



Inter-American Human Rights Network

Comparative Perspectives on Regional Human Rights Systems

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Policy Briefing

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Overview

This briefing is based on the principal conclusions of the third workshop of the Inter-American Human Rights Network, held at University of Ghent's Human Rights Centre in January 2016.² The workshop represented an innovative attempt at comparative analysis by scholars and practitioners of the challenges facing human rights systems across the globe. Workshop participants critically examined and compared a full range of international human rights bodies to assess the extent to which policies and procedures have helped to advance the realisation of human rights, and how best practices may be adapted across different systems. The debate focused principally on the operation of regional human rights systems in the Americas, Africa and Europe, but due consideration was also given to the mechanisms available before the United Nations. The main conclusions from the workshop and a series of recommendations for future research on comparative research on international human rights bodies are outlined in this briefing paper.

A Comparative Approach to the Study of Regional Human Rights Systems

There is a pressing need for systematic comparative analysis of the operations, activities and impact of regional human rights mechanisms. Though scholars and practitioners alike have increasingly sought to evaluate the impacts of the expanding number of decisions by regional bodies, most such assessments focus on individual systems in isolation. In part, this can be explained by the increasing specialisation of both human rights practice and scholarship, which in turn is driven by the complexity and sheer volume of 'output' produced by the contemporary international human rights regime at all levels. However, the lack of comparative analysis across regional human rights systems is also the result of a frequently undue emphasis on the many differences that distinguish the different systems, including their markedly diverse historical and political contexts, as well as their varying institutional procedures and norms. According to this perspective, the dissimilar contexts and specific challenges facing the various regional human rights mechanisms are too substantial to allow for useful insights to be gained from comparative discussions.

Despite the many divergent political, institutional, and legal differences between the various human rights systems, the potential for cross-regional comparison is tremendous. All systems share a similar

¹ The **Inter-American Human Rights Network (IAHRN)** is an international research project which seeks to examine the development and impact of the regional human rights system of the Americas. The network is funded by the Leverhulme Trust under its International Networks programme. For further information on the IAHRN please contact Dr Par Engstrom (p.engstrom@ucl.ac.uk), or IAHRN network facilitator, Peter Low (p.low@ucl.ac.uk)

² A more detailed summary of the workshop is available via the [IAHRN website](http://IAHRN_website). Please note, the analysis contained in this briefing does not necessarily reflect the views of all workshop participants.

set of challenges, including those associated with the lack of compliance with decisions, with opposition from states seeking to reduce institutional mandates and undermine their legitimacy, with limitations of access to international justice for victims of violations, and with mounting case backlogs linked to increasingly squeezed resources. Comparative analysis of the nature and scope of these shared challenges, and the various ways through which the different systems have sought to resolve them, can provide valuable insights into what the best practices may be. The varying contexts of the different systems clearly mean that policies and processes cannot simply be imported wholesale from one context to another. Still, lessons learned in any given system have the potential to inform approaches and practices elsewhere. The participants in the Ghent workshop discussed the potential of and challenges to learning between regional systems in a range of areas, some of which are highlighted below.

Lessons Learned

The value of comparative analysis of regional human rights systems can be illustrated in the following five distinct areas of scholarly and advocacy concern:

1. Relationships with Organised Civil Society

It is increasingly recognised that regional human rights mechanisms need to develop co-operative relationships with the whole range of relevant stakeholders and actors at the local level to ensure the effective implementation of their decisions. To facilitate such cooperation, opportunities for and means of engagement with national and sub-national authorities, domestic judiciaries, victims groups and civil society organisations require strengthening. In this regard, workshop participants noted the significant degree of substantive civil society participation in the Inter-American System, which, for instance, stands in stark contrast with the European System. The central monitoring organ of the Council of Europe, the Committee of Ministers, has traditionally operated in a generally non-transparent manner, with highly limited access for civil society participation to its proceedings. The lessons learned from civil society participation in the IAHRs are therefore very significant for the European System.

2. Vulnerable Groups

All regional systems have made important advances in the development of both special protection mechanisms and dedicated jurisprudence in their efforts to address the situation of vulnerable groups. There are several areas, nonetheless, in which remedies offered to vulnerable groups remain inadequate. In cases of violence against women, for example, scholars and practitioners highlight the need for human rights bodies to take greater note of the issue of intersectionality i.e. the multiple forms of discrimination and structural inequalities that contribute to such abuses. Though various UN mechanisms are increasingly including intersectionality-based analysis, such approaches have not been given much consideration by regional human rights mechanisms. Rulings within the IAHRs, for instance, have often focused on gender inequality while overlooking discussions of social inequality, in ways that restrict the design of appropriate reparation policies, in particular. There is ample scope, therefore, for increased strategic cross-fertilization human rights standards between systems to address similar substantive human rights challenges, particularly as they pertain to vulnerable groups.

