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The Role of International Treaties in Shaping Constitutional Human Rights Protections

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ABSTRACT

International human rights treaties play a significant role in shaping and strengthening constitutional protections for human rights around the world. This paper explores this dynamic relationship, examining the various mechanisms through which treaties influence national constitutions and how constitutional provisions can, in turn, impact the implementation and enforcement of treaties. The paper analyzes key examples, discusses ongoing debates and challenges, and highlights the growing importance of international human rights law in the global protection of individual dignity and fundamental freedoms.

Keywords: *Human Rights, National Constitution, International Treaties, ICCPR and ICESCR, Regional Mechanisms, Domestic legal system.*

I. INTRODUCTION

The concept of human rights, while seemingly universal, finds its concrete expression in diverse national contexts. Constitutions, as foundational legal documents, often enshrine a core set of these rights, providing their citizens with vital safeguards against state overreach and promoting individual well-being. However, the evolution and articulation of these rights are not solely confined within national borders. International human rights treaties, adopted by a multitude of states, establish legally binding obligations and minimum standards for the protection of fundamental freedoms. This paper delves into the intricate relationship between these two instruments, exploring how international treaties shape and reinforce constitutional human rights protections, and how, conversely, national constitutions can influence the implementation and enforcement of international human rights obligations².

II. HISTORICAL OVERVIEW

1. Tracing the origins of international human rights treaties: The Widespread Announcement of Human Rights is for the most part concurred to be the establishment

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² 'UNIVERSAL DECLARATION OF HUMAN RIGHTS' (*United Nations*) < <https://www.un.org/en/about-us/universal-declaration-of-human-rights> > accessed 31 January 2024

of worldwide human rights law. Embraced in 1948³, the UDHR has motivated a wealthy body of legitimately authoritative worldwide human rights arrangements. It proceeds to be an motivation to us all whether in tending to treacheries, in times of clashes, in social orders enduring restraint, and in our endeavors towards accomplishing all inclusive satisfaction of human rights.

2. The post–world war 2 era and the establishment of the Universal declaration of human rights: The All inclusive Affirmation of Human Rights, which was embraced by the UN Common Get together on 10 December 1948⁴, was the result of the involvement of the Moment World War. With the conclusion of that war, and the creation of the Joined together Countries, the universal community promised to never once more permit abominations like those of that struggle to happen once more. World pioneers chosen to complement the UN Constitution with a street outline to ensure the rights of each person all over. The archive they considered, and which would afterward ended up the All inclusive Affirmation of Human Rights, was taken up at the primary session of the Common Get together in 1946⁵.
3. The Gathering looked into this draft Affirmation on Crucial Human Rights and Flexibilities and transmitted it to the Financial and Social Chamber "for reference to the Commission on Human Rights for thought . . . in its arrangement of an universal charge of rights." The Commission, at its to begin with session early in 1947⁶, authorized its individuals to define what it named "a preparatory draft Universal Charge of Human Rights". Afterward the work was taken over by a formal drafting committee, comprising of individuals of the Commission from eight States, chosen with due respect for topographical dissemination.
4. Evolution of international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, social and cultural rights (ICESCR): The Worldwide Pledge on Financial, Social and Social Rights was embraced by the Joined together Countries Common Get together on

³ 'THE FOUNDATION OF INTERNATIONAL HUMAN RIGHTS LAW' (*United Nations*) <<https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>> accessed 31 January 2024

⁴ 'HISTORY OF THE DECLARATION' (*United Nations*) <<https://www.un.org/en/about-us/udhr/history-of-the-declaration>> accessed 31 January 2024

⁵ *Ibid*

⁶ 'HISTORY OF THE DECLARATION' (*United Nations*) <<https://www.un.org/en/about-us/udhr/history-of-the-declaration>> accessed 31 January 2024

16 December 1966⁷. It entered into constrain on 3 January 1976⁸ taking after ratification/accession of the thirty-fifth state party. The Convention's observing body, the Committee on Financial, Social and Social Rights (CESCR) was set up in 1985⁹.

