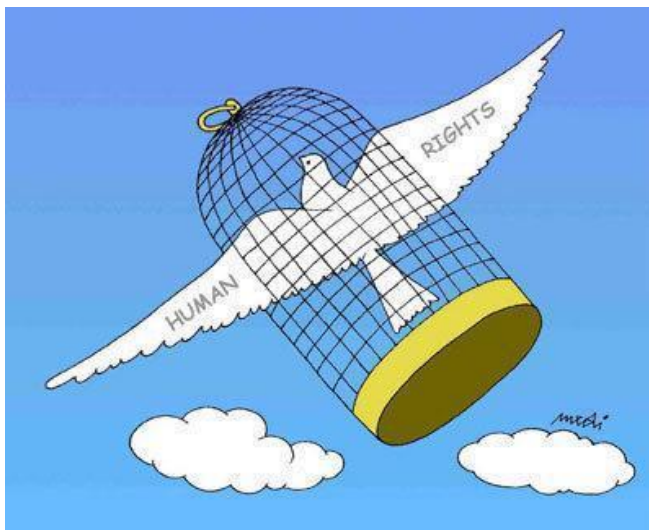




REGIONAL HUMAN RIGHTS INSTRUMENTS: Scoping of Rights and Wrongs

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ACRONYMS AND ABBREVIATIONS

| | |
|-------|--|
| ACFC | : Advisory Committee of Independent Experts of the Framework Convention for the Protection of National Minorities. |
| ACHPR | : African Charter on Human and Peoples' Rights |
| ACHR | : The American Convention on HR |
| AFET | : Committee on Foreign Affairs of the European Parliament |
| AICHR | : ASEAN Intergovernmental Commission on Human Rights |
| APRM | : African Peer Review Mechanism |
| APT | : Commission and the Association for the Prevention of Torture |
| ASEAN | : Association of Southeast Asian Nations |
| AU | : African Union |
| CDDH | : Steering Committee for Human Rights |
| CERD | : The Committee on the Elimination of Racial Discrimination |
| CoE | : Council of Europe |
| CoM | : Committee of Ministers |
| CPT | : European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment |
| CSCE | : Conference on Security and Cooperation in Europe |
| DROI | : Subcommittee on Human Rights |
| ECHR | : European Convention on Human Rights |
| ECJ | : European Court of Justice |
| ECRI | : European Commission against Racism and Intolerance |
| ECSR | : European Committee of Social Rights |
| ECHR | : European Court of Human Rights |
| EIDHR | : European Instrument for Democracy and Human Rights |
| EIPR | : Egyptian Initiative for Personal Rights |
| ESC | : European Social Charter |
| EU | : European Union |
| EUMC | : European Monitoring Centre on Racism and Xenophobia |
| FRA | : European Agency for Fundamental Rights |

GHM : The Greek Helsinki Monitor
GRETA : The Group of Experts on Action against Trafficking Human Beings
HCNM : High Commissioner on National Minorities
HRD : Human Rights Defenders
ICJ : International Commission of Jurists
JANIC : Japan NGO Center for International Cooperation (JANIC)
LAS : League of Arab States
LIBE : Committee of Civil Liberties, Justice, and Home Affairs
NEPAD : New Partnership for Africa's Development
NGO : Non-Governmental Organization
OAS : Organization of American States
OAU : Organization of African Unity
ODIHR : The Office for Democratic Institutions and Human Rights
OHCHR : Office High Commissioner of Human Rights
OSCE : Organization for Security and Co-operation in Europe
PIF : Pacific Island Forum
SA : South Asia
SAARC : South Asian Association for Regional Cooperation
SAPA : Solidarity for Asian People's Advocacy
SAVE : South Asian Visual Exchange
SCHR : Standing Committee on Human Rights in the LAS
TOR : Terms of Reference
UDHR : Universal Declaration of Human Rights
UN : United Nations

EXECUTIVE SUMMARY

The normative and institutional evolution of international human rights law at the global level played a prominent role in encouraging the creation of regional human rights systems in Europe, the Americas, Africa, and more recently the emerging systems in Asia and the Arab States. The U.N.'s role in encouraging the creation of regional human rights systems must be saluted." Regional systems have served as both institutional and normative building blocks and instruments for the realization of human rights at the grassroots.

