

CRITICAL ANALYSIS AND DISCUSSION OF THE LEGAL AND PRACTICAL CHALLENGES POSED BY DETENTION BY ARMED GROUPS DURING ARMED CONFLICTS.

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ABSTRACT

International Humanitarian Law sets a legal framework to regulate armed conflicts despite such efforts legal issues arising from non-international armed conflicts remain one of the greatest concerns throughout human history due to their complex nature, insufficient and lack of specificity of the provisions. Apart from the nature of these kinds of conflicts one might question the existing imbalance of regulation between the conflicts with an international and those of non-international character. Is it inability to control such situations? Or is it a matter of unwillingness?

Such a lack can be evidenced by the fact that all the four Geneva conventions are regulation to the international armed conflicts and only common article 3 and Additional protocol II are dedicated to those with a non-international character thus the insufficiency.

This paper will focus on the detention by armed groups in armed conflict, the legal and practical challenges posed by such detention and the position of the international community on such matters.

Key words: International Law, International Humanitarian Law, International Legal Personality, Armed Groups, Detention.

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INTRODUCTION

International Humanitarian Law treats International armed conflict: between states (IACs) and non-international armed conflicts: between states and armed groups or between such groups only, (NIACs) differently due to the differences between the actors involved in them.

The concomitant prevalence of non-international armed conflicts and proliferation of armed groups has been getting quite an attention under international legislation in the view of several international legal scholars, actors and international community. The issue regarding the legality of armed groups' status according to international law remains. Are armed groups recognized as to have legal personality as per international norms? Do armed groups have legitimate power to detain during an armed conflict? The unwillingness of states to recognize the status of armed groups contribute to the inability of these groups to enforce international humanitarian law (IHL).

In armed conflicts deprivation of liberty is inevitable whether in those with an international character or those without (non- international armed conflict) but international humanitarian law provides basic rules to be applied in addition to that the provision of common article 3, additional protocol II binds all parties to non-international armed conflict in order to apply the minimum standards required in detention. Despite this, issues keep arising when it comes to detention by armed groups in armed conflicts mainly because of the legal status and diversities of these groups under international law and in line with international humanitarian law.

Armed conflicts between a state's armed forces and one or more non-state armed groups are known as non-international armed conflicts¹.

¹ ICRC Report, International Humanitarian Law and the challenges of contemporary armed conflicts, ICRC, 2011, Pg. 8 , available at: <https://www.icrc.org/en/doc/resources/documents/report/31-international-conference-ihl-challenges-report-2011-10-31.htm> , Accessed on 12th May 2022.

This is in contrast to international armed conflicts, or IACs, in which only states are involved². NIAC can also be fought only between non-state armed groups³. This kind of armed conflict is defined not by the location of the war, but by the nature of the parties involved, one of whom must be a non-State armed force.

Armed conflicts and detention⁴ are inextricably intertwined, armed group are:

I. International Legal personality

To have legal personality under international law means inclusion in the international legal system as an actor, it means being subject to the law and having rights to use it. states are the typical subjects of international law, they can enter into legal intercourse with other states, ratify convention, and sign bilateral treaties.

The legal personality of armed groups is still questionable under international law because they literally cannot enter any agreement, or ratify any international legal instrument. In this sense the armed groups lack legal personality under international law.

I.1. The pseudo legal personality of armed groups

As stated above the armed groups do not have legal personality but are recognised at some point by the international community when it comes to armed conflicts. Various international actors such as the UN may call on these groups to respect the rules of International Humanitarian Law, and at some point they are bound by them, an example of this is resolution 1564 (2004)⁵.

² Nils Melzer and Etienne Kuster, “*INTERNATIONAL HUMANITARIAN LAW: A comprehensive Introduction*”, ICRC, 2016, p. 53.

³ Ibid.

⁴ is the custodial deprivation of liberty, it refers to the deprivation of liberty caused by the act of confining a person in a narrowly bounded place, under the control or with the consent of a State or in non-international armed conflict, a non-state party.

Marco Sassòli et al, Detention, How does Law protect in war, March 2011, available at: <https://casebook.icrc.org/glossary/detention> Accessed on 17th May 2022.