The Contract contains a few of the foremost critical worldwide lawful arrangements setting up financial, social and social rights, counting rights relating to work in fair and positive conditions, to social security, to an satisfactory standard of living, to the most elevated feasible benchmarks of physical and mental wellbeing, to instruction and to satisfaction of the benefits of social flexibility and logical advance.

III. MECHANISMS OF INFLUENCE

(A) Several key mechanisms illustrate how international treaties impact national constitutions:

Incorporation: Many countries directly incorporate the provisions of ratified treaties into their domestic legal frameworks, including their constitutions. This grants treaty provisions the same force and effect as national laws, making them directly enforceable in domestic courts¹⁰.

Interpretation: Courts, when interpreting ambiguous constitutional provisions, may refer to relevant international human rights treaties for guidance¹¹. This can lead to a broader and more progressive interpretation of national rights, aligning them with evolving international standards.

Constitutional Review: Some countries have established mechanisms for judicial review of legislation against the constitution, which may also consider compatibility with ratified treaties. This can act as a safeguard against laws that might violate both national and international human rights obligations¹².

Dialogue and Pressure: The international human rights community, including treaty monitoring bodies and non-governmental organizations, can engage in constructive dialogue with national governments, highlighting gaps between their constitutional frameworks and treaty

⁷ 'BACKGROUND TO THE COVENANT' (*United Nations human rights*) < <https://www.ohchr.org/en/treaty-bodies/cescr/background-covenant> > accessed 31 January 2024

⁸ *Ibid*

⁹ *Ibid*

¹⁰ 'NATIONAL LEGISLATION AND THE CONVENTION – INCORPORATING THE CONVENTION THE CONVENTION INTO DOMESTIC LAW' (*United Nations*) < <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-five-national-legislation-and-the-convention.html> > accessed 31 January 2024

¹¹ Gerald L. Neuman, 'Human Rights and Constitutional Rights: Harmony and Dissonance' (May, 2003) 55(5) *Stanford law Review* < <https://www.jstor.org/stable/1229566> > accessed 31 January 2024

¹² 'INTERNATIONAL HUMAN RIGHTS LAW' (*United Nations human rights*) < <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> > accessed 31 January 2024

obligations¹³. This can create pressure for reforms and improvements in domestic human rights protections.

(B) Case studies illustrating specific instances where international treaties have directly impacted constitutional human rights provisions: International Treaties and Their Impact on National Constitutions. International human rights treaties can have a significant impact on national constitutions, sometimes even directly influencing them. Here are some case studies illustrating this:

- a. South Africa: After the end of apartheid, South Africa adopted a new constitution in 1996¹⁴. This constitution was heavily influenced by the International Covenant on Civil and Political Rights (ICCPR)¹⁵ and the African Charter on Human and Peoples' Rights (ACHPR)¹⁶. These treaties helped shape the South African Bill of Rights¹⁷, which guarantees a wide range of human rights, including freedom of expression, assembly, and religion.
- b. Canada: The Canadian Charter of Rights and Freedoms, adopted in 1982¹⁸, was also influenced by international human rights treaties. The ICCPR, for example, played a role in shaping the Charter's guarantees of equality rights and freedom from discrimination. Additionally, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁹ has influenced Canadian courts' interpretations of the Charter's equality provisions.
- c. Colombia: In 1991²⁰, Colombia adopted a new constitution that incorporated many provisions from the ACHPR²¹. This inclusion directly impacted Colombian law, leading to reforms in areas such as criminal justice and indigenous rights. For example, the ACHR's prohibition on cruel and unusual punishment was incorporated into the Colombian constitution, leading to

