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# Regional Mechanisms of Human Rights

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## ABSTRACT

*Regional human rights systems are vital for promoting and safeguarding human rights and freedoms based on regional contexts. These systems provide platforms for individuals or groups to challenge domestic court decisions and hold government accountable for human rights violations. Europe, Africa and America have well-established mechanisms like the European Convention on Human rights, the African Charter on Human and Peoples' Rights, and the American Convention on Human Rights. Although these systems are effective, they face challenges such as implementation gaps and regional resistance. The absence of strict enforcement bodies often hinders the smooth application of human rights instruments. Consequently, states need to develop internal mechanisms for effective compliance and enforcement beyond mere treaty ratification.*

**Keywords:** *Regional mechanism, Human rights, well established mechanisms, challenges.*

## I. INTRODUCTION

Human rights are the rights which are possessed by each and every human being because they are human. It is provided by nature itself and inherent to all human beings, regardless of sex, nationality, ethnicity, caste, creed and religion or any other status. At the International level, there are universal human rights system, internationally protected code and regional mechanisms to assist states in promotion and protection of human rights.

Regional human rights protection mechanisms constitute main pillar of international human rights system. Currently, the three well most establish regional human rights systems exist in Europe, America and Africa. The regional arrangements for protecting human rights in Europe are extensive. Council of Europe is the main body with instruments of the European Convention on Human Rights (ECHR), the European Social Charter and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and mechanisms such as the European Court of Human Rights and the European Committee of Social Rights. While Inter-American human rights arrangement exists within the intergovernmental organization known as the Organization of American States (OAS) including the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights as instruments and the Inter-American Commission on Human Rights and the Inter-American

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Court of Human Rights as mechanisms. The African regional human rights system has been established within the intergovernmental organization known as the African Union. It includes instruments such as African Youth Charter and the African Charter on the Rights and Welfare of the Child 1990 and mechanisms such as the African Commission on Human and Peoples Right and African Court on Human and Peoples Rights. Even, these mechanisms face issue in adoption and implementation of decision.

## **II. REGIONAL HUMAN RIGHTS MECHANISMS**

Regional human rights mechanisms focused on strengthening the protection of human rights by taking account regional consideration. The system provided a layer of monitoring of and reporting on local human rights problems and provide forum and avenues that are designed to craft solutions and recommendation. It is based on instruments that are treaties, conventions, declarations and mechanisms such as commissions and courts which are responsible for implementation of instruments and aims to prevent and penalize violation of human rights by state and individuals. This mechanism is available after exhaustion of domestic remedies and in cases where domestic institution itself engaged in violation of law. The Council of Europe, The Organization of American States and The Organization of African Unity are the three main regional system of protection of human rights with judicial and quasi-judicial complaint mechanisms available to individuals and state. Basically, they provided system of check and balance over intergovernmental organizations through localizing international human rights norms and standards and reflecting the particular human rights concerns of that region.

Thus, the framework is necessary to seek redress beyond national boundaries and binding on ratified state. However, ratified state fronted issues in enforcement and created gap in execution resulting in arbitrary implementation, permissive judgments and violation of mechanisms by ratified states.

## **III. THE EUROPEAN HUMAN RIGHTS SYSTEM**

### **(A) The Council of Europe:**

The Council of Europe was **established on 5 May 1949** by the Treaty of London as a regional intergovernmental organization.<sup>2</sup> Its main objective is **to defend human rights, democracy, and the rule of law, and to standardize member countries' social and legal practices to guarantee the dignity of the nations and citizen of Europe**. Currently, it includes **47 member**

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<sup>2</sup> THE COUNCIL OF EUROPE, <https://www.coe.int/en/web/tbilisi/the-coe/about-coe/history> (last visited on September 16, 2023)

states.

## **(B) Human Rights Instruments**

### **1. The European Convention on Human Rights (ECHR)**

The convention is the **central document** of the Council of Europe **came into force on 3 September 1953** and established the European Court of Human Rights as a supervisory body as enforcement mechanism for human rights protection. Article 1 of European Convention on Human Rights provides that the rights guaranteed to individuals under the treaty are individual rights created by public international law.<sup>3</sup>

### **2. European Social Charter 1961**

European Social Charter is treaty of the Council of Europe and guarantees fundamental social and economic rights as a counterpart to the European Convention on Human rights, which refer to civil and political rights.<sup>4</sup> Part I of the Charter contains a series of principles, Part II legally binding articles and Part III enshrines the ‘a la carte’ principle that is State parties are automatically bound by certain articles.<sup>5</sup> All 47 member states of the Council of Europe have signed the charter, but only 42 states have ratified.

