# ADMINISTRATIVE AND JUDICIAL FRAMEWORKS FOR ARMED NON-STATE ACTORS' LAW ENFORCEMENT AND ORGANIZATIONAL STRUCTURES

*Adv. Ahmad Talha*
*LLM (International & Maritime Law)*
*Law Department*
*Bahria University Islamabad Campus*
*Islamabad – Pakistan*
*ahmadtalha80@yahoo.com*

**Abstract:**

*As a result of the global political turmoil caused by the numerous military conflicts that have broken out over the course of the past several decades, a huge number of groups have emerged with the goal of retaking large swaths of territory, which they then rule. Due to the fact that the legality of their administration is in question, there is an urgent need to investigate whether or not these groups are able to legitimately dispense justice during these conflicts and whether or not they actually adhere to the norms of law. According to International Humanitarian Law, it is legitimate for even ANSAs to administer justice since it is essential that everyone receive justice and because it should not matter who delivers that justice as long as it has been done. This is due to the fact that all parties must be afforded equal justice under international humanitarian law.*

**Keywords:** International Humanitarian Law, Armed Non – Stare Actor, Geneva Convention, International Committee of the Red Cross, International Law

## Introduction:

There are differing opinions on whether international law in general permits ANSAs to initiate the administration of justice. Some organizations, like the ICRC, contend that as long as they adhere to international legal norms and meet criteria that for a fair trial, they should be permitted. (IHL, Commentary of 2016) According to Jan Willms, it is legal because international law does not expressly forbid ANSAs from establishing courts and administering punishments. (Willms, 2012) Article 3 of the Geneva Convention provides that no one shall be subjected to punishment without a just and impartial trial. (Article3) Add to that Article 6(2) of Additional Protocol II, which provides

that no one may be punished unless by a court that ensures independence and impartiality. (Article6(2))

Many armed groups, including ISIS, have established organizations with full bureaucratic departments, which makes it quite simple for them to manage huge territories. ISIS, for instance, has divisions in charge of taxation and law enforcement. These organizations can readily establish courts and administer punishment in accordance with their interpretation of the law thanks to the system's extensive workings. (Jefferis, 2016)

*Las Fuerzas Armadas Revolucionarias de Colombia* or the Revolutionary armed forces of Columbia (FARC), a rebel group that first emerged in the 1960s, is another illustration of how it was able to gain substantial tracts of land through its campaigns and eventually persuade the local populace to join its ideology. (Provost, 2018) To the point when local administrative officers began to abide by their rules. The FARC adhere to a thorough code of conduct that was revised in 2013. This code outlines the penalties for heinous offences like murder, spying, treason, and sexual assault. (FARC-EP, 2013) For these offences, a unique procedure known as the *consejorevolucionario de guerra* has been developed (revolutionary court-martial). Contrarily, the law enforced by the Sudanese Peoples Liberation Army (SPLA) is seen as being bizarre and old, although it covers a wide range of subjects, from marriage and robbery to subjects like witchcraft. Payment, cattle, or even whipping may be used as the punishment. (FARC-EP, 2013) In truth, there are still unresolved concerns in international law, and most of their laws have not yet been codified, despite calls for their harmonization with human rights law. In reality, the Sri Lankan Tamil Tigers have established district courts where citizens can go to seek redress from the state's potential rulers. (Leonardi, 2009)

There are much more ANSAS in the world that have authority over certain regions and that administer justice by setting up courts for the general public and revolutionary trials that appeal to the general public's sense of principles. (Pascal Bongard, 2020) The international community is still unsure, nevertheless, whether such organizations or would-be Sovereign rulers are genuinely permitted to carry out these obligations under international law. Since due process is essentially non-existent, the fundamental criticism levelled at these legal systems is that they do not have fair trials. The interpretation is one of the reasons why experts disagree on whether these organizations have the right to establish courts, according to an article written by the ICRC. (Pascal Bongard, 2020)

The IHL customary rules state: "*Courts are those established by the laws that are implemented within a country, therefore when armed organizations take control of their entire existence, it is against the rules laid down by those laws, which is why they are illegal*." The conflict is brought on by the fact that many concerns are not addressed by international law. The uncertainty will persist since there is no clear rule that forbids non-state entities from setting up tribunals and punishing their citizens. (Heffes, 2016) The fact that Common Article 3 of the Geneva Convention and Additional Protocol both do not oblige the ANSA's from abstaining from creating courts in the administration of justice is another point to add to this already divisive area of IHL. (Heffes, 2016)

