

## Balancing Between Human Rights And State's Right To Maintain Its National Security

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### *Abstract*

Human rights moved to the international sphere after the establishment of the United Nations in 1945 through the Universal Declaration of Human Rights in 1948 and the treaties that followed it, which formed what is called the International Bill of Human Rights, and civil and political rights were the first generation of human rights generations guaranteed by the International Covenant on Civil and Political Rights of 1966, the balance between human rights and the state's right to self-preservation is a key pillar between the state's desire to preserve its national security and its provision of the rights and freedoms of individuals, as the balance between them has become an important factor in measuring the effectiveness of the measures taken by the state in the light of human rights standards, the more security prevails, the more human rights are the victims, which requires finding a balance between the measures taken by the state to preserve its national security and the protection of human rights.

Keywords: Human Rights Balancing, National Security, Civil Rights, Political Rights, State of Emergency.

### **Introduction**

Although international legislation is related to human rights, it obligated states to its different diversity of rights and obligated states to apply them within the framework of their national legal system, but there remained space for states to move through under the names of national security, maintaining the stability of the state and respecting its social and cultural system, therefore, we may find some cases that enable the state to partially

or completely suspend human rights in line with the internal conditions experienced by the state, or the state may apply human rights in a different way from other countries under the pretext of maintaining the public order of the state, therefore, international conventions related to human rights have given the state room to suspend the application of human rights in whole or in part in the event of emergency or exceptional circumstances that require resorting to this procedure, as well as the legality of making specific reservations to some of the texts contained in these conventions, and we find the basis of this based on the idea of balancing human rights and the state's right to maintain its national security.

### **First: Definition of Human Rights**

Several definitions of human rights have emerged among Western and Arab jurists, Ibrahim Badawi Al-Sheikh has defined that a person being a human being enjoys a set of rights that are necessary and attached to him, regardless of his nationality, sex, religion, origin, social or economic status, as for the jurist René Cassin, he defined it as the science of human rights, attached to the social sciences, studying the relationship between persons in accordance with human dignity, while identifying the rights and options necessary for the opening of the personality of every human being, this definition presupposes the existence of a science in itself whose subject is human rights.<sup>1</sup>

In the definitions of international organizations, human rights have been defined as universal legal guarantees for the protection of individuals and groups from the actions of Governments that affect fundamental freedoms and human dignity, human rights law obliges governments to do some things and prevents them from doing others, i.e. the vision of the international human rights organization is based on the premise that they are inherent rights in human nature and without them he cannot live as a human being.<sup>2</sup>

Accordingly, we can define human rights as (the set of principles and standards that are consistent with the written and unwritten human nature inherent in human dignity, based on the freedom and equality of individuals and groups without discrimination, and obligatory to respect in times of peace and armed conflict).

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<sup>1</sup> Hamdani Hussam El-Din, Protection of Human Rights through the Mechanisms of International Committees, Master's Thesis, Faculty of Law and Political Science, University of Ziane Achour, Algeria, 2020, p. 7.

<sup>2</sup> Osama Abdel Rahman, Human Rights Theory and Practice, 2014, p. 5.

**Second: The basis of commitment to human rights**

The basis of the obligation within the scope of the law does not depart from the framework of the rules of the Convention represented by treaties, or what settles within the scope of international dealings within the scope of custom, noting that treaties represent a state of relative effect, as its impact is limited to the treaty states and this is within the scope of bilateral treaties that are not legitimate, hence it was necessary to discuss the basis of the commitment of states to human rights, especially since the features of human rights in the declarations have been contained in the form of guidelines, do not have the element of binding, therefore, it was necessary to transfer the principles of human rights from the scope of the convention to the scope of international jus cogens, in order to achieve their desired purpose by preventing the state from evading the basics of human rights, at the same time, this achieves the basic goal by ensuring the commitment of States to it, protecting victims of violations resulting from their violation and repairing the damage, and this requires that it be implemented according to two criteria, the first related to immediate and rapid compliance with the standards governing human rights through the implementation of the jus cogens norm at the internal level of states, and the second through a long-term gradual commitment whose purpose is to reach the goals and objectives of international conventions on human rights, such as the right to sustainable development, according to what It is permitted by State resources.<sup>3</sup>

