

The Modern Jurisprudence of Criminalizing Acts and Conduct of Human Rights Transgressions in International Law

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Abstract

For the purposes of the advancement and protection of international peace, tranquility, and progress, States are mandated to preserve and uphold the rights of their citizens in compliance with International Human Rights Law. The Universal Declaration of Human Rights (UDHR), for instance, enjoins States not only to protect but to defend the inalienable and sacrosanct rights and freedoms of every individual, including those in prison custody or undergoing trials and prosecution. There have been concerns over the systemic transgressions of human rights and freedoms of citizens under the guise of safeguarding national security. There have been calls to further scrutinize, improve and restructure the mechanism and process of the investigation, trial, prosecution and punishment of conduct and actions meant to bestialize, animalize and devalue citizens in line with modern relevant provisions of human rights laws, instruments and treaties using the megaphone of criminal law to bring such offenders to account for such transgressions. This squarely places the required evidential obligation on various organs of States to criminalize any form of infraction of human rights by both State and non-state actors. The paper calls for a structural reform to criminalize, punish after diligent prosecution of such human rights transgressions, and to ensure the protection and respect for the humanity and value of human beings. This paper seeks to uphold the postulation that human rights protocols and declarations, as well as human rights institutions and watchdogs, should be used and restructured to monitor the criminalization of human rights transgressors. In addition, ensures that perpetrators are adequately punished to enhance international tranquility, progress, and amity.

Keywords

Transgression, International Law, Human Rights, Criminalizing, Punishment

1. Introduction

There have been concerns over the systemic transgressions of human rights and freedoms of citizens under the guise of safeguarding national security (Von-Schorlemer, 2003). International Criminal law encourages due investigation, fair prosecution, and commensurate comeuppance for convicted transgressors of human rights (Stahn, 2012). It was for this core purpose of safeguarding and conserving human rights that led to the founding and creation of the International Criminal Court (Bassiouni & Blakesley, 2021). It is a welcome development that international criminal law has matured into a specialized and independent field and now effectively consolidates human rights law, international humanitarian law, and domestic laws from the various States (Robinson, 2008). This progression and logical evolution is predictable for many reasons. First, the protection afforded and given by international criminal law only supplements and complements long-standing legal regimes. In other words, such persons are simultaneously protected by earlier foundational legal frameworks. Again, consistent with customary practice and standards, international human rights standards are absorbed, integrated, and incorporated into the legal regime of international criminal law (Ogbe, 2025a).

Furthermore, many human rights treaties have been held to provide a foundational legal premise; consequently, they are capable of guiding the decisions and thus inform the jurisprudence of many international penal bodies notwithstanding their non-binding nature. The evolution and growth of international criminal law has blurred the lines, eroded the distinction, weakened the traditional separation, and narrowed the gap between human rights law and criminal law. This has triggered a convergence of criminal justice and human rights regimes (Ogbe, 2025a). It has further homogenized and coalesced the application to human rights transgressions and criminal responsibility. This has established and positioned international criminal law as a legitimate pathway and primary vehicle to hold transgressors of human rights violations criminally liable and brought to justice (Kalpouzos, 2020).

The doctrine of individual criminal responsibility became a fundamental aspect of the international legal system and emerged from the establishment of international military tribunals as far back as 1946. In other words, the doctrine of individual liability for international wrongdoing gained more prominence following the horrors of the Second World War (Damaska, 2008). The laws, principles, and precedents administered and applied at the Nuremberg trials were affirmed, codified, and incorporated into subsequent international legal regimes with a focus on personal criminal liability for international crimes. Subsequently, as a direct response to this development, the United Nations opted for an improved mechanism to penalize mass atrocities like acts of genocide, war crimes, and crimes against humanity as international offences. The UN perceived this action as an improved framework and enhanced legal strategy to prevent and punish atrocity crimes. International human rights law relies on, focuses on, and prioritizes rep-

aration and rectification by States instead of penal punishment for individuals. Suffice it to say that human rights instruments and treaties have profoundly advanced and enhanced the efficacy, standard, quality, and jurisprudence of judicial institutions, legal processes, and proceedings despite the fact that these instruments and treaties rarely compel and mandate domestic criminalization (Ogbe, 2024b).

2. Paradoxical Relationship between the Enforcement of Human Rights Law and Domestic Criminal Law

State Parties have a duty to balance the intersection of human rights and their domestic criminal justice. States are compelled and duty-bound to penalize human rights abuses through legislation pursuant to UN treaty obligations such as CCPR Art 20 and ICERD Art 4.

