

A schematic comparison of regional human rights systems

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Summary

There are three regional systems for the protection of human rights in the world today, namely the African, Inter-American and European systems. This article is a comparative presentation of their salient features and focuses on key procedural and substantive aspects.

Regional systems for the protection of human rights have become an important part of the international system for the protection of human rights, and a rich source of jurisprudence on human rights issues, also on the domestic level. This note, in the form of a schematic exposition, attempts to make possible an easy comparison of the most salient features of the three systems in existence today. Except where otherwise indicated, it sets out the situation in respect of the European, Inter-American and African systems as it was in the first part of 2002.

Legend to schematic comparison:

Italics: yet to enter into force/yet to be established

[] : now defunct

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.

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	EUROPEAN	INTER-AMERICAN	AFRICAN
Regional organisations of which the systems form part	Council of Europe (CoE) (44 members)	Organisation of American States (OAS) (35 members)	Organisation of African Unity (OAU), replaced by the African Union (AU) in July 2002 (53 members)
General human rights treaties which form the legal base of the systems	Convention for the Protection of Human Rights and Fundamental Freedoms (1950/53), 44 ratifications and 13 additional protocols, the eleventh protocol created the single court (1994/98)	Charter of the OAS (1948/51), 35 ratifications, read together with the American Declaration on the Rights and Duties of Man (1948) American Convention on Human Rights (1969/78), 24 ratifications (21 accepted the compulsory jurisdiction of the court)	African Charter on Human and Peoples' Rights (1981/86) 53 ratifications <i>Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (1998/-), 5 ratifications, 35 signatures (15 ratifications required)</i>
Prominent specialised additional protocols and other instruments that are part of/supplement the system	European Social Charter (1961/65, as amended), 25 ratifications European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987/89), 44 ratifications	Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (1988/99), 12 ratifications Protocol to the American Convention on Human Rights to Abolish the Death Penalty (1990/91), 8 ratifications	OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969/74), 45 ratifications African Charter on the Rights and Welfare of the Child (1990/99), 25 ratifications

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Supervisory bodies in respect of general treaties	<p>Framework Convention on the Protection of National Minorities (1995/98), 35 ratifications</p> <p>Convention on Human Rights and Biomedicine (1997/99), 13 ratifications</p> <p>(All supplementing the system with separate implementation mechanisms)</p>	<p>Inter-American Convention to Prevent and Punish Torture (1985/87), 16 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>Inter-American Convention on the Elimination of all forms of Discrimination against Persons with Disabilities (1999/-), 4 ratifications (requires 6)</p>	<p><i>Court: yet to be established</i></p> <p>Commission: established in 1987</p>
	<p>New (or 'single') Court established in 1998</p> <p>[The old Court was established in 1959]</p> <p>[The Commission was established in 1954 and ceased its activities in 1999]</p>	<p>The Court was installed in 1980</p> <p>The Commission was established in 1960 and its statute was revised in 1979</p>	

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Based where	[Old and] new Court [and former Commission]: Strasbourg	Court: San Jose, Costa Rica Commission: Washington DC, but also occasionally meets in other parts of the Americas	<i>Court Seat: still to be determined</i> Commission: Banjul, The Gambia, but often meets in other parts of Africa
Case load: Individual communications per year	The new Court decides several thousand cases per year (9 351 decisions and 888 judgments in 2001). Case load rapidly increasing (31 393 communications received and 13 858 cases registered in 2001) [The old Court decided less than 100 cases per year] [More than 4 000 applications per year were registered with the Commission towards the end]	Court: Decides on average 4-6 cases per year. Also one advisory opinion on average per year. Commission: 100 cases decided per year. Total number of cases pending at the moment: 1 000	An average of 10 cases per year have been decided by the Commission since 1988; 13 cases during 2000, 4 during 2001
Case load: Number of inter-state complaints heard since inception	Court: 2 [Old Court: 1] [Commission: 19]	Court: 0 Commission: 0	Commission: One case admitted
Jurisdiction of the Court	Contentious and limited advisory	Contentious and broad advisory	<i>Contentious and broad advisory</i>

