve a kind of social solidarity based on the loading of public authority and responsibility in the protection of citizens and property, this is known as the concept in modern times, the theory of the social damage, not be applied until the present time only in the narrow limits on health insurance and disability.

Here, where the first DURANT in his book "The Story of Civilization," it says: Advanced Achievement (is there in these days of good governance city where dare to compensate where the crime because of the neglect of such compensation, and whether risen really laws as it was in the days of Hammurabi, or that all that happened to it numerous swelled <sup>(1)</sup> .

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(1) Ibid 24-26

The judiciary is the third guarantee guarantees the application of the law in Mesopotamia as well as referred to in the foregoing examples of emphasizes the role of the judiciary in the achievement of justice, the issue considered in the city of the inviolable showing the existence of the type of profession in Ancient Iraq, and that there was not the Law Organizing the Profession at that time, as I knew Babylon layer of the rulers was to defend others and claim their rights, and called them the agents of others, and they enjoy a high social rank, King chooses the judges, Hammurabi had an important role in the transfer of civilians and that this step was preceded the Hammurabi in the old Iraq was trying to alleviate the strict law <sup>(1)</sup>.

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(1) Ibid 29-28

## **The second demand**

# **Human Rights in the Greek and Roman civilizations**

In the framework of the general situation of human rights in the old European civilizations, we run the position of this issue on a theoretical level, Legislative Council through the philosophical schools that appeared in the country, and the laws enacted provisions and legislators, which can explain to us the situation of human rights, and highlights the image of this issue, if the Greek Cypriots have succeeded in the field of thought, the Romans had found the sprawling empire, how he was living in that period? What is the legal regulation which has in those societies?

### ***Section I - Human Rights in the Greek civilization***

In the framework of the Greek civilization, the search or

exposure to the issue of human rights and assets can take place through two ports: first, the ancient Greek legislation, and the second is linked to the Greek philosophical schools, which confirmed some of the foundations or the main principles that reflect the specific vision of the themes related to the idea of human rights to some extent, under the law of Solon issued in 594 BC, giving the people the right to participate in the legislative authority through the people's assemblies, and to make the law, the people of the right to contribute to the election of the serving, and has done Solon debtors of their debts and freed the slaves of them, and prevent the EN-SLAVEMENT of the debtor and on his body as a means to coerce a debt, and spent the influence of employers' families by breaking up large estates <sup>(1)</sup>, democracy and ethnically applied was in the eyes of Percales on the following basis:

1- Equality before the law, the civil and political equality, everyone is subject to the law, democracy is a system of legitimacy and equality.

2- Freedom of opinion, everyone says his opinion freely concerning the general interests, and there is no democratic regime in formal standpoint, as every citizen in a civil state can express an opinion, the majority view is the country abides by.

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(1) Dr. Mohamed Yossef, Notes in the Human Rights Rapporteur, page 3

The democratic ethics to Percales also confirms it is summarized in the brotherhood between citizens and tolerance and to provide assistance to the weak and the poor.

The population of the state of Greek civil was divided into three layers differ from each other in both political and legal, as there was a layer of citizens who have the right to participate in the political life of the city's affairs and public functions, the second layer is the layer of foreigners resident in the city, which is deprived of the contribution to the political life, despite the fact that its members are free, the slaves comes in the lowest layer of social peace, slavery remained a project when the Greeks, perhaps a third of the population of Athens from the slaves, Layer this layer is not included in the calculation of Greek city, the slave trade and the property of the yearnings and something's, and Aristotle called explicitly to be citizens themselves for political affairs, leaving all the manual work of the slaves, either Plato, says nothing about slavery system where speaking On his theory in individual ownership, but it seems that it did not mean the abolition of the global system of the time, slavery system without mentioning it expressly.

We can say that the question of human rights did not inform the great affair when the Greeks, this is due to social and economic factors involving the ancient civilizations in gen-

eral, but some philosophers Greeks criticized with traditions and laws in force in the community, which the slaves and foreigners, finding the impact of some of these: (we all are equal in birth and everything, we all our designs are fragranced air from the nose and mouth), and came in some of the texts on the tongue of one of the Slaves: (I am, Sir, and I am not a slave, I look like you, We created man from Bethlehem, there is not one of those slaves innately).

Yorpedes denied the validity of the existing social differences on the basis of birth and even for the slave as he said: that there is only one thing brings shame on the slaves is the name, and free at greatest risk except that thing, each of them carrying a sound spirit”, the sophists, in turn, has denied that slavery -born are normal, and attributed to one of them as saying that all human beings are created by God and did not make any one of them a slave, he denied the sophist Antiqion in the fifth century BC, there is no natural difference between the Greeks and Barbaras <sup>(1)</sup> .

The sophists had the point of view of the idea of justice and the link between justice and the interest of the stronger, this means that they have a position, the sophists of the idea of justice of the revolutionary nature of the understanding of the point to the link between justice in each state and the lon-

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(1) Ibid 4-5

gevity of the ruling class of the economic and social interests dictate the legislator, the most powerful is the legislation of the State, since States vary, the sense of justice is far from flat but is in a democratic state is democratic, and the despotic state law protects the interests of despotic class.

As Plato 437 - 427 BC, before the conservative doctrine of this idea based on the idea of consistency in the administration of justice, it is believed that one of the greatest causes of the perfect of state is that virtue which makes both children and women and industrialists and the rulers liberals governed work without interfering in the work of the other, and therefore, no one should not exceed what belongs to others or deprives the property owned is.. That justice is that one owns what really belongs to him, function... The encroachment on the functions of the others confusion between the three layers been on justice, in the eyes of Plato, the gravest consequences so that one is not merely the right thing as counting the crime.

This Platonist position of justice for which a clear class limits does not allow exceeding it so he was exposed to criticism of jeopardizing the viewpoint of freedom of action <sup>(1)</sup>.

The fact that the position of Aristotle requires a lot of reflection on the question of slavery in particular, he wondered whether the nature and people are slaves slavery for them

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(1) Dr. Salah Al Nahy, Ibid 44-54

becomes a legitimate procedure and appropriate, the answer is in the affirmative, it is inevitable according to the anticipation of the existence of the category of the Governor and the governed, the higher status must govern lowest rank, usually blowing strong nature we want to slave, while deposited in the body of the reasonably likely to free thinking, and thus become more mature and the free man is prepared to be judged on the basis of the base of the governing body of thought.

Aristotle stands against the principle of equal natural rights, it is believed that some may have characterized the nature of the mind, and gave others the ability to use the members of the body, nature and objects of different individuals make liberals objects of slaves, reservoir, the slaves by force to do the hard work, while the liberal objects created by nature is invalid because the pays of the righteous to do such hard work, as the liberal nature of the functions of the civilian life is not only.

This seems to be the strict attitude of the philosopher of the idea of slavery is an obvious, affirming that the only reason for the benefit of master is the slaves to directly aiding the human virtues than the development of wealth or increase the magnitude, the inability of the master. for the management of the credit for the distinction has no inherent benefit to avoid the slave of auto insurance companies, namely his

fruitful guidance thanks to the subject who is better, and here the inseparable relationship between the follower and the followed, Aristotle went as a result of this theory criticism for the owner of the idea that (from the slaves who are the people of freedom, and that of the freemen of the worth of slavery), the truth is that at the end of his life had put some conditions to ensure that certain reforms the situation of a slave, a need to treat the slave treatment of Hassan, and that extends to hope Granted freedom days, as advised by the Oldness of the Slaves and decided in his Oldness of his slaves <sup>(1)</sup>.

The Rwakia school, one of the philosophical schools founded by the Phoenician philosopher Zino late 14th century and early 13th century BC, it was a position also from some general ideas related to human rights, and if it was difficult to consider the school purely Greek school as it in fact reflected the interaction between east and west that emerged as a result of the conquests of Alexander the Macedonian, and all the thinkers of this school were from outside the country of the ancient Greeks, the first Rwakians are mostly Syrian but the latest are arrivals of the Romans, the school emphasized the principle of brotherhood of humanity, individuals as rational beings are basically the same and are all alike or to natural law and have equal rights, and the principle of equal security

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(1) Dr. Ghanem Mohamed Salah, Middle and old political thoughts, page 109-110

of the Rwakian lifting the moral level they do not agree with Plato and Aristotle on the existence of a difference between individuals. Because of gender or citizenship, the slave according to their ideas everyone there is of the same nature, but that a human being must be treated on the basis of a factor that rents for life, however, the criticism of the school. It divided the human beings to the rational of the abductors, this distinction not less harshness and severity of the Division to the Greeks of the world into Greeks and barbarians, there is no reason not to have any of the same mind and totally stupid, the people of the whole without the other <sup>(1)</sup>.

***First: the evaluation of the concept of rights and public freedoms in Athens:***

It cannot be denied that direct democracy has found a fertile ground in Athens, has been the introduction of the principle of popular sovereignty, but the idea of the people didn't mean all citizens both components of the people of the city, but the meaning of the idea of the people is the total free male citizens, thus depriving women the right to participate in the exercise of power.

The method of direct democracy taken by Athens meant that people have most of the authority exercised by himself,

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(1) Ibid 131-133

as well as the power of the people were absolutely not enjoy the rights and freedoms of any guarantees in the face of this authority, the truth is that the concept of freedom was different from its concept in contemporary democracies, as the freedom in ancient Greece didn't mean the freedom of the individual, but the freedom of the citizen as a member of society, which allows it to participate in the public affairs of the city without the modern civil liberty individuals such as personal liberty, freedom of ownership, freedom of belief, proceeding from the Athenian concept of freedom the citizen in the city of Athens enjoys a range of political rights of membership in the assembly of the people, the right to public office, as well as the enjoyment of freedom of thought, freedom of opinion, And this was not the Athenian citizen knows the true individual freedom because of the enjoyment of the state wide powers, comprehensive, and the absence of guarantees to individuals in the face of the city state.

It is noteworthy that Athens did not take the idea of economic and social rights as they are known today, although Pericles was considered a base to ensure that the weak and the poor economically from the ethical rules that should be proud of Athens.

Athens has also defined the dimensions, whereby the Assembly of People to expel any citizen outside Athens if it is

proven that this serious Greed citizen, or has popular might lead to tyranny, and multidimensional in this form, but it represents a guarantee against tyranny, but it includes at the same time an attack on the freedom of the Citizen deportee, in all cases, the rights and freedoms enjoyed by citizens in the city of Athens, did not represent a constraint on the authority of the State, as they were the words of the rights or freedoms of citizens in the face of each other, either for the State were able to deny these rights and freedoms, since there were no guarantees and bordered by only under one is the treatment of all citizens on an equal footing, which is to uphold the word The subordination of all the provisions of the law in this way was achieved freedom and equality in Athens.

### ***Section II - Human Rights in the Roman civilization:***

Rome witnessed some limited attempts for freedom and equality, and if the Romans these attempts have succeeded in getting a part of these rights, this does not mean at all that the Roman Empire had witnessed an era in which the rights and freedoms of the individual against the state, which was fully in control of the various affairs in life, and without the Romans customs and traditions and customs in the law of the Twelve Panels (450BC) to prove and settles, everyone is equal in their knowledge and submitting to its provisions

and the Romans gradually calling for freedom of belief in religious matters, and that the scholars of the Romans had looked to slavery look encouraging, however, it was felt that an anti-nature, the system of slavery (Roman) has confirmed that it may not be in the natural law that generates the people not free and slaves and an enemy of the present in The consideration of positive law, they are not present in the eyes of the natural law, which decides that all people are equal <sup>(1)</sup>.

Attempts to developed countries, and represented a step in the Roman Empire toward the organization of life, the reality of society and the State in Rome was completely inconsistent with the ideas the truth of human rights even in the primitive sense of what was going on from the waste of human rights in Rome and waste the dignity of an aspect of the manifestations of that State and mark works reflect an important aspect of the nature of the Roman society, in this sense confirms Lewis Mumford in his book History of the city that one must to pass the strongest experience passes When In Rome, since it (to block the nose of odors, and put their fingerprints on his ears from the subtle pain and panic, and closes the jaw so as not to vomit inside him, above all, one must maintain cold emotions, domestic need a husband the right to erase all

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(1) The jurists who developed the Roman laws were of Eastern origin, Kababus from the north of Syria, Bilbanian of Homs, Paul of the Phoenician coast, and Moratin of Tire. Justin relied on these jurists to call upon the world scientists. Dr. Abas Al Abody, Ibid page 19-20

of the emitter Roman on religion, compassion, Because all types of inflation will stimulate him in Rome, not least because of the magnitude of decadence and evil <sup>(1)</sup> .

On the other hand, I think the Romans legislators that nature came specific principles should be reflected in the legal position, the natural law, according to them, is the interpreter of the principles of justice and the General Assembly as the eternal natural principles which require respect for the Agreements are consistent with the values of justice in transactions between individuals and the protection of minors from children and the protection of women and the recognition of the demands of blood, kinship ties these principles to the emergence of the absolute legal authority broke the father and his sons, married women were granted legal status approaching the husband's rights with regard to the management of property or raising children <sup>(2)</sup>.

The most prominent thinkers who cared general aspects associated with the idea of human rights and lived in the Roman period, which Cicero 106-43 BC and Seneca 4BC- 65 AC, Cicero shares in the dialog on natural law, and that is synonymous with the absurd, and that the world is one world, one law valid for all nations, in different times because it is of the same nature, and that the purpose of this law, justice

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(1) Dr. Ahmed Gamal. Human rights, ibid page 86

(1) Ibid 157-158

and morality, as long as had emerged from the nature of the divine, moral and fair individuals are equal under the law all legal rights to equality before God and before the supreme law, which was adopted by the Christian thought after that, the objective of Cicero, giving individuals something of dignity, which is one of the most important human rights, even the slaves must have a share of it because they are not just the machines Live Human as Aristotle used by masters for production (1).

Seneca expressed thought lobbying in the first years of the Imperial Era his ideas were expressed clear religious nature, it was believed that nature is that provide the basis for living in which individuals, endorsed the principle of equality, humanity, since the differences between the slave dialectic is the question of the legal terminology and bad luck alone, which makes the man a slave, therefore, the refusal of Seneca. Cicero also rejected the first Rwakians Aristotle's claim that human beings are equal by nature.

On the other hand, Seneca claimed that reliance on the tyrant is the best choice to a large extent depends on the masses, as the crowd of the people of evil and corruption become tougher than the tyrant ruler (2).

Finally, we can say that the views of all of the Cicero and

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(1) Ibid 159-160

(2) Ibid 163

Seneca in general have been the basis on which led to the emergence of the first ideas in this regard of the fathers of the Church through the idea of general equality of humanitarian ideas and revolution when the state of the existence of an effective force and Seneca and say to try to correct the course of life and rid it of evil on earth <sup>(1)</sup> .