## **(C) Specialized Instrument:**

### **1. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987**

The Convention based on article 3 of European Convention on Human Rights entrusted with the mandate to visit any place of detention in a member state where persons are deprived of their liberty by public authorities.<sup>6</sup> All 47 member states are party to the convention.

### **2. The European Framework Convention for the Protection of National Minorities 1995**

The Convention is the first legally binding multilateral instrument protecting national minorities by incorporating States obligations and provided rights such as right to religious freedom,

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<sup>3</sup> EUROPEAN CONVENTION ON HUMAN RIGHTS, [https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG) (last visited on September 16, 2023)

<sup>4</sup> THE EUROPEAN SOCIAL CHARTER, <https://www.coe.int/en/web/tbilisi/the-coe/about-coe/history> (last visited on September 18, 2023)

<sup>5</sup> Wolfgang Benedek, Zdzislaw Kedzia, Felipe Gomez Isa & Jean Paul, *The Role Of Regional Human Rights Mechanisms*, EXPO DROI 410.206 (2010) [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI\\_ET\(2010\)410206\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf)

<sup>6</sup> EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE, <http://guide-humanitarian-law.org> (last visited on 19 September, 2023)

equality before the law, the use of the minority language, etc.<sup>7</sup> Currently, 39 Council of Europe member states are parties to the convention.

#### **(D) Institutional Structure**

##### **The European Court of Human Rights**

The European Court of Human Rights **was established first in 1959 and restructured by Protocol No. 11** to the European Convention of Human Rights, **situated in Strasbourg**. This Protocol went into force in 1998, replacing the existing part-time Court by a single, full-time Court and enforcing the judicial character of the system by making it compulsory.<sup>8</sup> The Court is **composed of 47 judges**.

#### **IV. HUMAN RIGHTS PROTECTION MECHANISM**

European Convention on Human Rights provides both **inter-state as well as individual complaints procedures**. According to Article 33, any contracting party can lodge an application against another state based on ‘any alleged breach of the provisions of the convention and does not need a direct link between the victim of the alleged violation and the state lodging the application. Article 34 provides that an application can be received from any person, non-governmental organization or group of individuals. Article 35 laid out **admissibility criteria** that is a violation of the rights set forth in European Convention on Human Rights and its protocols, the exhaustion of all domestic remedies and that the complaint is not lodged later than six months after the exhaustion of domestic remedies.<sup>9</sup>

Submitted applications must be examined by rapporteur and transferred for further proceedings to **three-member committee** or **chamber Judge**. Then, the parties are invited to submit further evidence and written observations. At this stage of the procedure, confidential negotiations to achieve a friendly settlement may be conducted. **If no friendly settlement can be achieved the judgment decides by a majority of votes** and must state the reasoning on which it is based and include satisfaction to the applicant.<sup>10</sup> A judgment becomes final after three months upon delivery to the parties, during this time any party may request the transfer of the case to the Grand Chamber if it raises a serious question of interpretation or application or a serious issue

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<sup>7</sup> THE COUNCIL OF EUROPE’S FRAMEWOK CONVENTION, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-persons-belonging-national-or-ethnic> (last visited on 19 September, 2023)

<sup>8</sup> EUROPEAN COURT OF HUMAN RIGHTS, [https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG) (last visited on 19 September, 2023)

<sup>9</sup> Wolfgang Benedek, Zdsizlaw Kedzia, Felipe Gomez Isa & Jean Paul, *The Role Of Regional Human Rights Mechanisms*, EXPO DROI 410.206 (2010) [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI\\_ET\(2010\)410206\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf)

<sup>10</sup> Ibid

of general importance.

