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Bridging International Norms And Domestic Realities: India's ICCPR Journey Towards Access To Justice

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ABSTRACT

This paper will critically examine India's journey in integrating the ICCPR (International Covenant on Civil and Political Rights), which came into force on 23 March 1976, into its domestic framework, navigating the intersection of international legal regimes and local jurisprudence. Drawing on an extensive literature review, analysis of primary legislation including the Indian Constitution and human rights statutes, and evaluations of UN Human Rights Committee reports, the study appraises both India's commitments and the gaps in enforcing the ICCPR's provisions. Although India's formal ratification and constitutional guarantees have established a framework for civil and political rights, challenges persist in practice, as evidenced by issues such as arbitrary detention, constraints on freedom of expression, and systemic shortcomings in protecting vulnerable communities. By critically assessing the enforcement mechanisms, this work highlights the crucial role of institutions such as the National Human Rights Commission and international oversight by the UN, detailing how these actors strive to transform formal rights into effective safeguards. Ultimately, the paper argues that bridging the gap between international human rights obligations and domestic practice is essential for ensuring justice that is accessible, accountable, and available to all. The discussion concludes with policy recommendations aimed at reinforcing legal accountability and enhancing remedial measures, thus offering a pathway toward a more inclusive and responsive justice system in India

KEYWORDS

International Covenant on Civil and Political Rights (ICCPR), Human Rights in India, Access to Justice, Civil and Political Rights, National Human Rights Commission (NHRC), International Human Rights Law, Enforcement and Compliance Mechanisms

INTRODUCTION

India, being a signatory to various international conventions and protocols, became bound to fulfill its obligations. It is the first generation of human rights. ICCPR, along with the Universal declaration of human rights. The covenant consists of the preamble and 53 Articles. This Covenant is divided into six parts. Implementation of the covenant is monitored by the UN human rights committee. It binds the countries that have ratified the treaty to protect the right to life and human dignity, minority rights, gender equality, ill treatment, and arbitrary detention, religious freedom and privacy, assembly, and association, equality before the law, freedom of speech, etc.[1] This covenant obligates member states to implement suitable judicial, administrative, and legislative actions to uphold the rights guaranteed by the treaty.

BACKGROUND AND OBJECTIVE OF ICCPR

The ICESCR, UDHR, and ICCPR, along with their two Optional Protocols, collectively constitute the International Bill of Rights (IBR). The ICCPR, adopted by the United Nations General Assembly on 19 December 1966 and entering into force on 23 March 1976, seeks to safeguard civil and political rights across member states.[2].

The following are the Objectives of ICCPR

- To improve the conditions of states that allow for the enjoyment of Civil and Political Rights.
- To provide an effective remedy.
- To create a binding effect which was absent in the UDHR. (Article 2 & Article 3A).

INDIA'S RESPONSE TO ICCPR AND HUMAN RIGHTS

As a committed member of the international community, India has consistently contributed to the advancement and safeguarding of human rights, both on the global stage and within its own

[1] UN (1966). *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171.
[2] Summary (Iccpr), October 27, 2015. Last Visited 20th May 2025, https://ccla.org/privacy/surveillance-andprivacy/summary-international-covenant-oncivil-and-political-rights-iccpr/.

borders.[3] This research will explore India's engagement with ICCPR, examining its implementations, commitments, contributions, and challenges to the global human rights regime.[4].

India ratified the ICCPR (International Covenant on Civil and Political Rights) on April 10, 1979[5], but entered with several reservations and declarations to ensure consistency with its domestic constitutional framework[6]. With respect to Article 1 on the right to self-determination, India argued that this right applies only to peoples of colonial or foreign domination and not to the parts of a sovereign independent nation, focusing on the importance of protecting national unity and integrity. In Relation to Article 9, which guarantees liberty and security of the individual, India has emphasised that its application must conform with Article 22(3) of the Indian Constitution, which allows preventive detention.[7] Also pointed out that under the Indian law, there is no enforceable right to compensation with respect to unlawful arrest and detention. As to Article 13 on expulsion of foreign nationals, India reserved[8] its sovereign discretion to apply its domestic laws in those matters. Furthermore, declarations were made regarding Articles 12, 19(3), 21, and 22 about the freedoms of movement, expression, assembly, and association, clarifying that these rights would be governed by Article 19 of the Indian Constitution, which permits reasonable restrictions in the interest of sovereignty, national security, and public order.[9]

[3] Nishtha Wadhawan & J. Tanisha, Implementation of International Covenants in Indian Legal System, 5 Int'l J. L. Mgmt. & Human. 239 (2022), Last Visited 20th May 2025, https://ijlmh.com/paper/implementation-of-international-covenants-in-indian-legal-system.

