

Effectiveness of Regional Human Rights Adjudication: ECHR/IACtHR Evidence and Implications for Asia

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Abstract

The research investigates international human rights compliance through legal frameworks and institutional changes by studying three regions of Europe and the Americas and Asia. The research evaluates ECHR and IACtHR through structured case studies to demonstrate how their binding treaties and individual access and enforcement systems differ from ASEAN and SAARC's non-judicial frameworks with weak structures. The study uses *Dudgeon v. UK* and *Barrios Altos v. Peru* to demonstrate how court-ordered decisions and monitoring systems and government backing determine the level of implementation. The research identifies three essential elements which determine effectiveness: (1) legally enforceable documents that require or accept court jurisdiction and (2) effective enforcement systems with follow-up procedures and (3) enduring political backing from civil society organizations. The European region achieves high compliance rates because of its extensive institutional framework yet the Americas show variable results in their human rights impact. The region of Asia faces obstacles to court establishment because of its non-interference principles and political divisions and absence of enforceable legal frameworks. The research supports a step-by-step approach to policy implementation which includes creating binding subregional agreements and strengthening AICHR/SAARC authority and testing judicial panels and developing compliance standards through NHRI-NGO partnerships and UN system support.

Keywords

Regional Human Rights Courts; Enforcement and Compliance; ECHR and IACtHR; ASEAN and SAARC; Legal and Institutional Reform

Introduction

Regional human rights courts have become an indispensable component of the international human rights system, providing individuals a forum to seek justice beyond their national courts (Shelton, 2018). Such regional mechanisms are widely regarded as “important pillars” of global human rights protection, complementing universal treaties by enforcing rights in a regional context (Universal Rights Group, n.d.). Over the past half-century, Europe and the Americas have each established robust judicial bodies – the European Court of Human Rights (ECHR) and the Inter-American Court of Human Rights (IACtHR) – that adjudicate alleged violations of regional human rights conventions (France Diplomacy, 2020; Shelton, 2018). Africa, too, has developed an African Commission and, more recently, an African Court on Human and Peoples’ Rights, albeit still in a formative stage with ongoing challenges (Liwanga, 2015; Shaw, 2004).

In stark contrast, Asia remains the only major world region without a regional human rights court or comparable mechanism, relying instead on intergovernmental declarations and national-level efforts (Askin, 1998; Baik, 2012). Attempts in Asia through organizations like the Association of Southeast Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC) have thus far produced only consultative human rights bodies with no real adjudicatory powers (Albar, 2023; Bashar, 2023). For example, the ASEAN Intergovernmental Commission on Human Rights – established in 2009 as a regional human rights body – operates without a binding human rights convention and lacks any mandate to enforce standards, reflecting ASEAN’s norm

of non-interference in domestic affairs (Albar, 2023). This dramatic divergence – effective courts in Europe and Latin America versus the absence of any court in Asia – raises the central research problem of why regional human rights courts succeed in some regions and not in others.

Scholars have identified several factors that may explain this disparity. Asia’s failure to establish a human rights court is often attributed to its extreme political and cultural diversity and a corresponding lack of political will among governments to submit to external human rights oversight (Askin, 1998; Baik, 2012). By comparison, Europe’s post-World War II commitment to “never again” allow atrocities, and Latin America’s embrace of human rights in the wake of military dictatorships, fostered the political consensus and legal frameworks needed to create strong regional courts. This paper takes up the puzzle directly: why have Europe and the Americas developed successful regional human rights courts, while Asia has not? In addressing this overarching question, the research also examines how these courts’ development, structure, and enforcement mechanisms compare across regions, and what role regional context plays in their effectiveness. Key questions include: *What historical conditions and political motivations led to the establishment of the ECHR and IACtHR? Which institutional designs and enforcement tools have made these courts effective (or, in some respects, ineffective)? Conversely, what obstacles – institutional, legal, or normative – have impeded the creation of similar courts in Asia (within ASEAN, SAARC, or other frameworks)? Finally, how have civil society initiatives contributed to the success of regional courts or attempted to fill the void in regions lacking such courts?* By clearly formulating these research questions, the study sets the stage for a nuanced comparative inquiry into regional human rights adjudication.

