



# ***The Evolution of Regional Human Rights Mechanisms: a Focus on Africa***


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**Symposium on Advancing Knowledge-Led  
Development through  
the Right to Science in Africa**

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# A Three Tier System of Human Rights Protection

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- Three tier system of human rights protection
    - International
    - Regional
    - National
  - The principle of subsidiary in international law requires that remedies should first be sought at the national level
  - Increasing universal reach of human rights protection and greater consensus
  - Increasing cross pollination of norms providing the opportunity for normative universalism

# Overview of the UN System

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- The Treaty-based System:

1. ICCPR (1966, 1976) (Ethiopia, 1993)
2. ICESCR (1966, 1976) (Ethiopia, 1993)- Right to Science implicitly recognized in Art 15
3. CERD (1965, 1969) (Ethiopia, 1976)
4. CEDAW (1979, 1981) (Ethiopia, 1981), undermined by extensive reservations to the treaty
5. CAT (1984, 1987) (Ethiopia, 1994)
6. CRC (1989, 1990) (Ethiopia, 1991) the most ratified except the United States
7. CMW (1990, 2003) (Ethiopia, not yet ratified)
8. CRPD (2006, 2008) (Ethiopia, 2010)
9. CPPFD (2006,) (Ethiopia, not yet ratified)

- Charter-based-Special Mechanisms (Thematic and Country Mandates)



# *European System of Human Rights*

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- The Principal Convention is the ECHR
  - Signed on **November 4 1950** and came into force on September 3 1953
  - Influence of the **Universal Declaration of Human Rights**
  - The first **legally binding supranational human rights treaty**
  - Undoubtedly the most significant achievement of the Council of Europe



# Additional Protocols

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**There are currently 14 Additional Protocols to the Convention:**

**Protocol 1** – right to property, education and free elections

**Protocol 4** – civil imprisonment, freedom of movement, prohibition of expulsion

**Protocol 6 & 13** – prohibition of the death penalty (unanimous except Russia)

**Protocol 7** – fair procedures, criminal appeals, compensation for miscarriage of justice, prohibition of double jeopardy, spousal equality

**Protocol 12** – applies prohibition of discrimination to legal rights & public authorities

- **The European Social Charter (1996)**-allows for collective complaints specially on labour related rights
- **European Convention for the Prevention of Torture (1987)**



# Operating Principles

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- The most common and dominant doctrine of the ECtHR is the **margin of appreciation doctrine**
  - The doctrine is employed to balance the need to give due respect **to national constitutional traditions and to national legislative and policy choice** together with the **oversight power of the Court**
  - The idea is to give discretion to states in interpreting certain norms as they are **‘better placed’** in applying these norms
  - Underlying such doctrine is also a belief in **legal pluralism and deference**
  - Specially in areas where consensus has not been reached, the doctrine has frequently gave discretion to states

eg *SAS v France*, prohibition of wearing *Niqab*, *Immigration issues etc ...*





# Standards of Review

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- Whether limitations are based on law
- Are justified and reasonable
- Are proportional to the aim to be achieved
- And whether less restrictive means have been used

# Case Law of the ECHR

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***Ireland v UK (1978)*** – “five techniques” amount to inhuman or degrading treatment, not torture

***Chahal v UK (1996)*** – breach of Article 3 to deport someone to a country where they may face torture

***Soering v UK (1989)*** – “death row phenomenon” amounts to inhuman or degrading punishment

***Partisi v Turkey (2003)*** – Sharia law is incompatible with fundamental principles of democracy (justifying militant democracy)

***Handyside v UK (1976)*** *Freedom of expression includes ideas which may ‘offend, shock and disturb’*

***SAS v France (2014)*** : *banning of the wearing of a full face veil (niqab) considered as non violation of freedom of religion and expression*





# The Inter-American Human Rights System

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- Charter of the Organisation of American States (OAS) (1948)
  - American Declaration on Human Rights (1948)
  - American Convention on Human Rights (1969, entry into force 1978)
  - Additional Protocol to the ACHR in the Area of Economic, Social, and Cultural Rights "Protocol of San Salvador" (1988, 1999)
  - Protocol to the ACHRs to Abolish the Death Penalty(1990, 1991)
  - Inter-American Convention on the Forced Disappearance of Persons (1994, 1996)
  - Inter American Convention to Prevent and Punish Torture (1985, 1987)
  - Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994, 1998).
  - Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (1999, 2001)
  - The Inter-American Convention on protecting the Human Rights of Older Persons (2015)