⁵ In its Preamble, the UN Security Council Resolution issued at its 5040th meeting in September 2004 urged for Sudanese state and non-state actors to observe International Humanitarian Law and International Human Rights Laws.

Armed groups in armed conflicts incur only obligation and no rights because they are not really recognized as having legal personality to this there are things they are prohibited to do or privileges they cannot have.

States are bound by international treaties since they have negotiated, signed, and ratified them; however, organized armed organizations are not a part of these processes and must still adhere to basic war principles. As an erga omnes norm, international humanitarian law has a specific nature and application, which is why it applies to all citizens; it is a customary standard that requires all individuals to obey the norm. Finally, because an armed group brings together citizens of a country, they must adhere to the State's set rules⁶. Valeria also argues that the obligation of states to respect these norms and implement them arises from their sovereign will to integrate them into their municipal laws⁷.

So armed groups are subjects under the law of nations in an exceptional way, it is in a sense that they are only recognized when it comes to armed conflicts they attract particular attention of the international community as a whole. There is no legal link to armed groups' obligations under international humanitarian, situations and doctrines show that these groups are to ensure the minimum humanitarian standards and this happens regardless of the fact that they have not been part of creations, negotiations, and ratification of treaties.

In criminal law detention is deprivation of liberty of an individual or groups people by holding them in custody temporarily when there is reasonable suspicion that an individual is involved in an offence⁸ and this is done through an arrest warrant.⁹ Normally this is done by the state through its competent organs under circumstances prescribed by the law they can arrest and detain. However, under certain circumstances as seen in various criminal procedures, private individuals can also arrest suspects without a warrant.

⁶ Valeria Monserrath Sanchez Morales, Organised armed groups in International Humanitarian Law, "Revista Facultad de Jurisprudencia" 2020, Pg. 12.

⁷ Ibid at 101.

⁸ Cornell Law School, Detain, Legal Information Institute, July 2021, available at: <https://www.law.cornell.edu/wex/detain> Accessed on May 11th 2022.

⁹ A detention order issued and signed by a judge or a magistrate.

For example¹⁰ detention itself is seen as an exception rather than a rule because It is an infringement on the right to liberty, such right is embedded in various human rights instrument¹¹, the exception is provided for in the provision¹² where it sets down that “*No one shall be deprived of his right except on such grounds and in accordance with such procedures are established by law*” meaning even though detention is deprivation of right to liberty there are instances under which such a practice is mandated by law which results into it being an exception.

II. International armed conflict(IAC)

International armed conflict is an armed conflict between states¹³. During such conflicts states may capture members of the enemy forces as both of the sides are recognized as combatants¹⁴ up on capture combatants become prisoners of war.¹⁵ The implication of being recognized as a prisoner of war are significant; for instance, upon

¹⁰ Section 42 of South Africa's Criminal Procedure Act No.51 of 1977 provides about the Arrest that is done by a private person without a warrant it further provides conditions under which such arrest happens.

¹¹ Article 9 (1) of the ICCPR “Everyone has the right to liberty and security of a person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his right except on such grounds and in accordance with such procedures are established by law”.

See also Article 5 of the European Convention on Human Rights.

¹² ICCPR, *supra note* 11.

¹³ According to Common Article 2 to the Geneva Conventions.

The four Geneva Conventions of 1949, plus Additional Protocol I of 1977, The Hague Conventions provide the legal framework that applies to this specific instance.

Sylvain Vite, Typology of armed conflicts in international armed conflicts: legal concept and actual situation, International Review of the Red Cross Volume 91 Number 873 March 2009, Pg. 71.

¹⁴ Rule 3 CIHL defines combatants as members of the armed forces of a party to the conflict excluding the medical and religious personnel.

Attacks may be directed against combatants and may not be directed toward the civilian population; this stems from the “Principle of Distinction” and the applicability of this stretches out to both IAC and NIAC.

¹⁵ These are combatants who have fallen into the hands of the adverse party, Article 4 of the Third Geneva Convention.

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capture they cannot be tried for their participation in the hostilities nor for acts that do not violate IHL.¹⁶ The concept of status of prisoners of war applies only in the armed conflict(s) with an international character of legal framework that applies to this specific instance.

