

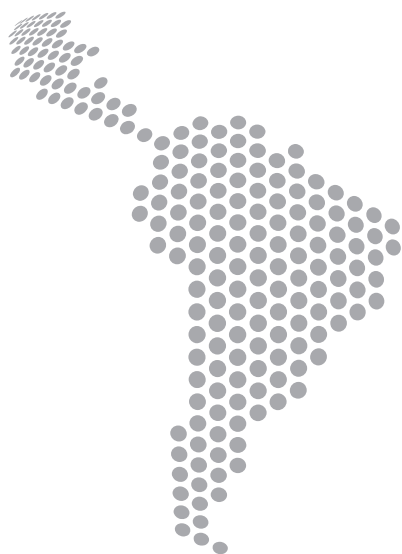


The advancement of human rights is a persistent challenge in the global South. Participants in an online learning programme from Asia, Africa and Latin America reflected on the usefulness of establishing and enforcing legal frameworks to protect and defend human rights.

LEGAL FRAMEWORKS TO PROTECT AND DEFEND HUMAN RIGHTS

SUMMARY

The ELLA Learning Alliance (LEA) on Human Rights was a four-month online learning exchange involving participants from Latin America, Sub-Saharan Africa and South Asia, predominantly policymakers, practitioners and researchers working on human rights issues in their respective countries and regions. Each week the ELLA Moderators made thematic posts in the online learning space, highlighting examples of Latin American policy and practice aimed at protecting human rights. Best practice and methodologies from Latin America were shared with participants in the form of briefs and videos made by regional experts. Based on a set of guiding questions, participants were invited to share experiences of how different actors in their countries are working to protect and defend human rights.





KEY ISSUES:

The key lessons drawn from the learning exchange between participants from Africa, Asia and Latin America are the following:

- A comprehensive approach to protecting human rights consists of the following three factors: formal recognition of the existence of human rights; harmonisation of the human rights perspective from international treaties within domestic law; and establishment of an effective human rights legal framework implemented with sufficient financial, human and infrastructure resources
- Strategic litigation is an important tool for defending human rights since the rulings of individual cases can set precedents and lead to structural changes in legal systems. Emblematic cases usually represent common violations of human rights and can serve to mobilise civil society around a particular cause, thereby building public demand for the safeguarding of human rights.
- Countries interested in designing and implementing effective legal frameworks for human rights can learn from similar experiences in other regions of the global South

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FIRST DISCUSSION THEME: NATIONAL HUMAN RIGHTS FRAMEWORKS

Latin American countries have followed different paths to building legal frameworks for the protection and defence of human rights. Harmonising domestic frameworks with international and regional treaties and covenants is just one of the strategies that has been employed. In this first discussion, participants were asked to read and discuss a Brief on Latin American experiences prepared for this topic: [Building Frameworks to Protect and Defend Human Rights](#).

Discussion 1 was guided by the following questions:

1. How can legal frameworks help to protect and defend human rights?
2. Which model of legal framework could be useful in your country?
3. What do you perceive are the critical elements described in the Latin American approaches that should be strengthened in your country or region to promote greater respect for human rights?

SUMMARY

This discussion focused on the establishment of legal and institutional frameworks as fundamental strategies for enforcing human rights at the national level. Participants shared their countries' experiences with different legal and institutional frameworks and reflected on the need to enact domestic human rights laws based on standards set out in international and regional treaties. The discussion revealed that strong legal frameworks are essential for compelling national governments to safeguard and enforce human rights. According to participants, legal frameworks are mechanisms that allow citizens to move from being defenseless to the point where their freedom, dignity and peace are guaranteed. However, participants also recognised that in some countries where legal frameworks have been established to protect specific human rights, discriminatory laws still prevail. In particular, laws concerning groups in vulnerable situations, such as indigenous people and sexual, religious and ethnical minorities. Likewise, the lack of official acknowledgement of specific rights within national legal frameworks represents an important setback. Participants came up with interesting proposals for dealing with these issues, such as establishing human rights protocols and standards to protect marginalised groups.