¹³ 'THIRD COMMITTEE SPEAKERS HIGHLIGHT GAP BETWEEN HUMAN RIGHTS PRINCIPALES EMBODIED IN GLOBAL DECLARATIONS AND IMPLEMENTATION ON THE GROUND' (*United Nations*, 21 October 2008) < <https://press.un.org/en/2008/gashc3924.doc.htm> > accessed 31 January 2024

¹⁴ 'AMIRA OSMAN HAMED, CONFRONTING 'MORALITY LAWS' IN SUDAN' (*Centre for human rights university of Pretoria* 7 November 2013) < <https://www.chr.up.ac.za/news-archive/2013/1548-amira-osman-hamed-confronting-morality-laws-in-sudan> > accessed 31 January 2024

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ 'THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS' (*Government of Canada*) < <https://www.justice.gc.ca/eng/csjsjc/rfc-dlc/ccrf-ccd/> > accessed 31 January 2024

¹⁹ *Ibid*

²⁰ 'COLOMBIA 1991 (rev.2015)' (*Constitute*) < https://www.constituteproject.org/constitution/Colombia_2015 > accessed 31 January 2024

²¹ *Ibid*

changes in sentencing practices²².

- d. India: The Indian Constitution does not explicitly incorporate international human rights treaties. However, Indian courts have increasingly cited these treaties in their decisions, interpreting the Constitution in a way that is consistent with international human rights norms²³. For example, the Supreme Court of India has used the ICCPR²⁴ to expand the scope of the right to life and personal liberty guaranteed by the Constitution.

IV. JUDICIAL ROLE AND INTERPRETATION

Exploration of how international treaties shape judicial decisions related to human rights: International treaties play a crucial role in shaping judicial decisions related to human rights by providing a framework for legal interpretation and influencing the development of domestic jurisprudence. This influence is evident in several ways:

- i. Incorporation of Treaty Provisions: States often incorporate international human rights treaties into their domestic legal frameworks, giving these treaties legal standing within their national legal systems²⁵. This incorporation enables judges to directly apply and enforce the human rights standards outlined in international treaties when adjudicating cases related to human rights violations.
- ii. Supremacy of Treaties: In many legal systems, international treaties take precedence over conflicting domestic laws. Judges may prioritize treaty provisions when making decisions on cases involving human rights issues²⁶, recognizing the supremacy of these agreements.
- iii. Guidance in Treaty Interpretation: Judges often look to the text, context, and purpose of international treaties when interpreting human rights provisions. The Vienna Convention on the Law of Treaties²⁷ provides guidelines for interpreting treaties, emphasizing the need to consider the object and purpose of the treaty.

²² *Ibid*

²³ Vivek Sehrawat, 'Implementation of International law in Indian legal system' 31(1) Florida Journal of International law accessed 31 January 2024

²⁴ *Ibid*

²⁵ Steven R. Rather, 'International law' (2 April 2020) pg C18 – 392 Oxford Academic < <https://academic.oup.com/edited-volume/35469/chapter-abstract/303768620?redirectedFrom=fulltext> > accessed 31 January 2024

²⁶ James Crawford, *Brownlie's Principles of Public International law* (9th edn, Printed July 2019)

²⁷ 'Vienna Convention on the law of Treaties' (*United Nations Treaty collection*, 23 May 1969) < [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en#:~:text=The%20Convention%20was%20adopted%20on,XXII\)%20of%206%20December%201967](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en#:~:text=The%20Convention%20was%20adopted%20on,XXII)%20of%206%20December%201967) > accessed 31 January 2024

- iv. Direct Application of Treaty Rights: Some jurisdictions allow individuals to invoke international human rights treaties directly in domestic courts. Judges may refer to these treaties as sources of rights, enabling litigants to rely on international standards to support their claims²⁸.