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(1) Dr. Ahmed Gamal AL Zaher, Human rights , ibid 95-97

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## **The second study**

### **An assessment of the idea of human rights in the first the position of Christian Roots**

#### ***Preamble:***

If the laws of the old philosophical schools have dealt with the ideas of equality and justice, where the worker economic and social and political role in the show certain positions, such legislation, schools, the evaluation of some of these aspects or ideas that can help to understand the situation better, and that addressed the position of Christianity from this issue contributes to the curtain on an important historical stage about the attitude of some of the intellectual assets of the principles of human rights.

## **The first demand**

### **The assessment of the idea of human rights in the first historic roots:**

The general principles to justify the manifestation of the protection of human rights and fundamental freedoms do not go beyond the concepts of justice, freedom and equality, and if we had our concept of human rights through legislation and the attitudes of some of the philosophers and schools of thought that emerged in the early ages, we are entitled to wonder about the real value of the ideas we presented, this requires an assessment of the idea of human rights in the first historical roots, a process that requires reference to the range of factors of human communities of economic, social and political element are all important factors in reaching a balanced assessment of these rights which we seek to know, understand and assess the respected.

That faith in human beings, loyalty or affiliation of humanity were raised in the nature of the rights and most honest deeper benevolent motives toward the upgrading of the human being in order to be supplied to serve other human man-lamic University Median is treated old nations and peoples in the period to which we have referred, each other or poor and vulnerable strata of some mercy?

The answer can be clear through the acknowledgment that the system of slavery which existed in that period may have been the biggest insults directed to humans, this system, which made human rights the subject of confectionary legal actions and not only one person who was a party to the law of war is the greatest cause for pushing ahead with a view to continued life and economic activity, which was a highly reliable, hence the inequality between classes or categories of society under the factor of lack of respect for the necessary foundations for the right of every human being to live equally with other human beings.

If the machinery of war has steadily developed by ancient peoples was a factor of success in the war in order to achieve security and stability to both internal and external, historical experience confirms that the application of the concepts of human rights through the laws of the State play an important role in achieving the desired objective, the Romanian experi-

ence for example presented their ideas of liberty, equality and democracy, one way or another, but confined these concepts in certain categories which lose the loyalty of individuals. After the defeat of the romans on the hands of the Gaelic tribes the Romans had convinced to change the organization of their army and the aristocrat and application of the principle of equality between people, and has therefore become the citizens they had to participate in the army, and the state in return for the work of this idea and the distribution of land to the did not own land, and authorized the new Constitution of the People's Assembly law to take decisions on war and peace, this, however, did not deny the imperialist character of the wars of the Roman Empire the middle class of the aristocracy remained in control of the people's congresses, the General Assembly vote for these groups of the aristocracy, which they feel with the type of security, or because they are accustomed to submit to the authority, or they may have learned the chain of command during military service, one of the book describes the greatness of cruelty found in the Roman Empire, where it says: (that the poor Romans untouchables, wretched and ruined who walk away, even many of the Romans, educated children and people escaped by surrounding them with their enemies. They were looking for Romanian humanitarian between the barbarians (mobile tribes) so as not

to perish from the barbaric cruelty between the Romans... we have departed to live among barbarians? Throughout and no compunction to never offend, preferring to live free, under the appearance of slavery to live under the guise of freedom (22) <sup>(1)</sup>.

It was not the treatment of slaves to one degree at nations, but the primitive groups were treated well, and not the absolute authority of the gentlemen, was regarded as members of the family, and was characterized by Rome when it was a small town, this kind of treatment with her slaves, but the picture had changed when it became an empire, the slave has become a key element in the economy of the state of Rome justified the degradation of the slave to the animal to utilize it in a way that fits, Mr. Roman was the full right to dispose of the lives of his slaves; that monstrosity, and god willing, God willing, presented by the black bull to death <sup>(1)</sup>.

The Slavery of the Eastern peoples, the treatment of slaves in the Eastern civilizations, more at the mercy of the West.

It is what is known as the human rights in practice could not be said that it was known in those ancient civilizations form which preserves the dignity of human beings away from the sex, race, color or social class to which the individual

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(1) Ibid 99

(2) Mohamed Yossef, ibid 10

belonged.

The laws or legislation that attempted to confirm the ideas such as restorative justice as the goal of the legislation or law, it did not come to the House of Commons Social framework based on the presence of multiple layers in society and they did not deviate from the economic framework of those societies based on the war in a way or another, this has not spared even the philosophical schools and ideas which it called for.

## **The second demand**

### **The position of the Christianity of the idea of human rights**

Reference can be made to the points of view of the two Christian attitude of the general ideas of the idea of human rights, refers to that Christianity has focused on human dignity and equality among human beings, as children of God, and put the cornerstone to restrict the authority since the latter decides the outcome for the service of man and must therefore respect the time that the Authority shall not exceed its competence intervenes in religious matters, otherwise they are materialized in the case of principle (Give to Caesar What Belongs to Caesar and what to GOD to GOD) and become a legitimate resistance <sup>(1)</sup> .

If Christianity advocated the principle (Give to Caesar What Belongs to Caesar and what to GOD to GOD) and the separation between religious and secular authority as well as the idea of justice, and to take the family, the church and state and

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(1) D Ghanem Mohamed Salah, *ibid* 179

the means to achieve happiness, considering people brothers equal before God in the other life, and opened the doors of the churches of slaves and defended the poor and vulnerable against the rich and the application of these principles could lead to the success of Christianity in class reduce inequality and promote justice and equality in the society, but that these principles have not been applied.

If the area had been opened in the era of Constantine, freedom of belief, but that it may still After Christianity became the official religion of the State, with 4,690 of the condemns without state religion very harshly, and that was the beginning of the tyranny exercised by the church where disrupted the individual will deprive them of any status to him then <sup>(1)</sup> .

One of the book confirms that the ideas of a political nature raised by the early Christians did not reflect in any way on the privacy of their own specific as it is in reality the ideas already put forward by others, they believe, like The Rwakians natural law and the principle of equality between human beings and the need for the state's commitment to justice, as well as the important principle they have brought considered the axis that took place embraced the discussions throughout the period that lasted until the 10th century, a principle to obey and respect the legitimate authority in application to say Je-

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(1) Ibid 180

Jesus Christ (gave Render Unto Caesar What Belongs to Caesar and what to GOD to GOD) and obey the testament of St. Paul that (all the same sultans; because there is no Sultan, but from God, and Sultans located is inferior to God, even resisting the sultan resists God, close arrangement will take for themselves the conviction The rulers is not an instrument of fear for good but for the evil. Do not you fear the Sultan? Do righteousness will you praise it because the servant of God rather than an antagonist. But if done evil, fear; because it does not bear the sword in vain, since it is the servant of God who do avenger anger evil, it is necessary that is because of the anger only, but also because of conscience, you for this vanities tribute, as the servants of God stick to this, in particular, they gave everyone their rights: the tribute for the tribute, tax for the tax, and fear for him for those who fear Him. Glory for the glorified.

According to these words, obey the Sultan was a Christian virtue did not deny any of the leaders of the church, they are obeying the orders of God, this is printed on the Christian teachings of the Roman character methodology that countered the constitutional theory, which sees the ruling authority derived from the people).

There is therefore of the view that the treatment of the slave trade, for example, the best when the East Timorese in the west, and especially the Roman Empire.

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## **Chapter II**

### **Human Rights in Islam**

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## **The first study**

# **The basic premises of human rights in Islam**

### ***Preamble:***

To speak about this indigenous partial rights are countless, if it is necessary to understand the meaning of human rights in Islam properly, the start should be the premise of the idea that represents the essence or the basis for the idea of human rights, this is the first step toward studying the details of these rights and, before that, to know the position of the Islamic State of this issue.

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## **The first demand**

### **The Islamic basic human rights**

Islam started from the base of the fixed with respect to human rights, which is the origin of the rights of one of the Doomed One, The Almighty said in the Sura of the believers: “We created man of an extract of clay” (verse 12).

Islam has adopted in its vision of things all the philosophy of moderation, where moderation most apparent features, meaning bypass roads over homosexuality and disintegration overstatements and understatements and exaggerating and insubordination, but based on the ballast, The Almighty said: “as well as we have made you a just nation, that you be witnesses over mankind.” (The Cow: 143) <sup>(1)</sup> , Islam is seen as the most expensive growth of human beings as long as he was faithful to the almighty God, who mocked him for the happiness of the universe, the Almighty said: “He has made

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(1) Dr. Ahmed Gamal, Human rights, ibid 132

subservient to you whatsoever is in the heavens and on earth, all of it verily in that are Signs for those” (verse 13).

The fact that the universe, including man is honoring him from God, and God’s preference that made him his successor in the earth for the enjoyment of the energies and the ability and willingness to undertake responsibility in governance, the Almighty said in the Sura of the cow: “And thy Lord said to the angels: I am in the earth a viceroy” (verse 30).

From the foregoing it is clear that the Islamic Foundation of human rights is based on the divine honor of man, the human person is the successor of Allah in the earth, the axis of the divine religions, and has bowed angels and preferred to other creatures and mocked him in the universe, Islam has initiated many provisions and rights and duties in the various aspects of life and has committed Muslims perform stand then, adherence by the Almighty Allah said: (those limits from Allah, do not approach it).

The fact that the meaning of these words, one of human rights in Islam stem from divine honors to the explicit texts, which is part of the Islamic concept of this issue in an important aspect of slavery to Allah Almighty of Allah , human dignity is the basis for all fundamental rights, it is the humanitarian guide human beings, if human dignity is the source of all human rights, the issue was and still is very all laws and

constitutions, and the backbone of the social life of the individual, and this is what was expressed by the international charters and declarations of the International Covenants on Human Rights, as stated in the Universal Declaration of Human Rights of 1948 (the recognition of the dignity inherent in all members of the human family and of the equal and inalienable rights is the foundation of freedom, justice and peace in the world), the foregoing shows that human rights are linked to The correct doctrine and radical faith in Allah first downloaded Secondly is the source of the Shariah Rights Foundation <sup>(1)</sup>.

Then Human Rights established by Islam is, in reality, are not safe from the governor or the State or any specific party, but is the eternal rights imposed by divine will presumably as an integral part of Allah 's blessing on the rights while he created in the best photo calendar completed human rights in Islam are positioned, and rapporteur in advance, which is commensurate with being a great location on the other creatures, as assigned a role in life, which means giving him the elements of a decent life.

The foundations of the concepts of human rights, we find the basis of the concepts built by Muslims, their lives, the concepts of freedom and justice are essential for the estab-

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(1) Ibid 133-134

lishment of the ideas of human rights, making Islam of justice as a basis for judging. The Almighty said: “Allah commands justice and charity” (bees: 90), justice and an end in Islam which advocated the freedom and equality concepts differs than is the case for western schools that advocated individual freedom at the expense of equality, equality in Islam is restricted in order to achieve justice that gives the governor the right to enter Islam allows individuals in the race to achieve their interests, but he confirms the necessity to help fellow human, when the lack of such assistance the State intervenes then, therefore, the law provides for the Prohibition of murder in order to preserve the soul, which Allah has forbidden killing only the right to, the prohibition of adultery to preserve the Progeny, the prohibition of theft of funds, maintain the prohibition of defamation to preserve the offer, the prohibition of alcohol to preserve the mind and punish the apostate religion to preserve all these necessities and achieve social justice in key aspects, and also Decides that the provisions of Islam equality between members of the society and make the preference in the good work. The Almighty said: “Allah raises those who believe you and who had had Science degrees” (1) .

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(1) Dr. Ahmed Gamal Al Zaher, Studies in political philosophy, Ibid 188

## **The second demand**

### **Human Rights and the Islamic State**

At a time when Europe was living central precious jewel it dominated the life of the Governor and the state so that the absolute Sultan vanished any features of the idea of the legitimacy or submission to the state law, arose in the Arab peninsula, the first legal state established by the Prophet Muhammad, peace be upon him, after immigrating to the city, and the consolidated caliphs, as adults, the legal state in the contemporary sense, its Constitution and the Qur'an and knew the principle of progressively in the legal value of the rules of law governing the relations between the sultan of the state with each other, and between individuals, and the recognition of individual rights and freedoms, and have developed rules that ensure respect for the state and its submission to the law, such as the principle of the separation of powers, and judicial oversight, the report of the sovereignty of the people at the base of the allegiance, any

choice of the people of the Governor control and isolate him, thus the law has laid the legal underpinnings of the state for the first time In the history of human beings, he asks if you want, peace be upon him, had established their own state in the city and began the terms of reference of the Supreme President of the State in the contemporary sense, such as declaration of war, and the justices of the peace, and the conclusion of treaties, the presidency of the executive and judicial branches, in conclusion, that the question of the foreign policy and internal affairs, but the Prophet, peace be upon him, and the Shurah Council in the district <sup>(1)</sup> .

The Islamic State based on the constitution of the religion is the Qur'an, where Islamic law is the mainstay of the State, sovereignty in the Islamic State is not the governor or the convicted person. The Almighty says: "I stayed Book to you judge between people, including Allah not that thou mightiest) (women: 105), some authors have confirmed that the role of the Muslim ruler is nothing more than a monitor the implementation of the orders of Allah , and when this is achieved the Muslims obedience to Allah and His Messenger and policy makers, as well as the Islamic Shariah is the owner of sovereignty in the state's foreign policy, war and peace and treaties subject to Shariah law and provisions.

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(1) Ibid 54

The Islamic Shariah in the Muslim scholars of the earlier system when Allah, the existence of the individual, society and the state, some of whom have gone to confirm that Islam was relieved every law of precedent and the State only executing orders of Islamic law in all cases, the insured remains committed to the religious laws, even in the absence of the State <sup>(1)</sup>.

Hence, the Islamic State is doing according to Islamic thought on legal grounds or legitimacy, it would suffice to refer here to the fact expressed by one of the jurists saying: (the first legal state in the land where the ruling party is subject to the law, and exercises its powers in accordance with the rules of the supreme is constrained by, and he cannot get out by individuals of the rights and freedoms stipulated by Islam, systems and decided the safeguards guaranteeing protection against an attack the governors and the governed alike, Islam is known as the sacred individual rights be insuperable barrier in front of the Governor's powers, it is Islam moved the idea of legal state to the various legal systems in the world, ideas that would otherwise what was known as the world human rights in Europe in the 16th century, after the emergence of Islam appeared on the year ten centuries of European philosophers of the term human rights and started airport The rights and freedoms of individuals. diced lamb meat as a result of the prevalence of au-

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(1) Dr. Ahmed Gamal Al Zaher, Human Rights, ibid 38

thoritarian regimes and unjust. As a result, the idea of the social contract in the emergence of the State, which is the contract under which moved people from the life of the instinct to live in an organized society, however, disagreement emerged between the supporters of this theory on determining the content of this social contract and some of the image as a concession from the sovereign rights in favor of the chosen by the finalized to advocate the absolute authority while others went right to say that the sovereign and inalienable rights and, therefore, does not have the group waived the Governor but mandated exercise on behalf of and under the control of the condition to have the right to resist or rhythm of the UN tribunal in the case of breach of the provisions of the contract <sup>(1)</sup>.

