

UNIT – III

Regional Protection of Human Rights

European System • Inter-American System • African System

Human Rights Law and Practice

Unit Overview

This unit examines the three major regional human rights systems that complement the universal UN framework. Regional systems often provide stronger enforcement mechanisms, including binding judicial decisions.

Focus areas:

- European Convention on Human Rights (1950) and the European Court of Human Rights (Strasbourg)
- Inter-American System – American Convention on Human Rights and Inter-American Court
- African Charter on Human and Peoples' Rights and the African Commission & Court
- Comparative strengths, landmark jurisprudence and effectiveness

What You Will Learn

01 European System

Structure of ECHR, ECtHR jurisdiction and key principles

02 Landmark ECtHR Cases

Soering, Handyside and evolution of living instrument doctrine

03 Inter-American System

American Convention, Commission and Court – unique features

04 African System

African Charter (unique peoples' rights), Commission and Court

05 Comparative Analysis

Strengths, weaknesses and enforcement differences

06 Case Law Impact

How regional judgments influence national and international law

Why Regional Systems Matter

Complementary

Regional systems operate alongside the UN universal system, often providing stronger remedies and closer cultural relevance.

Judicial Enforcement

Unlike many UN treaty bodies, the European and Inter-American Courts issue binding judgments that States must implement.

Proximity

Regional courts understand local contexts better and can develop progressive jurisprudence tailored to regional realities.

Access

Individuals generally have direct or quasi-direct access after exhausting domestic remedies.

European Convention on Human Rights (1950)

The most effective regional system. Created by the Council of Europe. The European Court of Human Rights (ECtHR) in Strasbourg delivers binding judgments. Protocol 11 (1998) made the Court permanent and abolished the Commission.

Parties	46 States (all Council of Europe members except Russia after expulsion)
Rights Covered	Civil & political rights primarily; some protocols add social rights
Individual Petition	Direct access after exhaustion of domestic remedies (Art 34)
Enforcement	Committee of Ministers supervises execution of judgments

Key Doctrines of the European Court

Living Instrument

The Convention is interpreted in light of present-day conditions (Tyrer v. UK). Rights evolve.

Margin of Appreciation

States have a certain discretion in implementing rights, especially in moral or sensitive areas.

Proportionality

Any restriction on rights must be proportionate to the legitimate aim pursued.

Positive Obligations

States must not only refrain from violations but actively protect rights (Osman v. UK).

Autonomous Concepts

Terms like “criminal charge” or “civil rights” have autonomous meaning under the Convention.

Effective Remedy

Art 13 requires practical and effective remedies at the national level.

European Court of Human Rights – Key Judgments

Soering v. UK (1989)

Extradition to face death row phenomenon can violate Art 3 (prohibition of torture/inhuman treatment). Established extra-territorial effect.

Handyside v. UK (1976)

Freedom of expression (Art 10). Margin of appreciation doctrine formally developed. “Freedom of expression is applicable not only to information or ideas that are favourably received...”

Tyrer v. UK (1978)

Living instrument doctrine. Judicial corporal punishment of a juvenile held to violate Art 3.

Osman v. UK (1998)

Positive obligation to protect life (Art 2) where authorities know or ought to know of a real and immediate risk.

American Convention on Human Rights (1969)

Also known as the Pact of San José. Supervised by the Inter-American Commission on Human Rights (Washington) and the Inter-American Court of Human Rights (San José, Costa Rica).

Unique Feature

Strong emphasis on reparations – the Court orders comprehensive remedies including rehabilitation, satisfaction and guarantees of non-repetition.

Access

Individuals petition the Commission first; only the Commission or States can refer cases to the Court.

Advisory Opinions

Court has extensive advisory jurisdiction used to clarify rights for the entire region.

Focus

Particularly strong jurisprudence on forced disappearances, indigenous rights and transitional justice.

Inter-American Court – Key Judgments

Velásquez Rodríguez v. Honduras (1988)

Foundational case on forced disappearance. Established State responsibility for failure to prevent, investigate and punish. Duty to investigate is continuous.

Barrios Altos v. Peru (2001)

Amnesty laws for serious human rights violations are incompatible with the American Convention. Influenced transitional justice worldwide.

Awás Tingni v. Nicaragua (2001)

Landmark recognition of indigenous communal property rights over ancestral lands.

Gomes Lund (Guerrilha do Araguaia) v. Brazil (2010)

Reaffirmed that amnesties for crimes against humanity are invalid under international law.

African Charter on Human and Peoples' Rights (1981)

Also called the Banjul Charter. Unique because it includes both individual rights and peoples' rights, and expressly places duties on individuals. Supervised by the African Commission and the African Court on Human and Peoples' Rights.

Peoples' Rights

Right to self-determination, development, peace, environment (Arts 19–24) – distinctive feature

Duties

Individuals have duties towards family, community, society and the State (Arts 27–29)

Commission

Quasi-judicial; receives communications, issues recommendations, conducts promotional activities

Court

Established by Protocol (1998); can issue binding judgments where States have accepted jurisdiction

African Commission & Court – Key Decisions

SERAC v. Nigeria (Ogoni Case) (2001)

Landmark on economic, social and cultural rights and environmental rights. Found violations of rights to health, environment, housing, food and life due to oil exploitation and military actions against Ogoni people.

Endorois Welfare Council v. Kenya (2010)

Recognition of indigenous peoples' rights to ancestral land, culture and development. Progressive interpretation of peoples' rights.

