**Empowering Marginalized People: Exploring Remedial Self-Determination in the International Human Rights Framework**

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**Abstract**

This paper investigates the concept of remedial self-determination within the international human rights framework and examines how this right can be applied in situations where historical injustices or rights violations have occurred. By focusing on the application of remedial self-determination in Kosovo, we can gain valuable insights into how the international community addresses past discrimination, persecution, and human rights abuses through the lens of self-determination. The paper also raises questions about the compatibility of remedial self-determination for Palestine in Middle East, Rohingya in Myanmar within the evolving international human rights system.Using a doctrinal, postcolonial and comparative approach, this paper argues for the essential activation of remedial self-determination to find solutions to the ongoing crises in Palestine, Rakhine and the likes. The principle of self-determination, as enshrined in Common Article 1 of the International Convention on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, is recognized as a fundamental right for all peoples. Remedial self-determination allows certain groups or populations to seek self-determination to address past injustices or rights violations, such as discrimination, persecution, or human rights abuses. The example of Kosovo illustrates how remedial self-determination was invoked to address historical injustices and protect the rights of the Kosovar Albanian population. This principle can serve as a foundation for sustainable peace and security, particularly in the cases of Palestine and Rohingya, where independence and protection of rights are crucial. The United Nations system for decolonization must be activated to ensure the right to live in peace and security for all. Dialogue, diplomacy, and adherence to international law are essential in navigating the complexities of remedial self-determination for towards a just and lasting solution. This exploration sheds light on the challenges of applying remedial self-determination in contexts where there are competing interests, such as territorial integrity, minority rights and European based International Human Rights Law.

**Keywords:** Remedial self-determination, European Based Human Rights, Kosovo, Palestine and Rohingya.

1. **Introduction**

Self-determination was ignited under colonial rule as a basis for anti-colonial movement which, now days under UN Charter this concept known as a fundamental ground for achieving universal peace and promoting friendly relations among the nations.[[1]](#footnote-1) As we delve more, it becomes clear that the right of self-determination is considered a collective right rather than an absolute right. Thus the principle of self-determination can be restricted by considerations such as territorial integrity and the rights of minority groups.[[2]](#footnote-2)

The self-determination was declared as part of Human Rights in the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR) which granted self-determination to all peoples, transforming it into a universal right. These conventions give self-determination four main elements, political, economic, social, and cultural.[[3]](#footnote-3) Certain member states of the ICCPR and ICESCR expressed worry about how the interpretation of self-determination, which differs depending on the region, may give rise to delicate issues like the rights of minorities and the right to secede. The lack of a clear definition of "people" in this context raises questions about the applicability of the regulations. These questions went unaddressed, and the requirements of human rights law are still unclear.[[4]](#footnote-4)

Furthermore, the application of self-determination remains vague although theoretically recognized in many international documents.[[5]](#footnote-5) There are most conflicts over self-determination which could not be resolved by the internal apparatus of individual states, triggered human rights violation and were considered as threats to international peace and security. Thus The UN Security council and the General Assembly are authorized to intervene in domestic affairs of a member states when the conflicts are considered to have severely negative influences on human rights violations. [[6]](#footnote-6)

Nonetheless, it is undeniable that the Security Council’s permanent members, however, are not fully out of this accusation of violation of human rights as clearly shown in cases.[[7]](#footnote-7) The failure of settling self-determination claims in many states, which threaten international peace and security has fueled the emergence of a remedial self-determination.[[8]](#footnote-8) Remedial self-determination investigates the potential for formulating such a framework for the implementation of self-determination in a postcolonial setting, be it for autonomy or independence.[[9]](#footnote-9)

The Arbitration Commission of the Peace Conference for Yugoslavia[[10]](#footnote-10) and the Supreme Court of Canada[[11]](#footnote-11) have historically endorsed advisory opinions on self-determination in post-colonial eras. They differentiate between external and internal self-determination, suggesting minorities should express their rights internally within their host state's constitutional framework.