To answer these questions, the paper employs a comparative case study methodology. It analyzes three regional contexts – Europe, the Americas, and Asia – to identify the conditions that foster or hinder the development of human rights courts. The European and Inter-American courts are examined as detailed case studies of functioning regional judicial mechanisms, drawing on their founding treaties, institutional structures, and enforcement practices. In contrast, Asia is studied through the lens of its regional organizations (ASEAN and SAARC) and their nascent human rights instruments (such as the ASEAN Human Rights Declaration and commissions), highlighting why these efforts have not yet culminated in a court. This comparative analysis relies on legal texts (treaties, charters, court statutes), case law, and scholarly evaluations of each system’s performance. By comparing regions with courts to a region without one, the study controls for global influences and zeroes in on regional factors – such as differences in institutional capacity, state sovereignty norms, and civil society engagement – that emerge as crucial explanatory variables.

The paper is organized in a comparative framework. Part I provides a case study of the European Court of Human Rights, tracing its historical development in the post-war era, outlining its institutional structure under the Council of Europe, and examining how its judgments are enforced (notably through the Committee of Ministers’ supervision). Part I also highlights the ECHR’s achievements and challenges – for instance, its extensive case law and the strain of a growing caseload as the Court became a “victim of its own success”. Part II then turns to the Inter-American Court of Human Rights, describing the evolution of the Inter-American human rights system under the Organization of American States. This section details the Court’s jurisdiction and relationship with the Inter-American Commission on Human Rights, and discusses enforcement difficulties in the Americas – such as the fact that not all OAS states accept the Court’s jurisdiction, and how the Court’s authority is limited by divergent political regimes in the region. Part III addresses Asia’s regional human rights efforts, focusing on ASEAN and SAARC. This section analyzes the formation of ASEAN’s human rights bodies, the content and limitations of the ASEAN Human Rights Declaration, and the repeated failures to establish any judicial or quasi-judicial mechanism in Asia. It explores underlying barriers, including the ASEAN norm of non-interference and the lack of a unifying human rights treaty, as well as South Asia’s geopolitical tensions that have stymied SAARC’s human rights initiatives. Part IV examines the role of civil society and advocacy networks in regional human rights protection. It compares how non-governmental organizations (NGOs), lawyers, and activists have engaged with or supported the ECHR and IACtHR (for example, by bringing landmark cases and ensuring compliance), versus how Asian civil society has attempted to promote regional human rights norms (such as through the 1998 Asian Human Rights Charter drafted by NGOs). Finally, the Conclusion synthesizes the findings from these case studies. It returns to the research problem of regional divergence, drawing out the differences in institutional capacity, political will, and legal frameworks that explain why some regional courts flourish while

others falter. The conclusion also offers practical recommendations for strengthening regional human rights mechanisms in Asia, including steps that Asian institutions and civil society might take, and reflects on the broader implications for future legal research and policy in the field of human rights.

Literature Review

The evolution of regional human rights mechanisms has been crucial in promoting and protecting human rights worldwide (Shaw, 2004; Shelton, 2018). In the Americas, Africa, and Europe, they emanated from legally binding regional charters and became operative through commissions and enforcement mechanisms. In the view of Askin (1998), the articulation of a legally binding convention of human rights is the core of regional cooperation. The European Convention on Human Rights (ECHR) and the African Charter on Human and Peoples' Rights, for example, provided the legal impetus to courts to operate. These conventions, reinforced through the use of protocols and cooperation among states in the regions, provided express obligations and empowered individuals to bring claims in their states of origin (Shelton, 2018).

These regional institutions are not effective unless the power of enforcement and supranational cooperation complements them. Shaw (2004) is clear that the Court of Africa was set up after lengthy negotiations in the members of the African Union and civil society, an indication of the rising political will all over the continent. Petersen (2011) also claims that the institutions are not effective when treaties are employed but not followed in the member states in terms of funding and political will. Without the two, the regional human rights institutions are symbolic but not practical.