In the Islamic State is not the ruler the sovereignty of the people, as it merely an employee derives its authority from his obedience to the Islamic Sharia, and the parish assist him in submission to Shariah law, if the disposal of the ruling party in the solution of the dispute, the people loyal to him, perhaps in the sermon of the caliph Abu Bakr, a clear expression of the issue when he said: (And I wish you and I am not better than you; The Well here's a fortified barrier and offended.... To as saying... obey me whatever I must obey Allah and His Messenger, If I disobeyed Allah and His Messenger , do not obey me) <sup>(2)</sup> .

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(1) Abd Al Aziz Sarhan, *ibid* 141-142

(2) Ahmed Gamal Al Zaher, *Human Rights*, *ibid* 141-142

Finally, in the case of a revolution against him, led by become the legitimate president if defeated, and those who said the permissibility out revolution, those who refused to revolution or out on the head of state in the case of a breach of its duties not noted the two things: The first is their keenness on the unity of Islamic Nation and avoid sedition applying the legitimate rule in carrying the minimum damage to avoid major damage.

The second is the fixed-day historical precedents of the companions and followers if the companions abstained from getting out to the sultan of the Umayyad caliphs who transgress the command of their Lord, and contravened the book and the Sunna in many of their actions.

The truth is that the latter view is not likely in the opinion of the Islamic jurisprudence, as well as it depends on the material basis and based to the armed force of the ruling party may be possible at the present time, a view that is weak and contradicted with constitutional foundations in Islam followed by the caliphs and the adults <sup>(1)</sup> .

It seems to us that Islam had decided a set of general principles which are considered necessary by the pillars of the system of governance in the Islamic Society, these principles are:

**1-Shurah:** the text on the Shurah in the Qur'an and the Ha-

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(1) Abd Al Aziz Sarhan, *ibid* 58-59

dith true friends rehearsed it come: “gently in the matter”, said the messenger of Allah, may Allah bless him: “no remorse of the one who supplicated not disappointed of consulted”, likely view of Muslim scholars to say that the Shurah Council is an imposition of a duty.

**2-Justice:** it was famous for Islam as a religion of justice and does not ask for justice from the judiciary, but requested from each has no authority whatsoever, acts as the Almighty says: “Allah commands justice and charity”.

**3-Equality:** one of the basic principles established in the Qur’an and the Sunnah. The Almighty said “the believers are brothers,” he says Prophet, peace be upon him, in the farewell sermon: “The Persian” and not to Romanian on Arab and juggling the two verses to the white and red preferred except in piety”, the Koran and the sunnah decide to endorse the principle of equality as a means of achieving justice.

**4-Freedom:** included provisions of Islam a method to achieve the freedom of the individual and preserve his dignity and humanity, and did not put the constraints which limit that freedom only as required by the public interest, have guaranteed religious freedom as well as to ensure that the traditional rights and freedoms and economic and social rights.

**5-The responsibility of the caliph:** this principle is applied in the framework of the legal texts in the Qur’an and the Sun-

nah, which enjoins the Shurah Council, and that the acknowledgment of this principle is understood by caliphs respecting their responsibility for their actions, it follows on the report of the caliph responsibility for what some scientists agreed on the resignation of Caliph if the validity of the post for reasons of physical or birth defects<sup>(1)</sup>.

The principles mentioned above make the political system in Islam more than political systems closer to the concept of western democracy, and vice versa, as the heavenly message of Islam first, and that the Islamic regime was highest in the emerging application and secondly, however, although the existence of this convergence is the difference in some aspects also exists, democracy is the only state while Islam is the religion of the State together this entails the emergence of some of the differences between democracy and the system of government in Islam and in the form as follows:

1-The democratic coupled with idea of nationalism but the later played a role in the emergence of the national state, as determined by its people and that the people who live in the territory of one of the combines its blood ties, sex and blood, language and customs, while the people of the Islamic State is determined on the basis of the unity of the faith.

2-The Democratic aims to achieve the goals of the mundane

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(1) Dr. Anwar Ahmed Raslan, *The general rights and freedom in changeable word*, 1993, Page 31-32

where physical aspects play an important role, while the Islamic system aims at achieving the purposes of spiritual and other material.

3-Democracy decides the absolute authority of the people as the sovereignty while this is not the case in Islam, as the power of the people and the reunification of the Islamic law (Shariah)<sup>(1)</sup> .

On the level of foreign relations, Islam emphasizes the unity of the human race, he said: “People Fear your Lord Who created you from the same one and the creation of her husband and spread from her many women and men. Fear Allah, who will ask you that Allah is watching you “ (Sura of Women), and urges the Islam on the need to respect the rights of others safeguarded in life and property, as long as their rights are not prejudicial to the rights of the Muslims, and the Islamic Shariah, the possibility of the defense of the Islamic State, if one of them or to its security and stability. Also, there are laws and abide by the Islamic state in the event of war, Islam does not justify recourse to the war of aggression and does not authorize the killing of innocent people, the burning of houses and trees, and fighting the elders, women and children who do not fight, and does not authorize the torture of prisoners of war or abuse!!!!

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(1) Ibid 33

## **The second study**

# **The classification of human rights in Islam**

### ***Preamble:***

Human Rights are remarkably numerous with the passage of time, but that addressing the political rights is remained existing and understandable in sources of legitimacy which can either through the original source or sources of dependence that carping criticism of many of these rights that international conventions and the constitutions of the world began to refer to it, while Islam has talked about the importance noted many centuries ago, and can imagine the presence of legal and judicial guarantees the protection of the rights recognized by Islam, then we will discuss the details of some basic rights in Islam as well as the legal and judicial guarantees.

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## The first demand forms of human rights in Islam

There are many rights that should be enjoyed by every human being to live in dignity and security, and its response to specific groups we review some of them through a review of the position of Islam as follows:

### *Section 1: Personal Rights*

That human rights and must be done in the framework of one of the 1,006 integral part, however, some of the most important of the other, the fact is that the fundamental rights or of a personal nature is to maintain the necessary legitimate interests and, in particular, in religion and soul, including:

**A-The right to life:** This right is a gift from Allah to human rights, agreed unanimously on this divine religions, which is taken from the Hadith: “A Muslim on Muslim are prohibited, His blood, and property presentation”, which came in a farewell speech: “Your Blood , your honor and your money scorn-

ful unbelievers, shame on you this day, as this the month of, as your country”, and builds on this right to a group of legal provisions is:

**1-Prohibiting the killing of human, as the Almighty says:**

“and do not slay the soul, which Allah has forbidden” (cattle, 151), and that this right even where all people once life, there is no difference between the noble and the, and the hate-filled idiocies commonly associated with the world, and the sane and insane, and the adult and a boy, and between male and female, and between Muslim and a disbeliever.

**2-The prohibition of suicide,** life is a gift of Allah and the spirit of the secretariat in the hands of its owner, shall not attack them, but is punishable by trying to commit suicide, and El Shafei said that the Messenger of Allah, peace be upon him, said: “The killed himself something of this world, tortured by the day of resurrection”, and inimical to the prohibition of murder, advanced authorization, where Allah is the personality and lethal, the authorization of a person to another that kills one ii has varied scholars in the penalty for the perpetrator, he considered the tap, suspicion, and generates the penalty kills the offender, but the punishment in furtherance, said Al-malikiyah: permission is not suspicion, because it is baseless and permits Act, the perpetrator is a murderer and deserves retribution.

**3-The prohibition of the fencing,** it is the fighting between

the two to prove right or to shame or insult.

In order to maintain the right to life of every human being has historically permitted the street has some prohibitions to maintain stipulation, to eat taboo, which the boar and wine, to preserve his life, it also permits the patient Fitr in Ramadan to preserve his health, relates to the right to life, human dignity and the need to preserve it, the honor for man came from Allah , and once a funeral passed the prophet, peace be upon him, then, he was told: It is a Jewish funeral, he said, “is not he a man”?)

It also establishes the inviolability of the destruction of the type or the human race under any circumstances, for any reason, it is in this spirit that the campus of an audience of scientists the idea of birth control, the elimination of the progeny, and did not allow only in narrow limits.

Islam , on the basis of the previous ideas ,prohibited abusing the victim, even if the enemy combatants in the battle, in this sense, the messenger of Allah, may Allah bless him and grant him salvation): “Breaking the bone of the dead like breaking the bone of the alive in sin”, based on the idea of honoring the Islam of man, alive or dead, and then urging the prophet, peace be upon him, to protect the reputation of the dead: “Say best of your dead,” preventing trample on the graves and sitting on it, where he said: “ you sit on the piece of fire and burns his clothes and enters to his skin, it is better than sitting on the tomb.”

The text of the Islamic Declaration of Human Rights in article (2) clause (4): (the funeral of man must be safeguarded of violation and also incriminates anatomized except by legitimate permission and the State to ensure this <sup>(1)</sup> .

Article 33 of the draft constitution by the Islamic committee of scientists in Sharia law that: (torture of persons as a crime, and not the punishment of the crime or the length of the life of the committed, or where the partner is committed to the attribution of responsibility in his money, with the employee or with the consent or silence, it is criminally liable and responsible partner in crime, civilians, and asking the government of solidarity <sup>(2)</sup>).

Islam is based on the respect of the right to life decides prohibiting torture and punishment and transactions.

**B-The right to freedom: this is the right of the:** The Impact of rights relevant to the right to life is one of the basic human rights truly is a comprehensive multi-year continued human intervention under the different headings of the freedom of belief and worship, freedom of thought associated with intellect and research and selection for truth, freedom of expression and advocacy to good, acts as the Almighty says: “and let you be a party who invite to good and enjoy what is right and the deception” (Al Omran 104), it is estimated that the matter personal

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(1) Dr. Mohamed Al Zohely, *ibid* 141-150

(2) Dr. Abd Al Aziz Sarhan, *ibid* 122

freedom is respected in Islam with two restrictions:

1. The freedom of a person depends upon the freedom of others.
2. The need to restrict this freedom fair laws and regulations and provisions which take into account the public interests.

Islam has ensured the right of personal freedom, people are equal in this right, as the origin is the freedom to know that they are free to either the position of Islam on slavery you must first acknowledge the fact that Islam has not created a system of slavery, but he encouraged the elimination of the previous religions, Islam has not anathema, since Islam came the Arab society, but in that case the rest of the other communities take slavery, as was the economic, political and social system and the law is not found in the adoption of the principle of slavery a bad aspect, not in the Koran explicitly indicates the imposition of a system of slavery to any category of human beings even if thereby involving Fighting Muslims in spite of the presence of other verses which reference to slavery, but they rehearsed it came to indicate some of the provisions of Almighty Allah : “Who They guard their chastity, not to their spouses or what their right hands possess” (the believers, 5.6) or in the verses that calls to free the slaves rehearsed it come: “Who by Zihar, then wish to go back neck” (Sura mogadalah: 3), and there are verses that call for the Liberation of slavery rehearsed it come:

“Even if either of us at subdued them after the redemption”  
(Sura Muhammad : 4)

The Qur’an did not impose slavery on prisoners of war, but the Muslims were forced to resort to impose slavery on the prisoners of war from the door of reciprocity, torture or ill-treatment of prisoners of war after enslavement, strongly condemned by Islam.

Islam has expanded the doors of manumission considering this from atonement, where the narrow ports manumission before Islam, or is virtually confined to the religious conservatism Mr., follow Islam in the expansion ports of manumission several

1-Urging the carrot without restricting the repentance from the guilt as the Almighty said: “What broke into Aqaba. Aqaba is disengagement neck.” (Sura The country).

2-applying the way of atonement repulsed the sins, such as murder is wrong acts as the Almighty says: “And whoever kills a believer by mistake secured Muslim slave friendly to his family” (Sura of Women 9)<sup>(1)</sup>.

Have acquired Islamic Declaration of Human Rights in article 10 install the rule of apostasy and said by Muslim scholars in this regard if it provided: (the rights to follow the religion of instinct, it may not exercise any color of coercion, nor may

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(1) Ibid 132-133

exploit his indigence or weakness or to change his religion to another religion or to atheism).

The freedom of belief in Islam is the sex of the freedom of opinion is restricted to the apostasy, the Islamic regime, granting non-Muslims the freedom of 1,436 and allowed them to live in the Islamic State, as Muslims and Muslims, he was not allowed to enter one of them does not Attainder In Islam when the structure out of the willing, Allah willing, claiming live like belief or opinion, Islam is the status of this restriction is to protect the interests of the man there is no repelling it, indicating that the apostasy from Islam and declared in particular is a blight on the community and damage with premeditation, because of the apostate, what we know without declaring apostasy adopted with a view to question the doctrines of the people taken Islam primarily in its survival, and evidence that the apostate declared converting really mean that harm the interests of the Muslim community, saying: “She said A range of people of the book believe in that which hath been revealed unto those who believe the day; perchance they may Turn back” (Al Omran: 73), it should be noted that the Prophet, peace be upon him, had assured the freedom of the colonel in the first Constitutional Declaration of Human Rights, when the foundations of their own in the city, if this declaration confirmed that the Jews their religion and Muslims their religion <sup>(1)</sup> .

Finally, it would be useful to record the testimony of great British orient list, Sir Arnold in this regard, emphasizes: (if we look to the tolerance extended to nationals of Muslims and Christians in the Islamic Judgment was issued this afternoon that the idea that spread that the sword was working group to convert people to Islam far from ratification (2).

### ***Section II: Political rights***

The intention of the rights which regulate the relationship of man to the state and society, if the establishment of the state of necessity, it is not only the regulations and laws, including those governing the relationship of individuals to the state, these laws and regulations may conflict with the human rights of a personal nature, hence the political rights of individuals in the state.

The field of the political rights of the field, and will only talk about here on what the rights granted by the State to individuals with personal link them within the concept and limits of the public interest and the freedom of opinion and expression and the right to participate in the affairs of governance (Shurah).

### ***A-Freedom of opinion and expression and the right of the Shurah***

That Islam is the partnership between the ruler and the gov-

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(1) Ibid 163-164

(2) Dr. Abd Al Hamed Metwaly, Principles of ruling system in Isalam, page 389

erned and that the ruling party was based its existence on the basis of the best interests of the people, and, in this sense, the status of the scholars of the jurisprudential rule that says: “The behavior of the imam is vested in the public interest.”

Thus, the freedom of opinion and expression is the ability to view various means, among the issues that can express their point of view with respect to matters of policy and governance, the caliphs was seeking the advice of the people and their views on various issues.

The guarantee of freedom of expression, it is the duty of the nation, which is a religious duty, and on the other hand, does not depend on the permission of the authorities, as long as the intended to please Allah and reminders of the path of justice and the right to freedom of expression, and that limits must not be exceeded, and that comply with the right to the argument in the proof and should not lead to depriving others from expressing their opinion, and it must be the view expressed away from mistrust and disillusionment and bad faith, the Almighty said: “O ye who believe punk news, if a troublemaker comes to you will be regretful” (5 rooms).

