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

Background Paper

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BACKGROUND PAPER

11th Informal Asia Europe Meeting (ASEM) Seminar on Human Rights National and Regional Human Rights Mechanisms

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Section 1: International framework

Since the adoption of the Universal Declaration of Human Rights in 1948, a wide array of human rights norms have been developed, and mechanisms for their promotion and protection have been established at international, regional and national levels.

1 United Nations human rights mechanisms

The United Nations (UN) Charter identifies 'promoting and encouraging respect for human rights and for fundamental freedoms for all' as one of the UN's primary purposes¹. To this end, various bodies have been established, including Charter-based bodies (those created according to provisions of the UN Charter) and treaty-based bodies (those created under international human rights treaties).

1.1 Charter-based bodies

The Commission on Human Rights was created in 1946, as a subsidiary body of the UN Economic and Social Council (ECOSOC)². The Commission was heavily engaged in human rights standard-setting and later authorised to examine violations of human rights³, with an elaborate system of special procedures, country-oriented or thematic, to monitor States' compliance with human rights norms⁴, complaint mechanisms, and the Working Group on Situations, which reviewed confidential reports on particular situations⁵. The Commission's eroding professionalism undermined its capacity to perform the tasks entrusted⁶, and with its credibility increasingly called into question⁷, accusations of politicization and double standards eventually led to the inclusion of human rights machinery reforms in the broad set of UN reforms⁸. After extensive negotiations in the General Assembly, the Human Rights Council was created in 2006. Among the ten tasks assigned⁹, the Council has prioritised four: Universal Periodic Review, review and supervision of special procedures and mandate holders, direction of the Advisory Committee, and administration of the confidential complaint system¹⁰.

¹ UN Charter art. 1, para 3.

² UN ESC Res 5(I), UN Doc. E/RES/5(I) (16 February 1946).

³ See, e.g., UN ESC Res 1235, UN Doc. E/RES/1235 (6 June 1967).

⁴ The Commission on Human Rights established 30 special procedures, and as the Human Rights Council replaced it in 2006, the issue of renewal of these mandates was dealt with in the Appendixes of the Human Rights Council Resolution 5/1.

⁵ UN ESC Res 2000/3, para 5, UN Doc. E/RES/2000/3 (16 June 2000).

⁶ Report of the High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, para 283, UN Doc A/59/565 (2 December 2004).

⁷ UN Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General*, para 182, UN Doc. A/59/2005 (21 March 2005); A M Bolin Pennegård, 'Overview over Human Rights – the Regime of the UN', in Gudmundur Alfredsson et al (eds), *International Human Rights Monitoring Mechanism: Essays in Honour of Jakob Th. Möller*, 19, 65 (Martinus Nijhoff 2001).

⁸ Report of the High-level Panel on Threats, Challenges and Change, *supra* note 6, paras 282-91.

⁹ GA Res 60/251, para 5, UN Doc. A/RES/60/251 (3 April 2006).

¹⁰ Human Rights Council Res 5/1 (18 June 2007).

1.2 *Treaty-based bodies*

Ten treaties¹¹ are generally considered to comprise the core of the UN human rights treaty system, and under each of the treaties, a committee of experts is established to monitor implementation by States parties¹². All but one of the treaty bodies review periodic reports submitted by States, and other functions performed by treaty bodies, although not common to all committees, include adoption of general comments or recommendations regarding the provisions of the various treaties, consideration of individual communications, and initiation of inquiry procedures¹³.

With the growth in the number of international human rights instruments and the increase of ratifications, the reporting and complaints procedures have placed significant burden upon the UN, treaty bodies, and States parties. In order to more effectively promote and protect human rights, the modernisation of the treaty body system has been identified by the UN Secretary-General as a priority¹⁴. Formal consultations have taken place during meetings of the committee Chairpersons and Inter-Committee meetings, and informal meetings and consultations involving different stakeholders have been held in Dublin¹⁵, Marrakesh¹⁶, Poznan¹⁷, Seoul¹⁸, Sion¹⁹, and Pretoria²⁰, with a view to strengthening the treaty body system.

1.3 *Other relevant UN bodies*

In addition to Charter- and treaty-based bodies, many other UN-related bodies exclusively or partially deal with human rights issues²¹. The High Commissioner for Human Rights is the principal UN official charged with the responsibility for UN human rights activities²². The mandate is executed through the Office of the High

¹¹ International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Optional Protocol to the Convention against Torture, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention on the Rights of Persons with Disabilities, International Convention for the Protection of All Persons from Enforced Disappearance.

¹² The Committee on Economic, Social and Cultural Rights was established by the UN Economic and Social Council.

¹³ Office of the United Nations High Commissioner for Human Rights (OHCHR), The United Nations: Human Rights Treaty System: An introduction to the core human rights treaties and treaty bodies (Fact Sheet No. 30), <<http://www.ohchr.org/Documents/Publications/FactSheet30en.pdf>> accessed 12 July 2011.

¹⁴ U.N. Secretary-General, Strengthening of the United Nations: an agenda for further change, para 49, UN Doc. A/57/387 (9 December 2002).

¹⁵ Dublin Statement on the Process of Strengthening of the United Nations Human Rights Treaty Body System, 19 November 2009, <<http://www2.ohchr.org/english/bodies/HRTD/docs/DublinStatement.pdf>> accessed 12 July 2011; A response to the Dublin Statement has been presented by 20 non-governmental organisations in November 2010, <<http://www2.ohchr.org/english/bodies/HRTD/docs/FinalDublinStatResponseNGOs.pdf>> accessed 12 July 2011.

¹⁶ Marrakech Statement on strengthening the relationship between NHRIs and the human rights treaty bodies system, 10 June 2010, <http://www2.ohchr.org/english/bodies/HRTD/docs/MarrakeshStatement_en.pdf> accessed 12 July 2011.

¹⁷ Poznan Statement on the Reforms of the UN Human Rights Treaty Body System, 28-29 September 2010, <<http://www2.ohchr.org/english/bodies/HRTD/docs/PoznanStatement.pdf>> accessed 12 July 2011.

¹⁸ Seoul Statement on Strengthening the UN Human Rights Treaty Body System, 19-20 April 2011, <<http://www2.ohchr.org/english/bodies/HRTD/docs/SeoulStatement.pdf>> accessed 12 July 2011.

¹⁹ Informal Technical Consultation for States parties on Treaty Body Strengthening, Sion, Switzerland, 12 – 13 May 2011, <http://www2.ohchr.org/english/bodies/HRTD/docs/Sion_report_final.pdf> accessed 12 July 2011.

²⁰ Pretoria Statement on the Strengthening and Reform of the UN Human Rights Treaty Body System, 20-21 June, 2011 <<http://www2.ohchr.org/english/bodies/HRTD/docs/PretoriaStatement.doc>> accessed 18 October 2011.

²¹ See Markus Schmidt, 'United Nations', in Daniel Moeckli et al (eds), *International Human Rights Law* 418-30 (OUP 2010).

²² GA Res 48/141, para 4, UN Doc. A/RES/48/141 (20 December 1993).

Commissioner (OHCHR²³) and its field offices, and the OHCHR conducts technical cooperation with States and regions, produces publications facilitating human rights education, and supports the work of UN human rights bodies. Additionally, the work of the UN General Assembly²⁴, Security Council²⁵, and Secretary-General²⁶ often involve human rights issues. In addition, the UN High Commissioner for Refugees (UNHCR)²⁷, the United Nations Children's Fund (UNICEF)²⁸, the United Nations Development Programme (UNDP)²⁹, and the recently established United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)³⁰, among others, also integrate or implicitly pursue human rights into their activities. Several specialised agencies of the UN, particularly the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), have consistently engaged in the field of human rights. The ILO, for instance, has a successful and long-standing experience of monitoring the implementation of labour conventions, which extensively relate to issues of human rights.

2 Regional human rights mechanisms

Since the adoption of the first regional human rights instrument, the European Convention on Human Rights (ECHR) in 1950, different regions of the world have seen development of mechanisms for the promotion and protection of human rights. The African Charter on Human and People's Rights is overseen by the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, while the Inter-American Commission on Human Rights and Inter-American Court of Human Rights enforce and interpret the American Convention on Human Rights.

2.1 Historical developments in Europe

Regional human rights mechanisms in Europe are primarily established under the auspices of two institutions: the Council of Europe (CoE) and the European Union (EU). The Organization for Security and Co-operation in Europe (OSCE) also undertakes human rights work. Further details are provided in Section 2.

The ECHR originally created a system of three institutions: The European Court of Human Rights (ECtHR), the European Commission of Human Rights, and the Committee of Ministers. This structure was transformed in 1998³¹: the Commission was abolished and the Committee of Ministers no longer has the power to settle cases on the merits. The ECtHR now functions as a full-time institution that receives individual applications, delivers legally binding judgements, and issues advisory

²³ <http://www.ohchr.org>

²⁴ Article 13 of the UN Charter explicitly stipulates that the General Assembly shall 'initiate studies and make recommendations for the purpose of ... assisting in the realization of human rights and fundamental freedoms for all'.

²⁵ The Security Council often considers massive violation of human rights as threats to peace, thus falling under its authority under the UN Charter. See, e.g., SC Res. 661, UN Doc. S/RES/661 (6 August 1990).

²⁶ Former and current Secretaries-General of the UN have emphasised the central role of human rights in their work. See, e.g., UN Secretary-General, *supra* note 7.

²⁷ <http://www.unhcr.org>

²⁸ <http://www.unicef.org>

²⁹ <http://www.undp.org>

³⁰ <http://www.unwomen.org>

³¹ Protocol No 11 to the European Convention on Human Rights.

opinions at the request of the Committee of Ministers. Faced with increasing caseload, the ECtHR has entered into a review of its working methods. The CoE also supports the mandate of the European Commissioner for Human Rights.

In its early days, the EU placed little emphasis on human rights. In recent years, however, the European Court of Justice has developed increasing jurisprudence on fundamental rights, and human rights issues are an important component of EU dialogues with third countries. The EU's accession to the ECHR is expected in the very near future³². In 2007, the EU Fundamental Rights Agency (FRA) was inaugurated to replace the European Centre on Racism and Xenophobia, as the EU's body of expertise on issues of fundamental rights and freedoms. With the entry into force of the Lisbon Treaty in 2009, the Charter of Fundamental Rights of the European Union became legally binding on Member States.

2.2 Historical developments in Asia

In spite of calls advocating the establishment of a regional human rights mechanism³³, to date, a mechanism similar to those established in Europe, America, and Africa, has not been created in Asia-Pacific. However, the region has seen developments initiated by different actors. Targeting the Asia-Pacific region as a whole, since the 1990s, the UN, drawing on local expertise, has supported technical cooperation activities in the region, through workshops and assistance in the creation of national human rights institutions (NHRIs)³⁴. In addition, the Informal Asia-Europe Meeting Seminar on Human Rights promotes dialogue between governments and civil society.

At the sub-regional level, the Arab Charter on Human Rights was adopted in 1994 (revised in 2004), providing for the establishment of the Arab Human Rights Committee, mandated to monitor compliance³⁵. Progress has also been seen in recent years in the context of the Association of Southeast Asian Nations (ASEAN). The Working Group for an ASEAN Human Rights Mechanism was established in 1995. ASEAN subsequently adopted declarations on specific human rights issues, e.g. violence against women. In 2009, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was inaugurated.

Asian and Pacific human rights organisations have also called on the South Asian Association for Regional Cooperation (SAARC) to take steps toward establishing a sub-regional human rights mechanism.³⁶

³² Protocol 14 to the European Convention on Human Rights.

³³ *E.g.*, GA Res 41/153, UN Doc. A/RES/41/153 (4 December 1986); Commission on Human Rights Res 1998/44 (17 April 1998).

³⁴ Vitit Muntarbhorn, 'Human Rights Monitoring in the Asia-Pacific Region', in Gudmundur Alfredsson et al (eds), *International Human Rights Monitoring Mechanism: Essays in Honour of Jakob Th. Möller* (2nd rev edn, Martinus Nijhoff 2009) 641, 643-44.

³⁵ Arab Charter on Human Rights, arts. 45-48.

³⁶ Asian NGOs Network on National Human Rights Institutions (ANNI - <http://www.forum-asia.org/>) and Pacific Regional Rights Resource Team (<http://www.rrrt.org/>).

2.3 Trends and challenges in international and regional human rights regimes

Common trends and challenges can be observed throughout the development of international and regional human rights regimes since 1945.

Distinctions have often been drawn between different categories, or 'generations', of human rights: civil and political rights (1st generation); economic, social and cultural rights (2nd generation); and rights to solidarity, e.g. the right to self-determination (3rd generation). A fourth generation of human rights is arguably emerging along with new phenomena (e.g. rights related to the Internet). Yet, the principles of universality, interdependence, and interrelatedness of all human rights are repeatedly emphasised in both international and regional contexts.

Non-State actors have increasingly played an important role under international and regional human rights law. Civil society and NHRIs contribute to the development of human rights standards and promote the respect, protection and fulfilment of human rights at the international, regional, and national level. Discussions on human rights obligations of non-State actors have also emerged, particularly with regard to transnational corporations.

International and regional human rights systems have developed significantly over the past decades. Particularly, the UN human rights system and the ECtHR have both entered a review process, in order to facilitate effective operation with limited resources. Furthermore, with the fragmented development of mechanisms both within the UN and regional regimes, there arises a need for cooperation and coordination within and between different mechanisms so as to further improve the protection of human rights on the ground.

Section 2 Regional arrangements

For historical and geographic reasons, there exists a wide disparity between the regional frameworks for the protection and promotion of human rights in Europe and Asia. The European system is vast and sophisticated, while in Asia no over-arching regional framework exists. However, protection mechanisms are emerging at the sub-regional level.

3 European Regional Human Rights Mechanisms

The European human rights protection framework is remarkably complex and multi-faceted. Its evolution can at least be in part attributed to such considerations as: a) a recognition that strong human rights protection can serve as a bulwark against totalitarianism and fascism; b) an understanding to the extent of which economic strength is closely related to sturdy systems for the protection of human rights; and c) a widely held belief that Europe can only play a prominent part in world affairs to the extent that it acts as one. While considerations such as these have fuelled the growth of the European human rights institutions, it must also be acknowledged that the protection of human rights in Europe remains uneven across the region and that traditionally more attention has been paid to civil and political rights than economic, social and cultural rights. Considerable challenges also persist for the protection of universal standards across a wide range of diverse political and social contexts.

Three European inter-governmental organisations are concerned with the promotion and protection of human rights: the Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe (CoE) and the European Union (EU). All three organisations were created after World War II; they form a concentric system of membership and geographical extension. All European sovereign States are members of the OSCE, most of them are members of the CoE and many are members of the EU. All three organisations are based on common European values of rule of law, democracy and human rights.

3.1 *The Organisation for Security and Cooperation in Europe*

The Organisation for Security and Cooperation in Europe (OSCE) has its origins in the Conference for Security and Cooperation in Europe (CSCE) of 1973 which led to the adoption of the Helsinki Final Act in 1975. The CSCE was an important instrument of detente during the Cold War between the Eastern and Western bloc. After the fall of the Berlin Wall and the collapse of the Soviet Union, participating States looked upon the CSCE as a forum to address the emerging challenges. Its structures became more and more permanent until in 1994 it was transformed into the Organisation for Security and Cooperation in Europe.

The OSCE is an inter-governmental organisation, political in nature, that is primarily concerned with security and whose work focuses on early warning, conflict prevention, crisis management and post-conflict rehabilitation. While its mandate does not include the promotion and protection of human rights as such, the Organisation actively encourages respect for human rights as a tool for maintaining peace and security in the region. It adopts a comprehensive approach to security and operates in three dimensions: the politico-military; the economic and environmental

and the human dimension. The OSCE recognises that lasting security is not possible without respect for human rights and fundamental freedom. It works in the areas of anti-trafficking, democratisation, elections, gender equality, human rights, media freedom, minority rights, rule of law and tolerance and non-discrimination.

One substantial difference from the other two main European regional organisations is that the OSCE was not established through legally binding treaties and therefore was not intended to be founded as a legal body. The OSCE's human rights principles are political commitments, rather than legal rights and obligations. Nonetheless, the OSCE has been highly successful and part of its success is attributable precisely to its political as opposed to legal nature.

Today the OSCE is the largest regional inter-governmental organisation in the world, comprising 56 participating States that span three continents (North America, Europe and Asia).

3.1.1 Principal OSCE mechanisms for the promotion and protection of human rights

(a) The Office for Democratic Institutions and Human Rights (ODIHR)

Established in 1992 as part of the human dimension of the OSCE's objectives, ODIHR is mandated to 'ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and [...] to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society'. Its work focuses on five areas: elections; democratisation; human rights; tolerance and non-discrimination; and Roma and Sinti issues. ODIHR activities in these areas include: observing elections; strengthening the rule of law (judicial independence, access to the legal profession and justice, and criminal justice); reviewing legislation for compliance with the OSCE principles; promoting freedom of movement and respect for the rights of migrants; fostering democratic governance with a focus on the regulation of political parties and the participation of women in national politics; strengthening the capacity of human rights defenders; implementing human rights education and training (e.g. on combating terrorism in compliance with human rights obligations); helping governments to combat hate crimes; promoting freedom of religion; assisting governments in advancing the rights of Roma and Sinti.

ODIHR employs nearly 150 staff from some 30 countries. Ambassador Janez Lenarčič of Slovenia has been the Director of ODIHR since 2008.

(b) The High Commissioner on National Minorities

The High Commissioner on National Minorities was established at the CSCE Helsinki summit in 1992 to address ethnic tensions and to prevent inter-State hostilities over national minority issues. The High Commissioner's role is to provide early warning and take appropriate early action to prevent ethnic tensions from developing into armed conflict. The mandate focuses on minority issues that have a security dimension, alerting the OSCE when situations escalate over a certain level where his containment efforts are no longer effective. The High Commissioner conducts on-site missions for information gathering and fact finding and engages in preventive diplomacy, seeking to promote dialogue, confidence and co-operation among

national minorities and government representatives. The mandate does not function as an ombudsman for national minorities nor receives complaints about human rights violations. The High Commissioner works mainly in confidence, exercising quiet diplomacy.

