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Article

More transparency on regional human rights courts? What we (still) need to know to understand and access regional human rights justice

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ABSTRACT

Regional human rights courts operate in a way that is only partially open to scrutiny from the outside. Rules of procedure are available to read, but researchers and practitioners know very little about what happens inside the courtroom and how judges make their final deliberations. This article focuses on the African Court of Human and Peoples' Rights, the European Court of Human Rights, and the Inter-American Court of Human Rights and explores three particular and overlooked aspects of their functioning: the role of the secretariats, third-party submissions, and the contribution of individual judges in courts' deliberations. Comparing best practices and lessons learned from the three systems, the article recommends some measures to improve transparency from the perspective of potential applicants and researchers trying to understand the adjudication of regional human rights systems.

KEYWORDS: transparency; human rights; regional systems; secretariats; judicial scrutiny; third-party interventions

INTRODUCTION

Transparency has become synonymous with legitimate and positive, while anything opposite to it, such as secrecy and confidentiality, is perceived as negative and untrustworthy.[1] However, this popularity and positive connotation have prevented it from being adequately addressed. As Peters noted, transparency is 'an overused but under analysed concept'.[2]

As Neumann and Simma commented, international courts and tribunals are now 'virtually palpable' and closer to the individuals than ever before, thanks to all the information

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[1] A Bianchi, 'On Power and Illusion' in A Bianchi and A Peters (eds), *Transparency in International Law* (CUP 2013) 2.

[2] A Peters, 'Towards Transparency as a Global Norm' in A Bianchi and A Peters (eds), *Transparency in International Law* (CUP 2013) 534–607, 534.

available on their websites and case-law databases.[3] Yet, a closer look shows that regional human rights courts operate in a way that is only partially open to scrutiny from the outside. Rules of procedure are available to read, and websites contain a wide range of information. Still, prospective applicants, researchers, and practitioners know very little about what happens inside the courtroom and how judges make their final deliberations.

While secrecy may preserve the aura of mystery around human rights adjudication, allowing courts to adopt continuously changing opinions, this constitutes an insurmountable obstacle to understanding the judicial attitude of each body and the direction of international human rights law. Both for a researcher investigating the interpretation of international human rights law and its judicial application and for a practitioner or a victim looking for redress and deciding the most appropriate legal strategy, not knowing how decisions are made and what factors influence them could be highly challenging.

This article adopts a comparative approach looking at the three main regional human rights courts—the African Court of Human and Peoples' Rights (ACtHPR), the European Court of Human Rights (ECtHR), and the Inter-American Court of Human Rights (IACtHR)—to identify the areas where more transparency, understood as access to information, is needed to gain a better understanding of the comparative judicial behaviour of these courts and to provide clarity and directions for potential applicants; victims of human rights abuses. The three regional human rights courts have different histories and traditions, as well as different caseloads and compositions. Still, they all share several commonalities in their aims and objectives, procedures, and functioning. This allows a very fruitful comparison and the identification of differences and similarities in their transparency efforts, as well as lessons learned and best practices from which to take inspiration. It is important to acknowledge that in the African and Inter-American systems, the courts work alongside the Commissions (respectively, the African Commission on Human and Peoples' Rights and the Inter-American Commission on Human Rights), and the latter may refer their cases to the Courts. This further level of scrutiny and decision adds another layer of transparency or opacity and should be considered in this discussion. While the focus of this article remains on the three courts, due consideration of the existing role of the Commissions will be made when relevant to the analysis.

Transparency could concern any aspect of a court, from its composition to its functioning. Scholars have dedicated significant attention to it, specifically to regional human rights courts.[4] However, some aspects are often omitted from traditional studies on transparency in international courts. This article discusses three of these aspects and focuses on the different practices and information available across the three regional courts in relation to the role of the secretariats, the influence of third-party submissions, and the individual contribution of judges in chamber formations. Interviews with non-governmental organisations (NGOs), regional court judges, and members of the secretariats revealed many 'hidden rules', which significantly contribute to shaping the adjudication of international human rights law and the behaviour of regional courts. This discrepancy between how things work in theory and practice has so far favoured those actors familiar with the system, possibly leading to a distortion of the judicial interpretation and application of human rights and producing a chilling effect on some categories of potential applicants. Highlighting best practices and lessons learned, as well as warning against the dangers of full disclosure, this article recommends specific strategies to increase transparency on these aspects to enable a deeper understanding

[3] T Neumann and B Simma, 'Transparency in International Adjudication' in A Bianchi and A Peters (eds), *Transparency in International Law* (OUP 2013) 436–76, 436.

[4] ibid 436–76; F Baetens, 'Transparency Across International Courts and Tribunals' (2022) 9 Nordic Journal of International Law 595.

of the judicial application of human rights and ensure meaningful and conscious access to regional human rights justice. Transparency would allow prospective applicants to effectively access human rights judicial mechanisms, be fully aware of how regional commissions and courts operate, and reach a decision. These should also be balanced against the possible shortcomings of such heightened transparency, including increasing backlogs and financial costs.

This article first introduces, in the section 'Transparency on what and transparency for whom?', the concept of transparency, discussing its meaning, legal basis, and perspective adopted for this research. On that basis, the section 'The practice of the regional human rights courts: where is more transparency needed?' discusses the information available, and the extent of further desired transparency in relation to (i) the role of secretariats, (ii) the third-party submissions, and (iii) the contribution of the individual judges. Building on this analysis, the section 'Limitations of transparency and recommendations' draws a few recommendations for improvement, balancing them against the possible limitations.

TRANSPARENCY ON WHAT AND TRANSPARENCY FOR WHOM?

Transparency is certainly a buzzword, often invoked as one of the fundamental pillars of any court's good practice and as a cornerstone of the rule of law. However, its actual meaning and contours are still blurred.[5] Largely discussed by scholars,[6] transparency is a relational concept, and, as such, it has the merit of assuming different aspects depending on the context or the perspective of who is speaking.[7] Likewise, the identity of the person asking for more transparency affects the degree of this desired transparency, which is counterbalanced by the need for confidentiality to safeguard the due process and independence of the court.

Transparency can assume different forms, especially in the context of international adjudication, but it is generally understood as the availability of information. Sometimes confused with publicity,[8] it is not its synonym as it does not require full disclosure[9] but just enough to ensure trust in the institution and its function, equal access to all parties involved and a good degree of public scrutiny. This understanding of transparency[10] is usually linked with the court's legitimacy, as the former is considered a requirement for the latter.[11] A court that is not transparent in its functioning, procedure, and outcome will not gain (or will lose) the needed procedural legitimacy.[12] These two extremely complex and blurred concepts in international law thus become interlinked, and their definitions depend on each other. Just as the

[5] Bianchi (n 1) 9.

[6] ibid. See also, among others, Baetens (n 4); A Peters, 'The Transparency Turn of International Law' (2015) 1 Chinese Journal of Global Governance 8; J Nakagawa (ed), *Transparency in International Trade and Investment Dispute Settlement* (Routledge 2013); CP Gonzalez, 'On Transparency, Good Governance and the Fight against Corruption: Some Lessons (and Questions) from an International Law Perspective' (2015) 19 Spanish Yearbook of International Law 143–71.

[7] Peters (n 2) 553.

[8] ibid 535; C Lindstedt and D Naurin, 'Transparency is not Enough: Making Transparency Effective in Reducing Corruption' (2010) 31 International Political Science Review 304.