Linked with the right to freedom of opinion and expression of what is known as the right of the Shurah Council, which means the need for consultation among the Muslims from the parish and rulers, the basis for the Shurah Council according

to opinion poll likely in Islamic jurisprudence, there is in the Qur'anic verses, The Almighty said: "gently in the matter", and that the biography of the Prophet, peace be upon him, confirm this approach.

The fact that freedom of opinion in the political field was guaranteed in the era of the caliphs, Whatever Imam Ali Bin Abi Taleb, whereas by the kharijites: they were about eight thousand after accepting the arbitration provisions in dispute with Mu'awiyah, did not resort to the use of force with them automatically but sent him respected companion Abdullah Bin Abbas to debate them: permission of them four thousand, he and others attributed the refused send pm reply: (Be where if you like, between us and you not shed prohibited blood do not wrong way anyone, you renounced war with you), and said to them: (not star you with fight unless you do not make corruption), this incident shows that the freedom of expression in the political field was guaranteed in the era of the caliphate prosperity, however it does not You can claim that this freedom was guaranteed in the vast majority of which followed this covenant of Muslim history, the caliph was since the era of the Umayyad Caliphate, people are asked to pay homage to his crown prince before his death, this allegiance was not in fact take place in complete freedom, but it was more than most (coercion) on the words of the Ibn Khaldoun center, and the abbasid from at least

the prime minister has not been killed by one of the caliphs, however it has been known in some covenants, some of the scientists who spoke with the affairs of government, and criticized the behavior of the caliphs and princes morning unharmed as al Hassan al Basry in the era of the Umayyad, they said that this situation represents an exception to the rule <sup>(1)</sup> .

***B-The author of the draft constitution of the Islamic Political rights:***

The assessment of any experience should be through the understanding of the theory or intellectual foundations that came by and comparing them with the scientific basis or applied Side, this had not yet been endorsed by any Islamic state; the Constitution contains an integrated vision in this area.

Article 4 of it provides for the establishment of the people's control of the imam and his assistants and accountable, and that the people are the source of authorities, where article 29 recognizes the important political freedoms, such as freedom of thought and opinion and join associations and trade unions, freedom of movement and, as recognized in article 41 of the freedom of the press, and prevents the state from fighting and killing political opponents economically, article 17 (the right to work and earn and acquisitions is guaranteed not to harm him...), article 42 provides that the right of citizens to form as-

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(1) Ibid 284-285

sociations and trade unions in article 49 which stipulates (not suite of his views against the allegiance forward before completeness) and does not recognize Islam absolute immunity of the head of state, since Article 45 No obedience to a creature while disobeying the Al-khal, and forward in a lump-sum payment of violating the Shariah), The provision in article 51 (subject has come forward to eliminate his dealer), article 94, confirmed the inadmissibility of preventing the judiciary from hearing the case against the imam and Governor, Islam and the draft constitution also acknowledges the right of the Islamic Shurah Council and control the constitutionality of laws in articles 61, 71, 83, 84 <sup>(1)</sup>.

As well as the texts of the draft constitution to prevent the ruling Islamic put his hand on public funds or accept gifts, and do not allow the Islamic Shariah law and the draft constitution tampering with judicial authority, with a view to political persecution of individuals or their political rights guaranteed to them under Shariah, and the establishment of extraordinary courts shall not <sup>(2)</sup>.

### ***Section III: The rights of the family***

The nuclear family is the fact that Islam which approved the brain organization of marriage and procreation and decided

(1) Khalfa responsibility, *ibid* 467-470

(2) Dr. Abd Al Aziz Sarhan, *ibid* 176-177

where the equality of the rights and duties of the spouses, The Almighty said: “mothers like them goodness”, but this equality is not absolute in Micromanagement, but preferred to each other in the side, the Islamic Declaration of Human Rights systems, aside from the provisions relating to the family and marriage in summary form in the fifth article in the two paragraphs:

1-The family is the basis for building a society based on the composition of the marriage, the men and women of the right to marry and does not prevent the enjoyment of this right restrictions originating in the race, color or nationality.

2-The society and the state remove obstacles to marriage, and facilitate whatever its way and protect the family and care.

The stair family rights in maternity and paternity leave the Islamic Declaration of Human Rights, reminding of what the progress of the third paragraph of article 7, which stipulates (parents of children their rights, initially being denied their relatives, in accordance with the provisions of the Shariah).

This text refers to Shariah law, have acquired by reference to relatives, while the second paragraph of article 7 of the right to choose the kind of education their sons Father, topped by the Islamic Declaration on Human Rights, under the terms of this paragraph (parents or legal guardians, the right to choose the kind of education they want for their children, with their interests, and their future, in the light of moral values and judg-

ments).

The right of the children have proved to boys in the Islamic Shariah, as a parent the care and upbringing of the small micro-enterprises and direction since the definition of the practice of worship laid it bare, education and the establishment of strong social links and teaching him Qur'an settlement between the boys, and the fact that the rights of children, the right to education, the right of religiously descent, the right to breast-feeding and the right of custody.

The Islamic Declaration affirmed the human rights of these rights in the first paragraph of article 7, which stipulates that each child since birth right of parents, society and the State in the nursery education and physical care, scientific, literary, and it must be the protection of the fetus and give it special attention <sup>(1)</sup>.

#### ***Section 4: economic and social rights:***

Islamic Shariah confirmed the need to ensure a range of economic and social rights; reference can be made to some of the summary:

A-Right to Work: Is Allah and human rights work, Almighty Allah said: (And say: Allah will see your work and His Messenger and the believers), there are many Hadith which urged to work, as the Prophet, peace be upon him: "Leave Me Alone,

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(1) Family rights in Islam, Mohamed AL Zohely, ibid 206-276

the best loss of the sale of the work of the men in his hands,” he said, peace be upon him: “Give the employee his wage before his sweat dries up”, the beating of the Prophet, peace be upon him, the ideals himself was grazing his sheep before he says: “The mission of the Prophet, but the grazing sheep” .

Not adhered to the freedom of the right to work only under general restrictions in the lawful and within the provisions of the SHARIAH and not lead to damage and injury to others, saying, peace are upon him: “Do not harm or prejudice” .

The Islamic Declaration of Human Rights devoted two articles to confirm the right to work, article 13 stipulates that work is the right of the cost of the State and society and for freedom of choice, and the right of the working group on security and safety, the right to equal pay for work of every individual, without any distinction between male or female, the right to equitable remuneration and patients to ensure that the worker and his family a decent Living Yucky, with the request of the sincerity and proficiency in the work, and the necessity of state intervention to resolve the conflict and injustice, as provided in article 14 of the human right to gain the project without monopoly or fraud .

B-He right to social solidarity: knew this right to the Contemporary Islamic Thought under the title: (social justice in Islam) or (social solidarity in Islam), and the messenger of Al-

lah, may Allah bless him and grant him salvation), the right to social integration for State Workers in particular, said: “The crown prince to us pursuant to, and not the house, he should take a house, from the house of money, or not wife so he should marry, or not have an animal ,he should take an animal”, in another Hadith of the Prophet of Allah, peace be upon him, said: “he is not a believer who slept with full stomach and his neighbor is hungry and he knows” .

The Islamic Declaration of Human Rights on the right to social security in article 17, which stipulates:

1-Everyone has the right to live in a clean environment of corrupting the moral epidemics, to enable it to build itself morally, society and the State to provide him this right.

2-Everyone in the society and nation has the right to health care, creating all the utilities needed in the limits of the available potential.

3-The State guarantees everyone the right to a dignified life, would bring him fully the efficiency and adequacy of the Provider, including food, clothing, housing, education, and treatment and other basic needs .

C- To be the right to own property and the recognition of the right of individual property of human beings, and the owner of the authority to act for the benefit of exploitation thing, origin in the property to be individuals, which individual property,

Islam also acknowledged the state public property in the funds that are essential to meet the needs of the nation, which is a source of wealth, article 15 of the Islamic Declaration of Human Rights on this right as follows:

1- Everyone has the right to own property and the legitimate means and the enjoyment of property rights, including does not harm or other individuals or society, expropriation is only the necessities of the public interest, in return for an immediate and just compensation.

2- Deprive the confiscation, seizure under the illegal funds.

Article 16 also confirmed in the Islamic Declaration of Human Rights on the adoption of intellectual property rights, as it stipulates that: everyone has the right to use the peach that any scientific, literary or artistic production, and the right to the protection of the moral and financial reconciliation arising there from that this production is not contrary to the provisions of the Shariah .

What has been said of the details of some of the rights which have been approved by the Islamic Shariah does not in any way mean that it is all the rights enjoyed by the rights under the last divine messages.

## **The second demand**

### **The guarantees of human rights in Islam**

Islam did not confirm the different human rights or statement they are not mere slogans put on certain occasions, and it is here that Islam decided to benefit from the grant of rights or text if it did not have the necessary legal guarantees to protect it and put into practice, whether through faith and conviction or through the awe and power, it is useless to speak of the right to if there is no entry into force, and religion without protected by force purely philosophy.

Hence, the elimination of the most important guarantees is the right that can protect human rights and Shariah and apply general provisions, and therefore the elimination of the state of Islam, which is one of the functions of the prophets, The Almighty said: “Dawood we made you Khalifa on earth tighten between the people have the right nor the plaintiff argued” (p.26).

And Islam is open doors for all people, one of the disputants do not pay any fees for the judicial service, the State bore the expenses, it is no less important for security, education and public health, supported by the state, he wished prophet, peace be upon him, in fair justice where he said: “just one day before the best, or the best, from 60 years of worship,” he said, peace be upon him, further: “Allah is with the judge unless, if Allah is being discharged him” (1).

In the sponsor guarantees in Islam for the protection of human rights is the right to litigate is guaranteed in Shariah law for every citizen in the Islamic state, Muslim or non-Muslim, and here Waqee heard from Shurah, said: (he returned to fighting Mu’awiyah found a shelter he saw a Jewish selling it, said: my shelter, had sold, and did not go! He said: my shelter, in Jewish hands, to lift it to shurah, shurah claimed: Are you aware, he said yes, Qanbar (his servant), son, said shurah: witness of the son to his is not permitted the father said: Glory is to Allah, a man from the people of Paradise) (2) .

The fact that the equality between the opponents and the administration of justice, including whatever varied social status and religious, the direct cause of the desire of many people to convert to Islam, and being with the Muslims in the creed.

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(1) Family rights in Islam, Mohamed Al Zohely, ibid 206-276

(2) Ibid 377

And other safeguards for human rights is equality of litigants regardless of rich and poor, social status or the difference in religion and doctrine and sexual and governed acts for saying, peace be upon him: “plagued the elimination between Muslims, he should rule with right, including in the Word and his indications” (1).

As well as the ruling is disclaimers, where the end or impunity on one only if the evidence proved that before the judge, if this is not there to impose the sentence and shall not resort to hit the accused or tortured to extract the acknowledgment thereof, and included the guarantees of due process in relation to the human rights of all participants in the judicial work, including witnesses, the Almighty said: “and do not harm a writer or a martyr” (282) cow.

It also endorsed the principles of the Shariah and the important aspects of human rights in the implementation of the judicial provisions thus say the Prophet, peace is upon him: “Allah wrote charity on everything, if you are kill to be in the best way”.

Finally, it must be pointed out to the fact and content that the issue of human rights in Islam if there is a problem, this imbalance was due to the Islamic state, starting from the beginning of the Umayyad rule, which was in turn the result of

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(1) Ibid 380

the political problems that stemmed from the question of succession and governance, which has been reflected in one way or the other humanitarian issues of human rights, and the fact that Islam as a system of social, economic, political and had to put the broad lines of justice within Islamic societies on a theoretical level, with a view to turn the world into a unified Islamic society.

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**Chapter III**  
**The development of the rights  
and freedoms**

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## **The first study**

### **The doctrines and schools**

### **The philosophical and intellectual theories**

#### ***Preamble:***

Contributed to the intellectual and philosophical doctrines and theories that have emerged since the end of the Medieval European countries in elaborating the direction serve one way or another, some of the concepts of human rights or the foundations of these ideas in subsequent eras, thus, exposure to some of the trends or ideas in these periods would help in understanding a part of the intellectual assets of the evolution of the human rights and fundamental freedoms.

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# The first demand

## Middle Ages

Ages means that the period in the last quarter of the fifth century until the end of the 15th century, and can be divided into three periods:

**The first period:** until the 10th century CE, Europe has witnessed during the invasion of East Timor from the north and the Arab conquest in the south, and this period saw the church confirmation of its status in the framework of the empire, there was insistence on the necessity of obedience and loyalty to the church and to have been accept any authority even if they are unfair and refused to resist, even if it came from a non-believer, as well as have heard the church to gain privileges before the temporal power, it helped the church to focus its hegemony, during this period the control of feudalism.

**Second Period:** since the 10th century, which extends to the 13th century CE, during which the force has grown the church where intensified conflict between them and the men of the State, so that the theory, which he described as the first

Grand Theft Auto: San Andreas Tzrifin and decide which kind of equality between religious and secular authorities subject closed.

**Third period:** From the beginning of the 14th century, during which we are witnessing the first stages of the collapse of the papal authority, and the establishment of an authoritarian regime with calls for the establishment of a global community and the Government of the divine one against the other which calls for the establishment of the national state<sup>(1)</sup> as a sacred, and that the kings are under Allah they are subject to the authority of the church do not ask before Priests, this has resulted in the conflict between the State and the church, the emergence of new ideas of a political nature by some intellectuals.

We find in every society political doctrine and legal drafting of political ideas, entitling the drafting these tend to the side of the governed from the Free State, including the opposite tendency is extracted in the totalitarian or authoritarian states, political belief in free countries is an essential source of individual guarantees, as it confirms that the political system as a whole to respect for human personality with its free and, therefore, should have the greatest ability possible premium of freedom <sup>(2)</sup>.

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(1) Ghanem Mohamed Saleh, *ibid* 175-177

(2) Ghanem Mohamed Saleh, *ibid* 175-177

## ***Section I: Gregory***

Gregory was one of the strongest of the popes, and the monument of 573 Mayor of Rome but he retired from this position to be devoted to the faculty of the religion in 590 assumed the papacy, which included his writings of the strongest arguments in favor of the duty to respect the temporal power, is the only one of the prominent figures in the church, who spoke about the holiness of the bad governor creation is not in obedience alone, but in the necessity of the fact that this silent obedience and negative, and nationals they must obey and they should also refrain from the attempt on the life of their rulers or criticism or discussion of what they are doing, Gregory protests on the orders of the emperor if he believed that it was contrary to the law, but he applied the theory seems to get rid of the emperor has the power to issue orders that he sees it even if those orders are not Illegal as long as the bears responsibility for that if this responsibility to being the curse of spiritual, not ruling authority derived from Allah only, but the greatest authority on earth, except the power of Allah<sup>(1)</sup>.