## V. CASES

European Court on Human Rights has delivered more than 16,000 judgments which provided framework for strengthening legal system of Europe, mainly cases related to violation of Article 1, Article 5 and Article 6 that are Right to Property, Right to Liberty and Security and Right to Fair Trial respectively. Some of the leading cases are mentioned below:

**Burdov v. Russia<sup>11</sup>:** Russian Court granted compensation to Anatoli Burdov for the diseases he developed during emergency operation of Chernobyl disaster. He filed application regarding violation of his right as higher court decision was against his concern. The Court found violations of Article 6 para. 1 (right to a fair trial) and Article of Protocol No. 1 (protection of property).

**Assanidze v. Georgia<sup>12</sup>:** Tengviz Assanidzé was kept in detention for three years after his acquittal by the Supreme Court of Georgia. The Court found violation of Article 5 that is Right to Liberty and Security and Article 6 that is Right to Fair Trial as the applicant had undergone arbitrary detention and directed state to release applicant.

**Sunday Times v. United Kingdom<sup>13</sup>:** The case concerned the injunction served on the Sunday Times restraining publication of news about a pending civil proceeding brought by parents of children born with severe deformities through the taking of thalidomide by women during pregnancy. The Court found a violation of Article 10 (freedom of expression).

**Gurguchiani v. Spain<sup>14</sup>:** In the case, applicant residing illegally in Spain had been sentenced to prison for attempted robbery and subsequently deported. The Court found that there had been a violation of Article 7 that is No Punishment Without Law.

## VI. ISSUES

1. **Loads of petition** – Court is suffering from slow trial disorder as the number of applications filed is more than the number of disposed. Approximately 70,150 applications were pending before court at 31 December 2021 and almost half of the judgments concerned 3 of the 47 member states namely the Russian Federation, Ukraine and Romania even a quarter of all the judgments delivered by the court concerned the

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<sup>11</sup> Application no. 33509/04 (decided on 7 May 2002)

<sup>12</sup> Application no. 71305/01 (decided on 8 April 2004)

<sup>13</sup> Application no. 6538/74 (decided on 26 April 1979)

<sup>14</sup> Application no. 42750/09 (decided on 15 December 2009)

Russia Federation.<sup>15</sup>

2. **Refusal to accept** – There is gap between regional mechanisms procedure and domestic implementation. In the case of *Hirst v United Kingdom*<sup>16</sup>, the European Court of Human Right asked United Kingdom to remove provision of section 3 of the Representation of the People Act, 1983 which prohibits convicted prisoners from voting during their incarceration in penal institution as it was contrary to Article 3 of the Protocol No. 1 of the European Convention on Human Right and ruled that the UK's blanket ban on all serving prisoners from voting violate Article 3 of Protocol No. 1 of the European Convention on Human Rights as the ban was indiscriminate and disproportionate. Thus, the onus to justify the provision was on United Kingdom as a result government legislated right to vote to prisoners but the British Parliament discarded legislation and alleged Court for intervening in domestic domain of Parliament and disrespecting human rights principles.

## VII. THE AFRICAN HUMAN RIGHTS SYSTEM

### (A) African Union:

The **Organization of African Unity (OAU)** was established in 1963 in Addis Ababa which played primary role in developing African Human Rights Charter considering both the United Nations Charter and the Universal Declaration of Human Rights.<sup>17</sup> **In 2001, the Organization of African Unity was transformed into the African Union.** The constituent Act of the African Union determines the promotion and protection of human and people rights. The African Union has currently 53 members states.

### (B) The African Charter on Human and Peoples Rights

The Charter established African Commission on Human and Peoples' Rights as a supervisory body with task to interpret the charter by considering instruments and the additional protocol of charter established African Court on Human and Peoples' Rights as supervisory body. The first chapter of charter includes article 3-14 which deals with **civil and political rights**, article 15-17 that is **socio-economic rights** and article 19-24 includes several peoples' rights such as the **right to an existence, the right to freely dispose of wealth and natural resources** etc. Chapter

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<sup>15</sup> THE EUROPEAN COURT OF HUMAN RIGHTS IN FACTS AND FIGURES 2021, [https://www.echr.coe.int/documents/d/echr/Annual\\_report\\_2021\\_ENG](https://www.echr.coe.int/documents/d/echr/Annual_report_2021_ENG) (last visited 19 September 2023)

