



Raoul Wallenberg Institute
of Human Rights and Humanitarian Law



11th Informal ASEM Seminar on Human Rights

“National and Regional Human Rights Mechanisms”

Seminar Report



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SEMINAR REPORT

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I. Executive Summary¹

The 11th Informal Asia-Europe Meeting (ASEM) Seminar on Human Rights was held on 23-25 November 2011 in Prague, the Czech Republic. Hosted by the Czech Ministry of Foreign Affairs and organised by the Asia-Europe Foundation, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, the French Ministry of Foreign and European Affairs and the Philippine Department of Foreign Affairs, the Seminar was dedicated to “Regional and National Human Rights Mechanisms”.

Seminar participants included members of the ASEAN Intergovernmental Commission on Human Rights, representatives of national human rights institutions (NHRIs), human rights ambassadors, representatives of justice and foreign affairs ministries, academics, activists and human rights defenders. Bringing together over 120 participants, the ASEM Seminar on Human Rights is the largest multi-sector gathering on human rights between the two regions.

Seminar participants convened in four Working Groups for open and in-depth discussions on regional and national mechanism-building, specifically:

- national human rights mechanisms
- regional human rights mechanisms
- the procedural effectiveness of regional human rights mechanisms; and
- the multi-level architecture of human rights mechanisms.

The following key messages emerged from Working Group discussions.

Human rights start at home

Each state has the responsibility to protect and to promote human rights, to prevent human rights violations, and to build mechanisms and procedures to operationalize human rights. Given their unique and important role, NHRIs should have as broad a mandate as possible, as stipulated by the Paris Principles.

A three-level approach to human rights promotion and protection

Participants advocated a three-level approach to human rights promotion and protection at the national and regional levels. This included: (a) human rights complaints-handling mechanisms as a driver for social change, particularly when traditional systems are weak or susceptible to corruption; (b) the continuing organic development of human rights in law and jurisprudence, taking into account contemporary human rights challenges; and (c) education, awareness-building and dialogue, including through the development of specific programs for public officers (state officials, members of parliament, lawyers and judges, diplomats, military, police and security forces) on human rights, the system of human rights protection, and the role of human rights defenders who are vulnerable to attack and reprisals.

¹ The Main Rapporteurs of this Seminar Report are Kieren Fitzpatrick and Michael O'Flaherty. Working Group Rapporteurs Prof. Dr Florence Benoît-Rohmer and Ray Paolo J. Santiago also contributed to this Report, as did Agnes Flues and Benjamin Lee. The report reflects the views and opinions expressed by Seminar participants; the authors gratefully acknowledge their contributions. The views expressed do not necessarily reflect those of the Asia-Europe Foundation, the Philippine Department of Foreign Affairs, the Raoul Wallenberg Institute or the French Ministry of Foreign and European Affairs.

Complementarity and competition - coherence of national, regional and international frameworks

Participants called for coherence between the national, regional and international human rights frameworks to avoid fragmentation of human rights standards. Recognising that human rights implementation relies on all organs of society, participants emphasised the discrete yet complementary roles served by regional human rights systems, states, NHRIs and civil society organisations.

Accountability, monitoring and capacity-building in order to inspire public confidence

Participants underlined the importance of accountability, monitoring and capacity-building to inspire public confidence in institutions. While compliance with the Paris Principles is an important determinant of NHRI effectiveness, NHRIs are also reliant on other state and societal institutions and agencies that support human rights, such as the courts and the media. Human rights mechanisms at every level need to be visible, accessible, transparent and accountable. The delivery of effective remedies is critical to public confidence.

Finally, participants called on the Asia-Europe Foundation (ASEF) and ASEM Members to ensure the dissemination and, where relevant, the implementation of Seminar outcomes.

II. Seminar Report

A. Overview

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

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

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

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

National human rights institutions (NHRIs) are independent organisations supported and established with a constitutional or legislative mandate to promote and protect human rights. NHRIs generally better understand national circumstances and local challenges. They can be the best-placed organisations (nationally or internationally) to monitor and evaluate the human rights situation in the country. The standards established by the UN - the Paris Principles² - outline a broad human rights mandate and a wide range of specific responsibilities for the creation and operation of NHRIs. The majority of ASEM countries do not have NHRIs and of those that do, not all entirely meet the Paris Principles.

A recent Office of the High Commissioner on Human Rights (OHCHR) study (2009) has found, however, that NHRIs' global engagement with international and regional mechanisms remains significantly underdeveloped and reflects limited familiarity with these systems. While NHRI participation in the

² 'Principles relating to the Status of National Institutions', adopted by General Assembly resolution 48/134 of 20 December 1993 <<http://www2.ohchr.org/english/law/parisprinciples.htm>> accessed 20 December 2011.

Universal Periodic Review (UPR) process of the UN Human Rights Council was considered to be “high”, interaction with treaty bodies was described as “moderate”, interaction with Special Procedures mandate holders as “low” and interaction with other international mechanisms as “minimal”. Less is known about the interaction between the region and NHRIs or other national institutions/agencies involved in human rights promotion and protection.