## ***Section II: Thomas Aliqwinj***

Is one of the greatest philosophers of the 13th century CE, and philosophy to reconcile reason and faith, this has focused

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(1) Ghanem Mohamed Saleh, *ibid* 189

on the processors thinker to clarify aspects of the State, society, and governance systems and the relationship of the State with the church and other topics, it is of the view that the political authority of the rights of humanity, and these human rights are part of the natural rights of the divine, and that Allah is not responsible for any form of government, because it was not by an administrative this form, and that Allah did not decide to preference one of the forms on the other forms of governments <sup>(1)</sup>, it is believed that the idea of the State asets, mainly related to the tendency of the human being, the person social rush social object in nature cannot live outside the framework of the community, this means that the State is a natural event Required by the nature of human life, is being organized and accepted by the individuals of their freedom to achieve the goal of individuals for the messenger.

The idea developed to be achieved through the realization of the principle of the election of the Governor, the property is wanted by Aquinas be constituency i helped the king elected aristocratic, and order is modified by aristocracy property and democratic, it also shows Aquinas his opposition to autocratic rule, and gives the people the right to resist the dictator, which exceed the limits of its authority under two conditions, namely: exercised this right to a certain sect of the people but

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(1) Ibid 26

must be exercised by all the people, must also take responsibility for only those resistance resulting from the movement of those disadvantages outweigh the disadvantages of the dictator or equivalent, he says that people have the legal right in forcing the ruling party, which derives its authority from the people to the commitment of the conditions under which a waiver of the Authority <sup>(1)</sup>.

### ***Section III: Marcelo Padua***

Without this his ideas in the Italian book issued in 1324 entitled: “Defender of Islam”, with the objective of destroying the papal control, to determine precisely and effectively to its claims of spiritual authority of the right of control, directly or indirectly, to the work of the government at the time, as he went to put the Church under the control of the State, and thus have reached an advanced stage in his defense of the temporal power <sup>(2)</sup>.

The first of the club in the Middle Ages, the principle of the right of peoples to sovereignty as distinguished between the nation, which is the source of authority, and between the government and the Executing tool of the will of the nation, and Padua decided the right of people in the legislative authority and the rule of this power to the executive power, as

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(1) Mohamed Ghanem Saleh , ibid 206-207

(2) Ibid 213

that according to his views the people choose the executive authority shall have the right to supervise and are responsible before him, and the right of people in the club to punish the rulers if they violate the laws enacted by the people, and the right of peoples to take off their rulers away from the authority, Padua's look to the law as it is essential that the issue of the constitutional body.

### ***Section IV: William Aukam***

This philosopher Born in 1290, in the province of Yorkshire and died in 1349, his writings have reflected the dissatisfaction of most of the Christians from the control of the pope that the predominant belief that the evil on the church and Europe together, then Aukam attempted to determine the area the jurisdiction of the authorities of time represented in the emperor or king and religious authority represented in the pope.

However, in all cases did not consider the cancellation or dissolving the authority of the church in the state, but he wanted to reform the situations through separating the area of competence of each of the religious and temporal authorities <sup>(1)</sup>.

The political philosophy of Aukam as reflected the situation of political thought which existed in the 14th century, and it did not come out essentially the discussion of the nature of the relationship between religious and secular authorities, although

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(1) Ibid221

the actual authority of Roman popes on the kings had almost faded, but the new philosophy of Aukam as it put forward in the political discussions of the relationship between the king and his subjects, as well as the right of those citizens to resist if taken a decision affecting their consciences about what they believe that it represents the reality of the Christian faith <sup>(1)</sup>.

Finally, we can say that the Middle Ages had been characterized by the ideas put forward by thinkers, philosophers and scholars expressed the presence of different types of bilateral ties, there are men of religion and powers in the face of the temporal power, or secularists or what could express the duality of the pope to the Emperor, the truth is that the ends of the middle ages during the 14th and 15th centuries has witnessed deep changes in the task, as it devastated the economic crises of the European continent, as well as the spread of epidemics, which ruled a third of the population of France, Britain, and the opulence of the church are all factors led thinking in different ways, the acceptance of new ideas helped the emergence of the national state with the beginnings of the renaissance, which laid the foundations of the first intellectual political and economic system of Europe, and the direct conflict between kings, on the one hand, and Peoples On the other hand, instead of the conflict that existed between the pope and Emperor.

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(1) Ibid 224

## The second demand

### *Section I: intellectual assets of rights and Public freedoms in the Renaissance*

With the dawn of the renaissance and the beginnings of modern times there has been progress in different areas in the European continent, in particular in the field of political ideas and theories, which enriched the intellectual debate on the concept of public rights and freedoms, the most prominent thinkers of this stage Micaville, Jean Baudin and Hooker:

**1-Nicholas Micaville:** Italian thinker, Micaville, was born in Florence in 1469, as had the independent national state in all of England and France, while Italy suffers from division, which impact on the future status of the European continent, which in turn affected the political philosophy, and therefore this club because of the thinker following the realistic policy based on force and caution, those qualities, which are necessary to the ruler <sup>(1)</sup>.

Micaville believed that the armed prophets who had prevailed over the authority, while the failure of others (disarmed) who did

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(1) Anwar Ahmed Raslan, *ibid* 76

not own the force, have been assigned to the vulnerability experienced by Italy in the 15th and 16th centuries to the Catholic church and religion who made as (evil), Italian seemed as the church was the basic reason for the division of Italy to dividing fragmented principalities could together, the solution lies in the creation of a strong Prince is able to unify the rival Emirates, and were then invite this explicit thinker Florence Governor Prince Medici the liberation of Italy from the French, Spanish, and the unification of the country as a whole, and his advice to the prince to be Slyly Sly as a fox is not good and that be strong like a no confidence in one, as pointed out to be fraudulent and prosecutors Religiosity and love of religion, namely that the end justifies the means, all to build a strong, stable and secure State is governed by a constitution that preserves the rights of the crown prince and the grandees and the rest of the people at rates consistent with what they enjoyed of centers and strength <sup>(1)</sup> .

**2-Jean Baudin:** This scholar was born in 1530 and died in 1596, a period characterized by the defection of the church after the Protestant doctrine of yearning for freedom of religion and the need to rid Christianity of the impurities and allegations which were suspended as a result of the conflict between the church and the princes and the use of some clerics Prince as a means of enjoyment of wealth and authority, this conflict be-

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(1) Ahmed Gamal Al Zaher, *ibid* 252-253

tween Catholics and Protestants to France, culminating in the massacre of Sant Partlemy in 1572, in the midst of this bloody conflict created a political party stressed the necessity of coexistence and recognition of freedom of religion for each party of the disputing parties, Jean Baudin was the thinker of this party intellectual view of its views.

Baudin created his famous Book (the Republic) in six parts in 1576, supporters of the theory of evolution and family out of the emergence of the State, under which the family is the origin of the emergence of the State, the State consisting of a group of families associated with some common interests and are subject to the authority of the one supreme, and Baudin supporters of the monarchy, which he preferred to the people and order the Aristocrat, ownership is the natural system agreed with nature, the world is governed by one Allah , therefore, the State must have one president also recognized by the subject him <sup>(1)</sup>.

The property of Baudin is not a system that masquerades as king and natural laws, perhaps Baudin highlighted the idea of sovereignty prevails the distinctive contribution in the legal field and political, it is the element which distinguishes the state in other human communities, and consequently recognizable as the absolute authority of the State, a major characteristic of the State appears on the other groupings and other human organizations,

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(1) Anwar Ahmed Raslan, *ibid* 81

sovereignty is the power to make laws for all people, is characterized by two things; first, it is always permanent authority is linking the sovereignty of the State, the second is that sovereignty absolute authority as relatively do not abide by the authority of the owner of sovereignty, but the divine and natural laws, the notion of sovereignty has played a role in the emancipation of peoples (1) .

**3-Richard Hooker:** Richard Hooker was born in 1544 and died 1600m, and it assumes the existence of the state of nature, where people are subject to the natural laws only, individuals have realized the need to eliminate the adverse effects resulting from relations between them, which was not easy to be completed without an agreement, including the organization of the bedroom of the general government and to subject themselves to it, a message indicates a form of social contract (2) .

### ***Section II: intellectual assets of public rights and freedoms In the 17th and 18th centuries.***

At the ends of the European renaissance and early modern times there was a basis to restrict the sovereignty of certain constraints to which we have referred, natural fashion and orders of Allah and the basic laws of the State, the fact that such restric-

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(1) Anwar Ahmed Raslan, ibid 82-83

(2) Abdorya, Nory Mohamed Hasanen, The entries to political science, the necessary theory in the origin of the state page 22

tions were not newly created specifically restrictions derived from natural law, but extend in the first historical roots to the era of the Greeks and Romans, but they usually appear again to resist tyranny and governance requirement by, the two legislators Grotius and yafndarouf appeared on the first hand what has become known as the doctrine of natural rights, where Grotius published his famous book in years 1625 (the rights of war and peace), and the second was published in 1673 his book (nature and humans rights), then followed in the literature speaks of the natural rights of human beings, as the author of the year 1748 published a book in the origins of natural rights, and Vattel who put his book entitled (human rights or principles of natural Year) in the same subject <sup>(1)</sup>.

### **1-Johaness Alethiosees:**

Is the German thinker used the idea of the social contract in the construction of the political regime in 1603, this theory was applied in practice by parents pilgrims on the ship (May Flower) in 1620, where reference was made to: (We also we sometimes agreement and the conclusion of the Covenant among ourselves before Allah and commit ourselves together in a bond of civilian political <sup>(2)</sup>).

This poses a constraint thinker responds to the State authorities, determines that there is no individual or object absolute au-

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(1) Ismen, Mohamed Adel Zaeter, , The origin of constitutional rights, page 157

(2) Abadorya, ibid 16

thorities not only Allah Who is the one Allah, the sultan men there can be absolutely no restrictions on him, according to his view there are three rules that limit the powers of the sovereignty; the divine rules, the rules of natural justice, with the basic laws of the State, it did not establish a precise definition of what was called the basic laws of the State.

### **2-John Milton:**

This philosopher was born in 1608 and in 1674, he referred to the contractual nature, which led to the emergence of the State and therefore his ideas in this regard can represent the workshop and the social contract theory which developed by Hobbes and Luke, Rousseau, Fimilton refers in a book issued in 1649 that the people are born free, and that the first mistake was played with the sin of Adam, in order to good individuals can live in peace and avoid the Nastiest and evil doers, agreed on the general formulas to link themselves with a view to salvation from harm, and to defend themselves against any exhibitions or rates or breach of this agreement <sup>(1)</sup>.

### **3-Thomas Hobbes:**

He was born in 1588 and died in 1679, the English philosopher, who lived during the civil war 1642-1651, perhaps this impact on support for the idea of absolute rule, as the most urgent needs in that period is a strong government to maintain law and

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(1) Abadorya, ibid 16

order <sup>(1)</sup> .

The fact that Hobbes had begun to express his views in the policy when the translated works of Theoseeds, pointing out the flaws of the evils of democracy after the members of the English Parliament in 1628, the implementation of the bill of rights, and in the year 1615 the publication of his book (The Dragon - L Viathan), who did not accept it and welcome it, not in France where he lived because of the attack on the Catholic Church, and of the paired English living in France, forcing him to return to England after Cromwell promised not working in the political field <sup>(2)</sup>.

In the justified how the state and the governor of the sultan absolutely confirms Hobbes that rights not social beings in nature as it was conceived by Aristotle, but creature selfish love for himself not only to the extent of its personal interests, and this is what led to the first human life difficult life dominated by chaos and anarchy, where the strong control the weak, and that the individual selfish nature, such as such was born in individuals need to contract to live under the presidency of one of them surrendering their natural rights for all, as a result, contracted to individuals to live in a social life instead of living in the life instinct, which was leading to a war of all against all, in the case of Hobbes natural decides that there is no justice or property The injustice, but there is a fierce war and harsh, and in such circum-

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(1) Ibid 17

(2) ASHmed Gamal AL Zaher, Studies of political philosophy, ibid 254

stances it does not appear from the virtues except by force, deception and, thus, get rid of the evils of the life instinct through to comply with the central force capable of keeping security and stability for the benefit of all, through the social contract.

#### **4-John Locke:**

Locke was born in 1632 and died in 1704, the biggest enemies of absolute rule, and the representative of the liberal movement in Europe, which came identical ideas with the views of the supporters of the doctrine of free association, he devoted his life to defend the freedom and anti-Semitism tyranny and control, and is credited with giving the English Revolution the intellectual and philosophical strength against the family of Stewart, when he expressed his philosophy in his book the civilian government of 1690, and have contributed in its analysis of the idea of the social contract in the establishment of the sovereign people's theory, and also participated in the establishment of the principle of separation of powers <sup>(1)</sup>.

Based on Locke from the principle that the civil government is the result of a social contract, which is consistent with Hobbes in the presence of the lives of the innate human lived before moving to the life of the community, and that the social contract is the transfer of individuals to live the life instinct to the life of the community or society the organization politically, but he

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(1) Anwar Ahmed Raslan, *ibid* 85-86

disagreed with Hobbes in that the life instinct was not the life of chaos prevailed in the domination of the weak, as Luke sees that the life instinct was the life of the virtuous circle of natural law and its principles of freedom and equality, as the individuals wanted to move to a better life, went to the organization of the freedoms provided by natural law and to push forward the attack, which could be located, who have contracted with them to establish the authority of the person or group of Persons representing the entire community.

Based on the foregoing, the social contract when Luke had been among the people by the Governor on the other hand, for the administration of justice and the freedoms that people enjoy in the life instinct, vlok ruling is a party to the contract, unlike Hobbes, as a result of the social contract in accordance with the concept of Luke that individuals or the people did not give up their rights in full, but the governor of the renunciation by the extent of the staying power, and this is not what after Hobbes, locke also confirmed that the authority of the rulers are restricted and not absolute, the basis of the restriction is the contents of the contract of mutual obligations, as the ruling party is restricted to respect the rights of individuals which did not renounce it, and that it is binding on the administration of justice, including in return for commitment of individuals to due obedience to the ruling party in the limits of the decade, if exceeded The gover-

nor of his powers under the contract and assaulted the rights and freedoms of individuals, the right would be fixed for them in the resistance of the ruling party and isolate<sup>(1)</sup>.

### **5- Montesquieu:**

Montesquieu was born in 1689 and died in 1755, and is the author of the real credit to provide a clear definition of the principle of the separation of powers, when understood this principle in his famous book (the spirit of the laws), issued in 1748, it recognizes the existence of the three authorities, where the legislature consists of two chambers as a distinct people from the general public because of birth or wealth, and hence, special interest is necessary to enable them to defend, fiancée of the terms of reference of the two councils are equal, but when the conflict will be limited jurisdiction of the second object only, the executive power is the king shall be the implementing authority, however, uses the general law, the judiciary and called it executing authority of Private Law<sup>(2)</sup>.