The obligation to protect human rights must be characterized by a distinctive and special character in that it is an abstract imperative rule that imposes general and binding legal obligations on all states, and at the same time it is an objective rule in the face of all, this was recognized in the ruling of the International Court of Justice in the BARCELONA TRACTION case issued in 1970, and it stated that the principles related to basic human rights create an obligation on the part of states towards the entire community of states<sup>4</sup>, this decision represents an indication of the court's recognition of the importance of rules related to the protection of human rights in the face of all, and accordingly, the court has distinguished between the obligations of states towards the international community as a whole and the obligations related to the framework of diplomatic protection for patriots,

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<sup>3</sup> Dr. Hassani Khaled, The Nature of the International Obligation to Protect Human Rights and the Difficulties of its Implementation, Journal of Studies on the Effectiveness of the Legal Base, Vol. 1, No. 1, 2017, pp. 83-84.

<sup>4</sup> Ashraf Arafat Abu Hijaza, Assigning International Responsibility to the State for Human Rights Violations, Egyptian Journal of International Law, Vol. 65, 2009, p. 233.

and this represents a primary commitment for all states, for this, the rules relating to the criminalization of acts of aggression and genocide represent objective rules of general relevance that all states have an interest in protecting, so the obligation imposed here is a global obligation in the face of all<sup>5</sup>.

As noted by the International Court of Justice in the Genocide case between Bosnia and Herzegovina on the one hand and Yugoslavia on the one hand, it recognized the need to refer to this Convention as an essential basis for the contemporary international order and as it represents an obligation stemming from the universal conscience that must be applied objectively<sup>6</sup>, this is confirmed by the Court's 1996 judgment, where the Court recognized that the rights and obligations contained in the Convention are rights and obligations of all<sup>7</sup>.

At the same time, this obligation is of an objective nature and is not subject to the principle of reciprocity, since a State's departure from human rights principles cannot be accepted on the pretext of lack of respect by other States, which means that it is not subject to reciprocal personal obligations in accordance with the rules of traditional international law<sup>8</sup>, this has been confirmed by the Human Rights Committee, in its commentary on article II of the International Covenant on Civil and Political Rights, by stating that "each State party has a legal interest in the performance by each other of its obligations, and this arises from the fact that norms relating to fundamental human rights constitute obligations erga omnes"<sup>9</sup>, this was recognized by the International Court of Justice in its Advisory Opinion on the Interpretation of the Convention on the Prevention and Punishment of the Crime of Genocide, which affirmed that human rights treaties are normative treaties that create objective international norms whose implementation is not dependent on the mutual interests of States<sup>10</sup>, the European Court of Human Rights, in the 1978 judgment between Ireland and

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<sup>5</sup> Ashraf Arafat Abu Hijaza, *op. cit.*, p. 233.

<sup>6</sup> Dr. Ahmed Abu Al-Wafa, *Commentary on the Judgments of the International Court of Justice*, *The Egyptian Journal of International Law*, Volume 54, 1998, p. 203.

<sup>7</sup> Vincent Chitai, *Contribution of the International Court of Justice to International Humanitarian Law*, *International Review of the Red Cross*, Selections from 2003, Geneva, p. 186.

<sup>8</sup> Ashraf Arafat Abu Hijaza, *op. cit.*, p. 240.

<sup>9</sup> Adel Al-Masadi, *International Commitment to the Protection of Guaranteed Human Rights and Regional Energy*, Research presented to the Conference on Human Rights and Protection at the National and International Levels, College of Law, Sultan Qaboos University, Oman, 2013, p. 15.

<sup>10</sup> Ashraf Arafat Abu Hijaza, *op. cit.*, p. 241.

the United Kingdom, also affirmed the objectivity of the European Convention on Human Rights as creating substantive obligations<sup>11</sup>.

