

Human Rights

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Monitoring human rights compliance – Part I: Overview

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Overview

- Basic principles
 - Domestic implementation
 - International implementation
 - International criminal courts
- The role of UN institutions in implementing human rights
- Relationship between different means of implementation

Why is implementation important?

- Stop ongoing human rights violations
- Remedy violations which already occurred (state responsibility)
 - Reparation
 - Rehabilitation of victims
- Punishing perpetrators (individuals)
 - Domestic law
 - International criminal law
- Prevention of future human rights violations
- Reconciliation and justice

Domestic implementation mechanisms

- Legal framework
 - Implementation as a domestic affair
 - Minimum standards in international human rights law
- Specific duties under international law
 - Duty to allow individuals to invoke human rights at the domestic level (duty to incorporate)
 - Duty to provide a legal remedy for human rights violations
 - Duty to investigate human rights violations, prosecute and punish the perpetrator
 - Duty to compensate and rehabilitate victims
 - Duty to prevent future violations

Specific duties (1/3)

- Duty to provide access to (judicial) review and remedies
 - Direct applicability of international human rights OR transformation into domestic law
 - Duty refers to the substance of the right not to the international treaty itself
 - Effective legal remedy \neq access to court
- Duty to investigate, prosecute and punish
 - Effective investigation, prosecution and punishment of the perpetrators
 - Confirmed by practice of the HRC and jurisprudence for cases of torture, violations of right to life, enforced disappearance of persons

Specific duties (2/3)

- Duty to provide reparation
 - Compensation and Rehabilitation
 - Examples: Victims of torture, abused children etc.
 - Compensation is owed to persons who have successfully asserted a claim.
 - UN GA Res 60/147 (2005) Principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law

Specific duties (3/3)

- Duty to prevent
 - Obligation to act in advance
 - Few explicit treaty provisions
 - Of particular relevance in the context of torture (Art. 2 CAT) and discrimination (Art. 2 CEDAW)

Mechanisms in international law

- General international law
 - Customary international law
 - State responsibility
 - Diplomatic protection
- International human rights law

General international mechanisms

- Right of diplomatic protection (eg Avena and Other Mexican Nationals - Mexico v. United States of America, ICJ Reports 2004, 12 ff., para. 29 ff.).
- Human rights obligations as obligations erga omnes (Barcelona Traction, ICJ Reports 1970, 4 ff., para. 33.)
- Bilateral actions
 - Diplomatic measures, incl. human rights dialogue
 - Technical assistance
 - Unfriendly acts: retorsions
 - Sanctions

Mechanisms in international human rights law

- Institutions
 - International Courts
 - ICJ
 - International Criminal Courts
 - Regional Human Rights Courts
 - Monitoring Bodies
 - Intergovernmental Bodies
- Procedures
 - Treaty-based
 - Charter-based
 - Criminal procedures
 - Specific procedures for enforcing international humanitarian law