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Preliminary remark: This course is taught by several lecturers. These are the course materials for my lecture on 11.02.2026. See also my [more detailed course materials and web links](#) from a similar course in 2023.

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These course materials are available for download at www.thomas-schmitz-yogyakarta.id. For any questions, suggestions and criticism please contact me via WhatsApp, e-mail (tschmit1@thomas-schmitz-eu.de) or in my office (Building A, room A.VI.11).

INTRODUCTION TO GEO-REGIONAL HUMAN RIGHTS LAW AND MECHANISMS

Contribution to the course Human Rights Norms and Mechanisms II

I. The multi-level protection of human rights

1) On terminology: human and fundamental rights

- see special material
- under common international terminology (which differs from Indonesian terminology)
 - "human rights" are the pre-legal ("natural") rights of the human being (according to philosophical doctrine)
 - "human rights" are also the rights guaranteed in intern. human rights treaties (who pretend just to reflect them)
 - "fundamental rights" are the legal positions created by the implementation of this doctrine in law
 - "constitutional rights" are fundamental rights enshrined in the Constitution

2) Human and fundamental rights regimes and other mechanisms

- *human rights regimes* (in intern. treaties) and *fundamental rights regimes* (in constitutions and laws) are *comprehensive integrated systems* that include the substantial guarantees plus the rules on the institutions and procedures to monitor and enforce them
 - the latter are also called *h.r. mechanisms*
- they are complemented by *political mechanisms* (that mainly serve to raise h.r. awareness)

3) The parallelism of human and fundamental rights regimes

- effective human rights protection is primarily the responsibility of the sovereign state
- but since the state often fails, there is a plurality of human and fundamental rights regimes at global, geo-regional, national and in some federal states also sub-national level
- international human rights treaties serve as a *second safety net*
 - global h.r. treaties define *global absolute minimum standards* that are imperative for any human society
 - geo-regional h.r. treaties define higher or particular *geo-regional minimum standards* that are considered imperative within the specific (European, American, African, Arab...) civilisation
 - the *national standards* can and *must be higher*
- the various regimes complement each other
 - intensified protection through cumulative requirements
 - parallel operation without correlation or interference
 - mutual influence of interpretation
 - conflicts only in rare cases, when concepts oblige authorities to intervene (e.g. prohibition clauses, rights with direct horizontal effect, duties of protection)

4) Geo-regional human rights regimes as expressions of identity of civilisations

- unlike the global standards, geo-regional human rights standards take into account geo-regional economic, social, cultural and ideological specifics
 - some rights may be unique to individual civilisations (e.g. peoples' rights in Africa)
 - different limitation clauses give the same rights a different emphasis in different civilisations

II. European human rights law

1) The role of the Council of Europe to promote human rights

- a pan-European organisation for promotion of democracy, human rights and rule of law
 - has prepared the European h.r. treaties
 - with *Commissioner for Human Rights*
 - with leading expert group *Venice Commission* (European Commission for Democracy through Law)

2) The European Convention on Human Rights (ECHR) of 1950

a) The guaranteed rights

- essential civil and political rights and complementing prohibitions for an effective basic human rights protection
- strong point: central elements of the rule of law anchored as human rights (art. 5 - 7, 13)
 - the abundant jurisprudence on these rights has shaped and consolidated the rule of law in Europe
- continuous expansion of the catalogue of rights through subsequently added protocols
- missing of certain rights in the text largely compensated by jurisprudence
 - e.g. freedoms of press, arts and science derived from art. 10 as parts of freedom of expression
 - numerous rights derived from art. 8 as parts of the right to respect for private life
 - however, some classical rights still missing (no freedom of occupation, no general right to equality)

b) The specific limitation clauses

- specific limitation clauses for the individual rights provide for a more sophisticated, *differentiated h.r. protection*
- many freedoms may only be subjected to restrictions that are
 - prescribed by law (not necessarily statutory law) and
 - necessary in a democratic society (with pluralism, tolerance, openness etc.)
 - in the interests of national security or public safety, for prevention of disorder or crime, protection of health or morals or protection of the rights of others
 - problem: human rights restrictions for the *protections of morals*? Incompatible with the modern understanding of human rights and the role of the law

c) The European Convention as a "living instrument"