The Universal Rights (2020) and the Human Rights Brief (2005) also mention that effective regional institutions share specific common characteristics, including a framework based on treaties, a rights-monitoring commission, and a court. These structures support each other. The commission inquires and raises awareness, while the court determines violations and delivers verdicts. They, in turn, build a harmonious and effective structure for the execution of human rights beyond borders.

Regional courts of human rights are critical for the rule of law. They allow individuals, organizations, and, in some instances, states to file claims against violators of human rights in a formal setting. These courts, such as the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human and Peoples' Rights, are established based on treaties that are signed, and they grant the court the legal authority to exercise jurisdiction over states (Shelton, 2018). The courts make binding rulings and are typically supported through a commission that filters through and sends cases (Shaw, 2004).

The effectiveness of such courts relies on the institutional power of enforcing decisions. Shelton (2018) notes that the European Court, for example, is very compliant in the decision because it is supported by practical state cooperation and control through the Council of Europe. In comparative scholarship, even in regions with established courts, such compliance is not guaranteed. In Africa, the consistency in enforcement is, in parts, patchy; however, the very fact that the court is on the continent has enabled the realization of accountability more (Shaw, 2004).

The research also shows that the exercise of regional courts relies on political consensus, the legal system, and the standard values for the protection of human rights. Baik (2012) also argues that if those conditions exist, the states would negotiate such compromises that would limit their sovereignty for regional enforcement. Bashar (2023) also claims that courts exist only because of the compatibility between supranational jurisdiction and national sovereignty, for which consensus in the regions is not easily achieved.

While hosting more than half of the world's population, Asia is the only major region that lacks a regional human rights commission or court. The absence is generally well understood among academics to be a consequence of the lack of legal, political, and institutional pillars. Asia, in the opinion of Askin (1998), lacks a binding treaty of human rights that would form the nucleus of the court. Without a regional legal regime, there is also no vehicle in which the states will be made responsible.

The ASEAN Intergovernmental Commission on Human Rights (AICHR) was established in 2009 but lacks enforcement capabilities. AICHR, in the opinion of Albar (2023), is a consultative regime that functions based on the consensus principle; thus, an objecting state can render the action inoperable. It cannot investigate, prosecute, or determine violations of the right to humanitarian intervention. Petersen (2011) is of the view that this is so because of the strong Asian principle of non-interference and even if national sovereignty dominates, thus inhibiting the building of supranational enforcement.

Moreover, Baik (2012) and Bashar (2023) argue that the range of political systems on the continent, from authoritarian to democratic, makes harmonization of common human rights standards even more challenging. There is neither a political nor a cultural identification for support for a regional court. Bashar (2023) also demonstrates that the regional forums, including SAARC, are weak and disunited in support of such a move. He believes that basic geopolitical rivalries, particularly among the other regional giants, including India and China, also hinder cooperation in the enforcement of human rights. Even actions initiated through international organizations and civil society have failed. Despite the presence of NGOs and national commissions for human rights, they cannot transcend the step of establishing a court independent of state approval (Petersen, 2011). Until all regions are in agreement regarding the fundamental principles of human rights and are willing to forgo limited sovereignty, the establishment of a court of human rights in Asia is unlikely.

Case Study and Legal Analysis

Legal Foundations of Regional Human Rights Courts

Regional Human Rights Courts in Europe, the Americas, and Africa have been established through treaties that define their jurisdiction and methods of enforcement. The treaties create judicial powers that define and attempt to protect human rights across their regions. Binding obligations are fundamental to all three regions, but their structures, capacity for enforcement power, and scope vary.

