

1. Access to justice - an overview

Script

According to international human rights law the state should respect, protect and promote everyone's right to freedom of religion or belief without any discrimination. But we know from experience that many people's rights are not respected or protected! So what can we do when freedom of religion or belief is violated?

There are many different ways to work to build more just societies in which freedom of religion or belief is respected. In the five presentations on access to justice we are going to focus on how we can use legal systems and institutional bodies to stop violations of freedom of religion or belief and find justice. On the website you can also find films and materials that look at other methods and strategies for working to make freedom of religion or belief a reality such as advocacy, awareness raising and documenting violations.

So how can you use law and institutions to access justice if your freedom of religion or belief is violated?

As you might have guessed this is a tricky question to answer at the global level because the answer depends almost entirely on who you are, what kind of violations you experience and where you live. That might sound unfair, but there is a reason for it.

Human rights are meant to be ensured through the actions of the governments who stated that they would respect, protect and promote them when they signed human rights conventions. You are meant to be able to turn to local and national justice systems when your rights are violated. You should have access to justice at the local and national level.

- Now in some countries justice systems do well in upholding human rights.
- But in many countries there are problems within the justice system, for example police who refuse to take up minorities' cases, judges who make judgements based on their own prejudices rather than the law or really long waiting times to have cases heard.
- And in some countries the law itself undermines rights as do the government, police force and judiciary. The entire system actively oppresses people.

So what can we do when we don't have access to justice at the local and national level?

Once again this depends on where you live. In some parts of the world there are regional systems to turn to, for example the Inter-American Court of Human Rights, The African Court of Human and Peoples' Rights or the European Court of Human Rights. These courts make judgements that are binding upon the state.

At the global level we can also turn to the human rights system of the United Nations.

But even though regional courts and global systems can result in binding judgements against, criticism of and recommendations to a government, these judgements and recommendations can't be enforced.

That's because there is no international police force that can force the government to change their laws, policies and practices. Human rights law is often called soft law, precisely because judgements that are binding in theory can't be enforced in practice, unless the state chooses to enforce them.

Many governments do want to improve their human rights record and are sensitive to international criticism. But it's important to remember that international human rights law can't be enforced at the regional and global level in the way national laws can.

You might be wondering if the United Nations isn't a global police force given that the UN Security Council can order military interventions under the UN flag. In truth there aren't very many such interventions, partly because the different political interests of Security Council members make it hard for the council to agree. And when the Council can agree, troops are only sent in when conflicts threaten international security. Their job isn't to make sure human rights treaties are followed in general.

You might also be wondering if the International Criminal Court, the ICC, isn't a global human rights court that can **make** governments follow human rights. But the ICC only tries individuals, for example a head of state or a member of the military, and only for having ordered or committed the most severe and systematic crimes – genocide, war crimes and crimes against humanity.

History gives us good reason to believe that it is wiser to base the human rights system on strengthening governments' home grown commitment and willingness to change than on military intervention.

The process of building societies that respect, protect and promote human rights is often long, painful and frustrating. It involves building knowledge of and respect for human rights in justice systems, in the policies and practices of local and national authorities and in the minds of ordinary people. It also involves making human rights a reality through the **ACTIONS** of people like you and me, as we respect them in our everyday lives.

Lots of people and organisations are striving to make rights a reality. In India a coalition of organisations highlighted violence and discrimination against Christians and Muslims ahead of a United Nations review of how India upholds human rights. As a result over 20 countries asked the Indian government questions about freedom of religion or belief during the UN review.

To sum up:

National governments have signed human rights treaties and are thereby responsible for making sure that human rights are respected in local and national contexts. So when human rights are violated we should be able to turn to local and national systems of justice to find remedies.

When these systems don't work we can also turn to regional or global human rights courts and systems.

But although international courts and bodies can make binding judgements against and criticize national governments, international bodies have no way of forcing governments to stop violating rights and protect people. There is no international police force to ensure human rights are followed.

For a more in depth look at access to justice at the local, national, regional and global levels, watch the separate videos on these topics which you can find on the website.

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