Montesquieu emphasizes that freedom achieved observance of authority, whatever this authority, the collection of power in the hands of one is no longer a threat to freedom, there can be no freedom with the collection of the authorities (Chapter Three), according to the actual anticipation is the only way to secure

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(1) Ehsan Ahmed Al Mafragy, constitutional law lecture, Baghdad University 1987-1988.

(2) Ibid 91

freedom, and justify this principle three considerations which were:

1- The human trials have proved that enjoys wide powers not specified will harm their use, and this is what makes it necessary that the political system on the basis of the principle of separation of powers.

2- The principle of the separation of powers is the only way to ensure that the laws are respected and applied correctly.

3- Montesquieu believed that the English system of the era, which was fascinated by based on the principle of separation of powers.

To achieve this principle, Montesquieu refers to the need to have all the power of the ability to decide on matters falling within its competence, the Parliament enacted laws, thus for the rest of the authorities, and that he should enjoy all the power of the ability of prevention that each power authority to prevent other authorities to intervene reference <sup>(1)</sup>

In summary, the views of Montesquieu end to the adoption of two things:

The first is specialization for each authority in directly the function, as well as the necessity for cooperation with the three authorities; the second is the mutual control between the three authorities <sup>(1)</sup> .

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(1) Ibid 92-93

## **6-Jean Jacques Rousseau:**

Rousseau was born in 1712 and died in 1778, and represents an important stage in the history of democratic thought, as it is his book (the social contract), issued in 1762, the clearest and most powerful books that I wrote about the theory of popular sovereignty, and therefore could not deny its impact on democratic development during the 18th and 19th centuries, Rousseau also played an important intellectual role in the French Revolution, they often boot of its leaders were supporters of the Russo the followers of his views, the French Declaration of Rights was issued in 1789, to record many of the views of the philosopher flout the people, individual freedoms, the law expresses the general will (2).

Russo called for direct democracy, and denied the theory of the divine right of rulers, it was believed that direct democracy is the best system of governance, the representative government of and called it elected aristocracy (3), this means that he does not agree to the parliament, and this trend is consistent with what to think about the idea of sovereignty, as it is when the mooring inalienable rights, and that they are indivisible, and on this basis the sovereignty cannot be transferred because they find expression in the general will and the will of the people imagine that substitute for the will of another person, Russo result refuses

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(1) Ibid 95

(2) Ibid 95

(3) Ahmed Gamal Al ZAher, Studies of political philosophy, ibid 257

parliamentary system based on the idea of democracy, which was Luke and Montesquieu (1).

Rousseau began his book the social contract with the words: (born rights free but with bar fetters everywhere, it, rights, imagine himself the master of others, which is nothing more than most of the bondage (2).

Rousseau aims at the establishment of direct democracy through his idea of the social contract, he says the waiver individuals of their entire natural, not a specific person, in particular, and certain persons in particular, also went Hobbes and Luke, but the waiver of the whole society, this is the basis of the famous principle: the principle of popular sovereignty.

In addition, when individuals drop their natural did not lose all those rights in practice, they had replaced by the rights of the city of guarantee them a better life, a more effective rights of those rights which they had enjoyed in the life instinct, civil rights guaranteed by the political authority, contracting when Rousseau and his function is to bring the general will replace the individual will, Rousseau asserts that the life instinct was a happy life, and that the authority could not be focused on force or the right of conquest, otherwise this will lead to the denial of the right, as long as the individuals in the life of instinct were free, enjoying full freedom and equal with each other, they cannot go

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(1) Anwar Ahmed Raslan, *ibid* 95

(2) Ahmed Gamal Al ZAher, *Studies of political philosophy*, *ibid* 258

to the life of the community or the life of organized civil society only under agreement their liberty, which What happened when the agreement was unanimously approved by the free wills of individuals, which is an agreement for the group, not only for the benefit of an individual or group of individuals, the objective of this contract waiver individuals of their natural rights for the benefit of the community, and as long as this waiver be without reservation by individuals, it is not anyone that calls for something in this way, the principle of equality is achieved, as, uh, as long as everyone has a waiver of the rights of the community, it will not be paid to the infringement of the others in this achievement of the principle of freedom, but that the waiver of the natural rights of the corresponding as mentioned their enjoyment of civil rights, where the person who built their protection, thus, Rousseau had differed with Locke, which limit the waiver of certain rights without each other, thus according to the social contract by Rousseau, the authority or the sovereignty of the group, he recognized the principle of popular sovereignty, which is reflected in the principle of the rule of law as an expression of the General Assembly<sup>(1)</sup>.

Notes on the social contract Rousseau that the goal of freedom, but in fact none of equality even at the expense of liberty<sup>(2)</sup>.

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(1) Ehsan Hamed Al Mafragy, *ibid*

(2) Ahmed Gamal Al Zaher, *Studies of political philosophy, ibid 258*

The conclusion was that the rules of the ideas of Rousseau are based on two basic ideas:

**1-Democratic Freedom:** The summation of the individual independence of the meaning of the individual subject to the law, which participates in the making, it also means the freedom of the individual, provided they do not exceed the freedom of others, and then this freedom does not exist in the parliament.

**2-Equality:** Meant by equality in individual independence, equality and freedom, it is understood that freedom refused the privilege to some over others, and to ensure that the freedom for all, equality <sup>(1)</sup> .

Rousseau ends to the link between freedom and equality through law and exclusion of all public personal power <sup>(2)</sup> .

Finally, it is important to note that the general will of the free zones which Rousseau is beyond the scope of the force of the metaphysics of nature, and that Rousseau does not believe the principle of the separation of powers <sup>(3)</sup> .

### **7. Adam Smith:**

Smith was born in 1723 and died in 1790 <sup>(4)</sup> is a famous Scot-

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(1) Anwar Raslan , ibid 96

(2) Ibid 96

(3) Ahmed Gamal Al Zaher, Studies of political philosophy, ibid 258

(4) One of the best professor in laseco university, he was a friend to Daved Hyom , the students came from Russia and other countries to listen to him, he was special person , he was absent mind most of times. Someone bring him cup of tea with some bread and butter and he said to him that is the worst cup of tea. Despite these actions, he has great ability in researching and meditation. His lecture was in moral philosophy.

tish economic consideration to the English society outside the scope of the dominant class, and believed that a society full of conflict is not governed by the code of ethics of the members of a balanced and stable or very poor, women and children working in the coal mines and are paid very low wages and see the light, the truth is that the social life in Britain in the 18th century was described as the worst it could be seen that man.

Smith issued the famous book known as *The Wealth of Nations*) which discussed the important issue is summarized in how to continue the society in the course of life, despite the discrepancy between its members and different orientations, i.e. how to place the individual in mind search for utility first so that in the end the interests of the community <sup>(1)</sup> .

Smith says that individuals do not sympathize with them because they are brutally taken but sympathy is the result of the love of their own, and this is paid to individuals to work, but that the community members motivated by special interest is weak society feeble, but competition between individuals that are creating strong community, looking for private interest are bound including dictated competition considerations with others imposed on them to provide the best of what they have during an investigation into their own work in the long term, these special interest according to the considerations developed countries

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(1) Ibid 214-215

generate in nature as a result of competition in the market for the benefit of the community, which is called social harmony <sup>(1)</sup>.

The objective of the Smith, the first in this book was the dimensions of effective factors check the state or other activities of the commercial market, it confirms that non-intervention in the laws of the market is important to take the factors of progress course without interference from any one, in this way the rich spread there is a big gap between the capital and the poor, and ideas in this form apply to Britain in the 18th century.

Smith also saw the need for the triumph of rationality, it is the view: Do not attempt to operate valid, but let the good work emerge through selfishness, and Nasser Smith the emancipation of the slaves in order that this step healthier over the long term <sup>(2)</sup> .

Thus, it seems clear that the ideas of Smith may have played a role as an assistant in the elaboration of the traditional theory of individual rights and the General Assembly as it calls for a limited role or secondary state in economic and social relations, a State which he wanted Smith is the State Guard and placed in the service of the community, the State grants the community legal form to seizing the system, it remains a priority for the state workplace community caused by eating too much junk food and expression of economic base (faire, let it pass) <sup>(3)</sup>.

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(1) Ibid 318

(2) Ibid 319

(3) Naem Ateya, traditional theory of general human rights, ibid 66

### **8-Jeremy Bentham:**

Bentham was born in 1748 and died in 1832, a philosopher and a man British law interested in studying the nature of impunity and prison systems, and in 1776 with the publication of his book (the government), in which he attacked the wording of the law in England in that Covenant, shortly before in 1780, Bentham formulated his theories on the philosophy of the legislation, and his philosophy, which is called the doctrine of mutually beneficial cooperation to achieve the greatest good for the greatest number of people, and impunity is the work of evil which is a project in itself and can be justified only if impunity to prevent greater evils, so it seems obvious that Bentham managed in the age in which he lived to identify the need to collect and coordinate criminal law reforms, and this has had a significant impact in the philosopher generation of jurists who Like permanent attack on the abuse of justice and methods of circumventing the laws <sup>(1)</sup>.

### **9-John Stuart Mill:**

John Stuart Mill was born in 1808 and died in 1873, where the link between democracy and the state ideal, it is in his book (analog) State decides that the best types of states and governments are sovereign or central force Supreme Court for the conduct of state affairs in the hands of the members of society, where every citizen has the right to political participation, and confirms

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(1) Alan Balmer, translators are Sawsan Al samer, Yussif Amen, Encyclopedia of Modern History,105-106.

that the democratic system and that it was not the ideal system, it is the best of the existing regimes and is based on the need for everyone to enjoy the freedom and equality <sup>(1)</sup> .

Finally, it seemed to review a consensus developed the idea of democracy and its link with the rights of individuals and the great fear from the rule of tyrants, this provision, which not only shows through the judgment of a single individual or small group of individuals, but that this form of governance can be seen through the judgment of the many at the expense of the few <sup>(2)</sup>.

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(1) Ahmed Gamal Al Zaher, *Studies of political philosophy*, ibid 259-260.

(2) *Ibid* 261

## **The third demand**

### **Traditional theory in the General rights of individuals**

We in the former requirement to the intellectual assets of the rights and freedoms of individuals, it was clear the continued attempts to highlight the supreme value of the individual as the ultimate goal, and the State only as a means to secure the rights of individuals and balancing to achieve common interests or the public interest, this is an issue related to the declarations of the rights of man and citizen, the emergence of the Protestant religious reform movement before, and the emergence of the bourgeoisie, there is a reciprocal relationship between these factors and that it was difficult to identify the nature of this relationship, whether a historic coincided or is it for this reason <sup>(1)</sup>.

Here it is necessary to refer to the most prominent intellectual figures we mentioned which represented their ideas and intellectual foundations of human rights and fundamental freedoms,

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(1) Said Zedany, *liberalism democracy, Arabic future*, 16-17

and some have been affected by the other, Russo and Gracias is professor of political science, not the impact of Luke in Montescio secret to anyone, but that Luke had in Russo also to a large extent, while the latter impact when the quote from the idea of the social contract and civil society, but the difference remains between the natural rights of the scientists and philosophers of France in the 18th century, scientists avoided the natural rights of access to express their ideas as a result of the Logical results of the enjoyment of the protection of the princes of Europe, but the result has led to the crystallization of the concept could be called traditional theory in the general rights of individuals <sup>(1)</sup>.

**In this demand**, therefore, we will define the concept of the traditional theory of the General rights of individuals and the criticisms directed to it.

### ***Section I: traditional foundations of the theory of the General rights of individuals :***

If the first seeds of individual doctrine emerged during the medieval era through the nature of the policy of the dissolution of the central authority, and the United States replaced, intellectual movement, which was active during the when the theologians natural principles <sup>(2)</sup>.

However, these ideas have not materialized in full only in the

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(1) Ismen, *ibid* 159

(2) Naem Ateya, *traditional theory of general human rights*, *ibid* 63-64

17th and 18th centuries by a group of intellectuals, philosophers, who already had been exposed to their ideas.

That the individual is a traditional doctrine of several foundations, which first found in the theory of argument and content of natural law, there is no law carries a great moral dimension to the logical concepts, which earlier on all modes and independent legislation it, and this is what creates an obligation on the state to respect, then came the theory of the social contract that culminated by Jean Jacques Rousseau, as the recognition of individual rights through the necessity to consider everyone as enjoying human dignity as the highest creatures of Allah Almighty <sup>(1)</sup>.

Personal Humanitarian is free and discreet, and thus enjoys the rights derive from the humanitarian value of the High Commissioner, and the system of governance that respects these foundations through expressed in its laws, perhaps the most common ideas in the scope of the traditional doctrine, namely the individual nature of the social contract, natural rights of human beings are the same for all members of the group and in every time and place, this means the existence of a model law, one of the so-called natural law, like what we call it human rights natural rights, and imposes an obligation on the jurisprudence of the need to search for the contents of this law and its rules, and legislators express these rules in positive laws, since the individuals

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(1) Ahmed Gamal Al Zaher, *Studies of political philosophy*, ibid 570.

are born, the restrictions on the freedom of every individual to be performed in the social life to be equal for all, because if it did not in fact this figure any dialed extension equal this individual freedom than the other, equality permission and that you are not in fact a natural right, but it due to maintain the natural rights of the individual, as the legal rule, if it was not based on equality, it would cause the reduction to one or another of the natural rights of an individual <sup>(1)</sup>.

Natural Law is the ideal to be reached and achieved, on behalf of this law shall be guilty of the reality with a view to the establishment of another system an alternative, in the 18th century, it was natural law represents the aspirations of the third layer (The bourgeoisie Layer), by its name and starting from it, I want to condemn the royal regime supported by the aristocracy, the fact is that there have been attempts to guest in Germany after the Second World War to revive the idea of natural law as a result of the tragedies that were left by the war in the same German people in this law, for example, individuals find the highest, also lies behind the hopes and aspirations of the new classes, which seeks to achieve a new legal system, the person while he finds himself encircled by and mired in natural conditions on the economic, social and political level, it seeks to overcome these situations on behalf of the search for absolute justice The Best of said: (The

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(1) Ahmed Anwar Raslan, *ibid* 104

History of Natural Law is the story of the search for absolute justice human rights failure) (1) .

As you find traditional theory of individual rights and the General Assembly which in the social contract as the group is not based on the will of the individual, but it assumes a consensus more than the will of the individual on the establishment of the group, and this is what has been by the social contract, as the individual is in the presence of the community, or is the *raison d'être* of the group or the cause of its existence, it must be subjected to collective goals and objectives goals and targets of the individual, the task of the group is limited to ensuring that the goals of individuals and leaving their free to achieve, hence the freedom of individuals is the basis of the existence of the group and its laws (2).

**The traditional theory considered concludes:**

1-That State sovereignty and authority of the general authority find the legal basis in the compromise individuals two components reflected the last decade.

2-That part maintained by individual liberty is a natural right to this override State sovereignty and authority of the general authority, there is no absolute limited by the state and its power or represented by either a king or a prince or other names, that there are limits to the sovereignty of the State.

