

REGIONAL PROTECTION OF HUMAN RIGHTS

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QUESTIONS:

- Do you have any experience or knowledge on the universal and regional systems? What are the similarities and differences between them?
- What is your opinion on the functioning of the regional systems of protection of human rights? Are you aware of the challenges that regional systems of human rights face?

REGIONAL PROTECTION OF HUMAN RIGHTS

- Regional human rights mechanisms play an important role in monitoring government compliance with human rights obligations. They operate in harmonious coexistence with the universal regime.
- There are three main regional systems of protection of human rights:
 - The Organization of American States.
 - The Council of Europe.
 - The Organization of African Unity/the African Union.

REGIONAL PROTECTION OF HUMAN RIGHTS

- The three systems of protection of human rights have as a key feature: the existence of complaints mechanisms whose nature is judicial and quasi-judicial. *What are the differences between judicial and quasi-judicial mechanisms?*
- Individuals USE THOSE MECHANISMS and can seek justice and reparation for human rights violations committed by a State party. A State party is a State that has ratified one of the regional human rights treaty.

REGIONAL PROTECTION OF HUMAN RIGHTS

	TREATY	JUDICIAL MECHANISM	QUASI JUDICIAL MECHANISM
European System of Human Rights	Convention for the Protection of Human Rights and Fundamental Freedoms	European Court of Human Rights	European Committee of Social Rights
Inter American System of Human Rights	American Convention on Human Rights (civil and political rights)	Inter-American Court of Human Rights	Inter-American Commission on Human Rights
African System of Human Rights	The African Charter on Human and Peoples' Rights	African Court on Human and Peoples' Rights	African Commission on Human and Peoples' Rights

What could be the advantages of developing regional systems of human rights?

- **Accessibility**: individuals have more accessibility to the mechanisms of protection of human rights (geography, language, familiarity).
- **Enforceability**: Regional systems can facilitate the enforcement of human rights obligations. Neighboring countries can exert more pressure to achieve implementation and compliance
- **Promotion**: In addition to deciding individual complaints, the regional human rights systems engage in a range of human rights **monitoring and promotion** activities.

Regional Systems and National systems

Principle of subsidiarity

- Human rights systems are not meant to replace the role of national courts.
- A general first requirement to start a proceeding before any of the regional systems of human rights is **FIRST** to attempt resolving the alleged violations of human rights using the available and appropriate local remedies.

Impact of human right treaties in the national legal orders

- The case-law of the regional tribunals constitutes an important source of information and guidance for judges and lawyers at the national level.(key words: dialog among judges, evolutionary interpretation)

AFRICAN SYSTEM OF HUMAN RIGHTS

- African Union: 55 members
- Instruments:
 - The African Charter on Human and Peoples' Rights (1982)
 - African Charter on the Rights and Welfare of the Child (1990)
 - Protocol to the African Charter on the Rights of Women in Africa (2003)

AFRICAN CHARTER

- The African Charter on Human and Peoples' Rights recognizes civil, political, economic, social and cultural rights of individual human beings:
 - the right to respect for one's life and personal integrity – art. 4.
 - the right to respect for one's inherent dignity as a human being, including freedom from slavery, the slave trade, torture, cruel, inhuman or degrading punishment and treatment – art. 5.
 - the right to education, and freely to take part in the cultural life of one's country – art. 17.
 - the right of the family, the aged and the disabled to special measures of protection – art. 18.
- The African Charter recognizes the following rights of peoples:
 - the right to existence of all peoples, including the right to self-determination.
 - the right of all peoples to assistance in their liberation struggle against foreign domination, "be it political, economic or cultural" – art. 20.
 - the right of all peoples freely to dispose of their wealth and natural resources – art. 21.
 - the right of all peoples to their economic, social and cultural development – art. 22.
 - the right of all peoples to national and international peace and security – art. 23.
 - the right of all peoples "to a general satisfactory environment favorable to their development" – art. 24.

ORGANS

- The African Commission on Human and Peoples' Rights is competent to:
 - **promote human rights** by collecting documents, undertaking studies, disseminating information, making recommendations, formulating rules and principles and cooperating with other institutions;
 - **ensure the protection of human and peoples' rights** by receiving (a) inter-State communications; (b) communications other than those of the States parties; and (c) periodic reports from the States parties.

The African Court:

The protocol on the establishment of the African Court on Human and People's rights (1998) sought to create a court which complemented and reinforced the work of the Commission. It became into force in 2004 after the 15th ratification. Thirty African states recognize the jurisdiction of the Court to examine claims of violations of human rights enshrined in various instruments.

PROBLEMS IN THE AFRICAN SYSTEM

- Resistance against the African Court and the African Commission:
 - What are the causes of resistance?
 - Rwanda, Tanzania, Angola
 - How is the situation in other regional systems of human rights? Do they face resistance?
- Ratification vs. Enforcement:
 - Is it better for the States to ratify the human rights treaties and work towards their goals or should States avoid the ratification of a human rights treaty until they are in the position to comply and enforce all the obligations and rights that stem from that treaty?
 - Case Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria

INTER-AMERICAN SYSTEM OF HUMAN RIGHTS

Organization of American States: 35 members

INSTRUMENTS:

- American Declaration on the rights and duties of Man (1948)
- American Convention on Human Rights (1969)
- Others (Protocols)

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- Inter-American Commission on Human Rights has diverse functions: To prepare such studies or reports on the situation of human rights in the region. To make recommendations to the governments of the member states, for the adoption of progressive measures in favor of human rights. To receive, analyze, and investigate individual petitions that allege violations of human rights, with respect to both the Member States of the OAS that have ratified the American Convention, and those Member States that have not ratified it.

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- The Inter-American Court of Human Rights
 - Inter-American Court of Human Rights is competent to examine cases submitted to it by the States parties and the Commission.
 - The Court is an activist tribunal. For example: it has created a mechanism of supervision of compliance of its case law; it provides a broader range of reparation (pecuniary and non-pecuniary).

PROBLEMS IN THE SYSTEM:

- Economic crisis affecting the functions of the Commission. Case Belo Monte vs. Brazil
- The Court faces problems of compliance of its decisions. States parties criticize the activism of the Court.

EUROPEAN SYSTEM OF HUMAN RIGHTS

- Council of Europe: 47 Members.
- INSTRUMENTS
 - The European Convention on Human Rights (1950).
 - Additional Protocols to the European Convention.
 - European Social Charter (1961, revised version 1996)

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- European Court of Human Rights
- European Committee of Social Rights

European Court of Human Rights

- The Convention originally created both a European Commission and a European Court of Human Rights. Currently, the implementation of the European Convention on Human Rights is monitored exclusively by the European Court of Human Rights. The European Commission does not exist anymore (Protocol 11, 1998)
- The Court can receive and examine inter-State cases and applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of the rights guaranteed by the Convention or its Protocols.
- PROBLEMS: AMOUNT OF PETITIONS BEFORE THE COURT, RESISTANCE (Hirst vs. United Kingdom)