DO LESS, BETTER

A think piece from Amnesty Norway on Amnesty's added value and Priorities for Amnesty International work on ESC-rights

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1. Introduction: Do less, better

In 2021 we will celebrate the 20-year anniversary since the inclusion of ESC-rights in Amnesty International's mandate. This occasion is an opportunity to reflect on this important step for our movement. It is an opportunity to look at what we have achieved so far in our work on ESC-rights, and not least to discuss how we can be most effective in our work towards our vision of *a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments*¹.

Amnesty International Norway has developed this think piece to spark such reflection. We hope other parts of the movement, including the international secretariat, will appreciate and utilise our thoughts in this paper in the process of finalising the new global strategy.

We are developing our new global strategy in a rapidly changing global context. The global COVID-19 -pandemic has hit every corner of the world, reinforcing existing power structures and changing geopolitical patterns. The pandemic is also a human rights crisis, both because of the many violations of the right to health, but not least because governments have grabbed the opportunity to restrict other basic human rights, such as freedom of expression and assembly.

The global inequality crisis, the global climate crisis, as well as the ongoing technological revolution are amplifying a global authoritarian turn in many parts of the world. Authoritarian leaders and governments increasingly disrespect and disregard human rights as well as the very system of international human rights law. They gather resources and power in the hands of the few, undermining systems to hold them to account over their human rights abuses and their conduct in general. The new global AI strategy must respond to the long term as well as immediate consequences of this context.

For Amnesty International, we have operated with an outdated global strategy and no permanent Secretary General for some years now. Also, the financial situation is critical. Our human resources as well as our financial resources arestretched. Our next strategy-period will be a crucial one both for the world and for our movement. We need to accept that we have limited human and financial resources and huge external challenges to address. The next strategy period is our window of opportunity to show the relevance and effectiveness of our movement. To do so, we need to be strategic and realistic when we decide how we prioritise our work.

This assessment of the combination of external and internal factors leads to the following as an urgent strategic challenge of our global movement: **How to balance AI's thematic priorities between local relevance and global impact?** As AI Norway sees it, this is a strategic challenge which remains internally under-communicated. By adding new issues as prioritised issues for the movement globally, we risk thematic fragmentation which threatens our global impact. In the new strategy, we need to give room for sections to work on locally relevant causes, but at the same time we do need to prioritise more strictly what our global priorities should be, in order to have global impact. In short, we need to plan for doing less better. As we elaborate in this document, the key to priorisation is a focused assessment of what is Amnesty's added value to work on a certain topic.

As a contribution to the current global strategy process, AI Norway has previously produced a think piece on <u>"The global authoritarian turn – Making humanity win"</u>. Here we argue that the ongoing global authoritarian turn is a political call to strengthen AI's work on civil and political rights. We have also prepared a discussion note on climate change as a human rights challenge, proposing what could be a meaningful approach for Amnesty to this field. With this third document, we hope to

¹ Statute of Amnesty International

stimulate the discussion on Amnesty's work on ESC rights. As in the climate brief, we make use of the lead-support-downscale model to sketch a way forward. We do this because Amnesty needs to take seriously the above-mentioned strategic challenge of thematic fragmentation. Further, we must continue to work human rights based, as opposed to a more unclear "systems-change approach" which is not in line with <u>Amnesty's policy on impartiality</u>.

To us, consciousness around Amnesty's added value should be refined and applied as a strategic navigator. Even if the perception of what is Amnesty's "added value" can differ with different contexts and different perspectives, such an entry point would take our strategic discussions a step further. Added value is about our unique approach – always working research based and always working human rights based. But added value is also about what we can add to the global family of INGOs, HRDs and civil society organisations. We should seek not to duplicate or take over the role of other actors. We should be conscious about our role – which is not to save the world, but to empower the people who can change the world to do so.

