

THE HARMONIZATION OF INTERNATIONAL LAW AND NATIONAL LAW SYSTEMS IN ENSURING A HIGH-LEVEL PROTECTION OF HUMAN RIGHTS

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Abstract

The harmonization of international and national legal systems plays a crucial role in ensuring a high level of human rights protection. This article explores the mechanisms through which international law influences domestic legal frameworks and vice versa. Particular attention is given to the role of regional human rights courts, inter-jurisdictional dialogue, and the challenges posed by legal fragmentation. By examining judicial decisions and legal developments across different regions, the article highlights the increasing convergence of human rights norms and their implementation at the national level.

Keywords: International law; protection of human rights

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Introduction

Legal systems and traditions play a crucial role in shaping the protection and enforcement of human rights globally. Different legal systems—such as common law, civil law, religious law, and customary law—affect how human rights principles are interpreted, applied, and enforced within national jurisdictions. Civil law systems, found in many European and Latin American countries, rely on codified statutes and comprehensive legal frameworks that integrate human rights protections into national constitutions and legal codes. Common law systems, prevalent in countries like the United States and the United Kingdom, emphasize judicial precedents and case law, allowing courts to develop human rights protections dynamically. Religious legal systems, such as Islamic law (Sharia), incorporate religious principles into legal frameworks, influencing human rights practices based on religious doctrines. Customary law, often observed in indigenous and local communities, can either support or conflict with international human rights norms, depending on cultural traditions and legal evolution.

Fragmentation² and constitutionalizing³ have been regarded as two contradictory discourses in international law.⁴ Furthermore, regionalization of human rights protection and proliferation of judicial organs have been considered to hinder consistency of human rights norms. Given that truth lies somewhere in between, this paper discusses harmonization of human rights norms through judicial interpretation by regional courts in indigenous rights cases. It first demonstrates the multiplication of regional human rights courts and their law-making function in general and

2 International Law Commission, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, UN Doc A/CN.4/L.682, 13 April 2006.

3 J Klabbers, A Peters & G Ulfstein (eds), *The Constitutionalization of International Law* (2009).

4 H G Cohen, 'From Fragmentation to Constitutionalization' (2011) 24 *Pacific McGeorge Global Business & Development Law Journal*; UGA Legal Studies Research Paper No 11-14.

then turns to the case of indigenous peoples. It concludes that a dialectic interpretation of indigenous rights has been developed through regional jurisprudence.

The relationship between international law and national legal systems plays a crucial role in safeguarding human rights. As globalization accelerates and cross-border interactions intensify, the harmonization of international legal norms with domestic legislation becomes increasingly significant in ensuring a high level of human rights protection. International treaties, conventions, and customary principles establish universal standards, yet their implementation depends on national legal frameworks that vary across jurisdictions. The effectiveness of human rights protection hinges on how well international legal obligations are translated into national laws and judicial practices, ensuring that individuals can effectively exercise their rights within their domestic legal system.

Despite these challenges, legal harmonization has proven to be a powerful tool in strengthening human rights protections. Supranational institutions, such as the United Nations, the European Court of Human Rights, and regional human rights bodies, play a key role in promoting compliance and fostering uniformity in legal interpretations. Moreover, comparative legal analysis, judicial dialogue, and international cooperation have emerged as effective strategies to reconcile differences and enhance the implementation of human rights law.

The **main aim** of this article is to analyse the process of harmonization between international human rights law and national legal systems, identifying key challenges, best practices, and legal mechanisms that contribute to a higher level of human rights protection. By evaluating the effectiveness of legal harmonization, this study seeks to provide insights into how national jurisdictions can better implement international human rights obligations while maintaining their legal sovereignty⁵.

Methodology: to get the necessary information and data for research, the author used independent internet resources and knowledge gained by Lithuanian and EU regulation.

The recommendations are made based on the personal evaluation of legal regulation in EU and those of other researchers as well. It also includes doctrinal Legal Research: Analyzing primary sources such as international treaties, human rights conventions, national constitutions, and judicial decisions to understand legal provisions and their application. Also, comparative Legal Analysis: Examining how different countries incorporate international human rights law into their domestic legal systems, highlighting effective strategies and existing challenges.