[9] T Cottier and M Tammerman, 'Transparency and Intellectual Property Protection in International Law' in A Bianchi and A Peters (eds), *Transparency in International Law* (CUP 2013) 207.

[10] ibid.

[11] TM Franck, 'Legitimacy in the International System' (1988) 82 American Journal of International Law 705; J-M Coicaud and V Heiskanen, *The Legitimacy of International Organizations* (United Nations University Press 2001); AE Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (OUP 2003); S Wheatley, *The Democratic Legitimacy of International Law* (Hart 2010); J d'Aspremont and E de Brabandere, 'The Complementary Faces of Legitimacy in International Law: The Legitimacy of Origin and the Legitimacy of Expertise' (2011) 34 Fordham International Law Journal 190; R Howse and others (eds), *The Legitimacy of International Trade Courts and Tribunals* (CUP 2018); HG Cohen and others (eds), *Legitimacy and International Courts* (CUP 2018).

[12] Y McDermott and W Elmaalul, 'Legitimacy' in WA Schabas and S Murphy (eds), *Research Handbook on International Courts and Tribunals* (Edward Elgar 2017) 229–31, 235.

necessary transparency depends on the perspective of who asks for it, so does legitimacy change its meaning according to the person who evaluates it.[13] This subjectivity further stresses the importance of defining the limits of this study.

Transparency also has a very close relationship with power.[14] Secrecy and confidentiality maintain the existing power imbalances, while transparency in access allows a level playing field for other actors to join and have an equal chance. Yet, as Pozen has powerfully explained, transparency could also turn scrutiny into control and lead to a reverse situation of power imbalance where those with access to information are in control of the actions of those institutions under scrutiny.[15] In the context of regional human rights courts, transparency could be crucial to allow all parties to the dispute to know the rules of the game and be able to access the system. More transparency does not automatically empower all actors equally but often leads 'to a power shift from those actors who know the right people to those who possess the know-how, and resources to collect, analyse and interpret the data'.[16] Yet, in a system where all the information is easily accessible and understandable, this could significantly empower structurally disadvantaged groups, and, in the context of regional human rights adjudication, it could play in the applicants' favour.

There are several arguments for and against more transparency in international adjudication. Regan[17] and Paulus[18] agree that courts should be transparent in their adjudication process, especially when they go beyond the *lex lata* and venture into the realm of *lex ferenda*.[19] However, other scholars such as Bianchi, Peters, and Baetens warn against too much transparency, as some secrecy is needed to preserve the courts' functions and independence.[20]

Transparency as a requirement for regional human rights courts also has a human rights foundation that courts must respect *vis-à-vis* their parties. When transparency is understood as access to information, this becomes instrumental to the enjoyment of both the right to receive information and the right to a fair trial. Under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), and its regional declinations of Article 10 of the European Convention on Human Rights (ECHR), Article 9 of the African Charter on Human and Peoples' Rights (ACHPR) and Article 13 American Convention on Human Rights (ACHR), everyone has a right to receive information. The content of this right is still highly debated, but it could certainly be interpreted as allowing people to request more information from regional human rights courts.[21] In addition, transparency on how the court operates and functions could also be considered a requirement to enjoy the right to a fair trial. As provided even by the ECHR Guide on Article 6, transparency is a necessary condition for protecting litigants' rights and for public scrutiny.[22] This is considered a safeguard against the administration of justice in secret and a way to preserve confidence in the courts.[23]

[13] H Charlesworth and J-M Coicaud (eds), *Fault Lines of International Legitimacy* (CUP 2010); J Tasioulas, 'The Legitimacy of International Law' in S Besson and J Tasioulas (eds), *The Philosophy of International Law* (OUP 2010); Cohen and others (n 11).

[14] Bianchi (n 1) 17–19.

[15] DE Pozen, 'Transparency's Ideological Drift' (2018) 128 Yale Law Journal 100.

[16] Peters (n 2) 555.

[17] DH Regan, 'International Adjudication: A Response to Paulus- Courts, Customs, Treaties, Regimes and the WTO' in S Besson and J Tasioulas (eds), *The Philosophy of International Law* (OUP 2010) 225–44.

[18] A Paulus, 'International Adjudication' in S Besson and J Tasioulas (eds), *The Philosophy of International Law* (OUP 2010) 207–24.

[19] ibid 221.

[20] Bianchi (n 1) 17–19; Peters (n 2); Baetens (n 4).

[21] P Birkinshaw, *Freedom of Information: The Law, the Practice, and the Ideal* (CUP 2010).

[22] ECtHR, Guide on Article 6 of the European Convention on Human Rights, 31 August 2020, page 28.

[23] ibid.

When discussing the functioning and procedures of international courts and tribunals, scholars have highlighted several requirements for a court to be considered transparent, mostly converging on a few. First, transparency for an international court means providing information or access to information for the parties and those in the general public who may be interested in the proceedings.[24] Baetens, Neumann, and Simma agree that such information should concern the following elements and stages in a court's proceeding: the applications received, the parties' submissions, the oral proceedings, the final judgments, and the parties' compliance with the outcome. This information is crucial for anyone observing, studying, or working with international courts and tribunals, and, as Baetens argues, regional human rights courts are doing well in providing a good degree of transparency on all these aspects. While I agree with her conclusion that no major reform is needed to ensure transparency, the analysis may offer new insights if one changes the observer's perspective from the general public (as she does) to the potential applicant and academic researchers.

For instance, if we take the view of a potential applicant, the information provided may not be enough to navigate the system with an adequate awareness level. Transparency on written submissions, oral hearings, and final judgments is important, but this may not be enough to be on a level playing field with the respondent state in terms of information available. Especially considering the information asymmetry between the two parties in any human rights dispute, it is paramount to allow the applicants (actual or potential) to access as much information as possible to build their case with full awareness. States usually have more means and resources to defend their cases before human rights courts than individual applicants, even when supported by NGOs and litigation firms, and have privileged access to information about the case at the domestic level. Moreover, considering the internal politics of regional human rights courts, the profiles of the staff working for the secretariats, and the appointment of judges, respondent states can easily know the hidden rules of the game (including who will work on the case and what judges will decide it), giving them a significant advantage. This calls for increased access to information for all potential applicants to be able to make a conscious decision on whether to bring a case and how to plan their litigation strategy.

Besides potential applicants, more transparency can also be beneficial, and to some extent is needed, for researchers looking at the interpretation and adjudication of human rights by the three regional courts. Researchers need to know more about how the courts function to understand their approach fully and how they decide to shape international human rights law. As recent literature demonstrated, merely analysing the judgments and focusing on legal factors is insufficient to explain case law and complex phenomena, such as judicial convergence and fragmentation.[25] The margin left to the court's interpretation is extensive, considering the vagueness of international human rights law provisions. Behavioural and organizational studies have highlighted the relevance of factors such as the judges' identity, background, nationality, political orientation, and the role of the administrative structure around them.[26] However, these aspects are often hidden from public scrutiny to maintain the courts' independence, autonomy, and freedom of action, and most studies usually

[24] Baetens (n 4) 597.

[25] E Abrusci, *Judicial Convergence and Fragmentation in International Human Rights Law* (CUP 2023).