Furthermore, The example of Kosovo illustrates how remedial self-determination was invoked to address historical injustices and protect the rights of the Kosovar Albanian population. Kosova's government is demonstrating its ability to protect human rights, particularly minority rights, demonstrating maturity in entering the civilized nations family. As a state, Kosova will set an example for protecting human rights for all.[[12]](#footnote-12)

Kosovo serves as a prime illustration of a territory that has successfully achieved self-determination, while other regions continue to endure numerous human rights violations. They are excluded and lack the agency to shape their own future. Hence, it is imperative for the international community to engage actively in assessing the compatibility of the implementation of the self-determination principle in Kosovo with other marginalized regions like Palestine and Myanmar.

Marginalized people prevented from participating fully in social, economic and political life because of a lack of access to rights, resource and opportunities.[[13]](#footnote-13) Discrimination against ethnic, religious, and linguistic minorities negatively impacts poverty reduction, democracy, sustainability, and preventing conflicts.[[14]](#footnote-14)

However through the international human rights convention will gain their rights as a human if the there are the clear circumstances on self-determination. Additionally, the function of international institutions and the international community must be clarified in order to guarantee that remedial self-determination is a viable solution to injustice. The way on how HRC asses the capacity of a group of people self-determination claim to achieve independent statehood clearly is needed. Because, grave human right violation might be caused by the misunderstanding of self-determination and the lack of democratic means to negotiating peace.[[15]](#footnote-15)

1. **Self-determination in postcolonial context**

In postcolonial context, the role of international law and its institutions in developing the law of self-determination have been contentious. This rights influenced by a temporary political situation and the interest of hegemonic powers in maintaining the world order. The ongoing self-determination movements in the postcolonial context contribute to the overall ambiguity of this principle, including uncertainty about a justification for intervention, basis for secession, or special arrangements within a State.[[16]](#footnote-16) Thus, a remedial character of postcolonial self-determination has conceptualized under this condition becomes a domain of human rights law, by which the interest of victim of a group under s State jurisdiction must be taken into account.[[17]](#footnote-17)

* 1. **Colonial self-determination**

The development of the concept of self-determination, from the Treaty of Westphalia to its prominence in Woodrow Wilson's 14-point vision and Lenin's socialist perspective, reflects its trans-formative role in shaping nations, fostering democratic ideals, and serving as a criterion for the liberation of oppressed peoples. These are historical understandings of the principle still hold importance in international law, however since World War II, and especially the establishment of the United Nations, the right to self-determination has been shaped tremendously.[[18]](#footnote-18)

Four principles characterize self-determination during this era are first, self-determination referred only to decolonization. Second, it did not apply to peoples but to territories. Third, self-determination was now considered an absolut right-though, again, for colonies only. Finally, self-determination did not allow for secession; instead, the territorial integrity of existing states and most colonial territories was assumed. The essential quality of self-determination during this era, Hannum emphasized, was not that all peoples had the right of self-determination, but that all colonies had the right to be independent.[[19]](#footnote-19) Thus for the colonial period of self-determination was merely applicable with respect to external meaning. External self-determination is the right to freedom from hegemony or colonization by other States or empire.[[20]](#footnote-20)

Self-determination also regulate in The Declaration on the Granting of Independence to Colonial and People states for determine their political status and freely pursue their economic, social and cultural development. Then to implement this instrument to Colonial countries and peoples, General Assembly calls upon the Administering powers to take all necessary steps to enable the dependent peoples of the Territories concerned to exercise fully and without further delay their inalienable right to self-determination and independence.[[21]](#footnote-21)

Furthermore, one of ten principles in the Helsinki Final Act of 1975 guiding relation between participating states is the principle of equal rights and self-determination of people. This act also breaks new ground in international relations by making connection between self-determination, democracy and human rights. The Final Act self-determination was proclaimed quite progressively, it was not confined to the colonial context.[[22]](#footnote-22)

On the other hand, the process of decolonization still not praiseworthy historical event and the consequences are still felt throughout the Third World today. For instance how the borders of African continent were drawn. The scene was in fact set for bloody and horrific conflicts with ethnic overtones which have not ceased till this day. Furthermore, the context of no colonies left in the world is irrelevant. For instance, the right of Palestinian people to self-determination, which has been given enormous attention in the UN and by the international community, even though the complexity and sensitivity of this particular issue have left us short of consistent State practice and of any real solution although over half a century has past since the beginning of conflict.[[23]](#footnote-23)