It should be noted that within the United Nations and the European human rights system, while the emphasis has been on the individual rights of the members of minority groups, certain group rights have also achieved recognition. In this sense, one of the main contributions of the OSCE High Commissioner has been the conclusion of a set of recommendations to promote the rights of national minorities, which are not legally binding, though bear great political influence. These are the Hague Recommendations regarding the Educational Rights of National Minorities; the Oslo Recommendations on the Linguistic Rights of National Minorities; and the Lund Recommendations on the Effective Participation of National Minorities in Public Life .

Since 2007 the High Commissioner on National Minorities is Knut Vollebaek of Norway. The Office of the High Commissioner is based in The Hague.

(c) The OSCE Representative on Freedom of the Media

The OSCE Representative on Freedom of the Media is the world's only inter-governmental institution mandated to protect media freedom. It was established in 1997 to strengthen the implementation of the principles and commitments to freedom of expression and free media. Its main task is to act as a media watchdog, observing media developments in OSCE countries and responding rapidly to serious non-compliance with OSCE principles, intervening on behalf of media in trouble. Particular focus is given to: harassment, intimidation, incarceration and physical attacks, including murders of journalists and other members of the media; restriction of media pluralism; denial or neglect of investigative rights for journalists regarding access to government information; coercion of journalists to reveal their sources to the police; attempts to label offending or critical views as punishable 'extremism' or 'hate speech'; criminalisation of journalists' professional errors, including defamation and charges of assaulting the dignity of public figures; challenges facing new media.

The Representative acts through quiet diplomacy, awareness raising, public statements, etc. His office also conducts legal analyses of proposed and existing media laws. It also conducts assessment visits, during which government officials, journalists and NGOs are consulted. The outcomes of such visits are published in reports. In-depth thematic reports are also published to assist all OSCE States to comply with their media freedom obligations.

Since 2010 the OSCE Representative on Freedom of the Media is Dunja Mijatović of Bosnia and Herzegovina. The Office is based in Vienna.

(d) Other OSCE human rights mechanisms

Alongside the principal organs described above, mention should also be made of the Chairperson-in-Office Personal Representative to promote tolerance and combat racism, xenophobia and discrimination and the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

3.2 The Council of Europe

The Council of Europe (CoE) is the oldest of the three European regional organisations. It was established in 1949 to promote human rights, the rule of law and pluralistic democracy. Only States that recognise and practise these three fundamental values (pillars) can become members of the CoE. Today it has 47 member States.

3.2.1 Principal human rights promotion and protection mechanisms of the Council of Europe

(a) The European Convention on Human Rights

The ECHR was adopted in 1950 and entered into force in 1953. It is the first legally binding human rights treaty with a procedurally developed judicial mechanism of accountability. Its jurisprudence has been inspirational in the consolidation and practical realisation of international human rights standards. The ECHR is certainly inspired by the UN Universal Declaration of Human Rights adopted in 1948, but differs substantially from it in that it predominantly promotes and protects civil and political rights, excluding economic social and cultural rights. In 1950, the priority was to quickly adopt a non-controversial text that governments would accept at once, whilst pro human rights sentiments were high. Predominant values in Western Europe meant that the Convention was limited to civil and political rights essential for a democratic way of life, while economic, social and cultural rights were left for later negotiations. The Convention's text has been over the years complemented by 14 Additional Protocols, which have both introduced extended substantive guarantees (including rights with a strong economic and social dimension) as well as reforms to the Convention's enforcement machinery.

The ECHR is the international human rights treaty with arguably the most effective and successful enforcement mechanism. It provides for both state and individual applications. Any State party may bring an application alleging a breach of the Convention by another State Party. More importantly, all State parties by ratifying the Convention accept the right of any person, non-governmental organisation or group of individuals, regardless of nationality, claiming to be a victim of a breach of the Convention to bring an application against it. Both State and individual applications are directed to the European Court for Human Rights (ECtHR), which is a permanent court composed by full-time judges. The Court decides in the first instance on the admissibility of the application. If it is admissible, the Court decides on the merits whether there has been a breach of the Convention, issuing a final judgement which is binding in international law. The execution of judgements by States parties is monitored by the Committee of Ministers of the CoE.

(i) Reform of the European Court of Human Rights

After the end of the Cold War, the CoE favoured a policy granting speedy accession to Central and Eastern European countries, with less strict attention to their record in human rights, rule of law or pluralistic democracy. As a consequence, States with poor human rights and rule of law record accessed the ECHR, inundating the Court with complaints. Protocol 11 of the ECHR (1998) replaced the two-tier system in Strasbourg (European Commission of Human Rights and ECtHR) with a single court.

This meant also that the examination of individual applications became the mandatory, rather than the discretionary jurisdiction of the Court.

The Court is at a breaking point. Despite its efforts to streamline internal procedures, the number of new applications exceeds by far its capacity, leading to a continuous increase in the number of pending cases (currently over 120,000). Two main factors have contributed to this situation. First, over 90% of submitted applications are manifestly inadmissible. Second, 50% of the admissible cases are repetitive, as they concern issues that have been adjudicated (repeatedly) in previous cases. The large number of cases also implies that, as perceived by the complainants, violations of human rights are not uncommon in Europe, and that the success of the Court has led Europeans to believe that it is a worthwhile last resort when they fail to acquire satisfactory remedies within the respective domestic contexts.

(ii) Protocol 14 to the European Convention on Human Rights

Protocol 14, which entered into force in 2010, was designed to improve the Strasbourg enforcement system in order to allow the Court to focus only on the most important cases. Main innovations include:

- The introduction of a single judge formation, empowered to declare inadmissible or strike out individual applications where such decisions can be taken without further consideration. The single judge replaced a three-judge Committee, therefore freeing up judicial time.
- The three-judge Committees are now able to unanimously declare admissible and at the same time give judgement on the merits in respect of cases where the complaint is already the subject of a well-established case law of the Court. Before Protocol 14 they could not give judgement on the merits.
- A new admissibility criterion is introduced, requiring that the applicant has suffered significant disadvantage unless respect for human rights requires an examination of the merits.
- It encourages friendly settlements at an early stage of the proceedings, in particular for repetitive cases.

Protocol 14 also accorded to the Commissioner for Human Rights the right to intervene as a third party, by submitting written comments and attending hearings. This applies also to pending cases. Furthermore, it introduced the possibility for the EU to accede the ECHR, similarly to what the Treaty of Lisbon did for the European Union (see below).

Protocol 14 has the potential to significantly improve the efficiency of the Court. However, it will not be able to solve its backlog problem. To this end further reform will be necessary.

(iii) The Interlaken Process

A Ministerial Conference on the future of the ECtHR was held in February 2010 in Interlaken, Switzerland.

Three aims were set out for the Conference. At the political level the States parties needed to endorse the 'sharing of responsibilities between the States and the Court'. They also needed to begin the process of determining the long-term reforms necessary for the Court's 60th anniversary in 2019 and, in particular, the contemplation of a new mechanism to filter applications under the control of the Court. Furthermore, they needed to agree on interim measures. To be considered for the short term were the expansion of translation into national languages of ECtHR judgements and enhancement of training for relevant national officials on State obligations under the ECHR. For the medium term, the possibility of a Statute of the Court should be discussed.

The Interlaken Conference adopted a Declaration and an Action Plan. This called upon the Committee of Ministers (CoM) to examine new procedural rules or practices regulating access to the Court. It called upon States Parties to fulfil their responsibility to guarantee the application and implementation of the Convention, therefore reiterating the subsidiarity principle that governs the ECHR. The Action Plan also recommended that the Court and Committee create effective filtering mechanisms in the short and medium term respectively. It also encouraged the examination of whether the judges responsible for filtering could, in the future, be empowered to determine repetitive cases. Through the filtering mechanism, the Court can identify at an early stage the most meritorious cases, and the judgments in such cases can offer solutions to be implemented by States. It further stressed the importance of judges of the Court possessing the requisite 'knowledge of public international law', 'proficiency in at least one official language' and 'the necessary practical legal experience.' It stressed the urgent need for the CoM to make the supervision and execution of judgements more 'efficient and transparent.' Finally, it called upon the CoM to examine the possibility of introducing a simplified procedure for any future amendment of the ECHR relating to organisational issues.

Since Interlaken significant political momentum has developed and the Action Plan has been given high priority within the Council of Europe. In April 2011, a follow-up Ministerial Conference was held in Izmir, Turkey, which provided information on steps taken to fulfil the Action Plan. The Committee of Ministers (CoM) adopted a recommendation to States Parties on effective remedies for excessive length of proceedings, accompanied by a guide to good practice. The Recommendation underlines that these will contribute to enhancing the protection of human rights in Member States and to preserving the effectiveness of the Convention system, including by helping to reduce the number of applications to the Court. The CoM established in November 2010 an Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights, to advise States Parties on whether candidates meet the criteria stipulated in the Convention. Following the entry into force of Protocol 14, the Court has introduced a single judge system for filtering inadmissible applications. The Court Registry has been reorganised to include the newly created filtering section. The Court's case processing now takes full account of a priority policy, with cases placed in one of seven categories of priority.

(b) *The European Social Charter*

The CoE soon recognised that civil and political rights could not be protected without the promotion of economic and social rights. The European Social Charter (ESC) was adopted in 1961. The ESC was soon criticised for not granting adequate

substantive rights, but also for its serious shortcomings in the implementation and monitoring mechanisms. A thorough review led to the adoption of an amended and revised Charter in 1996. The revised ESC contains principles, which States parties accept as policy aims but do not establish specific legal obligations, and substantive rights, which are an extension and consolidation of the policy aims and provide legal obligations. The ESC gives States the discretion of not being bound by all legal obligations related to substantive rights, but sets a minimum number that need to be accepted.

States Parties to the ESC need to submit regular reports on its implementation. The Charter is divided into four thematic areas and States report each year on one of these thematic areas. Two bodies consider State reports: the European Committee of Social Rights (ECSR) – composed of 15 independent experts - and the Governmental Committee. The ECSR conducts a legal assessment of the State's compliance with its obligations. The report and the ECSR's observations are then transmitted to the Governmental Committee, which formulates recommendations on matters of non-compliance, which are eventually issued by the CoE Committee of Ministers.

A Collective Complaints Mechanism was introduced by an Additional Protocol in 1995, which entered into force in 1998. This allows four categories of organisations (international organisations of employers or trade unions, non-governmental organisations with consultative standing at the CoE, national organisations of employers or trade unions and non-governmental organisations with particular competence in the field) to file complaints against States parties for non-compliance with their obligations under the ESC. The ECSR decides on the admissibility of the complaint – although there is not a comprehensive or explicit list of admissibility criteria - and then compiles a report on the satisfactory application or not of ESC provisions. The report is forwarded to the CoE Committee of Ministers, which makes the final decision.

(c) *The European Convention for the Prevention of Torture*

The European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) was adopted in 1987. It institutes a preventive system of visits to places of detention that was first floated in the framework of the UN Convention Against Torture, but did not receive international support until much later with the adoption of an Optional Protocol to this effect in 2002. The ECPT entered into force in 1989 and the European Committee for the Prevention of Torture (CPT) was established to monitor its implementation.

The CPT is composed by one expert for each ECPT State Party. Experts are from the fields of law, medicine, psychology, prison administration and others. Missions of the CPT can visit any place where persons are deprived of their liberty by a public authority, i.e. prisons, police stations, mental health institutions etc. They are entitled to access all documentation, cells and speak with detainees in private. After a visit, the CPT publishes a report with recommendations to the concerned government. Reports are confidential, but are usually published alongside with statements by the government. Reports can be published without the consent of the government, if this fails to comply with the CPT's recommendations. The CPT's recommendations have helped in developing common European minimum standards for conditions of detention. Given its limited capacities, the CPT has asked States parties to establish similar institutions for preventive visits at the national level.

The CPT is based in Strasbourg, and its bureau consists of three members: Mr. Lətif Hüseynov from Azerbaijan, as President, Mr Vladimir Ortakov, from the former Yugoslav Republic of Macedonia, as 1st Vice-President, and Ms Haritini Dip, from Greece, as 2nd Vice-President.

(d) *The Council of Europe Commissioner for Human Rights*

The office of the CoE Commissioner for Human Rights was instituted in 1999. It is an independent institution whose principal aim is to promote awareness and respect for human right in CoE member States. The Commissioner is mandated to promote the effective observance of human rights and assist States in implementing CoE human rights standards; promote human rights education and awareness; identify human rights shortcomings in law and practice; facilitate the activities of NHRIs and other national human rights mechanisms; provide advice and information on human rights protection across the region.

The Commissioner focuses on encouraging reform measures that create tangible improvement at the national level; he is not mandated to respond to individual complaints. He tries to engage in permanent dialogue with States by conducting country missions for a comprehensive evaluation of their human rights situation. During visits he meets with key representative from government and civil society. After a visit, the Commissioner publishes a report providing a detailed analysis of the country's human rights situation and recommendations for improvement. Follow-up visits and follow-up reports form the basis for permanent dialogue. He can also issue recommendations regarding a specific human rights situation in a specific State or group of States, highlighting topical human rights concerns and suggesting ways to tackle such problems (the latest such Issue Paper concerned 'Adoption and children: a human rights perspective'). He can also issue opinions on draft laws and specific practices. He further promotes human rights awareness through conferences, seminars and events. The Commissioner closely collaborates with NHRIs and other national human rights mechanisms and, where these are not present, strongly encourages their creation or development.

Some of the main areas of concern and action of the Commissioner relate to the human rights of refugees, immigrants and asylum seekers; human rights of Roma and travellers; children's rights; media freedom, independence and diversity; human rights of LGBTs and of persons with disabilities; non-discrimination and gender equality.

Since 2006 the Council of Europe Commissioner for Human Rights is Thomas Hammarberg of Sweden. The office is based in Strasbourg.

(e) *Other Council of Europe human rights mechanisms*

Besides the three main CoE human rights mechanisms described below, important protection work is carried out also by the European Commission against Racism and Intolerance (ECRI) and the Group of Experts on Action Against Trafficking in Human Beings (GRETA). Finally, there exists a Framework Convention on Protection of National Minorities (FCNM).

The CoE is also active in the promotion of human rights, most notably through the work of the Council of Europe Commissioner of Human Rights (see above). Other

bodies that do significant promotion work are the Steering Committee for Human Rights (CDDH) and the Committee of Experts on the Improvement of Procedures for the Protection of Human Rights. More generally, the CoE is involved in human rights standards and policy development; capacity building, awareness raising and training activities; actions on equality, diversity and rights of the vulnerable.

3.3 *The European Union*

The European Union is the result of a 50 year long process of regional integration in Europe, which was in the first instance economic in nature and then extended to the political dimension. The 1957 Treaty of Rome only indirectly concerned itself with 'human' rights. Moreover, rights were not accorded to human beings as such, but rather to community nationals. The economic nature of the European Communities also meant that fundamental human values, such as life, personal liberty, freedom of expression, etc. were not perceived to be relevant as such and therefore not identified as rights. With the creation of the European Union through the Treaty of Maastricht in 1992 (Treaty on European Union – TEU), there was a shift from a market and economy oriented institution to a broader organisation with a comprehensive agenda, in which human rights became increasingly important.

The legal and institutional structure of the EU is complex, based on a series of founding treaties. The Treaty of Lisbon (2009) is the latest of the series and completed a trend initiated by the Treaty of Amsterdam (1997) and the Treaty of Nice (2001) towards greater democratic legitimacy and efficiency of the EU.

The EU is based on the values common to its Member States of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. The EU is made up of three pillars: the European Community (EC), cooperation in foreign and security policy (CFSP), cooperation in police and criminal matters (CPCM). Human rights issues arise in all three pillars. The first pillar differs considerably from the other two, in that it is supranational rather than international in nature. EC law takes supremacy in domestic legal orders. Three main institutions are involved in the EU legislative and policy-making process: the EC, the Council of Ministers and the European Parliament. The European Court of Justice (ECJ) is the judicial institution responsible for adjudication of matters pertaining to EU law, its interpretation and implementation by member States. It has played a fundamental role in the development of human rights competence in the EU, first stating in the *Nold* case that human rights form integral part of the general principles of law whose observance the Court ensures (as reaffirmed by the Lisbon Treaty).

3.3.1 *Human Rights within the EU*

The EU's internal priorities in the areas of justice, freedom and security for the period 2010-2014 are outlined in the Stockholm Programme and Plan of Action. Among these is the creation of a 'Europe of rights'. European citizenship must confer to EU nationals the fundamental rights and freedoms enshrined in the Charter of Fundamental Rights of the European Union (CFREU). Particular emphasis is placed on the right to free movement; the protection of diversity and vulnerable groups, such as children, Roma, victims of crime; the rights of suspected and accused persons; participation in the EU's democratic life; data protection; and the fight against all forms of discrimination, racism, xenophobia and homophobia. Fundamental rights

are of relevance also in other priority areas – e.g. access to justice, internal security, border management and visa policies – and although rights language in these areas is less prominent, legislation will still need to comply with the CFREU.

Promotion and protection of human rights in the above mentioned priority areas are implemented through EU law (regulations, directives and decisions) as well as framework strategies, action plans and programmes in specific areas such as fundamental rights and citizenship; the rights of the child; the fight against violence towards children, adolescents and women; unaccompanied minors.

