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Mechanisms of the Legal Protection of Human Rights in Global Regulation

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ABSTRACT

Keywords

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This article addressed the issue of violations and infringements by presenting a legal study of the most important human rights protection mechanisms at the level of global regulation. The scientific necessity necessitated the study of the role of international bodies in the field of human rights, through the international mechanisms for monitoring human rights and the oversight and protection system in them. The article examined that international law has provided humanity with a number of mechanisms whose application leads to the creation of a virtuous society in which all human beings enjoy peace and security and enjoy all rights on an equal footing. International law has adopted a set of mechanisms that include a set of provisions that criminalize every act that would harm a person, whether this act occurred on his body, honor, or religion. International law has also created a number of consensual mechanisms that undertake the task of supervising and monitoring the extent to which individuals and states respect and apply those provisions. To achieve the objectives of the article, doctrinal legal research methodology using a qualitative approach was adopted. This article referred to a number of international treaties, charters, and declarations related to human rights or international law, in addition to many studies that dealt with human rights in international law. The article recommended that every country in the world shall stipulate that its constitution or basic law include explicit provisions that guarantee the protection of human rights and provide the necessary guarantees for their implementation.

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1. Introduction

The Universal Declaration of Human Rights has constituted an important event since its issuance and ratification in 1948 (Mihir 2023). This event had positive effects throughout the entire world and constituted great moral protection for humanity in general. This Declaration has been read from different angles (Morsink 2010). Some international jurisprudence read it as a cry made by man to empty the stock that has been repressed in the course of the ages (Douzinas 2000). This cry was in the form of declarations and charters, forgetting that man cannot achieve itself through abstract humanity but rather from traditional cultures (Tuen et al. 2023).

In addition, other jurisprudences see this declaration as merely a cover-up of what is happening on the ground of practice, whether in third-world countries or in the countries that issued this saying (Gellers 2021).

However, many consider this declaration an achievement that all peoples and nations have participated. Therefore, governments, institutions, and even national constitutions are working to the highpoint and confirm these rights (van der Sloot 2018). In addition, the principle of respect for human rights has been one of the critical standards in determining international relations (Risse & Sikkink 1999).

In other words, if it is permissible for us to make human rights a faith accomplishes, then the first requirement for that is faith, and this faith is not idealistic or abstract as much as it means belief in the importance of this concept as the development and renaissance (Bohlander 2021).

That is why the question arises about how the internal and international judiciary deal with cases or disputes brought before them about the rights protected by domestic laws or international agreements. To what extent can the internal judiciary protect human rights as the original refuge for human rights violations? And when can a state or an individual resort to the international judiciary to protect his basic rights and freedoms as the exception? (Georgi 2022).

The importance of the article is to explain the issue of the judiciary and human rights becoming pure, as it directly affects the human being in his life and future. International human rights law has made clear progress, beginning with the Declaration of Human Rights, charters, international agreements, and covenants, most remarkably the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights (van Dijk 2021).

With regard to the extent to which global and regional mechanisms are able to encourage states to include in their constitution's provisions on human rights, international jurisprudence indicated that human rights are at the core of the constitutions of modern states. Therefore, the International Bill of Human Rights forms an integral part of the constitutions of modern states (Petersmann 2002). However, there are often gaps within the constitutions of some countries in the field of human rights protection at the local level, and these gaps stem from deficiencies in the field of constitutional law. Therefore, it is the role of global and regional mechanisms to encourage states to include in their constitutions provisions on human rights to bridge these gaps within their local constitutions (McCrudden 2000).

The aim of the article is to recommend all countries around the globe stipulate in their constitution or basic law explicit provisions that guarantee the protection of human rights and provide the necessary guarantees and mechanisms for their implementation (Peled and Rabin 2010).



2. Research Methods

This article employed doctrinal legal research methodology (Sun & Zhao 2022). Additionally, this article used the qualitative method of research (Hamilton & Finley 2020). A library-based method was used to collect information. The primary data attained from treaties, agreements, legal statutes, official records, and case law (Al Amaren, Hamad, and Al Mashhour 2020). Whilst the secondary data were collected from relevant sources such as legal textbooks, journal articles, and reputable websites. Both primary and secondary information was critically and analytically scrutinized in this study using the content analysis approach (Cho & Lee 2014).

