

Regional human rights enforcement mechanisms

There are three major regional human rights enforcement systems: the European system, the Inter-American system, and the African system. When learning about these regional groupings, you will notice many similarities with the UN mechanisms that we studied in the previous part of the lesson. At the same time, however, each of the major regional human rights enforcement systems also has its own unique set of structures and norms.

1. the European System

The European System is the most extensive of the three major regional systems, and its enforcement mechanisms are even older than their UN counterparts. After the World War II, the European countries formed several institutions:

- **The Council of Europe** (1949): responsible for promoting the rule of law, human rights, and democracy;
- **The European Coal and Steel Community** which was replaced by the **European Union (EU)]** (1952): responsible for economic integration; and
- **The Conference on Security and Cooperation in Europe** which became the **Organization for Security and Cooperation in Europe (OSCE)]** (1975): responsible for maintaining peace and military security in Europe.

Each of these three institutions is made up of a different set of states and has a different set of competences. None of the three is concerned exclusively with human rights, but all play a role in the promotion and protection of human rights and fundamental freedoms in Europe.

Council of Europe

The Council of Europe was formed in 1949 by a group of 10 states. Its purpose was the promotion of democracy, the rule of law, and greater unity in Western Europe. Today, the purpose of the Council has changed. Its membership expanded greatly after the fall of the Soviet Union, and the Council now counts 47 member states, including nearly all of Western and Eastern Europe, much of the former Soviet Union (including Russia), and Turkey. In keeping with its new formation, the Council of Europe developed a new set of principal aims, among which is **the protection and promotion of human rights in Europe.**

The primary human rights document of the Council of Europe and the European system in general, is **the European Convention for the Protection of Human Rights and Fundamental Freedoms**, more commonly known as **the European Convention on Human Rights (ECHR)** adopted in 1950. It is particularly significant to human rights law because it was the first comprehensive, legally binding human rights document to enter into force. It established the **first international court and complaints procedure** for hearing human rights disputes. Since that time, the European system has generated an extensive jurisprudence, and remains the most highly developed of the regional human rights systems

It focuses primarily on **civil and political rights**, and is modeled on the civil and political rights provisions of the UDHR. The text of the ECHR is similar to that of the ICCPR, with a few important differences:

- (1) the European Convention on Human Rights (ECHR) contains no provisions relating to self-determination or minorities;
- (2) the European Convention on Human Rights (ECHR) requires limitations on rights to be “necessary in a democratic society”; and
- (3) the European Convention on Human Rights (ECHR) contains a different set of non-derogable rights.

Full text of the European Convention on Human Rights available on the Council of Europe’s website at <http://www.eycb.coe.int/compass/en/pdf/6_8.pdf>.

Although economic, social, and cultural rights were included in the post-war constitutions of Western European states like France, Germany, and Italy, they were not included in the European Convention on Human Rights ECHR. This was because the drafters felt that it was first necessary “to guarantee political democracy in the European Union and then to co-ordinate our economies, before undertaking the generalization of social democracy”. Instead, states agreed to deal with economic, social, and cultural rights and other outstanding issues through **optional protocols** and **separate agreements** containing additional provisions. Since 1952, a further **14 optional protocols to the European Convention on Human Rights ECHR** have been adopted. The majority of these deal with procedural matters. A few, however, grant additional protections for human rights. These include:

- **Protocol 1 (1952):** protecting the right to property; the right to education; and the obligation to hold free elections;

- **Protocol 4 (1963):** ensuring freedom from imprisonment for civil debts; freedom of movement and residence; freedom to leave any country; freedom from exile; the right to enter the country of which one is a national; and the prohibition of collective expulsion of aliens;
- **Protocol 6 (1983):** mandating the abolition of the death penalty;
- **Protocol 7 (1984):** affirming the right of an alien not to be expelled without due process; the right to appeal; the right to compensation for a miscarriage of justice; immunity from double prosecution for the same offence; and quality of rights and responsibility of spouses; and
- **Protocol 12 (2000):** elaborating on the prohibition of discrimination.

The European Convention on Human Rights (ECHR) assigns the primary responsibility for enforcing member states' obligations to **the European Court of Human Rights (ECtHR)**, established in 1959. The Court can give advisory opinions (an assessment of the legality of a law or action given in response to a request rather than as part of a contentious case) and hear individual complaints (brought by an individual against the state) as well as inter-state complaints (by one state against another), although the latter type of proceeding has rarely been used. The decisions of the European Court of Human Rights are binding on all state parties to the European Convention on Human Rights ECHR. The European Court of Human Rights is considered to be among the most effective international human rights enforcement bodies. Its decisions have a fairly high rate of compliance among Member States, with **the Committee of Ministers of the Council of Europe** supervising the execution of its judgments. While the Committee of Ministers cannot impose sanctions for non-compliance, political pressure has thus far been an objectively successful means of ensuring that states comply with the Court's judgments.