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

Cross-cutting questions:

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

B. Working Group 1: National Human Rights Mechanisms

The first Working Group’s discussion of national human rights mechanisms focused on the roles, standards and effectiveness of NHRIs, and their relationship with other state agencies. Developed by NHRIs in 1991 and subsequently endorsed by the then UN Commission on Human Rights and the General Assembly, the Paris Principles are the authoritative international minimum standards for NHRIs. Their adoption has proved to be a watershed moment for NHRIs, with the number of NHRIs around the world increasing exponentially since 1993.

The Group’s discussions were guided by six questions, each of which is set out below. Participants viewed the dialogue as an opportunity to develop relationships, exchange views and to share respective experiences from Asia and Europe. The achievement of formal consensus on discussion points was considered a secondary priority.

Do we have to review the Paris Principles?

There was broad agreement among participants that the Paris Principles should not be formally reviewed due to the consequent difficulty that could arise in reaching consensus on new normative standards for NHRIs. Rather, participants felt that the development of NHRI best practice examples, complemented by the continuing interpretation of the application of the Paris Principles, would ensure their continuing relevance and organic development as a dynamic set of norms. Since the adoption of the Paris Principles there now exists 20 years’ worth of collective experience as applied to the establishment, structure, roles and functions of NHRIs, and to the appointment of officers.

Participants viewed the work of the International Coordinating Committee of National Institutions (ICC), and in particular its designated accreditation body – the Sub-Committee on Accreditation (SCA) - as a valuable and rich source of information. Participants stated that the SCA’s findings and recommendations with respect to NHRIs and the application of the Paris Principles should be promoted and widely disseminated to all key stakeholders.

Finally, given the multiplicity of types of NHRIs that exist, participants stressed that the Paris Principles should be seen as minimum standards for the establishment and strengthening of NHRIs; a floor rather than a ceiling.

- I. How do we measure the efficiency and effectiveness of NHRIs? From experience, what are the factors of success?

Participants agreed that Paris Principles compliance is critical to NHRI effectiveness. Emphasis was placed on the important role that the ICC's SCA performs. The ability of external stakeholders, namely civil society organisations (CSOs) and NGOs, to contribute to the accreditation review of NHRIs was welcomed. It was acknowledged that Asian CSOs and NGOs have made much better use of this opportunity than their European counterparts.

Participants recognised that a number of other factors beyond formal compliance with the Paris Principles enhance the effectiveness of institutions. These include quality of leadership, the transparency of decision-making and operations, the accountability of the NHRI to various stakeholders, and the credibility of the institution in the eyes of the public.

Participants referred to the importance of developing indicators to assess the efficiency and effectiveness of NHRIs. The work of the Asia Pacific Forum of National Human Rights Institutions (APF) in conducting capacity assessments of its member NHRIs in partnership with the United Nations Development Programme (UNDP) and the OHCHR was identified as a regional level model for evaluating NHRI efficiency and effectiveness. Group members also acknowledged the important role that civil society performs, including the Asian NGO Network on National Human Rights Institutions (ANNI), in assessing NHRI efficiency and effectiveness.

Finally, it was stressed that NHRI effectiveness also depends on the strength and functioning of other state institutions and agencies, such as the courts.

II. Do Governments and other national authorities (e.g. parliament, judiciary) effectively take into account the advice of the commissions?

Participants stated that given that NHRIs do not generally have binding decision-making powers, it is important for them to establish good working relationships with other national authorities, including the courts. Participants identified use of the judicial system as an effective tool for the implementation of NHRI recommendations and the achievement of systemic change. This is particularly the case for those European NHRIs that are mandated to access and contribute to the work of judicial systems and therefore have access to the decisions and jurisprudence of the European Court of Human Rights. It was noted, however, that some courts might be reluctant to implement the decisions of NHRIs with quasi-judicial functions, given that their decision-making processes are not bound by the strict evidentiary burdens that apply to the courts.

Participants stated that NHRI experiences of engagement with other national authorities, namely the Parliament and the Executive, have been mixed. Examples were given from both Asia and Europe of formal NHRI recommendations being ignored by these bodies.

Participants also stressed that NHRIs should be proactive in their advocacy with national authorities, and recognised that the implementation of NHRI recommendations is strengthened when supported by other stakeholders such as the media, CSOs, and UN human rights experts.

III. What kinds of rights typically fall within the scope of NHRIs? What new areas have emerged?

The scope of NHRI mandates typically includes the international human rights treaties to which the state is a party, as well as national laws that address human rights. In the main this would include the core human rights treaties, which cover a range of civil, cultural, economic, political and social rights, as well as additional protections for particular groups of persons (such as children, women, persons with disabilities and migrant workers).