Objectives of the research are:

- 1) To analyze the legal frameworks governing the harmonization of international human rights law and national legal systems, identifying the strengths and weaknesses of monist and dualist approaches in ensuring effective human rights protection.
- 2) To examine the key challenges and obstacles that hinder the integration of international human rights norms into domestic legal frameworks, including issues related to sovereignty, political resistance, legal pluralism, and inconsistent enforcement mechanisms.
- 3) To evaluate successful models and best practices from different jurisdictions that have effectively harmonized their national laws with international human rights

5 See for example, Owens, M., Reflection on Future War, Naval War College Review 2008, p.61-76; Glenn, R., All Glory is Fleeting: Insights from the Second Lebanon War, RAND, Santa Monica 2012; Jordan I., Hybrid War: Is the US Army Ready for the Face of 21st Century Warfare, US Army Command and General Staff, 2008.

obligations, providing recommendations for improving legal alignment and enhancing human rights protections globally.

The Role of Legal Systems and Legal Traditions for Human Rights Protection

Legal systems and traditions play a crucial role in shaping the protection and enforcement of human rights globally. Different legal systems—such as common law, civil law, religious law, and customary law—affect how human rights principles are interpreted, applied, and enforced within national jurisdictions. Civil law systems, found in many European and Latin American countries, rely on codified statutes and comprehensive legal frameworks that integrate human rights protections into national constitutions and legal codes. Common law systems, prevalent in countries like the United States and the United Kingdom, emphasize judicial precedents and case law, allowing courts to develop human rights protections dynamically. Religious legal systems, such as Islamic law (Sharia), incorporate religious principles into legal frameworks, influencing human rights practices based on religious doctrines. Customary law, often observed in indigenous and local communities, can either support or conflict with international human rights norms, depending on cultural traditions and legal evolution.

Despite these differences, international human rights treaties, such as the International Bill of Human Rights, serve as a unifying framework that influences national legal traditions and promote universal human rights standards. Regional human rights mechanisms, such as the European Court of Human Rights and the Inter-American Court of Human Rights, further reinforce human rights protections across different legal traditions. However, challenges remain, including conflicts between national sovereignty and international human rights obligations, as well as the need for stronger enforcement mechanisms to ensure compliance⁶. Ultimately, the effectiveness of human rights protection depends on the interaction between legal traditions, judicial independence, and the willingness of states to uphold international norms within their legal frameworks.

International Bill of Human Rights as a Universal Legal Instrument Relevant to Crisis Situations

The International Bill of Human Rights, comprising the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), establishes fundamental principles for human rights protection and serves as a fundamental framework for the protection of human rights. These instruments provide a universal legal foundation, particularly relevant during crises when governments may impose restrictions on civil liberties. Their provisions, such as non-derogable rights, offer guidance on permissible limitations and state responsibilities in emergencies. . This legal corpus gains particular relevance in times of crisis, including armed conflicts, pandemics, economic downturns, and humanitarian emergencies, ensuring the protection of fundamental freedoms and human dignity.

Legal Foundations and Universality - The International Bill of Human Rights establishes universally recognized norms that underpin international human rights law. While the UDHR, adopted in 1948, is not legally binding, it has attained the status of customary international law. The ICCPR and ICESCR, adopted in 1966 and entered into force in 1976, are legally binding

6 Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 4 November 1950, 213 UNTS 221, Art 19; Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 9 June 1998, 1001 UNTS 45, Art 3.

treaties that impose obligations on state parties to respect, protect, and fulfill human rights. The universality of these instruments is reinforced through their widespread ratification and incorporation into domestic legal systems⁷. They establish minimum standards that states must uphold even in emergencies, reflecting their adaptability to various crisis scenarios.

Relevance in Crisis Situations:

1. Armed Conflicts and Humanitarian Emergencies pose significant threats to fundamental human rights. The ICCPR remains applicable during such crises, though states may invoke derogations in limited circumstances. However, non-derogable rights, including the right to life, the prohibition of torture, and the principles of non-discrimination, must always be upheld. The Geneva Conventions further complement these provisions by establishing rules to protect civilians, prisoners of war, and non-combatants. Additionally, ICESCR obligations ensure that individuals affected by conflict have access to essential services such as healthcare, food, and housing. International humanitarian organizations, such as the International Committee of the Red Cross, play a crucial role in monitoring compliance and delivering humanitarian aid.