3. Discussion

The authors in this part of the discussion would clarify the mechanisms of the legal protection of human rights in global regulation at the global, African, Western, and Arab levels.

3.1. Mechanisms of the Protection of Human Rights at the Global Level (The United Nations and Its Organizations)

The international approach to the issue of human rights, whether in terms of clarifying what these rights are in themselves or in terms of providing guarantees that guarantee their respect and the opportunity to enjoy them, has witnessed great development (Wong, Kwong, & Chau 2021). The issue of human rights and their various guarantees has become what is now known as international law, and in international relations literature in general, international law of human rights (Farreras & Salvador 2022). This is in addition to what has been termed international humanitarian law, which includes a set of rules related to the organization of human rights, without distinguishing between what is considered international conflicts in the strict sense and what is described as internal conflicts of an international nature (Buergenthal 2006).

It could be said that the Charter of the United Nations is viewed in this regard as the first basic building block that had the merit of contributing to the crystallization of these two new and distinct branches of public international law (Spadaro, Pirlone, & Candia 2022). They are international humanitarian law, in addition to the significant meanings contained in the preamble with regard to human rights (Otegui 2021).

The Charter of the United Nations also includes many provisions that refer in their entirety to the importance of the obligation of all states to respect these rights without discrimination of any kind regarding gender, nationality, ethnicity, color, or language (Moran & Bui 2019).

In this context, reference is made as an example to the Universal Declaration of Human Rights and the four Geneva Conventions regarding the treatment of civilians in armed conflict, as well as prisoners, wounded, and dead of war (Gross 2004). Moreover, the International Convention on the Prohibition of the Genocide, approved by the General Assembly, and the two International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights and the two protocols attached to them. The Convention on the Prohibition and Punishment of Racial Discrimination concluded, and the Convention against Torture and Other Cruel and Inhuman Treatment Rights (Mateus 2021).

In addition to these conventions, the General Assembly issued many important declarations in the field of human rights. These include, in particular, the Declaration on the Rights of the Child, the Declaration on Granting Independence to Colonial States and Peoples, the Declaration on the Elimination of Racial Discrimination against Women, the Declaration on Territorial Refuge, the Declaration on the Rights of Mentally Retarded Persons, and the Declaration on the Protection of Women and Children in Cases of Emergency and Armed



Conflict (Rajabi-Ardeshiri 2009). Furthermore, the Declaration on the Defense and Punishment of All Persons from Torture and Cruel, Inhuman or Degrading Treatment and the Declaration on the Rights of Persons Belonging to National, Ethnic or Linguistic Territories (Oggenhaffen & Put 2022).

The United Nations has also called for many conferences to discuss specific topics related to human rights, among the most important conferences held in this regard. The International Conference on Human Rights was held in the Iranian capital, Tehran, in 1968 (Clark, Friedman & Hochstetler 1998). The World Conference for the International Year of Women was held in the Mexican capital in 1975. The World Conference against Racism and Racial Discrimination was held in Geneva, Switzerland in 1978 (Camponovo 2002).

Additionally, several conventions have been concluded within the framework of the International Labor Organization, as it is one of the specialized international organizations of the United Nations. Especially during the period following the Second World War, which we mention, for example, but not limited to (Rodgers et al. 2010). The Convention on the Application of the Principles of the Right to Organize and Collective Bargaining of 1949, the International Convention on the Protection of Wages also concluded in 1949, the International Convention on the Level of Social Security in 1952, and the International Convention on Discrimination in the Field of Employment and Occupation for the year 1958 (Gernigon, Otero, & Guido 2001).

Although the idea of humanitarian intervention found many applications for it in international work, especially since the mid-nineteenth century (Wang, Liang, & Zhang 2022). However, there is no convention among the majority of researchers about the statement of the purpose of this humanitarian intervention. Even with regard to the concept of humanitarian intervention (Simms & Trim 2011). In this point, the authors confirm that there is more than one trend, both with regard to the concept of international intervention in general and in relation to the idea of the humanitarian intervention (Jardón 2013).

3.2. Mechanisms of Protecting Human Rights at the Western Regional Level

The mechanisms of protecting human rights at the western regional level are:

3.2.1. The American Convention on Human Rights

The American Convention on Human Rights was concluded at the Human Rights Conference held in the State of Costa Rica. One of the most important features of this convention is its recognition of basic human rights and that the individual does not enjoy these rights as a result of his association with a state, but rather that their source is the person himself (Douch et al. 2022).