Participants noted that some NHRIs with limited mandates (for instance, only civil and political rights) had brought creative approaches to the interpretation of their mandates, enabling them to address other categories of rights. It was also acknowledged that NHRIs could apply non-binding instruments, such as declarations, to their work.

Participants called for NHRIs to be given as broad a mandate as possible. This should include oversight of the police, military and intelligence services. As to the question of new areas of rights, it was noted that NHRI mandates have expanded through the express recognition of their role as mechanisms for the implementation of human rights protection at the national level under the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Participants also discussed the implications of new human rights challenges on NHRIs in performing their mandates. These challenges included biomedical and informational technological developments, the global financial crisis, and cross-border and transnational issues, such as migration and trafficking in persons.

- IV. What role could civil society play to foster national promotion and protection of human rights? What kind of cooperation is needed between NHRIs and the business sector?

Participants acknowledged that NHRIs and civil society have discrete yet complementary roles. Civil society was described as the eyes and ears of the people, giving voice to the human rights issues that affect the most disenfranchised in society. Identified roles performed by CSOs included the provision of paralegal assistance, the documentation of human rights abuses, and constructive engagement with both Government and NHRIs, while also serving as a watchdog.

The UPR process was highlighted as a positive example of NHRI and civil society cooperation. In the Asian region, a regional meeting between CSOs and NHRIs held in Sri Lanka in 1998 produced a set of best practice guidelines for NHRI and CSO cooperation called the Kandy Declaration.³

As to the type of cooperation needed between NHRIs and the business sector, participants emphasised that NHRIs can play a unique and critical role in preventing and responding to human rights violations committed by corporations. Discussion centred on the role of NHRIs in supporting the Guiding Principles⁴ developed by the then Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises. These issues were addressed in depth at an Asia-Pacific regional conference on Business and Human Rights held in Seoul, Korea, in October 2011.

- V. What role do other national institutions and agencies (domestic judiciary, ombudsman institutions and other relevant agencies) play in human rights protection?

At the outset, it was stressed that many Ombudsman's institutions are NHRIs. Participants also recognised that a variety of state agencies perform specific roles in human rights protection, and that cooperation between these agencies is essential to avoid duplication and other inefficiencies. This was considered to be particularly true for Europe, where countries have an array of state institutions that address human rights to meet both national and regional human rights obligations. Discussion followed on the relative merits of a single consolidated NHRI in countries versus the disaggregation of human rights responsibilities to different state agencies, without any clear and definite conclusion.

C. Working Group 2: Regional Human Rights Mechanisms

- I. Political or jurisdictional mechanisms?

An idea that repeatedly arose in discussion was the idea of the heterogeneity of regional human rights mechanisms. They differ in nature and in effectiveness. One can distinguish between different situations. A political mechanism such the OSCE seemed to some Asian participants to be more suitable than a jurisdictional one, but this view was not shared by all. With 56 participating states from Europe, the OSCE forms the largest regional security organisation in Europe. What seemed particularly attractive to the participants is the fact that decisions are taken by consensus on a politically binding basis. It offers a forum for political negotiations and decision-making in the fields of early warning, conflict prevention, crisis management and post-conflict rehabilitation. It also deals with other areas that are related directly and indirectly to human rights, including national minorities, democratisation, policing strategies, counter-terrorism and economic and environmental activities.

The European system of human rights protection, established in the framework of the council of Europe, is a jurisdictional mechanism which, for some participants from ASEAN, seems too advanced to be adapted, in its entirety in Asia at the moment as it is a complex system that has evolved in a very specific context over half a decade. The founding states of the Council of Europe (CoE) drew up the ECHR, which entered into force in 1953. This Convention is the central document of the CoE and established an effective enforcement mechanism for human rights protection by setting up the European Court of Human Rights as a supervisory body. It monitors state compliance with the ECHR and has an influential role by interpreting the ECHR and creating a body of jurisprudence. Judgments are legally binding for states and may provide compensations for damages suffered by claimants.

³ <http://www.asiapacificforum.net/support/training/regional-workshops/non-government-organisations/downloads/Kandy_Program_of_Action.doc/at_download/file> accessed 20 December 2011.

⁴ Guiding Principles on Business and Human Rights for implementing the UN "Protect, Respect and Remedy" Framework. Refer to Human Rights Council resolution 17/4 of 6 July 2011.

Participants underlined the fact that the European Court is a victim of its success. Since it was established, the Court has already delivered more than 13000 judgments finding states in violation with the ECHR. As a result of the enormous number of applications being lodged, coupled with the ever-growing backlog of pending cases, the European Court encounters difficulties to deliver judgments within a reasonable time. Protocol 14 which entered into force on 1 June 2010 tries to remedy the situation by introducing a new condition of admissibility according to which the applicant should not have suffered “a significant disadvantage”. The composition of the judicial formations of the Court has also been modified to improve its capacity of filtering of applications and of accelerating their judgment.