2. Pandemics and Health Crises Health crises, such as pandemics, place immense strain on governments and public health systems⁸. The ICESCR, particularly Article 12, obligates states to take measures to prevent, treat, and control epidemic diseases. Governments must ensure equitable access to healthcare services, including vaccinations, medical treatment, and mental health support. The ICCPR, meanwhile, guarantees civil liberties, including freedom of movement and expression. However, public health measures—such as lockdowns, quarantines, and mandatory vaccinations—must be proportional, lawful, and non-discriminatory. The COVID-19 pandemic highlighted the tension between public health concerns and civil liberties, underscoring the necessity of balancing emergency responses with fundamental rights protections.⁹

3. Economic Crises and Social Protection - Economic downturns jeopardize the fulfilment of socio-economic rights protected under the ICESCR. Job losses, inflation, and financial instability exacerbate poverty and inequality, disproportionately affecting marginalized groups. States are obligated to implement policies that uphold the right to work, social security, and an adequate standard of living. Measures such as unemployment benefits, minimum wage regulations, and affordable housing programs serve as crucial safeguards. Additionally, international financial institutions and human rights bodies encourage economic policies that prioritize human dignity over austerity measures. Governments must also ensure that financial relief packages and stimulus measures are distributed fairly, without discrimination or corruption.

4. Natural Disasters and Climate-Related Crises - Climate change and environmental disasters, such as hurricanes, wildfires, and rising sea levels, significantly impact human rights. The International Bill of Human Rights establishes state responsibilities to protect individuals from displacement, food insecurity, and water scarcity. The right to a healthy environment, increasingly recognized in international law, underscores the duty of states to adopt climate

7 An integrated pan-African court offers opportunities for developing a unified, integrated, cohesive, and hopefully, indigenous jurisprudence for Africa. Years later, this jurisprudence will be used as a yardstick for determining 'whether or not one can talk of a regionally peculiar corpus of African international law'. K Kindiki, 'The Proposed Integration of the African Court of Justice and the African Court of Human and Peoples' Rights: Legal Difficulties and Merits' (2007) 15 Af JICL 145.

8 The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law (1999) IACtHR Ser A No 16, paras 114–15.

9 K. Oellers-Frahm, 'Multiplication of International Courts and Tribunals and Conflicting Jurisdiction – Problems and Possible Solutions' (2001) 5 Max Planck UNYB 67.

adaptation and mitigation policies.¹⁰ Vulnerable populations, including indigenous communities and low-income households, often face the greatest risks. Governments must integrate human rights considerations into disaster preparedness plans, ensure access to relief assistance, and prevent forced displacement. International cooperation and adherence to climate agreements, such as the Paris Agreement, are essential in addressing these global challenges.

The International Bill of Human Rights remains a cornerstone of legal protection in times of crisis. Its principles provide guidance for states to navigate emergencies while upholding human dignity and rights. Strengthening enforcement mechanisms and international cooperation is essential to ensure that human rights are not compromised during crises but rather serve as a foundation for resilience and recovery.

Regional Legal Frameworks – European, Inter-American, African, Asia

Regional legal frameworks complement universal human rights instruments by addressing region-specific challenges. The European Convention on Human Rights (ECHR), the American Convention on Human Rights (ACHR), and the African Charter on Human and Peoples' Rights (ACHPR)¹¹ provide legally binding commitments for member states. While Asia lacks a unified human rights treaty, the ASEAN Human Rights Declaration serves as a guiding framework for Southeast Asian nations. These regional instruments reinforce human rights protections by ensuring accountability and providing enforcement mechanisms through regional courts and commissions.

The protection of human rights has been a central focus of international and regional legal frameworks. While international treaties, such as the Universal Declaration of Human Rights (UDHR) and various United Nations conventions, establish fundamental principles, regional human rights systems provide mechanisms for enforcement and adaptation to specific cultural, political, and historical contexts. These regional legal frameworks play a critical role in reinforcing human rights by addressing local challenges, offering judicial and quasi-judicial remedies, and promoting accountability among states.

This study examines the legal structures and mechanisms of human rights protection within four major regional systems: the European, Inter-American, African, and Asian frameworks. While Europe, the Americas, and Africa have well-established regional human rights systems with courts and commissions, Asia presents a fragmented approach, reflecting diverse legal traditions and political systems¹². By analyzing these frameworks, this research seeks to highlight their effectiveness, challenges, and prospects for harmonization with global human rights norms.