Moreover, the above convention affirms that the basic principles of human rights are flexible within the Organization of American States charter and the Universal Declaration of Human Rights and the duties of the individual in other international and regional human rights documents (Ewing 1994). The first chapter of the first section of the convention includes two principles:

The first principle: Relates to the responsibility of the member states of the convention to respect the rights contained therein and to work to guarantee that individuals exercise these rights without any discrimination based on gender, color, language, religion, political or



intellectual sect, national or social origin, economic status, birth, or any other factors (De Jesus, 2014).

The second principle: Relates to the state's obligation to amend its laws and legal systems to make them compatible with the convention. In the second chapter, the convention deals with civil and political rights, stipulating the right to legal personality, the right to humane treatment, the right to personal freedom and freedom from slavery, the right to a fair trial, protection against laws that have retroactive effect in criminal matters, the right to compensation and respect for life (Fox 1973). Freedom of conscience and religion, freedom of thought and expression, freedom of assembly, the right to form political, professional, and employment union associations, family rights, the right to a name, child rights, the right to population and property rights, freedom of movement, movement and residence, the right to equality before the law and judicial protection (Antkowiak & Gonza 2017).

The second section of the convention included the most important means in terms of guaranteeing human rights. This guarantee stipulated in the convention is the establishment of the American Commission for Human Rights (Landry 1975). The same applies to the American Court of Human Rights. An ordinary individual may submit a complaint to the American Commission on Human Rights, which in turn examines the reasons for the complaint and attempts to remove it, or prepares a report that it sends to the concerned parties or to the court in cases in which the member states of the convention have accepted the jurisdiction of the Court (Buerghenthal 2006).

3.2.2. The European Convention on the Protection of Human Rights and Fundamental Freedoms

The Council of Europe held in Italy in 1950 issued the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was signed by the member states of the Council of Europe at that time (Emmert & Carney 2016). Since the governments of European countries are combined by one tradition and have a common heritage of ideals and political traditions with respect for freedom and the rule of law, they have decided to take the first actions to ensure the collective guarantee of some of the rights preserved in the Universal Declaration of Human Rights (Košir & Lakshminarayanan 2021).

This convention entered into force three years later, in 1953, with the ratification of ten countries. It also entered the protocol attached to the Paris Protocol, signed in 1954 (Toman, 2017). The European Commission for Human Rights was established as a conciliation body in the event of disputes, and then the European Court of Human Rights in 1958 as a judicial body that adjudicates cases related to human rights violations consistent with the rule of law and in implementation of the obligations stipulated by the European Convention in this regard (Von Staden, 2009).

The European Convention and the protocols attached to it took into account practical considerations and therefore did not include basic rights and freedoms (Shue 2018), which can be effectively protected by legal and judicial means (Mowbray 2005). It did not include any social or economic rights as well as those contained in the Universal Declaration of Human Rights. However, the Additional Protocol to the Convention included the provision of the right to education, the right of a natural and legal person to own property, the right to his property, and the right of the individual to express his opinion (Eide 2001). Thus, the European Convention and the protocols attached to it have become binding on all the twenty-five



member states of the European Union, as human rights and freedoms contained therein are subject to collective guarantees that are exercised under international supervision (Trechsel 2003).

3.3. Mechanisms of Protecting Human Rights at the Arab Regional Level and The League of Arab States

The mechanisms of human rights and their protection are not limited to the international level, the United Nations, and the European Union only but also extended to the Arab level. These mechanisms are represented in:

3.3.1. Arab regional governmental and non-governmental organization

The starting point is to examine the human rights situation within the framework of the Arabic regional government organization, represented mainly by the League of Arab States and, to some extent, by some specialized Arab organizations such as the Arabic Labor Organization. This organization is considered backward to a large extent if compared to the numerous experiences of the international organization that arose in the aftermath of World War II (Oneal & Russett 1999).

Despite the explicit references in the preliminary talks to establish the League of Arabic States, it represents a response to Arabic public opinion in all Arabic countries and is the culmination of Arab aspirations (Lewis 2002).