(a) *The Charter of Fundamental Rights*

In June 1999, the EU Council of Ministers decided that the fundamental rights applicable in the EU should be consolidated into a Charter. The Charter should reflect general principles of the ECHR and constitutional traditions of Member States, as well as case law from the ECJ and the ECtHR. The Charter was developed by a commission including representatives from each Member State, the European Commission, the European Parliament and national parliaments. It was adopted in Nice in December 2000. With the entry into force of the Treaty of Lisbon in December 2009, the Charter was given binding legal effect equal to the Treaties (see below).

The Charter brings together into a single document principles and obligations that were before scattered across a variety of legislative instruments, including national and international human rights documents. By making fundamental rights clearer and more visible, it creates legal certainty in relation to human rights within the EU. The Charter is divided into seven chapters: dignity, freedoms, equality, solidarity, citizens's rights, justice and general provisions. The 54 articles cover a broad spectrum of civil and political rights, as well as economic, social and cultural rights.

The Charter applies to EU institutions and to EU Member States when they implement EU law. The meaning and scope of rights which are also included in the ECHR is to be the same as defined by the latter, although EU law might grant more extensive protection. Rights derived from common constitutional traditions need to be interpreted according to those traditions.

(b) *Consequences of the entry into force of the Treaty of Lisbon*

The Treaty of Lisbon has introduced a threefold regime of human rights protection within the EU. First and foremost, and predating the Treaty, human rights were and are protected as part of the general principles of the EU. As already mentioned, with entry into force of the Lisbon Treaty, the CFREU, guaranteeing a comprehensive set of human rights, has become a legally binding instrument of the EU. As a consequence, the norms of the ECHR are incorporated into the EU legal order. Where the rights protected in the Charter correspond to the rights guaranteed by the Convention, the meaning and scope will be the same as those in the Convention. This is arguably the main innovation introduced by the Treaty of Lisbon.

Human rights were already protected as part of the general principles of EU law and, at least since 2006, the ECJ has been using the CFREU as a source of fundamental rights, even though it was not legally binding. It is unlikely that, in the current climate, the Court will use the Charter more proactively just because it is legally binding. This applies particularly with regard to economic and social rights. On the other hand, as

already noticed, the Charter creates legal certainty, providing EU citizens with guidance on which rights are protected by EU law. Simple reliance upon general principles, even if they take into account binding treaties, leaves room for uncertainty. However, the Charter had already provided this guidance function even before it was legally binding.

The Charter has now the same legal status as the Treaties. Therefore, by incorporating the ECHR, it confers core ECHR rights – i.e. those Charter rights that correspond to rights guaranteed by the Convention – the status of EU primary law. Furthermore, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This means that in case of multiple protection of the same rights by e.g. the general principles of EU law, the Charter and the ECHR, the latter shall prevail. The only exception to this is that the Charter/Convention is to be intended as a minimum standard; EU law can provide a higher level of protection. Moreover, when interpreting Charter rights corresponding to Convention rights, the ECtHR jurisprudence will be binding. The meaning and scope of the Convention rights are determined by the normative text of relevant Convention provisions and the respective ECtHR case law. This is particularly relevant since there is still some way to go in the harmonisation of ECHR and EU human rights standards.

(c) *Accession of the EU to the European Convention on Human Rights*

Formal and informal talks and reflections around EU accession to the ECHR have been conducted since the late 1970s. The issue regained prominence with the adoption of the CFREU. In 2001 the CoE instructed a working group to conduct a study of the legal and technical issues that would have to be addressed for such accession as well as of steps necessary to avoid contradictions between the EU and the ECHR legal systems. With the entry into force of the Lisbon Treaty and Protocol 14, EU accession to the ECHR has become a legal obligation.

The EU accession to the ECHR is a development of fundamental importance for the architecture of European human rights protection. First, not only will the EU be bound by the whole ECHR, but it will also be placed under the jurisdiction of the ECtHR. Second, the accession will close a gap in human rights protection and enhance consistency between the ECtHR and ECJ. Third, EU citizens will be able to resort to the ECtHR for complaints against the EU in the same way as they can do against Member States. This will result in improved judicial protection of fundamental rights. Finally, the accession will enhance the credibility of the EU when it promotes ECHR-standards in third countries.

Since June 2010, the European Commission and the Steering Committee for Human Rights of the CoE Committee of Ministers have been elaborating on the elements of the legal instruments for the accession. A Draft Legal Instrument on Accession of the EU to the ECHR was submitted in June 2011 to the CoE Committee of Ministers.

The Draft Legal Instrument sets out the scope of the accession and the amendments to be made to the ECHR. With the accession, the EU will be subject to ECHR obligations with regard to acts, measures or omissions of its institutions, bodies, offices or agencies, or of persons acting on their behalf. The decisions of the ECtHR in cases to which the EU is party will be binding on the EU's institutions, including the ECJ.

Representatives of the European Parliament will be entitled to participate with right to vote in the CoE Parliamentary Assembly sessions for the election of ECtHR judges. The European Parliament will have a number of representatives equal to the State with the highest number of representatives in the Parliamentary Assembly. Similarly The EU will be able to participate in CoE Committee of Ministers meetings when decisions relevant to the ECHR are taken. This right to vote shall not prejudice the effective exercise by the CoM of its supervisory functions over the obligations of High Contracting Parties.

(d) The EU Fundamental Rights Agency

The EU Fundamental Rights Agency (FRA) was established in 2007 as successor of the European Monitoring Centre on Racism and Xenophobia (EUMC). The FRA provides EU institutions and Member States with assistance and expertise on fundamental rights issues, helping them to fully respect these rights. In order to do so, the FRA collects data and information on fundamental rights issues in its thematic areas of competence, listed in its Multi-Annual Framework (MAF) programme. The MAF for 2007-2012 indicates that the Agency will work in following areas: a) racism, xenophobia and related intolerance; b) discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination); c) compensation of victims; d) the rights of the child, including the protection of children; e) asylum, immigration and integration of migrants; f) visa and border control; g) participation of the EU citizens in the Union's democratic functioning; h) information society and, in particular, respect for private life and protection of personal data; and i) access to efficient and independent justice.

Within these thematic areas the FRA collects information and data on the specific effects on fundamental rights of action taken by the EU and related good practices. The collection of information and data is carried out mainly through an expert network of national institutions in each Member State (the FRANET). The Agency also develops standards to improve the comparability, objectivity and reliability of data; it conducts scientific research and surveys, preparatory and feasibility studies; and publishes annual and thematic reports based on its analyses. The FRA works closely with civil society through a Fundamental Rights Platform in order to exchange information, pool knowledge and ensure cooperation. It also collaborates with other regional, national and international institutions, particularly the CoE and OSCE, but also EC and governmental agencies, as well as NHRIs. The aim is to cooperate and avoid duplication of work.

The Agency is based in Vienna. It comprises a Management Board, an Executive Board, a Scientific Committee and a Director, Morten Kjaerum of Denmark.

3.3.2 Human Rights outside the EU

The second pillar of the EU is its common European Foreign and Security Policy. All main EU institutions – the Council, the Commission and the Parliament – contribute to its development. The Treaty of Lisbon establishes that the EU's action on the international scene shall be guided by the same principles that guided its own development and which it seeks to promote in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms,

respect for human dignity, the principles of equality and solidarity, and respect for the principles for the United Nations Charter and international law.

The Treaty of Lisbon created the post of the EU High Representative for Foreign Affairs and Security Policy – currently Baroness Catherine Ashton, United Kingdom – who is mandated to conduct the EU's common foreign and security policy, contribute to its development, ensure the consistency of the EU's external action, and represent the EU in related matters. She is assisted in her tasks by the European External Action Service (EEAS), which was also created by the Treaty of Lisbon.

The EU Council's Human Rights Working Group (COHOM) is now part of EEAS. COHOM was established in 1987 with a mandate to develop guidelines for common reactions to human rights violations and common positions in international fora such as the UN General Assembly or Human Rights Council. Composed of government representatives, it has developed human rights guidelines which are not legally binding, but bear strong political influence as they reflect priorities of the EU's human rights policy in its external relations. They are used as guidance by EU representatives across the globe and concern following areas: promotion of compliance with international humanitarian law; human rights dialogues with non-EU countries; human rights defenders; violence against women and girls; death penalty; children and armed conflict; torture and other cruel treatment; and rights of the child.

Human rights play an important role in the EU's relations with neighbouring countries. The EU's enlargement policy has been a very powerful tool in promoting and projecting human rights in Europe. Candidate States for EU accession need to accept EU law and comply with the Copenhagen criteria, which require stable institutions that guarantee democracy, the rule of law, human rights, respect and protection for minorities. The European Neighbourhood Policy, which covers 16 countries, sets the commitment to common values as a prerequisite for the development of relations; action plans promote short and medium-term reforms in relevant areas.

Human rights are prominent also in the EU's relations with third countries. They can feature in all meetings with non-EU countries; however specialised dialogues on human rights have been established with certain partners. These involve government as well as civil society representatives. A human rights clause figures also in partnership agreements that the EU has signed with over 120 countries, establishing that human rights and democratic principles underpin not only the partnership, but also the international and domestic policies of both parties. Human rights find room also in the EU's Strategic Partnerships with its principal allies – the US, China and Russia among others. In situations where no dialogue is possible, the EU uses public declarations to influence human rights records. It might also withdraw unilateral trading privileges or impose restrictive measures on countries with poor human rights records.

Focus areas of the EU's external actions, initiatives and projects are: human rights defenders, trafficking in human beings, support to democratic process (electoral assistance projects, electoral observation missions – EOM), minorities, economic and social rights. Furthermore, through the European Instrument for Democracy and Human Rights (EIDHR) the EU supports projects run by civil society organisations around the globe.

The EU is becoming an increasingly important actor also in the field of crisis management and conflict prevention. The Common Security and Defence Policy takes full account of human rights, gender issues and effects of conflict on children. Most of its current civilian and military operations and missions in three continents include among their staff human rights and/or gender experts. Furthermore, EU Special Representatives in the most troubled countries have human rights and gender focal points.

One last dimension of EU action worth mentioning concerns building acceptance for human rights and fundamental freedoms in parts of the world where they are not strongly supported. To this end the EU constantly tries to reach out to new and different partners. It also gives the opportunity to university students to study human rights by funding regional master programmes in human rights and democratisation based in Venice, Italy (European Master); Pretoria, South Africa (African Master); Sarajevo, Bosnia and Herzegovina (Southern Europe Master); Sydney, Australia (Asia Pacific Master); and Buenos Aires, Argentina (Latin America Master).

4 Asian Regional Human Rights Mechanisms

Asia has a fragmented human rights protection framework. Human rights mechanisms exist at the sub-regional level, but no umbrella human rights system covers the expanse of the Asia-Pacific. The Asia-Pacific is consequently the only region not to have a comprehensive human rights protection system.

A number of intergovernmental organisations in the Asia-Pacific count human rights amongst their priorities. Some have adopted human rights instruments and established human rights bodies; two have established sub-regional human rights mechanisms. This section examines five of these organisations - the Association of Southeast Asian Nations, the League of Arab States, the Organisation of the Islamic Conference, the Pacific Islands Forum, and the South Asian Association for Regional Cooperation.

4.1 Association of Southeast Asian Nations

The Association of Southeast Asian Nations (ASEAN), established in 1967, is an intergovernmental organisation that comprises ten Member States: Brunei Darussalam, Cambodia, Indonesia, the People's Democratic Republic of Lao, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam. ASEAN's founding principles include non-interference in the internal affairs of one another, effective cooperation, and decision-making by consensus.

Since the adoption of its 1993 Ministerial Meeting Joint Communiqué, ASEAN has become increasingly engaged in human rights. Drawing from the Vienna Declaration and Programme of Action of the same year, the Communiqué confirmed the interrelatedness and indivisibility of all human rights. It also encouraged ASEAN Members to adopt a common approach on human rights, to actively participate and

contribute to the promotion and protection of human rights, and to consider establishing a regional mechanism on human rights.³⁷

In 2008 the ASEAN Charter entered into force.³⁸ The Charter, which incorporated ASEAN's legal status and codified its norms, rules and values, confirmed the promotion and protection of human rights and fundamental freedoms as one ASEAN's purposes. The Charter also stated ASEAN's commitment to establishing a human rights body.³⁹

ASEAN's three prominent human rights initiatives are its Intergovernmental Commission on Human Rights, its Commission on the Promotion and Protection of the Rights of Women and Children, and its Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

4.1.1 ASEAN Intergovernmental Commission on Human Rights

The ASEAN Intergovernmental Commission on Human Rights (AICHR) is ASEAN's dedicated human rights body. Inaugurated in 2009, AICHR's charges include: developing an ASEAN Human Rights Declaration; supporting ASEAN Members and bodies by promoting human rights awareness, treaty ratification and implementation, and providing capacity building and advisory services; and undertaking studies on thematic human rights issues.

AICHR comprises a representative of each ASEAN Member State. AICHR members are appointed by their Governments for three-year terms (renewable once), during which time they remain accountable to their Governments. The AICHR Chairpersonship rotates annually to mirror the ASEAN Chairmanship.

In contrast to European arrangements, the AICHR cannot receive and determine applications or complaints from individuals. Further, while it can ask ASEAN Member States for information on their human rights protection and promotion efforts, it cannot investigate human rights situations or alleged human rights abuses in Member States. The AICHR's terms of reference will be reviewed in 2014. This presents ASEAN with an opportunity to extend AICHR's mandate.

AICHR has met six times since its inauguration, most recently in July 2011. Over this time it has:

- adopted its rules of procedure ('Guidelines of Operation for AICHR') and its 2012-2015 work plan
- adopted the terms of reference for its Drafting Group for the ASEAN Human Rights Declaration and the rules of procedure for the AICHR Fund

³⁷ 'Joint Communiqué of the Twenty-Sixth ASEAN Ministerial Meeting', Singapore, 23-24 July 1993 <<http://www.asean.org/2009.htm>> accessed 5 September 2011.

³⁸ 'Charter of the Association of Southeast Asian Nations', Singapore, 20 November 2007 <<http://www.asean.org/publications/ASEAN-Charter.pdf>> accessed 5 September 2011.

³⁹ Article 14.

- developed terms of reference for thematic studies on migration and human rights and corporate social responsibility.

The AICHR's immediate tasks include confirming the modalities of its relationship with other ASEAN human rights bodies, namely the Commission on the Promotion and Protection of the Rights of Women and Children, and the Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

AICHR has identified possible areas of cooperation with the European and Inter-American regional human rights systems, but is yet to formalise the modalities for its interaction with them.

AICHR is also yet to confirm the contribution opportunities available to NHRIs and human rights organisations in its work. It has taken steps toward this end, participating in a 'regional dialogue on UN engagement with the ASEAN human rights system' with UN agencies, NHRIs and Asian human rights organisations in 2010.

4.1.2 ASEAN Commission on the Promotion and Protection of the Rights of Women and Children

Inaugurated in 2010, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) – as a consultative intergovernmental body – was created to 'promote and protect the human rights and fundamental freedoms of women and children in ASEAN'.⁴⁰ The ACWC's functions include: promoting awareness of women's and children's rights; the ratification and implementation of international and ASEAN instruments that address the rights of women and children; assisting ASEAN Members to report to prepare periodic reports under Convention of the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and other treaty bodies and the Universal Periodic Review mechanism insofar as they address the rights of women and children; and promoting studies and research, sharing good practices, and providing advisory services on the rights of women and children.⁴¹

ACWC comprises 20 Government-appointed members. Two - one on women's rights and one of children's rights - are drawn from each ASEAN Member State. ACWC convenes in two regular meetings each year of no more than five days each. It met for the first time in February 2011; a meeting it dedicated to the development of its rules of procedure, its five-year work plan, and the election of officers.

4.1.3 ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

The ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) has been operational since 2008. ACMW, which comprises a representative of each ASEAN

⁴⁰ 'Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC)' at para. 2.1 <<http://www.asean.org/documents/TOR-ACWC.pdf>> accessed 5 September 2011.

⁴¹ Ibid at para. 5.

Member State and a representative of the ASEAN Secretariat, serves as the focal point within ASEAN for the effective implementation of commitments made under the ASEAN Declaration. It is also charged with facilitating the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers.⁴² ACMW's current work plan⁴³ consists of four 'thrusts': stepping up protection and promotion of the rights of migrant workers; enhancing labour migration governance in ASEAN countries; promoting regional cooperation to fight human trafficking; and developing the ASEAN instrument on the rights of migrant workers.

4.2 League of Arab States

The League of Arab States (Arab League) is a regional organisation of 22 Arab States.⁴⁴ In 2008, the Arab Charter on Human Rights entered into force. The Charter includes a range of cultural, civil, economic, political and social rights, some of which are non-derogable. The Charter also provided for the creation of the Arab Human Rights Committee.

4.2.1 Arab Human Rights Committee

Established in 2009, the Arab Human Rights Committee consists of seven members drawn from States parties to the Charter.⁴⁵ Members are elected by States parties and serve in their personal capacity for four-year terms. The Committee considers periodic reports that are submitted by States parties on the measures that they have taken to give effect to Charter rights. Based on an examination of these reports, Committee members share concluding observations and make recommendations. The Committee can also ask States parties to supply it with additional information relating to implementation of the Charter. Much of the Committee's early work has been dedicated to confirming its methods of work and rules of procedure.

4.3 Organisation of the Islamic Conference

The Organisation of the Islamic Conference (OIC) is an intergovernmental organisation that comprises 57 Member States representing 'the collective voice of the Muslim world'.⁴⁶ The current OIC Charter,⁴⁷ adopted in 2008, sets out the OIC's 20 guiding principles and objectives.⁴⁸ It also provided for the creation of an Independent Permanent Commission on Human Rights charged with promoting the 'civil, political, social and economic rights enshrined in the organisation's covenants and declarations and in universally agreed human rights instruments, in conformity with Islamic values'.⁴⁹ Amongst the OIC's human rights instruments is the 1990 Cairo Declaration on Human Rights in Islam.⁵⁰

⁴² Refer <<http://www.asean.org/20768.htm>> accessed 10 September 2011.