They also suggested that the multiplicity of mechanisms for the protection of human rights in Europe posed a problem. The EU adopted, in 2000, the European Union Charter of Fundamental Rights which sets out in a single text the whole range of civil, economic, political and social rights of European citizens and all persons resident in the EU. The ECHR is the central reference point for the European Court of Human rights and the European Court of Justice in ensuring the jurisprudential complementarity of their decisions.

II. The contributions and functions of regional human rights mechanisms

Participants viewed the establishment of a regional system of human rights protection in ASEAN as a good opportunity to establish a mechanism based on common principles as well as states’ human rights obligations. Participants also viewed regional human rights mechanisms as more in touch with regional sensibilities than international ones. They are in a position to set minimum standards for the region. Regional mechanisms allow for reforms that correspond to the needs of the particular region. They can also find solutions to violations of human rights that are adapted to the region and their member states, while respecting international human rights standards and as such, serve as a bridge between national and international human rights bodies.

Participants agreed that regional human rights mechanisms should, at a minimum, serve as a platform for political dialogue between member states as well as between states and civil society. Through the facilitation of dialogue, regional mechanisms could also be useful tools for building capacity at the national level.

Regional mechanisms should also work to prevent violations of human rights. In this case, the evolution of regional courts that sanction states that violate their human rights obligations is an important step, but they do not constitute the only available tool. Additional tools for human rights protection include the establishment of offices such as the High Commissioner on National Minorities set up in the Framework of OSCE or the Commissioner on Human Rights of the Council of Europe, who exercise a political or moral influence.

The ideal solution is that regional mechanisms for the protection of human rights leads to an evolution of national norms, mechanisms and legislation and the development of policies or practices that better protect human rights as it is often the case in Europe when the Court of Strasbourg finds that a state has violated the ECHR. In the framework of the ECHR, the obligation to abide by a judgment includes the requirement to ensure that measures are taken which achieve, as far as possible, *restitutio in integrum* for the applicant. However, on a more general level, the obligation also includes the prevention of violations similar to those found by the Court. General measures which may be necessary, include constitutional changes or legislative amendments, changes in the case-law of the national courts, as well as practical measures, such as the recruitment of judges or refurbishing obsolete prison facilities.

Some participants also underlined the important role that regional mechanisms serve as an additional source of recourse where national remedies have been exhausted, providing a sense of security and hope especially if national mechanisms are unable to protect the rights of the citizens of member countries. They also serve as a tool for checks and balances with regard to the protection of human rights by state authorities by monitoring the fulfillment of state obligations and exerting pressure on national governments to comply with and uphold international human rights norms. Regional mechanisms might also be in a position to hold non-state or transnational actors accountable for human rights violations when national governments are unable to.

Also discussed by the Group was the current effort to develop the ASEAN Declaration on Human Rights (ADHR). Participants stressed that the AICHR should refer to the Universal Declaration on Human rights when drafting the ADHR, and should be careful not to undercut it. While the AICHR should also take into account the specificities of the ASEAN region, it must be emphasised that human rights are universal and are not subject to regional particularities. Some participants felt that the latter approach would undermine the development of international human rights law and standards that has taken place over the last the

last six decades. If culture and tradition govern state compliance with international standards, then widespread disregard, abuse and violation of human rights could be given false legitimacy. Ultimately, international laws should be used as the basis for determining the responsibilities of both regional mechanisms and the state (even at the local government level) with regard to the protection and promotion of human rights.

III. Obstacles which could affect the functioning of regional human rights mechanisms

The group highlighted the danger of regional mechanisms being used as “window dressing” without any sincere political commitment. They stressed that regional bodies should treat existing standards as a minimum and that they should maintain their independence and commitment to upholding internationally recognised human rights standards.

The Group also discussed some specific obstacles that may affect the functioning of the regional human rights mechanisms. Political and cultural diversity are certainly the main elements that explain why the establishment of such mechanisms encounters difficulties, especially in their early stages. The Asia-Pacific region is arguably the most culturally diverse in the world. Some participants argued that the Asia-Pacific may be too heterogeneous to enable a regional human rights system to function effectively.

The participants acknowledged the historical, social, cultural and linguistic diversity of the ASEAN region in particular but maintained that these differences should not hinder the promotion and protection of human rights. ASEAN will still have to uphold international human rights standards. The ADHR, which will be a political document, is expected to add value to existing international standards. Participants also stressed the need for a clear time-frame for the development of the ADHR and a road map for its further development into a legally binding document.

One prominent obstacle to the effective functioning of any human rights mechanism is the lack of political will. The effectiveness of a regional mechanism is in fact a function of the will of the states to cooperate meaningfully with all stakeholders, civil society in particular.

Some members of the Working Group addressed the question of the sovereignty of states and of the principle of non-interference within the internal affairs of states which is considered to be a constraint to the protection of human rights. In the AICHR’s terms of reference determined by Foreign Ministers, on 20 July 2009, respect for the sovereignty of the member states and of the principle of “non-interference in the internal affairs of states” were mentioned. Participants recognise, however, that the primary responsibility for the promotion and protection of human rights rests with each member state. On this point, some members of the Working Group insisted that flexibility is needed where human rights are concerned as there is a fine balance between the sovereignty of the state and its international obligations.