Another key conclusion reached by LEA members was that the inclusion of human rights in national legal frameworks, by itself, does not necessarily translate into effective protection. South Africa, for example, has a progressive constitution but human rights violations are frequent; either because the state does not respect the law or because the law is not supported with the appropriate institution building, budget allocation, training and political will. Participants from Bangladesh, Costa Rica, Ecuador, Nepal, Nigeria and Uganda, stated that government policies in their countries do not reflect a human rights perspective because their national legal frameworks do not prioritise international human rights standards. Thus, participants indicated that enforcing legal frameworks among public institutions and civil servants is key to protecting citizens from human rights violations.



Finally, mechanisms for enforcing human rights laws were discussed by participants. Participants from Colombia and Ecuador shared their experiences of the legal action named “tutela”- a mechanism that can be activated when the government fails to protect human rights, which guarantees a resolution within 10 days and which provides provisional protection measures in case of imminent danger or in the absence of other such mechanisms. In Colombia and Ecuador, the tutela has helped to build public confidence in the legal system. Other mechanisms for enforcing human rights law mentioned by participants include institutions such as National Human Rights Commissions (NHRC) and Ombudsmen Offices. Participants from Asia stated that the lack of such institutions in their countries represents a considerable challenge since these mechanisms can provide effective means for civil society to monitor governments. Mass media coverage and campaigns were also mentioned as important tools for increasing the visibility of human rights violations, as they can work to add pressure on governments and raise issues on the public agenda. Mechanisms for enforcing human rights law become more efficient when they are communicated and coordinated within civil society in an effective way.

LESSONS LEARNED

- Establishing a national legal framework on human rights is an important first step since it creates the foundation for defending human rights within the justice system. Furthermore, a national framework provides the basis for human rights defenders to push for domestic reforms.
- Formal commitment from states to harmonise their national frameworks with international and regional treaties and conventions represents significant progress towards the protection and promotion of human rights. However, formal recognition must be accompanied by effective implementation, which includes the transformation of public institutions and policies in line with international human rights standards. As such, establishing independent mechanisms to enforce human rights law is key to instigating structural changes and safeguarding human rights over the long-term.
- Given that national legal frameworks are merely tools, participation of human rights advocates is key to strengthening the protection of human rights.



SECOND DISCUSSION THEME: THE ROLE OF REGIONAL LEGAL FRAMEWORKS AND INSTITUTIONS

The material for this second discussion explained the Inter-American Human Rights System (IAHR) and the role it has played in protecting women's rights in Latin American countries. Participants were asked to read and discuss the Brief: [The Role of Inter-American HRs System in Protecting Women's Rights](#), which describes the mandate and structure of the IAHR and presents two emblematic cases concerning women's rights in contexts of structural discrimination.

After reading the text, participants were encouraged to think over the following issues:

1. The Inter-American System of Human Rights has played a key role in defining state obligations by making rulings on emblematic cases based on international standards. Are there similar human rights institutions in your region playing this kind of role? If not, what is the potential for such institutions in your region/country?
2. After reading about the case of Paulina and González et al. (also known as "Cotton Field") in the ELLA Brief, participants were asked to share any emblematic cases that have been presided by a regional or international court in their country/region and to describe the impacts of the rulings.

SUMMARY

In the second discussion, participants reflected on the importance of regional human rights institutions and the role they play in recognising and addressing violations. These institutions preside cases that generally exemplify a common kind of human rights violation, and, as such, the rulings they make are considered emblematic since they help to highlight structural problems and set relevant precedents. It takes just one case to stir the conscience of a nation, and sometimes this is the first step to addressing human rights collectively.

Participants then went on to debate how regional institutions can set precedents and standards for protecting and defending human rights, impose limits to government power and provide a remedy to those who cannot obtain justice in their own countries.

Several participants from Africa indicated that there is a similar system there, made up of the African Court and the African Commission on Human and People's Rights, responsible for ensuring that the African Charter on Human and People's Rights¹ is well implemented in all of the member countries. The African Charter was enacted in 1979 as a result of a resolution made by the Assembly of Heads of State and Government calling for the creation of a committee of experts to draft a human rights instrument for the African continent. Participants indicated that the West Africa Court, a sub-regional court, can actually operate within a country when deliberating a case and in that way is better able to incorporate an understanding of the particularities of the context in its rulings.