⁴³ Refer <<http://www.asean.org/23062.pdf>> accessed 10 September 2011.

⁴⁴ Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen.

⁴⁵ In 2009, members were appointed from the United Arab Emirates (Chair), Algeria (vice-Chair), Bahrain, Palestine, Syria, Jordan and Libya.

⁴⁶ Refer <http://www.oic-oci.org/page_detail.asp?p_id=52> accessed 10 September 2011.

⁴⁷ Charter of the Organisation of the Islamic Conference, Senegal, 13-14 March 2008 <<http://www.oic-oci.org/is11/english/Charter-en.pdf>> accessed 10 September 2011.

⁴⁸ At article 1.

⁴⁹ At article 15.

⁵⁰ Refer <<http://www1.umn.edu/humanrts/instree/cairodeclaration.html>> accessed 10 September 2011.

4.3.1 Independent Permanent Commission on Human Rights

The OIC Independent Permanent Commission on Human Rights (IPCHR) was inaugurated in 2011. The IPCHR comprises 18 members that serve for three-year terms, renewable once. Six members are drawn from each of the three major geographical regions of the OIC — the African, Asian and Arab regions.

The IPCHR is mandated to conduct studies and research on human rights issues, provide Member States with technical cooperation on human rights, assist Member States to elaborate human rights instruments, support the OIC's position on human rights at the international level, submit recommendations on the refinement of OIC human rights declarations and covenants, and make suggestions as to ratification of international human rights instruments.⁵¹ The IPCHR will meet bi-annually.

4.4 Pacific Islands Forum

The Pacific Islands Forum (PIF), founded in 1971 as the South Pacific Forum, is a political grouping of 16 independent and self-governing Pacific States. Members include Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

PIF has incrementally incorporated human rights into its regional work. In the 2004 Auckland Declaration, PIF Leaders set out a shared vision for 'a Pacific region that is respected for ... its defence and promotion of human rights'.⁵² PIF's 2007 Pacific Plan added detail to this vision by setting out concrete human rights goals that included: promoting the ratification and implementation of international and regional human rights conventions, covenants and agreements; providing support for reporting and other requirements; and supporting key institutions such as audit and ombudsman offices, leadership codes, anti-corruption institutions and departments of attorneys general.⁵³ Forum Leaders also referred to human rights in their 2011 Forum Communiqué, recognising the participation of Forum Members in the Universal Periodic Review (UPR) process as a 'major regional achievement'.⁵⁴

The Pacific Plan also called for further analysis of the 'potential establishment of a regional ombudsman and human rights mechanisms to support implementation of Forum Principles of Good Leadership and Accountability'.⁵⁵ In both 2010 and 2011 the Forum's Security Regional Committee reinforced this call, recommending that PIF explore the potential establishment of a regional human rights mechanism.⁵⁶ This is not a new conversation. During the 1980s, the Law Association of Asia and the Pacific (LAWASIA) advocated for a Pacific Charter of Human Rights. By 1989, LAWASIA had developed a draft Charter that included a range of civil, cultural,

⁵¹ Chapter IV.

⁵² 'The Auckland Declaration' Auckland, New Zealand, 6 April 2004 <<http://forumsec.org/resources/uploads/attachments/documents/AUCKLAND%20Declaration1.pdf>> accessed 10 September 2011.

⁵³ At Strategic Objective 12.

⁵⁴ Forum Communiqué at the 42nd Pacific Islands Forum, Auckland, New Zealand, 7-8 September 2011 <<http://www.forumsec.org/pages.cfm/newsroom/press-statements/2011/forum-communique-42nd-pif-auckland-new-zealand.html>> accessed 14 September 2011.

⁵⁵ At Strategic Objective 12.

⁵⁶ Refer <<http://forum.forumsec.org/pages.cfm/political-governance-security/forum-regional-security-committee-frsc/>> accessed 14 September 2011.

economic, political and social rights, including the right to development and the rights of indigenous peoples. The draft Charter also provided for the establishment of a Pacific Human Rights Commission. While this process ultimately collapsed, efforts continue today. In November 2011, the PIF Secretariat, in partnership with the Pacific Regional Rights Resource Team (RRRT) of the Secretariat of the Pacific Community (SPC) is hosting a regional consultation dedicated to advancing the establishment process of a Pacific regional human rights mechanism.

In April 2010, the PIF Secretariat appointed its first Human Rights Advisor. The Advisor's roles include working with PIF Members to promote human rights treaty ratification and to assist in the preparation of reports to and implementation of the recommendations of the UPR and the human rights treaty bodies. The Advisor also works in partnership with the Asia Pacific Forum of National Human Rights Institutions (APF) to support the establishment of national human rights institutions in the Pacific.

4.5 South Asian Association for Regional Cooperation

The South Asian Association for Regional Cooperation (SAARC), founded in 1985, comprises eight South Asian States: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. The SAARC Charter⁵⁷ sets out the Association's objectives, which include: improving the quality of life of the peoples of South Asia, providing persons with the opportunity to live in dignity and to realise their full potentials, strengthening cooperation between SAARC Members in international forums on matters of common interests, and cooperating with international and regional organisations with similar aims and purposes.

SAARC has adopted conventions on child welfare⁵⁸ and the prevention and combating of trafficking in women and children for prostitution.⁵⁹ The SAARC Social Charter and the SAARC Charter of Democracy also contain references to human rights. In the Social Charter, SAARC Members agreed to 'promote universal respect for and observance and protection of human rights and fundamental freedoms for all, in particular the right to development'.⁶⁰ The Charter of Democracy reaffirms the SAARC Members' 'faith in fundamental human rights and in the dignity of the human person as enunciated in the Universal Declaration of Human Rights and as enshrined in the respective Constitutions of the SAARC Member States'.⁶¹

Despite its stated commitment to human rights, SAARC has not established a sub-regional human rights mechanism or body. In their 2010 Kathmandu Declaration, South Asian human rights organisations called on the governments of South Asia 'to establish an independent, effective and accountable regional human rights

⁵⁷ Refer <<http://saarc-sdmc.nic.in/pdf/charter.pdf>> accessed 8 September 2011.

⁵⁸ SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia <<http://www.saarc-sec.org/userfiles/conv-children.pdf>> accessed 10 September 2011.

⁵⁹ SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution <<http://www.saarc-sec.org/userfiles/conv-trafficking.pdf>> accessed 10 September 2011.

⁶⁰ At 2(xii).

⁶¹ At preambular para. 4.

mechanism with an explicit mandates of promoting, protecting and fulfilling human rights, through a process of wide consultation.⁶²

⁶² 'Kathmandu Declaration: Outcome document of the First Sub-Regional Workshop on a South Asian Human Rights Mechanism', 24-25 March 2010 < <http://forum-asia.org/documents/Kathmandu%20Declaration%202010.pdf> > accessed 10 September 2011.

Section 3: NHRIs and other national authorities

5 National Human Rights Institutions

A national human rights institution (NHRI) is an official State institution established by law and funded by the State to promote and protect human rights in the country. As State institutions NHRIs are subject to the law but are otherwise independent of the executive and legislative branches of government.⁶³ The degree of independence that each NHRI enjoys will depend on a range of factors, including its legal framework, its membership, and its financial resources.

NHRIs are unique institutions. They act as an important bridge between Government and civil society, and between their country and the UN system. There are currently approximately 110 NHRIs worldwide. Each country can only have one “official” NHRI.

NHRIs are required to comply with the UN minimum standards for NHRIs, the ‘Principles relating to the status of National Institution for the Promotion and Protection of Human Rights’ (Paris Principles).⁶⁴ The Paris Principles identify six criteria that NHRIs should meet in order to be effective, including:

- a clearly defined and broad-based mandate based on universal human rights standards
- autonomy from government
- independence guaranteed by legislation or the constitution
- pluralism, including membership that broadly reflects their society
- adequate resources
- adequate powers of investigation.

5.1 *NHRI roles and functions*

The Paris Principles set out the roles and functions of NHRIs. These include:

- advising Government and producing reports on matters concerning the promotion and protection of human rights
- drawing Government’s attention to human rights violations

⁶³ Kamelia Kemileva, Benjamin Lee, Claire Mahon & Chris Sidoti, ‘Expertise in the Human Rights Council’, Geneva Academy of International Humanitarian Law and Human Rights’ (Geneva, June 2010) at 14 <<http://www.adh-geneva.ch/policy-studies/ongoing/review-of-the-human-rights-council>> accessed 15 July 2011.

⁶⁴ General Assembly resolution 48/134 of 20 December 1993.

- promoting the ratification and implementation of international human rights instruments
- examining laws for their conformity with international human rights standards, and promoting the harmonisation of national laws and regulations with the human rights instruments to which the State is a party
- cooperating with and contributing to regional human rights bodies and to the UN system
- promoting human rights education and public awareness of efforts to combat discrimination.

Some NHRIs also have quasi-judicial competence, which enables them to receive and determine complaints from individuals.

5.2 Types of NHRI

It is each State's prerogative to determine the type of NHRI most appropriate to its particularities.⁶⁵ The main types of NHRIs are Human Rights Commissions, Ombudsman's Offices, advisory and consultative bodies, and research bodies. Some NHRIs are hybrid bodies that combine these roles. The UN reports that 58 percent of NHRIs are Human Rights Commissions, 30 percent are Ombudsman's Offices, and five percent are hybrid institutions. Advisory, consultative and research bodies comprise the remaining seven percent of NHRIs.⁶⁶

5.2.1 Human Rights Commissions

Human Rights Commissions are the most expansive type of NHRI in terms of size and functions. The largest NHRIs in Asia – the Afghanistan and Philippines Commissions – have over 600 staff each. The roles and functions of Human Rights Commissions may include the power to:⁶⁷

- receive and investigate complaints
- resolve complaints through conciliation and/or mediation
- recommend or provide the payment of compensation
- conduct investigations or inquiries at their own initiative
- enter and inspect premises, including detention facilities
- intervene or assist in court proceedings

⁶⁵ Per the Vienna Declaration and Programme of Action at article 36.

⁶⁶ 'National Human Rights Institutions: History, Principles, Roles and Responsibilities', UN, (New York and Geneva, 2010) at 15.

⁶⁷ See Brian Burdekin, 'National Human Rights Institutions in the Asia-Pacific Region' The Raoul Wallenberg Institute, (Martinus Nijhoff Publishers, Leiden/Boston, 2007) at 28-29.

- subpoena information and examine witnesses
- promote human rights education
- make recommendations to Government and Parliament on laws, regulations, policies and international human rights treaties.

A number of Human Rights Commissions also have anti-discrimination mandates.⁶⁸

Human Rights Commissions usually comprise several members (Commissioners) appointed for fixed terms. The appointment of Commissioners should be a transparent process and should ensure the representation of different segments of society as well as gender balance.

5.2.2 Ombudsman's Offices

Ombudsman's Offices primarily have a maladministration mandate, which can be extended to include general or specialised human rights functions, including the investigation of individual complaints. Ombudsman's Offices are usually headed by a single office-holder (Ombudsman) appointed for a fixed term.

5.2.3 Advisory and consultative bodies

Advisory and consultative bodies primarily focus on providing in-depth advice and making recommendations to Government on human rights issues and matters. They also make contributions to the work of regional and international human rights bodies and processes. These bodies generally do not have a complaint handling function.

5.2.4 Research bodies

Research bodies are human rights "think tanks" that make expert contributions to the study of a range of human rights issues. Like advisory and consultative bodies, research bodies generally lack the ability to receive complaints from individuals.

5.2.5 Hybrid institutions

Hybrid institutions are NHRIs with multiple mandates.⁶⁹ This often includes a combination of Ombudsman-like maladministration functions with some or all of the functions that Human Rights Commissions have. As the UN has pointed out, hybrid institutions can provide a "one-stop" service across a range of issues.⁷⁰ They can also be more financially viable than maintaining separate institutions.

⁶⁸ Refer United Nations, 'National Human Rights Institutions: History, Principles, Roles and Responsibilities', (New York & Geneva, 2010) at 16.

⁶⁹ Refer United Nations, 'National Human Rights Institutions: History, Principles, Roles and Responsibilities', (New York & Geneva, 2010) at 17.

⁷⁰ Refer United Nations, 'National Human Rights Institutions: History, Principles, Roles and Responsibilities', (New York & Geneva, 2010) at 18.

5.3 NHRI representative bodies

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) is the global NHRI network. The ICC:⁷¹

- works to build the capacity of NHRIs, in partnership with OHCHR's National Institutions and Regional Mechanisms Section (NIRMS)
- encourages cooperation and information-sharing among NHRIs
- assists NHRIs that are under threat
- supports NHRI contributions to the UN human rights system and engagement with States, UN agencies and human rights organisations.

There are four regional coordinating bodies of NHRIs, the: Asia Pacific Forum of National Human Rights Institutions (APF); European Group of National Institutions for the Promotion and Protection of Human Rights; Network of African National Human Rights Institutions; and Network of National Institutions for the Promotion and Protection of Human Rights in the Americas.

5.4 NHRI accreditation

The principal purpose of the ICC is the promotion and strengthening of NHRIs in accordance with the Paris Principles. The ICC's Sub-Committee on Accreditation periodically assesses NHRIs to determine whether they meet the requirements of the Paris Principles. NHRIs that comply with the Paris Principles are granted 'A' status by the ICC. NHRIs assessed as 'not fully compliant' with the Paris Principles are granted 'B' status. Non-Paris Principles compliant NHRIs are granted 'C' status. At July 2011, the ICC comprised 88 NHRIs: 64 'A' status; 15 'B' status; and nine 'C' status. 'A' status NHRIs enjoy ICC voting rights and participation privileges at UN meetings.

5.5 European NHRIs

Twenty seven European States have NHRIs. Seventeen of these are ASEM Partners: Austria; Belgium; Denmark; France; Germany; Greece; Ireland; Luxembourg; Netherlands; Poland; Portugal; Romania; Russia; Slovakia; Slovenia; Spain and the United Kingdom.⁷²

Of these the following eleven NHRIs have 'A' status – Denmark; France, Germany, Greece, Ireland, Luxembourg; Poland, Portugal, Russia, Spain and the United Kingdom (inclusive of the NHRIs from Great Britain, Scotland and Northern Ireland).

⁷¹ ICC Brochure (undated).

⁷² Austrian Ombudsman Board, Belgium Centre for Equal Opportunities and Opposition to Racism, Danish Institute for Human Rights, France National Consultative Commission of Human Rights, German Institute for Human Rights, Greek National Commission for Human Rights, Irish Human Rights Commission, Luxembourg Consultative Commission of Human Rights, Netherlands Equal Treatment Commission, Poland Commissioner for Civil Rights Protection, Portugal Ombudsman Office, Romania Advocate of the People, Commissioner for Human Rights in the Russian Federation, Slovak National Centre for Human Rights, Slovenia Human Rights Ombudsman, Spanish Office of the Ombudsman, Great Britain Equality and Human Rights Commission, Northern Ireland Human Rights Commission, Scottish Human Rights Commission, see <http://nhri.ohchr.org/EN/Regional/Europe/Pages/default.aspx>.

The NHRIs of Austria; Belgium, Netherlands, Slovakia and Slovenia have 'B' status and the NHRI from Romania has a 'C' status.

The ten European non-ASEM Partner States which have NHRIs are: Albania; Armenia; Azerbaijan; Bosnia and Herzegovina; Croatia; Georgia; Norway; Ukraine (all of which have 'A' status); Moldova ('B' status) and Switzerland ('C' status).

Unlike the Asia Pacific region where one specific NHRI model dominates, European NHRIs take the form of Ombudsman's Offices, advisory, consultative or research bodies, human rights commissions and hybrid institutions. The powers of these institutions vary with some institutions (e.g. France, Greece and Luxembourg) being mainly advisory bodies while others (e.g. Ireland, Poland, United Kingdom) have broader protection functions.

5.5.1 European Group of National Human Rights Institutions

The European Group of NHRIs is one of four regional networks of NHRIs within the ICC. Full membership of the network is restricted to those NHRIs deemed by the ICC to be fully compliant with the Paris Principles and accredited with 'A' status. NHRIs without 'A' status may attend meetings by invitation, but may not vote or take office.

The European Group co-ordinates joint action by NHRIs across the Council of Europe region, including by way of conferences and thematic working groups. It interacts with the regional human rights mechanisms in Europe including, the Council of Europe, the European Union Fundamental Rights Agency and the Organisation for Security and Cooperation in Europe (OSCE).

The European Group is currently an informal organisation without a distinct legal personality. The network does not have a permanent secretariat and rotates the Chairpersonship and responsibility for coordinating the activities of the Group amongst its member institutions. It is currently chaired by the Scottish Human Rights Commission. European NHRIs have determined that they will work in the future towards establishing a formal organisation with a permanent secretariat.

5.5.2 European NHRI work at the national and regional levels

European NHRIs work on substantive human rights issues at the national and regional levels.

(a) National

Respondents to a 2010 ICC survey⁷³ were 'asked to describe the top seven human rights issues in their country.' OHCHR reports that the top answers in the European region were as follows:

⁷³ 'ICC survey of 'A' status NHRI participation at and contributions to the United Nations Human Rights Council', ICC, (May 2010), available from the author.