Human Rights normative framework and conventions recommend that governments cease the arbitrary interference and curtailment of the fundamental human rights and freedoms of citizens and adopt proactive measures, swift remedies and safeguards meant to guarantee against state-sponsored violations (Akhavan, 2013). There are equally urgent measures, contextual constraints and compelling situations that impede and undermine individual freedom, bodily integrity and personal behaviour. Findings indicate and suggest that States bear positive obligations and are required to take proactive measures to safeguard rights clearly defined and enshrined in international and domestic laws within their borders (Feinberg, 2015). It is therefore incumbent upon States to proactively shield individuals' rights from violation through adequate and strict penalization and criminalization of conduct and actions that impede and transgress those rights and freedoms.

Further Illegalization Measures

The international bill of rights, such as the ICCPR, upholds, adopts, and champions preservation and maintenance of the rights and freedoms of every individual. The ICCPR mandates States to adopt legislative and other measures to preserve these freedoms regardless of whether such transgressions are perpetrated by government officials or private individuals. Based on Article 2 of the ICCPR, two primary types can be deduced, often described as negative and positive obligations. Sovereign states are tasked with halting such violations of rights and ensuring accountability for such violations.

A primary approach to achieving the aforementioned is for States to enact and enforce domestic statutes that incorporate and penalize the transgressions of human rights (Moeckli, 2010). In other words, States should pass laws that turn human rights abuses into criminal offences. This ultimate goal can be realized by establishing a statutory framework that penalizes unlawful interference with the right to life, security, dignity, and core liberties of citizens. The ICCPR, in particular, Article 20 creates a legal duty on State parties to proscribe and criminalize

propaganda for war advocacy and hate speech.

Many other institutions have supported the need for proactive measures meant to preserve the dignity and freedoms of individuals. In 2014, the Human Rights Commission reaffirmed its commitment to the relevant provisions of the ICCPR, particularly Article 9. Article 9 provides and declares that the right to physical safety and liberty is universal. It therefore follows that individuals are protected from capricious detention and physical abuse, including arbitrary, unlawful and unreasonable deprivation of such individuals' liberty and freedoms. It is therefore a mandatory requirement that the detention of any individual must follow legal procedure, including proper notification of alleged offences. Furthermore, persons detained must be promptly produced before a court of competent jurisdiction and prosecuted in accordance with due process of law. This is to ensure that those in custody are afforded a speedy judicial hearing before an authorized judicial officer. Individuals who are wrongfully arrested and held are entitled to seek legal redress and action for damages and compensation.

The remaining clauses of Article 9 equally mandate the government to adopt and enforce radical measures to mitigate potential injuries from severe and repressive actions by public officials, ensuring that criminal justice, including enforcement, is administered through legal and fair procedures. A key effective mechanism and approach involves State governments providing victim-centered responses, including accurate identification and profiling of victims, halting the intimidation of activists, and combating gender bias and intersectional violence. Signatory nations have the obligation to verify illicit, unjustified, and unauthorized coercion and make sure such cases are documented and sanctioned.

3. Illegalization of the Responsibilities of States

The UN Human Rights bodies have intermittently examined and habitually scrutinized human rights abuses and breaches, and non-compliance by signatory nations. States are bound by HRC-monitored obligations to safeguard, secure, and uphold human rights standards through the establishment, adoption, and application of criminal legislation and justice systems consistent with the ICCPR objectives and requirements, which compel and obligate member States to take proactive actions and measures to penalize every form of human rights transgressions.

The reports by some States were assessed and evaluated by HRC in relation to States' obligation to prohibit acts through penal law and other proactive measures. It used the review of Cameroon to recapitulate its earlier recommendation that member States should enact sanctions against serious abuses. Within the context of the report concerning heavy rights abuses in major poor countries, HRC calls for regular disclosure and a list of incarceration centers and locations, and to make the operation of illicit detention sites a criminal offense.

As regards the massive, monumental abuses against women, the HRC calls upon States to enact and adopt a robust legal framework prohibiting any form of

abuse against women, including non-consensual sexual acts, marital rape, and severe domestic violence. For the many cases of non-compensation of victims, the HRC recommends that States enact laws for restitution, reparation, and financial redress for victims who have suffered enormous violations of their human rights.

4. Advocacy for Further Illegalization

There is global consensus on legislating against spreading ideas based on racial disparity or superiority, strict penalization of discriminatory rhetoric, and ending impunity for hate crimes or hate-motivated violence in line with Article 5 of the Committee on the Elimination of Racial Discrimination, 1969. It is therefore commendable that Article 20 (2) of the ICCPR imposes a legal duty on States to treat as crimes the propaganda of unlawful ideas and penalize the spreading of prohibited speech. Signatory nations are required by the aforementioned clause to eliminate, outlaw, convict, and sanction particular instances of unnatural conduct and specific categories of deviant behaviour. This is possible by illegalizing racist propaganda, ideologies based on intense animosities and deep-seated prejudice.