The second human rights treaty adopted by the Council of Europe is **the European Social Charter** (adopted in 1961, revised in 1996), which protects economic, social, and cultural rights in Europe. The European Social Charter is administered by **the European Committee of Social Rights**, which functions like many of the UN treaty bodies. It is charged with carrying out advisory and monitoring functions, reviewing state reports and issuing conclusions, and deciding on collective complaints from organizations (but not individuals).

A number of other treaties provide additional protection for human rights in Europe. Among these, we have **the European Convention for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, which was agreed upon in 1987. The Convention established **a Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**, which is empowered to conduct visits to all “places of detention” in the member states of the Council and Europe. The committee visits may take place at any time, and governments are required to give the committee unlimited access to any place where persons are deprived of their liberty. The CPT uses these visits to inspect and report on conditions of imprisonment and treatment of detainees with the aim of preventing torture and other forms of cruel, inhuman, or degrading treatment. CPT reports are confidential and rely on the cooperation of national governments to protect persons deprived of their liberty. However, if a country fails to cooperate with the CPT, the Committee may decide to make a public statement on the matter.

In addition, in 1999 the Council of Europe established **a Commissioner for Human Rights**. The Commissioner promotes the observance of human rights, assists member states in the implementation of Council of Europe standards, promotes human rights education, identifies potential shortcomings in human rights law and practice, assists national human rights bodies, and provides advice and information concerning human rights to all countries in the region. The Commissioner also conducts country visits and engages in dialogue with member states, makes thematic recommendations on various human rights issues, and organizes assistance for national human rights structures.

Organization for Security and Cooperation in Europe (OSCE)

It also plays a role in the protection and promotion of human rights. The OSCE, created in 1994 after the Cold War, replaced the Conference on Security and Cooperation in Europe (CSCE) opened in 1973. The mission of the organization for Security and Cooperation in Europe (OSCE) is to promote democracy, protect human and minority rights, and encourage military reform. It deals with “three dimensions of security”: the politico-military dimension, the economic and environmental dimension, and the human dimension.

Under the heading of the “human dimension”, the organization for Security and Cooperation in Europe OSCE engages in a number of human rights activities, including monitoring the human rights situation in member states, providing

human rights training and education, and contributing to the development of human rights content by issuing non-binding standards. Its activities in recent years have focused on issues of human trafficking, democratization, education, elections, gender equality, media freedom, minority rights, the rule of law, and non-discrimination. The organization for Security and Cooperation in Europe has developed several mechanisms for promoting and protecting human rights, including the creation of:

- an Office for Democratic Institutions and Human Rights,
- a Representative on Freedom of the Media, and
- an Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, and
- it has deployed field missions to perform a range of activities, including monitoring borders, observing elections, and supporting schools.

One of the most evident human rights mechanisms developed by the organization for Security and Cooperation in Europe OSCE is its **High Commissioner on National Minorities**. The organization for Security and Cooperation in Europe OSCE is unique in focusing on the status of national minorities. The High Commissioner cannot receive individual or state communications, and performs a diplomatic, rather than a judicial, function. To this end, the High Commissioner for National Minorities has been particularly influential in developing the “**quiet diplomacy**” method, in which the organization for Security and Cooperation in Europe OSCE acts as a neutral broker between opposing political actors.

European Union (EU)

The third of the three major institutions in the European system is the European Union (EU) which replaced the European Coal and Steel Community, a six-nation agreement that sought to integrate the economies of France and West Germany. From this beginning, the project of European economic integration continued to progressively expand, and now covers a broad range of competences and stretches to 27 nations in Western and Eastern Europe.

The European Union has **a judicial body: The European Court of Justice** which developed some laws on human rights, particularly in the context of violations by the EU governing bodies. The EU promotes human rights outside the region by engaging in dialogue and providing technical and financial assistance to third

states. Various monitoring and advising experts assist the EU bodies on human rights topics. All members of the EU are also parties to the European Convention on Human Rights ECHR.

A Charter of Fundamental Rights of the European Union that protects all of the rights contained in the European Convention on Human Rights ECHR and the Social Charter; into the governing documents of the EU was adopted by the EU governing bodies in 2000, and entered into force in December 2009. The Charter makes a broad set of civil, political, economic, and social rights – including some new rights like “the prohibition of the reproductive cloning of human beings” – a legally binding feature of the European Union.