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Who can seize the supervisory bodies in contentious matters?	New Court [and formerly the Commission]: Any person, NGO or group claiming to be a victim, and states [Old Court: States concerned and the Commission could approach the Court, after the Commission had given its opinion. In respect of states that had ratified the 9th protocol, individuals could also approach the Court]	Court: after the Commission has issued a report only states and the Commission can approach the Court Commission: Any person or group of persons, or NGO	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 Commission: Not defined in Charter, has been interpreted widely to include any person or group of persons or NGOs
How many members do the supervisory bodies have?	Court: Equal to the number of state parties to the Convention (44) [Old Court: equal to the number of CoE member states] [The Commission had as many members as there were state parties to the Convention]	Court: 7 Commission: 7	Court: will have 11 members Commission: 11

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Who appoints the members of the supervisory bodies?	Court: The Parliamentary Assembly of the CoE elects judges from 3 candidates proposed by each government [Commissioners were appointed by the Committee of Ministers from candidates proposed by each State's national group in the Parliamentary Assembly]	Judges and Commissioners are elected by the General Assembly of the OAS	Judges and Commissioners are appointed by the Assembly of Heads of State and Government
When do the supervisory bodies meet?	Court: Judges are appointed on a full-time basis [Old Court: 10 times per year for 10 days] [Commission met 8 times per year for 2 weeks towards the end]	Court: 3 regular 2-week meetings per year Commission: 2 regular 3-week meetings per year and 1 or 2 short special sessions	Court: Regularity of sessions to be determined Commission: 2 regular 2-week meetings per year. Two extraordinary sessions have been held
Terms of appointment of the members of the supervisory bodies	Judges are elected for 6 year terms, renewable [Old Court: 9 years renewable] [Commissioners were appointed for 6 year periods, renewable]	Judges are elected for 6 year terms, renewable only once Commissioners are elected for four year terms, renewable only once	Judges will be appointed for 6 years, renewable only once, only the president will be full-time Commissioners are appointed for 6 years, renewable
Who elects the chairpersons or presidents?	Court: President elected by Plenary Court (3 year term) [Commission: President was elected by Plenary Commission (3 year term)]	Court: The President is elected by the Court (2 year term) Commission: The Chairperson is elected by the Commission (1 year term)	The President is to be elected by the Court (2 year term) The Commission elects its own Chairperson (2 year term)

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Form in which findings are made in contentious cases; remedies	Court: 7-member Chambers render judgments on whether violation occurred, can order 'just satisfaction'; exceptionally rehearing by Grand Chamber (17 members); summary procedure on admissibility before Committee of 3 judges [The Commission issued reports on whether violations occurred and 'just satisfaction' should be provided]	Court: Renders judgments on whether violation occurred, can order money damages/ or other reparations Commission: Issues reports which contain findings on whether violations occurred and makes recommendations	Court: Will render judgments on whether violation occurred, orders to remedy or compensate violation Commission: Issues reports which contain findings on whether violations have occurred and sometimes makes recommendations
Do the supervisory bodies require permission to publish their decisions?	Court: No, decisions and judgments are in principle public [Commission: Decisions were public, reports confidential, but could be published with government consent or as a sanction by CoE Committee of Ministers]	Court: No Commission: No	Court: No Commission: Requires permission of the Assembly. In practice passed by the Assembly as a matter of course.
Do the supervisory bodies have the power to issue interim/provisional/precautionary measures?	Court: Yes [Commission: Yes]	Court: Yes Commission: Yes	Court: Will have the power Commission: Yes

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Where does the primary political responsibility for monitoring compliance with decisions lie?	New Court [old Court and Commission as well]: Committee of Ministers	Court and Commission: General Assembly and Permanent Council	<i>Court: Council of Ministers (and Assembly) Commission: Presumably the Assembly</i>
Country visits by Commission	[Was not part of practice]	82 on site fact finding missions conducted in 41 years	Five on-site missions since 1995. Also promotional country visits which can include fact-finding
Does the Commission at its own initiative adopt reports on state parties?	[Was not part of practice]	Yes, 53 so far	No, only resolutions
Appointment of special rapporteurs by the Commission	[Was not part of practice]	Thematic rapporteurs: Freedom of expression; prison conditions; women; children; displaced persons; indigenous peoples. Country rapporteurs: each OAS member state has a country rapporteur drawn from the Commission members	Thematic rapporteurs: Extra-judicial killings; prisons; and women Country rapporteurs: None
Are state parties required to submit regular reports to the Commission under the general treaties?	[No, but the Secretary-General of the CoE could request reports on national implementation measures]	No	Yes, every 2 years