Another approach involves penalizing incitement to racial provocation, antagonism and harassment, including acts of physical force directed at individuals based on their race or a systematic forced removal of ethnic groups from a particular area or violence that combines both ethnic and religious animosity. Given these circumstances, proposals were made concerning the scope, setting, and substance of the nature and specifics of the criminalization. Governments are advised to modernize their laws and regulations, including strengthening and refining their statutory instruments consistent with international benchmarks (Martinez, 2003). National Governments are duty-bound to demonstrate effective application and administration of Article 4 in their routine and ad hoc submissions. It underscores the importance of the preceding article in the light of heightened organized violent criminal activity rooted in bigotry against ethno-racial bias and skin tone.

National governments are expected to promptly prioritize the robust and effective operationalization of the relevant provisions of Article 4. In line with the preceding legal provision, national governments need to realize that they must move beyond simple inhibition and proscription to adopting stringent, drastic, and punitive measures and mechanisms to ensure impartial, objective, and effective implementation of anti-racism laws. The idea is to ensure equitable accountability, legal redress, and just penalties.

For instance, as regards Article 4, the CERD Committee examined concerns surrounding diverse forms of harsh oppression and dominance and urged the Pakistani national government to implement the required measures, especially adopting mechanisms to eradicate the anti-human rights issues immediately. In 2014, as required by the convention, governments are enjoined to standardize, consolidate, and strengthen the alignment of penal laws to effectively identify and manage discriminatory offenses. CERD applauded and hailed the well-developed

nature and framework of Taiwan's criminal law and regulatory structure. It, however, urged and counselled the national government to modify and update its anti-discriminatory framework. In relation to the submissions from Bangladesh and Bhutan, the CERD Committee expressed worry on the massive failure to apply and implement changes to their Penal Codes, which are designed to outlaw all unlawful groups and the proliferation and promotion of hateful ideology based on race.

5. International Penalization of the Abuses and Transgression of Human Rights by International Institutions

The effect of Article 8 of the ECHR places a negative obligation on States and public authorities to abstain and refrain from any unjustified, unauthorized, and arbitrary intrusion into an individual's private sphere. The intent and objective behind the preceding legal provision is to safeguard and guarantee the human integrity and reputations of individuals, including the inalienable right to life, save for lawful, justified restrictions articulated and clearly defined by the legislation. Concurrently, pursuant to the provisions of articles two, three and four of the ECHR, it is the responsibility of States to secure and promote the liberties, birth-rights and entitlements of all those within State authority and control. This position and measure are designed to guarantee the sanctity of personal life and curtail unjust intrusion by public and private entities (Martinez, 2003).

It is contended in this paper that Article 8 is a qualified, non-absolute, and restricted right which authorizes and allows justified proportional State intrusion essential for democratic stability. The underlying objective is to safeguard individuals from unwarranted interventions and unjustified surveillance into their private, family, and home life. Reinforcing the point made earlier, penalizing human rights abuses and transgressions and instituting punitive measures constitutes a fundamental rights-protective criminal mechanism (Ogbe, 2024b). These punitive measures, acting as a proportional response to the transgressions, will similarly act as an effective preventive tool achievable only through rigorous and robust penal provision, application, and prosecution (Ogbe, 2024b).

In its established case law, the ECtHR, on numerous occasions, has mandated and affirmed that States must penalize acts that transgress fundamental rights, a principle heavily emphasized in *M.C.v.Bulgaria* (ECHR:2003). In the M.C ruling, the court highlighted that signatory States must establish and maintain proactive and comprehensive penalization and prosecution of sexual abuses pursuant to the requirements of Article 8. This ECHR jurisprudence represents a pivotal evolution in international human rights law, expanding the doctrine of positive state obligations under Articles 3 and 8 of the ECHR which has equally dismantled the archaic prerequisite of physical resistance. The ruling establishes that state parties bear an absolute affirmative duty to criminalize and effectively penalize any infringement upon sexual autonomy where voluntary consent is absent. States must

have robust and deterrent-focused criminal justice systems to deal with severe transgressions and offences against defenceless persons and populations (Ogbe, 2025a).

