

# The Most Important Hierarchical Means of Demanding Human Rights

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**Abstract:** Human rights are fundamental issues that form the foundation of justice and human dignity in modern societies. Since the issuance of the Universal Declaration of Human Rights in 1948, we have observed significant advancements in the mechanisms and methods that enable individuals and groups to assert their legitimate rights and ensure that these rights are respected by states and various entities. However, these mechanisms do not operate randomly; they are structured according to a logical and legal framework known as hierarchical means. This framework allows for a transition from domestic peaceful methods to international avenues when the former are compromised.

**Introduction:** This research aims to illuminate the most significant hierarchical methods through which human rights can be asserted, while analyzing the nature of each method, the conditions for their application, and their effectiveness in safeguarding rights and preserving human dignity. The legal and institutional frameworks that govern these methods will also be examined, along with real-world examples that illustrate how they are implemented in both national and international contexts.

Recognizing these issues not only enhances awareness of human rights but is also a crucial step toward building a just society that can confront violations and promote a culture of law and justice.

The significance of this research lies in illuminating the systematic progression of human rights claims and demonstrating the resources available to individuals and groups in addressing violations. Additionally, it contributes to educating citizens and civil society about legal and practical tools that may be lacking for many, thereby enhancing community engagement in the defense of rights and freedoms.

## Importance of the Study

The significance of this research is clear, as it illuminates the various avenues available for asserting human rights. This contributes to enhancing legal and human rights awareness among individuals and communities, while also providing both theoretical and practical evidence that can serve as guidance in cases

of violations.

Understanding the hierarchy of these means allows the optimal use of each, from peaceful means and national institutions, to regional and international bodies, thus enhancing the chances of restoring rights and achieving justice.

## Problem of the Study

Although many means can be used to claim human rights, there is ambiguity among many about the order of their use and effectiveness according to the legal or political context, which sometimes leads to the failure of claims or their poor impact. The research problem lies in the main question:

What are the most important hierarchical means of demanding human rights? How can their use be regulated in a manner that achieves the greatest effectiveness and equity?

## Objectives of the Study

1. Identify the most important means available to demand human rights at the various levels (national, regional, international).
2. Analyze the logical and legal hierarchy of these means according to different contexts.
3. Assess the effectiveness of each means in achieving justice and redressing violations.
4. Provide a frame of reference that helps individuals and activists choose the most appropriate means according to the situation.

5. Highlight the challenges facing the use of these means and propose practical solutions to overcome them.

### The First Topic

#### Legal Means of Claiming Human Rights

Legal means are considered the most important tools that enable an individual or group to rely on to claim their rights, as they are based on clear rules and based on constitutional and legislative texts, as well as international agreements ratified by states. These means are divided into internal and external media according to the nature of the violation and the possibility of addressing it in the national system first.

#### First Requirement

International conventions and instruments regulating the claim of human rights

International instruments constitute the legal framework of reference on which States and individuals rely to protect and promote human rights. These conventions establish clear means and define mechanisms for claiming rights and resorting to international bodies in case of violations. Among the most prominent of these instruments are the following:

First: The Universal Declaration of Human Rights (1948)

- It represents the first international document that embodies the universal recognition of human rights.
- Its articles (in particular article 8) provide for the right of everyone "to have recourse to the competent national tribunals for redress for acts that violate the fundamental rights recognized to him".
- Although not legally binding, it established a series of later binding treaties. ( )

II. International Covenant on Civil and Political Rights (1966)

- It is one of the most important legal instruments binding on ratifying States.
- Provide for a range of rights, including the right to life, liberty, security, fair trial, and freedom of expression.

• Established the Human Rights Committee, which receives individual complaints against States that have ratified the First Optional Protocol to the Covenant. ( )

III. International Covenant on Economic, Social and Cultural Rights (1966)

- Supplements the first Covenant and provides for rights such as education, work, health, and an adequate standard of living.
- Although its claims mechanisms were initially weak, the 2008 Optional Protocol allowed for individual complaints to be submitted to the Committee on Economic, Social and Cultural Rights. ( )

Fourth: European Convention on Human Rights (1950)

- Approved by the Council of Europe, it is considered one of the best regional conventions in the field of human rights.