The International Criminal Tribunal for the Former Yugoslavia has emphasized the consolidation of the jus cogens nature of norms relating to the protection of human rights, in particular those prohibiting torture<sup>12</sup>.

### **Third: The State's Right to Maintain National Security**

The International Encyclopedia of Social Sciences defines national security as "the ability of a State to protect its internal values from an external threat" or as "the study of how the State makes its decisions and determines its political plans, with the aim of providing the necessary protection of its internal values from external threats"<sup>13</sup>. The Encyclopaedia Britannica defined national security as "securing the state from submission to external powers"<sup>14</sup>. The well-known American politician (Henry Kissinger), who had served as US Secretary of State for National Security in the seventies of the last century, defined national security as (any measures taken by society and seeks through them to preserve the right to survival) and despite the importance of these definitions, they are inconsistent with the modern concept of national security under the new world order, most of the definitions of national security involve a general concept that includes peace, but the concept of national security is more comprehensive and includes other meanings, as well as securing the individual from fear internally and externally, to also include the protection of basic political and social values as well as the preservation of economic interests, taking into account the difference of those basic values from one society to another<sup>15</sup>. Dr. Fayez Mohammed Al-Duwairi defines national security as "preserving the principles, values, goals and policies related to the safety of the pillars of the state and the elements of its continuity and stability and protecting it from existing and potential dangers" and goes on to say: National security is based on four pillars:

1. Awareness of internal and external threats and challenges.

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<sup>11</sup> Adel Al-Masadi, , op. cit., p. 16.

<sup>12</sup> Muhammad Yusuf Alwan and Muhammad Khalil Al-Mousa, International Human Rights Law, Protected Rights (Part Two), 1st Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2011, p. 62.

<sup>13</sup> The International Encyclopedia of Social Sciences, The Macmillan Company and The Free Press, New York, Collier, Macmillan Publishers, London, 1972, Volume 11, P40-44.

<sup>14</sup> Encyclopedia Britannica, Vol. (16), 1962, p.623.

<sup>15</sup> Amin Howaidi, Militarization and Security in the Middle East: Their Impact on Development and Democracy, 1st Edition, Dar Al-Shorouk, Cairo, 1991, p. 50.

2. Develop the necessary strategies for the development of the state's forces and the secure launch of these forces.
3. Building armed forces and internal security forces capable of confronting and confronting these threats.
4. Preparing scenarios and taking appropriate measures to confront threats and challenges, whether internal or external, provided that these preparations escalate with the escalation of threats.<sup>16</sup>

Based on the foregoing, we can define national security as (the ability of the state to maintain its entity, security and safety against the dangers that threaten it internally and externally, protect the values, principles and various political, social and economic interests of society, and respect human rights and fundamental freedoms).

National security varies from one country to another, depending on the form of the state and the system in it, as national security in dictatorial regimes gives importance mainly to securing the system of government in them without any regard for the security of the individual and the state, there is no value for the security of the individual when it conflicts with the security of the system, but in countries with a democratic system, it is completely different from what it is in dictatorial regimes, this is because democratic systems believe in individual freedoms and take into account the principles of human rights and the rule of law, and therefore the security function aims to establish security and stability and maintain the security of the state at its three levels: local, regional and international, and national security in these systems means the security of the homeland, the citizen and the security of society as a whole, rulers and governed.<sup>17</sup>

Thus, we see that there is a close relationship between national security and human rights, the more the state adheres to the rules of human rights and grants its citizens their basic rights and freedoms, the more it can provide greater security for itself, compliance with human rights rules helps to build security within society, when we talk about national security and its rigidity in democratic regimes on the one hand, and its fragility in dictatorial regimes on the other, it is due to respect for regimes and methods. Democracy for human rights, securing justice and equality in society and preserving individual freedoms, in contrast to dictatorial regimes where national security is the security of the ruling class or the security of the ruling

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<sup>16</sup> Dr. Fayez Muhammad Al-Duwairi, *National Security*, 1st Edition, Dar Wael Publishing, Amman, 2013, p. 69.