For many participants, there is a common understanding that the lack of binding requirements for independence and expertise of any human rights mechanism is considered to be a constraint on the efficiency of the mechanism. In the case of the AICHR, some participants felt that members of the Commission should be independent from their governments in order to enhance the AICHR’s efficiency and to reinforce its authority and legitimacy. Some participants felt that any human rights protection system has to be independent in order to be efficient. One cannot expect an accurate verification of the status of protection of human rights if such verification were performed by an organ composed of non-independent experts. Such an evaluation or check must thus be performed by independent experts. Ideally, members of regional human rights mechanisms should be elected, in order to guarantee their independence.

Three issues which are relevant to the effective functioning of the AICHR were observed by some participants, namely a) the ability of individuals to access the AICHR; b) decision-making by consensus, (which could also present important challenges to the functioning of AICHR) and, c) the participation of civil society. In general, a lack of engagement with civil society could be seen as an obstacle to the efficient functioning of regional human rights mechanisms. The participants agreed that the success of any regional body would be unlikely without the participation of civil society groups and encouraged ASEAN and the AICHR to be more active and inclusive in their engagement with civil society. The participants concluded that there was a need to develop a clear framework for civil society engagement in this context.

In order to facilitate the development of regional mechanisms and to avoid the obstacles mentioned above, participants recommended the establishment of a regular platform for Asia and Europe to learn from each other. Participants were of the opinion that while ASEAN could learn from Europe’s experiences in the establishment of its own regional mechanisms, Europe could gain valuable insights from ASEAN’s current efforts as well.

IV. States' obligations and non-state actors' compliance

In principle, states are supposed to be the main actors when implementing human rights standards where international treaties are concerned. They do this through exercising legislative, executive and judicial powers. Laws, decrees and judgments should comply with and domesticate international human rights law and jurisprudence. States also have international responsibilities vis-à-vis international human rights conventions to which that state is party. They have the duty to monitor the performance of regional human rights mechanisms to which they belong.

States should ensure that victims of human rights violations have access to justice, particularly when state officials, such as the police, security and armed forces, are the perpetrators of the violations. Impunity must be removed.

States have the obligation to respect human rights but also the duty to protect people against human rights violations. States must build functional and effective judicial systems and create structures necessary for the promotion and protection of human rights in order to be able to safeguard the rights of their citizens. As stated in article 8 of the Universal Declaration of Human Rights, "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".

Local authorities are responsible for human rights at a sub-national level. They often play a pivotal role as frontline providers of essential services, such as education and housing, health care and other social services, but also in planning, policing and maintaining the social environment necessary for the respect of human rights. They are also at the frontline of combating discrimination and promoting equality, given their often considerable powers in the fields of education, housing, health, transport or employment as well as social welfare and housing. It is necessary to reflect on the role of local authorities in creating a discrimination-free environment and in protecting minorities and vulnerable persons. It is the responsibility of the state to ensure the compliance of these crucial local authorities with international and regional human rights standards.

The issue of holding non-state actors accountable for human rights violations is complex. Participants considered the social responsibility of companies to be an important topic. Companies should behave ethically and contribute to economic development while improving the quality of life of employees and their families as well as the local community and society at large. Companies should create a positive impact on society while doing business. States should ensure that the actions of non-state actors (e.g. private companies) comply with national laws.

Perpetrators of human rights violations can also be private military and security companies which provide services and expertise, similar to those of governmental or police forces, to private firms on a smaller scale. They can also be employed by private companies to provide protection of company premises, especially in hostile territories.

It is important to engage society in order to raise awareness of the necessity to protect human rights. In this context, NGOs and NHRIs play crucial roles. They promote human rights education and awareness, in part by publishing and disseminating manuals and other materials on challenges, threats and obstacles to the full enjoyment of human rights. They also encourage the states to ratify international or regional human rights instruments while ensuring that national laws are in accordance with them. They also strive for the protection and realisation of human rights and fundamental freedoms at the national level. NHRIs and NGOs can also assist people to find remedies to human rights complaints, including by working with the Government to achieve individual redress and systemic change.

The state has a fundamental role to play in reinforcing and promoting awareness of human rights through its educational institutions. Human rights education is a powerful tool for building inclusive societies respectful of human dignity. Comprehensive knowledge of human rights by the largest possible number of women and men is essential to make human rights a reality in every community and in society at large. As stated in the Universal Declaration of Human Rights (article 26), (2) "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace". Educational institutions are also key actors in connecting civil society with representatives of regional systems, in order to create mutual exchanges and general knowledge on human rights. They also should contribute to the dissemination of knowledge on major international human rights instruments.

Not only the general public, but also government officials including policemen, soldiers, judges, lawyers and teachers, should be educated on human rights. For this purpose, it is important that universities, especially the law faculties, offer human rights courses.