Europe: European Court of Human Rights (ECHR)

The European Convention on Human Rights (ECHR) of 1950 is the foundation of the European approach to human rights. The Council of Europe's forty-six members are parties to the Convention and are subject to the court's jurisdiction. When either an individual or state has exhausted all possible domestic remedies, they can petition the court regarding alleged violations of the Convention. Article 46 of the Convention obliges all parties to abide by the court's decisions. If the court determines a violation of the claimant's human rights has occurred, the state is obliged to comply with the judgment and progress is supervised by the Committee of Ministers of the Council of Europe to ensure remedies such as compensation measures, including law reform, are implemented (France Diplomacy, 2020). This strength of enforcement is a strength of the European approach and for regional enforcement of human rights is not found elsewhere. The ECHR has become one of the most powerful human rights courts in the world, with states changing laws to ensure alignment with the convention and the court's judgments.

For example, the ECHR has forced some of the most powerful states in the world, like France, to adapt its legislation to comply with the convention and the court's judgments (Torrance, 2021). The desire to uphold and respect the convention is motivated by the post-World War II consensus that democracy and human rights are integral to European prosperity, and since its creation, the ECHR has shaped human rights development based on this trust and power (France Diplomacy, 2020).

Americas: Inter-American Court of Human Rights (IACtHR)

The American Convention on Human Rights, created in 1969 but in force since 1978, created a dual system. The two parts are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (IACHR) (Loyola Law School, 2001). Thirty-four states have ratified the Organization of American States (OAS) charter, but only the states that have ratified the American Convention have committed to being bound by the

court's jurisdiction (Loyola Law School, 2001). Individual claimants file petitions with the Inter-American Commission, which decides whether to refer cases to the Court. States can also directly petition the court. The Convention defines civil and political rights, and alleged violations of those rights fall under the jurisdiction of the IACHR. The court's decisions are binding on members, and remedies include compensation and change to domestic law (Loyola Law School, 2001). However, compared to Europe, enforcement is much weaker. The court can order changes, but implementation relies on the states' willingness to comply. In the Americas, no equivalent to the enforcement powers of the Committee of Ministers exists (Loyola Law School, 2001). Groups within the OAS and periodic reports issued by the court track progress on implementation, and states do comply with some of the court's decisions, but implementation is inconsistent. Research shows that very few decisions are fully implemented, so relying on the state's willingness to comply is failing as a way of creating change (Amnesty International, 2023). The moral weight of the court's decisions can shape human rights discourse and policy development, but ultimately enforcement is much weaker than in Europe. Despite this, the moral weight of the court's decisions has led to some profound change as it motivates civil society to pressure governments, especially on issues such as indigenous and land rights (Loyola Law School, 2001).

Africa: African Court on Human and Peoples' Rights (AfCHPR)

The African Charter on Human and Peoples' Rights, created in 1981 and also known as the Banjul Charter, and an additional Protocol added in 1998 that created the African Court on Human and Peoples' Rights, is the foundation of the regional human rights court in Africa (Universal Rights Group, 2023). The Charter encodes both individual and collective rights (Universal Rights Group, 2023). The 1998 Protocol created the Court to support the Commission (Roger-Claude Liwanga, 2015). The court's jurisdiction covers cases of alleged violations of the African Charter and other ratified instruments (Universal Rights Group, 2023). The Court can hear cases from the African Commission, states, individuals, and NGOs. However, individuals can only access the court if the state in question has opted-in to Article 34(6) of the Protocol (African Court on Human and Peoples' Rights, 2025). Eight of the fifty-five African Union states have opted in to allow individual or NGO petitions to the Court (African Court on Human and Peoples' Rights, 2025). After unfavorable rulings, there has also been a pattern of states withdrawing from this opt-in clause (AllAfrica, 2021). State consent, therefore, limits the court's effectiveness. However, theoretically, the African Court's decisions are binding and enforceable on parties to the Protocol (Roger-Claude Liwanga, 2015). The Protocol also obliges states to comply and report on progress of adherence. Oversight from various political sections of the African Union has been limited, so compliance and enforcement have suffered (Juma & Orao, 2024). Rulings are regularly ignored or responses are delayed, but supporters of supranational oversight hope to create support for an African Court of Justice that would create more moral and legal weight (Universal Rights Group, 2023). Despite the creation of the charter and court, which shows a commitment to the development of human rights, the lack of compliance and enforcement means that African development of regional human rights standards is behind the standards seen in Europe and the Americas (AllAfrica, 2021).