<sup>17</sup> Dr. Omar Ahmed Qaddour, *The Form of the State and its Impact on the Organization of the Security Facility*, 1st Edition, Madbouly Library, Cairo, 1977, p. 222.

regime or party mostly, which means discrimination, loss of equality, justice and lack of freedoms, this, in turn, negatively affects the national security of the state, but the national security of the state is not achieved by simply respecting human rights, but there must be some pillars on which it is based, including political, economic, social, military and security, imagine that a country respects human rights but lacks military, economic or political power, how can it protect its entity and society if it is attacked on its territory, society or vital interests, similarly, in the case of the existence of the pillars of national security and the lack of respect for human rights and fundamental freedoms, the existence of these pillars is not sufficient to achieve the national security of the State, but human rights norms must be respected<sup>18</sup>.

Respect for the principles of human rights and adherence to their rules is one of the basic elements of national security through which the state can achieve a sufficient degree of security for its citizens, which positively affects the individual's loyalty to the homeland and the state and thus national security, on the contrary, the state's lack of respect for human rights negatively affects its national security, and freedom, justice and equality are basic human rights and have broad concepts that involve most other human rights, as the availability of an atmosphere of security and stability in some cases does not indicate the existence of freedom and democratic system, the state of security may be the result of repression and terrorism practiced against individuals within society, but this type of security is not real security, but rather fictitious security resulting from repression and carries within it the reasons for explosion when the opportunity comes, the bombing is a natural consequence in such cases, owing to repression, deprivation and tyranny over the freedoms of individuals, as a case in the former Eastern European States, the former Soviet Union and most Arab States.<sup>19</sup>

Thus, freedom is the goal that humanity has been and continues to strive to achieve, it is one of the basic elements of the national security of the state, the more the individual feels freedom, the more he can progress and develop and employ his capabilities to protect the homeland, and the free individual within his country defends his freedom, which he sought whenever that freedom is exposed to danger, when there is freedom for the individual, as well as justice and equality, these elements are the basic

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<sup>18</sup> Muhammad Nawzad Amin, *Protecting the National Security of the State under International Human Rights Rules*, Dar Dijlah for Publishing and Distribution, Amman 2014, p. 68.

<sup>19</sup> Amin Moussa Bou Khamseen, *Human Rights: Introduction to Human Rights Awareness*, 1st Edition, Center for Arab Unity Studies, Beirut, 1994, p. 41.

guarantees for the individual to obtain his rights from the community and society, these guarantees induce the individual to comply with the duties entrusted to him by the authority, resulting in the provision of security and stability and thus the national security of States.<sup>20</sup> Justice is also one of the main foundations of healthy societies in all its aspects, whether embodied in equality before the law, social justice in the distribution of resources, non-discrimination except on the basis of competence or other forms of justice, when the individual feels the existence of justice, this pushes him to a sense of belonging and citizenship and is the best motivation to make the citizen contribute effectively and positively to building society in all respects, including the security aspect, justice contributes to bringing tranquility to the hearts of individuals and makes them feel secure and not afraid of any attack on their lives or property, and thus justice in turn contributes to providing national security, giving the individual his full human rights approved by international laws, charters and norms makes him feel within the framework of his society his value, and when the state preserves the dignity of the individual and protects him from disregard, humiliation and humiliation and improves his living conditions and then protects him from poverty, hunger and disease, and provides ways of decent life for all members of society by providing them with job opportunities without any discrimination and the availability of health services and education then the security of the individual is achieved and the security of the individual is integrated the security of society and this is achieved through the provision of freedom Justice and equality, which underpin the national security of the state<sup>21</sup>, therefore, respect for and promotion of human rights by states effectively contributes to national security and makes it much stronger if the state neglects and does not abide by human rights norms.