ISSUE	OHCHR SURVEY (% OF RESPONDENTS)
Detention conditions and torture prevention	52
Migrants and refugees	43
Administration of justice	38
Minority groups	33
Economic, social and cultural rights	33
Privacy	24
Children's rights	24

(b) *Regional*

The work of European NHRIs at the regional level is conducted through the European Group of NHRIs. Within the limitations of its current informal status the European Group has undertaken a range of joint cooperation activities including the elaboration of a declaration on cooperation of NHRIs with other actors, including the Council of Europe and the EU, the development and adoption of a strategic plan, the promotion of the role of NHRIs as national preventative mechanisms under the Optional Protocol to the Convention Against Torture and the development of a *amicus curiae* submission to the ECtHR with regards to a case relating to intellectual disability.⁷⁴

5.6 Asian NHRIs

Nineteen Asian States have NHRIs. Nine of these are ASEM Partners: Australia; India; Indonesia; Malaysia; Mongolia; New Zealand; Philippines; Republic of Korea; and Thailand.⁷⁵ All of these NHRIs have 'A' status. The other ten States are Afghanistan, Bahrain, Bangladesh, Jordan, Maldives, Nepal, Oman, Qatar, Sri Lanka, and Timor-Leste.⁷⁶ The NHRIs of Afghanistan, Jordan, Nepal, Qatar, and Timor-Leste have 'A' status. Bangladesh, Maldives and Sri Lanka have 'B' status. Bahrain and Oman, as newly established NHRIs, are yet to be assessed by the ICC. The Palestinian territories also has an 'A' status NHRI.⁷⁷

Of these 20 institutions, 19 are Human Rights Commissions. The exception is the Timor-Leste Office of the Provedor for Human Rights and Justice, which is a hybrid institution, combining the maladministration mandate of an Ombudsman's Office with some human rights functions. In contrast, European NHRIs are for the large part Ombudsman's Offices or advisory, consultative or research bodies. A distinguishing feature of Asian NHRIs – attributable in part to the absence of a regional court or complaints mechanism - is their mandate to receive and determine complaints from individuals.

⁷⁴ European Union Agency for Fundamental Rights, 'National Human Rights Institutions in the EU Member States' 2010.

⁷⁵ Australian Human Rights Commission, National Human Rights Commission of India, Indonesian National Commission on Human Rights (Komnas HAM), Human Rights Commission of Malaysia (SUHAKAM), National Human Rights Commission of Mongolia, New Zealand Human Rights Commission, Philippines Commission on Human Rights, National Human Rights Commission of Korea, National Human Rights Commission of Thailand.

⁷⁶ Afghanistan Independent Human Rights Commission, National Human Rights Institution of Bahrain, National Human Rights Commission of Bangladesh, Jordan National Centre for Human Rights, Human Rights Commission of the Maldives, National Human Rights Commission of Nepal, National Human Rights Commission of Oman, National Human Rights Committee of Qatar, Human Rights Commission of Sri Lanka, Timor-Leste Office of the Provedor for Human Rights and Justice.

⁷⁷ Palestinian Independent Commission for Human Rights.

Other Asia Pacific States are taking steps toward NHRI establishment. Iraq has established its High Commission for Human Rights in law and will soon appoint Commissioners. Cambodia, Papua New Guinea, and Pakistan are preparing draft legislation to set up NHRIs. Japan, Palau, Samoa and the Solomon Islands are working in partnership with the APF to explore the potential establishment of NHRIs in their countries.

5.6.1 Asia Pacific Forum of National Human Rights Institutions

The APF is a membership-based organisation comprising 18 NHRIs in the Asia Pacific region.⁷⁸ The APF was established in 1996. It is the most advanced of the regional networks of NHRIs.

The APF has a full time professional secretariat which provides its members with practical support, including a wide range of training and capacity building services to assist them in promoting, monitoring and protecting human rights. It also provides a framework for NHRI cooperation on human rights issues at the regional level. The APF also offers Governments and civil society groups specialist advice to support the establishment of NHRIs.

5.6.2 Asian NHRI work at the national and regional levels

Asian NHRIs work on substantive human rights issues at the national, sub-regional and regional levels.

(a) National

Respondents to a 2010 ICC survey⁷⁹ were ‘asked to describe the top seven human rights issues in their country.’ OHCHR reports that the top answers in the Asia Pacific were as follows:

ISSUE	OHCHR SURVEY (% OF RESPONDENTS)
Women’s rights	66
Children’s rights	66
Migrants and refugees	58
Administration of justice	58
Civil and political rights (freedoms of expression and association)	58
Land and housing rights	50
Economic, social and cultural rights	50

⁷⁸ Afghanistan Independent Human Rights Commission, Australian Human Rights Commission, National Human Rights Commission of Bangladesh, National Human Rights Commission of India, Indonesian National Commission on Human Rights (Komnas HAM), Jordan National Centre for Human Rights, National Human Rights Commission of Korea, Human Rights Commission of Malaysia (SUHAKAM), Human Rights Commission of the Maldives, National Human Rights Commission of Mongolia, National Human Rights Commission of Nepal, New Zealand Human Rights Commission, Palestinian Independent Commission for Human Rights, Philippines Commission on Human Rights, National Human Rights Committee of Qatar, Human Rights Commission of Sri Lanka, National Human Rights Commission of Thailand, Timor-Leste Office of the Provedor for Human Rights and Justice.

⁷⁹ ‘ICC survey of ‘A’ status NHRI participation at and contributions to the United Nations Human Rights Council’, ICC, (May 2010), available from the author.

(b) *Sub-regional*

At the sub-regional level, the NHRIs of Indonesia, Malaysia, Philippines, Thailand, and Timor-Leste comprise the South East Asia National Human Rights Institutions Forum (SEANF). SEANF counts amongst its priority areas:⁸⁰

- encouraging other South East Asian governments to establish NHRIs
- developing a counter-human trafficking action plan
- exploring issues with inter-border implications, such as human rights and business, migrant workers, statelessness, and corruption
- strengthening engagement with civil society organisations
- developing human rights indicators on economic development and its impact on human rights
- opening lines of communication with AICHR, monitoring its progress, and contributing to the drafting of the ASEAN Human Rights Declaration.

(c) *Regional*

The work of Asian NHRIs at the regional level is conducted through the APF. In the past year, APF member institutions have participated in regional workshops and training programs on the prevention of torture, the conduct of national human rights inquiries, reproductive rights, administration and management, capacity assessments, business and human rights and the human rights of Indigenous peoples, migrants workers, and women.

The APF also holds biennial conferences on thematic human rights issues. Recent themes have included: human rights and corporate accountability; human rights and corruption; human rights and the environment; human rights and religion; the right to development; the rights of persons with disabilities; and the role of NHRIs in preventing torture.

The APF also has an Advisory Council of Jurists (ACJ), comprised of eminent jurists, that advises APF members on the interpretation and application of international human rights law, and which seeks to develop regional jurisprudence relating to the interpretation and application of international human rights standards. The ACJ has addressed a range of human rights issues, including: the death penalty; terrorism and the rule of law; the prohibitions on torture and trafficking; the right to education; and sexual orientation and gender identity.

5.7 Comparison between Asian and European NHRIs

A comparison between NHRIs from Asia and Europe reveals the following trends.

⁸⁰ 'Identification of new areas of priorities', SEANF, November 2010.

- NHRIs in both Asia and Europe are mainly statute-based institutions. Nonetheless a significant minority of institutions in Asia are constitutionally entrenched institutions.
- NHRIs from the Asia Pacific region have adopted the 'human rights commission' model whereas those in Europe have adopted a range of institutional models including commissions, ombudsman, advisory/consultative bodies, research institutes and hybrid institutions.
- The breadth of the mandate of the NHRIs in Asia covers the full range of competences and responsibilities specified in the Paris Principles. Fewer NHRIs in Europe are mandated to perform protection related functions such as complaint handling, inspection of detention centres etc.
- On average, NHRIs in Asia are more significant in terms of organisational structure, staffing and resources than those in Europe.

5.8 Other National Human Rights Mechanisms

5.8.1 Human Rights Ministries

Despite their establishment in North African countries such as Morocco as early as 1990, the idea of ministries of state for human rights is still a relatively novel concept. They are part of a wider trend of growth of domestic human rights protection institutions, but typically have not proved popular in countries, particularly in Europe, with strong NHRI presence in the form of independent Commissions.

Today human rights ministries can be found in such countries in Asia as Qatar (2003), Yemen (2003), Iraq (2005), Pakistan (2008), Indonesia (2000), Bahrain (2011). Elsewhere, human rights engagement of governments is channelled by various line ministries.

In some countries, such as Malaysia and the Republic of Korea, ministries are established to promote gender equality. In countries where such ministries are not found, institutional mechanisms for the advancement of women exist in various forms: advisory councils (Belarus, Slovakia), parliamentary committees (Serbia), high-level commissions (Lao People's Democratic Republic, the Philippines), gender focal points in government bodies (Ukraine), etc.

The establishment of dedicated human rights ministries may be seen to positively affect the discursive political environments in which they operate. They can also provide legitimacy to claims for human rights protection from civil society actors. Moreover, they may act as focal points for international and national actors who contest human rights violations and these ministries provide a single interlocutor for all human rights relevant engagement with the State.

5.8.2 National Action Plans (NAPs) for human rights

The concept of national human rights action plans was developed as part of the World Conference on Human Rights held in Vienna in 1993. The Vienna Declaration and Programme of Action recommended that each 'State consider the desirability of

drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights’.

‘The fundamental purpose of a national human rights action plan is to improve the promotion and protection of human rights in a particular country.’ The benefits of a NAP as opposed to less comprehensive or systematic planning approaches include: the possibility of a more comprehensive assessment of needs in the country concerned and the generation of a commitment to achievement that might not otherwise exist; the provision of guidance to government officials, non-governmental organizations (NGOs), professional groups, educators, advocates and other members of civil society regarding the tasks that need to be accomplished to ensure that human rights are effectively observed as well as the encouragement of cooperation among these groups; the promotion and maintenance of high levels of awareness of the state of human rights observance in the country. The relationship of NAPs with national development frameworks and frameworks for national human rights education plans raises issues and challenges.

European countries that have adopted NAPs include: Latvia, Lithuania, Moldova, Norway, Spain, Sweden. Asian countries with NAPs include: China, Indonesia, Kazakhstan, Nepal, Thailand.

5.8.3 Human rights ambassadors

Diplomacy has always been an important and often effective way to foster the promotion and protection of human rights. Human rights often figure among the priority policy areas of Foreign Ministries. To increase effectiveness in this regard, in recent years some countries have established the post of human rights ambassador. The role of such a post is to integrate human rights into all areas of foreign and development cooperation policy, and across all issues in which human rights play a role; to conduct missions, discuss human rights questions, explore the scope for dialogue and, occasionally, form part of the delegation of foreign and development ministers; to maintain and develop contacts with national civil society (in particular universities, human rights organisations, the media, businesses) in order to propagate human rights policy and acquire new ideas. Human rights ambassadors may also be nominated as representatives or heads of delegations of their respective government in multilateral contexts such as the UN Human Rights Council or international governmental conferences

Countries with human rights ambassadors include: Denmark, France, The Maldives, The Netherlands, Spain, Sweden.

5.8.4 Local government human rights mechanisms

As institutions to which national governments have delegated authority, local governments are bound by the same international human rights obligations entered into by the State. Local governments play an important role particularly with regard to the implementation of economic, social and cultural rights. For instance, delivery of services such as education, healthcare, housing and water supply, all have important human rights dimensions.

Decentralisation can improve protection of human rights in a number of ways. When decentralisation establishes local democracy where none existed before, this will be

a definite gain for democratic rights. Where power is devolved and exercised closer to the population, at least in theory those in authority should be more encouraged to act responsibly and accountably than office-holders who operate at a greater distance. Similarly, individuals will perceive to have greater influence on decisions that affect them, and therefore to participate more actively in democratic functioning of the local government.

Local government also provides an opportunity for effective collaboration with civil society actors. In England for example the British Institute of Human Rights has partnered up with local government in 'The Human Rights and Local Government Project'. The project aims to test out a human rights approach to the work of local government. To this end five local authorities are exploring how human rights principles and standards can help improve specific areas of service provision.

5.8.5 Human Rights Defenders and civil society

The fundamental role that human rights defenders and civil society organisations play must not be overlooked. They monitor the human rights situation at the national level; they conduct fact finding missions at all levels, react to violations quickly and without bureaucracy through public reports and campaigns, and lobby governments as well as inter-governmental organisations. They are also among the most important of human rights capacity building actors. NGOs and human rights defenders actions often trigger tensions with governments and their members commonly operate at great personal risk.

NGOs with consultative status (or similar) have a formal role to play in many UN fora, including the human rights treaty bodies and the Human Rights Council. They also provide essential input to human rights mechanisms of the CoE and the OSCE.

In 1998 the UN General Assembly adopted a 'Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms'. It is widely accepted that without the concerted pressure exercised on governments by NGOs, media and global civil society, human rights would have nothing like the attention they are accorded today.

Section 4: Interaction with the UN system

6 Introduction

Since the 1970s, the UN has promoted the establishment of regional arrangements in the field of human rights and NHRIs, through the adoption of resolutions⁸¹, organisation of workshops, and provision of technical assistance. The 1993 Vienna Declaration and Programme of Action recognises the fundamental role of regional arrangements in promoting and protecting human rights and stresses the importance of cooperation between regional mechanisms and the UN system, and NHRIs are invited to be involved in the implementation of the Declaration. Discussions on existing and possible means of cooperation have taken place in various forums, such as the annual meeting of the UN Human Rights Council special procedures⁸², annual meeting of the Chairpersons of Human Rights Treaty Bodies, and Inter-Committee meetings with the participation of representatives from UN human rights treaty bodies, in addition to workshops convened especially for such discussions.

Common methods of cooperation between regional mechanisms and the UN system include references to jurisprudence and other documentation, exchange of information and technical expertise, and cooperation in relation to country visits and to follow-up on decisions and recommendations. In the case of certain regional mechanisms, formal arrangements of cooperation have been put in place. Both the CoE⁸³ and the EU⁸⁴ have been granted observer status by the UN General Assembly. In relation to the CoE and the UN, an agreement was signed between the Secretariat-General of the CoE and the Secretariat of the UN in 1951, which established arrangements for cooperation between the two organisations: exchange of information, mutual consultation, attendance at meetings, and technical cooperation. General Assembly resolutions on cooperation between the CoE and the UN have especially underscored joint efforts of the two organisations in the protection of human rights and fundamental freedoms⁸⁵, and steps have been taken by both organisations in implementing the resolutions⁸⁶.

While, as demonstrated below, interaction can be observed between regional mechanisms and the UN, NHRIs and the UN, and regional mechanisms and NHRIs, such cooperation is not conducted in a systematic manner. In particular, possibilities for increased interaction between bodies performing similar functions, such as UN treaty bodies and the ECtHR; and the UN High Commissioner for Human Rights and the European counterpart, need to be further explored. It is also important to note

⁸¹ *Eg*, on regional arrangements, GA Res 32/127, para 1 (16 December 1977); Commission on Human Rights Res 1993/51; on NHRIs, GA Res 34/49, para 1 (23 December 1979).

⁸² Report of the Fourteenth Meeting of Special Rapporteurs/Representatives, Independent Experts and Chairpersons of Working Groups of the Special Procedures of the Human Rights Council and of the Advisory Services Programme (Geneva, 18-22 June 2007), paras 60-68, UN Doc A/HRC/7/29 (13 December 2007).

⁸³ GA Res 44/6 (17 October 1989).

⁸⁴ GA Res 65/276 (3 May 2011).

⁸⁵ *Eg*, GA Res 65/130 (13 December 2010).

⁸⁶ *See, eg*, Council of Europe, Information Document DER/Inf (2010) 6 on implementation of the United Nations General Assembly Resolution 63/14 on Cooperation between the United Nations and the Council of Europe <http://www.coe.int/t/der/docs/DER_Inf_2010_6_UN_EN.pdf> accessed 25 July 2011.

that so far, cross-region conversations of inter-governmental organisations on human rights have only taken place under the auspices of the UN. Noting the complementarity of human rights mechanisms at international, regional, and national levels, cooperation between them not only contributes to the efficiency of their operation but also reinforces the principle of universality of human rights. Close cooperation between mechanisms can also raise the visibility of the international and regional human rights regimes and further increase accessibility of various mechanisms. Stakeholders at all levels have consistently called for enhanced cooperation, with the ultimate goal of creating a positive difference in the lives of individuals on the ground.

6.1 *Interaction between regional mechanisms and the UN system*

6.1.1 *Existing interaction*

(a) *Establishment of OHCHR field offices*

To further reach out individuals on the ground, the OHCHR has set up 12 regional offices around the world, after consultations with the respective countries, as well as countries in the region. In Asia and Europe, regional offices were established in Brussels (Europe), Bishkek (Central Asia), Bangkok (Southeast Asia), Suva (Pacific), and Beirut (Middle East), and the Training and Documentation Centre for South West Asia and the Arab Region was established in Qatar. The OHCHR plans to establish more regional offices in Asia and continues to consult countries in the region⁸⁷. The region offices have acted as direct contacts with regional and sub-regional human rights mechanisms and facilitated various forms of interaction between international and regional/sub-regional mechanisms introduced below.

(b) *OHCHR's support in establishing regional and sub-regional arrangements in the Asia-Pacific region*

Since the 1990s, workshops facilitating dialogues regarding regional cooperation for the promotion and protection of human rights have been held by the UN in the Asia-Pacific region. In 1998, a framework was adopted to promote the establishment of regional/sub-regional human rights mechanisms and arrangements, with focus on four priority pillars: national human rights action plans, human rights education; NHRIs; the right to development and economic, social and cultural rights. Subsequently, periodic meetings have been held for States in the region to share national experiences on the four priorities or other selected themes, such as human trafficking and human rights and extreme poverty, and to discuss issues involved in the establishment of a human rights mechanism in the region⁸⁸. In the latest workshop held within the framework in 2010, States adopted the Bangkok Action Points, which welcomed the emergence of regional human rights mechanisms in the

⁸⁷ High Commissioner's Strategic Management Plan 2010-2011, 62, <<http://www.ohchr.org/Documents/Press/SMP2010-2011.pdf>> accessed 28 July 2011.

⁸⁸ Asia Pacific Framework - introduction, key documents, and the annual meetings < http://bangkok.ohchr.org/news/events/asia-pacific-regional-framework-workshop-2010/files/introduction_key_documents_annual_meetings.pdf> accessed 25 July 2011.