2. Amnesty International's added value

2.1. Amnesty's Vision and Mission

At its 2001 International Council Meeting in Dakar, Senegal, Amnesty International (AI) stressed the universality and indivisibility of all human rights, and the need to break down the perception that civil and political (CP) rights have more importance than economic, social, and cultural (ESC) rights.² The old mandate was revised to a new mission which proclaimed to work on civil, cultural, economic, political, and social rights, and to use the organization's methods both against state and non-state actors.³

The inclusion of ESC-rights in Als mission and vision was presented as an ethical approach to globalization, where the promotion of human rights is not limited to the struggle against torture, arbitrary detention, and unfair trials, but also against hunger, illiteracy and discrimination. A strategy paper to the International Executive Committee emphasized: *"Amnesty International should take care not to introduce distinctions between categories of rights that find no foundation in international law. There is no inherent hierarchy between ESC rights and CP rights, or among ESC rights"*. ⁴ In a more recent policy note on impartiality, the need to ascertain that Amnesty is not viewed to systematically ignore or downplay types of rights is stressed.⁵

Amnesty International's Vision and Mission as amended at the Global Assembly Meeting in Johannesburg in 2019 now states as follows: "Amnesty International's vision is of a world in which every person enjoys *all of the human rights* enshrined in the Universal Declaration of Human Rights and other international human rights instruments. In pursuit of this vision, Amnesty International's mission is to undertake *research and action focused on preventing and ending grave abuses* of these rights".⁶

2.2. The importance of Al's contribution and the need for evaluation

The importance of AIs contribution to work on ESCR can be measured in several ways. Some of them are related to internal factors, such as the importance of work on ESCR to maintain national or regional relevance or to ensure membership growth and a voice in public media. As AI's offices, sections and structures operate under very different socio-political contexts, the internal importance of AI's work on ESCR will be crucial for some, while it will be of less importance to others.

External factors that can measure the importance of Al's contribution to work on ESCR include enhanced focus, change in narrative, positive development of international human right standards, political and legal change at national level, and changes in socio-economic conditions. The end-goal should always be to increase the ability of rights-holders to access their rights, whether this is protection against discrimination and exploitation, access to healthcare or housing, or remedies for previous human rights violations.

² 2001 ICM Decision No. 3

³ POL 34/002/2003 Making Choices on Economic, Social and Cultural Rights-Strategy Paper page 3

⁴ POL 34/002/2003 Making Choices on Economic, Social and Cultural Rights-Strategy Paper page 4

⁵ Policy Note on Impartiality, independence and non-partisanship 18 March 2020 page 7

⁶ https://www.amnesty.org/en/documents/pol20/1045/2019/en/

In the overview of AI's work on ESCR the last two decades, the variety in the research and reports becomes visible.⁷

On some of these ESCR-issues, Al's policy and reporting has contributed to substantial change. This includes the work on the right to health and sexual and reproductive rights, with Al's work on maternal mortality in Burkina Faso and Sierra Leone; the right to free and safe abortion in Ireland and Argentina; and the right to legal gender recognition in Norway and Denmark, as good examples. Other positive examples are Al's work on corporate accountability, including the work to hold Dutch oil company Shell to account for oil spill and pollution in the Niger Delta, as well as for its acquiescence to other serious human right violations; and the work on the exploitation of migrant workers in Qatar. Al's work on the right to housing was effective when it addressed concrete threats of forced evictions and contributed to the empowerment of local community- based organizations. On the other hand, other work has been less successful.

There is no evidence-based knowledge that helps us to understand why Al's research and action on ESC-rights in some cases has had a documented added value, while the impact is less noticeable in others. A hypothesis could be that research and action with a focus on specific ESCR violations, using accurate documentation, rigorous rights-based analysis and identifying specific targets for action in accordance with the initial recommendations for ESCR-work, is more likely to succeed. Another working hypothesis could be that issues with a strong interlinkage between different sets of rights where AI can use its traditional strength as well as new knowledge in a holistic manner, will increase the likelihood of success and added value. This will include much of the work on corporate accountability, as well as the work on gender-based discrimination against women, and on discrimination based on sexual orientation, gender identity and gender expression.

An full-fledged internal evaluation of these questions would help addressing the strategic challenge of thematic fragmentation.