Over the years, regional systems, particularly those established in Europe and the Americas, have provided the necessary intermediary between state domestic institutions which violate or fail to enforce human rights and the global human rights system which alone cannot provide redress to all individual victims of human rights violations. At the global level, no permanent human rights court has thus far been created to allow individual complaints against governments for violations of human rights. It was at the regional level, in Europe, that the first system allowing for effective individual complaints against governments for violations of human rights was created. This system became the model of human rights realization in the other regional systems-the Inter-American system has a court, and the African system is in the process of creating one. Regional systems have served to fill gaps in the global human rights mechanisms. They have fruitfully complemented the global human rights system by impacting and influencing domestic human rights practice in member states. Although each regional system has its own issues and concerns arising out of diversity in each system's origins, all of them have elements of uniformity.

All regional systems began as the global human rights system was developing and they were inspired by universal norms as embodied, inter alia, in the UDHR. Regional systems are better placed and can therefore be more effective than systems with universal scope. Regional systems are flexible and have the ability to change as conditions around them change and sometimes do so quickly. This is because proposals for change in regional systems are likely to be meet less resistance than those of the global system. The great number of states with different traditions that are involved in the global system make implementation more complicated. On the other hand, shared legal, political, socioeconomic, intellectual, and cultural traditions and aspirations within a regional setting are more likely and do serve as cardinal bases for particularized and effective human rights protections at the regional level. The drafters of the African Charter were well driven by this conviction." Within the regional arena, shared traditions create homogeneity which facilitates debate over the substance of the rights protected and assist in the development of more or less familiar systems of redress, thereby enhancing the actual promotion and protection of human rights.

The regional arrangements in Europe have been functional and have worked in an atmosphere of confidence, that is to say, they have always had the confidence of governments, of NGOs and served to facilitate co-operation in the promotion and protection of human rights, while recognizing the success of the European system in protecting

individual rights, in supervising the exercising of emergency powers by governments, in unearthing defects of legal system of various countries. However, it has been unable to deal effectively with human-rights unfriendly regimes in a state party to the European Convention.

The Inter-American arrangements for the protection of human rights has also been normally constructive but have sometimes allegedly failed to maintain compatibility in addressing the human rights questions in all member states. The recently formed ASEAN Intergovernmental Commission on Human Rights (AICHR) is a huge step forward towards setting a common threshold on human rights protection and promotion in that part of Asia region although critics say that it would be powerless to tackle rogue members such as Myanmar and the justicilability part of the instrument in regards to individual's rights violation and redress is quite weak.

Most of these treaties have contributed to important changes in the laws of many countries, and, in view of the large number of States having ratified, acceded or adhered to them, they are also becoming particularly important for the work of judges, prosecutors and lawyers, who may have to apply them in the exercise of their professional duties. Many of the provisions of the general treaties have been extensively interpreted, inter alia with regard to the administration of justice and treatment of persons deprived of their liberty; and this case-law constitutes an important source of information and guidance for judges and lawyers.

In such context, it is highly desirable to deeply perceive the designability, feasibility and timeliness of setting up a regional arrangement for the SA region so that the potential value of a regional instrument would be well recognized and shall be in conformity with the globally accepted norms and values of human rights instruments. The geo-political, economic, cultural and social conditions as well as ethnic and cultural diversity cannot be the justification for inopportune to consider the establishment of a mechanism on human rights for SA region.

REGIONAL HUMAN RIGHTS TREATIES: A BRIEF REFLECTION

Regional human rights mechanisms play an important role in monitoring government compliance with human rights obligations. Europe, the Americas, and Africa have their own active regional human rights systems. Each system has many things in common with the United Nations' human rights system, and the regional systems often look to each other and to their UN counterparts for guidance in interpreting human rights language and addressing human rights violations. Nonetheless, each regional system has its own distinct mechanisms and procedures. Individuals and groups concerned about human rights issues in these regions should consider the advantages of engaging with the relevant regional human rights system.¹

The regional human rights mechanisms have become an integral part of the human rights system as they:

1. Act as a check and balance on national process
2. Promote regional peace, security and human rights
3. Provide regional input to the development of international human rights standards and the improvement of international human rights mechanisms
4. Help national governments to better address human rights concerns that cross national borders; for example, human rights violations and abuses that come from organized crime, including terrorism, human trafficking, migration etc.²