Asia-Pacific and encourages enhanced cooperation among all relevant actors, including the UN, regional mechanisms, governments, NHRIs, and the civil society⁸⁹.

A number of measures have been taken by the OHCHR in assisting the establishment of sub-regional human rights system. Workshops have been held in Southeast Asia, bringing together experts from other regions with a view to sharing experiences of setting up and developing regional human rights mechanisms. The OHCHR has also provided technical assistance, through, for instance, a publication on main principles for regional human rights mechanisms, identifying powers, responsibilities and structure of such mechanisms⁹⁰. Within the context of the League of Arab States, the OHCHR provided assistance in revising the Arab Charter on Human Rights to improve its compliance with applicable international human rights standards.

(c) *References to jurisprudence and other documentation*

In general, reports and findings of regional mechanisms are often consulted when States are examined by the treaty bodies and the Human Rights Council or when relevant communications are assessed by the Council's special procedure mandate holders. For instance, in the Universal Periodic Review (UPR) process of the Council, judgements of the ECtHR⁹¹ and reports of the CoE Human Rights Commissioner⁹² and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment⁹³ have been referred to. In turn, the CoE Human Rights Commissioner considers the opinion of UN treaty bodies and specialised agencies in carrying out his mandate.

In order to enhance synergies between international and regional human rights mechanisms, in July 2010, the chairs of treaty bodies met with representatives of EU institutions, including the European Commission, the European Parliament, the Council of the EU, and the FRA, as well as representatives of CoE institutions, including the ECtHR. In the meeting, the following interaction between international and regional mechanisms has been noted⁹⁴: International human rights instruments and treaty body recommendations have been used by EU institutions as points of reference in relation to situation of persons with disabilities and the situation of the Roma. In the practice of the ECtHR, treaty bodies' views on individual complaints and general comments are often consulted by the Grand Chamber of the Court. However, instances of direct reference by judicial and quasi-judicial mechanisms of jurisprudence of their counterparts⁹⁵ remain limited.

⁸⁹ Report of the High Commissioner containing the conclusion of the 15th Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region (21 to 23 April 2010), Annex, UN Doc A/HRC/15/39 (3 August 2010).

⁹⁰ OHCHR, Principles for Regional Human Rights Mechanisms (Non-Paper), <<http://bangkok.ohchr.org/programme/asean/principles-regional-human-rights-mechanisms.aspx>> accessed 21 July 2011.

⁹¹ See, eg, Human Rights Council, Report of the Working Group on the Universal Periodic Review: Russian Federation, UN Doc A/HRC/11/19 (5 October 2009).

⁹² See, eg, Human Rights Council, Report of the Working Group on the Universal Periodic Review: San Marino, UN Doc A/HRC/14/9 (15 March 2010).

⁹³ See, eg, Human Rights Council, Report of the Working Group on the Universal Periodic Review: Croatia, UN Doc A/HRC/16/13 (4 January 2011).

⁹⁴ Report of the chairs of the human rights treaty bodies on their twenty-second meeting, paras 11-22, UN Doc A/65/190 (6 August 2010).

⁹⁵ Eg, Case of Mamatkulov and Askarov v. Turkey, Applications Nos. 46827/99 and 46951/99 (4 February 2005); Case of Kurić and Others v. Slovenia, Application No. 26828/06 (13 July 2010).

(d) *Exchange of information, expertise, and cooperation in relation to country visits*

As regional mechanisms may have a more direct contact with regional and national situations, certain UN mandate holders have established a record of interaction with relevant regional bodies. For instance, the UN Special Rapporteur on torture has cooperated with regional bodies including the OSCE Office for Democratic Institutions and the CoE's Committee on Legal Affairs and Human Rights, Commissioner for Human Rights, and Committee for the Prevention of Torture⁹⁶. In 2005, as the Rapporteur visited Georgia, the OSCE provided support, especially during the visit to South Ossetia⁹⁷. Attempts have also been made to conduct joint country missions but so far have not come to fruition in Europe and Asia. With regard to the EU, the existing exchange of information has been between the FRA and certain UN treaty bodies, through the FRA's submission of country reports to the treaty bodies.

(e) *Cooperation in follow-up on decisions and recommendations*

Although international and regional mechanisms have established procedures to assist States in implementing decisions and recommendations taken, follow-up proves to be a great challenge for all mechanisms. While joint efforts are desired in this regard, little has been done. However, it is worth noting that the CoE Commissioner for Human Rights has expressed an intention to assist States in the implementation of the recommendations made in the UPR framework.

(f) *Establishment of focal points and liaison officers*

In order to facilitate cooperation amongst different mechanisms, institutional arrangements are crucial. In 2007, the Human Rights Council requested the OHCHR to convene in 2008 a workshop for an exchange of views on good practices, added value and challenges for regional human rights arrangements, and pursuant to the recommendations made during the workshop⁹⁸, the OHCHR National Institutions Section was expanded and became the National Institutions and Regional Mechanisms Section. On the regional level, the EU FRA, for instance, has established liaison officers, charged with the function of facilitating working relationships with the UN bodies, the OSCE, agencies of the EU, and EU Member States.

(g) *Other means of interaction*

In Europe, through the OHCHR regional office in Brussels, various exchanges have taken place, such as high-level talks between the UN High Commissioner for Human Rights and a number of EU counterparts, as well as human rights NGOs based in Brussels. Workshops and meetings on various topics, such as juvenile justice and

⁹⁶ Special Rapporteur on the situation of human rights and fundamental freedom of indigenous people, Special procedure and regional human rights systems: Areas for strengthening cooperation (4 June 2007).

⁹⁷ See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment, Manfred Nowak: Mission to Georgia, UN Doc E/CN.4/2006/6/Add.3 (23 September 2005).

⁹⁸ Secretary-General, Reports of the Secretary-General on the workshop on regional arrangements for the promotion and protection of human rights, 24 and 25 November 2008, paras 57-58, UN Doc A/HRC/11/3 (28 April 2009).

the follow-up to the UPR process, have also been held to encourage dialogue between the UN and regional mechanisms in Europe.

Since the entry into force of the Lisbon Treaty, the EU has played an increasingly active role in various UN forums, such as through the tabling resolutions concerning the death penalty and country-specific situations in the General Assembly and the Human Rights Council, and the EU has also provided financial support to the OHCHR⁹⁹. In 2009, a partnership between the UN and the EU also assisted Morocco, Tanzania, Nigeria, Haiti, Liberia, Seychelles, and Madagascar in developing a national human rights action plans, human rights training, and capacity-building¹⁰⁰. Furthermore, in December 2010, for the first time the EU ratified an international human rights treaty: the UN Convention on the Rights of Persons with Disabilities, and the Convention would subsequently form part of the EU legal order.

6.1.2 Recent efforts to increase cooperation

(a) *OHCHR regional consultations and international workshop on enhancing cooperation between international and regional mechanisms for the promotion and protection of human rights*

Pursuant to the request posed by the Human Rights Council Resolution 12/15, the OHCHR organised an international workshop on ‘enhancing cooperation between international and regional human rights mechanisms’, and regional consultations in Africa, the Americas, and in Europe were held in preparation of the international workshop. The regional consultations and the international workshop brought together various stakeholders, including independent experts of the UN human rights system and representatives of regional and sub-regional mechanisms, States, NHRIs and the civil society.

Participants of the regional consultations and the international workshop all agreed on the importance of and the need to enhance and institutionalise cooperation among international, regional and sub-regional mechanisms, building on existing means of cooperation, with an aim to generate an impact at the national level. It was also noted that during the current review of the Human Rights Council, means to increase interactions should be taken into consideration. While the participants acknowledged challenges with respect to resources, confidentiality, and the relevant actors’ lack of knowledge of relevant actors for international and regional mechanisms, the following sets of recommendation resulted from the discussions¹⁰¹.

Firstly, in terms of cooperation arrangements, it was recommended that a focal point should be designated within each mechanism and that biennial meetings should be held to facilitate dialogue among relevant actors. It was also suggested that regional and sub-regional mechanisms should be given opportunities to present oral and

⁹⁹ European Commission, Human rights and democracy in the work: Report on EU action, July 2008 to December 2009 <http://www.europa-eu-un.org/documents/en/100510_EU_Human_Rights_and_Democracy_2009_EN.pdf> accessed 25 July 2011.

¹⁰⁰ United Nations Brussels, Improving Lives: Results of the Partnership between the United Nations and the European Union in 2009 <http://www.europa-eu-un.org/documents/en/100607_Improving_Lives_2009.pdf> accessed 25 July 2011.

¹⁰¹ OHCHR, Report of the OHCHR on the international workshop on enhancing cooperation between international and regional mechanisms for the promotion and protection of human rights, paras 57-78, UN Doc A/HRC/15/56 (9 August 2010).

written interventions in Human Rights Council sessions. The need for further collaboration between human rights mechanisms and field presences of international organisations (such as OHCHR regional offices, UN Country Teams, and the United Nations Development Programme (UNDP) regional offices) was highlighted, as was the need for political and financial support from States and international organisations. Secondly, regarding instruments assisting cooperation, it was recommended that a database gathering information from international and regional mechanisms should be established, and that respective websites should provide links to other mechanisms and publish information on cooperation between mechanisms. Working level cooperation arrangements between secretariats of international and regional mechanisms and the conclusion of memorandums of understanding or intent between mechanisms have also been suggested.

Thirdly, in order to increase the sharing of information, it was recommended that a system should be put in place, and in particular, regular exchange of jurisprudence should be established between judicial and quasi-judicial mechanisms. The UPR process was also emphasised as an opportunity for cooperation, through submissions of the regional mechanisms to the Human Rights Council Working Group, consideration of regional human rights instruments in the UPR, and collaboration in implementing UPR recommendations on the ground. Lastly, concerning joint activities, it was recommended that joint visits should be conducted on a more regular basis and that practice of joint reports, publications, standards and guidelines be expanded. Other suggested possibilities of cooperation include joint press releases by mechanisms with similar mandates, joint actions to promote awareness of international and regional mechanisms among actors of all levels, and joint follow-up activities.

(b) Regional dialogue on UN Engagement with the ASEAN Human Rights System

In September 2010, the UNDP Asia Pacific Regional Centre and OHCHR Regional Office for South-East Asia jointly organised a 'Regional Dialogue on UN Engagement with the ASEAN Human Rights System'. Topics of discussions included human rights challenges in the region, opportunities of engagement with the AICHR and the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC), and working with the ASEAN Secretariat at regional and national levels. In order to enhance the UN's engagement with the ASEAN human rights system, possible areas of cooperation were identified¹⁰²: improving awareness of international human rights standards within the ASEAN bodies, capacity building at regional and national levels, thematic studies to be conducted by the AICHR and the ACWC, development of future regional human rights instruments (such as the ASEAN Human Rights Declaration), and technical assistance and facilitation of cooperation among all stakeholders in implementing human rights on the ground.

¹⁰² UNDP Asia Pacific Regional Centre & OHCHR Regional Office for South-East Asia, Report on 'Regional Dialogue on UN Engagement with the ASEAN Human Rights System', Bangkok, 6 September 2010, <http://bangkok.ohchr.org/files/Regional_Dialogue_ASEAN_Report.pdf> last accessed 25 July 2011.

6.2 Interaction between NHRIs and the UN

While performing the majority of their work at the national level, NHRIs also make important contributions to the international human rights system. Paris Principle 3(e) requires NHRIs to cooperate with the UN human rights system,¹⁰³ and the ICC's Sub-Committee on Accreditation has highlighted 'the importance for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies'.¹⁰⁴

6.2.1 General Assembly

In its 2010 resolution on NHRIs, the General Assembly recognised the importance of NHRIs at the national level and the value of their contributions to the UN human rights system.¹⁰⁵ NHRIs, however, have limited contribution opportunities at the General Assembly and in the work of its Committees.

6.2.2 Human Rights Council

NHRIs enjoy formal participation rights at the Human Rights Council¹⁰⁶.

NHRI contribution opportunities first developed organically at the Commission on Human Rights (the Council's predecessor) until confirmed in Commission resolution 2005/74,¹⁰⁷ which granted 'A' status NHRIs 'accredited by the ICC Sub-Committee on Accreditation' and their regional coordinating committees, such as the ICC globally and the European Group and APF regionally, the right to make oral statements and issue documents under NHRI-specific symbol numbers at Commission sessions. It also allocated NHRIs dedicated seating.

The Council preserved these NHRI contribution opportunities, confirming in its rules of procedure that the

*[p]articipation of national human rights institutions shall be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 ... while ensuring the most effective contribution of these entities.*¹⁰⁸

In a welcome recognition of the unique and increasingly important role of NHRIs in the work of the Council and its mechanisms, the recently completed five year review of the Council's work and functioning resulted in a further extension of NHRI contribution opportunities at the Council and in the work of its mechanisms.¹⁰⁹

¹⁰³ Paris Principle 3(e) provides that NHRIs shall 'cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights.'

¹⁰⁴ General Observation 1.4.

¹⁰⁵ General Assembly resolution 64/161. 'National institutions for the promotion and protection of human rights' of 12 March 2010.

¹⁰⁶ See above Section 1.1.

¹⁰⁷ Of 20 April 2005, 'National institutions for the promotion and protection of human rights'.

¹⁰⁸ Rule 7(b).

¹⁰⁹ Including: taking the floor immediately after their State during the Council's plenary discussion and adoption of the Universal Periodic Review (UPR) report on that country; taking the floor immediately after their State, following the presentation of a country mission report on that State by a Special Procedures mandate-holder; and nominating candidates for appointment as Special Procedures mandate-holders.

Further, in June 2011 the Council adopted its first NHRI-specific resolution, which acknowledged the crucial role of NHRIs in promoting and protecting human rights.¹¹⁰

The Council's main mechanisms include the Advisory Committee, Complaint Procedure, Expert mechanism on the rights of Indigenous Peoples, Forum on Minority Issues, Social Forum, Special Procedures, and the Universal Periodic Review (UPR). NHRIs enjoy discrete contribution opportunities in each of these mechanisms. The most substantive contributions that NHRIs make to the Council are national-level contributions: the submission of complaints and communications to the Special Procedures and the Complaint Procedure; the submission of information toward UPR country examinations; and contributions to thematic studies undertaken by Council mechanisms. These contribution opportunities – which are open to all NHRIs – inform the work of the Council and its mechanisms. Additional contribution opportunities are available to 'A' status NHRIs at Council sessions and mechanism meetings.

6.2.3 ECOSOC Functional Commissions

The UN's Economic and Social Council (ECOSOC) has developed modalities for the contribution of NGOs to UN meetings.¹¹¹ The same, however, cannot be said for NHRIs. NHRIs do not enjoy independent participation rights at meetings of ECOSOC Functional Commissions.¹¹² Since 2009 the ICC has conducted advocacy at one ECOSOC Commission – the Commission on the Status of Women (CSW) – with a view to securing independent participation rights for NHRIs. NHRIs may only participate at CSW meetings if they are invited to attend as part of their Government's delegation. Supported by the APF secretariat, seven NHRIs attended CSW 55 in March 2011, including the NHRIs of Australia, Jordan, Korea, New Zealand, and the Philippines.

6.2.4 Standard setting

NHRIs also contribute to human rights standard setting processes. Recent examples include NHRI participation in the negotiation of the *Convention on the Rights of Persons with Disabilities* and the Optional Protocol to the *Convention on the Rights of the Child* establishing a communications procedure. Despite these contributions, the participation of NHRIs in UN standard setting processes remains ad hoc rather than an established right.

6.2.5 Human Rights Treaty Bodies

NHRIs contribute to the work of the ten core human rights treaty bodies¹¹³.

¹¹⁰ A/HRC/17/L.18.

¹¹¹ ECOSOC resolution 1996/31 'Consultative relationship between the United Nations and non-governmental organizations' of 25 July 1996.

¹¹² There are nine Functional Commissions: Statistical Commission; Commission on Population and Development; Commission for Social Development; Commission on the Status of Women; Commission on Narcotic Drugs; Commission on Crime Prevention and Criminal Justice; Commission on Science and Technology for Development; Commission on Sustainable Development; United Nations Forum on Forests.

¹¹³ See above Section 1.2.

The treaty body contribution opportunities available to NHRIs include:

- submitting written information, including: parallel reports; contributions to lists of issues; and reports on State follow-up to the implementation of treaty body observations and recommendations
- attending and in some cases participating at pre-sessional and formal treaty body meetings
- contributing to treaty body inquiry and complaint procedures
- attending Days of General Discussion on thematic issues
- contributing to the development of general comments/recommendations on treaty provisions.

NHRIs can also be appointed as ‘National Preventative Mechanisms’ under the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*¹¹⁴ and serve as independent mechanisms to promote, protect and monitor the implementation of the *Convention on the Rights of Persons with Disabilities*.¹¹⁵

These contribution opportunities only exist, however, where a NHRI’s country is a party to a given human rights treaty and, in the case of individual complaints mechanisms, their optional protocols. The ratification record of ASEM Partners is annexed to this paper. Contribution opportunities also differ between treaty bodies as each has its own rules, practices and working methods.

