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PROMISE VS PRACTICE: UNPACKING THE ENFORCEMENT GAP IN HUMAN RIGHTS LAW

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ABSTRACT

Despite the proliferation of international human rights instruments and institutions over the past seven decades, the enforcement of human rights remains a persistent and systemic challenge. This article critically examines the "enforcement gap" the disconnect between the promise of legal rights enshrined in international treaties and their practical implementation on the ground. It explores the structural, legal, political, and institutional barriers that undermine effective enforcement, including the constraints of state sovereignty, the weakness of international adjudicatory bodies, and the lack of binding enforcement mechanisms. Through an analysis of regional human rights systems, non-state actor accountability, and selected case studies of enforcement failure, this study highlights how political interests, selective compliance, and institutional inertia contribute to the global implementation deficit. The article also proposes pathways to bridge this gap, including reforms to strengthen legal frameworks, enhance accountability mechanisms, and empower domestic actors. Ultimately, closing the enforcement gap is essential to preserving the legitimacy, credibility, and transformative potential of international human rights law.

Keywords

Human Rights Law, Enforcement Gap, International Law, State Sovereignty, Accountability, Regional Human Rights Systems

INTRODUCTION

International human rights law¹ represents a cornerstone of the post-World War II legal order, enshrining the universal recognition of fundamental rights and freedoms. From the Universal Declaration of Human Rights² in 1948 to binding treaties like the International Covenant on Civil and Political Rights³, states have repeatedly affirmed their commitment to uphold human dignity and protect individuals from abuses.⁴ Despite this robust legal framework, a persistent enforcement gap exists between the lofty promises codified in international instruments and the often selective, inconsistent, or ineffective enforcement of these rights in practice. This article examines the nature of this enforcement gap, identifying key structural, political, and institutional factors that contribute to the divergence between legal norms and their implementation. It further aims to assess the implications of this gap for the credibility and future of international human rights law, and explores avenues for strengthening compliance and accountability mechanism

THE EVOLUTION OF HUMAN RIGHTS NORMS

The development of modern international human rights norms can be traced to the atrocities of the Second World War, which exposed the inadequacy of existing legal protections for individuals under international law. In response, the international community established a new legal and moral framework to safeguard human dignity. The adoption of the *Universal Declaration of Human Rights* (UDHR) in 1948 by the United Nations General Assembly marked the first comprehensive articulation of fundamental human rights recognized as belonging to all people, regardless of nationality, race, or status. Although the UDHR itself is not a treaty and thus not legally binding, it laid the normative groundwork for a vast body of human rights law that followed. Over time, many of its principles have gained the status of customary international law.

Building on the UDHR, the United Nations developed two key treaties in 1966: the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).⁵ These documents, along with the UDHR,

¹ IHRL

² UDHR

³ ICCPR

⁴ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171

⁵ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

form the "International Bill of Human Rights." The ICCPR sets out legally binding obligations on states to respect and protect civil and political rights such as freedom of speech, the right to a fair trial, and freedom from torture. In contrast, the ICESCR emphasizes economic, social, and cultural rights including the right to education, health, and an adequate standard of living but allows for these to be achieved progressively, subject to a state's available resources.⁶ This distinction has led to debates about the relative enforceability of the two sets of rights, with civil and political rights traditionally seen as more readily justiciable than economic, social, and cultural rights.⁷

Key institutions play a central role in promoting, monitoring, and interpreting these rights. At the global level, the United Nations has established multiple bodies, including the Human Rights Council and various treaty-monitoring committees such as the Human Rights Committee (for the ICCPR) and the Committee on Economic, Social and Cultural Rights (for the ICESCR). These bodies review state reports, issue general comments, and hear individual complaints in certain cases. However, they generally lack coercive enforcement power, relying instead on political pressure and public accountability. In contrast, regional human rights systems have developed more formal mechanisms for enforcement. The European Court of Human Rights allows individuals to bring complaints directly against states for violations of the European Convention on Human Rights, and its judgments are legally binding. Similarly, the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights provide regional avenues for enforcement, although their effectiveness varies significantly depending on political will and institutional capacity. These regional systems often serve as stronger enforcement models, albeit limited to specific parts of the world. Another important distinction in human rights law is between binding legal instruments like the ICCPR or regional conventions and non-binding or "soft law" instruments such as declarations, resolutions, and guidelines. While not legally enforceable, soft law can still shape state behaviour and influence the development of binding norms. In this context, the UDHR serves as a prime example of a non-binding document that has achieved considerable normative weight.