[4] Ramesh Kumar, A Critical Appraisal of Law Relating to Human Rights in India: With Special Reference to Enforcement System: An Overview, 2 Legal Rsch. Dev. 1 (2017), Last Visited 21st May 2025, https://lrdjournal.com/index.php/lrd/article/view/63.

[5] Permanent Mission of India to the U.N., International Covenant on Civil and Political Rights (Apr. 10, 1979), Last Visited 21st May 2025, https://pmindiaun.gov.in/pageinfo/ODY3.

[6] ICCPR, Dec. 16, 1966, 999 U.N.T.S. 171 ((Mar.23, 1976); India, Declarations and Reservations to the ICCPR (Apr. 10, 1979), United Nations Treaty Collection, Last Visited 22nd May 2025 https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4.

[7] Rohan Khare, Preventive Detention Laws in India, Int'l J.L. Mgmt. & Hum. (2020), Last Visited 24th May 2025, https://ijlmh.com/wp-content/uploads/Preventive-Detention-Laws-in-India.pdf.

[8] Sakshi Bhasin, India's Reservations to Core Human Rights Treaties: A Study of Self-Determination and Preventive Detention (2023), Last Visited 23rd May 2025, https://papers.ssrn.com/sol3/Delivery.cfm/5106940.pdf?abstractid=5106940.

[9] UK Essays, India's Reservations and Declarations to Core Human Rights Conventions (2018), Last Visited 24th May 2025, https://www.ukessays.com/essays/law/indias-reservations-and-declarations-to-core-human-rights-conventions-international-law-essay.php.

India's accession to the ICCPR marked a formal embrace of global human rights commitments, yet it simultaneously asserted the precedence of its constitutional order and the imperative to safeguard national interests.

NHRC of India, which has been set up by the Act of Parliament under the PHA 1993, for the protection of human rights. Section 2(1)(d) of the PHA defines Human Rights as *"human rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India"*[10]. The Commission is also entrusted with examining international treaties and instruments pertaining to human rights and advising the Government on their effective implementation. As delineated under Section 12 of the Protection of Human Rights Act, its mandate includes inquiring into complaints alleging human rights violations or negligence in preventing such violations by public servants.

Part III of the Indian Constitution enshrines a comprehensive framework of human rights under the heading of Fundamental Rights, spanning Articles 14 to 32. In the event of human rights infringements, individuals are empowered to seek constitutional remedies through the Supreme Court under Article 32 or the High Courts under Article 226. The foundational guarantees of equality are articulated in Articles 14 to 18, while Article 19 secures essential freedoms such as speech and expression, and Article 21 affirms the inviolable right to life and personal liberty. Supplementing these enforceable rights, Part IV of the Constitution, comprising Articles 36 to 51, sets forth the Directive Principles of State Policy, which serve as aspirational guidelines for the State in fostering social justice and equitable governance[11].

India recently concluded its Fourth periodic review by the HRC.[12] (Human Rights Committee) to the ICCPR in Geneva- The fourth periodic review of India, held on 15-16 July 2024, featured a constructive dialogue between the Indian delegation and the HRC members. During the review, the Human Rights Committee members praised India's traditional cultural

[10] Aarti, A Socio-Legal Study of Reservation in India with Special Reference to Human Rights, 2 Legal Rsch. Dev. 1 (2019), Last Visited 24th May 2025, https://lrdjournal.com/index.php/lrd/article/view/108.

[11] Christine Forster, Public Interest Litigation and Human Rights Implementation: The Indian and Australian Experience, Asian J. Comp. L. (2006), Last Visited 25th May 2025, https://doi.org/10.1017/S2194607800000147.