[26] ibid. See, among others, A Roberts, *Is International Law International?* (OUP 2017); E Voeten, 'The Impartiality of International Judges: Evidence from the European Court of Human Rights' (2008) 102 American Political Science Review 417. CJ Carrubba, M Gable and C Hankla, 'Judicial Behaviour under Political Constraints: Evidence from the European Court of Justice (2008) 102 American Political Science Review 435; EA Posner and MFP de Figueiredo, 'Is the International Court of Justice Biased?' (2005) 34 Journal of Legal Studies 599; S D Franck and others, 'Inside the Arbitrator's Mind' (2017) 66 Emory Law Journal 1115; RA Posner, 'Judicial Behaviour and Performance: An Economic Approach' (2005) 32 Florida State University Law Review 1259–79; M Sagiv, 'Cultural Bias in Judicial Decision-Making' (2015) 35 Boston College Journal of Law & Social Justice 229.

speculate on the root causes of certain judicial decisions. Yet, if we are to fully understand and explain the legal approaches by regional courts to warn against possible distortions and unwanted consequences, more information is required.

While acknowledging the potential interest of other categories of people in increased transparency from regional courts, this study will confine its analysis to the viewpoints of these two specific groups, as they offer distinct and often unexplored vantage points—one characterized by personal investment in court proceedings, the other by a more detached, objective stance. This dual perspective allows for a nuanced exploration of the critical role of transparency in human rights adjudication.

THE PRACTICE OF THE REGIONAL HUMAN RIGHTS COURTS: WHERE IS MORE TRANSPARENCY NEEDED?

Regional human rights courts' transparency has been the subject of numerous scholarly works, especially by Neumann, Simma, and Baetens. They all investigated the most evident aspects of transparency in international adjudication to conclude that the regional human rights courts' overall performance is satisfactory.[27] The ACtHPR, ECtHR, and IACtHR are all extremely transparent regarding the rules that regulate their proceedings, which are clearly available and explained in the Rules of the Courts. Likewise, they are very transparent about the applications received, which are all easily accessible on their websites, even with minor delays due to a backlog.[28] The parties' written submissions are slightly more complex to access for a third party, as courts have complete discretion on whether to release them, and additional safeguards may require visiting the court's premises to access the documents.[29] Yet, parties to the dispute are timely notified of all documents, and the parties' submissions are made public, but only once the judgment is out. This openness of the regional courts is confirmed by the duty to hold public hearings, with very limited exceptions. Even though the IACtHR's new Rules of Procedure mildened the language from 'exceptional circumstances' to 'when the tribunal deems appropriate', the practice so far seems to suggest the Court's openness to ensure full access to its oral hearings.[30] Finally, judgments and decisions are published on the courts' websites and made available for anyone to access, as is also the case for compliance monitoring documents.[31] While the above shows very good transparency efforts, with the only exception being written submissions, the analysis leaves out some other aspects that both potential applicants and researchers may benefit from getting more insights into. The 'unseen actors' in international courts and tribunals are overlooked, and transparency requirements concerning them are usually waived.[32] The following sections discuss three important ones: the role played by the registries or secretariats, the role of third-party submissions and the contribution of individual judges to the court's functioning.

The role of the registry

It is increasingly recognized that secretariats play a key role in shaping international adjudications.[33] Acknowledging that the law results from complex and multi-stage deliberations

[27] Baetens (n 4); Neumann and Simma (n 3).
[28] Baetens (n 4) 604.
[29] ibid 608–10.
[30] Neumann and Simma (n 3) 450–52.
[31] Baetens (n 4) 622.
[32] See on this F Baetens (ed), *Legitimacy of Unseen Actors in International Adjudication* (CUP 2019).
[33] Abrusci (n 25) 160–67; S Cartier and C Hoss, 'The Role of Registries and Legal Secretariats in International Judicial Institutions' in C PR Romano, KJ Alter and Y Shany (eds), *The Oxford Handbook of International Adjudication* (OUP 2014) 711–36.

where different actors intervene is a significant step towards transparency. Besides the debate on whether the Registry should be able to draft the final judgment (or part thereof),[34] it is undisputed that they greatly influence the work of international courts and can impact the final adjudication in several ways.[35] Yet, there is no clarity or precise information as to the extent of their contribution to the deliberation. All three regional human rights courts have dedicated registries to conduct preliminary research and support the courts' deliberation. Yet, the information publicly available on the courts' websites and rules of procedures is very general, only providing an overview of the role registries play in the court's architecture.[36] Moreover, the three registries seem equivalent if one only looks at the available information. On the contrary, interviews with their members reveal that their size, structure, functions, and working habits differ significantly.

The ECtHR benefits from an impressively large and well-organised Registry, which is needed considering the enormous number of individual complaints it receives every year. The Rules of the Court have a dedicated chapter on the Registry and its composition and functions, but it does not provide much information.[37] Chapter III establishes the procedures for the Registrar's and its Deputy's election and offers an overview of the Registry's organization.[38] In particular, Rule 18 provides that the Registry should be organized into sections to assist the Court in its functions, there should be a non-judicial rapporteur working with the Court in its single-judge formation, and that a member of the Registry should act as jurisconsult, ensuring quality and consistency of case law.[39] Besides, the Rules of the Court do not contain further details about how all this works in practice. Official documents available on the Court's website improve the transparency of the composition and functioning of the Registry.[40] They confirm that the Registry comprises around 640 staff members from different Member States of the Council of Europe (CoE). It is divided into six sectoral divisions and 33 case-processing divisions. Lawyers in the case-processing divisions 'prepare files and analytical notes for the Judges' and 'correspond with the parties on procedural matters' but 'do not themselves decide cases'.[41]

The ACtHPR also has a well-advertised Registry on its website, with detailed profiles for the Registrar and Deputy Registrar.[42] The ACtHPR Rules of the Court similarly explain the procedures for appointing the Registrar and the Deputy, but also describe their functions and powers more at length.[43] Rule 21 is particularly detailed in laying down the administrative functions of the Registry, but there are no references to its research or legal support role.

Lastly, the IACtHR is probably the body with the least publicly accessible information on its Registry, called the Secretariat, as it works in support of both the Commission and the Court. The Court's Rules of Procedure only mention the Secretary's and the Deputy's

[34] ibid and H Thirlway, 'The Drafting of ICJ Decisions: Some personal recollections and observations' (2006) 5 Chinese Journal of International Law 15.

[35] T Soave, 'The Politics of Invisibility' in F Baetens (ed), *Legitimacy of Unseen Actors in International Adjudication* (CUP 2019) 323–46, 325.

[36] ibid 326.

[37] European Court of Human Rights, Rules of the Court, <https://www.echr.coe.int/documents/d/echr/Rules_Court_ENG> accessed 20 August 2025.

[38] ibid, Chap III.

[39] ibid, Rule 18.

[40] European Court of Human Rights, ECHR Registry—Information note, available at <https://www.echr.coe.int/documents/d/echr/Registry_ENG> accessed 20 August 2025.

[41] ibid.

[42] African Court of Human and Peoples' Rights, 'Office of the Registrar', available at <https://www.african-court.org/wpafc/office-of-the-registrar/> accessed 20 August 2025.

[43] ACtHPR, Rules of the Court, Rules 16–21.

elections and their functions but do not explain the powers of the Secretariat and its staff.[44] Likewise, nowhere on the website or in publicly available documents can one find any information related to the structure or the size of the Secretariat or details of the Secretary and Deputy besides their names and nationality.

This is where all the publicly available information stops. As Soave discusses, this exceptional 'silence' surrounding the role of secretariats (across all international dispute settlement mechanisms) is a peculiar form of collective denial, possibly intentional, that is probably intentionally initiated by the courts with a limited release of information and then perpetrated by judges and scholars with very little acknowledgement of their fundamental role.[45] While someone could argue that this is due to the need to maintain legitimacy or trust in the courts or to shield the secretariat staff from public contestation, Soave concludes that this is probably 'another way in which the international law profession describes its own operations and preserves its prestige and autonomy'.[46] However, academic literature and individual deductions allow one to imagine how the Registry supports the Court in practice.[47] However, this is not openly and directly provided for or confirmed by the courts.

