

# sur

international journal  
on human rights

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2006  
Number 4 • Year 3  
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SUR - INTERNATIONAL JOURNAL ON HUMAN RIGHTS is a biannual journal published in English, Portuguese and Spanish by Sur - Human Rights University Network. It is available on the Internet at <<http://www.surjournal.org>>

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We would like to thank Carolina Almeida Antunes Rossini <[carolrossini@fgv.br](mailto:carolrossini@fgv.br)> from the Center of Technology and Society of the Getúlio Vargas Foundation <[www.direitorio.fgv.br/cts](http://www.direitorio.fgv.br/cts)> for its collaboration in the adoption of Creative Commons by the Sur Journal.

We would also like to thank the following professors for their contribution in the selection of papers: Alejandro Garro, Bernardo Sorj, Christof Heyns, Laura Musa, Fiona Macaulay, Flavia Piovesan, Florian Hoffmann, Jeremy Sarkin, Malak Poppovic, Paul Chevigny, Richard Claude, Roberto Garretón, Usha Ramanathan, and Vinodh Jaichand.

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#### ABSTRACT

There are three regional systems for the protection of human rights, namely: the African, the Inter-American and the European systems. This contribution provides a comparative overview of their salient features and focuses on key procedural and institutional aspects of these systems.

#### KEYWORDS

Regional systems – Human rights – Comparative overview



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## A SCHEMATIC COMPARISON OF REGIONAL HUMAN RIGHTS SYSTEMS: AN UPDATE\*

Christof Heyns, David Padilla and Leo Zwaak

As is well known, human rights can be protected by law on the domestic or the international level. International human rights law, for its part, has different layers, including the global system, in which the United Nations (UN) is the main player, and which is potentially applicable in one form or another to every person in the world; and the regional systems which cover three parts of the world – Africa, the Americas and Europe. If one's rights are not protected on the domestic level, the international system comes into play, and protection can be provided by the global or the regional system (in those parts of the world where there are such systems).

All three regional human rights systems mentioned above form part of regional integration systems with a much broader mandate than just human rights – in the case of Africa, the parent organization is the African Union (AU); in the Americas it is the Organization of American States (OAS); and in Europe it is the Council of Europe (CoE). Other parts of the world also have regional integration bodies, but without a similar human rights mandate.

Although there were initially questions, especially from the UN perspective with its emphasis on universality, about the wisdom of some regions having their own human rights systems, the benefits of having such systems are widely accepted today. Countries from a particular region often have a shared interest in the protection of human rights in that part of the world, and the advantage of proximity in terms of influencing each other's behavior and ensuring compliance with common standards which the global system does not have.

Regional systems also allow for the possibility of regional values to be taken into account when human rights norms are defined - obviously at the

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\*First published in the *African Human Rights Law Journal*, vol. 5, pp. 308-320, 2005.

risk, if this goes too far, of compromising the idea of the universality of human rights. The existence of regional human rights systems allows for enforcement mechanisms which can resonate better with local conditions than a global, universal system of enforcement. A more judicial approach to enforcement may be appropriate in one region, as in Europe, for example, while an approach which also allows room for non-judicial mechanisms such as commissions and peer review may be more appropriate in a region such as Africa. The global system does not have such flexibility.

The treaties that create the regional human rights systems follow the same format. They set out certain norms – individual rights, mostly, but in some cases also duties and peoples’ rights – as binding on states that have joined the system, and then create a monitoring system to ensure compliance with these norms also by states that have joined the system. The classical format of such a monitoring system was set by the European Convention on Human Rights of 1950. In terms of this system once someone has pursued all avenues to have their rights vindicated by the legal system of the country where they find themselves, they can approach a human rights commission created by the regional system. The commission will give the state an opportunity to respond, and then decide whether there has been a violation. This decision does not, however, by itself carry the force of law. To obtain such a result, the case has to proceed to the regional human rights court, where legally binding decisions are issued on whether a state party has violated the treaty.

Since this pattern was set, the Europeans have, by means of a 1998 Protocol, abolished their Commission and left supervision in the hands of the European Court of Human Rights. The Inter-American system continues to function on the basis of a Commission as well as a Court. The African system initially had only a Commission, but the decision to supplement the Commission with an African Human Rights Court was taken by means of a Protocol in 1998.