The right of a state to maintain its national security is defined as (A set of measures and measures taken by the State to protect its national security provided for in international conventions and treaties, provided that that right is not abused and contrary to it, the State bears responsibility, i.e. the State must abide by the substantive and procedural conditions stipulated in those international conventions), it is worth mentioning that as we address this subject under human rights norms, it is worth noting that this right of the State is restricted by respect for human rights and fundamental freedoms, the right of the state to protect its national security is in part a right under which the state has the authority to take the necessary measures

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<sup>20</sup> Dr. Fayez Muhammad al-Duwairi, *op. cit.*, p. 93.

<sup>21</sup> Ha'el Abdel Mawla Tashtoush, *National Security and the Elements of State Power under the New World Order*, 1st Edition, Dar Al-Hamid for Publishing and Distribution, Amman, 2012, p. 171.

to protect its national security, and on the other hand, we see it as a duty where the state must take the necessary measures to protect national security, therefore, it is the right of the state as it enjoys a legal status towards whom measures are taken, and its sovereignty, and it is its duty, considering that protecting the supreme interests of the state is one of its main tasks and it must take all necessary measures to protect the state's entity and its higher interests, including national security.

The predominant nature of international conventions relating to human rights and fundamental freedoms is that the measures taken by the State to protect its national security are considered as the right of the State, and some of them are as follows:

**First:** The International Covenant on Civil and Political Rights, in Article (4), item 3 thereof, states that "any State Party to the present Covenant has used the right of non-derogation to inform the other States Parties immediately." It is understood from the text of the article that the State's non-compliance with the provisions contained in the Covenant is its right, such non-compliance is in exceptional circumstances that threaten the life of the nation, including cases that threaten the national security of the State, as stipulated in the first item of the same article.

**Second:** The European Convention on Human Rights, in Article (15) therefor, grants the right to the State, in case of danger or other exceptional circumstances, to take measures contrary to the obligations contained in the Convention to protect its national security, as the third item of that article provides "Any High Contracting Party using the aforesaid right of infringement shall notify the Secretary General of the Council of Europe" in other words, a State's breach of the obligations contained in the European Convention in the circumstances referred to in the above-mentioned article is its right.<sup>22</sup>

**Fourth: The state of emergency and its impact on human rights**

The declaration of the state of emergency and the severe restrictions it imposes on public and private freedoms are recognized by the International Covenant on Civil and Political Rights of 1966 in its Article IV, it was also approved by constitutions and statutes in the countries of the world, including the Arab countries as well as Iraq, the declaration of a state of emergency is a necessary evil necessitated by a state of necessity resulting from the endangerment of security and public order in the territory of the

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<sup>22</sup> Muhammad Nawzad Amin, op. cit., pp. 107-108.

State, the occurrence of a state of threat, internal disturbances, public disasters, or the spread of an epidemic.

In order to identify the state of emergency and its impact on human rights, especially civil and political rights, we should first address the definition of the state of emergency and then explain the impact of the state of emergency on these rights.

### **1. Definition of a State of Emergency**

When searching for the definition of a state of emergency, we found that there is no agreed definition, as it has been defined by several definitions, as some defined it as a legal measure dedicated to protecting all or some parts of the country against the dangers resulting from aggression, others have also defined it as a legal system determined by urgent constitutional laws to protect national interests and is not resorted to except on a temporary exceptional basis to face emergency circumstances that fall short of the legitimate government instrument and end with the end of its formulations, it is also defined as the situation in which the powers of civilian authorities are transferred to military authorities<sup>23</sup> it has also been defined as a specific legal regime to face exceptional circumstances and replace laws of full power, in connection with this definition, it was based on the definition of the existence or declaration of a state of emergency and that it confuses the nature of the state of emergency with the laws of full authority, where the first empowers the authorities, based on the state of emergency, to take exceptional measures for varying periods from one country to another to face exceptional circumstances and are often subject to parliamentary and judicial control, as for the laws of full authority, it empowers the Government to take all necessary measures to rebuild the country in times of danger and beyond, and under these laws the legislature grants unrestricted delegation to the executive to take measures that fall primarily within the competence of Parliament<sup>24</sup>, a state of emergency is an exceptional regime determined by the time and place declared by the Government to face emergency and unusual circumstances that threaten the security of the country, through urgent measures and unusual methods under certain circumstances, and until the threat has passed, it is exceptional measures taken by the executive by administrative decisions in exclusively

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<sup>23</sup> Dr. Omar Saadallah, *Dictionary of Contemporary International Law*, University Publications Office, 1st Edition, Algeria, 2005, p. 161.