[12] Ministry of External Affairs, Government of India. (2024, July 16). *India successfully concludes its fourth periodic review by the HRC*. Last Visited 26th May 2025, https://www.mea.gov.in/press-releases.htm?dtl/37974/India+successfully+concludes+its+4th+periodic+review+by+the+Human+Rights+Committee+under+the+ICCPR.

values, such as pluralism, diversity, and nonviolence, which align with fundamental human rights principles.[13].

They also acknowledged India's vibrant parliamentary democracy and its recent success in conducting the largest democratic exercise. India ratified the ICCPR in 1979 and has undergone three reviews of its compliance, with the most recent occurring in 1997. The rights and freedoms which are given in the ICCPR are also protected by the Constitution of India, as well as within its Judicial and legislative frameworks. The reviews had underscored India's dedication to engaging with IHR standards and commitments while addressing concerns and advancing the promotion and protection of its citizens' rights.

The discussion covered a broad spectrum of civil and political rights issues, where India presented its commitment, actions, and accomplishments. Topics addressed included counter terrorism and national security, the status of women and minorities, anti-corruption efforts, privacy protection and data protection laws, non-discrimination, judicial reforms, and new criminal legislation. India also focused on its achievements in safeguarding the rights of vulnerable sections and their contribution to global human rights frameworks.[3]

Though India has ratified ICCPR, there are still lots of struggles in fully implementing its provisions, especially concerning issues like custodial death, arbitrary detention, and restrictions on their freedom of speech and expression. Nevertheless, India's endorsement of the ICCPR highlights its dedication to safeguarding and advancing human rights, and the country keeps its focus on enhancing its human rights framework as per the international standards.

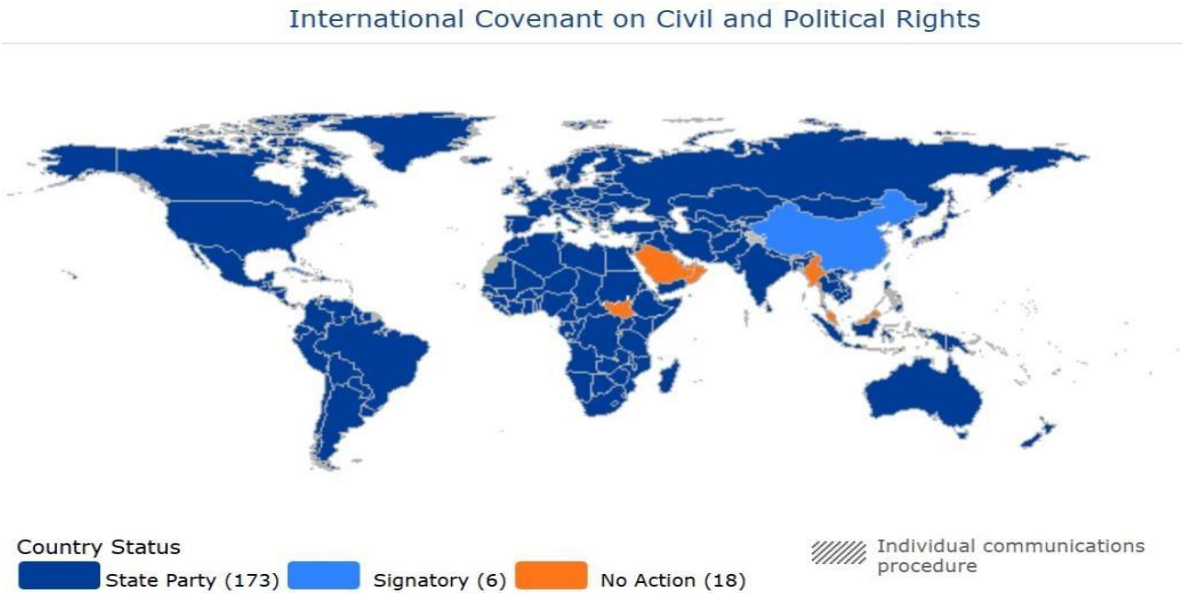
As reported in Human Rights Watch: - Under the leadership of the Bharatiya Janata Party, the Indian government has intensified measures that restrict civic engagement and press freedom. This includes frequent internet shutdowns and the use of stringent laws such as counterterrorism and hate speech provisions to target journalists, human rights defenders, and peaceful demonstrators, often on questionable legal grounds. Authorities have curtailed the activities of rights-based organizations by invoking restrictive foreign funding laws and levelling unsubstantiated financial misconduct allegations. Additionally, certain legislative and policy measures adopted by the Indian