Initially, when Amnesty was selecting areas of work on ESC rights, several factors were considered. These included AI's identity and capacity, as well as the gravity of abuses and gaps in protection. AI made a conscious decision to select *issues* that entailed grave human rights abuses, rather than singling out one or two ESC rights. This approach implied a holistic focus on rights that are threatened in a particular situation, regardless of the category to which these rights may belong.⁸

The recommendations in the evaluation of AI's initial work on ESC rights concluded that AI can have a measurable impact by campaigning against *specific ESCR violations*, using the methodology adopted in other areas of work including *accurate documentation, rigorous rights-based analysis and identification of specific targets for action*.⁹

⁷ Overview of Als policies on ESCR and examples of Als reports and other materials.

⁸ The impossible divide between different categories of rights is exquisitely described in General Comment 14 from the CESCR para 8: "The right to health is not to be understood as a right to be *healthy*. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health."

⁹ Where are we on ESC Rights? POL 34/001/2005

Nevertheless, *poverty* became the focal lens of the Demand Dignity Campaign, Al's first global campaign on ESC-rights. The end goal of the campaign, launched in 2009 was defined as: "A future free of poverty through enduring long-term, systemic change".¹⁰

Progress, as well as good intentions, must be addressed. While it is questionable whether the overall good-intended holistic focus on poverty contributed to any substantial change, progress was made on the sub-issues of corporate accountability and maternal mortality, especially when the research and action was specific and based on Amnesty's well-established methodology.

2.3. The strategic navigator: Amnesty's added value

Amnesty has huge potential to make a real difference globally. However, this requires a stricter thematic focus. As laid out above, there are no reasons to challenge the ICM 2001 Senegal decision. Still, including ESC rights in our mandate has inevitably increased the strategic problem of thematic fragmentation. Thus, we need a strategic navigator to be able to address this problem. We believe that stricter awareness around Amnesty's added value is such a strategic navigator.

Amnesty's added value must be understood along two axes. The first is related to who we are in ourselves, our uniqueness. As the world's largest human rights organization, Al's strengths are independent and impartial research of human right violations, a broad membership base, an ability to mobilize people all over the world to joint action, and the ability to ensure efficient communication. Al has a strong brand and has the position and the resources to build broad coalitions with partners and stakeholders at both local, national, regional, and international level. Al's important added value in this sense, is our foundation in human rights. The major gain of using the human rights framework as a starting point for research and action is the opportunity to hold state and non-state actors accountable to their human rights obligations, and to ensure that a particular breach of human rights violation related to the overall responsibility of state- and non-state-actors to respect, protect and fulfil human rights. ¹¹

The second axis is about who we are in relation to others. Al is part of the larger human rights movement, which consists of national and international NGOs, human rights defenders, researchand development- networks, professional organizations, and others. Al's added value in this sense is about what thematic expertise and capacity can we add to this broader human rights movement. When defining our thematic priorities, we must seek to complement and enhance the work of others, rather than duplicate and compete. Al's position and contribution will differ according to the circumstances, from being a driving force to be a catalyst for, or supporter of the work of others.

¹⁰ https://www.amnesty.org/en/documents/ACT35/003/2009/en/

¹¹ Als work on gender-based violence against women, starting for full with the Stop Violence against Womencampaign in 2003, is an example of how Als added value contributed to a change in narrative, and ensured that the issue of gender-based violence against women was embedded in a human rights framework, and considered a human right violation.

3. Human rights accountability versus systemic change – what are the boundaries and differences?

Amnesty's mission is to prevent and end grave abuses of human rights. We do this by holding power to account, by protecting civic space for all and by standing with human rights activists. This goes equally for all human rights; civil and political, economic, social, and cultural rights. We should therefore not frame Amnesty's involvement in areas of economic, social, and cultural rights within an overarching story of the need for systemic change or global justice.

Instead, we need to frame this struggle in the overarching story of holding power to account and demanding that power-holders deliver on their human rights obligations, regardless of ideological or political leanings of the government in charge at any point in time. The same approach should go for our work on private actors including our work on corporate accountability, where we should talk about this with a clear human rights language with an emphasis on the responsibility of corporations to ensure respect for human rights, rather than talking about "reigning in" or "reducing" corporate power.