Finally, a major tension in the evolution of human rights lies in the distinction between

⁶ ICESCR, *supra* note 3, art. 2(1).

⁷ See Philip Alston, *Economic and Social Rights*, in *Human Rights: An Agenda for the Next Century* 137, 141–45 (Louis Henkin & John L. Hargrove eds., 1994).

aspirational and enforceable rights. Aspirational rights, such as those requiring long-term economic investment or structural reform (e.g., the right to housing or to a clean environment), often face significant barriers to immediate implementation. Enforceable rights, by contrast, tend to be those that can be directly applied and adjudicated, such as protection against arbitrary detention. This divide reflects not only legal and institutional limitations but also political realities and resource constraints, highlighting the complex and uneven progress of human rights law globally.

UNDERSTANDING THE ENFORCEMENT GAP

The "enforcement gap" in international human rights law refers to the persistent disconnect between the legal obligations states assume under international treaties and declarations, and their actual behaviour in practice. Despite the proliferation of human rights norms and institutional mechanisms since the mid-20th century, enforcement remains one of the weakest links in the human rights system. This gap becomes particularly visible in cases of widespread or systematic violations where international legal frameworks exist, but are either ignored or selectively applied. For example, the 1994 genocide in Rwanda occurred despite the clear prohibition of genocide under the *Convention on the Prevention and Punishment of the Crime of Genocide* and the responsibility of the international community to act to prevent such atrocities. Similarly, the continued use of torture in various countries, despite absolute prohibition under the *Convention Against Torture*, underscores the failure to translate legal norms into consistent enforcement.⁸ Refugee crises in Syria, Venezuela, and Myanmar further illustrate the international community's repeated inability to uphold the rights of displaced populations, despite binding obligations under the *1951 Refugee Convention* and customary international law.⁹ These failures are not merely operational or logistical they reveal a structural weakness in the human rights regime where political considerations, national sovereignty, and the absence of coercive enforcement mechanisms regularly override legal obligations.

One of the core reasons for this enforcement gap is the lack of meaningful consequences for violations. Unlike domestic legal systems, international human rights law often lacks centralized judicial or executive authority capable of enforcing compliance. Most treaty bodies

⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85; see Manfred Nowak & Elizabeth McArthur, *The United Nations Convention Against Torture: A Commentary* 12–17 (2008).

⁹ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137; see Alexander Betts & Paul Collier, *Refuge: Transforming a Broken Refugee System* 45–51 (2017).

can only issue recommendations, not binding judgments, and even when international or regional courts issue rulings, enforcement often depends on the goodwill of states or political pressure from the international community. In many instances, powerful states are able to shield themselves or their allies from scrutiny, while weaker states bear the brunt of international condemnation, further undermining the system's credibility.⁶ As a result, while the body of human rights law has grown in breadth and sophistication, the mechanisms to ensure its consistent application remain fragmented, politicized, and frequently ineffective.

STRUCTURAL AND LEGAL BARRIERS TO ENFORCEMENT

One of the most significant barriers to the enforcement of international human rights law is the enduring primacy of state sovereignty and the principle of non-intervention in international relations. Enshrined in Article 2(7) of the *United Nations Charter*, the non-interference norm restricts the ability of external actors to intervene in what are deemed the domestic affairs of sovereign states even in the face of serious human rights violations.¹⁰ This foundational principle often trumps legal and moral obligations under human rights treaties, particularly when enforcement would require external coercive action. As a result, even when human rights norms are codified in international law, states may refuse to comply or cooperate without facing formal legal consequences.