- Established the European Court of Human Rights, which allows individuals to lodge direct complaints against member States after exhausting domestic remedies.

- The Court has binding jurisdiction, and its decisions are applied by States. ( )

Fifth: American Convention on Human Rights (1969)

- Known as the "San José Convention", its implementation is supervised by the Inter-American Court of Human Rights and the Inter-American Commission of Rights.

- Affirm the right to a fair trial, access to justice, and freedom from torture or enforced disappearance.

- Provides an individual and collective mechanism for grievance against OAS member States. ( )

Sixth: Arab Charter on Human Rights (2004)

- Approved by the League of Arab States, it represents the regional reference for the protection of rights in the Arab world.

- The texts contained therein are civil, political, economic, and social rights, which are in harmony with Islamic law. ( )

- Established the Arab Human Rights Committee (Charter Committee) to receive periodic reports from states, but still lacks an effective individual complaints mechanism, such as the European or American( ).

Through these conventions, it has been shown that the demand for human rights is not confined to the national context, but extends to the regional and international levels, through a variety of commissions and courts, the strength and effectiveness of which vary according to the legal system and the degree to which States are obliged to apply these provisions.

#### Second Requirement

Constitutional legislation that frames the construction of human rights concepts in Iraq

Constitutions are distinguished by their superiority over legislation in any country, and they draw up the general frameworks for guaranteeing rights and freedoms, and determine the relationship between the authority and the citizen. In Iraq, successive constitutions reflected different perceptions of human rights according to the political and social contexts of each stage. In this request, we review how human rights concepts are framed in three main constitutions: the 1921 Constitution, the 1958 Constitution, and the

Permanent Constitution of 2005.

#### **First: The Iraqi Constitution of 1921 (Royal Era)**

\* Its promulgation was under the British Mandate and was described as the "Iraqi Basic Law".

- Adopted the Western constitutional model but remained limited in the protection of human rights.
- It made clear reference to certain rights, such as freedom of religion and belief (art. 13) and equality before the law (art. 6). ( )
- We did not notice his assertion of clear mechanisms for the protection of rights, and these principles were subject to the authority of the King and the Government in their application.

Although it is a first step in building the Iraqi state, this constitution has not sufficiently established a culture of human rights, due to the near-absolute nature of the system and the absence of popular oversight.

Second: The Interim Constitution of 1958 (First Republic)

- It came after the overthrow of the monarchy, so it was more realistic in proposing the rights of the people.
- Explicitly stipulates the sovereignty of the people and freedom of opinion, press, and assembly.
- Emphasized social justice and the rights of workers and peasants.
- Recognize the principles of equality, rejecting discrimination based on sex, race, or religion.
- However, it has not been successful in establishing the principle of separation of powers and has been subject to political fluctuations. ( )

The 1958 interim constitution adopted modern language in the field of rights, but it was not implemented on the ground due to the absence of a stable reality for the Iraqi state.

#### **Third: The Permanent Iraqi Constitution of 2005**

- This constitution was adopted in 2005 after the change of the political system in Iraq.
- Distinguished by its comprehensiveness and clear emphasis on human rights and public freedoms.
- Article 14: Equality before the law without distinction as to sex, religion, or nationality.
- Articles 37, 38, and 39: Guarantee fundamental freedoms such as freedom of thought and expression, freedom of assembly, and association.
- Article 19: Fair trial guarantees.
- Article 46: Rights and freedoms may only be restricted by law and without prejudice to their essence. ( )

- Institutions such as the High Commission for Human Rights have been established as a watchdog. ( ) This Constitution represents the most developed model in terms of human rights texts.

The main problem lies in the implementation of these texts, as their effective implementation continues to be hindered by political challenges.

The reading of Iraqi constitutions shows a remarkable development in human rights texts, ranging from limited references in the 1921 constitution, to extensive declarations in the 1958 constitution, to the integral rooting in the 2005 constitution. However, its effectiveness remains dependent on political will, the independence of the judiciary, and the role of societal and institutional oversight.