The following table indicates the contribution opportunities available to NHRIs in nine treaty bodies:

Treaty body \ NHRI Contribution Opportunity	CCPR	CESCR	CERD	CEDAW	CAT	CRC	CMW	CRPD	CED
Submission of a parallel report	✓	✓	✓	✓	✓	✓	✓	✓	✓
Participation at pre-sessional working group				✓		✓			
Contribution to list of issues	✓	✓		✓	✓	✓			
Presentation to the treaty body before State	✓		✓		✓	✓	✓		

¹¹⁴ Per Part IV of OP-CAT.
¹¹⁵ Per Article 33.2 of the CRPD.

examination (including private meetings)									
Statement during the examination of the State			✓ 'A' status NHRIs				✓	✓ By invitation	
Provision of information toward an 'inquiry procedure'		✓		✓	✓			✓	✓
Provision of information toward a 'complaints procedure'	✓	✓	✓	✓	✓		✓	✓	✓
Participation at Day of General Discussion		✓				✓		✓	
Contribution to drafting of a General Comment/ recommendation	✓	✓	✓	✓		✓		✓	
Submission of information on follow-up				✓	✓				

NHRIs have also contributed to continuing consultations aimed at strengthening the treaty body system. At a June 2010 consultation, NHRIs called on the treaty bodies to:¹¹⁶

- periodically meet outside Geneva and New York in regional centres to bring the treaty bodies closer to people
- take account of the contributions that 'A' status NHRIs make to their work and to the protection and promotion of human rights in country
- align their reporting and individual communication procedures as far as possible through common rules of procedure and working methods; and
- invite NHRIs to provide them with information on a systematic basis.

Three treaty bodies have general comments on NHRIs: CERD, CESCR, and the CRC. CERD has also formalised NHRI participation in its working methods and rules of procedure.¹¹⁷ The other treaty bodies should give thought to doing the same.

¹¹⁶ 'Marrakech Statement on strengthening the relationship between NHRIs and the human rights treaty bodies system', 10 June 2010.

¹¹⁷ Refer 'Information Note: National Human Rights Institutions (NHRIs) interaction with the UN Treaty Body System', OHCHR National Institutions and Regional Mechanisms Section, April 2011 at 5.

6.2.6 Other relevant UN bodies

NHRIs work in partnership with a range of UN agencies on human rights issues and in implementing projects at the national level. At the international and regional levels, NIRMS, as OHCHR's dedicated NHRI section, supports the efforts of the ICC and the four regional NHRI coordinating bodies to establish and support NHRIs. NIRMS also serves as the ICC's secretariat.

In 2010, both the APF and the ICC entered into a joint 'framework of cooperation' with OHCHR and the United Nations Development Programme (UNDP). Through this tripartite partnership, the organisations have agreed to work together to strengthen the capacity of NHRIs.

6.3 Interaction between regional mechanisms and NHRIs

In Europe, the European Group of NHRIs has obtained consultative status with some of the regional bodies. Although civil society organisations are involved in the discussions on the reform of the ECtHR and the development of human rights standards, and that the NHRIs have a role to play in assisting States in implementing the recommendations by the regional bodies, the interaction between NHRIs and regional human rights mechanisms remains limited. In 2009, a workshop was held in Jakarta, where civil society organisations and NHRIs from Africa, the Americas and Europe shared experiences of their contribution to the establishment and development of credible regional human rights mechanisms, and proposals were made to assist civil society organisations and NHRIs in Southeast Asia in contributing to the ASEAN human rights mechanisms¹¹⁸.

6.3.1 AICHR

AICHR is mandated to consult, as appropriate, with regional and international institutions and entities concerned with the promotion and protection of human rights. It is yet to identify which institutions fall within this mandate and to confirm the modalities for such consultation.

AICHR members have, however, identified possible areas of UN-AICHR engagement. These include working in partnership with UN agencies to: encourage ASEAN Member States to ratify and implement international human rights treaties; build the capacity of ASEAN Member States with regard to international and regional human rights mechanisms; contribute to studies on thematic human rights issues, including Special Procedures studies;¹¹⁹ and contribute to the drafting of ASEAN human rights instruments.¹²⁰

¹¹⁸ OHCHR Regional Office for South-East Asia, Report of the Expert Dialogue with Civil Society and NHRIs on Regional Human Rights Mechanisms in Africa, the Americas and Europe, Jakarta, 4-5 May 2009, <http://bangkok.ohchr.org/programme/asean/report_jakarta_workshop.pdf> accessed 25 July 2011.

¹¹⁹ AICHR contributed to the work of the former Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, John Ruggie.

¹²⁰ 'Report on "Regional Dialogue on UN Engagement with the ASEAN Human Rights System"', UNDP Asia Pacific Regional Centre and OHCHR Regional Office for South-East Asia (Bangkok, 6 September 2010) <http://www.bangkok.ohchr.org/files/Regional_Dialogue_ASEAN_Report.pdf> at 3-4.

6.4 NHRI contributions to the UN system

6.4.1 Human Rights Council

While NHRIs contribute to the work of all of the Council's mechanisms, this section specifically examines their contributions at Council sessions and to the work of three Council mechanisms: the Special Procedures; the UPR; and the Complaint Procedure. These mechanisms are of particular pertinence to the work of Asian NHRIs given the absence of a regional complaints mechanism in Asia. They also allow for some comparative analysis of the contributions made by Asian and European NHRIs, having regard to Europe's well-established regional system.

The findings of global OHCHR (2009)¹²¹ and ICC (2010)¹²² surveys on NHRI contributions to the Council and its mechanisms are applied to this task. Both surveys, however, have weaknesses.

Twelve of the 61 respondent NHRIs to the OHCHR survey were from the Asia Pacific region;¹²³ 21 were from Europe.¹²⁴ The disaggregated statistics provided by OHCHR do not, however, identify which institutions made which contributions and do not therefore take account of the fact that only 'A' status NHRIs can contribute at Council sessions.¹²⁵

The ICC survey was only distributed to 'A' status institutions, thus its findings do not report on the national level contributions that 'B' status NHRIs make to the work of Council mechanisms. Second, only eight of the 15 'A' status Asian NHRIs responded to the survey,¹²⁶ seven of which also responded to the OHCHR survey¹²⁷ and only one of the 19 'A' status European NHRIs responded.¹²⁸ Accordingly, only the ICC survey's findings on Asian NHRI contributions to the Council are used here.

Weaknesses aside, the OHCHR and ICC surveys provide useful – and otherwise unavailable – statistical information on NHRI contributions to the Council. Both surveys also asked respondent institutions to identify obstacles to their contributions to the Council.

¹²¹ 'Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide', OHCHR, (July 2009), available from the authors.

¹²² 'ICC survey of 'A' status NHRI participation at and contributions to the United Nations Human Rights Council', ICC, (May 2010), available from the author.

¹²³ Afghanistan, Iran, Jordan, Malaysia, Maldives, Mongolia, Nepal, New Zealand, Philippines, Republic of Korea, Thailand, and Timor-Leste. All of these NHRIs, save for Iran, are APF member institutions.

¹²⁴ Albania, Armenia, Bosnia & Herzegovina, Croatia, France, Germany, Greece, Ireland, Latvia, Luxembourg, Northern Ireland (UK), Norway, Portugal, Romania, Scotland (UK), Slovakia, Spain, Sweden, Ukraine, Great Britain (UK), Uzbekistan.

¹²⁵ At July 2009, when the survey findings were released, the ICC comprised over 90 member institutions, 65 of which had 'A' status.

¹²⁶ Responses were received from the NHRIs of Afghanistan, India, Jordan, Malaysia, New Zealand, Philippines, Republic of Korea, and Timor-Leste.

¹²⁷ Afghanistan, Jordan, Malaysia, New Zealand, Philippines, Republic of Korea, and Timor-Leste.

¹²⁸ Northern Ireland.

(a) *Human Rights Council sessions*

The Council holds three regular sessions each year for a total of ten weeks.¹²⁹ 'A' status NHRIs can attend Council sessions, speak under each of the Council's ten agenda items, issue documents under NHRI-specific symbol numbers, and have allocated seating at the Council. Further, the ICC appointed a Geneva Representative in 2007 charged with facilitating NHRI contributions to the Council. The ICC Representative is authorised to deliver oral statements on behalf of 'A' status NHRIs. This has enabled 'A' status NHRIs unable to attend Council sessions to make oral statements by proxy.

(i) Asian NHRIs

100 percent of Asian respondents to the ICC survey had attended at least one regular Council session; 87 percent had delivered an oral statement, and 63 percent had issued documentation at the Council. By contrast, the OHCHR survey reports that 25 percent of Asian respondent to its survey had attended a Council session; 25 percent had delivered an oral statement, and none had issued documentation at the Council.

(ii) European NHRIs

The OHCHR survey reports that 14 percent of European respondents had attended a regular Council session. 10 percent had submitted documentation. Statistics on oral statements are not provided.

(b) *Special Procedures*

Special Procedures is the general name given to a collection of mechanisms inherited from the Commission. Special Procedures office-holders, known as mandate-holders,¹³⁰ examine, monitor, and report on human rights situations in specific countries or territories (country mandates), or on major phenomena of human rights violations worldwide (thematic mandates). They also receive and act upon complaints from individuals, conduct studies, provide technical assistance at the national level, and undertake human rights promotional activities.¹³¹

All NHRIs can contribute to the work of the Special Procedures. Contribution opportunities include: submitting complaints (known as urgent appeals) on behalf of individuals; providing information to mandate-holders on the human rights situation in their State; facilitating country visits by mandate-holders; meeting with mandate-holders; contributing information toward thematic studies; monitoring State follow-up to Special Procedures recommendations; and nominating persons for appointment as Special Procedures mandate-holders. All of these contributions - save for the

¹²⁹ It can also hold special sessions at the request of a Council member, where such a request attracts the support of no less than one-third of the Council's 47 members. Per operative para.10 of General Assembly resolution 60/251.

¹³⁰ Mandate-holders are either individuals (called a 'Special Rapporteur', 'Special Representative of the Secretary-General' or 'Independent Expert') or members of working groups (which are generally composed of five members, one drawn from each of the UN's five regional groups). Refer <<http://www2.ohchr.org/english/bodies/chr/special/index.htm>> accessed 20 July 2011.

¹³¹ Refer <<http://www2.ohchr.org/english/bodies/chr/special/index.htm>> accessed 20 July 2011.

nomination of candidates - can be made from the national level and are thus open to all NHRIs.

(i) Asian NHRIs

OHCHR reports that over 50 percent of respondent Asian NHRIs to its survey had contributed in some way to the work of the Special Procedures. One hundred percent of ICC survey respondents had contributed to the Special Procedures. Disaggregated statistics on these contributions are tabled below.

CONTRIBUTION TYPE	OHCHR SURVEY (% OF RESPONDENTS)	ICC SURVEY (% OF RESPONDENTS)
Submission of urgent appeals/communications	8	13
Provision of information on the country situation	50	86
Facilitation of country visit by mandate-holder	Not provided	50
Meeting with mandate-holder	58	63
Contributing information to thematic studies	Not provided	63
Monitoring State follow-up to recommendations	33	63
Nominating persons for appointment as mandate-holders	33	50

(ii) European NHRIs

The OHCHR survey provides the following statistics on the contribution of European NHRIs to the Special Procedures.

CONTRIBUTION TYPE	OHCHR SURVEY (% OF RESPONDENTS)
Submission of urgent appeals/communications	0
Provision of information on the country situation	19
Facilitation of country visit by mandate-holder	Not provided
Meeting with mandate-holder	29
Contributing information to thematic studies	Not provided
Monitoring State follow-up to recommendations	10
Nominating persons for appointment as mandate-holders	10

(c) UPR

The UPR was established by the General Assembly in 2006.¹³² Under the UPR, each UN member State's human rights performance is reviewed by the Council on a periodic basis.¹³³ The UPR process comprises several stages, including: the

¹³² Per operative para. 5(e) of resolution 60/251, which states that the Council shall 'undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States ... '.

¹³³ As of 2010, the UPR will operate on a four-and-a-half-year cycle.

preparation of reports on the State’s compliance with its international human rights obligations;¹³⁴ a public examination of the State conducted in Geneva by a Working Group of the Council (the Working Group on the UPR); and the preparation of a narrative report on the review, which contains conclusions and recommendations (known as ‘UPR outcomes’) that seek to assist the State under review to improve its human rights performance. These reports are transferred to the Council, where they are discussed and adopted. UPR ‘follow-up’ is the process by which each State implements its UPR outcomes. The State’s progress in implementing its UPR outcomes is examined in subsequent UPR cycles.

‘A’ status NHRIs can attend the Working Group on the UPR, but cannot make oral statements. As per Council practice, ‘A’ status NHRIs can attend and make oral statements at the Council session at which the country report is discussed and adopted. All NHRIs can submit information toward the review of their country, and can work on ‘follow-up’ to their State’s implementation of UPR outcomes at the national level.

The UPR boasts the highest NHR participation rate of all Council mechanisms, with both the OHCHR and ICC surveys reporting that 100 percent of respondents had contributed in some way to the UPR process. Contribution types are disaggregated below.

(i) Asian NHRIs

CONTRIBUTION TYPE	OHCHR SURVEY (% OF RESPONDENTS)	ICC SURVEY (% OF RESPONDENTS)
Contribution to the State report	25	88
Preparation of stakeholder submission	25	63
Attendance of the Working Group on the UPR	25	100
Oral statement at the adoption of the country report at the Council	Not provided	57
Dissemination of UPR outcomes	25	86
Follow-up to UPR outcomes	25	86

The variation in the statistical results of both surveys, despite their common pool of respondents, is attributable to the fact in the 18-24 months between the OHCHR and ICC surveys, an additional four Asian States underwent UPR examinations.

(ii) European NHRIs

CONTRIBUTION TYPE	OHCHR SURVEY (% OF RESPONDENTS)
Contribution to the State report	14
Preparation of stakeholder submission	29
Attendance of the Working Group on the UPR	33
Oral statement at the adoption of the country	Not provided

¹³⁴ Country reviews are based on three documents: a 20-page national report prepared by the State under review; a ten-page compilation of UN information, prepared by OHCHR; and a ten-page summary of information received from ‘stakeholders’, including NHRIs, also prepared by OHCHR.

report at the Council	
Dissemination of UPR outcomes	14
Follow-up to UPR outcomes	24

(d) *Complaint Procedure*

The Complaint Procedure addresses ‘consistent patterns of gross and reliably attested violations of all human rights and fundamental freedoms occurring in any part of the world and under any circumstances’.¹³⁵ An adaptation of the Commission’s ‘1503 Procedure’, the Complaint Procedure operates on the basis of communications transmitted by individuals, groups or organisations that claim to be victims of violations of human rights and fundamental freedoms or that have direct, reliable knowledge of such violations.¹³⁶ The Complaint Procedure is a confidential process so as to enhance cooperation with the State concerned. The activation of the Complaint Procedure requires the exhaustion of domestic remedies ‘unless it appears that such remedies would be ineffective or unreasonably prolonged’.¹³⁷ The Complaint Procedure comprises two working groups. The first, the Working Group on Communications, is composed of five members of the Advisory Committee who assess received communications against objective criteria. The second working group, the Working Group on Situations, is composed of five State representatives who, based on communications referred to it by the Working Group on Communications, bring situations of concern to the Council’s attention. The Council subsequently discusses these situations in a closed meeting and determines appropriate responses.¹³⁸

All NHRIs can submit communications to the Complaint Procedure. Given its confidential nature, OHCHR does not include the Complaint Procedure in its survey; none of the respondent institutions to the ICC survey had submitted a communication to the Complaint Procedure.

Respondent institutions to the ICC survey attributed their lack of usage of the Complaint Procedure to the sufficiency of domestic complaint handling mechanisms, a lack of ‘consistent patterns of gross violations’ in country, and a lack of familiarity with the Complaint Procedure’s operation. It is significant, nonetheless, that Asian NHRIs have not used the Complaint Procedure in the absence of a regional mechanism.

(e) *Obstacles and accountability*

Respondent NHRIs to both surveys identified a number of obstacles to their contributions to the Council and its mechanisms: a lack of knowledge of Council mechanisms and their operation (Complaint Procedure); a lack of resources, requiring a prioritised approach to engagement with Council mechanisms; and the

¹³⁵ Per Council resolution 5/1 at operative para. 85.

¹³⁶ Refer *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, at 82.

¹³⁷ Resolution 5/1 at operative para. 87(g).

¹³⁸ Actions include: (a) discontinuing its consideration of a situation when further consideration or action is not warranted; (b) keeping a situation under review and requesting the State concerned to provide further information within a reasonable time; (c) keeping a situation under review and appointing an independent and highly qualified expert to monitor the situation and to report back to the Council; or (d) recommending that OHCHR provide technical cooperation, capacity-building assistance or advisory services to the State concerned. Refer *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, at 82.

reported sufficiency (or preferred usage) of national – and in the European context, regional – mechanisms in place of Council mechanisms.

Some accountability, however, must be apportioned to individual institutions, particularly ‘A’ status NHRIs, for the relatively low proportion of NHRI contributions to the Council’s work. Reported obstacles, for instance, do not explain the under-usage of the ICC Geneva Representative as a means of exercising speaking rights at Council sessions and meetings of its mechanisms, nor the small amount of NHRI documentation issued at the Council. Accordingly, ‘A’ status NHRIs need to make better use of the contribution opportunities that they enjoy at the Council.

Two steps that can be taken by NHRIs are:

- identifying concrete contributions that they can make to Council mechanisms and incorporating these contributions into their strategic plans and annual programs of work; and
- allocating funds to support these contributions, or seeking earmarked funding from Government to this end.

6.4.2 Human rights treaty bodies

The OHCHR survey also examines NHRI contribution to the treaty bodies. It provides the following statistics on Asian and European NHRI contributions:

CONTRIBUTION TYPE	ASIA PACIFIC	EUROPE
Contribution to a State report	50%	43%
Public comment on a State report	41%	33%
Submission of a parallel report	33%	29%
Contribution to the drafting of lists of issues	33%	29%
Participation in a treaty body session	33%	33%
Made statement through the ICC representative	8%	5%
Dissemination of concluding observations	33%	39%
Conducted follow-up activities	50%	43%
Participation in days of ‘General Discussion’	8%	5%
Contribution to the drafting of ‘General Comments’	25%	14%

The OHCHR survey does not, however, report on NHRI contributions to treaty body early warning and individual complaints mechanisms, two of the treaty bodies’ most important roles.

6.4.3 NHRI coordinating bodies

The ICC, supported by the APF and the European Group of NHRIs, also contributes to the UN human rights system.