2. The inter-American system

Although the American system theoretically applies to the whole region of North, Central, and South America, it has been predominantly a Latin American system, with the United States and Canada making only occasional appearances.

The Inter-American system of human rights protection is the second long-standing regional system for the monitoring and enforcement of human rights. The Inter-American system is primarily based on **two treaties (the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights)** administered by **the Organization of American States (OAS), the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights (IACtHR).**

The Organization of American States (OAS) was established in 1948 for the purposes of strengthening peace and security in the Americas, promoting democracy, settling inter-state disputes, and supporting development.

The establishment of the Organization of American States (OAS) was preceded by the adoption of **The American Declaration on the Rights and Duties of Man**, the founding human rights document in the American system, and the oldest general international human rights treaty (predating the UDHR by several months). The rights contained in the Declaration are similar to those in the UDHR, and include **civil and political as well as economic, social, and cultural provisions.** It is unique, however, in that it includes ten “duties of the citizen” in addition to rights:

- The duty of the individual to conduct himself in relation to others that each and every one may fully form and develop his personality;
- The duty to aid, support, educate, and protect children and to honor, aid, support, and protect parents;
- The duty to receive education;
- The duty to vote;
- The duty to obey the law;
- The duty to serve the community and the nation;
- The duty to respect social security and welfare;
- The duty to pay taxes;
- The duty to work; and
- The duty to refrain from political activities in a foreign country.

Like the UDHR, this early treaty had significant moral and political force, at the time of its adoption was not a binding legal document and contained no enforcement mechanisms. **The American Convention on Human Rights**, which translated the American Declaration into a binding legal document, was adopted in 1969 and entered into force in 1978. The American Convention is similar in structure to the ICCPR, and focuses primarily on **civil and political rights**. It differs somewhat from the ICCPR, however, in that it contains **no protection for minorities**, and includes **five additional protections for the rights of reply, the right to property, freedom from exile, the right to asylum, and the prohibition of the collective expulsion of aliens**. Rather than creating a separate treaty for economic, social, and cultural rights, the American Convention includes a general provision instructing state parties to implement them.

An **Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador)** was adopted in 1988 and went into effect in 1999. The Protocol obliges parties to adopt measures for the progressive achievement of a list of rights similar to those in the ICESCR, and a few additional rights such as the right to a healthy environment, the right to special protection in old age, and the rights of persons with disabilities. Specific individual and groups rights are granted further protection under **several additional conventions**, including:

- Inter-American Convention on the Granting of Civil Rights to Women (1948);

- Inter-American Convention on the Granting of Political Rights to Women (1948);
- Inter-American Convention to Prevent and Punish Torture (1985);
- Inter-American Convention on International Traffic in Minors (1994);
- Inter-American Convention on the Forced Disappearance of Persons (1994);
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (the Convention of Belém do Pará) (1994); and
- Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999).

These treaties are supported by a **number of Inter-American organizations** that address human rights issues, including **the Inter-American Commission of Women, the Inter-American Children's Institute, the Inter-American Indian Institute, and the Inter-American Institute of Human Rights.**

Two bodies have been given the primary responsibility for overseeing the implementation of **the American Declaration and American Convention: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.** The Inter-American Commission on Human Rights is a treaty body set up in 1959 to oversee the implementation of the American Declaration on the Rights and Duties of Man. The Inter-American Commission monitors and investigates human rights situations, receives and comments on country reports, makes country visits (an important power that has no equivalent in the European system), and serves as the first destination for all individual complaints, some of which it sends on to the Inter-American Court of Human Rights. Today the **Commission also serves as the treaty body for the American Convention.** The Commission can hear individual complaints as well as inter-state complaints under both the Declaration and the Convention.

The Inter-American Court of Human Rights (IACtHR) was established in 1979 to enforce the Convention. It is empowered to issue advisory opinions (legal opinions not connected with contentious cases) and hear individual complaints. The IACtHR differs from the European Court in that individual complaints may not be made directly, but must be forwarded by the Commission or the state party to the complaint. The IACtHR has jurisdiction only over countries that have ratified the American Convention. Complaints against states that have ratified only the Declaration must be addressed to the Inter-American Commission instead.

Decisions of the IACtHR, unlike those of the Commission, are legally binding on states.

The IACtHR has been somewhat less active than its equivalent in the European system. It has received and judged a fairly small number of cases. One of the reasons for this is that unlike the European Court, the IACtHR is not a permanent body, but meets several times a year to hear complaints. Several of its cases, however, have made a relatively significant impact on international human rights law. In particular, the IACtHR has been a pioneer in defending the rights of indigenous peoples and in ordering states to pay reparations to victims of human rights abuses.