¹ Also known as the Banjul Charter, the African Charter on Human and People's Rights is an international human rights instrument



In contrast, participants from Asia expressed concern for the absence of this kind of supra-national institution in their own region. They explained that the ASEAN Intergovernmental Commission on Human Rights² (India is not a member) has been strongly criticised as a toothless institution since it has no regional court to preside cases or issue sentences for human rights violations. Participants from Asia indicated that that Civil Society Organisations (CSOs) have played the most significant role promoting human rights in the region by carrying out local actions, demanding justice, protesting and publicly condemning gross violations of human rights.

Although both the Inter-American and African systems include specialist courts that issue sentences, states do not always fully respect these rulings. While most of the time states are willing to pay compensation, they appear to be less committed to meeting the other four dimensions of redress, namely restitution, rehabilitation, satisfaction and guarantee of non-repetition. Participants felt that states that fail to provide comprehensive redress are not committed to the values of truth and justice, and that this represents a significant barrier to the effectiveness of regional institutions, which ultimately depends on political will.

Participants agreed that states should include a human rights perspective in public policies and government agendas. Given that the implementation of international and regional court sentences is a slow and challenging process, participants indicated the importance of setting national standards, norms and good practices as a way of strengthening respect for human rights domestically.

As for Asia, participants noted the urgent need for a regional human rights system. Yet because of the significant cultural and political differences between countries in the region, they suggested that small regional or sub-regional institutions could be established.

LESSONS LEARNED

- Regional human rights institutions play a key role defining the obligations of the state to safeguard human rights and can help to impose limits to government power. These regional institutions provide an alternative option for those who have not obtained justice in their own countries.
- By presiding individual cases that represent common occurrences of human rights violations, regional institutions can help to highlight structural problems and propose comprehensive measures for redress. In doing so, regional institutions set important precedents on how human rights should be protected and defended, which, in turn, can support the development of standards, norms and protocols at the national level.
- The enforcement power of regional human rights institutions needs to be strengthened since the extent to which any government fulfils a ruling depends largely on political will. In Asia, there is a compelling need for regional or sub-regional frameworks and institutions that are able to respect the cultural and political differences between countries.

² The Commission has 14 mandates centred on the promotion and protection of human rights, providing capacity building and technical assistance, gathering information and engaging with national, regional and international bodies.



THIRD DISCUSSION THEME: LATIN AMERICAN HUMAN RIGHTS CHALLENGES

For the third discussion, the LEA Moderators and guest expert Javier Hernandez Valencia from the United Nations High Commissioner on Human Rights provided an overview of progress on human rights in Latin America. Participants were asked to watch the [ELLA Video: Latin American Overview on Human Rights](#) and reflect on the key issues. They were then invited to participate in a discussion based around the following two questions:

1. Which human rights challenges shown in the video are similar to the challenges faced in your country/region?
2. What are the key lessons and how may they be applied to your country/region?

SUMMARY

The discussion focused on the common challenges of human rights abuses in Latin America, Africa and Asia. Many participants mentioned human rights violations perpetrated by the state, as well as military regimes, apartheid, monarchies, dictatorial regimes, torture and abuse inflicted by security agencies, extrajudicial killings, detentions and prison without trial, human trafficking and migration, corruption, discrimination and racism. Participants also highlighted the high rate of violence against women (such as female genital mutilation and increasing rates of rape and female homicide, among others), against ethnic and religious minorities and against individuals and groups with different sexual preferences. This last group in particular was felt by participants to highlight an important conflict between traditional values and human rights. Another set of human rights violations mentioned by participants is linked to the implementation of infrastructure projects, extraction of natural resources and energy generation. These projects are leading to serious violations of human rights including the disappearance and torture of community members and activists. Finally, many participants expressed concern about economic inequality, which they considered a form of human rights abuse perpetrated by the state.

Regarding the challenges faced by human rights institutions, participants from many countries including Togo, South Africa, Ghana, Uganda, Nepal, Mexico, Argentina, Brazil and Costa Rica explained that there is weak state capacity for enforcing human rights, often combined with a lack of respect for human rights within the local culture. CSOs have led efforts to defend human rights, but they still face significant challenges, one of the main ones being economic dependence on government, which often results in a lack of political autonomy and financial sustainability.

