

# Gross Human Rights Violation –The Enforcement Challenge

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## ABSTRACT:

This paper briefly penetrates into the concept of Gross Human Rights violation and speaks about what it is and why it is. It also deals with the concept of what amounts to violation and also about the reparation and rehabilitation to the victims of Gross Human Rights violation. The short note moves on through the difficulty in enforcing the prevention of Gross Human Rights violation and the reason to the flow. With all this together, the paper tends to leak out the hardships and struggle the victims undergo after being infringed of all basic rights provided. The paper gets summarised with the challenge in enforcement of prevention to the violation.

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## I. INTRODUCTION

As we all know, in general parlance, basic Human Rights is derived not through any legislation but through Natural Justice and History. When a person's right is violated, he reaches a machinery to regain or claim damages for his right infringement. Gross Human Rights Violation is indefinite field to define as there is no clear cut definition for it. Gross violations are those that are particularly serious in nature because of the gravity of cruelty involved in it. Large-scale violations are always gross in character and gross violations includes torture, arbitrary and prolonged detention. It refers to the intensity of the violation or effects, violation of flagrant nature, amounting to direct assault on the assets protected by the ruler. In a working paper submitted to the Sub Commission on Prevention of Discrimination and Protection of Minorities, Stanislav Chernichenko attempted to define gross and large-scale human rights violations.<sup>1</sup> He proposed to include: ☐

- Murder, including arbitrary execution.
- Torture.
- Genocide. ☐
- Apartheid.

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<sup>1</sup> 'Definition of Gross and Large-scale Violations of Human Rights as an International Crime', Working Paper submitted by Mr Stanislav Chernichenko in accordance with Sub-Commission Decision 1992/109, UN doc. E/CN.4/Sub.2/1993/10, 8 June 1993, para. 42. The SubCommission on Prevention of Discrimination and Protection of Minorities requested MrChernichenko's paper in order to justify the inclusion of this category of violations among international crimes. The paper explained: 'The main point of declaring gross and large-scale human rights violations ordered or sanctioned by a Government to be international crimes is to highlight the fact that the responsibility of the State cannot be kept separate from the criminal responsibility of the individuals who perpetrate such violations'. See also an expanded version of the paper, 'Recognition of Gross and Massive Violations of Human Rights Perpetrated on the Orders of Governments or Sanctioned by them as an International Crime', Expanded working paper submitted by Mr Stanislav Chernichenko in accordance with decision 1996/116 of 29 August 1996 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN doc. E/CN.4/Sub.2/1997/29, 28 May 1997.

- Discrimination on racial, national, ethnic, linguistic, or religious grounds.
- Enslavement.
- Enforced and involuntary disappearances.
- Arbitrary or prolonged detention.
- Deportation or forcible population transfers.

Tardu, for example, has interpreted the term ‘consistent pattern of gross violations’ based on debates concerning Resolutions 1235 and 1503. These highlighted several quantitative and qualitative characteristics of a ‘consistent pattern of gross violations’:

- Violations ‘cannot easily involve a single victim’.
- A number of breaches occur, spread over a period. <sup>2</sup>
- An element of planning or of sustained will on the part of the perpetrator’ must be present. <sup>2</sup>
- According to a qualitative test, the violation must inherently have an ‘inhuman and degrading character’.<sup>2</sup>

In the recent times, there have been serious steps taken to eradicate Gross Human Rights Violation in the international perspective. Strengthening of the international system to ensure accountability for crimes against humanity and justice for victims involves a stronger focus on the right to reparation, including the means for rehabilitation after torture and other gross human rights violations.<sup>3</sup>

Establishment of universal jurisdiction for atrocious and odious crimes like Genocide and torture, it is also necessary to look up on the victims of such crimes. Prosecution or extradition of offenders against humanity is not enough to bring out justice to the affected. A proper Reparation and Rehabilitation mechanism has to be established for the victims. This is where the bridge of balance lies. The phrase used by Nora Sveaass perfectly takes a seat “Dialogue between the field of trauma and the system of Justice.”<sup>4</sup>

Enforcement of prevention against Gross Human Rights Violation is a very tedious task. The categories or types of Human rights violations are common but some factors vary between states like political condition, cultural disparity or any other factor it may be. So when an international codification is done for prevention, the

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<sup>2</sup> M. E. Tardu, ‘United Nations response to Gross Violations of Human Rights: The 1503 Procedure’, Santa Clara Law Review, Vol. 20 (1980), p. 583ff.

<sup>3</sup> Becker D. The deficiency of the concept of posttraumatic stress disorder when dealing with victims of human rights violations. In: Kleber R. J, Figley C. R, Gersons B. P. R, editors. Beyond trauma. cultural and societal dynamics. New York: Plenum Press; 1995. pp. 99–114.

<sup>4</sup> Nora Sveaass. Gross Human Rights Violation and Reparation under International law, 2013

effective implementation of it is a very big question mark. The real challenge is that of incorporating the international codification to the law of the land.

Human rights are not something different from fundamental rights. All fundamental rights are human rights but all human rights are not fundamental. Looking on to long time territorial dispute between Israel and Palestine, possibility of prevention against Gross Human Rights violation is a nightmare. There are four requisites for considering a state as sovereign, (i) Government (ii) Definite Territory (iii) Population (iv) Capacity to enter into relations with other states, par with these looking on to Palestine it was a definite state before but after Israel started attacking them, they started losing all the requirements of being recognized as a state. In this instance how Gross Human Rights violation can be prevented? Not possible. Why? While Israel has a definite Government and all other qualities of a sovereign, Palestine doesn't even have a definite territory. The UN documents that are relevant to this are: The first, an Interpretative Guide on Corporate Responsibility, was published by the Office of the UN High Commissioner for Human Rights (OHCHR) and the second, the UN Human Rights Due Diligence Policy on UN support to non-UN security forces, adopted a complex definition of grave violations of human rights.

People's peace living is one of the most important duty of a government or state which is to be maintained. When they fail to maintain internal peace or when they fail to uplift the sovereignty of the state, it results in Gross Human Rights violation. Looking above it is very clear that even though there are regulations for prevention of Gross Human Rights violation, the enforcement of it will not be adequate unless the regulation is in consonance of each state and not to be in whole