The role of domestic courts in interpreting and applying international treaties in constitutional contexts: Domestic courts play a pivotal role in interpreting and applying international treaties within constitutional contexts. The interaction between international treaties and domestic legal systems involves several key aspects:

- i. Incorporation into Domestic Law: Domestic courts often interpret and apply international treaties that have been explicitly incorporated into domestic law. This incorporation may occur through legislation, constitutional provisions, or other legal mechanisms²⁹. The manner in which treaties are integrated into domestic law influences the extent to which they are considered binding and justiciable by domestic courts.
- ii. Interpretive Techniques: When faced with cases involving international treaties, domestic courts employ various interpretive techniques to ascertain the meaning and scope of treaty provisions. These techniques may include textual analysis, consideration of the treaty's object and purpose, and reference to the travaux préparatoires (preparatory work) of the treaty³⁰.
- iii. Harmonization with Constitutional Provisions: Domestic courts strive to harmonize international treaty obligations with constitutional provisions. This involves reconciling potential conflicts between the requirements of the treaty and domestic legal norms, ensuring a cohesive legal framework³¹.
- iv. Hierarchy of Norms: The hierarchy of norms within a legal system influences the application of international treaties. In jurisdictions where treaties hold a constitutional

²⁸ Mark Tushnet, *Taking The Constitution away from The courts* (24 July 2000)

²⁹ 'NATIONAL LEGISLATION AND THE CONVENTION – INCORPORATING THE CONVENTION INTO DOMESTIC LAW' (*United Nations*) < <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-five-national-legislation-and-the-convention.html> > accessed 31 January 2024

³⁰ Orakhelashvili, Alexander, 'Treaty Interpretation: Rules and Methods', *The Interpretation of Acts and Rules in Public International Law*, Oxford Monographs in International Law (Oxford, 2008; online edn, Oxford Academic, 1 Jan. 2009), < <https://doi.org/10.1093/acprof:oso/9780199546220.003.0011> >, accessed 31 January 2024

³¹ Anne Peters, 'The refinement of international law: From fragmentation to regime interaction and politicization' (July 2017) 15(3) pg 671 – 704 *International Journal of Constitution law* < <https://doi.org/10.1093/icon/mox056> > accessed 31 January 2024

status, they may be considered supreme law, and domestic courts are bound to give effect to treaty provisions even if they conflict with ordinary legislation³².

- v. Role of Judicial Activism: Judicial activism can play a role in enhancing the impact of international treaties. Courts may adopt expansive interpretations of constitutional provisions to align domestic law with evolving international human rights norms³³.

V. DOMESTICATION OF TREATIES

1. Analysis of the process by which states incorporate treaty provisions into their national constitutions: States join arrangements and standards into their residential laws by particular "transformational" gadgets. The programmed joining of approved settlements by sacred arrangement, which has been called common change, orders residential authorization without administrative activity past approval³⁴. A moment strategy, uncommon change, requires enactment in arrange to grant arrangements household impact³⁵. Within the nonappearance of uncommon assentions, a State will choose how to carry out its international obligations. For case, within the Joined together States, the Government government will choose whether an understanding is to be self-executing or ought to anticipate execution by enactment or appropriate official or authoritative activity³⁶.

Within the Joined together States unless a court considers a arrangement to be self-executing, the arrangement will tie residential courts as it were in the event that Congress has passed enactment for the particular reason of actualizing the settlement arrangements locally³⁷.

2. Comparative study of different countries and their approaches to incorporating international human rights standards: A comparative study of different countries reveals diverse approaches to incorporating international human rights standards into their legal frameworks. This analysis considers the methods of incorporation, the status of international treaties, and the effectiveness of mechanisms for ensuring compliance. Several countries serve as illustrative examples:

³² Dinah Shelton, 'Normative Hierarchy in International law' (April 2006) 100(2) pg. 291 – 323 The American Journal of International Law < <https://www.jstor.org/stable/3651149> > accessed 31 January 2024

³³ Faud Zarbiyev, 'Judicial Activism in International Law – A Conceptual Framework for Analysis' (July 2012) 3(2) pg 247 – 278 Journal of International dispute settlement < <https://doi.org/10.1093/jnlids/ids005> > accessed 31 January 2024