The European Human Rights System is among the most developed and influential in the world. It is primarily governed by:

10 P. Dupuy, 'The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice' (1999) 31 NYUJILP 791, 791-792; J I Charney, 'Is International Law Threatened by Multiple International Tribunals?' (1998) 271 RCADI 162; R Higgins, 'Respecting Sovereign States and Running a Tight Courtroom' (2001) 50 ICLQ.

11 In *Purohit v The Gambia*, the African Commission affirms that: 'In interpreting and applying the African Charter, the African Commission relies on its own jurisprudence, and as provided by articles 60 and 61 of the African Charter, on appropriate and relevant international and regional human rights instruments, principles and standards. The African Commission is, therefore, more than willing to accept legal arguments with the support of appropriate and relevant international and regional human rights instruments, principles, norms and standards taking into account the well recognized principle of universality.' *Purohit v The Gambia*, ACmHPR Comm No 241/2001, paras 47-48.

12 Benin, Burkina Faso, Congo, Libya and Mali. See African Court Coalition, 'Ratification Status: Protocol on the Statute of the African Court of Justice and Human Rights.'

- 1) The European Convention on Human Rights (ECHR) (1950), enforced by the European Court of Human Rights (ECtHR).
- 2) The European Union Charter of Fundamental Rights (2000), which binds EU institutions and member states when implementing EU law.
- 3) The Council of Europe as a key regional body for human rights governance.

Enforcement Mechanisms includes: the European Court of Human Rights (ECtHR) allows individuals and states to bring cases against member states for human rights violations. The European Committee for the Prevention of Torture (CPT) monitors detention conditions. The European Court of Justice (ECJ) ensures the application of human rights principles in EU law. Considering the strengths and challenges, some of the strengths are Strong enforcement mechanisms, legally binding judgments, and high compliance rates, but in such a case we have some challenges as well: overburdened court system, political resistance from some states, and tensions between EU law and national sovereignty.

The Inter-American human rights system is a key regional mechanism for the protection and promotion of human rights in the Americas. Established under the framework of the Organization of American States (OAS), it provides legal and institutional mechanisms to address human rights violations and ensure state accountability¹³. The system is based on the principles outlined in the American Declaration of the Rights and Duties of Man (1948) and the American Convention on Human Rights (ACHR) (1969), among other treaties¹⁴.

The Inter-American human rights system is primarily composed of two main bodies:

- 1) The Inter-American Commission on Human Rights (IACHR) – Established in 1959 and headquartered in Washington, D.C., the IACHR monitors human rights conditions, receives petitions from individuals and groups, and makes recommendations to states regarding human rights violations.
- 2) The Inter-American Court of Human Rights (IACtHR) – Established in 1979 and based in San José, Costa Rica, the IACtHR adjudicates cases of human rights violations and issues binding rulings for countries that have ratified the American Convention on Human Rights (ACHR) and accepted the Court's jurisdiction.

Furthermore, additional protocols and treaties under the Inter-American system strengthen the protection of various rights, including:

- The Additional Protocol to the ACHR in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador, 1988)
- The Inter-American Convention to Prevent and Punish Torture (1985)
- The Inter-American Convention on Forced Disappearance of Persons (1994)
- The Inter-American Convention on Protecting the Human Rights of Older Persons (2015)

The African human rights system serves as a critical mechanism for the protection and promotion of human rights across the continent. Established within the framework of the African Union (AU), this system operates through legal instruments and institutions designed to address human rights violations, ensure state accountability, and promote justice¹⁵. Unlike other regional human rights frameworks, the African system uniquely emphasizes collective

13 As of October 2012, only five countries have made such a Declaration. Those countries are Burkina Faso, Ghana, Malawi, Mali, and Tanzania. The African Union Commission, 'The African Court on Human and Peoples' Rights'.

14 African Union Assembly, Decision on the Merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union, AU Doc Assembly/AU/Dec.83(V), July 2005.

15 Hubert D. and Weiss Th., The Responsibility to Protect: Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty, International Development Research Centre, Canada 2001.

rights, such as the right to self-determination, development, and cultural identity, alongside individual rights.