Advocates from developing countries perceive colonialism as a serious issue, albeit it may not manifest in the overt manner of traditional colonialism. Neo-colonialism establishes a connection between self-determination, territorial integrity, nonintervention, development, and human rights. Third World activists prioritize a comprehensive approach, establishing links between poverty, human rights abuses, ethnic conflicts, and minority concerns with the legacy of colonialism. Postcolonial resistance is occurring in response to colonialism.[[24]](#footnote-24)

Furthermore, the definition of self-determination in the common Article 1 of the two International Human Rights Covenants has evolved from externally (independent) to internal (autonomy) self-determination. Furthermore, the Human Rights Committee's General Comment 12 has eliminated self-determination as a right that can be implemented.[[25]](#footnote-25) Nevertheless, there is a limit for external application because it would be subject to the discretion of national and international support.[[26]](#footnote-26) As a result, self-determination would take on two contradictory meanings: internal self-determination, which provides people with some autonomy, and external self-determination, which recognises peoples' claims to a new state. Such, the current international human rights legal framework may address postcolonial self-determination issues.

* 1. **Remedial self-determination**

The Essential meaning of self-determination is a remedial means for an oppressed person both in colonial and postcolonial context. While the colonial context has ended, postcolonial self-determination remains focused on both repairing the historical wrongs of the colonial context, responding to the breakdown of states, and recovering from persistent violations against anyone in the state. [[27]](#footnote-27)

The idea of remedial self-determination is founded on the overarching principle of fairness known as *"ubi ius ibi remedium."* If self-determination exists, it necessitates the presence of both a solution and a mechanism to exercise this right.[[28]](#footnote-28) The remarks of Ryngaert and Griffionen clearly exemplify a debate on the methods used. The statement:

What if a state persistently denies the fundamental rights from the internal self- determination? What if people cannot select freely and they are subject of violence and they endure huge violations of their basic rights, whereas all possible means for peaceful solution of the conflict are exhausted? Should we forbid this people to find choice for self – help in form of external self determination. [[29]](#footnote-29)

Therefore, people who were subjected to systematic violence and were denied their rights cannot be denied the right to remedial self-determination. In previous writing the author recommend to revised the term of “freely determines political status” to “freely *negotiate* their political status to leave space for conflict resolution internally within international human rights law system, while the HRC and other international institutions could observe such negotiations for the benefit of the parties involved.[[30]](#footnote-30)

Furthermore, the proposed remedial ground for postcolonial self-determination can be divided into four circumstances. First, it is remedial in terms of restoring unsettled cases of the UN Trust and NSGT project. This refers to remedying prior injustice.[[31]](#footnote-31) Second, it should be referred to the persisting repressive government against its people like the cases of Kosovo which the International community was seriously concerned with the massive human rights violations in states, but could not intervene due to the principle of territory integrity.[[32]](#footnote-32) Third, the remedy is needed in the event of State Collapse and the last one it is should be considered for severely discriminated or imbalanced political and economic power distribution system within state, for example the special autonomy of Aceh.[[33]](#footnote-33) Thus, the circumstances can be comperhensilvely understood as “ a remedy for injustice.[[34]](#footnote-34)

However in postcolonial context, people who might legitimately use the right of self-determination remain questionable as there is no clear definition of people in international law. Thus, some interpretation was emerged to defined the word of people which relating to the nation, ethnicity, dan minorities.[[35]](#footnote-35) **Nation: t**his understanding views the provision of people to the whole population and according to legal document like UNGA resolution that noted the distinction between nations and people. The argument against the equalization of nation and people was rooted in the complication of how to interpret different sub-groups within a nation.

**Ethnicity:** according to the Aland Island in 1921 the league of Nations Legal Committee referred . extensively, to the concept of peoples to one of ethnic groups.[[36]](#footnote-36) in the situation of Bangladesh, the International Commission of Jurists in 1972 referred to the concept of people to ethnicity. In attempts to conceptualize the provision can be found in UNESCO's International Meeting for Experts on Further Study of the Concept of People's Rights in 1989. The experts suggested that characteristics such as ethnic identity, linguistic homogeneity, and a shared desire to be identified as a people were inherent in the definition of a people. **Minority:** minorities have an explicit right under Article 27 ICCPR to belong to a group. There are also some scholars have argued that the definition of the concept of minority people holds the same as that of nations which would place the discussion of the concept of minorities in the same form as the concept of nation at least. Minorities benefit indirectly from a states fulfillment of individual human rights allowing them to experience internal self-determination. [[37]](#footnote-37)