Interviews conducted with members of the Registry and judges of the three regional courts reveal more details on their working procedures and the differences between each court.[48]

First, there is a striking difference between the three Registries in terms of size. The ECtHR benefits from a Registry with around 640 staff members, of which more than 200 are lawyers, against a workload of around 34,650 new applications received per year and 6931 judgments delivered (31,329 applications struck out or declared inadmissible) if one considers the numbers of 2023.[49] On the contrary, the two other courts are certainly less supported, and information on such staff is not publicly available. Indeed, only by resorting to secondary research or after direct interviews is one informed that the African Court has a Registry composed of 67 staff members, of which only 10 are legal officers. As a reference, the Court received eight new cases in 2023 and rendered 48 decisions, including judgments, orders, and rulings.[50] Similarly, the Inter-American Court's Secretariat has 24 full-time lawyers and around 20 temporary visiting practitioners (for a total of 34 new contentious cases submitted to the Court in 2023 and 33 judgments issued),[51] who work together with the Secretariat of the Inter-American Commission.

Secondly, the three regional systems differ in the organization of the Registry into divisions or sections, which shows their priorities and working methods. While the ECtHR releases plenty of information on how its Registry is organized into case-law processing and other sectoral divisions, no information is available on the organization of the African and Inter-American Courts.

Following the ECtHR model, more transparency on these two elements seems like an easy improvement to the existing practice of regional courts. This would allow the public, prospective applicants, and the academic community to increase their knowledge and understanding of these courts' functioning.

[44] Inter-American Court of Human Rights, Rules of Procedures, Chapter II, art 10.

[45] Soave (n 32) 344.

[46] ibid 345.

[47] ibid; K Claussen, 'Gatekeeper Secretariats' in F Baetens (ed), *Legitimacy of Unseen Actors in International Adjudication* (CUP 2019) 139.

[48] Interviews conducted by the author with members of the secretariats of the three courts in the period 2017–21. Due to confidentiality clauses, it is not possible to disclose the names of the interviewees.

[49] European Court of Human Rights, Annual Report 2023, 108.

[50] African Court of Human and Peoples' Rights, Activity Report of the African Court on Human and Peoples' Rights 1 January–31 December 2023, EX.CL/1492(XLIV), 5.

[51] Inter-American Court of Human Rights, Annual Report 2023, 41 and 57.

Thirdly, there is no transparency, but there is a striking difference between the three systems in how the Registry approaches its crucial task of supporting the Court in legal research and case preparation. In all three systems, each case brought before the Court is assigned to a Registry lawyer, who prepares the case for the judge-rapporteur. In this preparatory phase, the Registry lawyer peruses the relevant case law on the subject matter of the application. The aim is to provide the judge-rapporteur with a comprehensive framework of the relevant jurisprudence and judicial interpretation of the legal issues at stake. The main difference between the three regional systems lies here, as the hierarchy of the sources researched and communicated to the judges varies significantly.

Interviews conducted with senior lawyers of the ECtHR's Registry[52] revealed that the Registry operates following a standard procedure for researching external sources, where relevant Member States' case law takes precedence, followed by other European sources (such as the European Court of Justice case law) and only later (and not always) international sources. Only for high-profile cases and for those reaching the Grand Chamber does the Registry provide a careful study of the relevant case law from international and regional bodies. Differently, for those cases that do not reach this stage, the international and (non-European) regional case-law analysis is conducted upon specific request by the judge-rapporteur. Moreover, lawyers of the Registry confirmed that the presence of the case law of the IACtHR, ACtHPR, or UN bodies in the preparation material depends very much on the personal expertise and knowledge of the individual lawyers or the requests of the judge.

On the contrary, interviews with the Registrar and current Deputy Registrar (at the time of the interview, Head of Legal Affairs) of the ACtHPR show a completely different approach.[53] Even though there is no rigid structure in the case preparation, the Registry first looks at the case law of the African Commission of Human and Peoples' Rights and at that of the Economic Community of West African States (ECOWAS). This is followed by a careful analysis of the approach of the ECtHR and IACtHR and, when relevant, also of UN bodies. It is noteworthy that, unlike the ECtHR, domestic case law from the ACtHPR Member States is rarely considered.

Lastly, the IACtHR's Registry follows another procedure when researching the cases. As all the cases that reach the Court's attention have been previously addressed by the Commission, the IACtHR's Registry works closely with the Commission's Secretariats. It has the 'privilege' of dealing with fewer cases and dedicating more time to them. As emerged from an interview with a Senior Legal Officer at the Registry, for every case under the Court's consideration, the Registry conducts thorough research for all the international, regional, and national case laws on the matter, focusing on the case law of the ECtHR.[54]

Such a difference in what is researched and analysed may also influence the courts' adjudication. Interviews conducted with both lawyers of the Registry and ECtHR's judges[55] confirmed that the work of the Registry has a high impact on the external material referred to in the final judgment. It follows that both a potential applicant and a researcher would be very interested in knowing more about what legal sources are preferred when preparing the case for consideration. This would increase the chances for the applicant to submit a successful application and better understand how the process works and why certain sources are considered. At the same time, such information would allow researchers to contextualize and

[52] Interviews conducted in Strasbourg with Senior Legal Officers of different branches of the ECtHR's Registry on 6th and 7th July 2017.

[53] Interviews held in November 2021 with the Registrar, Deputy Registrar and Head of Legal Affairs of the ACtHPR.

[54] Interview conducted online in May 2018 with a Senior Legal Officer from the IACtHR's Secretariat.

[55] Interviews conducted in Strasbourg with Senior Legal Officers of the ECtHR's Registry and four ECtHR judges on 6th and 7th July 2017.

explain the increasing judicial dialogue and consequent convergence between regional courts and appreciate the secretariats' role in the courts' adjudication.

This is not to suggest that the Registry should openly disclose all its preparatory work. Still, it could communicate the hierarchy of sources that it considers when researching a case.

The role of third-party submission

The role of third-party submission in international human rights cases has increased significantly in the past decade.[56] Academics, civil society organizations, and interested people often submit their views for the attention of regional human rights courts on any type of case before their consideration. Although the applicant and respondent state's submissions are the most important elements in the dispute, regional human rights courts allow the submission of third-party interventions (or *amicus curiae*) and have often relied on them for their deliberations,[57] as confirmed, for instance, by explicit mentions by the ECtHR in cases like *Soering*[58] and in *Chalal*,[59] and by the ACtHPR in *Konate*'.[60]

Yet, it is not clear how much regional courts consider them and what role they play in the final judgments. Third-party interventions are particularly important for the courts as they offer alternative viewpoints from those of the parties, they could provide additional legal and factual evidence,[61] and they could increase the democratic legitimation of judicial decisions if widely accessible.[62] At the same time, overreliance on them could raise questions of legitimacy and bias. Third-party submissions could also be presented by Member States not parties to the dispute. Still, this section will focus only on the *amici* submitted by academics, civil society organizations, and other non-governmental entities. This is motivated by the fact that a distinct set of rules often regulates submissions by state parties, and because internal and international politics may explain the reluctance to be fully transparent on States' submissions as third-party interveners.