The first major step taken by the League on this path was that which was represented in the decision of the League Council issued in 1968 regarding the formation of a permanent Arabic regional human rights committee (Bargain, Boutin, & Champeaux 2019).

3.3.2. The Arab Charter on Human Rights (ACHR)

ACHR came into force in 2004 to confirm the importance that the Arab League gives to the issue of human rights. It considered the matter not to be completed only by stipulating human rights in some of the treaties it issued or by establishing the permanent committee for the rights of a comprehensive charter of human rights, but there is an urgent need for the existence of a treaty or the formulation and preparation of such a charter (Magliveras 2017).

This ACHR was inspired by a wealth of international charters, the circles of which have been organized and connected over a century and a half since the signing of the Geneva Convention to establish the International Committee of the Red Cross and then successive agreements through the establishment of the League of Nations, including the Convention on the abolition of the white slave trade in 1921 and the renunciation of war in 1925 (Jimerson 2022).

The ACHR contains a preamble and forty-three articles divided into four sections; the preamble, where the first article states the right to self-determination. The Articles 2 to 39 deliver for human rights and freedoms, and the Articles 40 and 41 provide for a committee of experts' Human rights, and articles 42 and 43 deliver for the final provisions of the Charter in terms of signature, ratification, and enforcement (Rishmawi 2005).

It could be said that the ACHR is categorized by two characteristics; 1. Stress on the Arab climate on human rights. The drafters of the charter were keen to highpoint its specificity in the Arab framework, as stated in the preamble to the charter "based on the belief of the Arab nation in human dignity since God made the Arab nation the cradle of religions and the home of cultures that stated its right to a dignified life on the basis of freedom, justice, and equality" (Rishmawi 2010). This is also obvious from what was stated in Article 35, which states that



“citizens have the right to live in an intellectual and cultural environment that is proud of its Arabness” (Article 35, Arab Charter on Human Rights of 2004).

In addition to working to remove racism, Zionism, and foreign control. The framers of the ACHR highlighted the necessity of combating Zionism and foreign domination because they establish a challenge to human dignity (Allam 2014). Article 1 of the ACHR states that “racism, Zionism, occupation and foreign domination are a challenge to human dignity and an obstacle to the basic rights of peoples, and it is imperative to condemn all their practices and work to eliminate them” (Article 1, Arab Charter on Human Rights of 2004).

3.4. Mechanisms of the Protection of Human Rights at the African Charter

The Summit of African Heads of State Members of the Organization of Unity before turning to the African Union, held in the Kenyan capital Nairobi in 1981, agreed to adopt the African Charter on Human and Peoples' Rights (Hansungule 2012). The charter consists of a preamble and 68 articles that define the main features of African human rights and the peoples of the African continent. Moreover, in its preamble, the African Charter stresses the need to consider African historical traditions and cultural values and addresses the duties that fall on each (Van Hout & Wessels 2021).

Among the human rights stipulated in the Charter are the right to eliminate all forms of racial discrimination, the right to equality, and the right to life and bodily integrity (Arndt et al. 2018). The right to respect for human dignity and legal status, the right to freedom and personal security, the right to litigation, freedom of opinion, justice, and the free exercise of religions, the right to obtain information, expression and dissemination of opinions, the right to join trade unions, freedom of movement, residence and leaving the country, and the prohibition of the expulsion of foreigners except in accordance with the law, the right to property, the right to work, the right to physical and mental health, the right to education and participation in cultural life, and family rights (Mubangizi 2012).

As for the rights of peoples, the African Charter stipulates the most important of these rights, which are the right to equality, the non-dominance of one people over another, the right to survival, the right to self-determination, and freedom from foreign control, sovereignty over natural resources, and the right to an environment conducive to development (Baloyi 2000).

The set of human and peoples' rights stipulated in the African Charter on Human Rights reflects the suffering experienced by the African continent from the domination of Western powers, confiscation of the right to self-determination, colonialism, underdevelopment, delay in development, plundering of wealth and exploitation of the peoples of the continent (Idemudia, Tuokuu, & Essah 2022). In addition to this, the peoples of the continent suffered from long wars for liberation and to achieve security and peace (Odinkalu 2001).

In the interest of the charter to achieve a balance between rights and duties, the charter also included, in addition to what is guaranteed to the African citizen and even the African people, a set of duties that fall on the shoulders of these individuals and peoples. This is because the enjoyment of rights and freedom corresponds to an obligation and requires that each individual perform his duties (Van der Linde & Louw, 2003).