The three regional human rights systems in operation today share many characteristics, but there are also differences. The schematic exposition provided here gives an overview of how some of the most important aspects of these systems may be compared to one another, focusing on the way in which the enforcement mechanisms are constituted and operate, and the procedures followed.\* Except where otherwise indicated, it sets out the situation in respect of the African, the Inter-American and the European systems as it was at the end of 2005. The usual order in which these systems are presented is reversed, to emphasize that none of these systems necessarily sets the norm.

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\*This is an updated version of C. Heyns, W. Strasser & D. Padilla, “A schematic comparison of regional human rights systems”, *African Human Rights Law Journal*, v. 3, 2003, p. 76.. We would like to pay tribute to Wolfgang Strasser who recently passed away.

**Where two dates are provided behind the name of a treaty, the first one indicates the date when the treaty was adopted, the second the date when it entered into force.**

	<b>AFRICAN</b>	<b>INTER-AMERICAN</b>	<b>EUROPEAN</b>
<b>Regional organisations of which the systems form part</b>	Organization of African Unity (OAU), replaced by the African Union (AU) in July 2002 (53 members)	Organization of American States (OAS), established in 1948 (35 members)	Council of Europe (CoE), established in 1949 (46 members)
<b>General human rights treaties which form the legal base of the systems</b>	<p>African Charter on Human and Peoples' Rights (1981/86), 53 ratifications</p> <p>Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (1998/2004), 21 ratifications</p> <p>The Protocol entered into force in January 2004 and the process is underway to establish the Court. The AU Summit has taken a decision in July 2004 to merge the African Human Rights Court with the African Court of Justice. The entries below are based on the 1998 Protocol.</p>	<p>Charter of the OAS (1948/51), 35 ratifications, read together with the American Declaration on the Rights and Duties of Man (1948)</p> <p>American Convention on Human Rights (1969/78), 24 ratifications (21 states accept the compulsory jurisdiction of the Court)</p>	Convention for the Protection of Human Rights and Fundamental Freedoms (1950/53), 45 ratifications, and 13 additional protocols. The Eleventh Protocol created a single court (1994/98).
<b>Specialized additional protocols and other prominent instruments that are part of/supplement the systems</b>	<p>OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969/74), 45 ratifications</p> <p>African Charter on the Rights and Welfare of the Child (1990/99), 37 ratifications</p> <p>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003/2005), 13 ratifications (15 ratifications required)</p>	<p>Inter-American Convention to Prevent and Punish Torture (1985/87), 16 ratifications</p> <p>Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (1988/99), 13 ratifications</p> <p>Protocol to the American Convention on Human Rights to Abolish the Death Penalty (1990/91), 8 ratifications</p> <p>Inter-American Convention on Forced Disappearances of Persons (1994/96), 10 ratifications</p> <p>Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (1994/95), 31 ratifications</p>	<p>European Convention on Extradition (1957/60), 46 ratifications</p> <p>European Convention on Mutual Assistance in Criminal Matters (1959/62), 45 ratifications</p> <p>European Social Charter (1961/65), 27 ratifications</p> <p>European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987/89), 45 ratifications</p> <p>Framework Convention on the Protection of National Minorities (1995/98), 36 ratifications</p> <p>European Social Charter (revised) (1996/99), 19 ratifications</p>

	AFRICAN	INTER-AMERICAN	EUROPEAN
		Inter-American Convention on the Elimination of all forms of Discrimination against Persons with Disabilities (1999/2001), 15 ratifications	Convention on Human Rights and Biomedicine (1997/99), 19 ratifications European Convention on Nationality (1997/2000), 13 ratifications
Supervisory bodies in respect of general treaties	The Court is yet to be established. The Commission was established in 1987.	The Court was established in 1979. The Commission was established in 1960 and its statute was revised in 1979.	A single Court was established in 1998, taking over from the earlier Commission and Court.
<b>Supervisory bodies based</b>	Court seat: to be determined (It will be in the East Africa region.) Commission: Banjul, The Gambia (It often meets in other parts of Africa.)	Court: San Jose, Costa Rica. In May 2005 the Court held its first extraordinary session (in Paraguay). Commission: Washington DC. (It also occasionally meets in other parts of the Americas.)	Strasbourg, France
<b>Case load: Number of individual communications per year</b>	An average of 10 cases per year has been decided by the Commission since 1988; 13 cases during 2000, 4 during 2001, 3 during 2002, 13 during 2003 and 11 during 2004.	Court: Until 2003 the Court decided on average 4-7 cases per year. In 2004 the Court issued 15 judgments. By October 2005 11 judgments had been notified. It also gives one advisory opinion on average per year. Commission: Approximately 100 cases decided per year. Total number of cases pending at the moment: Approximately 1 000	The Court decides thousands of cases per year, with the case load rapidly increasing. In 2004 the Court delivered: 21191 decisions (1566 chamber decisions including two decisions of the Grand Chamber, one of which concerned the first ever request by the Committee of Ministers for an advisory opinion, and 19 625 committee decisions), and 718 judgments (including 15 judgments of the Grand Chamber). At the end of 2004, 78000 applications were pending before the Court. Communications lodged: 44100
<b>Case load: Number of inter-state complaints heard since inception</b>	Commission: One case admitted	Court: 0 Commission: 0	Court: 13
<b>Contentious/advisory jurisdiction of Courts</b>	Contentious and broad advisory	Contentious and broad advisory	Contentious and limited advisory