The latest draft strategy for Amnesty now states that the organisation's goal when it comes to inequality and discrimination is that "by 2028, equality has been increased, as a result of actions taken by states to reduce inequalities and discrimination, reign in corporate power and address the climate crisis". We believe that our mission should be to ensure the *respect of human rights* globally. Hence, we think our goal in this area instead of what is currently in the draft, should be that by 2028, *respect for all human rights has been increased, leading to less discrimination and more equality of opportunity, through ensuring that states respect ,protect and fulfil human rights, that corporations respect human rights and that states secure a green transition with climate solutions that are not violating human rights.*

We recommend that Amnesty focuses its research, advocacy, campaigning, human rights-education and mobilisation, on ensuring the fulfilment of the human rights obligations and responsibilities of states, intergovernmental organizations, and corporations, rather than focusing on which political or economic system is more likely to deliver on human rights obligations. This is in line with the current policy of Amnesty on impartiality which stresses not taking account of the political, social, cultural, or economic structure or the ideology of the state. It is further in line with the draft note from 2020 on "Impartiality, independence and non-partisanship" where it is stated that 'Amnesty International does not take a position on economic systems and ideologies as a whole, but rather calls on states to ensure that whatever their particular economic system it safeguards and realizes human rights'¹².

Our aim is the fulfilment of all human rights for all. When we talk about what this means, we need to use the human rights language that is the foundation of our movement. Our goals and working methods may align with movements basing their struggles on different sets of values, such as the climate justice movement, movements for social justice, movements that specifically aim to reduce income inequalities etc. but this should not be our starting point. Our starting point should be that we talk about these issues within the framework of human rights, and then assess from case to case whether that means that we can be supporters of other movements' goals and objectives, and how.

We should derive from the above that Amnesty cannot as a starting point say that we are going to be a supporter of all movements that some internal documents now term "people-power movements".

¹² «Impartiality, independence and non-partisanship: Implications for Amnesty's research, advocacy and communications», *draft* policy note from the Law and Policy programme of Amnesty International of 18 March 2020.

Expressing support for such movements in general should be avoided, as some people-power movements seek to undermine human rights. Instead, we should use our value-added as a human rights based organisation with unique methods, to work for a world where human rights are protected and promoted for all, so that each and every organisation, movement and individual has the freedom to work for the changes in society that they would like to see.

4. Inequality and discrimination

The First Draft of Amnesty International's Global Strategy (2021 – 2028) suggests two main goals: 1) Freedom of expression and civic space and 2) Inequality and discrimination. Goal 2 is specified as follows: *"By 2028, equality and inclusion have been increased as a result of actions taken by states to reduce inequalities and discrimination, reign in corporate power and address the climate crisis – in line with human rights standards."*

In the strategy draft, inequality and discrimination are posted as equal priorities. Both are doubtless core challenges in societies around the world. Both are reflected in the Sustainable Development Goals. Also, the two impact each other: when inequality is combined with discrimination, it often increases the marginalization of certain individuals and groups. This can be described as a vicious cycle: discrimination leads to increased inequality, and increased inequality to additional human rights violations.

However, there are also crucial differences between how the two concepts are rooted in human rights. Discrimination is clearly reflected in the global human rights standards, which it is Amnesty's mandate to uphold and fight for. *Freedom from discrimination* is a human right referred to in the UDHR, in the ICESCR and the ICCPR. In addition, there are several conventions about discrimination, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the rights of persons with disabilities and the Convention on racial discrimination. If you are discriminated by the state or the state does not secure your right to freedom from discrimination, it is a human rights violation.

Equality is a human rights standard reflected several places, including UDHR article 1: *All human beings are born free and equal in dignity and rights*. The equal rights of men and women are also reflected in CCPR and CESC art 3 as well as CEDAW art 1.

Inequality, on the other hand, is not clearly referred to in human rights standards. Neither is the more narrowly defined *economic inequality*¹³. It is however clear that increased inequality, including economic inequality, *can* lead to human rights violations. In 1986, The Declaration on the right to development stated that *"states should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia , equality of opportunity for all in their access to basic resources^{"14}. More recently, in 2018, a group of independent UN human rights experts addressed inequality, calling for <i>"more action on inequalities that threaten peace and security, development, and human rights."*¹⁵ Rather than taking a view of how inequality per se can affect human rights, or which economic system best protects and promotes human rights, Amnesty should focus on those aspects of any system that we see as resulting in human rights abuses. For

¹³ Inequality can have several definitions, as can economic inequality. Here we define economic inequality as the gap in wealth between individuals in society.