V. Recommendations

- 1) ASEF should broaden its scope by expanding the number of issues being discussed and by providing an informal forum for discussion.
- 2) ASEM could act as a platform for sharing experience regarding the implementation of the National Plans of Action for the promotion and protection of human rights.
- 3) The key driving factor behind the EU forming a consensus on human rights was to prevent new wars. The integration process is similarly motivated. There is a need on the part of ASEAN to search for and build consensus on certain common issues. The issue of poverty, for example, could be a starting point for the forming of consensus as it is quite widespread across the Asian region.
- 4) The EU and ASEAN need to share experiences in terms of operationalising a human rights approach, with a clear framework for NGO participation and which operates at national and regional levels. NGO participation is needed to make the regional and international human rights more democratic and a “bottom up” rather than being a “top down” approach.
- 5) ASEAN focuses more on “promotion” than “protection” of human rights. There is a need to focus on the “protection” aspect as well.
- 6) The evolution of the AICHR into a more effective mechanism needs to be supported by ASEAN member states.
- 7) There is a need for more sharing of experience between the EU and ASEAN.

E. Working Group 3: Procedural Effectiveness of Regional Human Rights Mechanisms

Addressing the question of the procedural effectiveness of regional human rights mechanisms, the third Working Group’s discussions, while informed by a list of guiding and cross-cutting questions, were informal and free-flowing. The Group’s guiding questions included: (i) what institutional features make a regional mechanism effective?; (ii) what mechanisms/tools are available for redress in the event of human rights violations and are they effective?; (iii) how can the complexity of some systems be addressed?; (iv) how can the challenge of determining jurisdiction (with respect to international and national levels) be addressed?; (v) what role does the right of individual access to complaint procedures play in the system?; (vi) should there be an equivalent of the Paris Principles to guide the formation and operation of regional mechanisms?

Participants identified the European human rights system as an effective mechanism but viewed it as a victim of its own success. When compared to the UN human rights system, participants considered the European system to be more effective in terms of compliance given that the Council of Europe has both an international tribunal that makes binding decisions as well as a supervisory mechanism that executes these decisions. Concerns were raised, however, at the lack of implementation of and compliance with some decisions of the European Court of Human Rights and the consequential impact that this has on access to justice. Participants also identified backlog as a major challenge to the European system, fuelled by the exceptionally high proportion of inadmissible (reportedly 95 percent) and repetitive cases. One proposed way of addressing repetitive cases is the pilot judgment procedure which would enable the Council of Ministers (the CoE organ which is mandated to supervise the execution of the judgements) to pressure states to introduce remedies at the national level. Participants also pressed that - as far as possible - only the most serious human rights violations should be referred to regional courts, underscoring the need for strong domestic mechanisms.

The Working Group discussed the differences between Asia and Europe, with participants from Asia arguing that the economic disparities between Asian states has made it difficult for a uniform regional approach to be brought to the address of human rights. While participants viewed recent developments in Asia - namely the establishment of AICHR - as promising, it was noted that the Commission has deficiencies: it reports directly to ASEAN Foreign Ministers; it has neither inquiry nor complaints procedures; and AICHR members represent and remain accountable to their respective governments while in office. AICHR’s scheduled 2014 review was seen as an opportunity to extend the Commission’s functions and to develop clear modalities for the participation and contribution of CSOs and NHRIs to its work. Participants reported that AICHR’s establishment has generated some interest in other Asian sub-regions, namely amongst the members of the South Asian Association for Regional Cooperation (SAARC).

While participants from Asia welcomed the opportunity to learn from European experience, they also emphasised the value of “South to South” exchanges in combating the cultural relativist arguments that some Asian countries have used to challenge the universality of human rights.

The Group agreed on the following observations and recommendations, which it reported back to plenary:

- Access to justice is paramount. This includes ensuring that regional human rights mechanisms are accessible, and that the decisions of judicial bodies are clearly articulated and implemented.
- Adequate resources are critical to the effectiveness of regional human rights mechanisms. Regional mechanisms should be able to deliver to the expectations that they create.
- Periodic exchanges between different regional human rights systems would promote the development of best practice. Meetings of jurists would facilitate the peer-to-peer sharing of experiences on jurisprudence, cases, and case-handling.
- Credibility, transparency and accessibility must be key institutional features of regional human rights mechanisms. There is a need for both claimants and states to have confidence in their processes and capability. This should include information-sharing and constructive dialogue with NHRIs, CSOs and other relevant stakeholders, while observing the importance of regional mechanisms not being over-reliant on these bodies.
- Regional mechanisms should be better equipped to deal with potential trans-border and transnational issues.
- Regional mechanisms should work to develop general measures to address systemic human rights challenges.
- There is a need for strong and effective domestic mechanisms to address human rights violations. Regional human rights mechanisms and bodies should support the work of these national mechanisms.
- Non-judicial mechanisms for the resolution of human rights complaints at the national level are very important given that not all judicial systems function effectively.
- The compartmentalisation or “boxing” of human rights into discrete categories (such as civil and political or economic, social and cultural) should be avoided as this undermines the indivisibility, interrelatedness and interdependence of human rights.
- There is a need to raise awareness of human rights through human rights education. Examples of awareness-raising activities include the holding of human rights film festivals, the production of human rights publications, linkages between universities, CSO networks, and the integration of human rights subjects into school curricula.