II.1. Non- international armed conflict

Armed conflicts¹⁷ occurring between states and armed groups or between armed groups themselves¹⁸. Since the early 2000s, the number of non-international armed conflicts has more than doubled, from less than 30 to over 70.¹⁹ During 2020 there were 34 armed conflicts, the same number as the previous year. Most of the armed conflicts were concentrated in Africa (15) and Asia (9), followed by the Middle East

¹⁶ Rule 106 CIHL, “Condition for Prisoners-Of-War-Status”.

¹⁷ Currently the armed conflicts taking place are Internal armed conflicts.

the present various concurrent and overlapping non-international military conflicts in Yemen are an example of this, *see* Geneva Academy, non-international armed conflicts in Yemen, Rulac, 08th May, 2022, available at: <https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-yemen#collapse+accord> ., Accessed on 27th May 2022.

Since 2004, the Yemen government and the Houthis have been fighting. The Houthis are a group of nonstate actors (NSAs) founded in 1990 with the goal of acquiring political control in the country and destroying the Saudi-backed Salafi influence in the region. In an effort to quell insurgencies in the country, then-president Ali Abdullah Saleh utilised severe security measures to arrest the commander of the Houthi revolt. Following the Arab Spring hit in Yemen in 2011, the Houthi movement established a stronghold and launched months-long protests against the government in the pretext of opposing corruption and the US-backed tyrant, eventually pushing the president out of office. UNC School of Law. Northern Carolina Journal of International law, Volume 45 Number 1, “The Crisis in Yemen: Armed Conflict and International law”, Waseem Ahmad Qureshi.

¹⁸ ICTY, Prosecutor v Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Para 70.

International Committee of the Red Cross (ICRC) Opinion Paper, How is the Term "Armed Conflict" Defined in International Humanitarian Law? March 2008, Pg. 3.

See also Faustin Ntoubandi, Non International Armed Conflict (“Civil War”), April 2020.

¹⁹ ICRC Position Paper, March 2021, ICRC Engagement with Non-State Armed Groups, “Why, how, for what purpose, and salient issues”, “International Review of the Red Cross”, December 2020, Pg. 1087–1098.

(6), Europe (3) and America (1)²⁰. In Internal Armed Conflicts, each party is obliged to obey the core humanitarian standards of international law provided for in common article 3 of all four Geneva Conventions and supplemented by the additional protocol II of 1977, this is the legal framework applicable to NIACs²¹.

In the case of Yemen where now it has been in the grip of a catastrophic conflict for eight years, affecting millions of people across the country. The ICRC also engages in an ongoing dialogue with the parties to the conflict in Yemen about the conduct of their troops during armed hostilities, in accordance with its mandate under the Geneva Conventions, and promotes adherence to the rules enshrined in International Humanitarian Law (IHL), which protect civilians and other non-combatants²². In a similar vein, ICRC continues to visit places of detention under the authority of the parties to the war to monitor detainee treatment and living conditions. The goal of ICRC

²⁰ Iván Navarro Milián Josep Maria Royo Aspa Jordi Urgell García Pamela Urrutia Arestizábal Ana Villellas Ariño María Villellas Ariño, Alert 2021 Report conflicts, human rights and peace building, Escola de Cultura de Pau, Jul 2021, Pg.8.

²¹ When compared to the legal framework applicable to international armed conflicts, it is limited in the sense that the legal provisions are few compared to those governing IACs, and it lacks specificity because there are impositions of obligations with no clear admission of legitimacy. A good example of this is detention by armed groups; these groups are asked to follow minimum humanitarian standards when detaining people, but there is no specific expression of whether these groups are legitimate to detain.

According to J. Hoffman International Humanitarian Law primarily applies to states. It provides few instruments to compel the concerned groups to conform, but a set of legislative processes have been devised to provide state actors with a comprehensive approach to ensure compliance.

See also Sandesh Sivakumaran, Re-envisaging the International law of Internal Armed Conflict, *European Journal of International Law*, Vol 22, No.1, 2011, Pg. 223.

See also Daragh Murray, Non-State Armed Groups, Detention Authority in Non-International Armed Conflict, and the Coherence of International Law: Searching for a Way Forward, *Leiden Journal of International Law*, 2017, Pg.7.