<sup>16</sup> (2005) ECHR 68

<sup>17</sup> Wolfgang Benedek, Zdzislaw Kedzia, Felipe Gomez Isa & Jean Paul, *The Role Of Regional Human Rights Mechanisms*, EXPO DROI 410.206 (2010) [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI\\_ET\(2010\)410206\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf)

II incorporate duties of the individual toward his family, society, state and international community under article 27-29.<sup>18</sup>

### **(C) Human Rights Instruments**

#### **1. The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa 1969**

The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa 1969 came into force in 1974 as a response to the refugee problem.<sup>19</sup> This convention was drawn up by taking into consideration the United Nations Convention relating to the Status of Refugee 1951.

#### **2. The African Charter on the Rights and Welfare of the Child 1990 (Children's Charter)**

This charter was adopted in 1990 and has similar provisions to the United Nations Convention on the Rights of the Child.<sup>20</sup>

#### **3. African Youth Charter**

The Youth Charter came into force in 2009 and contains rights and duties for the African youth, defined within the Charter as persons between the ages of 15 and 35.<sup>21</sup>

### **(D) Institutional Structure**

#### **1. The African Commission on Human and Peoples' Rights**

The Commission was established by the African Charter on Human Peoples' Rights. It is **composed of 11 independent part-time personalities, nominated by State parties and elected by the Assembly** with expertise in Human Rights holding its ordinary sessions twice a year in Banjul or in another African capital.<sup>22</sup>

#### **2. The African Court on Human and Peoples' Rights**

The African Court on Human and Peoples' Rights was established under Article 1 of the protocol to the African Charter on Human and People's Rights and ensure the protection of

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<sup>18</sup> AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS, <https://au.int/en/treaties/oau-convention-governing-specific-aspects-refugee-problems-africa> (last visited on 21 September, 2023)

<sup>19</sup> OAU CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA, <https://www.unhcr.org/in/media/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted-assembly-heads> (last visited on 21 September, 2023)

<sup>20</sup> Supra 19

<sup>21</sup> Supra 19

<sup>22</sup> THE AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS, [https://www.achpr.au.int/en\\_](https://www.achpr.au.int/en_) (last visited on 23 September 2023)



human and people rights in Africa. It complements and reinforces the functions of the African Commission on Human and Peoples' Rights.<sup>23</sup>

### VIII. HUMAN RIGHTS PROTECTION MECHANISMS

The African system for the protection of human rights consists of the **report and complaints procedure** of the Commission. In **report mechanisms**, States are required to **submit reports every two years** on the measures they have taken to implement the African Charter on Human Peoples' Rights. These reports dealt by Commission in public sessions and states are allowed to send representative in sessions to present report, respond to question and discuss issue. NGOs are allowed to submit their comments to state reports.

In **Complaint Procedure**, states and individual can lodge **complaints under Article 55 to the Commission** alleging violations of the African Charter on Human and Peoples' Rights. Further, the commission prepare report of facts and findings and transmit it to the states concerned and to the Assembly of Heads of State and Government with intention to reach a peaceful resolution.<sup>24</sup> These individual complaints must be submitted within a reasonable time period after exhaustion of domestic remedies.

According to Rules of Procedure, each complaint must be submitted before commissioner who may seek additional information from the complainant or the respondent states for recommendation on issue of admissibility. If commission considered case admission, then the respondent states have three months times to submit explanation or statement otherwise the facts alleged are considered as proven. The Commission may request a state prior to its final views to take interim measures in order to avoid irreparable damage to the victim of alleged violations. Finally, all observations, findings and recommendations made by the Commission are submitted to the Assembly of Heads of State and Government, the State concerned and the complainant.