	<b>AFRICAN</b>	<b>INTER-AMERICAN</b>	<b>EUROPEAN</b>
<b>Who is able to seize the supervisory bodies in the case of individual complaints</b>	<p>Court: After the Commission has given an opinion, only states and the Commission will be able to approach the Court. NGOs and individuals will have a right of 'direct' access to the Court where the state has made a special declaration.</p> <p>Commission: Not defined in the Charter. It has been interpreted widely to include any person or group of persons or NGOs.</p>	<p>Court: After the Commission has issued a report only states and the Commission can approach the Court. As from 2001, the Commission sends cases to the Court as a matter of standard practice.</p> <p>Commission: Any person or group of persons, or NGO</p>	Any individual, group of individuals or NGO claiming to be a victim of a violation
<b>Number of members of the supervisory bodies</b>	<p>Court: will have 11 members</p> <p>Commission: 11</p>	<p>Court: 7</p> <p>Commission: 7</p>	Equal to the number of state parties to the Convention (45)
<b>Appointment of members of the supervisory bodies</b>	Judges and Commissioners are elected by the AU Assembly of Heads of State and Government.	Judges and Commissioners are elected by the General Assembly of the OAS.	The Parliamentary Assembly of the CoE elects judges from three candidates proposed by each government. There is no restriction on the number of judges of the same nationality.
<b>Meetings of the supervisory bodies</b>	<p>Court: Regularity of sessions to be determined</p> <p>Commission: two regular two-week meetings per year. Three extraordinary sessions have been held.</p>	<p>Court: four regular meetings of two to three weeks per year (one extraordinary session in 2005)</p> <p>Commission: two regular three-week meetings per year and one or two short special sessions</p>	The Court is a permanent body.
<b>Terms of appointment of members of the supervisory bodies</b>	<p>Judges will be appointed for six years, renewable only once. Only the President works full-time.</p> <p>Commissioners are appointed for six years, renewable, part time.</p>	<p>Judges are elected for six-year terms, renewable only once, part time.</p> <p>Commissioners are elected for four-year terms, renewable only once, part time.</p>	Judges are elected for six-year terms, renewable, full-time.
<b>Responsibility for election of chairpersons or presidents</b>	<p>The President is to be elected by the Court (two-year term).</p> <p>The Commission elects its own Chairperson (two-year term).</p>	<p>The President is elected by the Court (two-year term).</p> <p>The Chairperson is elected by the Commission (one-year term).</p>	The President is elected by the Plenary Court (three-year term).