The African legal framework and Institutional system is primarily governed by the African Charter on Human and Peoples' Rights (Banjul Charter, 1981), which serves as the cornerstone of human rights protection in Africa. To oversee the implementation of the African Charter, three main institutions have been established:

1. The African Commission on Human and Peoples' Rights (ACHPR): Established in 1987 and headquartered in Banjul, The Gambia, the ACHPR is the primary monitoring body responsible for overseeing compliance with the Charter. The Commission consists of 11 independent experts who review complaints of human rights violations, conduct fact-finding missions, and provide advisory opinions. However, its recommendations are non-binding, which limits its ability to enforce decisions¹⁶.
2. The African Court on Human and Peoples' Rights (AfCHPR): Created in 1998 and based in Arusha, Tanzania, the AfCHPR is the judicial arm of the African human rights system. The Court has the authority to issue binding rulings on states that have ratified its protocol, requiring them to take corrective actions in cases of human rights violations. However, only 31 of the 55 AU member states have accepted the Court's jurisdiction, and even fewer (only 8 countries) allow individuals and NGOs to file cases directly.
3. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC): Established in 1999, this body oversees the implementation of the African Charter on the Rights and Welfare of the Child (1990)¹⁷. It plays a vital role in protecting the rights of children, investigating violations, and issuing recommendations to AU member states.¹⁸

The African human rights system relies on both judicial and non-judicial enforcement mechanisms, while the institutions within the system provide important legal avenues for addressing human rights violations, their effectiveness remains limited by weak state cooperation and institutional constraints¹⁹. The African Commission on Human and Peoples' Rights (ACHPR) primarily functions as a quasi-judicial body that investigates human rights abuses and issues non-binding recommendations to states. Individuals, NGOs, and even states can file complaints before the Commission, which then examines the case and advises governments on corrective actions. However, because its decisions lack legal enforceability, many states disregard or delay implementation of the Commission's recommendations.

Despite its binding nature, the Court faces challenges in enforcing its judgments, as many governments simply refuse to comply. Some states, such as Rwanda, Tanzania, and Benin, have even withdrawn from the Court's jurisdiction to avoid scrutiny. This undermines the effectiveness of the Court as a tool for justice and accountability. The African Union (AU), as the governing body of the system, has the potential to enforce compliance through diplomatic measures and political pressure. However, the AU has historically been reluctant to impose

16 L Burgorgue-Larsen, 'The Indirect Contentious Jurisdiction of the Court', in L BurgorgueLarsen & A Ubada de Torres (eds), *The Inter-American Court of Human Rights: Case Law and Commentary* (2011) 25, 28. 24 African Charter on Hum

17 An integrated pan-African court offers opportunities for developing a unified, integrated, cohesive, and hopefully, indigenous jurisprudence for Africa. Years later, this jurisprudence will be used as a yardstick for determining 'whether or not one can talk of a regionally peculiar corpus of African international law'. K Kindiki, 'The Proposed Integration of the African Court of Justice and the African Court of Human and Peoples' Rights: Legal Difficulties and Merits' (2007) 15 Af JICL 145.

18 See V O Orlu Nmehielle, *The African Human Rights System: Its Laws, Practice, and Institutions* (2001).

19 African Charter on Human Rights and Peoples' Rights (Banjul Charter), 28 June 1981, 1520 UNTS 217.

sanctions on member states that violate human rights rulings. Instead, enforcement often relies on external actors, such as civil society organizations, international human rights bodies, and regional economic communities.

The system has also played an increasing role in conflict resolution and transitional justice. The Commission and Court have investigated human rights abuses in conflict zones, including Sudan, Ethiopia, and the Democratic Republic of Congo. Their efforts have helped bring international attention to war crimes and human rights violations, contributing to post-conflict justice initiatives. In recent years, the AfCHPR has issued landmark rulings on freedom of expression, political rights, and indigenous land rights. The case of *Konaté v. Burkina Faso* (2014), for example, strengthened press freedom in Africa by ruling that criminal defamation laws should not be used to suppress journalism. Such decisions have influenced national legal systems, encouraging African courts to adopt progressive human rights interpretations.