Further compounding this problem are the inherent weaknesses in the enforcement architecture of international human rights law. Many international agreements rely on soft law instruments such as declarations, guidelines, and resolutions that are not legally binding but are intended to influence state behaviour through moral or political pressure. Even where binding treaties exist, their enforcement mechanisms are often limited by non-compulsory jurisdiction. For example, the International Court of Justice (ICJ) only has jurisdiction over a dispute if the states involved have expressly consented to it, thereby limiting its reach and authority. Similarly, the International Criminal Court (ICC), while empowered to prosecute individuals for genocide, crimes against humanity, and war crimes, faces severe political constraints, particularly when powerful non-party states such as the United States, China, or Russia are involved. The ICC has also struggled with accusations of politicization and selective justice, which have weakened its credibility and deterred cooperation from some states.

¹⁰ U.N. Charter art. 2.

Regional courts, such as the European Court of Human Rights and the Inter-American Court of Human Rights, have made important strides in developing jurisprudence and providing individual remedies, but their jurisdiction is geographically limited, and their decisions can still be disregarded by states lacking political will or facing no meaningful consequences for non-compliance. Moreover, UN General Assembly resolutions and recommendations from treaty-monitoring bodies, such as the Human Rights Committee or the Committee on the Elimination of Racial Discrimination, are non-binding and largely reliant on states' voluntary cooperation. These bodies can issue authoritative interpretations of treaties and assess compliance, but they lack the power to compel states to act or to impose sanctions for violations. In short, while the normative framework of human rights law is well-developed, the structural and legal barriers to enforcement rooted in sovereignty, weak adjudicatory mechanisms, and non-binding instruments render the system often ineffective in practice.

POLITICAL AND PRACTICAL CHALLENGES

Beyond legal and structural limitations, the enforcement of international human rights law is significantly undermined by political and practical challenges, particularly the reality that geopolitical interests often supersede human rights concerns. Powerful states frequently prioritize strategic alliances, economic partnerships, and national security over holding allies accountable for rights violations. For instance, long-standing political alliances have often shielded states like Saudi Arabia or Israel from meaningful international scrutiny, despite credible allegations of rights abuses. This has led to a widespread perception of selective enforcement and double standards, where weaker or politically isolated states are more likely to be condemned or sanctioned, while powerful states or their close partners evade accountability. The invasion of Iraq in 2003, carried out without UN Security Council approval and based on contested legal justifications, remains a stark example of how human rights principles can be sidelined by major powers in pursuit of geopolitical goals.

A related issue is the lack of political will among many state actors to pursue or support enforcement measures, especially when doing so may strain diplomatic relations or expose them to scrutiny. This reluctance is particularly acute in multilateral institutions like the United Nations Human Rights Council, where members often vote along political lines, leading to watered-down resolutions or inaction in response to grave violations. Even when mechanisms such as UN fact-finding missions or special rapporteurs produce credible reports, states frequently disregard their findings, and few are willing to back enforcement with meaningful

action. Compounding these challenges are the resource and capacity limitations of international human rights bodies themselves. Agencies like the Office of the High Commissioner for Human Rights (OHCHR) operate with limited funding and staff, constraining their ability to monitor violations, respond to crises, or support victims effectively.¹¹ This is further exacerbated by reliance on voluntary state contributions, which can be withdrawn or politicized. Consequently, the practical implementation of human rights law is not only shaped by normative and legal considerations, but is deeply influenced by the politics of power, priorities, and resources often to the detriment of the individuals and communities the law is intended to protect.