Courts acts in co-operation with the Commission as the opinion of the Commission is required in deciding the admissibility of cases. Article 6(3) of African Charter on Human and Peoples' Rights provides that the Court has the possibility to consider the case itself or transfer it to the Commission when a friendly settlement needs to be achieved. Article 5 of African Court on Human and Peoples' Rights states that the commission, States Parties and African

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<sup>23</sup> AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS, <https://www.african-court.org/wpafc/> (last visited on 23 September, 2023)

<sup>24</sup> Wolfgang Benedek, Zdsizlaw Kedzia, Felipe Gomez Isa & Jean Paul, *The Role Of Regional Human Rights Mechanisms*, EXPO DROI 410.206 (2010) [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI\\_ET\(2010\)410206\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf)

intergovernmental organizations are entitled to submit cases about an alleged violation of human rights. Individuals, Groups, NGOs can submit application in court in official language of court in the written form containing name and address of both parties. Application must specify alleged violation and proof the exhaustion of domestic remedies.<sup>25</sup> Then, upon receipt of complaint, copies are transmitted to the respondent state, the complainant, to the President and Members of the Court and to the Commission. The state party against which complaint has been placed shall respond within sixty days and submit further information. Further, Court can conduct an enquiry, hear witnesses or visit the scene. If Courts find out there has been a human rights violation, it shall make orders to remedy the violation, including the **payment of fair compensation or reparation. Decisions of Court are binding** and state have to comply with them and guarantee their execution. Judgments, decided by the majority, are final and not subject to appeal.

## IX. CASES

**Norbert Zongo and Others v. Burkina Faso**<sup>26</sup>: In the case, Court found that the delay in prosecuting the Norbert Zongo and his companions constituted a violation of their rights to a fair trial as no trial was conducted in more than 15 years. Thus, Court awarded compensation to the beneficiaries for material and moral damages suffered as consequences of violation.

**Ingabire Victoire Umuhuza v. Republic of Rwanda**<sup>27</sup>: This case relates to statement made by opposition leader Umuhuza which were found by domestic courts to constitute denial of the Tutsi genocide. Court found that remarks made by the applicant did not constitute minimization of the genocide against the Tutsi and therefore found her conviction to violate her freedom of expression and ordered State to restore applicant rights and pay her compensation.

**Lohe Issa Konate v. Burkina Faso**<sup>28</sup>: Court found that one year imprisonment meted against Konate for publishing newspaper articles constituted breach of freedom of expressions and held that authorities who discharge public functions should be prone to a higher level of criticism and prison sentences would therefore deter journalists from performing the critical duty of exposing shortfalls in public governance. Court ordered State to amend laws and reinstate applicant's banned newspaper and pay compensation.

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<sup>25</sup> Supra note 24.

<sup>26</sup> Application no. 013/2011

<sup>27</sup> Application no. 003/2014

<sup>28</sup> Application no. 004/2013

## X. ISSUES

1. **Resistance** – Only 31 of 55 African Union member have ratified the court's protocol and six states have permitted individual and NGOs direct access to the court because of judgment against Rwanda, Tanzania and Angola.<sup>29</sup> States refuse to ratify the court's protocol and started acting against African Court and Commission. Court is facing non-compliance crisis and resistance is affective judgment delivery as well as the very existence of the court.
2. **Implementation gap-** Ratified states is facing problem of enforcement because of ineffectiveness of the monitoring mechanism in compliance with the Commission's recommendation.<sup>30</sup> For instance even after the 20 years of decision of Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) v. Nigeria in which commission found that Nigeria had breached obligation to protect and promote rights of the Ogoni people in Niger Delta region, still Ogoni people are demanding their basic rights.<sup>31</sup>

## XI. THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

### (A) Organization of American States:

**The Charter of the Organization of American States**, with Article 52 of the United Nation Charter established the Organization of American States as a regional agency. The organization constitutes the main political, juridical and social governmental forum in this region with *inter alia*, the aim of promoting peace, security and democracy on the continent and the eradication of poverty.<sup>32</sup>

### (B) Human Rights Instruments

#### 1. The American Declaration of the Rights and Duties of Man

The American Declaration of the Rights and Duties of Man was primary instrument constituting the beginning of the regional system of human rights **adopted on 30 April 1948**. It contains 38 article which provide civil, political, economic, social and cultural rights. Declarations was not legally binding treaties it is only considered as source of international obligation for the member

<sup>29</sup> Successes of African Human Rights Court undermined by resistance from states, THE CONVERSATION (August 31, 2021, 4:10 pm) <http://www.theconversation.com>

<sup>30</sup> Stefaan Smis and Olalekan Bello, Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) v. Nigeria: Two Decades on – Questioning and Continuing the Implementation Gap, 5 AHRV (2021) <http://scielo.org.za>

<sup>31</sup> Ibid

<sup>32</sup> ORGANISATION OF AMERICAN STATES, <https://www.cidh.oas.org/basicos/english/basic22.charter%20oas.htm> (last visited on 23 September, 2023)

states of Organization of American States.<sup>33</sup>

## 2. The American Convention on Human Rights

This was adopted on **22 November 1969** strengthening the Inter-American system of human rights by extending the powers of the Inter-American Commission on Human Rights and creating an Inter-American Court of Human Rights. The convention has been **ratified by 25 American States**.