Geographical proximity and cultural propinquity inherent within a regional framework make more probable the investigation and remedying of human rights violations. In the absence of a regional or global police force or army or prison to enforce compliance with international human rights obligations, supra-national institutions have to rely more on shame and pressure mechanisms, such as economic sanctions, the severance of diplomatic relations, sport, and other ties against the recalcitrant state. These mechanisms are likely to be more effective in respect of those states in a regional arrangement where states are in constant contact. Geographical proximity in regional systems leads to socioeconomic, environmental, and security interdependence which more easily forces a recalcitrant state once isolated to comply with its international human rights obligations. These realities place regional human rights systems in a strong position to enforce universal human rights norms.

The existing regional human rights instruments and institutions for the promotion and protection of human rights in Europe, Americas, Africa, and in the Arab region, have drawn upon various essence such as the restatement of universal norms on human rights within the context of a regional instrument; the use of promotional measures, e. g., measures for the dissemination of information, teaching, training, education, and encouragement of civil society organizations; the provision of assistance to governments in drafting legislation or in administering national or local institutions for the promotion and protection of human rights; making procedures available for individual petition (the European Convention on Human

1 <https://www.newtactics.org/engaging-regional-human-rights-mechanisms>

2 The Role of Regional Human Rights Mechanisms, Directorate-General for External Policies Policy Department, European Parliament

Rights, the American Convention on human rights, the African Charter on Human Rights); making procedures available for interstate complaints (the European Convention, the American Convention and the African Charter); providing judicial arrangements (for example, the European Court of Human rights and the American Court of Human rights).³

The African Charter on Human and Peoples' Rights-1981

The adoption of the African Charter on Human and Peoples' Rights in 1981 was the beginning of a new era in the field of human rights in Africa. It entered into force on 21 October 1986. Although strongly inspired by the UDHR, the two International Covenants on human rights and the regional human rights conventions, the African Charter reflects a high degree of specificity due in particular to the African conception of the term "right" and the

African Court Order to Libyan Government to Adopt Provisional Measures

In early February 2011, Libyan security forces in the city of Benghazi violently suppressed peaceful demonstrations against the detention of an opposition lawyer, and the violence quickly spread to other parts of the country. On February 28, the Egyptian Initiative for Personal Rights ("EIPR"), Human Rights Watch, and INTERIGHTS submitted a joint communication to the African Commission. A few days later, the commission referred the matter to the African Court. In its application to the court, the commission called for the Government of Libya to "set up an exhaustive inquiry and prosecute the authors of these violations," compensate victims and family members, and "include human rights in the training programmes of its security forces." On March 25, 2011, in light of the extreme gravity and urgency of the matter, the African Court issued an order for provisional measures. The order called on the Government of Libya to: (1) Immediately refrain from any action that would result in loss of life or violation of physical integrity of persons, which could be a breach of the provisions of the Charter or of other international human rights instruments to which it is a party; and (2) Report to the Court within 15 days from the date of receipt of the Order on the measures taken to implement the Order. Due to the chaos and eventual change in government in Libya, the court was not able to enforce its order.

Source: Organization of American States, "IACHR Takes Case involving Panama to the Inter-American Court," Apr. 4, 2013, http://www.oas.org/en/iachr/media_center/PReleases/2013/022.asp.

place it accords to the responsibilities of human beings. The Charter contains a long list of rights, covering a wide spectrum not only of civil and political rights, but also of economic, social and cultural rights. The African Charter further created the African Commission on Human and Peoples' Rights, "to promote human and peoples' rights and ensure their protection in Africa" (Art. 30). In 1998, the Protocol to the Charter on the Establishment of an African Court of Human Rights was also adopted. Lastly, work on the elaboration of an additional protocol concerning the rights of women in Africa is in

progress within the framework of the African Commission on Human and Peoples' Rights, the Commission being assisted in this task by the Office of the United Nations High Commissioner for Human Rights.⁴

The American Convention on HR-1969

The American Convention on Human Rights, 1969, also commonly called the Pact of San José, Costa Rica, since it was adopted in that capital city, entered into force on 18 July 1978 following the denunciation of the treaty by Trinidad and Tobago on 26 May 1998. The

3 Ibid

4 Major Human Rights Instruments, Lalit Kumar Arora, Isha Books-2006

Convention reinforced the Inter-American Commission on Human Rights, which since 1960 had existed as “an autonomous entity of the Organization of American States”.⁵