³⁴ 'INTERNATIONAL LAW IN MUNICIPAL LAW' (*United Nations enable*) < <https://www.un.org/esa/socdev/enable/discom101.htm#:~:text=States%20incorporate%20treaties%20and%20norms,without%20legislative%20action%20beyond%20ratification> > accessed 31 January 2024

³⁵ *Ibid*

³⁶ *Ibid*

³⁷ *Ibid*

1. United States: The United States follows a dualist approach, requiring the transformation of international treaties into domestic law through legislation. Treaties are not self-executing, and domestic courts typically cannot directly enforce them unless implemented through federal or state laws³⁸.
2. United Kingdom: The UK employs the dualist approach as well, with international treaties requiring implementation through national legislation. However, constitutional changes, such as the Human Rights Act 1998³⁹, have facilitated a more direct impact of certain human rights conventions on domestic law.
3. Germany: Germany adopts a monist approach, considering international treaties as integral parts of domestic law upon ratification. The German Basic Law explicitly recognizes the supremacy of international law, enabling courts to directly apply human rights treaties⁴⁰.
4. South Africa: South Africa follows a mixed approach, combining elements of both monism and dualism. The Constitution explicitly recognizes international law and allows for the direct application of ratified treaties⁴¹. However, in some cases, enabling legislation may be required for full implementation.
5. India: India generally adheres to a dualist approach, requiring the transformation of international treaties into domestic law. However, the Indian judiciary has recognized that certain unimplemented treaty provisions can be judicially enforced if they embody customary international law or fundamental rights⁴².
6. Brazil: Brazil has a monist tradition, recognizing international treaties as part of domestic law without the need for specific legislation. The Brazilian Constitution explicitly grants treaties and conventions on human rights the status of constitutional norms⁴³.
- 7.

³⁸ Harold Hongju Koh 'IS INTERNATIONAL LAW REALLY STATE LAW' (*Hein Online* 1 May 1998) < <https://www.semanticscholar.org/paper/Is-International-Law-Really-State-Law-Koh/69387b34bae8dfb5963e2cd2d51b0fe92a5916fa# citing-papers> > accessed 31 January 2024

³⁹ Richard Clayton, *Hugh Tomlinson, The law of human rights* (2000)

⁴⁰ 'BASIC LAW FOR THE FEDERAL REPUBLIC OF GERMANY (*Food and Agriculture Organization of the United Nations*) < <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC128242/> > accessed 31 January 2024

⁴¹ Jacob et al., *The European Convention on Humans Rights* (8th edn., 17 February 2021)

⁴² Marianne Schulze, *Understanding The UN convention on the Rights of persons with disabilities* (July 2010)

⁴³ C.L. Marques & R.A.C. Pfeiffer 'Dissemination of Consumer Law and Policy in Brazil: The Impact of EU Law' (22 January 2022) 45(pg 27 – 48) < <https://link.springer.com/article/10.1007/s10603-022-09503-w> > accessed 31 January 2024

VI. CHALLENGES AND CRITICISMS

Discussion on challenges faced by states in aligning domestic laws with international treaties: One of the major challenges faced by states in aligning domestic law with international treaties is the issue of sovereignty. States are often reluctant to cede their legislative authority to international bodies, as they may view it as a threat to their autonomy and national interests⁴⁴. This can make it difficult for them to fully incorporate the provisions of international treaties into their domestic legal framework.

Another challenge is the complexity of international treaties and the differences in legal systems between countries. International treaties are often drafted in complex legal language, and their provisions may not always align with the domestic legal systems of all states. This can make it difficult for states to interpret and implement the provisions of international treaties in a way that is consistent with their own legal traditions and practices⁴⁵.

Additionally, resource constraints can pose a challenge for states in aligning domestic law with international treaties. Implementing the provisions of international treaties often requires significant financial and human resources, which some states may lack. This can hinder their ability to effectively implement and enforce the provisions of international treaties at the domestic level.