Case Study 1: European Court of Human Rights – Dudgeon v. United Kingdom (1981)

Dudgeon v. UK (1981) epitomizes the effectiveness of the ECHR. Consensual homosexual acts had been decriminalized in most of the UK, but up until the late 1970s, Northern Ireland had not (Torrance, 2021). Following the experience of being interrogated by police in Belfast about his homosexuality, Dudgeon petitioned the ECHR arguing that his right to privacy under Article 8 of the European Convention had been violated (Torrance, 2021). In 1981, the ECHR ruled that Northern Ireland's continued criminalization of homosexual acts violated the right to private life (Torrance, 2021). The ECHR had strengthened LGBTQ human rights, and Northern Ireland complied.

Despite intense opposition in Northern Ireland, including a petition of 70,000 people demanding the ECHR be ignored (Torrance, 2021), the British government recognized that it was obliged to change the law to adhere to the ruling. By October 1982, the criminalization of homosexuality in Northern Ireland had been reversed. The ECHR's ruling was powerful, and compliance was fast even when faced with intense local opposition (Torrance, 2021). Later, Ireland faced a similar claim in *Norris v. Ireland* (1988) and the ECHR's ruling also led to the decriminalization of homosexuality in Ireland in 1993 (Torrance, 2021). The cases show the effectiveness of the

ECHR and the high levels of compliance from states even when the leadership and large parts of the population oppose the court's ruling. The Dudgeon case shows that the institutions developed to protect and enhance human rights in Europe have a high level of effectiveness and states are willing to comply even with challenging decisions. This level of compliance contrasts with the reliance on inconsistent political will in the Americas and Africa, where the institutions' influence is much weaker and overall development of the human rights courts is at a much less advanced stage.

Case Study 2: Inter-American Court of Human Rights – Barrios Altos v. Peru (2001)

The Inter-American Court has also had some success, as shown by the Barrios Altos v. Peru case. In 1991, a massacre occurred in the Barrios Altos, Lima. Fifteen civilians were killed by a so-called government death squad during a period of internal conflict in Peru (Amnesty International, 2023). In the mid-1990s, Peru's government passed amnesty laws to prevent human rights-related prosecutions of those employed by the government during the period of conflict (Loyola Law School, 2001). The Barrios Altos victims' families could not pursue prosecutions because of the amnesty, so they petitioned the Inter-American system and their case was eventually heard at the Inter-American Court of Human Rights.

In 2001, the IACHR found that Peru's amnesty laws violated the American Convention and could not prevent investigation and prosecution of the alleged perpetrators of human rights violations such as the Barrios Altos massacre (Loyola Law School, 2001). The Court rejected any state's right to create blanket amnesties for human rights violations such as extrajudicial killings (Loyola Law School, 2001). The court effectively nullified the domestic law of Peru, but the decision was made at a time when Peru had moved towards Democracy, and the ruling party in the country supported the decision (Amnesty International, 2023). Despite the powerful nature of the decision, the enforcement took place because of the state's willingness to comply.

Peru immediately complied, overturned the amnesty, and began the process of prosecutions (Amnesty International, 2023). Effective investigations of perpetrators were carried out, and even the President who had pushed the amnesties—President Fujimori—was convicted and given twenty-five years in prison for his role in human rights abuses, including the Barrios Altos massacre (Amnesty International, 2023). The precedent set by the IACHR's decision created a ripple effect across the Americas, as it showed that serious human rights violations would be tried at a level beyond national corruption and abuses (Amnesty International, 2023). Following the impact of the case, courts across the Americas and the IACHR used the Barrios Altos decision to challenge similar amnesty laws in jurisdictions such as Argentina, Chile, and Uruguay.