Article 36(2) of the ECHR allows the Court, 'in the interest of the proper administration of justice', to invite 'any person concerned who is not the applicant' to submit written comments or participate in hearings.[63] As the Court clarifies, this allows any non-governmental organization, academics, private individuals, business enterprises, national human rights institutions, and so on to submit their views on the issue at stake. Still, it is up to the Court to decide whether to accept them or not.[64] As the note explains, 'third-party interventions … will be invited or permitted only if the Court is satisfied that it would be in the interest [s] of the proper administration of justice',[65] and it does not consult the parties on this.[66] Such a test is not further narrowed, explained, or made public, and it leaves the Court a

[56] N Bürli, *Third-Party Interventions before the European Court of Human Rights* (Intersentia 2018); AA Mohamed, 'Individual and NGO participation in human rights litigation before the African Court of Human and Peoples' Rights: lessons from the European and Inter-American Courts of Human Rights' (2009) 43 Journal of African Law 201; LH Mayer, '*NGO Standing and Influence in Regional Human Rights Courts and Commissions Symposium: Governing Civil Society: NGO Accountability, Legitimacy and Influence*' (2011) 36 Brooklyn Journal of International Law 911–46.

[57] Bürli, ibid.

[58] *Soering v United Kingdom*, Application no 14038/88 (ECtHR, 7 July 1989).

[59] *Chahal v United Kingdom*, Application no 22414/93 (ECtHR, 15 November 1996).

[60] *Lohé Issa Konaté v Burkina Faso*, Application no 004/2013 (ACtHPR, 5 December 2014).

[61] Y Ronen and Y Naggan, 'Third Parties' in CPR Romano, KJ Alter and Y Shany (eds), *The Oxford Handbook of International Adjudication* (OUP 2014) 807–26.

[62] A von Bogdandy and I Venzke, *In Whose Name? A Public Law Theory of International Adjudication* (OUP 2014) 178.

[63] ECHR, art 36(2).

[64] ECtHR, Practice Directions: Third-party intervention under art 36(2) of the Convention or under art 3, second sentence, of Protocol No 16 (Version 2.0), 2 May 2023, <https://www.echr.coe.int/documents/d/echr/pd_third_party_intervention_eng-pdf> accessed 20 August 2025.

[65] ibid 2.

[66] ibid.

wide margin of discretion to filter third-party interventions. Yet, the Practice Directions offer detailed guidance on the format, content, and procedure for submitting *amici* briefs, thus providing a good degree of information to any prospective interested party. Combined with existing guidance from civil society actors,[67] this enables a good understanding and knowledge of the process. However, the transparency efforts concerning what third-party interventions the Court received and by whom are often limited. Van den Eynde reports that the ECtHR sometimes completely forgot to mention submitted *amici*; in others, it did not mention the name of the organization but simply 'a third-party'.[68] Indeed, the relevance (and influence) of third-party interventions on the final deliberation is not clear, and only in a few cases can the link between the submission and the final judgment be established with a decent degree of certainty. This is because the ECtHR does not always mention or acknowledge the *amici* received and very rarely explicitly links its decision on the merits with what is contained therein.

The ACtHPR allows the participation of third parties even though it does not openly advertise it. Neither the African Charter nor the Protocol establishing the Court contain any dedicated legal provision concerning third parties. Still, the Rules of the Court can be interpreted to allow their participation. Rule 70 establishes that: '1. The Court shall establish the time limit for the filing of written submission by States Parties and by *any other interested entity*. 2. Any other State Parties may submit written submissions on any of the issues raised in the request. *Any other interested entity* may be authorised by the Court to do the same.'[69] Similar language is contained in Rule 45(1) on evidence.[70] As suggested by D'Amour and Viljoen, this should be interpreted as allowing *amici* from a wide range of entities, including academics and NGOs.[71] Similar to the ECtHR, the ACtHPR also enjoys full discretion on whether to accept or decline an application for submitting an *amicus curiae* based on the 'relevance of the request'.[72] As commented by D'Amour, this seems to be an open-ended standard, and no further guidance is provided on how this relevance can be assessed.[73]

Lastly, the IACtHR makes a large use of third-party interventions as provided for by Article 44 of the Rules of the Court.[74] Compared to its African and European counterparts, the Inter-American system is more welcoming towards third-party interventions, as testified by the promotional material available on the IACtHR's website and the letter of Article 44. Indeed, it directly allows third parties to submit their contribution without needing a prior request. The discretion of the Court seems limited and vaguely formulated. Paragraph 3 of Article 44 states that 'following consultation with the President, the *amicus curiae* brief and its annexes shall be immediately transmitted to the parties'. While there are no reported situations of *amici* being refused to be transmitted to the parties, this wording could still be confusing for potential third parties, considering the lack of information on how these consultations with the President are conducted and the criteria for approval or exclusion. In any case, the role of *amici* in the Inter-American system is significant, as studies confirm that in

[67] There is an abundance of documents on this. For instance ENNHRI, 'Third Party Interventions Before the European Court of Human Rights' 2020, <http://ennhri.org/wp-content/uploads/2020/10/Third-Party-Interventions-Before-the-European-Court-of-Human-Rights-Guide-for-NHRIs.pdf> accessed 20 August 2025.

[68] L Van den Eynde, 'An Empirical Look at the Amicus Curiae Practice of Human Rights NGOs before the European Court of Human Rights' (2013) 31 Netherlands Quarterly of Human Rights, 235–396, 279.

[69] ACtHPR, Rules of the Court, Rule 70.

[70] ibid, Rule 45.

[71] F Viljoen and AK Abebe, 'Amicus Curiae Participation before Regional Human Rights Bodies in Africa' (2014) 58 Journal of African Law 22–43, 35; BJ D'Amour, 'Missed Opportunities: Participation of NGOs in Advisory Proceedings of the African Court on Human and Peoples' Rights' (2022) 22 Human Rights Law Review 1–24, 16.

[72] ACtHPR, Rules of the Court, Rule 45(1).

[73] D'Amour (n 71) 18.

[74] Inter-American Court of Human Rights, Rules of the Courts; L Burgorgue-Larsen and A Ubeda de Torres, *The Inter-American Court of Human Rights* (OUP 2011) 47–49.

the past 35 years, the Court received more than 500 *amici* from NGOs, academic institutions, research centres, and private individuals in more than 100 cases.[75] The impact of *amici curiae* on the IACtHR's adjudication is, though, very hard to assess due to the reluctance of the IACtHR to explicitly cite third-party submissions,[76] even if scholars agree on the increasing importance that *amici curiae* exercise on the IACtHR besides the mere outcome of the judgments.[77]

This information is still insufficient to fully understand *amici curiae's* admissibility criteria and third-party interventions' impact and relevance in regional human rights courts' adjudication. There remain open questions concerning this process for a prospective civil society actor interested in investing time and resources to submit an *amicus curiae* and for researchers studying the jurisprudence of regional human rights systems.

The vague wording in the African and European systems makes it harder and discouraging for potential parties to submit their views. As Bürli argues, in the ECtHR, the lack of mention of non-admitted submissions in the judgments and the fact that authors are not informed of the reasons for rejection further undermines the transparency of the admissibility process.[78] A more straightforward and welcoming approach, such as that of the IACtHR or simply more clarity on the admissibility of the submissions, would be very much welcomed and would improve access to the ACtHPR and ECtHR for third parties.