[13] Human Rights Comm., Concluding Observations on the Fourth Periodic Report of India, U.N. Doc. CCPR/C/IND/CO/4 (2024), Last Visited 27th May 2025, https://india.un.org/en/275172-un-human-rights-committee-issues-findings-india.

government have been criticized for disproportionately impacting religious minority communities.[14]. This environment has fostered the marginalization of certain communities, notably Muslims, through rhetoric and actions endorsed by state actors and their affiliates. The lack of accountability and inaction by law enforcement agencies has further emboldened Hindu nationalist groups, enabling them to intimidate civil society organizations and minority populations without consequence.[15]. Also, various reports[16] show the areas where the Indian government is failing to protect the human rights of individuals.

RATIFICATION STATUS OF ICCPR

Before relying on the given data, read the limitations, methodology, and data sources of this report.[17]



This indicator refers to the action by the State that made its consent for being restricted by such human rights commitments under this international law. A Signatory to a treaty is a State that provides a preliminary approval to the instrument and its intent and interest to enforce the treaty in domestic law and consider it by ratifying it. "No action" means that the State did not express its affirmation and approval towards it.

[14] Vikram Sharma, International Human Rights Law: Enforcement Mechanisms and Challenges in a Globalized World, Indian J. L. (2024), Last Visited 30th May 2025, https://law.shodhsagar.com/index.php/j/article/view/26.
[15] India | Country Page | World | Human Rights Watch, Last Visited 29th May 2025, (hrw.org).
[16] Available at HRW, Last Visited 30th May 2025, https://www.hrw.org/news/2024/08/14/indiahate-speech-fueled-modis-electioncampaign, https://www.hrw.org/news/2024/08/15/doctors-rape-murder-indiasparksprotests
[17] Updated on 02 August 2020, Last Visited 24th May 2025, MetadataRatificationTotal_Dashboard.pdf (ohchr.org)

The "State party" to a treaty is a State that has expressed and affirms, by the act of succession, accession, or ratification, and a treaty has entered into effect, or a nation becomes a party only after formal acceptance by the UN Secretariat of the treaty. The state's decision to be a member of it[18].

OPTIONAL PROTOCOLS

The two optional protocols enhance the protection and rights under ICCPR.

The 1st Optional Protocol: - The 1st OP allows victims of HR violations to get a remedy by exercising rights at international platforms. HR Committee, which is being established by ICCPR, has no territorial restriction and has the authority to receive and acknowledge communications or complaints from such individuals. As of now, there are 115 parties and 35 signatories to this first additional protocol.[19]

The 2nd Optional Protocol: It aimed to discard the death penalty completely. At present, there are 37 signatories and 81 parties.

India is a signatory to ICCPR 1976, which came into effect after 10 years on 23 March 1976, along with ICCPR's first optional protocol, which came into force on the same day, March 23, 1976. But India is not a signatory to the Optional Protocol 2, which came into effect on July 11, 1991, that aims to complete the removal of the death penalty.

ENFORCEMENT MECHANISM FOR ICCPR

A. Under ICCPR [20]:

I. Art 2(2) of the International Covenant on Civil and Political Rights mandates that State Parties undertake necessary measures, including enacting laws, to ensure effective protection of the rights it enshrines.

[18] Select Treaty (ICCPR), Last Visited 30th May 2025, - OHCHR Dashboard,
[19] Int'l Comm'n of Jurists, Submission to the UN Human Rights Committee on India's Human Rights Record (2024), Last Visited 1st June 2025, https://www.icj.org/international-commission-of-jurists-submission-to-the-un-human-rights-committee-on-indias-human-rights-record.
[20] United Nations. (1966). *International Covenant on Economic, Social and Cultural Rights*, 993 U.N.T.S. 3.

II. Art 28 of the ICCPR creates an HRC, tasked with overseeing the application of the Covenant and monitoring compliance by Member Parties.

III. Member States are required to provide a report to the HRC, outlining their actions to enforce ICCPR's rights.

IV. The First Optional Protocol allows individuals who have experienced human rights violations to present their cases to the Committee.