The terms of “people” under the Human Right Council (HRC) refer to Optional Protocol (OP) can only receive individual complaints against the States. On the other hand, The Committee’s General Comment 12 has stressed self-determination is a collective right not individual, thus that the right under the current arrangement should be unenforceable.[[38]](#footnote-38)

All theories considering the right to secede are understood within two frames, first Remedial right only theory claims that a group of citizens has right to seceded if and only if it has suffered certain injustices, for which secession is the last resort for remedy. Second, Different Remedial Right Only Theories assumes that secession is possible in case different injustices occur.[[39]](#footnote-39)

Furthermore, a unilateral secession will always required a people subject to historical and persistent state-abuse. In post colonial context, however, people who might legitimately use the right of self-determination remain questionable as there is no clear definition of people in international law.[[40]](#footnote-40) Two different possibilities have emerged such as, first is that “people” means the entire population of a state, the other that “people” means persons comprising a distinctive group on basis of ethnicity, language, common history and possibly religion, i.e. a national group, or a nation. The most essential and indispensable characteristic is however not physical but rather ideological: a people begin to exist only when it becomes aware of its own identity and emphasizes its will to exist.[[41]](#footnote-41)

* 1. **Kosovo case**

Kosovo was previously a self-governing region of Serbia, which was one of the six constituent republics of the Socialist Federal Republic of Yugoslavia (SFRY).[[42]](#footnote-42) Prior to the late 1980s, Kosovo held the position of an autonomous province and had significant authority in governing its region. Nevertheless, as a reaction to the ethnic Albanian uprisings occurring in Kosovo, which were organized by paramilitary groups resembling guerrillas, the Serbian leadership implemented severe measures in the late 1980s to suppress the unrest.[[43]](#footnote-43) Resulting in significant civil and political rights being denied to the Albanian population.[[44]](#footnote-44)

Serbia took the control over it by force and sent a memorandum to the Great Powers justifying the action without taking into consideration the will of Kosovo people. Then the tension increased to its high point when in 1987 SFRY Presidency declared that the situation in Kosovo had become a threat to the constitution, integrity and sovereignty of the country.[[45]](#footnote-45) Human rights violation against ethnic Albanians by Serbia and Yugoslav government had been constant. Albanians were harassed and beaten by police and security forces.[[46]](#footnote-46) The government was imprisoning people for their political views and prosecuting political reader.[[47]](#footnote-47)

How kosovo claim the right to self-determination? By unilateral secession. In July 1990, Kosovar delegates declared independence in front of the Kosovo Assembly building. Two months later, they announced the Republic of Kosovo's Constitution in Kacanik. In 1991, a semi-underground referendum was held from September 26-30. On May 24, 1992, Kosovars held elections for parliament and the presidency. Due to changes in international politics, Kosovo declared independence anew on February 17, 2008. [[48]](#footnote-48)

International Court of Justice (ICJ) was asked for an Advisory Opinion on compliance of such a unilateral declaration of independence of Kosovo with the international law. The International Court of Justice (ICJ) has determined that the declaration in question does not contravene international law or United Nations Security Council Resolution 1244 (1999), nor does it violate the constitutional framework or the relevant principles of international law.[[49]](#footnote-49) ICJ conclude that there is no contradiction between the right of self-determination and the principle of territorial integrity, as they both are applicable in different situations. The court noted the scope of the principle of territory integrity is confined to the sphere of relations between states.[[50]](#footnote-50) (more than 80 UN countries formally recognized the Republic of Kosovo).[[51]](#footnote-51)

The ICJ's stance on Kosovo's independence has elicited political reactions, with the United States, EU member states, and certain countries such as Spain, China, Russia, and Chechnya acknowledging Kosovo's statehood. The ICJ's decision is recognized by nationalist movements worldwide as a recognition of the right of people to secede; however, it is not a judicial precedent.[[52]](#footnote-52)