<sup>24</sup> Mustafa Salem Mustafa Al-Nujaifi, *The State of Emergency and its Impact on Civil Human Rights, A Comparative Constitutional Study in the Iraqi Case*, *Journal of Legal and Economic Research*, Issue 64, Faculty of Law, Mansoura University, 2017, p. 620.

specific cases and under certain conditions<sup>25</sup>, it is an exceptional conditional regime, justified by the idea of the danger that surrounds the national entity, this justifies legal action aimed at protecting the country in whole or in part from the dangers resulting from internal or external aggression, the establishment of which can be achieved through the transfer of the powers of the civilian authorities to the military authorities<sup>26</sup>.

## **2. Impact of the state of emergency on human rights**

Human rights are often affected by the declaration of a state of emergency, as the right to life is the first human right, it may not be deprived of his right to life except in accordance with the requirements of the law and the public interest and after the completion of all the procedures and guarantees provided for by the laws, this right is enjoyed by all without distinction between young and old, women and men, or rich and poor<sup>27</sup>, the human right to life is the highest right, and indeed the basis of them all, since it is not reasonable to think about exercising any other right without a preliminary guarantee and adequate protection of this inherent right in the human being, this right must be guaranteed and protected first by the letter of the law and secondly through application, and this means that the competent authorities must take positive measures to create safety and reassurance in the soul of the citizen and protect him from the loss of his life, that is, to protect him not only from the aggression of others, but also from the abuse of power, especially by the security services, which requires the legal authorities to monitor the actions of security personnel and to restrict the circumstances in which such authorities may deprive a person of his life<sup>28</sup>, especially when the state is going through exceptional emergency circumstances, which necessitates monitoring these agencies and surrounding them with strict restrictions in order to preserve this sacred right, which is protected by law and made the basis for all other rights and with regard to the death penalty, it may only be imposed for the most serious crimes, which means that it is considered an "exceptional case" and that it is judged in accordance with the law in force at the time of the commission of the crime only and provided that all procedural guarantees

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<sup>25</sup> State of emergency, available on the website [www.marefa.org/index.php](http://www.marefa.org/index.php), visit date 12/4/2023.

<sup>26</sup> Abdulelah Al-Khani, *Emergency Law and Martial Law*, 2001, lecture delivered on the occasion of the 40th anniversary of the declaration of the state of emergency in Syria.

<sup>27</sup> Dr. Sahar Muhammad Najib, *Constitutional Organization of Human Rights Guarantees and Freedoms, Comparative Study*, PhD thesis, College of Law, University of Mosul, 2003, p. 26.

<sup>28</sup> Thana Fouad Abdullah, *the Specificity of Democracy in the Arab World*, Center for Arab Unity Studies, First Edition, Beirut, 1997, p. 291.

are observed, including the right to a fair trial by an independent tribunal that supposes the innocence of the accused until proven guilty and provides him with the minimum guarantees of defense and review of the verdict by a higher tribunal. The right to life is one of the rights committed by the States parties to the International Convention on Civil and Political Human Rights, which considered this right to be inviolable even in a state of emergency, it is a right that is always safeguarded, whether in normal circumstances or in exceptional circumstances, but despite that, we note that under the emergency law, this sacred right is subject to violation through cruel punishments and inhuman treatment followed by the state under the state of emergency (ill-treatment and torture of detainees inside prisons motivated by forcing them to confess, which may lead to the death of many of them under torture) this right is therefore also adversely affected under the emergency law<sup>29</sup>, moreover, the human rights most affected by the declaration of the state of emergency are the human right to personal integrity because of the actions of the executive authorities of the State that affect the personal safety of citizens, such as arrests and torture in prisons, in order to extract confessions or information using all inhumane means, the State must therefore ensure effective protection through an effective oversight body so that complaints in this regard can be thoroughly investigated, punish all those found responsible and open the door for the victim to resort to the judiciary and claim his right to compensation<sup>30</sup>.