## Literature Review

Ezequeil Heffes discusses at length the various themes of Administration of Justice by armed groups. He discusses the reasons why Jurists and the International community are at a crossroads when it comes to ANSA's administering Justice and goes on to discuss the effects of the Geneva calls round table. (Heffes, 2016) He discusses that although IHL has existed for over 60 years this new emerging phenomenon with our ever-changing political climate cause for emergence of new issues that IHL is silent on. In the article the reference of common article 3 and Additional Protocol II is given to highlight the fact that although the main convention on war is silent on whether these organizations can set up courts it does give rules that inevitably cannot be breached due to international customary law. However, in his article the author does not discuss the various armed groups and how they have successfully administered justice in the territories controlled by them. (Heffes, 2016)

In fact, the Garance talks themselves discuss the issues faced by both states and ANSA's. The series highlights the various roles of ANSA's have to acclimatize too. It also details the reason why it is necessary for ANSA's to set up a mechanism to deliver justice when it is needed. (GenevaCall, 2017) Some of the reasons highlighted were the fact that during the war (Civil war in Sudan) crimes were being committed and people were needed to be detained for the crimes they committed for this reason SPLA had to detain people as prisoners until the sentence was finished. Another issue it highlighted was that in regards to FARC sometimes the people who were punished were done so with inaccurate evidence and hence impartiality of justice and a free and fair trial was not the case. Garance talks specifically talked about the administration of justice was done with those ANSA's at the talks and focused more on their methods rather than discussing the depths of IHL. (Geneva, 2018)

Jan Willms in his paper discussed how and why armed groups could administer justice. The writer is of the view that the IHL does not strictly prohibit Armed groups from taking up the administration of justice and believes that their systems can actually help in protecting the principles laid down by IHL. (Willms J. , 2010) If the mechanism established stops armed groups from committing various criminal acts during a time of war or peace than such mechanisms should be allowed. The author also believed that the record of armed groups in legal matters is mixed, he gives the example of African armed groups where they violate IHL yet respect and protect civilians. This author did not however, discuss groups that were being discussed in this research paper. (Willms J. , 2010)

Sandesh Sivakumaran discusses in his article the various criticisms that are levied against Armed groups. The author analyses various armed groups like the FMLN, CPN-M and the Tamil Tigers. He individual discusses their merits and demerits while linking their status under IHL. (Jalloh, 2013) He is of the view that a mechanism that is created by a law to protect a rule of law. However rudimentary it may seem, which protects the people, works for the benefit of the people. Should be acknowledged and the international community should not create barriers in acknowledging it but work for the safeguarding and protection of Humanity. (Sivakumaran, 2009)

A paper written by cherry Leonardi discusses the nature of SPLA, how and why it set up its judicial system. The fact that the SPLA is one of the few armed groups to actually take power over a vast majority of territory has enabled it to create a judiciary that solves all sorts of problems. (Cherry, 2009) As the writer explains the judicial system is a like a market where people can choose to go to whichever court, they want for whatever reason they want. The writer however, discussed the administration of justice when the war was finished and as such the applicability of IHL was left out. (Leonardi, 2009)

**Objectives Of The Research**

- In order to conduct an analysis of the Fundamentals of International Law in relation to the functioning of the Judicial System,
- To investigate the processes that are used by a variety of armed organizations to Administer Justice;
- To determine whether the armed groups that have been addressed genuinely adhere to the laws of Intentional.

**Research Questions**

1. In relation to the administration of justice, what are the fundamental principles that underpin IHL?
2. Where Does the Administration of Justice Carried Out by Armed Groups Stand in Relation to International Law?
3. How armed groups administer justice?

**Research Methodology**

Since the current literature on international humanitarian law and diverse armed organizations will be used in this dissertation, the research approach will only be qualitative. The purpose of the research is to comprehend how distinct armed organizations respond to the demand for enforcing the law. The legality of armed groups dispensing justice will then be discussed. whether or not different armed groups are permitted to establish different methods under international law, and if so, under what restrictions? The research paper will then go on to discuss the divergent perspectives on the relationship between armed groups and justice, as well as the challenges that both the international community and armed groups have encountered in establishing these systems for delivering justice to both armed groups and civilians.

