

## **Dinah Shelton: Can regional human rights bodies be made (more) effective?**

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The number of regional and sub-regional organizations taking up human rights issues continues to increase. It is legitimate to ask whether there is value-added in this on-going proliferation or whether the cause of human rights would be better served by genuinely strengthening existing institutions. In fact, the best approach should be to not view these as incompatible goals, but to proceed with extending coverage into areas currently lacking a regional system, while improving the functioning of those bodies that already exist.



The number of regional and sub-regional organizations taking up human rights issues continues to increase. Within Europe, the Council of Europe, European Union and the Organization for Security and Cooperation in Europe all address human rights. In the Americas, the Organization of American States is facing a proliferation of sub-regional structures such as the Community of Latin American and Caribbean States (CELAC), Mercosur, and the Bolivian Alliance for the Americas (ALBA). The African Union also has sub-regional economic associations such as SADC and ECOWAS whose courts have decided human rights cases. ASEAN created an inter-governmental committee on human rights (AICHR) and in 2012 adopted a Declaration of Human Rights. The South-Asian Association for Regional Cooperation and the Organization of Islamic Cooperation (OIC) extend the reach of human rights discussion into additional regions. It is legitimate to ask whether there is value-added in this on-going proliferation or whether the cause of human rights would be better served by genuinely strengthening existing institutions. In fact, the best approach should be to not view these as incompatible goals, but to proceed with extending coverage into areas currently lacking a regional system, while improving the functioning of those bodies that already exist.

Not all of the regional organizations mentioned have established specific organs or bodies with a mandate to promote and protect human rights. Among those that have, there are some commonalities but also differences in the composition, functions and procedures of the commissions, committees and courts they have established. The commonalities stem from the fact that member states of the organization create them and ultimately decide whether or not they are willing to accept scrutiny of their human rights practices, including through allowing victims to bring petitions or complaints against them, or whether they prefer to maintain maximum discretion and flexibility without accountability to or oversight from a strong regional body. Compliance is a concern in every human rights system; without the peer pressure of other states in the organization, human rights bodies have little ability to ensure that their recommendations and decisions are implemented. Member states must have the political will to support an effective human rights mechanism and demonstrate that will in several key areas, as follows:

1. Composition of the human rights bodies. The work of a human rights body is only as good as its members and if decisions must be taken by consensus it will only be as good as its weakest member. Human rights bodies depend on their reputation for integrity, impartiality, independence, and legitimacy to elevate the status of their decisions and create pressure for compliance. If states choose to nominate unqualified or biased candidates who are then elected to serve on the body, the system is undermined. The smaller the body the more important it is to ensure that all members meet the qualifications to serve.
2. Support staff. In most organizations, the secretariat is supplied by the parent organization. Few human rights bodies have the ability to select their lawyers, registrar, and other key personnel. Often in practice the head of the organization will take into account the views of the human rights body, but there is always a risk of political appointments or other interference with the work when the human rights body does not control the hiring, tenure, and other aspects of employment of its staff. The staff must be professional, competent, and dedicated. The problem of having only short-term contracts, a problem linked to budgetary shortfalls, undermines the ability to obtain and retain good staff.

3. Time for meeting. The only full time human rights body in the world is the European Court of Human Rights. All other commissions and courts are organized as part-time bodies whose members then must have regular employment outside of the meetings of the body. This makes it difficult to schedule on site visits and to take quick action outside the normal sessions. Members may be geographically quite distant one from another and have difficulty making contact. The sessions themselves are often too short and too infrequent to complete the necessary work.

4. Budget. The size of the staff and the time for meeting, as well as the ability to make on site visits, hold hearings, and fulfill the functions conferred on a human rights body depend entirely on the budget and financial contributions available to it. This is a matter of urgency and even crisis in some human rights systems. In the Inter-American system, less than half the budget is provided by the OAS and there is a constant search for funding to undertake necessary projects. Resources must also be administered properly and transparently.

5. Adequate publicity is essential, including a functioning and accessible website, regular publication of documents and decisions, a press office that can ensure press coverage, and regular meetings with the member states and civil society organizations.

6. An adequate level of compliance must occur in a significant number of the state parties. If the level of respect for human rights norms on the domestic level is low, and domestic institutions are not effective in implementing human rights norms or domestic law, the case load will become unmanageable without underlying problems being addressed.

7. Issue linkage. As the OSCE has shown, trade, communications, travel, security, and other links between state parties can help to elevate human rights and make possible the conditions to impose sanctions in those cases where gross and systematic violations make them appropriate or necessary.

There are no doubt other aspects of the functioning of human rights bodies that deserves attention and inclusion on this list, but these are probably the ones that arise the most frequently. Genuine strengthening and effectiveness is possible, if the political will is present.

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