To put it differently, the main objective is to uphold and secure criminal legislation, legal structures, and statutory mechanisms, with a call for a thorough, integrated, and ethical approach to safeguard and provide security for individuals against sexual crimes, abuses, and other associated offences (Carden, 2000). The adoption and rigorous application of robust and functional penal statutes, sanction mechanisms and preventive measures for contraventions and infractions are vital and essential for the protection of citizens' human dignity and civil liberties. The court unequivocally made it abundantly clear when it contended that it is an inherent obligation of contracting parties to constantly uphold the sanctity of life by establishing a robust and efficient criminal justice system that will act to inhibit the occurrence of unlawful acts and conduct. Specifically, the ECtHR, in conformity with the dictates of articles 2 and 8 of the ECHR, places on the doorsteps of States the profound responsibility to penalize infractions of human liberties and wholly outlaws abasing, despicable and bestializing treatment and punishment.

Pursuant to the dictates and requirements of Article 4 of the ECHR, the issue of concomitant State responsibility to enact criminal laws against breaches of fundamental liberties and rights (Stahn, 2012) has been subjected to inconsistent shifting and evolving interpretations. Equally, the court reiterated the States' responsibility to establish, enact, and apply criminal legislation to prevent the commission of violent acts. The court further held that States bear an obligation to promptly inquire into alleged rights transgressions, prosecute perpetrators, and sanction those responsible.

The foregoing analysis underscores a crystal imperative to urgently and fully incorporate the penalization, zero-tolerance approach, and punishment of rights transgressions and infractions into domestic legislation to align with international human rights standards (Kalpouzos, 2020).

6. Conclusion

Citizens are no longer allowed to transgress provisions of international law as well as human rights law without being penalized (Meron, 2000). The prevalent international consensus is a growing, widely accepted practice and custom to ensure accountability for all transgressions of international law, especially international human rights law (Ogbe, 2024b). This increasingly prevalent shift is meant to end impunity by holding persons responsible for any violation.

The current focus, which is the new priority, squarely places the obligation on signatory States to ensure the safeguarding of citizens' human rights, thoroughly probe, diligently investigate, fairly prosecute, and penalize transgressors (Ogbe, 2025b). Of equal significance is the State's obligation to provide just and full reparations, ensure adequate redress, and remedy human rights transgressions and

abuses through adequate compensation and restitution (Von-Schorlemer, 2003). The establishment and founding of specialized international criminal bodies and the ultimate inception of the ICC have accelerated the development of legal norms, acting as a catalyst for the evolution and invigoration of international criminal law. Thus, empowering it to address gross transgressions of human rights and strengthen its response to grave infractions of international law (Tallgren, 2002). Human rights monitoring institutions and courts have enabled and brought about this advancement and progress.

Despite the non-criminal origin of these institutions and courts (because they were initially created and designed for other purposes), these judicial bodies, authorities and institutions, notably the European Court of Human Rights, have established, evolved and developed a significant criminal law mandate, progressive jurisprudence and a robust legal framework. This breakthrough, jurisprudential and paradigm shift by European and certain American systems is being adopted and replicated by other emerging regional bodies and institutions. It was based on this that the Inter-American Court of Human Rights reaffirmed and underscored that under article one, States Parties are legally bound to respect, uphold, and ensure the enjoyment of human rights.

In essence, signatory States have a mandate to deploy government mechanisms, leverage state structure, and activate the relevant machinery to uphold, guarantee, protect, and fulfil the fundamental rights of all citizens and residents, realized and facilitated through purposive judicial intervention and interpretation (Tallgren, 2002). Judicial mechanisms are deployed, employed, and utilized to preclude and avert the infraction of human rights and freedoms, which encompasses the application of legal, governmental, and customary procedures and processes, particularly through dynamic and proactive interpretation of the law and robust jurisprudence, provided these approaches and strategies are meant to further enhance and safeguard the protection of fundamental liberties (Droege, 2007).

This evolution and advancement have catalyzed, prompted, and further induced diverse institutions and commissions, notably the ACHPR, to support, back, and echo the call and demand for the outlawing of particular behaviour and conduct to safeguard, uphold and fortify the protection of civil liberties, environmental justice and communal rights (Meron, 1998). The ongoing advancement and progress in regional human rights systems, mechanisms and frameworks underscore and demonstrate the urgency for accelerated development and the accentuation of assorted and multiple normative standards and conventions for the safeguarding and securing of fundamental freedoms. In the light of the preceding discussion, this paper asserts and contends that the core duty of States, which is their primary and fundamental mandate, is to penalize acts and conduct that transgress human rights (Meron, 1998). Thankfully, the European Court of Human Rights is pioneering and advancing a coalition of courts to enforce and promote a criminal law approach in fostering a robust and tangible protection of human freedoms.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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