3. Implementation Challenges

The effective implementation of decisions remains a serious challenge to all human rights institutions. Regional human rights systems would benefit from sustained dialogue regarding policy responses and administrative practices. For example, the European System has developed a pilot- judgement procedure that has been credited with bolstering the administration of local justice and with reducing case backlog. The IAHRs has experimented with some prioritisation of structural cases, but with more limited effectiveness to date. The experience of the European System shows that such procedures may, when carefully designed and implemented, bring advances in particular thematic areas.

Similarly, the potential and challenges involved in the application of the ‘margin of appreciation’ doctrine developed by the European Court of Human Rights by other regional human rights courts merits further study. The Inter-American Court has historically avoided this doctrine in its jurisprudence, but some judges have expressed support for its application in the Americas. Some argue that the addition of this procedure might help to minimise the backlash of states against the Inter-American System by allowing for a more deferential approach by the system to public policies adopted by states to protect human rights. There is a pressing need for robust evidence-based analysis of such claims and an informed understanding of the experiences of the European System in order to assess the appropriateness of such approaches in Africa and the Americas.

4. Judicial Dialogue

The potential of judicial dialogue both between regional human rights courts and between international and domestic courts, remains largely untapped. Regional human rights systems operate in a fertile environment of inter-legality characterised by a plurality of domestic and international legal and judicial systems. This provides ample scope for judicial dialogue and exchange. Some limited judicial dialogue is certainly already taking place, as evidenced in human rights jurisprudence on issues such as same sex marriage and the applicability of amnesties. Genuine and substantive dialogue between judicial bodies must go beyond mere citations of other systems’ jurisprudence. To fulfil its potential to advance rights protections, judicial dialogue must involve interactions of a more sustained and consistent nature. Diffusion and learning, however, are attractive concepts, but remain somewhat ambiguous. For cross-regional learning to be effective, scholars and practitioners alike need to specify: what is to be learned; how learning takes place; and how to assess whether learning has occurred or not.

5. Improving Cross-Regional Collaboration

All three main regional human rights systems face significant challenges to their authority by states in their respective regions. From Italy, through to Russia and the United Kingdom, the European Court of Human Rights confronts public refusals by states to comply with high-profile rulings. In the Americas, opposition to the Inter-American System has even led to some countries withdrawing from the jurisdiction of the Inter-American Court. Increased cross-regional collaboration between officials of the various systems has become increasingly essential to address these evolving forms of state resistance to international human rights institutions.

However, further assistance could be obtained from improving ways of interacting with external stakeholders. In particular, regional systems could foster further collaboration with academic institutions in order to facilitate rigorous analysis of their work, which would, in turn, have the potential to counteract negative claims levelled by states against these systems. In order to bolster the support of scholarly networks, regional human rights mechanisms could form strategic partnerships with academic institutions, participate in academic evaluations of their operations, and help disseminate the findings of scholarly research. Moreover, all regional systems would facilitate academic research by improving scholarly access to their archives, operational data and files.

Recommendations

- **Creation of collaborative mechanisms between regional human rights systems.** The importance of communication and co-operation between regional human rights mechanisms has become increasingly clear. Permanent mechanisms for sharing information between regional and universal bodies should be established to allow the design of more effective solutions to current and future human rights challenges. Such mechanisms could include institutional exchanges, training visits, dissemination tools and better methods for sharing jurisprudential developments and lessons learnt between human rights mechanisms.
- **Systematisation and publication of human rights mechanisms' operational information.** Greater transparency of systems' activities and availability of operational information would increase transparency and allow for more rigorous scholarly comparative analysis of the effectiveness of the various internal processes and procedures. This could, in turn, both inform future policy debate and help respond to criticism levelled against institutions by their opponents.
- **Assessment of the processes and procedures that best enable cross-system learning,** with a view to better understanding which best practices and lesson-learned are most likely to 'travel' across human rights systems and why. With this objective in mind, there is a need for the development of indicators to assess if and how cross-system learning and diffusion has taken place.
- **Explore innovative mechanisms for improving implementation of decisions.** Implementation is likely to remain one of the principal challenges for human rights institutions, especially in the context of state backlash. To mitigate such challenges, regional human rights systems have much to learn from each other in their efforts to develop innovative models for increasing compliance and reducing backlogs.