F. Working Group 4: Multi-level Architecture of Human Rights Mechanisms

The fourth Working Group decided not to work with the standard questions, but to identify themselves the key issues with regard to the topic of multi-level architecture of human rights.

On this basis the group identified five questions:

- I. How to promote coherence of national, regional and international frameworks
- II. How to promote implementation of findings at the national level
- III. How to promote public confidence in human rights protection mechanisms
- IV. What is the relationship between constitutional and treaty rights
- V. What is the scope and what are the limits for a multi-stakeholder approach to human rights protection?

The Working Group decided to work in sub-groups that would then report to the plenary meeting of the Working Group.

- I. How to promote coherence of national, regional and international frameworks?

The issue of coherence requires attention to substantive law and procedures at the national, regional and international levels. Discussion of this topic has to take account of any existing initiatives such as the recent UN sponsored meetings of regional and international human rights mechanisms (2009, 2010). Another important and very recent initiative is the Dublin process on treaty body strengthening that issued the Dublin II Outcome Document.

Among the factors promoting incoherence are the following: a) where national courts contradict the international standards; b) where the differences in the remit of the regional and the UN mechanisms create protection gaps; c) where different organisations with different mandates with regard to human rights operate in the same region; d) when a region fails to honour international human rights in an

indivisible manner- such as when it favours civil and political rights over economic, social and cultural rights.

The various mechanisms will be strengthened and better calibrated to each other if they allow a meaningful space for NGO participation. In this regard, care must be taken to ensure that that space is not occupied by Government-organised NGOs (GONGOs) rather than NGOs.

The fact that there are higher levels of protection for some rights at the regional level is not a problem. The regional space can provide the laboratory for new rights that are subsequently taken up internationally (for instance regarding data protection).

Factors to be taken into consideration in promoting coherence include the following: a) regional initiatives must always conform to the human rights principle of universality and, at a minimum, to the Universal Declaration of Human Rights; the international standards must serve as the minimum acceptable level of protection, including at the regional level; b) work of coherence must be a continuing one that recognises the need for human rights protection systems to evolve and to improve; coherence at the regional level requires respect for the principle of subsidiarity; c) it is agreed that the doctrine of margin of appreciation has an important role to play at the regional level. Its application at the international level is less clear (as the international standards establish a minimum) and it is always open to abuse; d) the system of obligatory referral of questions to the European Court of Justice is another useful tool to promote coherence at the European regional level; e) another European initiative that promotes coherence is the EU Charter of Fundamental Rights which serves as a bridge between the EU and the ECHR.

In promoting coherence it is important not to overplay the problem of fragmentation. A diversity of systems of protection and related jurisprudence can serve to provide better coverage and protection of human rights.

II. How to promote implementation of findings at the national level?

The focus of the sub-group is on the national entities involved in the implementation at the national level, although the important role of such international mechanisms as UPR (which, as a multi-stakeholder mechanism, has considerable potential) is recognised.

It is recognised that the primary responsibility for implementation lies with the state. At the national level there are implementation roles to be played by the executive, the legislature, the judiciary, civil society, political parties, the media and others.

With regard to parliament, there is a continuing need for human rights training and awareness-raising as well as for the establishment of human rights commissions and committees.

Concerning government, it is important that where human rights ministries exist they not be used as a way of side-lining the human rights issues.

With regard to the judiciary, it has to be acknowledged that international human rights arguments often fail. Much more effort is needed to provide information and training to the judiciary on human rights. The training should also be extended to lawyers so that human rights arguments are actually made in court.

The role of civil society is critically important. For it to be able to play its proper role it is necessary to recognise, respect and empower the civil society sector. States should be very cautious in seeking to regulate the sector. The safety of human rights defenders must be given the highest priority and all reprisals against them need to be vigorously prosecuted.

NHRIs can play a unique role in promoting implementation since they serve as an “honest broker” between civil society and government.

The general population can also play a valuable role in implementing human rights. In this regard the Japanese system of “human rights volunteers” is very interesting, as is the other Japanese initiative of “human rights museums”.

All stakeholders will be empowered if judgements reports and findings, including those of treaty bodies, UPR, Special Procedures and courts are widely disseminated by the state and translated into national languages.

Finally on this topic the group discussed whether there is any merit in having international expert bodies undertake a ranking of countries according to their levels of human rights compliance. It was accepted that this idea has a lot of merit but its application could be troublesome. It might be less sensitive or difficult instead to have a body that tracks global trends of compliance. Any initiative of these kinds needs to be based on data generated through reliable indicators. Good work is being done on the development of such indicators but it remains incomplete.