**A Brief Exposition of the Principle of Legality in International Law:**

The ability of any armed organization or armed non-state actor (ANSAs) to carry out justice is a matter of discussion. It is also unclear from the wording of international legal documents and agreements whether ANSAs can actually administer justice as they see fit. Prior to all of this, the

legality premise needs to be covered. The concept of legality has been codified in international customary law, according to the ICRC. In their compilation, the ICRC emphasized that no one is allowed to be found guilty of or punished for an offence that is not illegal under domestic or international law. According to Rule 101 of Customary International Humanitarian Law (CIHL), which goes even further, no person or group of people who commits a crime is subject to a penalty that is harsher than the one that was in place at the time the crime was first committed. (IHL, Practice relating to Rule 101 ; The Principle of Legality)

In accordance with the third Geneva Convention, this legality principle is enforced by international humanitarian law (IHL), which states that no one may be found guilty of an act or omission that was not illegal at the time it was committed. (Article99, 1949) The fourth Geneva Convention continues by stating that no court may punish anyone until it is permitted by law and that the penalty cannot go beyond what is specified in the law. (Article67, 1949) The two clauses of the third and fourth Geneva conventions serve to codify what was said in CIHL Rule 101 into an international legal agreement. The Geneva Convention of 1977's Additional Protocol I reiterates these considerations by stipulating that no 79 people may be punished unless it is carried out by an impartial court with legal authority. (Article75(4), 1949)

All of the aforementioned principles are reiterated in Additional Protocol II of the GC's, but it also adds that if a conviction for a crime results in a punishment that is later amended to be less harsh, the person who was convicted will benefit from the less severe punishment. (Article6(2)(c), 1949) The maxim *Nullum Crimen Sine Lege* states that no one shall be held responsible unless the alleged offence was truly a crime at the time it was committed. This maxim has also been underlined in the Rome Legislation or the ICC statute. (Nullum crimen sine lege is latin for "no crime without law.") The non-retroactivity rationale personae principle, which stipulates that no one can be held accountable for an offence if it was not stated in the act at the time the crime was committed, is also codified in the Rome Statute. (Article24(1), 1998) The same principle also argues that the accused should receive a benefit if the law is relaxed about how, it punishes a crime, so long as it occurs prior to the court's final ruling. (Article24(2), 1998)

The concept of legality has also been included into several international law conventions by international human rights law (IHRL). Similar to IHL, the International Covenant on Civil and Political Rights (ICCPR) enshrines the legality concept by stipulating that no one may be brought to justice unless their conduct or omission actually violates the law. (Article15(1), 1966) In fact, the African Charter of Human Rights (Article7(2), 1986), American Convention on Human Rights (Article9, 1978), European Convention on Human Rights (Article7(1), 1950), and Convention on the Rights of the Child (Article40(2)(a), 1990) all reiterate this same notion. This designation under Article 4 of the ICCPR and the inclusion of the legality concept in so many international law instruments render it a *Jus Cogens*, which the ICCPR further argues makes this right non - derogable. (Article4, 1966)

One thing is unquestionably obvious when using the aforementioned precedents and practices. If certain conditions are met, such that the offender was sentenced by a court with legal authority and that the law changes to lessen the punishment for the offender, that change will be taken into account, then a punishment may be carried out for a crime that is sanctioned by the law. In essence, 'administration' carried out by a legally qualified court will be recognized if these requirements are satisfied, even if it is an ANSA's.

**Administration of Notable Armed Non-State Actors in the Global Arena**

**Administration of Justice Within ISIS Territories:**

After Al-Qaeda struggled to establish itself in Iraq following the American-led invasion, the ISIS was created. Al-Baghdadi took over as leader of the Islamic State of Iraq in the year 2010 when Al-Qaeda in Iraq had already been defeated and reorganized (ISI). (Jefferis, 2016) Later, after absorbing additional organizations, most notably Al-Nusra, AQI and ISI Al-Baghdadi claimed in 2013 that they would now form a single entity known as the Islamic State of Iraq and Syria. (Jefferis, 2016) Simply put, the fact that there were already plenty of dishonest politicians in the regions of Syria and Iraq allowed ISIS to establish a sense of security. This is one of the key reasons why ISIS has been able to seize control of vast tracts of land.