Does Kosovo's exercise of self-determination align with the criteria for self-determination as defined in international law? The international community has a significant role in ensuring that the components of self-determination are met. The international community's remarks on the Kosovo question support the idea that Kosovo Albanians are a "people" with the right to external self-determination due to human rights crimes by their former parent-state Serbia. It is clear that repression in the 1990s, as well as international involvement and subsequent presence, had a substantial impact on the unilateral declaration of independence and establishment of the Republic of Kosovo.[[53]](#footnote-53) Eventually, the international community will decide whether Kosovo will be granted statehood. Being recognized by more than half of the world's countries suggests that Kosovo is on the right track.[[54]](#footnote-54) The violent historical background that stretches back centuries ago and the linguistic and cultural gap between the Serb and the Kosovo Albanian population may classify the Kosovo Albanian population as a people.

According to the remedial secession doctrine the Kosovo Albanian people must be able to show that severe human rights violations have been committed against them by Serbia. Looking back into the condition in Kosovo actually during more than a decade the Serbian government perpetrated gross human rights violations againts Kosovo Albanian population, including massacres, involving the Racak massacre taking place in 1999, resulting in the NATO intervention and the subsequent withdrawal of Serbian military in Kosovo. It is however reasonable to conclude that the Kosovo Albanians fulfill the requirement of human right violation that entitles them the right of external self-determination.[[55]](#footnote-55)

In 1999, UN Security Council Resolution 1244 re-establishes self-governing institutions in Kosovo, affirms Serbia's territorial integrity, and promotes a political process to determine Kosovo's future status. Nonetheless, the international community watched years of unsuccessful discussions between Serbia and Kosovo, as well as a lack of willingness to negotiate. Kosovo Albanians believe they have exhausted all other choices for self-determination beyond secession due to their volatile and unstable history, making independence the only viable alternative.[[56]](#footnote-56)

Until 2008 and the declaration of independence the international community has though been reluctant to support an independent Kosovo, most likely out of fear that such support would open a pandora’s box in regards to people with possible claims of self-determination around the world. Since kosovo’s declaration of independence, the republic of kosovo has received more than 100 diplomatic recognitions as an independent state. Most states believe Kosovo is a unique circumstance and cannot serve as a precedent for other populations seeking foreign self-determination. External self-determination through secession is primarily a political issue, not a legal one.

There are three justifications for granting self-determination to the Albanians in Kosovo. The first issue is the unjust conquest of territory in the past. The second issue is the collapse of a country. Lastly, there is the matter of attempted genocide.[[57]](#footnote-57) Self-determination becomes then a remedial right that can be exercised against the will of the central government in exceptional cases; where there is fragrant violation of the rights of a class of people in a monumental proportion.[[58]](#footnote-58)

1. **Marginalized people in postcolonial context**

Postcolonial theory examines the aftermath of colonialism, focusing on the felt experiences of marginalized individuals and the collective memory of their marginalization and silence, as a major strand of criticism.[[59]](#footnote-59) Self-determination refers to a state's obligation to protect marginalised people with distinct historical, linguistic, religious, ceremonial, institutional, and land ownership structures.[[60]](#footnote-60) External self-determination may occur when a state fails to negotiate minority rights, particularly in cases of human rights violations.[[61]](#footnote-61)

* 1. **Palestine**

The "nowhere" of Palestine in postcolonial studies may be due to its aggressive form of settler colonialism. However, anti-colonial discourse by those under colonialism forms the backbone of the field. Palestinians have an incurable disease - hope. This educated hope, *docta spes*, is materially grounded, progressively functioning, and future-forming. It has learned from reality and aims to become reality-determining, reflecting Palestinian suffering and adapting to altered historical circumstances. While there is a strong sense of urgency to explore Palestine in the postcolonial academic, the specific connection between Palestine and "the postcolonial" has not been properly defined.[[62]](#footnote-62)

Yet other scholarly studies, like those authored by Mohammad Salim, have employed a post-colonial literary approach. From his writing described “Men in the Sun”[[63]](#footnote-63) as a short story that combines existentialism and naturalism, highlighting the unity of the Palestinian people and their suffering. The story is a matter-of-fact allegory that confronts the brutal reality of humiliation and death without the metaphorical distancing typical of a parable. The ironic death of three Palestinian refugees in the Sun is caused by the Zionist occupation of Palestine and the complacency of Arab governments. The story symbolizes the Palestinians' loss of land and deception, and the men without graves are without a place to call home.[[64]](#footnote-64)