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(1) Monzer Al Shady, *The doctrines of law*, 38-39

(2) Naem Ateya, *traditional theory of general human rights*, *ibid* 570-571

If the individual theory with several foundations they remain true unity shows through the following results:

1-That the State is not absolute Sultan, this is ranked as a result of its content could not impose legal rules applicable as you want or without restrictions, which also includes other groups or names as chattel, sex, class and family.

2-Respect for individual rights must be at the level of objectives and means, there can be no justification for tyranny merely seek to create better conditions in the future for a life in the principles of freedom, the goal does not justify the means.

3-That every action aimed at achieving the public interest presupposes the sacrifices by individuals but these sacrifices and constrained by the need to take into account the individual rights <sup>(1)</sup>.

4-The role of the state is the legal role in social relations, the basis for this conclusion is built on some economic observations, in the sense of social harmony, when will the economic base which says: let him work let him pass <sup>(2)</sup> .

## ***Section II: The criticism of the traditional theory***

The general rights of individuals and the

We can outline the most important criticisms of traditional

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(1) Ibid 572-573

(1) Naem Ateya, traditional theory of general human rights, ibid 66.

theory in the general rights of individuals:

1. The isolation does not exist; the idea of the isolated human rights that live in normal condition prior to entering the life of the community is the idea of metaphysics, that is, the idea of merely exceeds the actual nature of Muslim women.

2. The human being social in nature, which never lives isolated, as nature does not enable him, what could be a reliable researcher is not an end in itself, but the individual rights in society.

3. Absolute equality between the members of the group was unrealistic, individuals differ from each other, and civil work to remove these differences but complicate it.

4. The idea that there is a perfect law is the idea of a fiction and does not exist.

5. The idea of natural right before the group is incorrect.

6. Absence of positive obligations on the state, since the latter is a state guard as traditional theory, and the establishment of the State of any positive action by the criterion of this theory is the basis of the breach.

7. The inability of the individual theory to restrict the state law.

8. The collapse of the idea of the individual, there is no in the evolution of modern legal thought a certain area that is organized by the State.

## **The fourth demand**

### **The Marxist concept of human rights**

Marx and Engels began establishing the perception of human rights in their perceptions to condemn what they called bourgeois outlook human rights, calling them false and deception, and begin the starting point in the Marxist doctrine of the cause of human rights from the perception that the rights guaranteed freedom captive of nature lived until he was able to understand some of its aspects and its secrets when managed to Harnessed or part of it for himself but he quickly appeared on the level of social problems as a result of the growth of private property and generated from social classes lived their prisoners of social development based on the exploitation of Marx, Engels and I think that this exploitation reaches its climax in the capitalist system.

## **The second study**

### **Human Rights in the proclamations and declarations of rights and revolutions and constitutions**

#### ***Preamble:***

The rights and freedoms were not obtained by the peoples born of a grant from the kings, but it was as a result of the revolutions and the uprisings against the kings of the sultan of the Absolute, and then restricted this Sultan gradually, it would be appropriate for the development of indigenous peoples in the exposure to an attempt to claim their rights and freedoms in the months of the countries that witnessed the developments in this regard, England and the United States of America and France.

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## **The first demand**

### **England**

#### ***Section I: The Covenant bulk 1215***

The oldest documentation to decide a group of freedoms associated with the conflict between King John and supervision, as a result of the king to impose arbitrary taxes and imprisoning quarrel in prison without a legitimate reason, which led to the revolution of the supervision of arrest where obligated to sign the written document, and the renewal of the support of the work contained in the years 1216, 1217, 1225, 1297 With some modifications, the most important of the texts of the Covenant bulk are the text of the article (39) which stressed the inadmissibility of the arrested or imprisoned or stripped of his liberty or be deprived of the protection of the law or pure except by virtue of a warrant issued by the Jury according to the law, the text of the article (40) came on

the tongue of the King and content (will not reject or to be rigid or tolerate in the application of the law fulfilling justice).

The value of this document are derived from the recorded the principle of submission to the king, the rule of law, and that the resistance of its tyranny is not considered, as well as the need for the approval of the taxpayers in any tax be imposed <sup>(1)</sup>.

### ***Section II: The broad range of rights 1638***

The presence of the representatives of the ordinary people in the parliament as well as scheduled since the year 1311, thus bringing to parliament a weapon wielded by another king when interfere with the freedoms of the people is to refrain from approving the king needs to collected from taxes <sup>(2)</sup>.

Broad rights were issued on 7 June 1628 after a conflict between King Charles I (1649- 1625), the parliament, as the condition of the parliament for its approval to the money request on his part, Charles I to finance the freedom against Spain to agree to the content of the broad range of rights which included a set of rights and freedom of citizens, and before the king this offer, however, the dispute between the parties concerning the possibility of renewed the king to impose taxes which led to be accused of betrayal of the rights and freedoms of the people, which ended with the arrest and

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(1) Ibid 381-382

(2) Naem Ateya, Declarations of human rights And the citizen in the Anglo-Saxon experience,ibid 382

trial in front of the parliament, who spent his execution (1) .

The most important of the items contained in this document:

1-The failure of the King to request donations and compulsory

2-He had not the imprisonment of any person, posing specific real

3-The declaration of martial law in time of peace

4-Respect for personal freedom

5-Not to impose taxes only with the consent of the parliament (2).

***Section III: a declaration the list of rights in 1689:***

English document which is important decided by the parliament in February 1689, which ended the authority of the absolute monarchs as it announced the members of parliament (for the adoption and affirmation of their rights and freedoms old) invalidity of the authority of King alleged in the Disable laws or the lack of action or exception without the approval of the parliament heroes special ruler and the legality of the collection of the king taxable without the approval of the parliament, and the right of the people to file petitions and com-

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(1) Ibid 382-383

(1) Faisal Shatnawy, human rights and International humanitarian law, 2001, page 41.

plaints to the king without a passport for their presentation of punishment for that and the parliamentary elections must be free, and not to hinder the freedom of opinion and debate and all actions must be taken into account equity and excessive penalties and fines and fees required of individuals in this document laid the foundations of individual freedom in England <sup>(1)</sup> as it is considered the declaration of rights in the eyes of the scholars of the English Constitution of England.

The fact that the occasion which called on parliament to the issuance of the document had been associated with the invitation to the English people of King William of Orr Ang and his wife Mary entering the throne after King Jacques ii, where the view of parliament that this is an occasion for the liberation of the links between the king and the people, and affirming the rights of individuals <sup>(2)</sup> .

#### ***Section IV: The law of personal liberty or *Hapies Corpus****

Is the fourth document, which provided the basic guarantee for the protection of personal freedom from the arbitrariness of authority, issued in 1679 and amended in 1816 under which prevent the detention of any person without a legal memo, the detainee is entitled to request a review of his ar-

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(1) Naem Ateya, *Declarations of human rights And the citizen in the Anglo-Saxon experience*,, ibid 384.

(2) Ibid384

rest is also committed to the elimination of dealing with stand in good faith (*nullum crimen, nulla poena sine lege*) that means (no crime no punishment but with a law) has limited the application of this law when it was issued in 1679 on the criminal, and then spread after the amendment in 1816 bell to other articles, if the detention for another reason except for the commission of a crime <sup>(1)</sup>.

### ***Section V: Common features of English documents***

1-These documents do not address when installed a group of rights that come with any PHILOSOPHICAL or theoretical justification, but only recorded on king a group of excesses and abuses enumerated in these documents exclusively and requests from the king or the authorities recognize not to return to follow because it is not consistent with the freedoms and traditions of the kingdom, others succumb to the king these demands under the influence of the circumstances in signing the document which provided to him.

2-These documents are of a purely English where she grabbed the head to the other peoples of this vary these documents for the declarations of rights that were issued after the French Revolution in France

3-the English documents are heading to restrict the pow-

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(1) Ibid 385

ers of the King without the parliament as the English people is that the parliament represented by and therefore does not think any measures where the absolute powers, this key feature distinguish English constitutional documents from those in America and France, and that the distinction between the legal base of the regular constitutional and al Qaeda said in England that parliament can do everything except transform a man into a woman

4-This is the documents as well as the case with us documents which included the rights of citizens of the most respectable part of the documents issued by the parliament with the broad powers does not affect these rights because of the established traditions in England or a bicameral system, and that any party that affects these freedoms will find himself had lost the election, as the English people do not accept any prejudice, including myself as well as the importance of the presence of a free horse, and the English judiciary plays an important role in maintaining these rights and freedoms <sup>(1)</sup>.

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(1) Ibid 387-388

## **The second demand**

### **The United States of America**

The views of Thomas Jefferson and the intellectual basis for democracy in America, democracy when Jefferson is a means to an end of human freedom, and can signal some legislators in the declarations of the rights of America to identify the contents:

#### ***Section I: a Constitution or proclamation of Virginia***

Acquire This Constitution promulgated on 12 June 1776 of particular importance in the field of individual rights, it is the first Constitution Guarantee a declaration considering human rights, as the most populous texts are included the majority of the individual rights that Everett school natural rights where it refers to the (that individuals by nature are equal in Freedom, Independence and have Human Efforts close to them

that do not have upon entering the meeting status be denied any form of contracts and these rights to the particular benefit of life, liberty and the acquisition of the property as well as fact finding happiness and security and get them).

He also pointed out that the constitution to the people, the source of the authorities and the freedom of the elections and the need for trial before a judge of good faith, and freedom of the press, and the inadmissibility of depriving a person of his liberty or his life except in accordance with the law and its courts where there is an element of the jury and the freedom of every individual to express his views on the responsibility for the abuse of this freedom.

The fact that the constitution of Virginia had counted when the model followed the attic other U.S. states, which included their constitutions contain similar <sup>(1)</sup>.

## ***Section II: The declaration of independence of 1776***

This declaration came after the American revolution as the era of the Congress and to the Commission on the status of five people, including John Adams and Benjamin Franklin and Thomas Jefferson, who had a major impact on the development of the Declaration and read the declaration notes that

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(1) Ibid 426-427

full of ideas and expressions of the natural rights of the social contract theory, since the idea of equality and the recognition of the rights of non-renounceable life and freedom, as well as installing the right appealed to resist tyranny.

The declaration of independence had been among the reasons for the American people to provoke the revolution with the statement of the holy political rights <sup>(1)</sup>.

It was stated in the preamble to the Declaration: (we consider the immediate facts is clear on its own, all people are created equal, that the creator had greeted them waving human confirming non-renounceable among these rights, life, liberty and happiness, and to ensure these rights built governments which derived its legitimate since the governed become irrelevant if the government whatever the form of the destructive for those purposes was the right of people to amends or repeals and replaced by a new government <sup>(2)</sup>).

### ***Section III: The common features of the declarations of the rights of America***

We can outline the common features of the declarations of the U.S. rights and the constitutions of the United States, which was issued after the success of the American Revolution as follows:

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(1) Ibid 426-427

(2) Ibid 424-425

1-The constitutions of America the first case in which they knew their constitutional history written constitutions bound either before it had it been limited to merely a set of customary rules or legislation in certain matters were called the basic laws of the kingdom.

2-The US declarations of rights on the basis of ideological philosophy and justifications of the theory of natural rights of individuals as the view of the authors of those declarations, as did Jefferson in the US declaration of independence by the year 1776 not only ads on the mere enumeration of individual freedoms but cared made a philosophical basis.

3-The US declarations of rights to the Americans, the only intact declarations of Rights English This are contrary to what the mechanism of the French declarations of rights after this date.

4-The US declarations of Rights restricted the executive and legislative authorities of the country toward individuals this progress in its favor, facing the English declarations of rights that have been identified by the authorities of the executive power, the US declarations is the first attempt to record the rights of individuals in a constitutional document to safeguard against the tyranny of the majority and not repel the tyranny of the Kings only, it rejects that the people is the owner of absolute sovereignty, which is not an officer, but

stresses that the people despite being the owner of sovereignty is subject to a legal rule by the content of human rights.

5-The US declarations of rights considered binding legal rules and therefore any US citizen the right to uphold before the courts are constitutional rules take precedence over ordinary legislation and therefore cannot be challenged in any ordinary law violates these declarations and the human proved to be in the interest of the individuals <sup>(1)</sup> .

#### ***Section IV: The Federal Constitution of 1787***

The US Federal Constitution approved in 1787 by the Madison after he met the representatives of the United States separated from England in the Philadelphia Conference, and approved on 17 September 1787 replaced the old charter of the development compact and the new constitution, with the exception of Rhode Island city which didn't join ,in the year 1799, the union in this Constitution contains a declaration of the rights of individuals, but it contained some provisions regarding the guarantees of individual liberty, recorded the first article of the ninth paragraph, the need for the allocation of the necessary burden according to the capacity charge and the inadmissibility of the public money in non-specific purposes in accordance with the law and not granting titles <sup>(2)</sup> .

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(1) Faisal Shanatawy, *ibid* 45

(2) Naem Ateya, *Declarations of human rights And the citizen in the Anglo-Saxon experience,, ibid* 428-429.

On 25 September 1789, the US Congress adopted one paid ten amendments approved by the fulfillment of the promise of cutting some states worried about the independence and freedoms of its citizens, these amendments became effective on 15 December 1791 in accordance with article V of the Constitution, these amendments relating to the eight of them guarantees of individual rights and property rights, the latter two states in its internal matters <sup>(1)</sup> .

These amendments provided that it is not the Senate enact laws that impose the followers of a specific religion or prevent the freedom of newly monetary or reviews, or limiting the freedom of the press or to prevent the people from gathering to express their rights and the prohibition of the Senate, the law that prevents citizens from carrying weapons, buy, or sell, as the representatives of the states do not have the right to enter one of the homes of citizens without his approval as a State may not search for papers or property of citizens, and in the case of committing an offense has the right to claim the murderer to expedite the trial and has the right to know the offense committed by or in violation of the right to interview witnesses who would testify against him and heard tool and also has the right to obtain witnesses In his favor, and has the right to appoint one to defend him <sup>(1)</sup>.

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(1) Ibid 431-432

(2) Ibid 445

The fourteenth amendment adopted by Congress in 1868, even from a formal point of view on the problem of the constitutional black that this addendum or amendment stipulates that all of Born or endemic in the United States and underwent its authority is a citizen of the United States, and that the jurisdiction where the citizen, and the addendum in the second paragraph, to say that any mandate does not have to issue or apply any legislation that would limit the features or characteristics that enjoyed by citizens are not entitled Les mandate that deprives people of their right to life, liberty or property without taking into account the guarantees sufficient legitimacy and thus available to the constitutional protection of the rights of civilian citizen against the government mandate that person belongs after this protection is limited in accordance with the first 10 items of the Constitution of the Government of the fourteenth report of the acquisition focused their right to full equality also <sup>(1)</sup>.

The 15th Amendment was issued in 1870, adopted the principle of equality in elections between whites and people of color, the 19th Amendment Act of 1920, which granted women the right to vote on an equal footing with males <sup>(2)</sup>.