III. How to promote public confidence in human rights protection mechanisms

At the outset the group cross-referenced the promotion of public confidence to many of the points made with regard to the implementation of human rights findings.

At the heart of the promotion of public confidence is the principle of transparency. Human rights mechanisms at every level need to be visible, accessible and transparent in their working methods. The principle of transparency demands the right of access to public information. Secrecy laws and other restraints on access to information should be the exception and not the norm and employed very sparingly.

The concomitant principle of transparency is that of accountability. Human rights duty bearers must be held accountable for their actions. In general, confidence in human rights will be raised if perpetrators of abuses, including public officials are prosecuted and punished.

Public confidence in human rights mechanisms is enhanced when they deliver effective remedies that are actually enforced.

One idea to promote public confidence is for governments to publish an annual human rights report and for this to be debated in Parliament. Promotion of public confidence will also be strengthened if and when overloaded human rights mechanisms are given the adequate resources. This is for example the case with the European Court of Human Rights.

Public confidence will also be enhanced if politicians and other commentators do not abusively use human rights discourse to achieve political ends or denigrate human rights for the same purpose.

The media play a critical role in promoting public confidence, but to play this role to the full they need extensive training on human rights in general and on their own role as a stakeholder.

IV. What is the relationship between constitutional and conventional rights?

It is recognised that the legal systems of the world are very diverse and there can be no one model of the relationship between constitutional and treaty rights.

What is important is that the highest standard of human rights protection is ensured be it in the constitutional or the treaty order.

While the monist/dualist framework of reception of international law is beyond the remit of our discussions, it is recognised that the monist model does a better job of bringing human rights home.

Regardless of systems in place, it is also very much in the interest of human rights to have a strong role for a constitutional or other such court.

V. Miscellaneous Recommendations

The role of education is fundamental to every aspect of the discussions. Rights holders must know of their rights if the system is to be used effectively and respected by all stakeholders.

For the same reasons, the importance of delivering human rights capacity building for civil society cannot be overstated.

All aspects of the matters under discussion recall the importance for states to consider adopting national human rights plans of action.

The various mechanisms will also be enhanced if more states were to accept the individual complaint procedures under the UN treaties.

G. Concluding Observations

The 11th Informal ASEM Seminar on Human Rights was dedicated to discussion of national and regional human rights mechanisms:

What are the appropriate minimum standards for these entities?

How can they better deliver to their mandates to promote and protect human rights, to ensure accountability and to provide relief?

How can they best collaborate with each other, with civil society, and with the UN's human rights machinery?

How can they work together to ensure that regional and national laws and institutions do not undercut established international human rights standards?

Despite the diversity of their experiences and the plurality of their legal, cultural and political systems, participants agreed on a number of concrete observations and recommendations that addressed the above questions. These included the following:

Regional mechanisms

- While it is recognised that the legal systems of the world are very diverse and that there can be no single model for regional human rights mechanisms, regional initiatives must always conform to the human rights principle of universality and, at a minimum, to the Universal Declaration of Human Rights.
- The effectiveness of regional mechanisms is dependent on the willingness of states to support their work and to constructively engage with them.
- Coherence at the regional level requires respect for the principle of subsidiarity. The margin of appreciation also has an important role to play.
- The principle of non-interference with the internal affairs of states – by which the work of AICHR is bound, is a real constraint to the promotion and protection of human rights.
- Despite the European Court of Human Rights' success, case volume and backlog remain challenges that the 14th Additional Protocol to the ECHR is yet to resolve.
- Periodic peer-to-peer exchanges should be arranged between representatives of regional human rights mechanisms. This will promote the development of best practices and support the organic development of human rights jurisprudence.
- Regional mechanisms must create meaningful space for NGO participation in, and contributions to, their work.
- While the Paris Principles may not be an appropriate model, there is value in exploring the development of minimum international standards for regional human rights mechanisms.

National mechanisms

- Human rights must start at home. NHRIs should be given as broad a mandate as possible, covering the full range of human rights and including oversight of the police, military and intelligence services.
- It was noted that the majority of ASEM Members do not have NHRIs and of those that do, not all meet the requirements of the Paris Principles in full.
- The effectiveness of NHRIs depends on the strength of other state institutions and agencies, such as the courts.
- The Paris Principles should not be formally reviewed. Rather, the development of NHRI best practice examples, complemented with the continuing interpretation of the application of Paris Principles, will ensure their continuing relevance and organic development.
- NHRIs need to develop a clear framework for their collaboration with NGOs and CSOs.
- Local authorities should work on human rights issues as closely with the community as possible. These bodies are at the frontline of combating discrimination and promoting equality given their powers in the fields of education, health, transport, employment, social welfare and housing.

Participants also agreed that the provision of adequate resources is essential to the effective functioning of both regional and national mechanisms, and that the ability of these institutions to deliver effective remedies that are actually enforced is critical to public confidence.