Furthermore, Considered under a post-colonial lens, the Israeli-Palestinian conflict exemplifies the enduring repercussions of colonialism. Postcolonial philosophy emphasizes the significance of comprehending alternate narratives and empowering the underprivileged by allowing them to express their perspectives. In the context of conflict, this refers to the imperative of attentively considering the experiences and ambitions of the Palestinian population, which are frequently disregarded or oversimplified through Western cliches.[[65]](#footnote-65)

The League of Nations transferred Palestine to Great Britain following the conclusion of the First World War. The United Kingdom declared its intention to evacuate the mandated territory by August 1948 in 1947, and subsequently extended the deadline to May 1948. The General Assembly adopted resolution 181 (II) regarding the future governance of Palestine, which proposed a Plan of Partition between Arab and Jewish states and a unique international regime for Jerusalem.

In 1948, Israel declared its independence, which resulted in armed conflict with Arab states.[[66]](#footnote-66) In 1949, armistice agreements were signed in Rhodes by the Security Council, which established demarcation lines between Israeli and Arab forces in Palestine. In 1948, Israel issued an application for membership in the United Nations. It resolved to implement resolution 181 (II) in 1949.[[67]](#footnote-67) Israeli forces were compelled to occupy all territories beyond the Green Line in 1967, following the outbreak of the Six-Day War. In 1967, the Security Council adopted resolution 242 (1967), which prohibits military conquest and orders the withdrawal of Israel's armed forces. Israel initiated the process of establishing settlements in occupied territories and implementing measures to alter the status of Jerusalem. These actions were condemned by the Security Council, which also confirmed their invalidity.[[68]](#footnote-68)

In 1973, armed conflict broke out between Egypt, Syria, and Israel. The Security Council called for a cease-fire and implementation of Resolution 242 (1967). The General Assembly recognized the Palestinian Liberation Organization (PLO) as the representative of the Palestinian people.[[69]](#footnote-69) The Camp David Accords were signed in 1978, leading to a Peace Treaty between Israel and Egypt. In 1988, the PLO declared the establishment of the State of Palestine.[[70]](#footnote-70) In 1993 and 1995, Israel and the PLO signed the Oslo I and Oslo II Accords, recognizing Israel's right to peace and security and dividing the Israeli-occupied West Bank into three administrative areas.[[71]](#footnote-71)

In the early 2000s, Israel began building a "continuous fence" in the West Bank and East Jerusalem, despite a 2004 court opinion finding it contrary to international law. The wall continued and settlements expanded in the Occupied Palestinian Territory. By 2005, settlers were evacuated, and by 2023, approximately 465,000 settlers resided in the West Bank and 230,000 in East Jerusalem. The residents of these settlements are predominantly Israelis and non-Israeli Jews. In 2012, Palestine was granted non-member observer state status in the United Nations. In 2016, the Security Council urged intensifying diplomatic efforts for a comprehensive, just, and lasting peace in the Middle East. In 2024, the General Assembly determined that Palestine is qualified for membership in the United Nations and reiterated its commitment to the vision of a two-State solution. The Court's inquiries focused on three types of conduct: ongoing violations of Palestinian people's right to self-determination, occupation, settlement, and annexation of Palestinian territory, and discriminatory legislation.[[72]](#footnote-72)

* 1. **Rohingya**

The Rohingya have been targeted and their national identity removed by the Myanmar government, which has caused the ethnic group to suffer, they are one of the largest stateless populations in the world.[[73]](#footnote-73) The removal is closely linked to the cultural, linguistic, and ethnic differences between the Rohingya and the ethnic majority in Myanmar.[[74]](#footnote-74) The loss of citizenship has profoundly affected multiple facets of individuals' life, and ethnic minorities persist in enduring persecution. Additionally, it has led to the formation of a horizontal conflict between the ethnic Rohingya group and other ethnicity officially recognized by the state of Myanmar.[[75]](#footnote-75)