¹⁴ <u>https://www.ohchr.org/en/professionalinterest/pages/righttodevelopment.aspx</u>

¹⁵ <u>https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23969&LangID=E</u>

instance, we do not oppose austerity per se, but we are concerned about how such measures are implemented and how human rights have been considered both prior to and during implementation. Another example would be that we do not take a view, in principle, on whether public services are better delivered by the public or private sector, but rather focus on whether such provisions are consistent with human rights, which may lead us to criticizing privatization of such services if this threatens equality of access to health services.¹⁶

To summarize: even though economic inequality often leads to human rights violations for those with less resources in a given society, it *does not necessarily do so*. It is imaginable that a society with a certain level of inequality still can be able to secure the human rights of all citizens. Whether it is a *just* and *good* society to live in, is a different issue.

A last point to make here is the added value of Amnesty International and the danger of watering out our brand. Our mission is human rights. If we put a cause which is not clearly rooted in human rights at the top of our strategic priorities, we risk watering out our mission and our brand. In order to make our work on inequality and discrimination effective, we would need to ensure that it remains politically neutral, by applying a human rights focus to all of our analysis, as it is stated in the guidance note to the draft strategy that we will do. ¹⁷

To conclude: although inequality, including economic inequality, often *can* lead to human rights violations, it *does not necessarily do so*. Based on this, we recommend that inequality referred to in the strategy document should be clearly defined as inequality caused and reinforced by discrimination, or better: that the strategy document refers to the need to ensure *equality* in dignity and rights and reduce discrimination, rather than talk about inequality. This implies that inequality should be removed as a top priority in Amnesty's upcoming strategy. If Amnesty is to increase its work on inequality, it should focus on research on the link between increased inequality and human rights violations.

¹⁶ Both these examples are taken from the draft policy note «Impartiality, independence and non-partisanship: Implications for Amnesty's research, advocacy and communications» of 19 March 2020.

¹⁷ In the guidance note on page 3, it is stated that «Our future work on inequality and discrimination would remain politically neutral by applying a human right focus to all of our analysis».

5. Do less, better: What ESCR issues should Amnesty engage in – and how?

Amnesty is not an organisation for all good causes. We need to do less better. As elaborated above, thematic fragmentation is itself a strategic problem for Amnesty. We are not able to harvest impact to our full potential, because we work too scattered.

We suggest two levels for AI engagement with ESCR issues in the next strategy period (2021 - 2028): Leading and supporting.

Leading: Al is a driving force on the issue. This implies allocating recourses to accurate documentation through own research, rigorous rights-based analysis, and identification of specific targets for action, as well as policy development, advocacy, communication, and mobilization.

Supporting: Al supports ongoing processes and actions by other actors. Less resource heavy and does not necessitate e.g. Al research focused on this field, still must include rigorous rights-based analysis and identification of specific targets for action.

As a human rights organisation we must be the first to acknowledge the limits ofhuman rights. They are minimum standards which leaves room for national bodies to negotiate human rights based political solutions which are contextually relevant in given country. We should avoid judicialization of too many universal solutions, because one size does not always fit all. Therefore some ESC rights could be downscaled as global priorities for Amnesty International.

Referring to AI's strategy and evaluations of ESCR work, we suggest concentrating on *concrete issues*, rather than singling out a number of ESCR rights as referred to in ICESCR.

The protection of economic, social, and cultural rights is equally important to other rights, and should be developed in regional or national perspectives. When we develop our work on ESC rights, we must always keep a human rights-based approach.

Our suggestions are based on the following criteria:

- Al's added value (see chapter 1)
- Prioritisation of issues characterized by intersectional discrimination on the basis of gender, sexual orientation, gender identity, disability, ethnicity, class, caste, or other prohibited grounds of discrimination.
- Prioritisation of issues where there are *intersections of ESC rights with <u>other areas of high</u> <u>priority in the draft for AI's Global Strategy</u> (2021-2028) (e.g. business and human rights)*
- Prioritisation of topics where AI has a high degree of <u>experience and competence</u> (e.g. as shown in the ESCR primer <u>Human Rights and Human Dignity</u> (2014)), and in particular, topics where AI has conducted broad <u>ESCR research</u> up to now.
- Prioritisation of topics where <u>right to remedy and reparation</u> is relevant, as this is an area where Amnesty has a clear added value given our competence and experience
- The repercussions of the *COVID-19 pandemic* where relevant.