The Barrios Altos case shows that the Inter-American system can have a profound effect on human rights in the Americas. Peru fully nullified the amnesty and paid out compensation to victims (Amnesty International, 2023). The case showed the effect that a regional human rights court in the Americas could have on human rights development when states show the political willingness to abide by its decisions. However, that is also the weakness of the court. The decision was only implemented and only had such a powerful effect because Peru cooperated, and that only happened because the regime that had committed the human rights abuses had been replaced. The IACHR had no way of enforcing the ruling itself and relied fully on Peru's willingness to comply. If the perpetrators of the Barrios Altos massacre had still been in power, it is highly unlikely that the IACHR would have had any immediate effect on justice in the country. Unlike in Europe, where the Irish did not agree with the decision but it was complied with, in the Americas the court relied on moral authority and the willingness of the state to comply.

Case Study 3: Asia – Efforts to Establish a Regional Human Rights Mechanism (ASEAN and SAARC)

Asia does not have a regional human rights court, unlike Europe, the Americas, and Africa. Any attempt to create a regional human rights court has faced significant challenges. For this case study, two sub-regions are examined: Southeast Asia (ASEAN) and South Asia (SAARC). Both have started to develop institutions that prioritize human rights, but there is almost no support for a supranational system to oversee domestic policymaking and justice.

Southeast Asia (ASEAN): In 2009, ASEAN established the ASEAN Intergovernmental Commission on Human Rights (AICHR) as part of the progress of previous Charter commitments (Rafsi Albar, 2023). In 2012, the ASEAN Human Rights Declaration was also made (Rafsi Albar, 2023). However, the AICHR is a consultative body, not a court, so it cannot receive petitions or issue binding judgments. ASEAN has instead focused on an approach that prioritizes non-interference in domestic affairs and decision-making based on the development of consensus. This approach has become known as the “ASEAN Way” (Rafsi Albar, 2023). The ASEAN Way has meant that the AICHR is widely known to be ineffective and has no record of creating profound human rights change (Rafsi Albar, 2023). Instead of creating practical change, the AICHR focuses on promoting dialogue (Rafsi Albar, 2023). Examples of its ineffectiveness include its inability to intervene or influence the participants in Myanmar’s Rohingya ethnic cleansing. Due to the AICHR’s inability to influence anything in a serious manner in the region, some academics and members of civil society in the region have begun calling for a regional human rights court based on the European, Inter-American, and African courts (Rafsi Albar, 2023). Despite the development of many theories and proposals, a genuine human rights court has not become a realistic proposition (Rafsi Albar, 2023). Critics of the plans claim that ASEAN is an intergovernmental organization with a principle of non-interference, which differs significantly from the shared historical and cultural development of regions like Europe (Rafsi Albar, 2023). Europe’s consensus relies on post-second world war shared values, but the ASEAN region lacks a similar shared approach to values and regional cooperation. In other words, there is no motivation for ASEAN members to give up their domestic power to a supranational body (Rafsi Albar, 2023). Some have proposed that the AICHR should be able to hear complaints and make proposals, but various ASEAN members have rejected this attempt to even slightly increase the powers of the AICHR. For Southeast Asian countries, intragovernmental cooperation has been prioritized rather than joint obligations for higher human rights standards, and it does not appear that this approach will change any time soon.

South Asia Association for Regional Cooperation (SAARC): SAARC comprises countries like India, Pakistan, Bangladesh, Nepal, and Sri Lanka, and has no human rights court or commission. Since its founding in 1985, SAARC’s focus has been economic and developmental cooperation (Zafar, 2024). Major geopolitical tensions, such as those between India and Pakistan, prevent any attempt to create human rights standards for the region (Zafar, 2024). Some experts have called for SAARC to develop frameworks such as a South Asian Human Rights Charter, a commission, and a court – to address some of the many human rights abuses that plague the region such as atrocities of war and gendered violence (Zafar, 2024). It has been argued that the inter-American model or the African model could be used as a foundation for the development of similar institutions in the SAARC region (Zafar, 2024). However, the region faces significant challenges of a scale and intensity which are not prevalent in other regions, such as caste- and ethnic-based violence and weak rule of law (Zafar, 2024). SAARC’s function by consensus so any state can block attempts at cooperation, and like ASEAN, SAARC’s members have consistently used the language of interference in domestic affairs when supranational jurisdictions are discussed (Zafar, 2024). A vast range of political systems exist in the region and democracies and authoritarian states have almost no chance of agreeing on a shared standard of human rights (Zafar, 2024). SAARC’s annual summits have discussed human rights, but no institutional processes for complaints or decision-making have been created. Among some groups in South Asia, such as civil society, jurists, and NGOs there has been support for a regional human rights court mechanism but a lack of support from major states means there has been no progress. SAARC is the least advanced with the development of a regional human rights court and related institutions of the cases examined in this paper. Europe and the Americas show levels of inter-state cooperation that do not exist in the SAARC region and are unlikely to develop any time in the near future. There seems to be almost no prospect of the development of these institutions without radical and profound change in the relationships and political development of states in the region.