The Rohingya, who lack a recognized citizenship, face severe limitations on their mobility, which significantly impacts their ability to exercise fundamental economic, social, and cultural rights. These restrictions hinder their access to basic necessities such as sustenance, education, healthcare, and religious freedom, including the right to worship and assemble.[[76]](#footnote-76)

The Rohingya ethnic group experienced colonization within their own country, resulting in the destruction of over 200 Rohingya households. The existing buildings were dismantled and replaced with new communities, while the Rohingya people were coerced into labor for the construction of these new dwellings.[[77]](#footnote-77) Consequently, 126,000 of them become internally displaced persons (IDPs) and are residing in refugee camps along the Myanmar-Bangladesh border (capital of Rakhine). Out of the total of 126,000, all of them identified as a muslim and 80% of them are comprised of women and children.[[78]](#footnote-78)

The condition is also the main reason ethnic Rohingya seek asylum in various parts of the world including Indonesia. Despite the risks, Rohingya refugees are persisting in their efforts to find safety by embarking on perilous sea voyages out of desperation. Last year, 2022, was one of the most fatal years on record for Rohingya refugee maritime movements in South-east Asia, with 348 individuals tragically confirmed deceased or missing, including children.[[79]](#footnote-79) Since the first wave of refugees in 1970 and until now, the Rohingya have not been treated fairly from Myanmar and there has been no permanent solution to this crisis.[[80]](#footnote-80)

* 1. **Uighur**

The Uighur ethnicity refers to the indigenous population residing in China's Xinjiang province, primarily practicing the Islamic faith. Since Xinjiang is under China's control, Han ethnicity has been mass mobilized, therefore marginalizing Uighur ethnicity.[[81]](#footnote-81) Uighur faced their cultural forcibly destroyed by states governments of China in order to extinguish their culture and create a culturally homogeneous State. This practice known as cultural genocide. Cultural genocide is a global hazard to the continued existence of minority groups because the presence of a common culture is an integral characteristic of a minority group.[[82]](#footnote-82) The significance of 'culture' is evident in its inclusion in various international human rights instruments, despite the lack of a specific definition in international law.[[83]](#footnote-83)

However, the limited protection offered by these instruments does extend to the Uighur minority in China. It is worth mentioning that the government in power in China claims to uphold international human rights obligations, but many argue that their actions do not align with these principles. Furthermore, China signed the ICCPR but never ratified it, excluding the Uighur minority.[[84]](#footnote-84) Despite this, minority rights are enshrined in the Chinese Constitution since 1911. However, no administrative codes or rules for implementing these rights have been established. The Case Study reveals a significant disparity between the rights provided in the Chinese Constitution and the Uighur minority's treatment.[[85]](#footnote-85)

The Uighur ethnicity has gained international attention due to human rights violations, including cultural, social, economic, civil, political, and democratic rights. The Chinese government implemented the Religious Affairs Regulation policy in 2005 to regulate the religious activities of minorities suspected of terrorism, including the Uighur ethnicity. This policy mandated that imams complete government-approved education and forbade Uighur minors from attending mosques prior to the age of 18. Additionally, in 2009-2014 the policy prohibited wearing of burqas, niqabs, and beards in public areas.[[86]](#footnote-86)

In 2016, Chen Quanguo took charge of Xinjiang as party secretary, which resulted in an increase in human rights violations against the Uyghur community through the establishment of a Political Education Camp.[[87]](#footnote-87) The camp provided education to Uyghur individuals involved in threatening activities, resulting in a significant number of arrests in 2017. The camps employed various approaches such as promoting unity through education, teaching Chinese ideology, providing psychological counseling, and studying government policies. Human rights violations persisted until 2018, reaching their most severe state in the past five years.[[88]](#footnote-88)

On the other hand, The World Union (WUC) is an organization formed on 16 April 2004 in Germany, has effectively raised awareness about Uighur human rights issues by actively engaging with NGO’s, the United Nations, and Western countries through reporting and lobbying efforts. Highlighting peaceful approaches, the WUC has called for the European Union, the United States, and the United Nations to exert pressure on China. Nevertheless, China's veto power poses a significant obstacle to achieving a complete halt.[[89]](#footnote-89)