ISIS is fundamentally a sect that upholds Sharia law, hence the vast bulk of the laws they adhere to are not written or codified. (Bunzel, 2015) The *Hudud* punishments, which are severe penalties, are discussed in some of the written regulations. The Quran, which is the main source of Sharia, serves as the primary source of law for ISIS and the majority of Islamic extremist organizations. However, ISIS has established laws for them and has actually implemented the *Siyasa Shariah* principle, which is also known as "religiously valid administration," in response to contemporary issues. (Khalaf, 2014) ISIS has even gone as far as to codify some of the rights and obligations of those who are under its authority. ISIS sometimes refers to its followers as *An-Nas*, the Arabic word for "people," or *Ri'aya* (flock). In some cases, especially when a number of people pledge allegiance to ISIS. ISIS even permits contracts to be made. ISIS even has a constitution that is only hazily modelled after *Madinah's*. (Khalaf, 2014)

In Libya, Syria, and Iraq, ISIS has formed a large number of tribunals and pro to courts. These courts are used in a variety of ways, particularly to educate the public about ISIS's methods. The majority of the time, the judgments are rendered in the town's center where a sizable crowd can hear them in public. (Revkin, 2016) Three distinct court systems make up the bulk of ISIS's judicial system. The first is known as *diwan al-mazalim*, and it functions as a sort of general court that receives complaints of all stripes. The second court, known as *Diwan al-hisba*, is where ISIS's moral police bring accusations. A high court located in Mosul is the third court. And last, ISIS has a well-organized police force that carries out law enforcement. The second police force is a moral police force committed to eradicating the evils introduced from outside sources and is called *hisba*. The first police

force, known as *al-shurta al-islamiyaa*, deals with the general enforcement of rules and regulations in the same way a normal police force would work. (Revkin, 2016)

**Administration of Justice within South America by FARC**

The FARC was led by *Manuel Marulanda Velez* until his passing in 2008. The group of military leaders that included *Marulanda* and gave commands was referred to as the General Secretariat. There were seven different commanders in charge of specific duties including military strategy. The FARC's constitution demonstrates that its organizational structure is modelled after the military, indicating that it is highly structured and organized. (Carrillo-Suarez, 1999)

The FARC's legal system took a very long time to build. At first, FARC operated under extremely simple regulations, just applying state law in a more arbitrary manner. (Carrillo-Suarez, 1999)

Initially, the legal system was created in a way that concentrated on minor offences. When the death penalty was actually applied, it was always announced in a newspaper or pamphlet and then distributed to the public in an effort to garner support by enforcing justice for the underprivileged rural population. (Provost, 2018) Later, the law evolved to provide for the administration of justice in settings that were more moderate or secure. *Zonas de retarguardiasnacional* was the name given to these locations (National rear-guard zones). This branch of justice dealt with offences including corruption and aiding paramilitary organizations with the goal of reducing the criminal activity in the region. (Peña, 2014) They even went so far as to settle family issues in order to settle arguments on a more personal level. When the FARC really held any territory, it began to behave like a state and attempt to administer what would be considered a very primitive kind of justice. This simply involved adhering to local laws and customs that were consistent with the Marxist concepts that the FARC had accepted. The FARC really published two texts, one of which contained 46 principles governing many facets of daily life. The other document, *Normas de Convivencia Ciudadana*, was consistently displayed in public areas. (Peña, 2014) Both of these documents governed citizens' lives, not the lives of FARC members, who were covered by a different and more comprehensive statute. The FARC did have a type of tribunal system that was initially developed for the military but subsequently expanded to include the civilian community. The FARC, however, respected the choices made by the local chief or elder because they were more widely accepted. Regarding private legal conflicts, the local region commander would visit the town or hamlet and open up shop during the market day. People would then come to him for justice in regards to their private matters, which could range from custody battles to property disputes. The commander would listen to both sides' arguments and let them speak before making a decision. (Provost, 2018) To make sure his judgement was fair, the commander might even travel to the property's location if something was uncertain or request to inspect the item in question. The FARC even established an actual office in the *La Macarena* neighborhood, staffed by a "retired" guerrilla who would settle local residents' private problems. The local population trusted them even more as a result of this approach of handling individual cases because everything was handled on a more personal basis. (Provost, 2018)