- development to a powerful and modern human rights regime far beyond its wording in the jurisprudence of the European Court of Human Rights
 - generous interpretation of the rights' spheres of protection, restrictive interpretation of limitation clauses
 - a consistent, sophisticated and therefore influential h.r. doctrine
 - constant modernisation of the doctrine with regard to new trends and developments

d) Important elements of human rights doctrine under the European Convention

- *dogmatic structuring* of the human rights
 - distinction between sphere/scope of protection, encroachment/interference and justification by the right's limits
- the *principle of proportionality* as "limit of limits"
 - every measure encroaching on h.r. must pursue a legitimate aim and be suitable, necessary and adequate (proportional in the strict sense) for pursuing this aim
- *positive obligations*
 - state must protect citizen against unlawful private interference

3) The European Court of Human Rights (ECtHR)

a) A court as treaty-body of the European Convention

- an international court with seat in Strasbourg, whose *decisions are legally binding* and to which individuals can apply directly
 - 47 judges (one per state), elected for a term of 9 years
 - sits in various formations (art. 26 ff.), especially as Chamber (7 judges) or Grand Chamber (17 judges)
 - has delivered *more than 17.000 judgements*
 - can find that the Convention has been violated but *cannot annul* the attacked decision
- jurisdiction: on *interstate complaints* (art. 33), *individual complaints* (art. 34) and to give *opinions* (art. 47) *and advisory opinions on request of high courts & tribunals* (Prot. 16)
- the judgements' execution is monitored by the Council of Europe's Committee of Ministers (art. 46 ECHR)
 - if state fails to abide, Committee can, after ECtHR confirmation, consider appropriate political measures

- b) **The legal remedy of individual complaint to the Court** (art. 34 ff. ECHR)
- every citizen who deems his rights violated can file an individual complaint *after all domestic remedies have been exhausted* (art. 35(1))
 - Court can afford just satisfaction (compensation) to the injured citizen (art. 41)

4) **Other human rights treaties**

- altogether 34 treaties and protocols on human rights; most important:
- European Social Charter (original version of 1961 & revised version of 1996)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) of 1997
- Framework Convention for the Protection of National Minorities (FCNM) of 1995
- Convention on Human Rights and Biomedicine (CHRB) of 1997
- Council of Europe Convention on Action against Trafficking in Human Beings of 2005
- Council of Europe Convention on preventing and combating violence against women and domestic violence of 2011

III. American human rights law

1) **The role of the Organisation of American States (OAS) to promote human rights** (cf. art. 45 lit. a, 91 lit. f and 106 OAS Charter)

- performed mainly by the Inter-American Commission of Human Rights (IACHR)
- fundamental rights as *a common American fundamental value* (art. 3 lit. 1 OAS Charter)

2) **The American Convention on Human Rights (ACHR) of 1969**

a) **The guaranteed rights**

- essential civil and political rights, central elements of the rule of law (art. 8, 9, 25)
 - prohibition of death penalty (Optional Protocol of 1990)
- economic, social and cultural rights (Optional Protocol of 1988)
 - here only obligation to adopt measures (art. 1)
- obligation to criminalise propaganda for war and advocacy of national, racial, or religious hatred inciting to violence (art. 13(5))
- IACtHR has declared national legislation that violates the Convention inapplicable

b) **The control mechanisms**

- state reporting procedure (for Optional Protocol), state reports of the Commission, IACtHR opinions, interstate complaints
- *individual complaints* (art. 44)
 - by individuals, groups of persons or NGOs
 - first petition before the Commission, examination and decision and, where appropriate, recommendations of the Commission (art. 51)
 - then, where appropriate, submission of the case to the Court by the Commission or a state (not by the citizen!) (art. 61), then decision by the court (art. 63)

3) **The Inter-American Commission of Human Rights**

- OAS institution and ACHR treaty body with seat in Washington D.C.
 - legal basis: art. 53 lit. e, 106 OAS Charter, Chapter VII (art. 34 ff.) ACHR, IACtHR Statute
 - 7 members with a 4 years term
- monitors h.r. situation in the member states, deals with individual complaints and works on priority thematic areas (*thematic rapporteurships* for 13 different fields of h.r.)

4) The Inter-American Court of Human Rights (IACtHR)

- international court (and ACHR treaty body) with seat in San José, whose decisions are legally binding
 - legal basis: Chapter VIII (art. 52 ff.) ACHR, IACtHR Statute; jurisdiction only if state has recognized it (art. 62)
 - 7 part-time judges from any OAS member states, elected for a term of 6 years
 - has delivered 447 decisions and judgements (until 02.2022)
- cases can only be submitted by states and Commission (art. 61(1))
- Court can order remedial action or compensation (art. 63(1))
- no mechanism for enforcing judgements
 - but Court requires compliance reports of the states