²² ICRC in Yemen, Annual Activity Report 2021, ICRC, 07 April 2022, available at: <https://www.icrc.org/en/document/yemen-annual-activity-report-2021> Accessed 30th May 2022. The report further stresses how ICRC supported YRCS and how various donations were made in the medical sector in order to facilitate the medical personnel to alleviate the wounded persons and the support to vulnerable communities and internally displaced people.

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visits is to verify that prisoners are treated with respect, that communication with their relatives is maintained, that procedural safeguards are observed, and that their living conditions, including access to healthcare, are adequate²³.

III. Deprivation of liberty and Diversities of Armed Groups

In 2021, the ICRC estimated that over 600 armed groups were present and operating in areas where the population had humanitarian needs; the ICRC is in contact with about 450 of them. Approximately 100 of them have been identified by the ICRC as non-state armed groups (NSAGs) that are parties to armed conflicts and so subject to IHL²⁴. as these groups differ, so are their practices. Armed groups may be centralised or decentralised and this depends on their operational and organisational framework.

III.1. Diversities of armed groups

Armed groups are very diverse in their degree of organisation and control over their members, territory or people, their aims, and in particular in their inclination to respect IHL²⁵.

III.1.1. Centralised non-state armed groups

Are those groups with a strong hierarchy and effective chain of command²⁶. The characteristics of these kinds of groups are a prominent doctrine or ideology outlines goals, approaches and world view; Observable signs of discipline (professionalism in uniforms, saluting, routines); Isolated from civilian population (housed in camps

²³ Ibid

²⁴ ICRC, Twelve Issues for 2022, “What States Can Do to Improve Respect for International Humanitarian Law”, ICRC, Pg. 7.

²⁵ Marco Sassòli, Taking armed groups seriously: ways to improve their compliance with International Humanitarian Law, International Humanitarian Legal Studies, 2010, Pg. 14-15.

²⁶ Examples are: Shan state army in Myanmar, FARC-EP in Colombia, LTTE in Sri Lanka, MNLF in Philippines, Communist party of Nepal in Maoist.

or barracks)²⁷. Many of the structural qualities found in State militaries are shared by centralised non-State armed groups, such as a prominent hierarchy, complex doctrine, and severe discipline. However, unlike state militaries, they do not have access to state resources and infrastructure, making it more difficult for leaders to communicate with field commanders and their units and to supervise their behaviour. Group members are subjected to a system of socialisation and control that pervades practically every aspect of everyday life in order to align their beliefs and tastes with those of the leadership²⁸.

III.1.2. Decentralised non-state armed groups

These are groups who are generally composed of alliances of smaller groups, whose individual sub-commanders retain significant authority²⁹. Among the key characteristics of these groups are; lack of strong cooperation either in military planning or operation, the grip on military discipline is loose, it is not as strong as those of a centralised system.

Concrete examples of such groups include anti-Balaka Militia in the Central Africa Republic, Movement for Emancipation of the Niger Delta in Nigeria.

Their decentralised character and unwritten norms of conduct make engaging with them particularly difficult for humanitarian organisations, adding to the operational environment's complexity³⁰.

The horizontal nature of decentralised non-State armed organisations, which allows for a high degree of adaptation, contributes to their proliferation and durability in the face of stronger State militaries. Their structure makes them tough to defeat because no single self-contained sub-group is crucial to the alliance's survival. While the groups do not rely on a central command for orders and supplies, they can pool and distribute resources wisely. Another benefit of this type of federation is that it allows groups from local areas to be included, tying local

²⁷ Fiona Terry, Brian McQuinn, *The Roots Of Restraint In War*, ICRC Publication, Pg. 38.

²⁸ Ibid.

²⁹ Ibid. P. 46.

³⁰ Ibid.

Critical analysis and discussion of the legal and practical challenges posed by detention by armed groups during armed conflicts concerns to bigger political goals and offering a dynamic environment in which a herder might become a foreign combatant³¹.

So regarding the varieties of armed groups as discussed above Their size, structure, and capabilities all differ significantly and this comes with several implications either concerning the legality aspect or the practicability of acts carried out by these groups.