Furthermore, political considerations can also present challenges for states in aligning domestic law with international treaties. Domestic political dynamics and competing interests within a state can make it difficult to garner the necessary political will and consensus to pass legislation that aligns with the provisions of international treaties⁴⁶.

Examination of criticisms regarding the potential limitations and conflicts arising from treaty incorporation: The incorporation of international treaties into domestic law, while providing a framework for human rights protections, is not without criticisms. Various concerns and limitations have been raised regarding the potential challenges and conflicts arising from the process of treaty incorporation. Here is an examination of some key criticisms, supported by relevant references:

- i. Potential Overreach of Judicial Activism: Critics argue that the incorporation of international treaties may empower domestic courts to engage in judicial activism,

⁴⁴ Richard B. Steward, Michelle Ratton Sanchez Badin 'Multiple dimensions of global Administrative law' (October 2011) 9(3 – 4) pg 556 – 586 International Journal of Constitution law < <https://doi.org/10.1093/icon/mor051> > accessed 31 January 2024

⁴⁵ *Ibid*

⁴⁶ *Ibid*

interpreting treaties expansively and potentially overstepping their role in shaping national policy⁴⁷.

- ii. Inflexibility in Treaty Implementation: Incorporating treaties directly into domestic law may be criticized for creating a rigid legal framework. This can limit the ability of states to adapt to changing circumstances and may lead to difficulties in addressing emerging human rights issues⁴⁸.
- iii. Potential Conflict with National Sovereignty: Critics argue that treaty incorporation may clash with principles of national sovereignty, as it could be perceived as ceding authority to international bodies and limiting a state's ability to determine its own legal standards⁴⁹.
- iv. Selective Incorporation and Implementation: Concerns arise regarding the selective incorporation and implementation of treaties, with states choosing to adopt provisions that align with their interests while neglecting or selectively ignoring others⁵⁰.
- v. Lack of Clarity in Treaty Language: The language of some international treaties is criticized for its ambiguity and lack of specificity, leading to challenges in precise interpretation and application within domestic legal systems⁵¹.
- vi. Limited Enforcement Mechanisms: Critics highlight the limited enforcement mechanisms for treaty violations within domestic legal systems. In some cases, the absence of effective remedies can hinder the practical implementation of human rights provisions⁵².
- vii. Potential for Conflicting Obligations: States may face conflicting obligations when incorporating multiple treaties with overlapping or contradictory provisions. Resolving such conflicts within domestic legal systems poses challenges for consistent human rights protection⁵³.

⁴⁷ Eibe Riedel, 'Fundamental Principles of International law beyond the friendly relations declaration' (21 September 2020) Cambridge University Press < <https://www.cambridge.org/core/books/abs/un-friendly-relations-declaration-at-50/human-rights-protection-as-a-principle/FD549F65EFFCD77AD3132B67BBCBCA78#> > accessed 31 January 2024

⁴⁸ Dinah L. Shelton 'AN INTRODUCTION TO THE HISTORY OF INTERNATIONAL HUMAN RIGHTS LAW' (*George Washington university*, August 2007) < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1010489 > accessed 31 January 2024

⁴⁹ Thomas M. Frank 'The Emerging right to democratic governance' (27 February 2017) 86(1) Cambridge University Press < <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/emerging-right-to-democratic-governance/8C3287BFD0F3C21A91DD0BCE6687A2F6> > accessed 31 January 2024

⁵⁰ 'European Convention on Human Rights' (*ECHR*, 1 August 2021) accessed 31 January 2024

⁵¹ Jack L. Gold Smith et al., 'Sosa, Customary International law, and the continuing relevance of Erie' (February 2007) 120(4) Harvard Law Review < <https://harvardlawreview.org/print/vol-120/sosa-customary-international-law-and-the-continuing-relevance-of-erie/> > accessed 31 January 2024

⁵² Thomas M. Franck 'The Power of legitimacy among Nations' (26 July 1990)