Transparency is also missing in relation to the actual influence of third-party interventions on the courts' adjudication. Someone could argue that their influence is minimal because of the limited citations (or acknowledgements) they receive in the final judgments. In contrast, others could speculate that the judgments are all based on these submissions to save judges time and effort. Scholars have repeatedly demonstrated a clear link between third-party submissions and the tendency of regional courts to engage in judicial dialogue.[79] For all three courts, studies on the available documents show that the more external references contained in *amici*, the higher the likelihood of and the extent to which the regional court would cite and engage with the case law of other regional and international human rights bodies.[80] Yet, no studies could actually establish a cause-and-effect link nor say anything more about the influence of these submissions on the adjudication process, as there is always the possibility that the court independently reaches the same conclusion as an *amicus curiae*. Getting a better idea of the influence of third-party submissions on the courts' deliberations serves both a curiosity and a necessity purpose. Curiosity from a researcher's perspective to understand the dynamics within the regional courts and the role of other actors. Necessity for both applicants and third parties. Applicants may need to know whether there is a high or low likelihood for the Court to take into serious account the content of the *amici*, as this may impact the Court's reasoning, and the applicant may decide to adopt a different litigation strategy during oral hearings. Likewise, NGOs or other civil society actors with limited resources may need to know whether their hard work has any chance of impacting the court, as they may prefer to direct their efforts to other endeavours.

[75] ibid 105–08.

[76] D Shelton, 'The Participation of Nongovernmental Organisation in International Judicial Proceedings' (1994) 88 American Journal of International Law 611–42; A-K Lindblom, *Non-Governmental Organisations in International Law* (CUP 2005) 350–59.

[77] ibid 355; Shelton, ibid 638–40; FJ Rivera Juaristi, 'The Amicus Curiae in the Inter-American Court of Human Rights (1982–2013)' in Y Haeck, O Ruiz-Chiriboga and C Burbano-Herrera (eds), *The Inter-American Court of Human Rights: Theory and Practice, Present and Future* (Intersentia 2015) 108–09.

[78] Bürli (n 56).

[79] L van der Eynde, 'Encouraging Judicial Dialogue. The Contribution of Human Rights NGOs' Briefs to the European Court of Human Rights' in E Muller and Kjos (eds), *Judicial Dialogue and Human* Rights (CUP 2017) 339–98; Abrusci (n 25) 109 and 232–34.

[80] ibid.

Interviews with judges, litigators, and NGOs representatives from the three systems reveal interesting, yet puzzling, insights.[81] In all three systems, judges show different views on the role of third-party submissions in their final adjudication. Some find them particularly helpful in supporting their argument, bringing in additional evidence and making them aware of relevant case law from other systems.[82] On the contrary, others argue that although they find third-party submissions very interesting, they often do not have time to read them in detail, and they ultimately rely on the preparatory work made by the Registry and judge-rapporteurs.[83] Moreover, they also express concerns of perceived legitimacy and impartiality that could arise if they over-rely on external material for the final deliberation. To avoid such allegations, they may ultimately decide not to openly cite them, even if their content could inspire them.[84] Indeed, studies show citations do not mean influence.[85] In the same ways as some citations may be simply 'decorative and rhetorical'[86] and may not correspond to actual influence on the adjudication, the lack of explicit reference to a third-party submission does not mean that it did not impact the courts' final reasoning. On the other hand, litigators and NGO representatives confirm that, when bringing cases before regional systems, they usually welcome *amici* submissions, often considering them strong allies in their cases.[87] Likewise, when NGOs have the possibility, and it fits within their advocacy agendas, they consider submitting *amici* as an important way to contribute to the public debate and to support human rights victims. None of those interviewed saw the possible lack of influence on the final adjudication as a problem or a reason not to engage anymore with the system. This triggers the question of what drives them to do so anyway, but such inquiry is beyond the scope of this article and would deserve a separate discussion.

This prompts the question of whether it is necessary or possible to ask for more transparency on the influence of *amici* on regional human rights systems. While it may benefit applicants, researchers, and civil society, full transparency would likely undermine the court's independence and freedom of action. It would require the courts to renounce their full discretion or risk jeopardizing their ability to discuss any issue and change opinions freely. Nevertheless, there may be a number of easy improvements that could be put in place. These may include full disclosure of all the submitted *amici* with even a short summary of the main arguments put forward, which would acknowledge third-party contributions without entering the sacred space of judges' deliberation.

The individual contribution of judges

Judgments of the three regional human rights courts are always issued by the court as a whole, with no mention of the individual contribution of single judges to the final deliberation. Judgments merely report the list of judges who participated in the deliberation. However, courts are not a separate entity but a group of individuals with specific identities,

[81] Interviews held with selected judges of the ECtHR and IACtHR between May 2017 and November 2021.

[82] ibid.

[83] ibid.

[84] Cristopher McCrudden, 'Common Law of Human Rights?: Transnational Judicial Conversations on Constitutional Rights' (2000) 20 Oxford Journal of Legal Studies 499.

[85] ibid.

[86] E Voeten, 'Borrowing and Nonborrowing among International Courts' (2010) 39 Journal of Legal Studies 547, 555; GL Neumann, 'The External Reception of Inter-American Human Rights Law' (2011) Quebec Journal of International Law 99, 125

[87] Interviews conducted with two NGOs working in field of freedom of expression and privacy globally (July 2017 and September 2017), three independent litigators working on freedom of expression and fair trial (June 2017 and March 2018), one human rights organization working in the Americas (May 2018) and two general human rights NGOs operating globally (June 2017 and August 2017).

ideas, and inclinations.[88] Scholars have been trying to explain judicial behaviour, resorting to several disciplines, including international relations and sociology. Voeten defines judicial behaviour as the study of *why* a court behaves in a certain way.[89] Beyond the *why*, there is the question as to *what* the contribution of every single judge to that behaviour is and whether we could (or should) separate the behaviour of the individual judges from that of the court. If affirmative, we would require more transparency from all three regional courts to identify and assess that role. There are strong arguments in favour of the secrecy of how a court reaches its conclusion, pointing towards functionality and judicial independence. As Baetens argues, 'a measure of opacity is functionally required' for any court to fulfil its role.[90] Yet, as von Bogdandy and Venzke reflect, there are some options for 'some meaningful openings' in the decision-making process by international judges.[91]

Every court has a different working procedure, and a case may be decided by just one judge, a few of them or the full court. While the ACtHPR and the IACtHR decide all cases in full court formation, the ECtHR resorts to different arrangements. To deal with the considerable number of applications it receives, the Strasbourg court devised a procedure where each case is progressively referred to a higher formation, starting from a single judge to the Grand Chamber (where still only 17 judges sit, not all of them). The ECtHR is fully transparent about who sits in each court section, and the parties and the general public are notified of this. However, none of the three regional courts openly disclose who the judge-rapporteur for each case is, nor how the deliberation occurs.

Judge-rapporteurs play a fundamental role in all three regional courts.[92] When a case passes the first screening by the Registry, it is assigned to one judge who becomes the judge-rapporteur. It is their task to analyse the case in depth with the support of the Registry, sometimes to decide on its admissibility or to refer it to the Chamber/Court with their recommendation for action. The judge-rapporteur introduces the case before their colleagues and significantly influences the final deliberation. In the ECtHR, it is not uncommon for the respondent State's national judge to act as a judge-rapporteur. Still, there is no certainty about it, which is not the case before the Grand Chamber, where the judge-rapporteur should never be the national judge.[93] From a transparency perspective, it is of little consolation that the drafting input of the judge-rapporteur is limited by the role of the Registry,[94] which, as discussed above, operates away from any public eye.