5) Other American human rights treaties

- Inter-American Convention to Prevent and Punish Torture (IACPTT) of 1985
- Inter-American Convention on Forced Disappearance of Persons (IACFDP) of 1994
 - allows individual complaints before Inter-American Commission and Court
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women of 1994
 - right to be valued and educated free of stereotyped patterns of behavior and social or cultural practices based on concepts of inferiority or subordination (art. 6 lit. b)
 - allows individual complaints before Inter-American Commission (art. 12)
- Inter-American Convention on the Elimination of all Forms of Discriminations against Persons with Disabilities of 1999
- Inter-American Conventions against all Forms of Discrimination and Intolerance and against Racism, Racial Discrimination and Related Forms of Intolerance of 2013
- Inter-American Convention on Protecting the Human Rights of Older Persons of 2015

IV. African human rights law

1) The African Union and human rights

- h.r. protection and promotion one of the AU's objectives (art. 3 lit. h AU Constitutive Act)

2) The African Charter on Human and Peoples' Rights (Banjul Charta) of 1981

- strongly influenced by the *African concept of human rights*:
 - includes collective rights of the peoples
 - includes duties of the individual and stresses the importance of the community
 - requires elimination of all forms of foreign economic exploitation
- a) **The guaranteed rights**
 - civil and political rights; central elements of the rule of law (art. 7)
 - economic, social and cultural rights (art. 13 et seq.)
 - **right to asylum** (art. 12(3))
 - rights of women under Protocol on the Rights of Women in Africa (2003)
 - **collective rights of the peoples**
 - equality of all peoples (art. 19)
 - rights to existence, self-determination, development, peace and security, free disposal of natural resources etc. (art. 20 et seq.)
- b) **The control mechanisms**
 - state reporting procedure (art. 62), interstate complaints (art. 47 et seq.), ACtHPR opinions (art. 4 ACtHPR Protocol)
 - two ways of *individual complaints* (art. 56 et seq.)
 - first petition before Commission, consideration and recommendations by Commission (cf. art. 45(1) lit. a, 56), then submission of the case to the Court by the Commission, a state or an African intergovernmental organisation (art. 5 ACtHPR Prot.)

- or direct submission to the Court by NGO with observer status at the Commission or the citizen (optional, accepted presently by 12 states) (cf. art. 5(3), 34(6) ACtHPR Prot.), then decision by the court (art. 28 ACtHPR Protocol)

1) The African Commission on Human and Peoples' Rights

- ACHPR treaty body with seat in Banjul (Gambia)
 - legal basis: art. 30 ff. ACHPR
 - 11 members with a 6 years term
 - with special sub-institutions (special rapporteurs, committees, working groups) for different fields of h.r.
- promotes human and peoples' rights and ensures their protection in Africa (art. 30, 45); interprets ACHPR provisions on request (art. 45(3)); considers communications on h.r. violations

2) The African Court of Human and Peoples' Rights (ACtHPR)

- international court (and Banjul Charta treaty body) with seat in Arusha, whose decisions are legally binding
 - legal basis: Protocol on the Establishment of the African Court on Human and Peoples' Rights (ACtHPR Prot.); jurisdiction only for states which have ratified this Protocol
 - 11 judges from any AU member states elected for a 6 years term
 - has delivered *155 judgements and 133 orders* (until 02.2022)
- cases can be submitted by states, Commission, African intergovernmental organisations, and also by NGOs and citizens (optional, in 2026 accepted by 12 states)
- Court *can order remedial action* or compensation (art. 27(1) ACtHPR Prot.)
- no mechanism for enforcing judgements
 - but execution monitored by AU Council of Ministers (art. 29(2) ACtHPR Prot.)

3) Other African human rights treaties

- OAU-Convention Governing the Specific Aspects of Refugee Rights in Africa of 1969
- African Charter on the Rights and Welfare of the Child (ACRW) of 1990
- African Union Convention on Ending Violence Against Women and Girls of 2025
- African Charter on Democracy, Elections and Governance (2007)
 - provides for African Union sanctions in case of case of unconstitutional changes of government (art. 23 et seq.)

V. **In contrast: the missing Asian human rights law**

- the "Asian values" doctrine and the long way to the acceptance of the idea of human rights in East and Southeast Asia
- the non-binding ASEAN Human Rights Declaration of 2012
 - includes some innovative approaches (e.g. the right to safe drinking water and sanitation, art. 28 lit. e)
 - but fails to include some important rights (e.g. no freedom of association)
 - criticised for clauses that dilute the commitment to human rights
 - e.g. for pretending that "the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds" (art. 7)
 - a dangerous relativisation of human rights
- a first step towards binding human rights law: the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) of 2015

VI. **Conclusion: the merits and weaknesses of the existing geo-regional human rights regimes**