

11th Informal ASEM Seminar on Human Rights
“Regional and National Human Rights Mechanisms”

CONCEPT NOTE

The relation between universal/UN and regional human rights arrangements can be described as complex. Regional mechanisms exist in Europe (Council of Europe since 1950 and the Organisation for Security Cooperation in Europe through its Office for Democratic Institutions and Human Rights and the High Commissioner on National Minorities), Latin America (Organisation of American States since 1969) and Africa (Organisation of African Unity now African Union since 2002) including a largely dormant Arab system under the auspices of Organisation of Arab States.

Under both universal and regional arrangements, obligations of the states arise through the ratification of treaties or with the emergence of custom, general principles or precedents. There can be differences in the level of protection offered by global and regional standards and mechanisms, but those seeking redress (individuals, groups, NGOs, etc.) will eventually have the final say through their selection of standards and a monitoring avenue that offers them the best and most effective protection or remedy.

The recent creation of a regional human rights mechanism in Asia, namely the ASEAN Inter-governmental Commission on Human Rights, is therefore a stimulating development. ASEAN mechanisms for the protection of women, children and migrants also provide an opportunity to analyse new experiences and contribute to the development of regional mechanisms.

While long-standing, the European Court of Human Rights faces the challenge of a high volume of cases and a need for improved remedies at the national level, despite the entry into force of the 14th Additional Protocol to the European Convention on Human Rights intended to simplify and expedite processing of cases. The European human rights architecture needs to address the implications of the Lisbon Treaty, the expected accession of the European Union to the European Convention on Human Rights and the legally-binding nature of the Charter of Fundamental Rights.

National human rights institutions (NHRIs) are independent organisations supported and established with a constitutional or legislative mandate to promote and protect human rights. NHRIs generally better understand national circumstances and local challenges. They are often the best-placed organisations (nationally or internationally) to monitor and evaluate the human rights situation in the country. The standards established by the United Nations (the Paris Principles) outline a broad human rights mandate and a wide range of specific responsibilities for the creation and operation of NHRIs. In ASEM countries, majority do not have NHRIs and of those that do, not all entirely meet the Paris Principles.

A recent Office of the High Commissioner on Human Rights study (2009) has found, however, that NHRIs' global engagement with international and regional mechanisms remains significantly underdeveloped and reflects limited familiarity with these systems. While NHRI participation in the Universal Periodic Review (UPR) process of the UN Human Rights Council was considered to be "high", interaction with treaty bodies was described as "moderate", interaction with Special Procedures mandate holders as "low" and interaction with other international mechanisms as "minimal".

Less is known about the interaction between the region and NHRIs or other national institutions/agencies involved in human rights promotion and protection.

The main objective of the 11th Informal ASEM Seminar on Human Rights on Regional and National Human Rights Mechanisms is to facilitate a dialogue on regional and national mechanism-building. Specifically, the Seminar aims to develop recommendations to strengthen regional and national mechanisms in Asia and Europe.

Cross-cutting questions:

1. How do regional and national human rights mechanisms promote the principles of universality, inalienability and interdependence of rights?
2. How have economic, political and societal changes in the last 30 years had an impact on human rights protection?
3. What are state obligations with respect to human rights promotion, protection, fulfillment, as well as in the prevention of violations?
4. Should regional human rights systems serve as an additional forum for appeal (the "fourth instance") in the event of failure of the domestic system to protect contested civil and political rights?
5. How are regional and national mechanisms relevant to the question of the right to development as a collective reference to economic, social and cultural rights?

Working Group 1

National Human Rights Mechanisms

1. Do we have to review the Paris Principles?
2. How do we measure the efficiency and effectiveness of NHRIs? From experience, what are the factors of success?
3. Do governments and other national authorities (e.g. parliament, judiciary) effectively take into account the advice of the commissions?
4. Which kinds of rights typically fall within the scope of NHRIs? What new areas have emerged?
5. What role could civil society play to foster national promotion and protection of human rights? What kind of cooperation is needed between NHRIs and the business sector?
6. What role do other national institutions and agencies (domestic judiciary, ombudsman institution and other relevant agencies) play in human rights protection?

Working Group 2

Regional Human Rights Mechanisms

1. Are regional human rights systems necessary? What is their added value to international and national mechanisms?
2. Is there a need to refer to define and harmonize human rights standards within a region?
3. What are the different roles played by international and national mechanisms vis-a-vis regional ones for human rights promotion, protection, fulfillment, as well as in the prevention of violations?
4. How do mechanisms at a regional level enhance protection of the rights of vulnerable groups such as, among others, ethno-linguistic and religious minorities, migrant workers, women and children?
5. How could regional mechanisms respond to the emergence of new types or generations of rights (e.g. better protection of social rights, or right to healthy environment)?
6. Does the existence of a regional mechanism help to promote a shared human rights culture?

Working Group 3

Procedural Effectiveness of Regional Human Rights Mechanisms

1. What institutional features make a regional mechanism effective, in terms of:
 - a. Procedures?
 - b. Recognition and scope of rights?
 - c. Complaints procedure?

- d. Provision of remedy?
2. What mechanisms/tools are available for redress in the event of human rights violations? Are available mechanisms effective?
3. How can the complexity of some systems be addressed?
4. How could the challenge of determining jurisdiction, with respect to international and national levels, be addressed?
5. What role does the right of individual access to complaint procedures play in the system? What are the results from existing experiences?
6. Should there be the equivalent of the “Paris Principles”¹ to guide the formation and operation of regional mechanisms?

Working Group 4

Multi-level Architecture of Human Rights Mechanisms

1. What are the outcomes of different needs and approaches to human rights?
2. Can the current situation be described as convergence or divergence between and among the different levels (national, regional, international)?
3. How can the engagement of NHRIs with UN Bodies (eg. Human Rights Council and its universal periodic review mechanism) and Special Procedures improve the human rights situation at the national level? Would this divert resources and attention from primary national responsibilities?
4. What areas of cooperation could be found between NHRIs and regional bodies, eg. EU, ASEAN, Council of Europe?
5. How can the mutual influences between and among the different regional courts (e.g. precedents cited from one court in another) be organised?
6. How can constitutional rights, defined nationally, be combined with regional and universal/UN standards?

¹ <http://www2.ohchr.org/english/law/parisprinciples.htm>