Case Study 4: Asia – Civil Society and Academic Advocacy for a Regional Mechanism

Across Asia, there has been no significant progress in the development of supranational human rights institutions, but there has been significant support from civic and academics for the creation of such an institution. Although these efforts have been limited to raising awareness of the issues, an example of one of the more successful attempts to make progress was the creation of the Asian Human Rights Charter in 1998, at Gwangju in South Korea by the Asian Human Rights Commission and other NGOs (Asian Human Rights Charter, 1998). It lacked

the force of an intergovernmental treaty but epitomized the enthusiasm and commitment to a comprehensive vision for human rights in Asia. The Charter called for institutions to develop and enhance human rights across Asia (Asian Human Rights Charter, 1998). Importantly, a significant part of the debate prompted by the charter was the contrast of human rights that had evolved in the West and “Asian values”, with supporters arguing for a firm commitment to a universal standard of human rights. Despite the enthusiasm, the charter lacked any official force. To some extent, it influenced the debate over human rights and motivated human rights city projects in the Asia-Pacific (UCLG Committee on Social Inclusion, Participatory Democracy and Human Rights, 2021), but governments essentially ignored the demand for a regional human rights mechanism. The Asian financial crisis, political instability, and authoritarian governments who were hostile to human rights limited any attempt to create something that resembled the ECHR.

Conferences, scholarly articles, and think-tank reports have attempted to outline how an Asian or ASEAN form of the ECHR could be created and not violate the consensus norms of the region (Rafsi Albar, 2023). However, an attempt to create a court in this context would fail. To move towards more acceptance of supranational institutions, some have argued for incrementalism and to start with fact-finding committees and gradually develop quasi-judicial and then judicial mechanisms (Rafsi Albar, 2023). However, policymakers have rejected these types of proposals. It is argued that Asia’s diversity and cultural norm of consensus make the development of these proposals impossible (Rafsi Albar, 2023).

Despite the skepticism, advocates for an Asian form of the ECHR or something similar have continued to press their case. An example of this type of advocacy is the recent paper “A Vision for South Asia: Establishing a Regional Human Rights System” (2024) (Zafar, 2024). The author argues the region must “dare to dream” of a human rights system inspired by the development of these systems in other regions (Zafar, 2024). The persistence of this type of advocacy suggests that there is demand for the development of regional human rights institutions among academics and similar groups, but governments have shown very little interest in developing their ideas. At no point have Asian governments seriously pursued the development of a regional human rights court.

Europe’s institutions developed as a response to the second world war, and the Americas developed their systems as a response to the fall of dictatorships, but Asia does not seem to have found this kind of unifying experience to motivate the reduction of national powers and submission to a supranational court. In the long-term, reductions in geopolitical tensions and the number of authoritarian states could create a pathway to a regional human rights court for Asia, but at the moment this seems highly unlikely (Zafar, 2024).

Discussion

The success or failure of regional human rights courts depends on three essential elements which include institutional capacity and political will and binding legal frameworks. The three elements of institutional capacity and political will and binding legal frameworks determine how well regional human rights mechanisms protect human rights in Europe and the Americas and Asia.