	<b>AFRICAN</b>	<b>INTER-AMERICAN</b>	<b>EUROPEAN</b>
<b>Form in which findings on merits are made in contentious cases; remedies</b>	Court: It will render judgments on whether a violation has occurred, and orders to remedy or compensate violations.  Commission: It issues reports which contain findings on whether violations have occurred and sometimes makes recommendations.	Court: It renders judgments on whether violation occurred; it can order compensation for damages or other reparations.  Commission: It issues reports which contain findings on whether violations have occurred and makes recommendations.	Declaratory judgments are given on whether a violation has occurred. It can order 'just satisfaction'.
<b>Permission required from supervisory bodies to publish their decisions</b>	Court: No  Commission: Requires permission of the Assembly. In practice permission has been granted by the Assembly as a matter of course. However, in 2004 the publication of the Activity Report was suspended due to the inclusion of a report on a fact-finding mission to Zimbabwe to which the government claimed it had not been given the opportunity to respond. Permission to publish the report was given in January 2005.	Court: No  Commission: No	No, decisions and judgments are public.
<b>Power of supervisory bodies to issue interim/provisional/precautionary measures</b>	Court: It will have the power.  Commission: Yes	Court: Yes  Commission: Yes	Yes
<b>Primary political responsibility for monitoring compliance with decisions</b>	Executive Council and Assembly of the AU	General Assembly and Permanent Council of the OAS	CoE Committee of Ministers
<b>Country visits by Commissions</b>	A small number of fact-finding missions and a larger number of promotional country visits	95 on-site fact-finding missions conducted so far	N/A
<b>Commissions adopt reports on state parties by their own initiative</b>	Yes, occasionally following fact-finding missions	Yes, 56 country reports and six special reports adopted so far	N/A
<b>State parties required to submit regular reports to the Commissions</b>	Yes, every two years	No	N/A

	AFRICAN	INTER-AMERICAN	EUROPEAN
<b>Appointment of special rapporteurs by the Commissions</b>	<p>Thematic rapporteurs: Extra-judicial killings, prisons, and women, freedom of expression, human rights defenders, refugees and displaced persons</p> <p>Follow-up committee on torture (Robben Island Guidelines)</p> <p>Working groups: economic, social and cultural rights, indigenous people or communities</p> <p>Country rapporteurs: None</p>	<p>Thematic rapporteurs: Freedom of expression, prison conditions, women, children, displaced persons, indigenous peoples, migrant workers, human rights defenders, Afro descendants and racial discrimination</p> <p>Country rapporteurs: Each OAS member state has a country rapporteur drawn from the Commission members.</p>	N/A
<b>Clusters of rights protected in the general treaties</b>	Civil and political rights as well as some economic, social and cultural rights, and some “third generation” rights	Civil and political rights, socio-economic rights recognized by the Protocol	Civil and political rights and the right to education
<b>Recognition of duties</b>	Yes, extensively	In the American Declaration but not in the American Convention	No, except in relation to the exercise of freedom of expression
<b>Recognition of peoples’ rights</b>	Yes, extensively	No	No
<b>Other bodies which form part of the regional systems</b>	Committee of Experts on the Rights and Welfare of the Child monitors compliance with the African Charter on the Rights and Welfare of the Child.		CoE Commissioner for Human Rights (established in 1999): It monitors and promotes human rights in member states; may undertake country visits; assists member states (only with their agreement) to overcome human rights-related shortcomings.
<b>Approximate number of staff</b>	<p>Court: To be determined</p> <p>Commission: 22 permanent staff members, encompassing the Secretary to the Commission, seven legal officers, a financial/administrative manager, and support staff (finance, administration, public relations, documentation officer, librarian). At the end of 2005 the Commission also had five legal interns.</p>	<p>Court: 15 lawyers, 3 administrative employees, 1 librarian, 1 driver and 1 security guard. Total 26 persons</p> <p>Commission: 24 budgeted posts (2 non-lawyer professionals, 15 lawyers, 8 administrative employees) plus 6 contract lawyers, 8 administrative contract employees, 1 contract part-time librarian, 6 fellows lawyers. Total 45 persons</p>	As of 30 June 2005, total registry staff approximately 348 of which 187 permanent (including 76 lawyers) and 161 on temporary contracts (including 78 lawyers)