5.1. Leading: On which issues within ESCR should AI take the lead globally?

1. Sexual and reproductive health and rights including gender-based violence and lgbt-rights.

Amnesty should strengthen its work within this field. Relevant focus areas include protection against rape including consent-based rape legislation, access to safe and legal abortion, access to age-appropriate sex education, maternal mortality.

This is based on the following criteria: Added value, and AI competence, intersection with discrimination of certain groups, right to remedy and reparation

2. Corporate accountability: Holding corporations accountable for human rights violations

Amnesty should strengthen our work on business and human rights. The business and human rights umbrella is broad, and there are several relevant topics to focus on over the coming strategy period. Workers' rights are relevant both within formal and informal sectors. We would like to point to the following:

- Intersections with discrimination and a particular focus on workers belonging to marginalized groups. This can include migrant workers, indigenous peoples, and minorities. In addition to the need to challenge corporations for their responsibility, this work may include challenging regulation on state and regional level, as well as aiming to fight discrimination and exploitation faced by workers.
- Implementing laws for mandatory human rights due diligence, at the regional and national level.
- Environmental issues should be prioritized when linked to BHR and HR violations, such as the right to livelihood, life, water, and adequate housing.

This is based on the following criteria: Added value, AI competence, intersection with other areas of high priority in the draft strategy (BHR), right to remedy.

5.2. Supporting: On which issues within ESCR should AI be a supporter?

1. Marginalized groups' right to health (including, but not limited to, the repercussions of the COVID-19 pandemic)

This is based on the following criteria: Particularly important in a post-COVID-19 world. Marginalized groups are more vulnerable in the pandemic. This applies to, but is not limited to, health rights of workers. On this there is an intersection with BHR (workers in high-risk work conditions). However, our understanding is that several well-qualified actors are working on this, including labour rights groups. When it comes to the issue of health workers, we suggest that these are not given priority over other groups' right to health. This is a consequence of focusing on marginalized groups' right to health. Who these marginalized groups are will vary between different contexts, in certain situations health workers might be a group of priority, and in other situations other groups. That said, we would like to mention irregular migrants as a particularly vulnerable group when it comes to right to health, and on this topic, Al also has good experience.

2. Right to adequate housing, with a special focus on forced evictions and the right to water and sanitation.

This is based on the following criteria: AI competence, intersection with discrimination of marginalized groups and right to remedy suggests this should be a priority. However, the results of AI's work on this is unclear, and success on the issue is highly dependent on local knowledge.

5.3. Are there issues linked to ESCR that could be downscaled – and why?

The below issues are mentioned specifically because of the fact that they have been discussed as possible focus areas during the international strategy process. We propose that they are downscaled.

1. Minimum income.

Reasoning: Minimum income is not a human rights standard and whether this is a good reason for securing economic rights varies from different contexts. In some countries, including Norway, the labour movement opposes a minimum income, fearing a "race to the bottom" effect.

2. Global tax rules, tax evasion and tax avoidance.

Reasoning: There are already a significant amount of well-qualified actors in this field. We question the added value of making this a priority, in particular as Amnesty does not have historical competence on this issue and it would require significant resources to secure the right competence.

3. Austerity

Reasoning: Amnesty International does not oppose austerity per se, but we are concerned that this must happen in line with the human rights obligations of states (*vis til Impartiality, independence and non-partisanship-dokumentet*). Thus, we suggest that Amnesty's work on austerity is framed within the relevant human rights violations happening as a result of austerity policies, instead of austerity per se being the frame and priority.

4. Sustainable Development Goals (SDGs)

Reasoning: SDGs are important goals for states, corporations and the international community and no doubt plays an important role in the international debate. However, Amnesty's work is based on human rights standards and our role in the international community should be to uphold these as the minimum standards that all states are accountable for.