The universal conventions and declarations are all with constitutions represent the sponsor and legal guarantor that emphasizes the maintenance of human rights and this is what is reached through the mechanisms and means guaranteed by these charters. We see that the will of man if it wants to move to claim a right must be based on this international law. ( )

#### **The second topic**

Hierarchical means of behavior for claiming rights

Hierarchical means of claiming rights represent the customary and orderly gradation in the use of available mechanisms, starting from national peaceful and legal means, until access to international mechanisms when equity is not possible. This sequence reflects and illustrates the principle of "exhaustion of domestic remedies", which is considered a basis in international human rights law, and contributes to maintaining the peaceful and legitimate nature of the claim to rights( ).

We will divide this topic into two main sections:

##### **First Requirement**

Hierarchical procedures for demanding human rights

Freedom of expression and the right to peaceful demonstration are among the best forms of human rights exercise in democratic societies, and are mechanisms through which individuals express their opinions and demands. In the Iraqi legal system, these rights are affirmed in Article 38 of the Permanent Iraqi Constitution of 2005( ). Hierarchical means of claiming these rights extend from legal and institutional forms to more severe societal tools of struggle such as civil disobedience, in a sequence of low-to-highest strength.

Freedom of expression is embodied in giving importance to spreading the principle of freedom of opinion, which is considered one of the real and realistic premises for demanding rights, and this is confirmed by all international conventions and

covenants, including

#### **First: Freedom of expression**

Article 38/I of the Iraqi Constitution affirms that "the State shall guarantee, without prejudice to public order and morals, freedom of expression by all means". ( ).

This stage is considered the first stage of demanding rights, where individuals or groups begin to express their demands through articles, seminars, conferences, television programs, as well as through social media platforms and official correspondence.

#### **Second: The Right to Peaceful Demonstration**

Article 38/II affirms: "Freedom of assembly and peaceful demonstration, without prejudice to public order and morals," and demonstrations are a legitimate popular tool to demand that the authorities achieve political, economic or social demands. Demonstrations must be based on the law and must be practiced by peaceful means.

Peaceful demonstration has constitutional and legal legitimacy, but may face repression in the absence of a culture of dialogue and acceptance of the legitimate needs of individuals. ( )

#### **Third: Strike**

The strike is used as an escalator means which puts pressure on government institutions or companies to achieve the demands of workers or citizens, and in Iraq, there is no explicit provision in the constitution that allows or prevents strikes, but it is practiced in some sectors. Dr. Nawal bin Talib's study "The Right to Strike between International Law and National Legislation" (2012) highlights the gap between legal theory and practical application in some countries and emphasizes the importance of the strike as a peaceful and democratic means. especially the professional trade union, and the strike represents a collective struggle tool to reach legitimate rights and represents the effectiveness of civil society with its organizations and formations a tool from which various diverse actors to demand a right, and represents the strike transition quality of expression to influence, and sometimes affects the economic system, which accelerates the response to those demands( ), as discussed by Dr. Ahmed Hassan Abu Zeid in his book "The right to strike in international law and Islamic law" (2010) dimensions of this right from a comparative perspective, considering the strike A sophisticated form of peaceful protest. ( )

#### **Fourth: Civil Disobedience**

Civil disobedience represents the maximum degree of concepts of demanding legitimate rights, which is a tool of pressure resorted to by those who demand a legitimate right, and the theoretical foundations of this

concept have been laid in writings, where Henry David Thoreau considered that justice takes precedence over the law when the two oppose, stressing that the responsibility of the free citizen to refuse to participate in injustice even if it is legislated. This argument later inspired figures such as Gandhi and Martin Luther King, and civil disobedience became part of civil political action in many countries of the world( ), Civil disobedience may include refraining from paying taxes, not going to work or schools, as well as sitting in public squares for long periods, for his part, Dr. Azmi Bishara has addressed the concept, stressing that civil disobedience is not chaos, but a conscious strategic means used by societies for peaceful pressure, and that it is a sophisticated form of positive rebellion in closed systems( ), that civil disobedience does not aim to change a political system, but is intended to reach the achievement of demands in addition to exposing injustice reality on a segment, and show the loss of authority to its moral legitimacy before the local and international community.