Beyond the judge-rapporteur, regional human rights courts are certainly not transparent, nor do they aim to be, about what happens inside the court's chambers, how the cases are decided, and how the judgment is drafted. Courts are collegial entities, but the identity of the judges has relevance and can significantly influence the interpretation of human rights in concrete cases.[95] Voeten has shown how the nationality of the judges influences their voting behaviour, especially in particularly sensitive cases.[96] Their previous work experience

[88] D Terris, CPR Romano and L Swigart, *The International Judge: An Introduction to the Men and Women who decide the World's Cases* (OUP 2007).

[89] E Voeten, 'International Judicial Behavior' in CPR Romano, KJ Alter and Y Shany (eds) *The Oxford Handbook of International Adjudication* (OUP, 2014), 550–68.

[90] Baetens (n 4) 627.

[91] von Bogdandy and Venzke (n 62) 175–76.

[92] Terris, Romano and Swigart (n 88) 59–60; Neumann and Simma (n 3) 460.

[93] ECtHR, Rules of the Court.

[94] L Garlicki, 'Judicial Deliberations: The Strasbourg Perspective' in N Huls and others (eds), *The Legitimacy of Highest Courts' Rulings* (TMC Asser 2009) 389–97, 394.

[95] Terris, Romano and Swigart (n 88); L Swigart and D Terris, 'Who are International Judges?' in CPR Romano, KJ Alter and Y Shany (eds), *The Oxford Handbook of International Adjudication* (OUP 2014) 619–38, 620.

[96] E Voeten, 'The Impartiality of International Judges: Evidence from the European Court of Human Rights' (2008) 102 American Political Science Review 417, 417–33.

increases judges' national bias,[97] also in the context of international generalist courts like the International Court of Justice (ICJ).[98] Other studies have shown a link between judges' education and professional backgrounds and their use of external references in separate opinions.[99] This could suggest that the link also extends to the final judgment, but the deliberation's mystery prevents any ultimate conclusion. Indeed, the only available information on the contribution of single judges to the judgment is what they (sometimes) include in their separate opinions. However, while separate opinions are an important aid to understanding the dynamics inside the court, allowing further discussion on topical issues and glancing at the debate behind closed doors[100] cannot be considered foolproof. As suggested by several scholars, the practice and etiquette in regional human rights courts sometimes make it difficult for a judge to express their dissenting view, and writing a separate opinion is perceived as a strong message that not everyone is willing to send.[101] Naurin and Stiansen show that there is a negative relationship between dissenting opinions and compliance and that cases before the ECtHR and IACtHR with more dissenting opinions saw less state compliance.[102] As state compliance is one of the goals for any regional human rights court, as well as a (debatable) metric of its success, regional courts may very well be inclined to avoid dissenting opinions as much as possible to increase their perceived unity, authority and performance.[103] Moreover, as Stack argued, 'the presence of dissenting justice demonstrates that behind the word "Court" in "the opinion of the Court" sit individual justices'[104] and this reality check of humanity and, consequently, the possible fallacy of the court may not be welcomed by the regional courts. On the contrary, promoting a culture where judges are encouraged to issue separate opinions could be a step in the right direction towards more transparency, also further serving the democratic principle.[105] This could also help compensate for the fact that individual voting records are not made available in regional courts.

Indeed, there are solid reasons why there is no transparency on the role and voting of individual judges. As Neumann and Simma explain, this protects the judges' independence from their national governments, which could otherwise monitor their activities and try to influence their decisions.[106] Moreover, the judges' opinions in a chamber formation may significantly vary, generating controversies and heightened debates. If all the discussions were published and made public, this could affect the judgment's understanding and threaten the court's legitimacy. However, echoing von Bogdandy and Venzke, some 'middle-ground' options could still allow for some transparency of the adjudication process while preserving

[97] ibid; FJ Bruinsma, 'Judicial Identities in the European Court of Human Rights' in A van Hoek and others (eds), *Multilevel Governance in Enforcement and Adjudication* (Intersentia 1996) 203–40.

[98] E Posner and M de Figuerido, 'Is the International Court of Justice Biased?' (2005) 34 Journal of Legal Studies 599.

[99] Abrusci (n 25); L Baum, *Judges and Their Audiences: A Perspective on Judicial Behaviour* (Princeton University Press 2006).

[100] H Mistry, 'The Paradox of Dissent: Judicial Dissent and the Projects of International Criminal Justice' (2015) 13 Journal of International Criminal Justice 449–74.

[101] JL Dunoff and MA Pollack, 'The Road not Taken: Comparative International Judicial Dissent' (2022) 116 American Journal of International Law 340–96; NL Arold, 'The European Court of Human Rights as an Example of Convergence' (2007) 76 Nordic Journal of International Law; Abrusci (n 25) 158; R White and I Boussiakou, 'Separate Opinions in the European Court of Human Rights' (2009) 9 Human Rights Law Review 37–60.

[102] D Naurin and O Stiansen, 'The Dilemma of Dissent: Split Judicial Decisions and Compliance with Judgments From the International Human Rights Judiciary' (2019) 53 Comparative Political Studies 959–91.

[103] ibid. See also C Hillebrecht, 'The Power of Human Rights Tribunals: Compliance with the European Court of Human Rights and Domestic Policy Change' (2014) 20 European Journal of International Relations 1100–23.

[104] KM Stack, 'The Practice of Dissent in the Supreme Court' (1996) 105 The Yale Law Journal 2235–59.

[105] von Bogdandy and Venzke (n 62) 178; SB Haire, LP Moyer and S Treier, 'Diversity, Deliberation, and Judicial Opinion Writing' (2013) 1 Journal of Law and Courts 303–30; CR Sunstein, *Why Societies need Dissent* (Harvard University Press 2005).

[106] Neumann and Simma (n 3) 457–58.

the functioning and independence of the courts.[107] For instance, they suggest publishing draft decisions for public critique, following the practice of the World Trade Organisation (WTO).[108] Such a proposal could be extended to the three regional human rights courts, even though it may slow the case processing and negatively impact the court's caseload. Likewise, openly communicating who the judge-rapporteur for each case is could help the applicant design a more fitting strategy for its oral hearing and for an external researcher to gain a better understanding of what happens inside the court. Lastly, in order not to contravene the ethical and legal requirements of secrecy that judges should follow,[109] efforts could be made to promote a culture where the release of separate opinions is encouraged.

LIMITATIONS OF TRANSPARENCY AND RECOMMENDATIONS

Improving transparency on the work and functioning of regional human rights courts is not easy, nor is it uncontroversial. As recalled throughout the article, several arguments favour keeping a level of secrecy in international adjudication, and many scholars consider the regional human rights courts' current level of transparency satisfactory. In particular, three are relevant when drawing recommendations for the regional systems: the efficiency argument, the cost argument, and the authority argument.

The efficiency argument considers that any efforts to improve transparency would inevitably reduce the efficiency and functioning of the regional courts. Due to the already significant backlog of cases that regional courts have and the struggle of dealing with an increasing number of applications with limited resources, any transparency measure would undermine the efficiency and ability of the three systems to continue working efficiently.[110] While this claim has a sound foundation, one could question whether it is inevitable to have a trade-off between transparency and efficiency or if a compromise can be found to improve both simultaneously. Likewise, if a trade-off is inevitable, the question would be how much transparency should be sacrificed in the name of increased efficiency or vice versa.