V. Under Article 41 of the ICCPR, a State Party can file written complaints with the HRC if it believes another member State Party is not complying with its obligations under the International Covenant on Civil and Political Rights.

VI. NGO's play a crucial role by submitting 'shadow reports' to highlight concerns and promote the protection of ICCPR values.

VII. Countries that ratify the ICCPR must integrate its provisions into their national laws, since mere signature of the treaty does not bind a State legally; it generally requires subsequent accession, acceptance, approval, or ratification.[21]

B. Human Rights Committee

The International Covenant on Civil and Political Rights does not have its own enforcement mechanism. No country has a perfect record of promoting and protecting rights under ICCPR. Covenant's functions are being looked at by the United Nations Human Rights Committee.

Functioning as a treaty-monitoring body, the Human Rights Committee, constituted by independent professionals, scrutinizes the compliance of member states with the standards articulated in the International Covenant on Civil and Political Rights.[22] The Committee's efforts promote the effective implementation of civil and political rights, leading to significant reforms in laws, policies, and practices. These changes have positively impacted individuals worldwide.

[21] Published Oct 2015, Last Visited 2nd June 2025, Summary: International Covenant On Civil And Political Rights (Iccpr) - CCLA

[22] Int'l Fed'n for Hum. Rts. (FIDH), India: Report Submitted to the UN Human Rights Committee (2024), Last Visited 2nd June 2025, https://www.fidh.org/en/region/asia/india/india-report-submitted-to-the-united-nations-human-rights-committee.

The Committee remains dedicated to ensuring that every civil and political right mentioned in the ICCPR is fully enjoyed and free from discrimination by everyone.

The Human Rights Committee convenes three times annually in Geneva to carry out its mandate. One of its key outputs is the issuance of General Comments, which serve to clarify the substantive meaning of specific provisions within the ICCPR and provide authoritative guidance on thematic human rights issues and procedural practices. The body of the human rights committee has 18 experts for monitoring the application of the ICCPR by its state parties. Reports are to be submitted by the state parties to the committee on how civil and political rights are being implemented. The Committee requires that reports be submitted following an eight-year schedule, in line with the Predictable Review Cycle.

States must submit their initial report within one year of acceding to the Covenant, and provide additional reports as requested by the Committee. Committee examines reports and provides feedback to the State party through 'concluding observations,' which include critiques and recommendations.

COMMITTEE HAS A ROLE TO ENCOURAGE ITS STATE PARTIES TO-

I. Evaluate the impact of new laws, policies, and practices proposed by a state party to ensure they do not undermine the rights guaranteed by the Covenant.

II. Preserve laws, policies, and practices that support and enhance the enjoyment of Covenant rights.

III. Also, to take appropriate action in case a member state fails to promote or protect these rights.

IV. Withdraw or amend measures that are harmful or detrimental to Covenant rights.[23]

MONITORING FUNCTIONS OF THE COMMITTEE

Based on Articles 40 and 41 of ICCPR, and on the 1st Optional Protocol to the International Covenant on Civil and Political Rights, the Committee has four main functions.

[23] Introduction to the Committee, Last Visited 24th May 2025, Introduction to the Committee | OHCHR 10 P14, 0443671_factsheet_def.qxp (ohchr.org).

1. The Committee reviews and evaluates reports from member states for their efforts to enforce the rights outlined in the ICCPR.

2. It develops general comments to assist States parties in meeting the Covenant's provisions, providing detailed guidance on substantive and procedural obligations.

3. The Committee addresses individual complaints, or "communications," submitted under the Optional Protocol by individuals alleging violations of their Covenant rights by a state party.

4. The Committee has the authority to investigate complaints by one State party against another concerning non-compliance with Covenant obligations (Art. 21).

POLICY RECOMMENDATIONS

In light of the findings of this research, it is evident that India's journey in integrating the ICCPR into its domestic legal and institutional framework is marked by both progress and persistent gaps. To bridge the divide between international obligations and domestic realities, the following policy recommendations are proposed:

1. Strengthening Domestic Enforcement of ICCPR Rights

India should set up a dedicated parliamentary or independent oversight mechanism in order to monitor the compliance of ICCPR obligations. Parodic assessments and corrective recommendations will ensure that the legislative and administrative measures are aligned with international standards.