THE ROLE OF REGIONAL HUMAN RIGHTS SYSTEMS

Regional human rights systems have played a critical role in supplementing the global human rights framework by providing more accessible and enforceable mechanisms for the protection of rights within specific geographic and cultural contexts. Among the most developed is the European Court of Human Rights (ECHR), established under the *European Convention on Human Rights* in 1950, which allows individuals to file complaints directly against member states and whose judgments are legally binding.¹² The ECHR has issued thousands of decisions, contributing significantly to the advancement of legal standards on issues such as due process, freedom of expression, and prohibition of torture. Its enforcement record is relatively strong, with the Committee of Ministers of the Council of Europe tasked with supervising state compliance. In contrast, the Inter-American Court of Human Rights (IACtHR), created under the *American Convention on Human Rights* in 1969, has developed a rich and progressive body of jurisprudence particularly in areas such as indigenous rights, forced disappearances, and transitional justice.¹³ While its decisions are binding, enforcement has been uneven, as some states have resisted compliance or withdrawn from the court's jurisdiction entirely, as Venezuela did in 2013. The African Court on Human and Peoples' Rights (ACHPR), established more recently under the *Protocol to the African Charter on Human and Peoples' Rights* in 2004, has faced more serious challenges, including limited jurisdictional acceptance by states, underfunding, and growing political pushback.¹⁴ For example, several states including

¹¹ See United Nations Office of the High Commissioner for Human Rights, OHCHR Budget and Funding, <https://www.ohchr.org/en/about-us/funding-and-budget> (last visited Oct. 1, 2025).

¹² European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221; see also European Court of Human Rights, About the Court, <https://www.echr.coe.int> (last visited Oct. 4, 2025).

¹³ American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123; see also Jo M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* 37–50 (2d ed. 2013).

Tanzania and Rwanda have revoked the right of individuals and NGOs to bring cases directly before the court, weakening its reach and authority.¹⁴

Despite these limitations, regional systems have achieved important successes by tailoring human rights enforcement to regional norms, histories, and legal traditions. Their proximity to local contexts allows them to engage more directly with national governments and civil societies, often yielding stronger impacts than distant global bodies. Moreover, these courts have frequently served as laboratories for legal innovation, with decisions influencing not only domestic jurisprudence but also international human rights law more broadly. At the same time, they also reveal the vulnerabilities of regional mechanisms, including political resistance, lack of consistent state cooperation, and financial constraints. The European system demonstrates the benefits of institutional maturity and robust compliance procedures, while the Inter-American and African systems highlight the importance of judicial activism and engagement with civil society, even amid political adversity. Taken together, these regional experiences offer valuable lessons particularly the need for legal access for individuals, institutional independence, and mechanisms for political accountability which can inform efforts to strengthen the global human rights enforcement architecture.

NON-STATE ACTORS AND ACCOUNTABILITY GAPS

Criminal Court (ICC) focus primarily on individual criminal liability rather than corporate or collective responsibility. The traditional architecture of international human rights law is state-centric, built on the assumption that states are the primary duty-bearers. However, in today's globalized world, non-state actors including multinational corporations (MNCs), private military contractors, and armed non-state groups have become significant perpetrators or facilitators of human rights abuses. These actors often operate across multiple jurisdictions, exploiting regulatory gaps and weak governance structures in host countries. For instance, MNCs have been implicated in forced labour, environmental destruction, land grabs, and the exploitation of vulnerable workers particularly in the Global South, where accountability mechanisms are often underdeveloped. Armed groups, such as militias and insurgents, have committed grave violations including mass killings, recruitment of child soldiers, and sexual violence with limited avenues for legal redress.

¹⁴ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, June 9, 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III); see also Rachel Murray, *The African Court on Human and Peoples' Rights: Successes and Challenges* 89–90 (2019).

One of the central challenges in addressing these abuses is the lack of binding international legal frameworks that directly impose obligations on non-state actors. Unlike states, corporations and armed groups are generally not parties to human rights treaties, and international courts like the International Domestic legal systems may offer some avenues for accountability such as tort-based lawsuits or criminal prosecutions but these are often limited by jurisdictional barriers, political pressure, or lack of resources. In response to these gaps, the international community has increasingly turned to soft law instruments and voluntary codes of conduct. Most notably, the UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council in 2011, provide a normative framework based on three pillars: the state duty to protect, the corporate responsibility to respect, and access to remedy. While widely referenced, the UNGPs are non-binding and rely heavily on corporate self-regulation, raising concerns about their effectiveness in preventing abuses or ensuring accountability.