The OAS Charter also created **an Inter-American Council for Education, Science and Culture and an Economic and Social Council** to set standards and make recommendations with respect to economic, social, and cultural rights.

3. The African System

The protection of human rights has a long history in Africa, which has struggled for much of recent history against colonialism and apartheid, repressive post-colonial regimes, conflict, and poverty. The legal structure of the African system, however, is the newest and the least developed of the three major regional systems for the promotion and protection of human rights.

The Organization of African Unity (OAU) was established in 1963 to serve as the regional governing body for the African states. It was set up in the wake of the anti-colonial struggle of the 1950s, and its agenda focused primarily on ending colonialism. As such, the OAU Charter recognized the “inalienable right of all people to control their own destiny” and listed as one of its primary purposes the defense of the sovereignty, territorial integrity and independence of African states. This emphasis on sovereignty led the OAU to resist intervening in the internal affairs of African states, even for the purpose of ending gross human rights abuses. But this reluctance to intervene soon led to charges that the OAU was “largely irrelevant,” “bureaucratic and toothless,” and a “dictators’ club” that was “unwilling to hold its members accountable.”

The OAU was succeeded by **the African Union (AU)** in 2002. The AU has a much broader human rights agenda than its predecessor. The founding document of the new body provides that the AU shall operate in accordance with human

rights principles, and lists the promotion and protection of human rights as one of its key objectives.

The OAU adopted **the African Charter on Human and Peoples' Rights** (also known as **the Banjul Charter**) in **1981**. The Charter is the founding document of the African system, and has a number of unique aspects. It recognizes a broad range of civil, political, economic, social, and cultural rights, as well as a number of group rights that are not recognized by other regional bodies. For example, the African Charter recognizes the right of peoples to equality; existence; self-determination; control over natural resources; economic, social, and cultural development; international peace and security; and a generally satisfactory environment. Additionally, the African Charter is much more duty-oriented than either the UN human rights system or the other regional systems.

Since the signing of the African Charter, several additional human rights instruments have been adopted. Among these:

- **The 1990 African Charter on the Rights and Welfare of the Child.** The African Children's Charter is overseen by **the African Committee of Experts on the Rights and Welfare of the Child**, which examines state reports, receives individual complaints, and conducts on-site investigations.
- **An African Youth Charter** that focuses on youth participation and basic rights for young people was agreed upon by the African Union in 2006, and came into force on 8 August 2009.
- **The 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.** It is the Africa's primary treaty relating to women's rights. This protocol goes further in its protection against harmful practices than do the equivalent treaties in Europe and the Americas or the regional instruments.
- The former Organization of African Unity (OAU) has adopted the 1969 **Convention Governing the Specific Aspects of Refugee Problems in Africa.**

The African Charter establishes an **African Commission on Human and Peoples' Rights** to oversee the implementation of the treaty. The Commission has been in operation since 1987, and is headquartered in Banjul, The Gambia. The African Commission receives and comments on state reports, conducts on-site visits, issues resolutions, appoints special Rapporteurs and working groups, and acts as

a quasi-judicial body, empowered to hear individual complaints and inter-state complaints, and to issue non-binding recommendations. In addition, the Commission's rules of procedure allow it to issue requests for provisional measures to prevent imminent harm to human rights. The African Commission's broad mandate has allowed it develop some leading decisions on economic, social, and cultural rights.

In 1998, the OAU adopted a **Protocol to the African Charter that created an African Court on Human and Peoples' Rights** to complement and reinforce the work of the Commission. The Protocol entered into force in 2004, and the Court opened its doors in Arusha, Tanzania in 2006.

In 2003, it was established the **African Court of Justice** that was intended to be the principal judicial organ of the African Union (parallel to the European Court of Justice, which is the principal judicial organ of the EU). This Court was to hear cases between states, organs of the African system (including the Commission), and, in some cases, third parties. But, in mid-2008, African leaders voted to establish **an African Court of Justice and Human Rights** to serve as the main judicial organ of the African Union. This new Court merges the African Court on Human and Peoples' Rights and the African Court of Justice into one African Court of Justice and Human Rights. There is also **the Protocol on the Statute of the African Court of Justice and Human Rights** (2008).

In addition to these major human rights institutions, there are also **various courts of justice in Africa's several regional economic communities** that have human rights mandates: The Court of Justice of the East African Community, the Court of Justice of West African States, the Court of Justice of the Common Market of East and Southern Africa, and the Tribunal of the Southern African Development Community may all have some competence over certain human rights issues.