2. Reforming Preventive Detention and Arbitrary Arrest Provisions

Laws relating to preventive detention and anti-terrorism must be re-examined to ensure their alignment with Articles 9 and 14 of the Covenant. Safeguards like judicial review, time-bound detention limits, and mandatory legal representation must be made integral to such laws.

3. Enhancing the Autonomy of Human Rights Institutions

The NHRC (National Human Rights Commission) and State Commissions must get greater autonomy, financial independence, and relatively high binding powers from the present date. This

will allow their recommendations to have enforceable authority rather than remaining advisory in nature.

4. Considering Accession to Optional Protocol

India may engage in serious discussion for adopting the 1st Optional Protocol to the Covenant, which provides individuals the right to petition the UN HRC. This step will enhance the accountability of state actions and will also provide the affected person with an additional option for redressal.

5. Initiating a Debate on the Death Penalty

However, India has not accepted the Second Optional Protocol; a phased approach for restricting and eventually abolishing the death penalty may be reconsidered. In the meantime, strict adherence to the "rarest of rare[24]" Doctrine and heightened procedural safeguards must be ensured.

6. Safeguarding Freedom of Expression and Civil Society

Laws such as the Information Technology Act and the Foreign Contribution (Regulation) Act should be reviewed to ensure that they do not disproportionately curtail freedom of speech and the press. Also, a free environment for civil society and independent media is crucial for the better application of ICCPR principles.

7. Ensuring Minority Rights and Non-Discrimination

Targeted reforms are needed to address discrimination, hate speech, and communal violence. Law enforcement agencies must be held accountable for failure to protect minorities, and compliance with the law, and policies must focus on equal protection under Articles 26 and 27 of the ICCPR.

8. Improving Transparency in Reporting

Authorities should also ensure the timely submission of periodic reports to the UNHRC. Broader public consultations with civil society and the dissemination of reports may increase accountability and participatory governance.

[24] Bachan Singh v. State of Punjab, (1980) 2 S.C.C. 684

9. Capacity Building for Judiciary and Law Enforcement

Regular human rights training for the authorities, such as judges, police officers, and prison officials, is crucial. This capacity building within the authorities will promote ICCPR-compliant adjudication and policing, particularly in cases related to minority and vulnerable sections of the country.

10. Integrating Human Rights Assessments into New Legislation

New criminal laws and administrative laws must be tested for systematic compatibility assessments with the Convention's obligations. This will prevent the enactment of laws that sometimes undermine fundamental rights and ensure security compliance with internationally accepted laws.

CONCLUSION

The Integration of ICCPR provisions into the Indian Constitution and legal framework reflects a commitment to uphold fundamental human rights, evidenced by the establishment of the National Human Rights Commission and the alignment of domestic laws with international standards. However, the research highlights that despite these positive developments, India faces considerable challenges in fully realizing the ICCPR's provisions. Issues such as arbitrary detention, restrictions on freedom of expression, and the treatment of minorities continue to draw criticism from international bodies and human rights organizations. The most recent periodic review by the United Nations Human Rights Committee underscores both India's achievements and the ongoing areas of concern, particularly in light of recent reports of government actions that may contravene ICCPR standards.

The implementation mechanisms of the covenant, including oversight functions of the HRC, serve a pivotal function in overseeing compliance and responding to breaches of the Covenant. Through its periodic reviews, authoritative general comments, and adjudication of individual communications, it ensures that State parties remain accountable to their obligations. Nevertheless, the effectiveness of these mechanisms is contingent upon the engagement and cooperation of member states. India's interaction with the Committee and its responses to international critiques illustrate a partial but ongoing commitment to aligning with ICCPR standards.

In conclusion, while India's ratification of the ICCPR and its legal and institutional frameworks demonstrate a foundational commitment to civil and political rights, there remains a discernible gap between international standards and domestic practices. This gap highlights the need for continued reform and vigilance to bridge these discrepancies and fully honor the rights that are enshrined in the ICCPR. The dynamic nature of human rights issues necessitates ongoing engagement with international mechanisms and adaptation of domestic practices for ensuring the security of civil and political rights is both effective and comprehensive.