Part I of the Convention protects **civil and political rights (under Article 3 to 25)** with regard to economic, social and cultural rights whereas Part II establishes means of protection and sets forth the organization, functions, competence, and procedure of the Inter-American Commission on Human Rights and Inter-American Court of Human Rights. The Convention has been complemented by **two additional protocols** that is the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, signed on 17 November 1988 and ratified by 14 American states and the American Convention on Human Rights to Abolish the Death Penalty signed on 8 June 1990 and ratified by 11 American States.

### (C) Special Instruments:

Inter-American system of human rights consists of conventions on special matters such as **Inter-American Convention to Prevent and Punish Torture adopted on 12 September 1985**, **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women** adopted on 9 June 1994, **Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities** adopted on 7 June 1999.<sup>34</sup>

### (D) Institutional Structure

#### 1. The Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights is one of the principal organs of the Organization of American States established in 1959 at **Washington D.C.** The main function is to promote the observance and protection of human rights and to serve as consultative organ.<sup>35</sup>

#### 2. The Inter-American Court of Human Rights

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<sup>33</sup> AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN, <https://www.ohchr.org/sites/default/files/Documents/Publications/Compilation1.1.en.pdf> (last visited on 23 September, 2023)

<sup>34</sup> Wolfgang Benedek, Zdzislaw Kedzia, Felipe Gomez Isa & Jean Paul, *The Role Of Regional Human Rights Mechanisms*, EXPO DROI 410.206 (2010) [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI\\_ET\(2010\)410206\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf)

<sup>35</sup> INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/what.asp> (last visited on 23 September, 2023)

The Inter-American Court of Human Rights was **established by the American Convention on Human Rights in 1979 at San Jose, Costa Rica**. In 1980, the Court's first Rules of Procedure was formulated after considering the European Court of Human Rights' Rules of Procedure. The Court is not a permanent means it holds regular and special sessions that can be invoked by the president of the Court or the majority of the judges and exercises adjudicatory and advisory jurisdiction on different conventional basis.<sup>36</sup>

## **XII. HUMAN RIGHTS PROTECTION MECHANISM**

The Inter-American system for the protection of human rights includes individuals and states **mechanism**. Individual complaints are dealt by the Commission which is based on the Organization of American States Charter and the 1948 American Declaration of the Rights and Duties of Man, binding on all member states irrespective of the ratification of the Convention in support of Article 51 of the Rules of Procedure that provides the Commission receives and examines any petition that contains a denunciation of alleged violations of the Member States of the Organization that are not parties to the American Convention on Human Rights.<sup>37</sup> However, the individual complaints procedure based on the Charter is not legally binding in nature.

States complaint procedure is available under Article 44 of the Convention, that is any person or group of persons, or any non-governmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciation or complaint of violation of the Convention by a State Party.<sup>38</sup> Petitions or Communications lodged in accordance with Article 44 or 45 require that all domestic remedies have been exhausted and lodged within six months after the final decision in the domestic proceedings, and that the subject of the petition or communication is not pending in another international proceeding.

If the petition or communication is **considered admissible**, the Commission requests information from the government of the State indicated as being responsible for the alleged violations.<sup>39</sup> In case matter not get settled or submitted by the Commission or by the State

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<sup>36</sup> INTER-AMERICAN COURT ON HUMAN RIGHTS, <https://www.corteidh.or.cr> (last visited on 23 September, 2023)

<sup>37</sup> Wolfgang Benedek, Zdsizlaw Kedzia, Felipe Gomez Isa & Jean Paul, *The Role Of Regional Human Rights Mechanisms*, EXPO DROI 410.206 (2010) [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI\\_ET\(2010\)410206\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf)

<sup>38</sup> Ibid

<sup>39</sup> Wolfgang Benedek, Zdsizlaw Kedzia, Felipe Gomez Isa & Jean Paul, *The Role Of Regional Human Rights Mechanisms*, EXPO DROI 410.206 (2010) [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI\\_ET\(2010\)410206\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf)

concerned to the Inter-American Court within the three months then the Commission may prepare a second report or may take the case to the court. Only the **Commission or the State** concerned may submit the case to the Court, individuals do not have this right.