	<b>AFRICAN</b>	<b>INTER-AMERICAN</b>	<b>EUROPEAN</b>
<b>Physical facilities</b>	Court: To be determined Commission: Two floors used as offices	Court: Own building Commission: Offices in General Secretariat facilities. 16 individual offices, 1 library, 1 conference room, filing room, 43 computers in total for the Court and the Commission	Five storey building with two wings (16 500 m <sup>2</sup> ), two hearing rooms, five deliberation rooms, library, approximately 600 computers
<b>Annual budget</b>	Court: To be determined The budget for a session of the Commission is roughly US\$ 200 000.	Court: US\$ 1.39 million Commission: US\$ 2.78 million and US\$ 1.28 million in external contributions The Court and the Commission's combined budget of US\$ 4.1 million is 5.4% of the OAS' total budget of US\$ 76.2 million.	41 million Euros The Court's budget is approximately 20% of the CoE core budget.
<b>Other regional human rights fora whose work draws upon/overlaps with the systems</b>	The African Peer Review Mechanism (APRM) of the New Partnership for Africa's Development (NEPAD) reviews human rights practices as part of political governance.		European Union (EU): Membership of the CoE and adherence to the European Convention on Human Rights are prerequisites for membership of the EU. The Convention constitutes general principles of the European Union law.  European institutions with roles that affect human rights, and which draw upon the Convention, include: The European Council, the Council of the European Union, the European Commission, the European Parliament, the European Court of Justice and the European Ombudsman.  Organization for Security and Co-operation in Europe (OSCE): Although its standards do not impose enforceable international legal obligations as they are mostly of a political nature, it draws heavily upon the principles of the European Convention. It does provide for a multilateral mechanism for the supervision of the human rights dimension of its work.
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<b>Other useful websites</b>	<a href="http://www.chr.up.ac.za">www.chr.up.ac.za</a> <a href="http://www.issafrica.org">www.issafrica.org</a> <a href="http://www1.umn.edu/humanrts/regional.htm">www1.umn.edu/humanrts/regional.htm</a>	<a href="http://www.iidh.ed.cr">www.iidh.ed.cr</a>	<a href="http://www.coe.int">www.coe.int</a>

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<b>Sources (other than websites) where decisions are published</b>	<p>Annual Activity Reports</p> <p><i>African Human Rights Law Reports</i> published by the Centre for Human Rights, University of Pretoria and the Institute for Human Rights and Development in Africa, Banjul, The Gambia</p>	<p>Court: Annual report, decisions series, precautionary measures volume, yearbook (with Commission)</p> <p>Commission: Annual report, country reports, rapporteur reports, yearbook (with Court), CD-Rom</p>	<p>Since 1996, the official European Convention law reports have been the <i>Reports of Judgments and Decisions</i>, published in English and French.</p> <p>Prior to 1996 the official law reports were the <i>Series A Reports</i>. The <i>Series B Reports</i> include the pleadings and other documents.</p> <p>From 1974, selected European Commission decisions have been reproduced in the <i>Decisions and Reports Series</i>.</p> <p>The <i>European Human Rights Reports</i> series includes selected judgments of the Court, as well as some Commission decisions.</p> <p>Decisions and judgments are also available on-line on the Court's official website through the HUDOC database at <a href="http://www.echr.coe.int/Eng/Judgments.htm">www.echr.coe.int/Eng/Judgments.htm</a>. The contents of HUDOC are also accessible via CD-ROM and DVD.</p>
<b>Commonly cited secondary sources on system</b>	<p>M. Evans &amp; R. Murray (eds), <i>The African Charter on Human and Peoples' Rights</i>, Cambridge UP, 2002</p> <p>C. Heyns (ed), <i>Human rights law in Africa</i>, Marthinus Nijhoff, 2004</p> <p>F. Ouguergouz, <i>The African Charter on Human and Peoples' Rights: A comprehensive agenda for human rights</i>, Kluwer Law International, 2003</p>	<p>T. Buergenthal &amp; D. Shelton, <i>Protecting human rights in the Americas</i>, NP Engel Publishers, 1995</p> <p>F. Martin et al (eds), <i>International human rights law and practice</i>, Kluwer, 1997</p>	<p>P. van Dijk &amp; GJH van Hoof, <i>Theory and practice of the European Convention on Human Rights</i>, Kluwer, 1998</p> <p>C. Ovey &amp; R. C.A. White, <i>Jacobs and White, the European Convention on Human Rights</i>, Oxford UP, 2002</p> <p>M. Boyle, D. J. Harris &amp; C. Warbrick, <i>Law of the European Convention on Human Rights</i>, Butterworths, 1995</p> <p><i>Yearbook of the European Convention on Human Rights</i>, Kluwer</p>
<b>Some relevant academic journals</b>	<p><i>African Human Rights Law Journal</i></p> <p><i>East African Journal of Peace and Human Rights</i></p>	<p><i>Revista del Instituto Interamericano de Derechos Humanos</i> (articles in English and Spanish)</p>	<p><i>European Human Rights Law Review</i></p> <p><i>Human Rights Law Journal</i></p> <p><i>Netherlands Quarterly of Human Rights</i></p> <p><i>Revue universelle des Droits de l'Homme</i></p>