The FARC, which is essentially a military organization, was quite tight with the rules for their combatants, much like other ANSA's, and the rules and laws themselves are far more established than those for the citizens. The FARC devised a statute for its fighters that governed conduct, rights and obligations, and even movement. Section 8 of the regulation that served as their guideline even stipulates that they must prevent civilians from suffering as a result of their fighting. (UN, 2016) By stipulating that no FARC member can kill a civilian or another FARC member, it even codifies the principles of the Geneva Conventions, the UDHR, and other documents. For major offences, the member may be subject to a court martial. There are five jury members, a president, and a secretariat in a court martial. The Guerrilla council always selected the prosecutor for the court martial. These requirements state that the person facing court martial must first be given a fair amount of time to prepare their defense and, second, be provided with all pertinent case materials. (UN, 2016)

**Administration of Justice within Sri-Lanka, Tamil Tigers:**

A number of courts were established by the ANSAs known as the Liberation Tigers of Tamil Elam (LTTE) in the late 1990s to oversee the enormous land and population they had seized in Sri Lanka's north and east. The LTTE even established a law school to aid in the legal education of more Tamils living in the territories under LTTE control. After carefully examining the legal systems of the British, Indian, and Sri-Lankan regimes, the LTTE developed their structure for administering justice. (Sivakumaran, 2009) The LTTE had seventeen distinct courts that would provide justice to many people when it was at its height. These courts generally consisted of an appeals court that served as a supreme court or review court and had three justices sitting in judgement. There existed a special court that only met under exceptional circumstances, such as in certain criminal cases involving particularly specific matters. Additionally, three carefully selected justices presided over this court. Two high courts were present. six District courts with separate criminal and civil divisions. It even had a separate family court. At its height, the LTTE heard cases and rendered verdicts in almost 23,000 instances. These courts mostly handled private disputes ranging from property disputes to contractual difficulties in the cases they heard and decided. (Sivakumaran, 2009)

The LTTE established a law school only for the use of Tamil Tiger militants who would attend to study the law. However, this practice was ultimately abandoned in favour of the local population being allowed to enroll as well. In the end, the LTTE members who had first attended the school for training were chosen to serve as judges. According to the LTTE, there was a stringent application process for the law college. There was also developed an entrance standard. Admission was granted to students who had successfully completed their G.C.S.E. A level as well as to employees with a minimum of seven years of experience in their current position. The educational programmed was broken up into three years, with a different subject receiving special attention each year. In the beginning, year one was taught 11 subjects, year two taught 10, and year three taught 9. After this, in order for a graduate to actually start practicing law themselves, a 2-year apprenticeship was required. Anyone was permitted to represent themselves in court in territory governed by the LTTE. (Sivakumaran, 2009) They merely had to swear an oath in order to engage in practice if they were

from outside the LTTE's areas. The LTTE set up a court system that they vehemently insisted was independent, and many people upheld that claim. However, on the other side, it was criticized for being run by the LTTE itself, ruining its reputation as an independent judiciary, especially since the majority of the judges were LTTE cadres. That said, the LTTE established a judicial system during its time as one of the largest and best-organized ANSAs. It was based on former governments' operating models, and it was somewhat successful, but like all ANSAs, the independence of such a judiciary is in question. (Provost, Rebel Jurisdiction, Due Process, and Tamil Tiger Justice, 2021)

**Administration of Justice by Taliban in Pakistan and Afghanistan**

One of the most well-known organizations mentioned here is the Taliban, which is notorious for carrying out terrorist acts in both Pakistan and Afghanistan. *Mullah Haibutlullah Akhunzada* is the organization's current leader. The Taliban have intermittently controlled Afghanistan for the past few decades, and they have also had power over Swat Valley in Pakistan.