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(1) Fisal Shanatawy, *ibid* 46-47

(2) Naem Ateya, *Declarations of human rights And the citizen in the Anglo-Saxon experience,, ibid* 439-44

## The third demand

### France

The French experience in the areas of the Declaration on the Rights of the more than richer experiences as the concept of human rights has crystallized in the period of the history associated with the appearance at the global level of the French Revolution and the declaration of the rights of man and citizen, issued on 26 August 1789 the most famous declaration because there has been a universal value, and that most of the constitutions of the countries of the World include a list of individual rights, which were couched in seems to be affected by the provisions of the Declaration of the rights of man and citizen of 1789 <sup>(1)</sup> .

It can refer to some of the boilers in the French experience related to human rights are as follows:

#### ***Section 1: Declaration of the rights of man and citizen (26 August 1789)***

The first is the Universal Declaration of Human Rights

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(1) Admon, Rebat, ibid 446

and the citizen, who was issued after the French Revolution, which made the Constitution of 3 September 1791 <sup>(1)</sup>.

The term human rights in the title, the French declaration or in its introduction, which stipulates that (ignore or forget or contempt of human rights is the only reasons of public calamities for the corruption of Governments) and the words human rights in this declaration in some of its articles, article II, which stipulates that the (very every political meeting is to preserve the natural human rights which does not come by the limitation period).

This Declaration contains an introduction and seven of ten article, and bases of the authentic is summarized in the following points:

1. Every human being has the natural rights sacred and eternal and non-changeable because of the change of time, and cannot be disposed of, life, liberty and equality.
2. The goal of the political society is to maintain human rights, that the human person is the goal.
3. There are no limits of human freedom, but the limits arising from the exercise of the inalienable rights of others.
4. The law could not affect the individual freedoms; it cannot put a barrier only toward the harmful actions of the society when necessary.

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(1) Abd Al Hamed Mtwaly, *Brief in the theories and political systems*, page 333.

Within this declaration, a set of rights, the first article of the civil equality between citizens, provided that (people are born and remain free and equal in rights), and here, the scholar Esmein asserted that civil equality include the assumption of equality between individuals in the civil war of the acquisition of the rights protected by the law, it does not mean equality in wealth, but it means the protection of everyone equal protection for their human, civil equality and ensure the protection enjoyed by the individuals of the benefits or rights in the same way and with the same force, these civil equality can only be achieved through the recognition of the equal opportunities for social benefits provided by the State.

The truth is that a document on human rights in the third year of the revolution had included a reference to the right to equality, as well as the French National Assembly in 1793 <sup>(1)</sup>.

It follows civil equality and the following results:

1. The equality of all citizens before the law, in the sense that the legislature to enact laws without discrimination between one person and another or layer.

2. Equality in public institutions, that is, the institutions of the State in carrying out their duties not to discriminate between individuals in terms of the services provided by or return, and equality before the public institutions of the State leading to

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(1) Esmail Al Ghazal. *Constitutional law and political systems*, University Foundation for Studies and Publishing, Birot, Page 47.

the prohibition of the establishment of special justice for some individuals to be distinguished from the others <sup>(1)</sup>.

The second article showed that there are natural rights that cannot be waived, liberty, property, security and resistance of tyranny, and that the principle of equal rights is the only basis upon which such rights <sup>(2)</sup> .

The fourth article defined freedom as (the right to work of all that would not be prejudicial to the rights of others, and direct the natural rights of each individual have no borders except those which ensure that members of the other group of the same rights, and should not decide the limits of natural rights, but by the law).

The truth is that without political freedom become other freedoms just can grant authority or represented recovered at any time, therefore, through the Montesquieu on this issue the best expression when he decided that the democratic systems of governance is the source of all freedoms and guarantees that political freedom can be achieved effectively only in the light of the availability of other freedoms, because voting is one requiring the free press and the recognition of the freedom of the meeting .

This speech makes it difficult to accept what Napoleon de-

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(1) Mostafa Kamel Lila, *ibid* 381.

(2) *Ibid* 381-382

(3) Faisal Shantawy, *ibid* 52.

cided that (democracy we have culminated in the person of the head of State chosen by the nation <sup>(1)</sup> .

As well as the progress of the Declaration to the other freedoms set forth in the articles the seventh, eighth and ninth sessions where you can not accuse any person or his arrest and detention except in the specific cases according to law, and no person can be punished only in accordance with the law and that the accused is innocent until proven guilty, as well as prevents article 10 inconvenience any person because of his religious opinions, article 11 on freedom of expression of ideas and opinions is one of the fundamental freedoms and, therefore, every citizen has the right to freedom of expression and writing and publishing the override condition on the freedoms of others in accordance with the law, the truth is that the reason why the authors of the French declaration focused on freedom of expression and decide to have a special article returns to the dominant Church which did not allow for such a right as well as the shed Feudalism.

The twelfth, thirteenth, fourteenth and fifteenth sessions, confirmed to ensure the necessary protection of human rights, as well as the taxation and public expenditure and accounting staff on the work of the administration of the affairs of individuals, while spoke of article XVI of the principle of separa-

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(1) Mohamed Kamel Lila, page 387.

tion of powers as the true criterion of the political system.

The seventeenth article spoke of ownership when provided (to the property is guaranteed and sacred place no one can be deprived of them only when necessary assembly legally fixed this matter in a clear condition that gives him fair compensation <sup>(1)</sup>.

## ***Section II: human rights and fundamental freedoms In the French Constitutions***

France since 1789 to 1875 three of the written constitution, and virtually free French constitution from the first constitution, which was issued after the great revolution and the Constitution De Gaulle window of 1958 underline a set of basic rights and freedoms, the most prominent of these constitutions that can be referred to:

### **1. The Constitution of 3 September 1791:**

Is the first constitution after the French Revolution, and provided that the sovereignty of the nation, the latter enjoys separate legal personality the personality of individuals supervising its affairs, but that the ballot was not comprehensive and straightforward, namely that individuals did not have the right to personal exercise of election, because sovereignty is in the nation and not to the individual, this text has been the constitution of the principle of the separation of powers be-

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(1) Ibid 389

tween the figure in the US Constitution <sup>(1)</sup>.

The authors of the Constitution of 1791 did not change anything in the declaration of the rights of man and citizen issued in 1789 when the Constitution of 1791, but they put him as the head of this Constitution, in this way, the body of the Constitution of 1791, the Declaration of Rights of 1789, constitutional formula binding after the effects of the Declaration and the question of the value true legal breaches, the text of the Constitution, inter alia from the basic principles of sovereignty back to the nation as mentioned (article III) according to this Constitution the principle of the separation of powers in article VI in straitened circumstances, this constitution has remained in force until the vote on the Constitution of 24 June 1793.

## **2. The Constitution of 24 June 1793:**

The Human Rights declared in the introduction to the present Constitution, which consisted of (35) Article, distinguish him, social recognition by the right to work and the right to social assistance, the right to education for all citizens, and the adoption of this Constitution, the idea of the ballot to apply after its promulgation, and proved the right to resist tyranny, if the government of violating the rights of the people, and introduced the method of the referendum in the legisla-

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(1) Faisal Shantawy, *ibid* 53-54.

tive process.

This is the constitution described that an important aspect of which was derived from the ideas of Rousseau, and the people agreed on this constitution after it, but it was not coupled with implementation due to the rebellion of the major cities and the threat of external invasion, prompting politicians (Conference) to the adoption of the resolution on the 10th of October 1793 to postpone the implementation of the formation of the Revolutionary Government derived from this government the committee known as the Committee on public safety, which was under control of Robspear, this was known as the reign of terror, as the revolutionary government remained in power until the 26th of October, 1795 <sup>(1)</sup>, which was issued after the constitution of 1793, the Constitution of 22 August 1795 and the Constitution of 13 December 1799 which reflected the ambition of Napoleon Bonaparte and was marked by the dictatorship of the executive authority with her young general to retain some semblance of democracy and the constitution 4 June 1814 Royal, who refused the King where the principle of national sovereignty and insisted on the same as the source of authority, but that the general freedoms and obtained by the French people and recognized by the French constitutions issued after the French Revolution,

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(1) Ismail Al Ghazal, *ibid* 269-270

the freedom of the press freedom and personal and religious freedom and equality before the law, and then came after this Constitution Monarchy Royal Constitution is the Constitution of 1830 whereby known France for the first time parliamentary system certain formula <sup>(1)</sup>.

### **3. The Constitution of 4 November 1848:**

Then between these constitutions after the revolution of 1848, the bourgeoisie, which led to the question of the invocation of the electoral Aristocracy once again, was the elimination of the monarchy and the accompanying the practices classified as anti-democracy and human rights and freedoms.

This begins with the Constitution, the Declaration of Human Rights, expressed in his introduction, composed of eight articles, as well as Chapter II which begins article II and ends with article XVII <sup>(2)</sup>.

Under this constitution, the consolidation of the principles of the Declaration of 1789 and address new aspects and settled the right to vote and reduce the voting age to 21 years of age to run for 25 years, as justified the idea of the Republic the progress, social justice and the Constitution of 1848, the lawmaker proved to list and describe the traditional rights of freedom and security, he pointed to the abolition of slavery in France, under article 10 refer to the principle of equality,

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(1) Ibid 271-272

(2) Ibid 272-278

the text of the constitution on the right of assembly as well as the abolition of the death penalty for political offenses, as indicated by the constitution to the need for the government to provide aid and assistance to the needy citizens of the disabled work (1).

#### **4-The Constitution of 27 October 1946:**

After the constitution of 1875 was canceled on 10 July 1940 Constituent Assembly elected in 1945 has been entrusted with the task of drafting a constitution for France, where most of the draft constitution of the April 1946 approved by the Constituent Assembly in the same year and presented to the People's Assembly on 5 May 1946, but he refused and has encountered severe criticisms, in particular with regard to the freedom of education which are not recognized in the texts of this Constitution explicitly, as well as the articles that dealt with the right to property, if the vast majority of smallholder tyrant was not considered by the State nationalizing industries, real estate, that is their right to property that derives its existence from the legislator which can be stripped of them at any time, one of the important reasons for refusal that important part of the French electorate was demanding more Freedoms and Rights (2).

In fact, the draft Constitution of 19 April, which is rejected

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(1) Ibid 279

(2) Fiasal Shantawy, *ibid* 61, Naem Ateya, *ibid* 15

by the French people had included the introduction or the preamble to the declaration of the rights disconnect began the first talked about the freedoms followed by the second chapter talked about the rights of an economic and social nature and organized the rights and freedoms in this project on two grounds; the first is the need to affirm respect for the French people and faith in the principles of free, given the fate of the bondage and highlights, and then invoke the developments that hit the joints of the socio-economic life of the destination, and the need to find a kind of compromise between the traditional principles of the theory of human rights and freedoms, the General Assembly, any consensus formula between the principles of the free individual and the principles of socialism <sup>(1)</sup>.

As for the Constitution of 27 October 1946, approved by the French people and the subject after rejecting the draft constitution April 19, referred to above, the elected Constituent Assembly on 2 June 1946 to deal with the draft Constitution of 19 April the change of the substance of the previous project, the general principle is to try to find a compromise formula between Marxism and the ideas of the free doctrine.

The truth is that the conflict has raged between ideologies, when the Constituent Assembly to review the declaration of

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(1) Ibid 1007

rights, and in order to avoid the disagreement has been abandoned for a detailed declaration of rights in the constitution to be prepared with the acceptance by listing the basic rules contained in the Declaration in the preamble to the constitution, where it began by assuring that the French people (declares that every human being without distinction of origin or religion or creed sacred rights could not be demilitarized, officially confirms the rights and freedoms of man and citizen for the declaration of the rights issued in 1789 and the fundamental principles recognized in the laws of the Republic).

Then add the following text: (moreover declares as a necessity for our time basic principles, economic and social development of the following:

1-The law guarantees women equal rights with men in all fields.

2-Everyone who is persecuted for his liberty has the right to have recourse to the territory of the Republic.

3-Every individual has a duty to work and the right to work and do not oppress everyone in his work or his profession because of his origin or opinions or beliefs.

4-Everyone has the right to defend its rights and interests by the association which chooses to join.

5-The right of the sit-in organized by the special laws.

6-Each and every draft of the exercise of civil in nature

or involves the monopoly must be property, owned by the group.

7- the nation ensures that individuals and families the necessary reasons for the nation, and uplift for all, especially for mothers of older workers and the protection of the health and physical comfort and leave, and every human being finds itself unable to work because of age or physical or mental incapacity or ill health has the right to obtain the necessary ingredients, and ensure the survival of the nation great and unobtrusive equal opportunities for education and training, the State takes it upon themselves to organize free education at all stages <sup>(1)</sup>.

The legal value of the Declaration of the rights of man and citizen of 1789 an introduction to the French Constitution of 1946 Search first raised in France on the legal value of the owned by the declarations of rights, including the declaration of the rights of man and citizen, issued in 1789, and then raised the controversy over the legal value of the preamble to the French Constitution of 1946 or the introduction, which included a group of public rights and freedoms.

In the case of the Declaration of Rights of 1789, the view of the faith not considered that the provisions of a legal nature, modes and therefore they are not enforceable, as it is a

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(1) Ibid 1016-1017

mere declaration of principles but lacks the universality and binding legal, this is submitted or the preamble paragraph of the Declaration is not merely a philosophical rules or programs would not be organized by law, even if he wanted the legislature to confer upon the legal status of their respective at the heart of the Constitution, especially if he wanted to take into account the formal point of view, and to improve any dispute that may arise in the future in this regard through the texts of clear and specific addresses are not supplied in the introduction, the ornate words by resounding speeches may raise telling simple human rights, not a man of the law, to use its methodology to distinguish between what is and what is optional and not binding, this applies to declarations of rights, it is also a philosophical nature is ideal for non-binding, and this at least for formal school represented by (Carrey de Milberg Wiseman).

As for the substantive school represented by (Brigadier General Lyon Doge and Moors Horio) are going to, contrary to the formal school <sup>(1)</sup> reaffirming the Brigadier Doge to the declaration of rights the highest rank and more of a force of the same constitutional texts, so the public rights and freedoms which were not provided for in the Constitution of 1875 is the highest French affair, the Constitution itself, but

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(1) I Hassan Mohamed Shafek Allany, the general freedoms, lectures in the law college, Baghdad University, 1996-1997.

is under the Constituent Assembly drafted <sup>(1)</sup> .

The introduction to the Constitution of 1946, it did not provide for the French public rights and freedoms in its provisions, but he announced in the preamble to the contrary to the draft constitution, which was rejected by the French people in the draft constitution of the same year (April 1946) and the fact that the scholars disagree on the legal value of this preamble or submitted despite being part linked to the Constitution, whether when put on the one hand or when a referendum by the people, where the referendum with the Constitution did not separate him, and it is not a separate document, as was the case of the Declaration of 1789 <sup>(2)</sup> .

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(1) Othman Khalel, the constitutional law, first book, page 36.

(2) Ibid 136.

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