Despite these achievements, the African human rights system faces serious obstacles that hinder its effectiveness²⁰. One of the biggest challenges is weak enforcement. Many African governments simply ignore rulings from the ACHPR and AfCHPR, citing national sovereignty as justification²¹. Without a strong enforcement mechanism, compliance remains inconsistent, weakening the credibility of the system.²²

Political interference and state withdrawals have also undermined the Court's authority. Some governments, such as Rwanda and Tanzania, have withdrawn from the Court's jurisdiction after facing adverse rulings. Others have restricted civil society participation, preventing individuals and NGOs from bringing cases before the Court. This resistance to human rights scrutiny limits access to justice for victims. Another significant issue is the limited accessibility of the Court for individuals. Unlike the European Court of Human Rights, which allows direct petitions from any citizen of a member state, the AfCHPR only accepts cases from individuals in countries that have explicitly accepted its jurisdiction. As a result, millions of Africans are unable to seek justice at the regional level, weakening the Court's ability to serve as an effective human rights watchdog.

Unlike other regions such as Europe, the Americas, and Africa, Asia lacks a unified and binding regional human rights system. The continent's vast political, cultural, and legal diversity has resulted in a fragmented approach to human rights governance, where human rights protections are primarily handled at the national level, supplemented by regional declarations and frameworks that have limited legal enforceability²³. The absence of a regional human rights court or a binding human rights treaty means that human rights issues in Asia are largely managed within individual state legal systems, leading to inconsistencies in protection, enforcement, and accountability²⁴.

The region's human rights landscape is shaped by subregional organizations such as the Association of Southeast Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC). While these organizations have adopted human rights declarations and charters, their frameworks emphasize non-interference in domestic affairs,

20 Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), ICJ Reports 1971 p 16, 31.

21 G L Neuman, 'Import, Export, and Regional Consent in the Inter-American Court of Human Rights' (2008) 19 EJIL 101, 111.

22 M Killander, 'Interpreting Regional Human Rights Treaties' (2011) 7 SUR IJHR 145, 154.

23 Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, 26 June 1957, 328 UNTS 247.

24 Kevin Mgwanga Gunme v Cameroon (2003) ACmHPR Comm No 266/03, para 176 ('The Commission deduces [...] that peoples' rights are equally important as are individual rights. They deserve, and must be given protection').

which significantly weakens their enforcement power. Additionally, some countries in Asia have established National Human Rights Institutions (NHRIs) to provide domestic oversight, but their effectiveness varies widely depending on the political environment and legal independence of these bodies.

The absence of a comprehensive regional human rights system in Asia is largely due to geopolitical complexities, cultural differences, and varying levels of commitment to human rights among states. While ASEAN and SAARC have attempted to introduce regional human rights frameworks, these remain largely declaratory, lacking strong legal enforcement mechanisms. The ASEAN Human Rights Declaration (2012) is the most significant regional human rights document in Asia. Adopted by the Association of Southeast Asian Nations (ASEAN), it sets out fundamental human rights principles but is not legally binding, meaning it relies on voluntary compliance from member states. ASEAN's commitment to the principle of non-interference in domestic affairs has led to minimal accountability mechanisms, with governments resisting external scrutiny of their human rights records.

Another key organization, the South Asian Association for Regional Cooperation (SAARC), has expressed commitments to human rights in its founding documents, but it has no formal human rights treaty or enforcement body. SAARC primarily focuses on economic and regional cooperation rather than human rights protection, and political tensions between major member states—such as India and Pakistan—have further weakened its ability to foster a unified human rights agenda. Outside of ASEAN and SAARC, bilateral agreements, trade partnerships, and individual state policies influence human rights governance in Asia. Countries such as Japan, South Korea, and India have independent national legal frameworks that uphold human rights principles, while others, such as China and Myanmar, face ongoing international criticism for human rights abuses.

Additionally, the role of National Human Rights Institutions (NHRIs) varies significantly across Asia. Some countries, like Indonesia and the Philippines, have strong and independent NHRIs that investigate abuses and make recommendations to the government, while others, like Vietnam and China, either lack independent bodies or operate state-controlled institutions that offer limited protection for victims of human rights violations.

Within SAARC, no institutional mechanism exists for human rights enforcement. Although SAARC has recognized the importance of human rights, political disputes between member states have prevented the establishment of a regional human rights court or monitoring body²⁵. Without a judicial or quasi-judicial enforcement mechanism, human rights protections in South Asia remain heavily dependent on national legal systems, which vary significantly in their effectiveness. At the domestic level, National Human Rights Institutions (NHRIs) play an essential role in monitoring and advocating for human rights, but their influence depends on their level of independence from the state. For example, the National Human Rights Commission of South Korea is regarded as one of the strongest in the region due to its ability to operate independently and issue recommendations. In contrast, other NHRIs, such as those in China, Myanmar, and Vietnam, are state-controlled and lack meaningful autonomy, serving more as government agencies than independent watchdogs.