The commission shall appear as a party before the court in all cases within the adjudicatory jurisdiction of the court. Direct participation to victims and their representative in the Court's proceedings has been granted to alleged victims or representatives by the amended Rules of Procedure of 2001. Decisions of the Court are taken by a majority vote of the judges present. The hearings shall be public, unless the Court, in exceptional circumstances, decides otherwise. The decisions, judgments and opinions of the Court shall be published, along with the judges' individual votes and opinions and with such other data or background information that the Court may deem appropriate. The **judgment** of the Court shall be **final and not subject to appeal**. The States Parties to the Convention are obliged to comply with the judgment of the Court

**(A) Cases:**

**Gonzalez et al. (Campo Algodonero) v. Mexico<sup>40</sup>:** The case raised question of the international responsibility of the Mexican State for the lack of diligence in the investigation related to disappearance and murder of Claudia Ivette Gonzalez, Esmeralda Herrera Monreal and Laura Berenice Ramos Monarrez. Court found violation of human rights under the American Convention of Human Rights and ordered to compensate and construct a national memorial.

**Atala Riffo and Daughters v. Chile<sup>41</sup>:** This case related to LGBT rights and child custody. Inter-American Court of Human Rights reviewed Chilean court ruling that in 2005 awarded custody to father because of mother's sexual orientation. Court held in favor of mother and gave child custody to mother recognizing LGBT rights.

**(B) Issues:**

- 1. Implementation Gap:** Court is victim of non-compliance between states and regional mechanisms. States ratification and enforcement is not working in parallel and as a result court face criticism.
- 2. Financial instability:** Economic crisis restrict function of government and as result judgments get affected. The regional mechanism of Inter-American face serious consequence because of states economic issue for example- in the case of Belo Monte v. Brazil, court ordered for the construction consortium in charge of building a dam and

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<sup>40</sup> 49 ILM 637 (2010)

<sup>41</sup> Inter-Am. Ct. HR 12.502 (2012)

the Brazilian government to finance and organize the restructuring of the National Indian Foundation in charge of redistributing the financial benefices of the dam to the local indigenous communities.<sup>42</sup> The judgment was not implemented and state failed to comply with requirement for which again case was presented in court.

### **XIII. CONCLUSION**

Regional human rights system promotes and protects human rights and fundamental freedoms of individuals or groups on account of regional consideration that is regional instruments and mechanisms. It plays primary role in protecting human rights which are possess by every human being because of the existence of human being through providing forum where one can appeal against domestic court decision and can hold government responsible for violation of human rights. Europe, Africa, America is the main continent where most established regional system exist and functions effectively. Principal instruments are: The European Convention on Human Rights, The African Charter on Human and Peoples' Rights and The American Convention on Human Rights while protection mechanism differ such as Europe human rights protection mechanism include both inter-state as well as individual complaints, African system for protection of human rights consists reports and complaints and the Inter-America mechanism contain individual complaints. But all three mechanisms face problem of implementation gap and resistance of regional factors. Implementation gap is common issue as there is not strict enforcement institution in regional areas and the implementation of instrument is not that smooth as it seems on documents. Thus, ratified states need to develop their internal mechanisms for smooth implementation and must become capable to comply and enforce obligations and rights as only ratification to treaty is not enough for promotion and protection of human rights. Recently, South Asia admitted need of a regional human rights mechanism because unlike Europe, Africa, America, there is no inter-governmental regional system for human rights protection but before establishing a system south Asia must overlook loopholes to prevent violation of rights.

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<sup>42</sup> MONGABAY, <https://news.mongabay.com/2012/08/brazils-controversial-belo-monte-back-on-track-after-court-decision-overruled/> (last visited 24 September, 2023)