The second argument against the efforts to improve transparency concerns the costs associated with any of these initiatives. Regional human rights courts are already struggling with limited resources due to low budgets and contributions from Member States. Many of the transparency gaps highlighted above would require costly interventions, and if the courts were to address them, they would need additional resources. This certainly brings up the long-lasting issue of courts' finances and the need for Member States to contribute more substantially to the functioning of the regional human rights systems. In particular, the ACtHPR and the IACtHR must continuously rely on international donations and financial support since their state parties contribute extraordinarily little to the courts' budget. In such a situation of financial distress, transparency measures may not be the priority for the courts. Yet, one could still encourage the courts to implement low or no-cost initiatives, such as those highlighted below, with a view to a progressive realization of transparency, depending on the means and resources available to the court at any given time.

Lastly, the authority argument focuses on the need for secrecy to maintain the court's independence and autonomy. Especially in a time of backlash against regional systems, regional human rights courts may need to keep a level of obscurity to their operations and

[107] von Bogdandy and Venzke (n 62) 176–77.

[108] ibid.

[109] cf International law Association, Study Group on the Practice and Procedure of International Courts and Tribunals, 'The Burgh House Principles on the Independence of the International Judiciary', 2004 as discussed in Neumann and Simma (n 3) 461. See also ECtHR, 'Resolution on Judicial Ethics', 23 June 2008.

[110] See, among others, M Evans, 'The Future(s) of Regional Courts on Human Rights' in A Cassese (eds), *Realizing Utopia: The Future of International Law* (OUP 2012) 261–74.

decision-making to protect themselves against attacks.[111] While this argument is valid, too much obscurity could also trigger an enhanced backlash, encouraging some compromises.

Based on the analysis above, one could identify a series of recommendations for the three regional systems to increase their current transparency for the primary benefit of applicants and researchers.

Two initiatives could improve the transparency of the role of the Registry. As observed, public information on the three courts' secretariats is limited and very general. Among them, the ECtHR stands out as the most transparent, at least in relation to the size and structure of its Registry. Therefore, a first recommendation would be for the ACtHPR and the IACtHR to draw inspiration from their European counterpart and release information on their secretariats' size, structure, and organization. This type of information is undoubtedly uncontroversial as it does not concern sensitive information, nor could it affect the courts' independence, legitimacy, and functioning. Moreover, it is easy to provide and does not require excessive efforts or be a burden on the Registry, as it merely consists of providing one-off information to be updated regularly. Yet, this basic information could improve communication with the general public and shed light on a critical component in the regional systems. Although it may be challenging to determine whether it can bring significant added value, there is also no obvious reason not to attempt to introduce such a small change. In addition, all three courts should consider the need to be more transparent on the Registry's role in supporting judges in their deliberation. In particular, they should release information on how they conduct the preparatory research and the sources they resort to for comparative analysis. As it emerges from interviews, these differ significantly across the three courts, and potential applicants, as well as researchers, should be aware of this. Disclosing such information on their work protocols could be controversial. Still, a solution could be to make public just the hierarchy of the sources they consult, similar to Article 38 of the ICJ statute. This should not be overly problematic from an independence perspective, yet providing some insights as to what will be prioritized and primarily considered in the case preparation and analysis from the court.

On third-party interventions, full transparency in their influence may not be ultimately possible without seriously undermining the independence and functioning of regional courts. Yet, middle-ground measures could still be put in place to ensure more transparent admissibility and engagement with these important aides. First, the African Court should follow the example of the ECtHR and IACtHR to clarify how to submit *amici*. Drawing inspiration from the practice direction of the ECtHR, this may increase the participation of different third parties in the disputes and is a quick and low-cost measure to implement one-off. Secondly, both the ACtHPR and the ECtHR should provide more information on how they decide on the admission of third-party interventions. Considering the high level of discretion left to the two courts to decide what submissions to accept in their cases, based on the 'relevance' or whether the admission of the submission is 'in the interest of the proper administration of justice', more transparency is needed on how the two courts interpret these vague formulas. An alternative would be to make the submission of *amici* not subject to the court's discretion or subject to a very limited one, such as in the case of the IACtHR. Lastly, due to the inconsistent approach shown by the three regional courts in relation to the

[111] X Soley and S Steininger, 'Parting Ways or Lashing Back? Withdrawals, Backlash and the Inter-American Court of Human Rights' (2018) 14 International Journal of Law in Context 237–57; A Jamail and M Faix, 'Human Rights Litigation in Africa Under Attack' (2023) 7 Bratislava Law Review 9–30; O Stiansen and E Voeten, 'Backlash and Judicial Restraint: Evidence from the European Court of Human Rights' (2020) 64 International Studies Quarterly 770–84.

engagement with the submitted *amici* and the need for more procedural transparency, all three courts could make some efforts to acknowledge the contribution of third-party submissions. Even though, as previously argued, full transparency on the influence exercised by *amici* on the final judgment would jeopardize the independence and autonomy of the court, there is undoubtedly the possibility to implement some less problematic measures, such as systematically acknowledging the receipt of third-party submissions (with the full-text publicly available) and even providing short summaries of the main argument contained therein. This is to confirm the court's understanding and full consideration of the submission while maintaining secrecy and speculations on the actual impact on the deliberation. However, such a measure is significantly time-consuming and could impact the efficiency and budget of the already overstretched courts.

Moving to the quest for more transparency about what happens during the deliberation and what the individual contribution of the judges is, here, most of the demands are destined to remain unsatisfied. To maintain the courts' independence, autonomy, and legitimacy and allow them to fulfil their mandate, a certain degree of secrecy about their chamber's deliberations should be preserved. This prevents disclosure of who said what during the discussion or whether the final judgment is closer to the judge's initial view. Nevertheless, considering how important the identity and role of each single judge is in the courts' work, some recommendations could be formulated to improve transparency. First, all three courts should consider improving transparency on who the judge-rapporteur for each case is. Especially considering the information asymmetry between the applicant and the respondent state, with the latter often able to retrieve this information, it is important to allow all parties to know who the judge is that will have the main impact on their case. Secondly, one of the main transparency tools we currently have in relation to the individual contributions of judges is the publication of separate opinions. To further improve transparency, all three courts could work towards an environment that promotes or encourages separate opinions and does not try to avoid them for the risk of a negative impact on state compliance. Lastly, in an attempt to balance transparency and independence, all three regional courts could consider some efforts to share more insights on how the deliberation occurs. One possibility would be to follow von Bogdandy and Venzke's suggestion to publish draft decisions and open them for public comments. While, again, not resolutive, not advantageous for the parties, and very burdensome for the courts, it may be a way to understand the deliberation process and to allow public scrutiny of the courts, ultimately increasing their legitimacy and authority.

CONCLUSIONS

Regional human rights systems are already committed to ensuring transparency in their operations and activities, fulfilling their obligations under international human rights law, and ensuring their own functioning. However, this article highlighted that additional efforts could be made to improve transparency in relation to the role of the Registry, the admission and influence of third-party interventions and the contribution of single judges to the court's decisions. In particular, from the perspective and to the advantage of researchers and potential applicants, all three regional human rights courts could implement some additional transparency measures, including providing additional information on the composition, structure and work protocol of the Registry, further explanation of the admissibility procedure for *amici curiae* and acknowledgement of those received, communicating the judge-rapporteur for each case and ensuring an environment where separate opinions are welcome. These may certainly not be fully resolutive or easy to implement, especially due to the numerous

challenges posed by the limited resources, threatened autonomy, and legitimacy and the increased number of cases to consider. Yet, by learning from each other, reflecting on these issues, and the type and level of transparency they aspire to, regional courts could develop to further deliver on their promise to ensure human rights protection in their regions.

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