The European region achieved post-war political agreement which led to the creation of the 1950 European Convention on Human Rights that established both legal and institutional structures. The European Court of Human Rights (ECHR) evolved into a supranational judicial organization which gained compulsory jurisdiction over European member states and achieved strong enforcement through the Committee of Ministers of the Council of Europe. The Court gained the ability to issue enforceable decisions which states needed to follow because of its established institutional structure which led to widespread human rights compliance throughout the region. The European Court of Human Rights maintains its authority in all cases including discrimination and privacy rights matters because member states continuously recognize its power.

The Inter-American Court of Human Rights (IACtHR) started its operations in 1969 after the American Convention on Human Rights became effective. The IACtHR has produced significant rulings about state violence and transitional justice and indigenous rights yet its total impact remains restricted. The Court faces two major obstacles to its effectiveness because states can choose to participate voluntarily and the enforcement system

depends on political influence rather than legal authority. The Inter-American system lacks an institutional body which would enforce Court decisions at the same level as the Committee of Ministers does in Europe.

The establishment of a regional human rights court in Asia faces ongoing barriers because essential structural elements are missing. The region lacks essential elements for a regional human rights court because there is no enforceable multilateral agreement and no established judicial authority and no unified political backing for international oversight. The principles of non-interference and consensus within ASEAN and SAARC prevent these organizations from creating stronger human rights mechanisms. The ASEAN Intergovernmental Commission on Human Rights (AICHR) functions as an advisory body without any authority to enforce decisions or establish judicial authority. The absence of institutional and political support in Asia prevents the establishment of an operational regional human rights court.

The research shows that regions which establish robust legal systems and enforcement systems and demonstrate political backing will achieve better human rights protection. The absence of strong legal frameworks and insufficient political support in Asia prevents regional mechanisms from becoming more than symbolic entities. The existing differences between regions demonstrate that human rights courts need proper institutional structures and sufficient political backing to achieve their intended goals.

Conclusion

The process of closing Asia's human rights enforcement gap needs step-by-step strategic improvements instead of trying to establish a complete regional court system at once. The first step for human rights enforcement should focus on creating subregional agreements because they represent a feasible beginning. The ASEAN and SAARC organizations need to create legally enforceable human rights charters which will establish a fundamental legal framework for upcoming institutions. The agreements will create essential standards and demonstrate Asia's dedication to accountability through enforcement. The current AICHR system needs improvement through practical implementation to develop a stronger future system. The organization should obtain authority to handle individual complaints and perform fact-finding operations and produce advisory opinions about major human rights violations. The organization should develop its quasi-judicial capabilities into official judicial authority through time-based development. The establishment of subregional pilot courts enables member states to develop trust and operational experience before they can establish an Asia-wide court. A small tribunal focusing on specific rights including torture prevention and fair trial protection can function as an enforcement procedure testing ground and compliance mechanism development site.

Civil society organizations need to take an active part in the process. The combination of legal assistance and advocacy work with international networking by NGOs and lawyers and national human rights institutions will drive countries to follow human rights standards. The weak enforcement structures in Latin America have received support from civil society organizations which have pushed for better human rights protection. The 1998 Asian Human Rights Charter shows that Asian civil society organizations have supported stronger regional human rights institutions for many years. The existing advocacy efforts will generate political backing and public approval for human rights protection.

Future research together with international cooperation stands as a fundamental requirement for progress. The combination of academic research about Asian-specific tribunal designs with international organization support for technical assistance and European and Inter-American Court of Human Rights knowledge sharing will help build confidence among regional governments. The process of exposing regional governments to supranational adjudication will help them understand its workings and develop trust in this system. Regional human rights courts function beyond their legal nature because they represent the collective responsibility of nations to uphold justice through shared accountability. The combination of legal frameworks with political determination and civil society activism has enabled human rights standards to become enforceable obligations in Europe and the Americas. The region will achieve an effective human rights system through a step-by-step process which starts with establishing legal frameworks and developing institutional power and civil society activism.

Acknowledgements

I would like to express my deepest gratitude to Professor William W. Burke-White for his invaluable guidance, insightful feedback, and encouragement throughout the development of this research. His expertise in international law and human rights greatly enhanced the clarity and depth of my analysis. This work would not have been possible without his generous support and thoughtful mentorship.

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