The behavior of demanding rights ranges from simple individual expression to mass demonstration, then to organized strike, and finally to peaceful civil disobedience, according to an escalating logic intended to correct the mistakes of the authority in the application of laws related to the needs of people and their legitimate rights, which may be confiscated or taken away as a result of tyranny from the authority, government or any other party such as public and private companies, and in the Arab context, this is what Dr. Nasser bin Suleiman Al-Omar showed a legitimate and intellectual rooting of this type of struggle, indicating that It can be in line with Islamic values if its purpose is to remedy injustice without causing fin, which reflects the extent of the blockage of the political and legal horizon. Each phase carries with it different messages of pressure( ), calculated based on the size of popular support, the response of the authority, and the general context.

#### **Second Requirement**

##### **Guarantees of the demand for human rights**

The effectiveness of the demand for human rights is not complete unless these rights are protected by constitutional guarantees and real institutions represented by the bodies of constitutional justice. Mahmoud Cherif Bassiouni addressed the guarantees provided by international conventions, such as the International Covenant on Civil and Political Rights, in addition to the oversight mechanisms that ensure the implementation of those guarantees, including the role of the Justice International and the Human Rights Committee( ), which enhance the citizen's ability to



claim rights and ensure that those claims are protected within the framework of the rule of law. The Federal Supreme Court and the principle of separation of powers are among the most prominent of these guarantees in Iraq.

### **First: The Federal Supreme Court in Iraq**

According to article 93 of the Iraqi Constitution of 2005, the Federal Supreme Court is the supreme judicial body that is competent to monitor the constitutionality of laws and regulations and to interpret the provisions of the Constitution.

As well as settling disputes between federal authorities and adjudicating appeals submitted regarding the constitutionality of legislation or violation of those rights, the court represents a key tool to ensure the protection of rights and freedoms by invalidating legislation that contradicts constitutional rights, as well as rehabilitating victims of legal violations, and supports the principle of legality and control over the performance of the executive and legislative authorities, where Abdul Karim Muhammad interpreted the provisions of the Iraqi constitution comprehensively, with a detailed analysis of the role of the Federal Supreme Court in monitoring the constitutionality of laws, and interpreting the texts of Constitution. ( ) 'Dr. Fouad Mohamed Hassan discussed the role of the Court in interpreting constitutional articles and resolving legal disputes related to the Constitution, ( ) while Dr. Ahmed Al-Rubaie explained the competences of the Federal Supreme Court, including its role in interpreting constitutional texts and monitoring laws. ( )

The role of the Federal Supreme Court in monitoring the constitutionality of laws and the interpretation of constitutional articles is one of the most prominent guarantees in the Iraqi legal system, as it contributes to achieving a balance between powers and enhances the independence of the judiciary in Iraq. However, the practical challenges faced by the Court, such as political interference and external pressures, make it necessary to strengthen its independence in carrying out its tasks.

For example, to challenge the constitutionality of laws that limit freedom of demonstration or expression, as the court represents a real reference for settling the dispute and guaranteeing guaranteed freedoms.

Second: The principle of separation of powers

Article 47 of the Iraqi Constitution states: "The federal authorities shall consist of the legislative, executive and judicial authorities, and shall exercise their powers and functions on the basis of the principle of separation of powers." ( )

This principle confirms a real guarantee for the exercise

of each authority of its competence and non-interference in the competencies of another authority that this integration of the principle of separation of powers ensures realistic commitment to the provisions of the law and the constitutional powers entrusted to each of these authorities and therefore if we reach a real application will be a pillar and guarantee for the human being and his rights, This principle prevents the concentration of power in the hands of one party, and allows the independence of the judiciary, to adjudicate disputes without political interference, as well as the control carried out by Parliament over the executive authority and the existence of clear limits to the powers of each authority, and the more effective this separation is, the hierarchical means of demand become safer and less vulnerable to repression or marginalization, and above all if states abide by the conventions they concluded and contributed to their respect for international declarations and covenants, we will reach the real application of the concepts of demanding human rights.