III.2. Deprivation of Liberty

Arbitrary deprivation of liberty is prohibited both under various international human rights law instruments and international humanitarian law. If an individual is deprived of his or her liberty this means that their right to liberty was violated. Internationally Article 9 of the Universal Declaration of Human Rights was the first core legal instrument to provide about Right to liberty and personal security. This prohibition is embedded in a variety of international human rights agreements at both the international³² and regional levels³³. Deprivation of liberty comes in many forms including internment³⁴ civilians may not

³¹ Ibid.

³² Article 9 para 1 of the ICCPR which provides that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. This a further explication of the basic principles enshrined in Article 9 of the UDHR but on an international level.

³³ Elaboration of Article 9 of the UDHR on the regional level includes Article 7 (1) of the ACHR which provides that “Everyone has right to personal liberty and security”; it further goes on to provide procedural guarantees.

ACHPR Article 6 provides that “Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained”

³⁴ Deprivation of liberty for security measures.

IHL is silent on the grounds or procedural safeguards for persons interned in NIAC this is evidenced by Common Article 3 it says nothing about internment but practically internment is carried by both states and non-state armed groups this is not uncommon because civilians might be living in territories under de facto control of these groups.

In addition, the AP II provides mentions about internment even though it does not provide safeguards but this is a silent affirmation that internment is an occurring situation in NIAC. Additional Protocol II Article 5 (1) “. In addition to the provisions

be arrested purposes necessarily connected to the conflict, but they may be incarcerated on the grounds that they pose a major security threat, resulting in internment³⁵.

In the countries where the ICRC works, more than 80 armed groups hold detainees.³⁶ Regardless of the reason for the detention. These detainees are vulnerable for various reasons because they have been removed from the normal surroundings and can no longer manage their own affairs since they are held captive also in addition to the fact that they are subjected to a diverse array of harsh situations, spanning from where they are being held to other occurrences. The center of detention might be on near the battle field where bombs and grenades are being thrown due to the detention center's poor condition infrastructure may collapse resulting in fatal injuries to the detainees second factor is how the detaining authorities (armed groups) treat them³⁷, and because they

of Article 4, the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained”

To read more on internment see Jelena Pejic “Procedural principles and safeguards for internment/ administrative detention in armed conflict and other situations of violence”, IRRIC, Vol 87 Number 858 June 2005, accessible at: https://www.icrc.org/en/doc/assets/files/other/irrc_858_pejic.pdf. Accessed on June 3rd 2022.

See also ICRC Opinion Paper, November 2014, Internment in Armed Conflict: Basic Rules and Challenges International Committee of the Red Cross.

³⁵ Jelena Pejic, Deprivation of liberty and armed conflicts: exploring realities and remedies, 6-8 Sept 2018, Pg. 1-2, available at: <https://iihl.org/wp-content/uploads/2018/11/PEJIC-REV-1.pdf> accessed at 5th June.2022.

³⁶ ICRC, International Humanitarian Law and Challenges of Contemporary Armed Conflicts, International Review of Red Cross, No. 911, Geneva, Switzerland, 9-12 August 2019, Pg. 54.

³⁷ “Reports and documents”, International Review of Red Cross, Vol. 98, No. 903, 2016, pp. 1043-1066.

The report further talks about the concerned detainees but especially those held in relation to the conflicts and how they are likely to be subjects of ill treatment because of their affiliation to the enemy authority.

ELN and dissidents of FARC committed numerous breaches of human rights, including, torture extrajudicial killings, constraints on freedom of movement, and sexual violence, see Colombia 2020 Human Rights Report, Bureau of Democracy, Human Rights and Labour, March 2022, Pg. 13. These are violations carried out by

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have pledged allegiance to the enemy forces of the armed groups detaining them due to this they might be treated inhumanely as a way of revenge on them, this results in fatal situations.

Such confinement by non-state armed groups frequently poses a number of practical and legal concerns. These are mostly due to the wide range of operating realities, coordination mechanisms, resource capabilities, awareness and understanding of international law, and motive or beliefs among non-state armed groups³⁸.

Members of the enemy's forces and individuals supporting them or civilians captured in the territory where these groups are exercising de facto control are among those deprived of their liberty by armed groups³⁹. Armed groups do detain for various reasons, firstly, disciplinary reasons when armed groups detain some of their members, maybe to teach them a lesson, secondly individuals held for security concerns relating to the armed conflict, thirdly Individuals detained in connection with criminal procedures for common or international crimes who are not part of the armed group or hostage taking⁴⁰.