Real-world case studies underscore the urgency of closing these accountability gaps. For example, Shell has faced lawsuits over alleged complicity in human rights violations by Nigerian security forces, including extrajudicial killings and environmental degradation in the Niger Delta. In the mining sector, companies such as Glencore and Barrick Gold have been linked to abuses ranging from displacement of indigenous populations to the use of lethal force by private security contractors. While civil litigation in jurisdictions like the United States and the Netherlands has provided some limited avenues for redress, overall accountability remains elusive. These cases illustrate the pressing need for a more robust and enforceable legal framework to regulate non-state actors and ensure that human rights obligations are not confined to state conduct alone.

BRIDGING THE GAP: REFORM AND RECOMMENDATIONS

Closing the enforcement gap in international human rights law requires a multi-pronged reform strategy targeting the legal, institutional, and political dimensions of the system. Legally, states must move beyond symbolic commitments by accepting compulsory jurisdiction of international and regional courts, and by ratifying key human rights treaties without restrictive reservations. The mandates of treaty bodies should be strengthened by providing them with binding interpretive authority, increased resources, and broader access to individual communications procedures, especially in underrepresented regions. Politically, greater efforts are needed to insulate human rights enforcement mechanisms from selective pressure and

politicization, including reforms to institutions like the UN Human Rights Council, such as the establishment of objective membership criteria and automatic review procedures for persistent violators.

At the institutional level, compliance and monitoring mechanisms must be enhanced through mandatory periodic reviews, independent verification tools (such as satellite monitoring and digital forensics), and public reporting requirements to increase transparency and accountability. Simultaneously, there is a pressing need to improve access to remedies for victims. This includes expanding the jurisdiction of regional and international courts, supporting universal civil jurisdiction in national courts for serious violations, and ensuring legal aid and protection mechanisms for those who seek redress.¹⁵ Creating international compensation funds or victim reparation schemes, particularly for victims of corporate or conflict-related abuses, could provide effective relief where domestic systems fail.

A critical component of bridging the enforcement gap is the domestic implementation of international human rights norms. States should be encouraged through technical assistance and conditional aid to integrate treaty obligations into national legislation, ensure judicial enforceability, and promote human rights education among law enforcement and public officials.¹⁶ Moreover, national human rights institutions (NHRIs) can serve as vital intermediaries between international bodies and local populations, provided they are sufficiently independent, empowered, and resourced. Strengthening the role of NHRIs and local civil society actors enhances grassroots accountability and ensures that human rights enforcement does not remain a distant, top-down process but becomes embedded within everyday governance. Ultimately, bridging the gap demands both international solidarity and localized ownership, recognizing that human rights are not only universal in aspiration but must also be enforceable in practice.

CONCLUSION

This article has examined the enduring enforcement gap in international human rights law an issue that lies at the heart of the disconnect between the promise of legal norms and the reality of state and non-state conduct. While the international human rights framework has expanded

¹⁵ See International Commission of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide*, No. 2 (2006), <https://www.icj.org>.

¹⁶ See UN Office of the High Commissioner for Human Rights (OHCHR), *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, U.N. Doc. HR/P/PT/4 (2000).

considerably since the adoption of the Universal Declaration of Human Rights, its capacity to ensure consistent, impartial, and effective enforcement remains significantly constrained. Structural and legal barriers, such as state sovereignty, non-binding instruments, and the limited jurisdiction of international courts, are compounded by political inertia, geopolitical selectivity, and the growing influence of non-state actors. Regional human rights systems and soft law mechanisms have introduced valuable innovations, yet they too face serious limitations in reach, consistency, and compliance.

The central thesis of this article is that without meaningful enforcement, the legitimacy of international human rights law is at risk of erosion. Legal norms that are regularly ignored without consequence risk becoming symbolic rather than substantive, undermining both public trust and the protective power of the law itself. To close this gap, a multi-level strategy is needed: enhancing the authority and resources of treaty bodies and courts, building stronger compliance mechanisms, expanding access to remedies for victims, and embedding human rights norms more deeply into domestic legal and institutional systems. Only through such concerted reforms can the international community fulfil its commitment to protect the dignity and rights of all individuals not just in principle, but in practice.