The demand for human rights gains its strength not only from the clarity of international conventions and covenants or constitutional texts, but also from the existence of institutional guarantees that enable individuals to peacefully and effectively claim their rights, without fear of reprisals or exclusion. The Federal Supreme Court, the principle of separation of powers and good governance models are all real pillars for activating hierarchical means and ensuring their continuity in a democratic environment.

### **The end**

The demand for human rights is not merely a fleeting act of protest; it is an organized legal and societal process grounded in a gradual hierarchy that considers the comprehensive application of international declarations and conventions within a constitutional and legal framework, supported by both national and international legitimacy. This research reveals that hierarchical mechanisms form a systematic structure that empowers individuals and groups to restore or defend their rights. This process begins with administrative grievances, progresses to judicial recourse, and then advances to societal pressure tactics such as demonstrations and strikes, ultimately culminating in escalatory actions like civil disobedience or appeals to international bodies. The presence of constitutional guarantees, such as the Federal Supreme Court and the principle of separation of powers, is a crucial foundation for protecting individuals' rights to claim their entitlements. These guarantees enhance the effectiveness of the aforementioned means and provide the necessary legitimacy and legal protection. Comparative experiences, particularly from European

and American models, underscore the significance of robust and independent institutions that maintain this balance and promote justice. Therefore, establishing an integrated system that respects gradual approaches and ensures legal protection for those asserting their rights is essential for fostering cohesive societies and cultivating a culture of legal recourse rather than chaos or violence.

## **CONCLUSIONS**

1. Establishing a hierarchy in the methods of advocating for human rights is essential for achieving both effectiveness and legitimacy. Beginning with local, regional, and international approaches aligns with the legal frameworks established in national and international systems.

2. National mechanisms serve as the primary line of defense for rights, operating through domestic judiciaries, national human rights institutions, and civil society. These mechanisms uphold the principle of sovereignty and mitigate external interference. When national avenues fail, regional and international mechanisms become essential for promoting justice. Notably, organizations such as the United Nations Human Rights Council and regional courts, including the European, African, and Inter-American Courts of Human Rights, play a significant role in this process.

3. The effectiveness of various methods depends on the political and legal context of each country. In some systems, local resources may be limited, making it even more crucial to seek recourse from international bodies.

4. Integration of multiple approaches, rather than relying on a single method, is essential for successfully restoring rights. The combination of legal, human rights advocacy, media engagement, and diplomatic pressure enhances the likelihood of achieving a positive response and redress.

5. The lack of societal awareness regarding hierarchical structures poses a significant challenge. This issue necessitates educational initiatives and awareness campaigns to foster a culture of rights among individuals and communities.

6. The existence of a clear legal and human rights framework facilitates the effective assertion of rights and helps prevent the waste of time or the pursuit of futile measures.

## **RECOMMENDATIONS**

In light of the findings presented and analyzed in this research, we offer the following recommendations:

1. Enhance legal awareness among citizens regarding their rights and the appropriate procedures for claiming them in accordance with legal and

constitutional guidelines. This will help prevent direct confrontations with authorities and reduce the risk of legal accountability.

2. Emphasizing the activation of national human rights institutions and ensuring their material and administrative independence will enable them to receive complaints, monitor violations, and coordinate with international judicial bodies when necessary.

3. Affirming the independence of the judiciary and recognizing the Federal Supreme Court as the ultimate guarantor of constitutional rights, while ensuring that its supervisory powers remain unimpeded by other authorities.

4. Issue clear laws that regulate the rights to demonstrate, strike, and engage in civil disobedience to ensure their peaceful and legitimate exercise, while preventing abuses of security and unjustified repression.

5. Encourage civil society organizations to act as mediators between citizens and the government, while also providing legal and media support to individuals asserting their rights.

6. Emphasizing the consolidation of the principle of separation of powers and ensuring a genuine balance among them to prevent any interference by any party that could undermine rights and freedoms.

7. Accede to international conventions related to the Optional Protocols that permit individuals to file complaints before UN bodies, thereby providing an additional avenue for claims when domestic remedies are unavailable.

8. Develop concepts related to hierarchical means within the school curriculum to cultivate a generation that values the culture of peaceful advocacy and adherence to the law.

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