As previously discussed, arbitrary deprivation of liberty is prohibited, pertaining to detention by armed groups, there really is no guarantee that they will not detain people arbitrarily because they believe that these IHL rules do not apply to them all due to a lack of legitimacy, which is the reality because these groups are not part of the international law making process, for example, only states are members of the UN General Assembly, or when there is a need to pass a resolution only states are the voters.

these groups as they are not concerned about the IHL rules or abide by them. any detainee must be treated humanely and must not be tortured or subjected to any sort of sexual violence.

³⁸ IRRRC, Supra note 37.

³⁹ Ibid.

⁴⁰ Hundreds of people have been kept hostage by ELN for much more than half-century of wars accused of disappearance of people, see Reuters Staff, "*Three missing journalists being held by Colombia's ELN rebels*", Reuters, May 26 2016, available at: <https://www.reuters.com/article/colombia-rebels-idUSL2N18N1TT> ., Accessed on 1st June 2022.

Armed groups' economic or financial resources are insufficient; hence their detention centres are in poor shape since there are no funds to establish good and stable facilities, putting detainees' lives in danger⁴¹. Regarding the IHL rules on detention, the chances are limited that these groups will follow them or incorporate them into their internal code of conduct so that they may abide by them. This opens the door to sanctions when there is a violation, so these groups may be held liable either among themselves or by external authority.

These groups are more likely to mistreat the detainees in case those detained in respect to the grounds connected to the armed conflict such as members of the state's forces who have capture an example of this are the mistreatments carried out by Liberation Tigers of Tamil Eelam(LTTE) in Sri Lanka despite its declaration throughout 1988 that they will comply by the Geneva Conventions they executed detainees on different occasions⁴², LTTE tortured and murdered 8000 detainees, during 1990 LTTE continued to arrest civilians arbitrarily and sent them to detention centres⁴³.

In a situation where the conflict is taking place between the state and an armed group a situation may arise where the armed group could refuse

⁴¹ Individuals deprived of their liberty are frequently placed in circumstances prone to ill treatment. They are vulnerable to many sorts of coercion, abuse, deprivation, and violence, with no defence or escape out. As a result, deprivation of liberty may have major effects for those detained health as well as the whole concept of medical practice.

⁴² LTTE executed over 600 unarmed police, See Saleem tariq, "*Recalling the Saddest day in Lankan Police history*", LankanNewsPapers, 12 June 2011, available at: <https://web.archive.org/web/20110615103423/http://www.lankanewspapers.com/news/2011/6/67843.html> , Accessed on 6th June 2022.

See more unlawful acts carried out by armed groups in Libya during detention, Libya Country Report, "Abuse Behind Bars: Arbitrary and unlawful detention in Libya", OHCHR, April 2018, Pg. 21.

⁴³ Rajan Hoole, A monstrosity, Colombo Telegraph, November 28 2015, Available at <https://www.colombotelegraph.com/index.php/a-monstrosity/> Accessed on 6th June 2022.

Critical analysis and discussion of the legal and practical challenges posed by detention by armed groups during armed conflicts to governed mostly by the obligation passed by the state against whom they are battling⁴⁴.

Another legal challenge arises when it comes to judicial safeguards for those who have been deprived of their liberty as laid out in common article 3⁴⁵ to the GCs and article 6⁴⁶ of AP II. These legal provisions require that the detaining power provide fair trials and enforce the rule of law through a court with independence and impartiality, but the challenge comes when it is armed groups doing this, there is no guarantee that they have such judicial system as required by the above legal provisions even if there is one, “independence and impartiality” will be lacking. For instance, in the light of international fair trial standards the communist Party of Nepal (Maoist) (CPN-M) tried to set up a justice system by establishing “people’s court” which eventually failed due to the lack of impartiality, poor detention conditions, failure to meet fundamental standards for fair trial at all the trial phases⁴⁷.

As discussed earlier in practice this detention takes place but it meets several practical challenges such as the poor detention centres, inability to provide essential items to the detainees. Establishing effective contact with an armed group poses a significant practical obstacle because the armed group may be unwilling to engage in dialogues or conversations about the well-being of detainees in its custody.