In March 2010, the APF assumed the Chairpersonship of the ICC, a three-year post that rotates between the four regional groups of NHRIs. The ICC has in this time actively participated in: the five-year review of the Council; the treaty body reform process; UN standard setting processes; and has pursued NHRI participation rights

at CSW. The ICC also holds biennial international conferences on thematic human rights issues.¹³⁹

As the global NHRI network, the ICC has a responsibility to build the capacity of its member institutions to contribute to the UN human rights system. The ICC Strategic Plan expresses its commitment to '[s]upport NHRIs in their efforts to improve follow up to recommendations from UN mechanisms, including the UPR, treaty bodies, and special procedures'.¹⁴⁰ To this end, the ICC should consider taking the following steps.

First, the ICC should increase the number of workshops and training sessions that it holds for its members on the Council and its mechanisms. As OHCHR notes in its survey report, while

[c]ooperation with the international and regional human rights mechanisms is a key requirement of the Paris Principles... participation rates show a limited familiarity with the international and regional systems. In fact, just over 50% of respondents had participated in training on the international human rights system'.¹⁴¹

Without a strong ICC investment in increasing the capacity of NHRIs to contribute at the Council, a widening gap will open between the Council's expectations of NHRI contributions and the actual capacity of NHRIs to deliver to these expectations. This is underlined by the new contribution opportunities that NHRIs enjoy as a result of the Council review process.

Second, the ICC should formally request OHCHR to produce a resource which sets out the various contribution opportunities open to NHRIs at the Council and its mechanisms, as it has done for civil society actors.¹⁴² There is currently no such resource for NHRIs, despite their recognition as key entities at the Council. The ICC could provide 'best practice' examples of NHRI contributions to Council mechanisms for inclusion in the publication.

Third, the lack of NHRI financial resources is an issue. Accordingly, the ICC should lobby the Council to establish a fund to support NHRI participation at the Council. It should also seek external sources of funding to support its own capacity-building activities.

Fourth, the ICC should conduct an annual survey of NHRI contributions to the Council which ICC members would be required to submit along with their annual ICC membership fees. This would allow for the collection of comprehensive and authoritative statistics on NHRI contributions to the Council.

¹³⁹ Recent examples include business and human rights (2010), NHRIs and the administration of justice (2008), and the role of NHRIs with regard to migration (2006).

¹⁴⁰ At Strategic Objective 5.2.

¹⁴¹ 'Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide' at 42-43.

¹⁴² *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*.

Section 5: Conclusion

Regional Arrangements

The European human rights protection framework is notably complex and multi-faceted. Three European inter-governmental organisations are concerned with the promotion and protection of human rights: the Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe (CoE) and the European Union (EU). The development of the European system and its sophistication are remarkable, though it needs to be stressed that, traditionally, more attention has been paid to civil and political rights than economic, social and cultural rights. Considerable challenges also persist for the protection of universal standards across a wide range of diverse political and social contexts.

Although the mandate of the OSCE does not include the protection of human rights as such, the Organisation considers the respect of human rights to be essential for lasting security. By promoting such respect through political commitments, instead of binding legal obligations, the OSCE has been highly successful in the field of human rights.

The CoE's European Convention on Human Rights is the international human rights treaty with arguably the most effective and successful enforcement mechanism: the European Court for Human Rights, which can adjudicate both state and individual applications. European citizens place very high expectations on the Court, which has become a victim of its own success and of the success of the CoE's regional inclusion policy. Confronted with an ever increasing number of pending cases, CoE Member States have undertaken to reform the Court in order to render it more effective and efficient. A first step towards reform came with the adoption and entry into force of Protocol 14, though its scope is clearly limited and more long term solutions need to be identified. The Interlaken process is the main ministerial framework in which options of reform are currently being discussed. In addition, other instruments (such as European Social Charter) have been adopted and mechanisms (such as the Commissioner for Human Rights) established to further promote human rights and bring about changes in the lives of rights-holders.

The European Union is the result of a unique 50 year long process of regional integration. In the last decade, the EU has enacted a sensible shift from a market and economy oriented institution to a broader organisation with a comprehensive agenda, in which human rights play an increasingly important role, both in the EU's internal relations as well as in its external relations. With regard to the internal aspect, the adoption of the Charter of Fundamental Rights, the entry into force of the Treaty of Lisbon, the EU's accession to the European Convention on Human Rights, and the establishment of the Fundamental Rights Agency are particularly worth noting.

The Asia Pacific region has a fragmented human rights protection framework. Human rights mechanisms have recently been established at the sub-regional level but no pan-regional human rights system exists. The Asia Pacific region is consequently the only region not to have a comprehensive regional human rights protection system.

Of the Asia Pacific's intergovernmental organisations, the Association of Southeast Asian Nations, the League of Arab States and the Organisation of the Islamic Conference have recently established formal sub-regional human rights mechanisms. The Pacific Islands Forum and the South Asian Association for Regional Cooperation have not yet established a sub-regional human rights mechanism or body.

The various Asia Pacific mechanisms largely seek to advance human rights through the promotion of human rights awareness and providing capacity building and advisory services to ASEAN Member States. In contrast to European arrangements, the Asia Pacific mechanisms cannot receive and determine applications or complaints from individuals or investigate human rights situations or alleged human rights abuses in Member States.

NHRIs and Other National Human Rights Mechanisms

A national human rights institution (NHRI) is an official State institution established by law and funded by the State to promote and protect human rights in the country. As State institutions NHRIs are subject to the law but are otherwise independent of the executive and legislative branches of government. It is each State's prerogative to determine the type of NHRI most appropriate to its particularities. The main types of NHRIs are Human Rights Commissions, Ombudsman's Offices and advisory, consultative bodies or research bodies. Some NHRIs are hybrid bodies that combine these roles.

NHRIs are required to comply with the UN minimum standards for NHRIs, the 'Principles relating to the status of National Institution for the Promotion and Protection of Human Rights' (Paris Principles). The Paris Principles set out the roles and functions of NHRIs. These include:

- advising Government and producing reports on matters concerning the promotion and protection of human rights
- drawing Government's attention to human rights violations
- promoting the ratification and implementation of international human rights instruments
- examining laws for their conformity with international human rights standards, and promoting the harmonisation of national laws and regulations with the human rights instruments to which the State is a party
- cooperating with and contributing to regional human rights bodies and to the UN system
- promoting human rights education and public awareness of efforts to combat discrimination.

All of the NHRIs in the Asia Pacific region and some in Europe also have quasi-judicial competence, which enables them to receive and determine complaints from individuals.

A determination of the compliance of NHRIs with regards to the Paris Principles is undertaken by the International Coordinating Committee of National Institutions (ICC). NHRIs that comply with the Paris Principles are granted 'A' status by the ICC. NHRIs assessed as 'not fully compliant' with the Paris Principles are granted 'B' status. Non-Paris Principles compliant NHRIs are granted 'C' status. At July 2011, the ICC comprised 88 NHRIs: 64 'A' status; 15 'B' status; and nine 'C' status. 'A' status NHRIs enjoy ICC voting rights and participation privileges at United Nations meetings.

Twenty seven European States have NHRIs. Of these, nineteen have 'A' status institutions, six have 'B' status and two have 'C' status. Unlike the Asia Pacific region where one specific NHRI model dominates, European NHRIs take the form of Ombudsman's Offices, advisory, consultative or research bodies, human rights commissions and hybrid institutions. The powers of these institutions vary with some institutions (e.g. France, Greece and Luxembourg) being mainly advisory bodies while others (e.g. Ireland, Poland, United Kingdom) have broader protection functions.

Nineteen Asian States have NHRIs. The Palestinian territories also has an NHRI. Of these twenty NHRIs, fifteen have 'A' status, three have 'B' status and two institutions have not yet been accredited by the ICC. Of these 20 institutions, 19 are Human Rights Commissions. The exception is the Timor-Leste Office of the Provedor for Human Rights and Justice, which is a hybrid institution, combining the maladministration mandate of an Ombudsman's Office with some human rights functions. A distinguishing feature of Asian NHRIs – attributable in part to the absence of a regional court or complaints mechanism – is their mandate to receive and determine complaints from individuals. On average, NHRIs in the Asia Pacific are also more significant in terms of organizational structure, staffing and resources than those in Europe.

In addition to 'traditional' National Human Rights Institutions, a number of interesting new mechanisms for the protection and promotion of human rights have emerged both in Asia and Europe. Human Rights Ministries have been established in numerous Asian countries. In addition, institutional mechanisms for the advancement of women, can be seen in the countries of both regions. National Action Plans for human rights have been adopted by many States in Asia as well as in Europe. These are all welcome developments that can effectively complement the role played by NHRIs. Moreover, local governments and civil society organisations are invaluable human rights actors both in Europe and Asia.

Regional Interaction with the UN System

The UN, mainly through OHCHR, is the main promoter of interaction for example through OHCHR field offices. Principal existing forms of interaction include support to the establishment of regional and sub-regional mechanisms in Asia; cross referencing of jurisprudence and other documentation; exchange of information and expertise; cooperation in follow-up on decisions and recommendations; establishment of focal points and liaison officers.

OHCHR has recently also promoted consultations, workshops and dialogues with various stakeholders on ways of increasing interaction between the international and

the regional mechanisms.. Various recommendations were concluded in these events: cooperation arrangements (such as focal points) should be put in place and regular dialogues should be facilitated among different mechanisms; instruments assisting cooperation, such as a database gathering both international and regional materials, should be created; a system of regular exchanges of jurisprudence between judicial and quasi-judicial mechanisms should be established; and joint activities by mechanisms with similar mandates should be conducted on a more regular basis.

While performing the majority of their work at the national level, NHRIs also make important contributions to the international human rights system. Paris Principle 3(e) requires NHRIs to cooperate with the UN human rights system, and the ICC's Sub-Committee on Accreditation has highlighted 'the importance for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies'.

At the regional level, the interaction between NHRIs and regional human rights mechanisms remains limited. In Europe, the European Group of National Institutions has obtained consultative status with some of the European regional bodies and it interacts with the Council of Europe, the European Union Agency for Fundamental Rights and the Organisation for Security and Cooperation in Europe. In the Asia Pacific region, given that the majority of sub-regional intergovernmental mechanisms have only recently been established, the interaction between NHRIs and these sub-regional mechanisms is undeveloped.

Annex 1: Ratifications

Ratification of International Human Rights Treaties as at September 2011

ASEM Partners	CAT	CAT (OPT)	CCPR	CCPR (OPT)	CCPR (OPT 2)	CED	CEDAW	CEDAW (OPT)	CERD	CESCR	CERCR (OPT)	CMW	CRC	CRC (OPT Armed Conflict)	CRC (OPT Sale of Children)	CRPD	CRPD (OPT)
Australia	✓	#	✓	✓	✓	x	✓	✓	✓	✓	x	x	✓	✓	✓	✓	✓
Austria	✓	#	✓	✓	✓	#	✓	✓	✓	✓	x	x	✓	✓	✓	✓	✓
Belgium	✓	#	✓	✓	✓	✓	✓	✓	✓	✓	#	x	✓	✓	✓	✓	✓
Brunei Darussalam	x	x	x	x	x	x	✓	x	x	x	x	x	✓	x	✓	#	x
Bulgaria	✓	✓	✓	✓	✓	#	✓	✓	✓	✓	x	x	✓	✓	✓	#	#
Cambodia	✓	✓	✓	#	x	x	✓	✓	✓	✓	x	#	✓	✓	✓	#	#
China	✓	x	#	x	x	x	✓	x	✓	✓	x	x	✓	✓	✓	✓	x

ASEM Partners	CAT	CAT (OPT)	CCPR	CCPR (OPT)	CCPR (OPT 2)	CED	CEDAW	CEDAW (OPT)	CERD	CESCR	CERCR (OPT)	CMW	CRC	CRC (OPT Armed Conflict)	CRC (OPT Sale of Children)	CRPD	CRPD (OPT)
Cyprus	✓	✓	✓	✓	✓	#	✓	✓	✓	✓	x	x	✓	✓	✓	✓	✓
Czech Republic	✓	✓	✓	✓	✓	x	✓	✓	✓	✓	x	x	✓	✓	#	✓	#
Denmark	✓	✓	✓	✓	✓	#	✓	✓	✓	✓	x	x	✓	✓	✓	✓	x
Estonia	✓	✓	✓	✓	✓	x	✓	x	✓	✓	x	x	✓	#	✓	#	x
Finland	✓	#	✓	✓	✓	#	✓	✓	✓	✓	#	x	✓	✓	#	#	#
France	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	x	✓	✓	✓	✓	✓
Germany	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	x	✓	✓	✓	✓	✓
Greece	✓	#	✓	✓	✓	#	✓	✓	✓	✓	x	x	✓	✓	✓	#	#
Hungary	✓	x	✓	✓	✓	x	✓	✓	✓	✓	x	x	✓	✓	✓	✓	✓

ASEM Partners	CAT	CAT (OPT)	CCPR	CCPR (OPT)	CCPR (OPT 2)	CED	CEDAW	CEDAW (OPT)	CERD	CESCR	CERCR (OPT)	CMW	CRC	CRC (OPT Armed Conflict)	CRC (OPT Sale of Children)	CRPD	CRPD (OPT)
India	#	x	✓	x	x	#	✓	x	✓	✓	x	x	✓	✓	✓	✓	x
Indonesia	✓	x	✓	x	x	#	✓	#	✓	✓	x	#	✓	#	#	#	x
Ireland	✓	#	✓	✓	✓	#	✓	✓	✓	✓	x	x	✓	✓	#	#	x
Italy	✓	#	✓	✓	✓	#	✓	✓	✓	✓	#	x	✓	✓	✓	✓	✓
Japan	✓	x	✓	x	x	✓	✓	x	✓	✓	x	x	✓	✓	✓	#	x
Korea	✓	x	✓	✓	x	x	✓	✓	✓	✓	x	x	✓	✓	✓	✓	
Laos	#	x	✓	x	x	#	✓	x	✓	✓	x	x	✓	✓	✓	✓	x
Latvia	✓	x	✓	✓	x	x	✓	x	✓	✓	x	x	✓	✓	✓	✓	✓
Lithuania	✓	x	✓	✓	✓	#	✓	✓	✓	✓	x	x	✓	✓	✓	✓	✓

ASEM Partners	CAT	CAT (OPT)	CCPR	CCPR (OPT)	CCPR (OPT 2)	CED	CEDAW	CEDAW (OPT)	CERD	CESCR	CERCR (OPT)	CMW	CRC	CRC (OPT Armed Conflict)	CRC (OPT Sale of Children)	CRPD	CRPD (OPT)
Luxembourg	✓	✓	✓	✓	✓	#	✓	✓	✓	✓	#	x	✓	✓	✓	✓	✓
Malaysia	x	x	x	x	x	x	✓	x	x	x	x	x	✓	x	x	✓	x
Malta	✓	✓	✓	✓	✓	#	✓	x	✓	✓	x	x	✓	✓	✓	#	#
Mongolia	✓	x	✓	✓	x	#	✓	✓	✓	✓	✓	x	✓	✓	✓	✓	✓
Myanmar	x	x	x	x	x	x	✓	x	x	x	x	x	✓	x	x	x	#
Netherlands	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	#	x	✓	✓	✓	#	x
New Zealand	✓	✓	✓	✓	✓	x	✓	✓	✓	✓	x	x	✓	✓	✓	✓	x
Pakistan	✓	x	✓	x	x	x	✓	x	✓	✓	x	x	✓	#	✓	✓	x
Philippines	✓	x	✓	✓	✓	x	✓	✓	✓	✓	x	✓	✓	✓	✓	✓	x

ASEM Partners	CAT	CAT (OPT)	CCPR	CCPR (OPT)	CCPR (OPT 2)	CED	CEDAW	CEDAW (OPT)	CERD	CESCR	CERCR (OPT)	CMW	CRC	CRC (OPT Armed Conflict)	CRC (OPT Sale of Children)	CRPD	CRPD (OPT)
Poland	✓	✓	✓	✓	#	x	✓	✓	✓	✓	x	x	✓	✓	✓	#	x
Portugal	✓	#	✓	✓	✓	#	✓	✓	✓	✓	#	x	✓	✓	✓	✓	✓
Romania	✓	✓	✓	✓	✓	#	✓	✓	✓	✓	x	x	✓	✓	✓	✓	#
Russia	✓	x	✓	✓	x	x	✓	✓	✓	✓	x	x	✓	✓	x	#	x
Singapore	x	x	x	x	x	x	✓	x	x	x	x	x	✓	✓	x	x	x
Slovakia	✓	x	✓	✓	✓	#	✓	✓	✓	✓	#	x	✓	✓	✓	✓	✓
Slovenia	✓	✓	✓	✓	✓	#	✓	✓	✓	✓	#	x	✓	✓	✓	✓	✓
Spain	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	✓	✓	✓	✓	✓
Sweden	✓	✓	✓	✓	✓	#	✓	✓	✓	✓	x	x	✓	✓	✓	✓	✓

ASEM Partners	CAT	CAT (OPT)	CCPR	CCPR (OPT)	CCPR (OPT 2)	CED	CEDAW	CEDAW (OPT)	CERD	CESCR	CERCR (OPT)	CMW	CRC	CRC (OPT Armed Conflict)	CRC (OPT Sale of Children)	CRPD	CRPD (OPT)
Thailand	✓	✗	✓	✗	✗	✗	✓	✓	✓	✓	✗	✗	✓	✓	✓	✓	✗
United Kingdom	✓	✓	✓	✗	✓	✗	✓	✓	✓	✓	✗	✗	✓	✓	✓	✓	✓
Vietnam	✗	✗	✓	✗	✗	✗	✓	✗	✓	✓	✗	✗	✓	✓	✓	#	✗

✓ = Ratified

✗ = Not ratified

= Signatory only

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