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Clusters of rights protected in the general treaties	Civil and political, also education	Civil and political	Civil and political rights as well as some economic, social and cultural rights, and some 'third generation' rights
Are duties recognised?	No, except in relation to the exercise of freedom of expression	Yes, in the American Declaration Not in the American Convention	Yes, extensively
Are peoples' rights recognised?	No	No	Yes, extensively
Annual budget	Court: 29.8 million Euros The Court's budget forms 17.6% of the budget of the CoE	Court: US\$ 2.2 million Commission: US\$ 3.1 million and \$1 million in voluntary contributions The Court and Commission's combined budget of US\$ 3.5 million forms 5.6% of the total budget of the OAS of US\$ 78 million	<i>Court: To be determined</i> Commission: US\$ 760 000 from the AU. Additional funds raised by Commission
Approximate number of staff numbers	Court: As of 30 June 2002 total registry staff is approximately 348 of which 187 permanent (including 76 lawyers) and 161 on temporary contracts (including 78 lawyers) [Commission: 1997: 51 lawyers, 44 supporting staff]	Court: 5 budgeted posts (2 lawyers, 2 administrative employees), 4 contract lawyers, 2 clerical employees, 1 librarian, 1 driver and 1 security guard	<i>Court: To be determined</i> Commission: 12 staff members; Secretary to the Commission, legal officer for promotional activities, legal officer for protection activities, finance/admin officer, bilingual secretary, secretary/receptionist, officer clerk

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Physical facilities	Court: five storey building with two wings (16 500 m), 2 hearing rooms, 5 deliberation rooms, library, 421 computers	Commission: 22 budgeted posts (2 non-lawyer professionals, 13 lawyers, 7 administrative employees) plus 6 contract lawyers, 8 contract administrative employees, 1 contract part-time librarian, 6 fellows lawyers. Total 43 persons 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 Commission	<i>Court: To be determined</i> Commission: Two floors used as offices.
Official website	http://www.echr.coe.int	www.corteidh.org.cr www.cidh.org	http://www.achpr.org http://www.Africa-union.org/en/home/asp
Other useful websites	http://www.coe.int	http://www/iidh.ed.cr/en_index.htm	http://www.up.ac.za/chr http://www.iss.co.za http://www1.umn.edu/humanrts/regional.htm

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Sources where decisions are published	<p>Since 1996 the official European Convention law reports are 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 were 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, plus some Commission decisions</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), website, CD-Rom</p>	<p>Annual Activity Reports</p> <p>Institute for Human Rights and Development in Africa</p> <p><i>Compilation of Decisions on Communications of the African Commission on Human and Peoples' Rights (1994-2001)</i></p> <p>R Murray & M Evans (eds) <i>Documents of the African Commission on Human and Peoples' Rights</i> Hart, 2001</p>
Commonly cited secondary sources on system	<p>P van Dijk & GJH van Hoof <i>Theory and practice of the European Convention on Human Rights</i> Kluwer, 1998</p> <p><i>Yearbook of the European Convention on Human Rights</i> Kluwer</p>	<p>T Buergenthal & D Shelton <i>Protecting human rights in the Americas</i> NP Engel Publishers, 1995</p> <p>F Martin <i>et al</i> (eds) <i>International human rights law and practice</i> Kluwer, 1997</p>	<p>M Evans & 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> series Kluwer, annual publication since 1996</p>

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Relevant journals	<i>European Human Rights Law Review</i> <i>Human Rights Law Journal</i> <i>Revue universelle des Droits de l'Homme</i>	<i>Revista del Instituto Interamericano de Derechos Humanos</i> (articles in English and Spanish)	<i>African Human Rights Law Journal</i> <i>East African Journal of Peace and Human Rights</i>