In terms of strategies for strengthening human rights, some participants stressed the importance of working at the grassroots level, while others emphasised the need to work with a range of stakeholders (government, legal system, justice system, academics, civil society etc.) in order to make lasting structural and behavioural changes. Regardless of the approach, strategies should be informed by a comprehensive view of human rights that accounts for the intrinsic characteristics of indivisibility, interdependence and universality.



LESSONS LEARNED

- In contexts where there is an absence of government action and no culture of respect for human rights, a non-confrontational approach by CSOs was suggested by some participants as the best and most effective strategy for promoting human rights.
- Given that the work of CSOs has been fundamental for defending human rights in all regions of the world, these organisations should diversify their income sources in order to maintain political independence and ensure financial sustainability. Working collaboratively in coalitions, networks and partnerships can help strengthen the lobbying power of these groups.
- The biggest challenge for CSOs is to learn how to work together while respecting the different objectives and skills of each organisation.



FOURTH DISCUSSION THEME: THE RIGHT TO REDRESS

The objective of the final week's discussion was for participants to learn about how different victims' groups in Oaxaca, Mexico, have organised themselves to demand the right to redress in cases of human rights violations. Participants were encouraged to evaluate the obstacles faced during this process, as well as the strategies used to overcome them.

Participants were invited to watch a video about three victims of human rights violations that took place in 2006 during the repression of a social movement in Oaxaca in the southern region of Mexico - [ELLA Video: The Right to Redress in Oaxaca](#) - and to review a document describing the context of this social movement: [Human Rights and the Right to Redress in Oaxaca](#).

After reviewing the materials, participants discussed the following questions:

1. How have victims of human rights violations organised themselves to demand redress in your country/ region?
2. What have been the major obstacles that they have faced and have they managed to overcome them?

SUMMARY

The challenges to obtaining redress are very similar across countries and regions despite different contexts. One major challenge is that often the state that should provide redress to victims is, at least partially, responsible for committing the human rights violations. Furthermore, the perpetrators of these crimes often remain in office. In this scenario, it is uncommon for the state to meet its obligations towards victims, and often the judicial process is marred by political negotiations and influences. In some cases, constitutional provisions provide amnesty for perpetrators, which leaves the victims exposed and human rights defenders unarmed.

Many countries including Nepal, Togo, South Africa and Ghana are undergoing processes of transitional justice, and many have found Truth and Reconciliation Commissions to be an effective mechanism for assigning responsibility for past crimes and defining suitable redress. However, participants expressed different degrees of confidence in these Commissions, since some have failed to recognise the connection between violations of political rights and the historical denial of human rights. Furthermore, states have generally failed to provide adequate redress to individual and collective claims from diverse cultural groups. When states do offer redress, it is often incompatible with victims' realities and needs. In order to acquire real legitimacy, states should address past and present human rights violations by engaging in dialogue with the victims in an attempt to understand what would really help them to repair their lives. To do so, states should invite victims to participate in public debates and consultations, as well as processes of transitional justice procedures.

Another set of challenges is related to the role that victims play in demanding their rights, the strength that they manage to generate and maintain, and the relationship that they are able to build with CSOs, the media, human rights commissions, political parties, local authorities and other political actors.



LESSONS LEARNED

- Impunity is the biggest challenge facing the right to redress; a lack of justice impedes access to the truth and the trauma continues, especially when states prioritise the political stability of the country (many perpetrators belong to powerful economic and political groups) over the rights of victims. Therefore, providing adequate redress is a crucial element to rebuilding public confidence in government institutions and in the justice system in general.
- Redress measures should respond to the particular harm caused to the victim(s) while at the same time reflecting any broader cultural impacts. These measures should be differentiated from and in addition to social programmes, which are already a state obligation.
- The active participation of victims in public debates, consultations and processes of transitional justice can transform them into pro-active human rights defenders, thereby putting greater pressure on governments to meet their obligations to provide adequate redress.

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FIND OUT MORE FROM [ELLA](#)

To learn more about Human Rights in Latin America, visit the [ELLA website](#), which has a full list of the knowledge materials available on this topic. To learn more about other development issues, browse other [ELLA Themes](#).

María was supported by the following experts during this Learning Alliance. All can be contacted through the ELLA coordinator, Janet Oropeza, Researcher at Fundar, janet@fundar.org.mx

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