# Principal Human Rights Organs


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## The Inter American Commission and Court on Human Rights

- The IAC was created as a principal organ of the OAS in 1959 to oversee the human rights obligation of states
- It is composed of 7 commissioners who serve for a 4 year term (Elected by the GA)
- Commissioners should be persons of high moral character and recognized competence in the field of human rights
- Seat- Commission (Washington DC) Court (San Jose, Costa Rica)

# Jurisprudence

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- ***Clude Reyes v Chile***- The concerned regarding access to information about a deforestation project carried out by a company which was approved by the gov't
    - An NGO called, the *Fundacion Terram* asked the government to release a report regarding the impact and scale of the deforestation project
    - This was rejected by the state
    - The IACtHR for the first time ruled that a state has a positive obligation to provide information held by the state to individuals
    - Denial to provide state held information violated FoE (Art 13 ACHR)



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- ***Barrios Atlos v Peru*** – Invalidation of amnesty laws and emphasizing on the importance of ending impunity and ensuring accountability
  - ***Valasquez-Rodriguez v Honduras***- first case of the IAtHR in which it noted the obligations of states on human rights such as the right to effective remedy
    - It held that the forced disappearance of persons constituted **multiple and continuous violations** of human rights
    - It also held that the obligation of the state to respect human rights under art 1 of the ACHR includes duty to protect and when violations occur to investigate and follow up

# The African Human Rights System



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## Unique Features

- Comprehensive: includes civil and political rights, socio-economic rights and third generation human rights
- The only convention to recognize the existence of a right to development
- The Principle of humanitarian intervention is recognized (Art 4 Const. Act)
- Provides for justiciable socio-economic rights
- Protects both individual and peoples rights
- No derogation clause (see *Media Rights Agenda v Nigeria*)
- The idea of duties as parallel to rights

# Enforcement Mechanism



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- The African Commission on Human and Peoples' Rights (1987)
  - The African Court on Human and Peoples Rights (1998)
  - The African System has:
    - Protective (Individual complaints, inter-state complaint)
    - Promotional Mandates (state reporting, special rapporteur)
      - freedom of expression
      - human rights defenders
    - prisoners rights
    - refugees, asylum seekers, migrants and internally displaced person
    - rights of women



# Robust jurisprudence

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▪Eg. 1. ***SERAC V Nigeria*** (Socio-economic rights and environmental protection)

-State's failure to protect the environmental degradation and the destruction of homes was held to violate the charter's rights to life, right to food, housing...

(doctrine of implied rights)

2. The ***Endorois Community v Kenya Case*** (right to development)

*"It must be equitable, non discriminatory, participatory, accountable and transparent, with equity and choice as important overarching themes".*

3. Progressive Interpretation of Freedom of Expression

***Lohi Issa Konate v Burkina Faso*** (*African Court on Human Rights*)

-Incarceration for defamation was held to be incompatible with freedom of expression

-Open public discussion special on political issues should have higher protection

▪ Expanding treaty law-Refugees, children, women, IDPs....

# Achievements and Challenges



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## ■ Achievements of the AHRs

One of the achievements of the African human rights system has been its ability to articulate norms that are particularly relevant to the historical, social and cultural context of Africa. In this regard the following points can be observed:

- The importance attached to collective rights : the right to peace, right to development, the right to clean environment, the right to self determination
- Justiciable socio-economic rights
- More accessible requirements for admitting communications (*actio popularis*)
- Use of comparative law- Art. 60 & 61
- State reporting mechanism more suited to the African way of settling issues through negotiation and open discussion. Note that its counter parts-the European and Inter-American Systems do not provide for state reporting mechanism.
- Generally, it is normatively appealing but lacks enforcement mechanisms



# Challenges of the African Human Rights System

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- Claw back clauses
- Weak enforcement and follow up: Better prospect for the African Court ?
- Weak national human rights enforcement
- Cultural challenges
- Counter-terrorism measures
- The emphasis on duties
- Risk of Fragmentation and lack of normative coherence