Despite its weaknesses, the Asian human rights framework has made notable progress in some areas, particularly through national-level human rights protections and growing regional dialogues. One of the key strengths of the system is that many Asian countries have incorporated human rights protections into their national constitutions and legal frameworks.

25 United Nations General Assembly Resolution 3314 (XXIX), A/RES/3314, (UNGAR 3314), 14 December 1974.

For instance, Japan, India, South Korea, and Indonesia have established strong legal protections for civil liberties, freedom of expression, and political rights. These countries also allow judicial review, where national courts can challenge government policies that violate constitutional rights.

One of the biggest obstacles is the lack of a legally binding regional human rights treaty or enforcement body. Unlike in Europe or the Americas, where human rights courts can hold states accountable, Asian governments remain resistant to external legal scrutiny, prioritizing national sovereignty over regional accountability. State sovereignty concerns continue to undermine regional cooperation on human rights²⁶. Many Asian governments—especially in authoritarian states such as China, North Korea, and Myanmar—reject external criticism of their human rights records and actively suppress dissent. Even within democratic states, human rights protections are often selectively applied or compromised for political stability²⁷.

Another major challenge is weak enforcement mechanisms within existing regional bodies. AICHR lacks the power to investigate violations or sanction non-compliant states, while SAARC has failed to establish any human rights monitoring system²⁸. Without enforcement tools, these organizations remain largely symbolic. Political conflicts and tensions between member states also hinder human rights cooperation. Ongoing disputes between India and Pakistan, China's influence over ASEAN, and authoritarian rule in several countries prevent meaningful progress in regional human rights enforcement. The Asian human rights framework remains underdeveloped compared to other regions, primarily due to the lack of a binding regional treaty, a human rights court, and strong enforcement mechanisms. While progress has been made in certain national contexts, the overall system suffers from fragmentation, state sovereignty concerns, and limited accountability mechanisms.

Conclusions

1. Based on the above analysis, it is important to note that the research highlights significant disparities in human rights protection across regional systems. While Europe and the Americas have established strong legal frameworks with binding enforcement mechanisms, Africa and Asia continue to struggle with weak enforcement, state resistance, and political interference.
2. Despite the existence of regional human rights bodies, enforcement remains a major challenge in all systems except Europe. In Africa and the Americas, states often refuse to comply with rulings from human rights courts, undermining the effectiveness of judicial decisions.
3. Although international law is far from achieving a constitutionalist order, legal norms are subject to judicial interaction. Accordingly, judicial interpretation enables the development of common standards within regions systems.

26 Hsiao A., Is China's Policy to Use Force against Taiwan a violation of the Principle of Non-Use of Force under International Law, *New England Law Review*, 1998, Vol. 32.

27 Valek P., Is Unilateral Humanitarian Intervention Compatible with the UN. Charter, *Michigan Journal of International Law*, 2005, vol. 26.

28 V. Orlu Nmehielle, *The African Human Rights System: Its Laws, Practice, and Institutions* (2001).

Recommendations

1. Regional human rights systems must be strengthened by enhancing the independence, jurisdiction, and enforcement mechanisms of human rights courts while ensuring that states fully comply with their rulings. This requires expanding the jurisdiction of existing courts, such as the African Court on Human and Peoples' Rights (AfCHPR) and the Inter-American Court of Human Rights (IACtHR), to prevent selective recognition or withdrawal by states seeking to avoid accountability. In Asia, the establishment of a regional human rights court is crucial to addressing the lack of a binding enforcement mechanism.
2. To ensure long-term effectiveness, greater collaboration between regional human rights institutions, national courts, and civil society organizations is essential in reinforcing accountability and human rights promotion. National Human Rights Institutions (NHRIs) must be granted greater independence and resources to investigate violations, while civil society organizations (CSOs) and the media should be given an expanded role in monitoring, reporting, and pressuring governments to uphold human rights commitments. Governments should be encouraged to ratify key regional human rights treaties and remove reservations that limit individual and NGO access to regional courts, particularly in Africa and Asia.

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