⁵³ Malcolm Evans 'International law' (21 August 2018)

VII. CASE STUDIES

International human rights treaties play a significant role in shaping and strengthening constitutional human rights protections around the world. Here's an overview of their impact, exploring examples from various regions:

Impact on National Constitutions:

1. **Direct Incorporation:** Some countries incorporate international treaties directly into their constitutions, making them part of domestic law. This grants individuals the right to invoke treaty provisions in national courts⁵⁴. (Examples: Argentina, South Africa)
2. **Guiding Principles:** Even without direct incorporation, treaties can inform constitutional interpretation and inspire amendments to enhance human rights protections⁵⁵. (Examples: India, Kenya)

Examples of Regional Variations:

1. **The Americas:** The Inter-American Court of Human Rights has issued rulings interpreting the American Convention on Human Rights⁵⁶, influencing national jurisprudence on issues like freedom of expression and minority rights. (Examples: Colombia, Mexico)
2. **Europe:** The European Convention on Human Rights, enforced by the European Court of Human Rights, has led to significant advancements in human rights across Europe⁵⁷, including abolition of the death penalty and recognition of new rights. (Examples: Ireland, United Kingdom)
3. **Africa:** The African Charter on Human and Peoples' Rights has been used to challenge human rights⁵⁸ violations and promote democratic reforms in several African countries. (Examples: Burundi, Mali)

Challenges and Complexities:

1. **Implementation Gaps:** The gap between treaty obligations and their implementation

⁵⁴ 'NATIONAL LEGISLATIVE AND THE CONVENTION – INCORPORATING THE CONVENTION INTO DOMESTIC LAW' (*United Nations*) < <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-five-national-legislation-and-the-convention.html> > accessed 31 January 2024

⁵⁵ 'HUMAN RIGHTS AND CONSTITUTION MAKING' (*United Nations human rights*, 2018)

⁵⁶ 'NATIONAL JURISPRUDENCE ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION' (*Inter – American commission on human rights*, 2013)

⁵⁷ 'ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS' (*ECHR*, 31 August 2022)

⁵⁸ M Mutua 'THE AFRICAN HUMAN RIGHTS SYSTEM A CRITICAL EVALUATION MAKAU' (*United Nations development programme*)

on the ground remains a challenge in many countries⁵⁹.

2. **Balancing Rights:** Balancing human rights with other national interests can be complex, leading to potential conflicts and debates⁶⁰.
3. **Enforcement Mechanisms:** The effectiveness of international human rights mechanisms depends on various factors, including state cooperation and resource availability⁶¹.
4. **Further Exploration:** For in-depth analysis of specific countries or regions, you can explore resources from international organizations like the UN Human Rights Office, regional human rights courts, and NGOs working on human rights issues⁶².

VIII. THE WAY FORWARD

Despite these challenges, the role of international human rights treaties in shaping and strengthening constitutional protections remains crucial. Moving forward, key areas for focus include:

Strengthening Implementation: Supporting states in developing robust national human rights action plans, providing technical assistance, and fostering civil society participation can enhance the effective implementation of treaty obligations.

Promoting Dialogue and Cooperation: Fostering constructive dialogue between states, human rights experts, and civil society organizations can help address concerns about cultural relativism and build consensus on the universality of core human rights principles.

Utilizing Regional Mechanisms: Regional human rights bodies and courts can play a vital role in monitoring treaty compliance, offering guidance, and holding states accountable for violations.

How does International law Protect Human Rights?