The second part of the African Charter on Human and Peoples' Rights deals with measures to protect those rights. It stipulates the necessity of establishing an African Commission on Human and Peoples' Rights within the Organization of African Unity framework to promote and protect human and peoples' rights in Africa (Ougergouz 2003).

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Article 45 of the African Charter defines the functions of that human rights commission as follows; 1. “Strengthening human and people’s rights by compiling documents, conducting studies, disseminating information, presenting recommendations to governments, formulating and setting principles and rules aimed at solving legal problems related to human and people’s rights, and cooperating with other African or international institutions concerned with the protection of human rights. 2. Ensuring the protection of human and peoples’ rights in accordance with the conditions set by the African Charter. 3. Interpreting the provisions contained in the African Charter at the request of any of the state’s party to the Charter or one of the institutions of the Organization of African Unity or any other organization recognized by the Organization of African Unity” (Froehlich, Ringas, & Wilson 2022).

3.5. Mechanisms of the Protection of Human Rights at the ASEAN region

The regional protection of human rights in Asia has yet to be adequately studied. For one thing, there is no regional mechanism to this end on the continent. Developments in Southeast Asia have reduced the distance between the rest of the world and Asia, the only continent without a regional human rights protection system (Davis & Galligan 2011).

Asian countries, with the exception of ASEAN member states, have not seriously considered establishing a regional human rights mechanism, partly due to some characteristics of regional intergovernmental relations. The verbal spat between Japan and China, India and Pakistan, and North Korea and South Korea are examples. It conflicts with the non-confrontational, and moreover, the difference in diplomacy between the countries of Asia (Ghai 1993). The absence of a regional mechanism is also due to weak cooperation in the field of human rights in general. Regional cooperation in Asia is weaker than anywhere else in the world (Aggarwal & Chow 2010). Therefore, the authors point out that the existence and application of global and regional mechanisms in Asia will have an important role in protecting and disseminating international human rights standards, including addressing deficiencies in national laws (Cardenas 2003).

Based on the above discussions, and regarding the extent to which global and regional mechanisms are able to encourage states to include in their constitution’s provisions on human rights. International jurisprudence mentioned that human rights are at the core of the constitutions of modern states. Therefore, the International Bill of Human Rights forms an integral part of the constitutions of modern states (Henkin 1995). However, there are often gaps within the constitutions of some states in the field of human rights protection at the local level, and these gaps stem from deficiencies in the field of constitutional law. Therefore, it is the role of global and regional mechanisms to encourage states to include provisions on human rights in their constitutions to bridge these gaps within their local constitutions (Henkin 1995). It is noted that any state in the world adopting global and regional mechanisms within its constitutions would lead to considering these constitutions as democratic in the eyes of the international community and vice versa (Held 1992). Based on the foregoing, all countries of the world must stipulate in their constitutions global and regional mechanisms to ensure the protection and implementation of human rights and to consider the country’s constitution democratic in the eyes of the international community.

4. Conclusion

The national and international interest in issues of human rights and essential freedoms continued beyond the justification for emphasizing these rights and those freedoms and approving them in the core of constitutions and national legislation and in many international charters. Instead, many priorities and measures were taken at the global, regional, national, governmental, and non-governmental levels to ensure these rights. However, an important



fact shall be emphasized that human rights and basic freedoms are a national issue in the first place, given that national sources, in addition to religious teachings and the contributions of philosophers and social thinkers. According to some researchers' opinions, philosophers' and social thinkers' contributions are the original sources of these rights and freedoms.

In addition, states generally work to stipulate in their national constitutions and basic law provisions emphasizing the protection of human rights and freedoms. It is noticeable that almost every country in the world is keen to include in its constitution or basic law explicit provisions that guarantee the protection of human rights and provide the necessary guarantees for their implementation. The authors recommend every country in the global stipulate in its constitution or basic law explicit provisions that guarantee the protection of human rights and provide the necessary guarantees for their application. For this, each state must incorporate human rights principles into its internal legislation, rehabilitate judges and persons working in the judicial organs and train them in order to deal with the human being as a human value and as a human being before dealing with him as a suspect or convicted person.

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