The so-called trial commission and the Ulema council are in charge of the Taliban's whole legal system. The Taliban's commission is a very complex and well-organized institution that deals with a variety of legal issues, from the appointment of the president of the organization responsible for crafting the Taliban's rules or code of conduct or their constitution to (Layha). (Jackson, 2018)

*The Daruliftah*, or *Fatwa Council*, is the first and largest of the three additional branches that make up the Commission. This serves as the Taliban's judiciary system, and it is present in every province under the ANSA's control, which includes all of Afghanistan as well as the Pakistani provinces of Quetta and Peshawar. (Antonio Giustozzi, 2021) Similar to how state courts in general are separated, the courts are further divided. In order to administer justice, they have district level courts that combine permanent judges with others who will shift from district to district. Judges conduct their business out of courthouses that also include a jail. The other courts operate at the province level, and Pakistan has a separate supreme court. (Antonio Giustozzi, 2021)

The court system is both simple and complex, relying mostly on eyewitness testimony as evidence, the fundamentals of Islamic Shariah law, as well as customary traditions. If a case needs to be started, it must first be done so in writing to the governor. The governor may settle simple disputes, but judges will handle more complicated decisions involving the interpretation of the *Quran, Sunnah,* and *Hadiths*. (Antonio Giustozzi, 2021) The parties will always be aware that a case has been started, and if a summons is necessary, the governor of that province will issue one. When a trial is started, witnesses are requested, especially key witnesses like the village elders. The Taliban system permits a council of elders (Taliban seniors) to be formed to resolve disputes when much more important and complex topics are brought before the courts. Although they have a right to appeal, the locals rarely do so out of concern for getting in trouble or offending the Taliban. However, the Taliban's powerful and well-connected families have occasionally contested court rulings. (Antonio Giustozzi, 2021)

According to the Taliban, this code of conduct was developed after significant research and consultation with jurists and specialists in shariah law. As far as the Taliban are concerned, the rules and regulations of their fighters are governed by a document, sort of a constitution, called the Layha. This text states that it applies to everyone, even warriors (*Mujahideen*), and that they must faithfully follow it in their daily activities. There are 85 sections in the Layha's current iteration, which was released in 2010. The Layha stipulates that the governor must release prisoners of war (POWs), punish them with the *Tazir* penalty or execute them if they are classified as Afghan Defense Forces or Afghan officials. This is governed by Section 10. Unless the governor is functioning as the Qazi, the judge in that province is the only one who can impose the *Tazir* punishment. Section 11 states that 23 to 26 persons are employed by *Kafir's*. (Munir, 2011)

All those who assist the *Kafirs* in constructing their camps or buildings will be punished by death, either immediately or after a court ruling, in accordance with sections 11, 23, and 26. The Layha specifies that the judge's discretion is reserved when it comes to foreign POWs. However, if foreign POWs are engaged in fighting while being transported, they must be murdered. The Layha does protect POWs from torture, but under section 15 it also talks about suicide bombings and their legitimacy, how to deal with spies, how to fight, what is forbidden, and act which are prohibited and of course booty.

**Conclusion And Recommendations**

There are a lot of legal loopholes that need to be filled by the international law community before anybody can readily claim with certainty whether or not ANSA's and IHL fit together. These legal loopholes involve the applicability of IHL as well as the way that ANSA's administer justice. Although there is a protracted and in-depth discussion about whether or not ANSAs can lawfully regulate a region, the phenomena are still occurring even if this debate is taking place in legal circles. There are anti-government militias operating in various parts of the world, and they are fighting for a variety of causes. Many of these ANSAs command enormous swaths of land and exercise authority over the local legal system.

It is necessary for everyone to get justice, and as long as their basic rights to justice are being fulfilled, it should not matter who is delivering that justice as long as it has been done, so according to international humanitarian law, it is legal for even ANSAs to administer justice. This is because international humanitarian law recognizes that it is necessary for everyone to get justice.

Article 3 of the Geneva Convention, which applies to all parties, has a provision that specifically mentions everyone's right to seek justice; this provision does not differentiate between parties only on the basis of whether they are states or armed organizations. According to the law, "everyone" has the right to seek justice, and according to the researcher's point of view, it should not matter who is responsible for providing that justice. so long as it is conducted in accordance with the principles that are inscribed in international law.

People who live in territories that are controlled by different groups at different times during a war need to be provided with a forum in which they can seek justice. If the state and the group in question are engaged in hostilities, then the people in those territories will seek justice either from the state or from the authority that is exercising control over them. If both of these entities are engaged in hostilities, then the people in those territories will seek justice from the authority that is exercising control over them. In situations like these, it ought not to matter who is meting out justice as long as it has been done so in accordance with the law.

The researcher is of the opinion that the time has come to stop debating the theoretical aspects of whether or not ANSA's can administer justice and to instead create an actual working legal framework with a universal applicability upon all ANSA's to guarantee the rights of everybody living under their regime.

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