However, Due to the inordinate influence of China on governments and immigration authorities in the host countries of Uyghur and other Turkic refugees from East Turkistan, they are currently living in a state of peril of refoulement in a number of countries worldwide. The United Nations High Commissioner for Refugees (UNHCR) is unable to fulfil its mandate in numerous countries due to a variety of interrelated reasons, including the host country's non-adherence to the 1951 Refugee Convention, the host country's restrictions on UNHCR's operations, or the ineffectiveness of UNHCR's efforts and the absence of contingencies to ensure refugee protection.[[90]](#footnote-90)

1. **Remedial self-determination for marginalised people**

According to Kosovo cases remedial self-determination allowed under specific circumstances first it must against gross human right violation, fulfill the definition of the people and include the minorities group. The problem is human rights framework in both its content and enforcement procedures does not adequately recognize the group dimension of minority’s identity. However IHL provisions, while undoubtedly essential to supporting minority self-determination claims, are activated only once an armed conflict has occurred. [[91]](#footnote-91)

Furthermore, in the human rights committee’s general comment 23 on Article 27 of the International Covenant on Civil and Political rights has confirmed minorities protected by law should be the individual rights of members of a minority group similar to treatment of indigenous people.[[92]](#footnote-92) Additionally, the current international human rights protection system has explicitly defined the development of indigenous self-determination. UNDRIP 2007 defined indigenous self-determination as the freedom to articulate their concerns in politics, economics, and culture on an internal basis.

However, The International Court of Justice in the Western Sahara case introduced the contemporary definition of the right to internal self-determination, which was "defined as the need to pay regard to the freely expressed will" of the peoples at issue. The concept of self-determination is intended to "ensure that a particular group maintains and freely develops its social, ethnic, or religious characteristics," as the Commission of Jurists noted in its report on the Åland Islands case. In addition, Dietrich Murswiek has contended that the rationale is that a group is able to "cultivate, preserve, and develop the specific characteristics determining its identity" in its traditional territory.[[93]](#footnote-93)

In Palestine cases, The Palestinian people are universally recognized as belonging to this select group due to their historical experience of colonial rule by the Ottoman and British empires, as well as the ongoing denial of their right to self-determination since the establishment of Israel in 1948 and the occupation of the West Bank and Gaza since 1967.[[94]](#footnote-94) Furtermore, according to the ICJ's advisory opinion, the occupation was an illegal act, and Israel committed a variety of crimes against humanity.[[95]](#footnote-95)

In this instance, Palestinians are entitled to exercise their right to self-determination. The Palestinian people have the right of external self-determination in international law, which is part of international human rights law. The realization of this right depends on a peace agreement between Israel and the Palestinians. International law should not focus on the 'humane' treatment of the Palestinian people under the occupation, but on affirming their right to self-determination and the right to use force, requiring the occupation of the West Bank and Gaza to end now.[[96]](#footnote-96) All actors, including states, UN officials, and human rights NGOs, must affirm the Palestinian people's self-determination and the need for the occupation to end immediately.

Conversely, the government, which wields complete authority, perpetrates a variety of inequities and similarities against the Rohingya and Uighur. Nevertheless, these two ethnicities are entitled to self-determination, as the authorities in full power do not guarantee justice for them. The international community's intervention and support are essential for these two ethnicities to obtain their right to self-determination in accordance with international human rights law.

1. **Conclusion**

In order to guarantee the right to live in peace and security for all, the United Nations system for decolonization must be activated. Remedial self-determination allows certain groups or populations to seek self-determination to address past injustices or rights violations, such as discrimination, persecution, or human rights abuses. According to Kosovo cases remedial self-determination allowed under specific circumstances first it must against gross human right violation, fulfill the definition of the people and include the minorities group.

Consequently, the Human Rights Council (HRC) would be a valid, legitimate, and feasible institution for the resolution of current postcolonial self-determination movements, including those under the Unrepresented Nations and Peoples Organization (UNPO). The international communities and The International Criminal Court of Justice (ICJ) has also been instrumental in resolving some of the most challenging legal questions related to self-determination claims through adjudication and advisory opinions. Additionally, in order to navigate the intricacies of remedial self-determination for Palestinians and Rohingyas in pursuit of a fair and enduring resolution, it is imperative to employ diplomacy, dialogue, and adherence to international law. Equally remedial self-determination can be part of essential element for postcolonial world to challenges European based Human rights system.

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