Media Rights Agenda v. Nigeria

Important free expression and media freedom decisions under the Charter.

African Court cases (e.g., Mtikila, Konaté)

Growing jurisprudence on political participation, freedom of expression and fair trial from the African Court.

COMPARISON

Three Regional Systems at a Glance

Treaty	ECHR 1950	ACHR 1969	African Charter 1981
Court	ECtHR (permanent)	IACtHR	AfCHPR (limited)
Individual Access	Direct	Via Commission	Limited / via Commission
Binding Judgments	Yes	Yes	Yes (where accepted)
Special Feature	Living instrument	Reparations focus	Peoples' rights + duties
Strength	Highest compliance	Strong on disappearances	ESC & group rights

Common Strengths of Regional Systems

01

Binding Judicial Decisions

European and Inter-American Courts issue enforceable judgments

02

Individual Access

Victims can bring cases after domestic remedies (strongest in Europe)

03

Progressive Jurisprudence

Courts develop rights dynamically through living instrument / evolutive interpretation

04

Reparations Innovation

Especially Inter-American Court – comprehensive remedies beyond compensation

05

Regional Ownership

States more willing to accept scrutiny from regional peers than global bodies

06

Complementarity

Work with UN system; many judges and experts cross-reference each other

Core Points to Master

Exhaustion Rule

All systems require exhaustion of domestic remedies before regional petition (with limited exceptions).

Subsidiary Role

Regional courts are subsidiary to national systems; primary responsibility remains with States.

Just Satisfaction

ECtHR awards just satisfaction (Art 41); IACtHR orders broader reparations.

Execution

Committee of Ministers (Europe) and Court itself (Inter-American) monitor compliance.

Peoples' Rights

Only the African Charter explicitly protects collective peoples' rights alongside individual rights.

India's Position

India is not party to any of these regional systems; relies on UN mechanisms and domestic law.

European System – Why It Is the Most Effective

1. Compulsory jurisdiction – all States parties accept the Court's jurisdiction.
2. Direct individual petition right since Protocol 11.
3. High rate of compliance with judgments (though some structural problems persist).
4. Detailed, reasoned judgments that national courts increasingly follow (dialogue).
5. Pilot judgment procedure for systemic issues (e.g., prison conditions, excessive length of proceedings).
6. Strong political backing from the Council of Europe and Committee of Ministers.

Challenges: Case backlog, non-execution in some States, and recent tensions with certain member States.

Inter-American & African – Distinctive Contributions

INTER-AMERICAN

- Pioneered comprehensive reparations
- Strong on forced disappearances and amnesties
- Advisory opinions shape regional law
- Focus on structural discrimination and indigenous rights
- High quality of reasoning despite fewer cases
- Challenges: limited ratification of Court jurisdiction by some States

AFRICAN

- Only system with explicit peoples' rights
- Duties of individuals – unique philosophical approach
- Progressive ESC and environmental jurisprudence (Ogoni)
- Growing African Court jurisprudence
- Challenges: weak enforcement, limited individual access to Court, resource constraints

KEY HIGHLIGHTS

Sections & Main Points

European	ECHR + ECtHR – strongest enforcement, living instrument, Soering, Handyside
Inter-American	American Convention + IACtHR – reparations, Velásquez Rodríguez, amnesties invalid
African	Banjul Charter – peoples' rights + duties, SERAC (Ogoni), Endorois
Common	Exhaustion of domestic remedies, subsidiary role, progressive interpretation
Difference	Europe: individual direct access; Africa: collective rights; Americas: reparations
India	Not a member of any regional system; uses UN + domestic constitutional remedies
Impact	Regional judgments influence national courts and UN treaty bodies
Future	Growing cross-fertilisation of jurisprudence among the three systems

ADDITIONAL CASES

Further Landmark Judgments

Ireland v. UK (1978)

ECtHR – first inter-State case; defined torture vs inhuman treatment

Marckx v. Belgium (1979)

ECtHR – discrimination against illegitimate children; family life

Loayza Tamayo v. Peru

IACtHR – double jeopardy, fair trial, reparations for psychological harm

Constitutional Rights Project v. Nigeria

African Commission – fair trial and independence of judiciary

Golder v. UK (1975)

ECtHR – right of access to court implied in Art 6

Yakye Axa v. Paraguay

IACtHR – indigenous land rights and cultural identity

Must-Remember Points

- Regional systems fill gaps left by the universal UN system with stronger judicial teeth.
- European system remains the gold standard for individual access and compliance.
- Inter-American system leads in reparations and fighting impunity for gross violations.
- African system uniquely protects peoples' rights and recognises individual duties.
- Landmark cases (Soering, Velásquez Rodríguez, SERAC) have shaped global human rights law.
- All systems require exhaustion of domestic remedies and operate on the principle of subsidiarity.
- India, as a non-member, relies primarily on constitutional remedies and UN treaty bodies.

SUMMARY

Key Takeaways

1. Regional human rights systems provide judicial protection that the UN system largely lacks.
2. The European Court is the most developed and influential regional court.
3. Inter-American jurisprudence on reparations and amnesties has global impact.
4. The African Charter's peoples' rights and duties clauses are unique contributions.
5. Landmark cases from all three systems continue to shape domestic and international law.

Next Unit: Protection of Human Rights at the National Level – Indian Constitution & the 1993 Act.