The declaration of the state of emergency also has a significant impact on all aspects of life and its impact extends to human rights, including political rights, and that this affects his right to vote and participate in elections, as well as his right to run for one of the positions in the state, since the declaration of a state of emergency often leads to the postponement of the date of holding elections, and that this has an impact on the right to vote and to run, but some laws exclude the right to vote and run for office from the declaration of the state of emergency and its effects.

As for the "Iraqi Emergency Law" No. 1 of 2004, it was stipulated in its first article "The Prime Minister may, with the unanimous approval of the Presidency, declare a state of emergency in any region of Iraq, when the Iraqi people are at grave risk of a life-threatening situation arising from an ongoing campaign of violence, by any number of persons to prevent the formation of a broadly representative government in Iraq or to disrupt the

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<sup>29</sup> Avin Khalid Abdul Rahman, *Human Rights Guarantees under the Emergency Law*, Amman, Dar Al-Hamid, 2008, pp. 147-148.

<sup>30</sup> Dr. Mustafa Salem Mustafa, *The State of Emergency and its Impact on Civil Human Rights*, *Journal of Legal and Economic Research*, Mansoura, Issue 64, 2017, p. 653

peaceful political participation of all Iraqis or for any other purpose." As for the reasons for this law, "in view of the dangerous security conditions and the difficult repercussions that have been plaguing Iraq at this stage, and the need to resolutely confront those who tamper with the law, and based on the commitment of the interim government to protect the citizen's right to a free and dignified life, guarantee his political and civil rights, and the commitment to create the appropriate security environment for the holding of free and democratic elections as dictated by the Law of State Administration for the Transitional Period, in order to strengthen the rule of law and the independence, effectiveness and oversight of the judiciary, and to prevent the abuse of force in exceptional circumstances and for other known reasons, we have issued this Order"<sup>31</sup>, human rights are linked to each other as a result of their overlap, and thus the right to run and vote is directly affected by the declaration of a state of emergency, which affects the rest of the rights for example, voters are unable to reach voters' polling stations due to curfews and restrictions on freedom of movement, as well as the right to vote and stand for election affected by the right to express opinion and expression, as candidates are unable to communicate their programmes to voters<sup>32</sup>.

### Conclusions

- 1- Human rights is a legal term that appeared within the framework of national legislation and was within the exclusive competence of the state, until it turned to international attention after the establishment of the United Nations, with which the interests of states in human rights developed, which gradually formed a solid legal nucleus based on the International Bill of Human Rights.
- 2- Civil and political rights constituted the first generation of international human rights generations and were particularly interested in international treaties, as they appeared in the International Declaration of Human Rights and then were codified by a special treaty known as the International Covenant on Civil and Political Rights of 1966.
- 3- Despite the existence of treaties on civil and political rights, which obligated States to apply within the framework of their national legal systems, there is still room for the State to restrict these rights and empty them of their content in order to protect the national security of the State, as the preservation of national security is part of the State's right to survival, states of emergency have been used to restrict human

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<sup>31</sup> Article 1 of the Iraqi Emergency Law No. 1 of 2004.

<sup>32</sup> Rasul Muhammad Saeed, *op. cit.*, p. 73.

rights as well as counter-terrorism as a justification for restricting these rights.

- 4- Civil and political rights are indivisible rights of personality and must not be violated except in the light of predetermined legal legislation that protects rights and prevents the encroachment and deviation of power through the use of its security measures in a way that may affect these rights in whole or in part.

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