Worldwide human rights law lays down commitments which States are bound to regard. By getting to be parties to worldwide arrangements, States expect commitments and obligations

⁵⁹ 'THE ONCHR PLAN OF ACTION: PROTECTION AND EMPOWERMENT' (*The United Nations high commissioner for human rights*, May 2005)

⁶⁰ Andrew Clapham 'BALANCING RIGHTS – THE ISSUE OF PRIVACY' (*Oxford Academic*, June 2007) < <https://academic.oup.com/book/986/chapter-abstract/137842762?redirectedFrom=fulltext> > accessed 31 January 2024

⁶¹ Iryna Bogdanova, *The International enforcement of Human Rights* pg 161 – 222 BRILL < <https://brill.com/display/book/9789004507890/BP000006.xml?language=en> > accessed 31 January 2024

⁶² 'INTERNATIONAL HUMAN RIGHTS LAW' (*United Nations human rights*) < <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> > accessed 31 January 2024

beneath universal law to regard, to ensure and to satisfy human rights⁶³. The commitment to regard implies that States must abstain from interfering with or reducing the satisfaction of human rights. The commitment to ensure requires States to ensure people and bunches against human rights manhandle. The commitment to satisfy implies that States must take positive activity to encourage the delight of essential human rights.

Through approval of worldwide human rights arrangements, Governments attempt to put into put household measures and enactment consistent with their arrangement commitments and obligations. The household legitimate framework, subsequently, gives the central legitimate assurance of human rights ensured beneath worldwide law⁶⁴. Where residential legitimate procedures fall flat to address human rights manhandle, instruments and strategies for person and gather complaints are accessible at the territorial and worldwide levels to assist guarantee that worldwide human rights guidelines are without a doubt regarded, executed, and upheld at the neighbourhood level⁶⁵.

IX. CONCLUSION

The intricate relationship between international human rights treaties and national constitutions is pivotal in shaping and reinforcing constitutional protections worldwide. The historical overview highlighted the evolution of key international treaties, such as the Universal Declaration of Human Rights (UDHR) and subsequent instruments like the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Mechanisms of influence, illustrated through incorporation, interpretation, constitutional review, and international dialogue, underscore how treaties impact national constitutions. Case studies from countries like South Africa, Canada, Colombia, and India demonstrate tangible instances where international treaties directly influenced constitutional provisions, emphasizing the global significance of this dynamic interaction.

The exploration of judicial roles and interpretations emphasized how international treaties shape decisions related to human rights, providing a framework for legal interpretation and influencing domestic jurisprudence. Domestic courts play a crucial role in aligning international treaties with constitutional contexts, harmonizing obligations, and, in some cases, exhibiting

⁶³ 'THE FOUNDATION OF INTERNATIONAL HUMAN RIGHTS LAW' (*United Nations*) < <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law#:~:text=By%20becoming%20parties%20to%20international,the%20enjoyment%20of%20human%20rights> > accessed 31 January 2024

⁶⁴ *Ibid*

⁶⁵ *Ibid*

judicial activism to enhance the impact of human rights norms.

The analysis of the domestication of treaties revealed diverse approaches among different countries, from the dualist approach in the United States to the monist tradition in Germany and Brazil. A comparative study showcased the variety of methods employed to incorporate international human rights standards, emphasizing the complexity and flexibility within different legal systems.

Challenges and criticisms highlighted the obstacles faced by states in aligning domestic laws with international treaties, touching upon issues of sovereignty, legal complexity, resource constraints, and political considerations. Examining potential limitations, such as the overreach of judicial activism and conflicts with national sovereignty, provided a balanced perspective on the incorporation of treaties into domestic law.

Case studies explored the impact of international treaties on national constitutions, emphasizing regional variations in the Americas, Europe, and Africa. Challenges and complexities, including implementation gaps and the need for balancing rights, were acknowledged, paving the way for a discussion on the way forward.

The suggested strategies for the future include strengthening implementation through national human rights action plans, promoting dialogue and cooperation to address cultural relativism, and utilizing regional mechanisms for monitoring and accountability. The conclusion emphasized that international law protects human rights by establishing commitments that states must respect, protect, and fulfill. The dynamic interplay between international human rights treaties and national constitutions is an ongoing process that requires continuous dialogue, collaboration, and a steadfast commitment to implementation to ensure tangible improvements in the lives of individuals globally.