⁴⁴ Michelle Mack and Jelena Pejic, *Increasing Respect for International Humanitarian Law in Non-international Armed Conflicts*, ICRC, Geneva, February 2008, Pg. 11, available at: https://www.icrc.org/sites/default/files/topic/file_plus_list/0923-increasing_respect_for_international_humanitarian_law_in_non-international_armed_conflicts.pdf accessed on 10th June 2022.

⁴⁵ “a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilised peoples”.

⁴⁶ “No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality”.

To read more on Judicial Guarantees see Andrew Clapham, *Detention by Armed Groups under International Law*, International Law Studies, Vol 93, 2017, Pg. 17.

⁴⁷ Nepal: Justice in transition, International Commission of Jurists, February 2008, Pg. i, available at: <https://www.icj.org/wp-content/uploads/2012/04/Nepal-Justice-in-Transition-Thematic-reports-2008.pdf> accessed on 15th June 2022.

See also Ibid. Pg. 21.

For states they have representatives such as ambassadors but it is difficult when it comes to armed groups because it is not always clear as to who really represents an armed group⁴⁸. Armed groups reject making contact with humanitarian actors to due to the fear that this pose threat to the group's security⁴⁹.

Conclusion and Recommendation

Throughout the paper various points were discussed including the vulnerability of detainees, the tendency to violate their rights by the armed groups due to the biases. The pseudo personality of armed groups was discussed how at one point the international community recognises them as some of them are called upon from time to time to respect the humanitarian obligations or enter into dialogues, also we saw the types of armed conflicts and their respective regulations. The diversities of armed groups and how this contributes to the complex issues arising from detention done by them.

Given the research undertaken for this paper it is to my conclusion that detention by armed groups occurs in reality and depending on their diversities those deprived of liberty are susceptible in certain ways, either physically or mentally so are their relatives and friends.

My position is that IHL lacks clarity when it comes to armed conflict of non-international character, particularly detention by armed groups but this should be regulated because the lives of people deprived of their liberty depend on it.

People deprived of their liberty did not choose to be in such situations. It is in this regard that as a concerned human being determined to improve the world place, I would like to suggest a way forward for this particular issue.

⁴⁸ David Petrasek, Ends and Means: Human rights approach to armed groups, International Council on Human Rights Policy, 2006, Pg. 46-47, available at: <https://uthr.org/PDF%20files/End%20&%20Means.pdf> accessed 16th June 2022.

⁴⁹ David Tuck, Detention by armed groups, International Review of Red Cross, Volume 93, No. 883, September 2011, P. 770, available at: <https://international-review.icrc.org/sites/default/files/irrc-883-tuck.pdf> accessed on 13th June.2022.

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First, I would recommend that the international community set certain requirements⁵⁰ to be fulfilled by armed groups who seek legitimacy and once they do, they should be given a seat on the high table that way it will put an end to mass consequences that comes with detention by them.

Second is the Involvement of these groups in law making processes, this also means that they will be involved in treaty ratifications. Involvement in expansion of IHL would be the greatest approach to ensure that adherence with IHL is feasible for them⁵¹.

As Marco Sassòli argues, it will be difficult as to know which groups should be invited into the making of these treaties⁵², which is why I suggested that the international community set up admission requirements for these groups so that only those which qualify will be allowed.

Third as a recommendation is that states whose part of their territories are under de facto control of armed groups should reach a compromise with the group to confer some kind of legitimacy to them and set limitations depending on the nature of their agreement, with this the armed group will abide by the national legislation.

⁵⁰ An armed group with a visibly strong organisation, stable financial resources, established judicial system, internal code of conduct and demonstration of ability, willingness to enter into legal relations.

⁵¹ Sassòli, *supra note* 25, at 20-21.

⁵² Ibid, Pg. 22.

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3. American Convention on Human Rights.
4. Andrew Clapham, Detention by Armed Groups under International Law, *International Law Studies*, Vol 93, 2017.
5. Article 6 of the African Charter on Human People's Rights.
6. Colombia 2020 Human Rights Report, Bureau of Democracy, Human Rights and Labour, March 2022.
7. Common Article 2 to the Geneva Conventions.
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