Organs of the Inter-American System for the Protection of Human Rights

| Inter-American Commission on HR | Inter-American Court of HR |
|---|---|
| <ul style="list-style-type: none"> • 7 members (Commissioners) • elected by the General Assembly of the OAS • independent experts • 4 year term plus one reelection • functions: <ul style="list-style-type: none"> - to promote respect for and defense of human rights - to prepare reports regarding the human rights situations in OAS member States (in loco visits) - to act on individual petitions | <ul style="list-style-type: none"> • 7 members (Judges) • elected by States Parties to the American Convention • independent jurists • 8 year term plus one reelection • functions: <ul style="list-style-type: none"> - contentious: to resolve individual cases - advisory: to interpret the American Convention and other human rights instruments |



Tools

| Inter-American System | European System | African System |
|---|--|--|
| Individual Petitions | Individual Petitions | Individual Petitions |
| Thematic Hearings | | Thematic Hearings |
| Precautionary Measures | Interim Measures | Interim Measures |
| Advisory Opinions | Advisory Opinions | Advisory Opinions |
| Special Rapporteurs | | Special Rapporteurs |
| Execution of Decisions: Inter-American Commission and Court of Human Rights | Execution of Judgments: Committee of Ministers | Execution of Judgments: Council of Ministers |



It became a treaty-based organ which, together with the Inter-American Court of Human Rights, “shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties” to the Convention (art. 33). In 1988, the General Assembly of the OAS further adopted the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, also called the Protocol of San Salvador. This Protocol develops the provisions of article 26 of the Convention whereby the States parties in general terms “undertake to adopt measures, both internally and through international co-operation, ... with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the

Organization of American States as amended by the Protocol of Buenos Aires”.

Inter-American Commission Refers case to the Inter-American Court

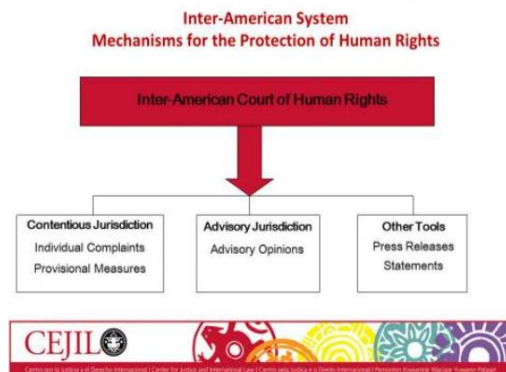
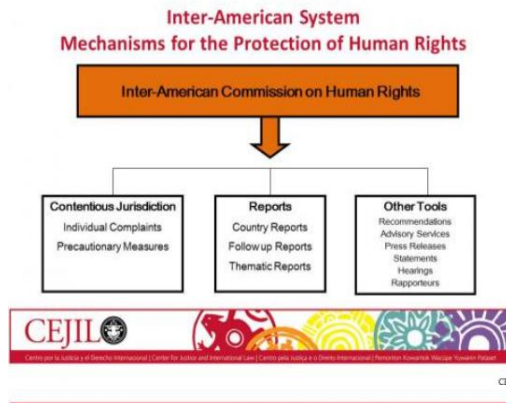
In 2013, the Inter-American Commission referred the case of the Kuna Indigenous People of Madungandí and Emberá Indigenous People of Bayano and their members against the State of Panama to the Inter-American Court. The State of Panama had failed to pay economic compensation to the indigenous peoples for the dispossession and flooding of their ancestral territories stretching back as far as 1969. The Inter-American Commission chose to refer the case to the Inter-American Court in order to push for compensation and to mandate that the State of Panama work to preserve the human rights of the indigenous groups, including by returning them to their ancestral lands.

Source: Organization of American States, “IACHR Takes Case involving Panama to the Inter-American Court,” Apr. 4, 2013, http://www.oas.org/en/iachr/media_center/PReleases/2013/022.asp.

5 Major Human Rights Instruments, Lalit Kumar Arora, Isha Books-2006

The European Convention on HR-1950

The European Convention on Human Rights was adopted by the Council of Europe in 1950, and entered into force on 3 September 1953. The Convention originally created both a European Commission and a European Court of Human Rights entrusted with the observance of the engagements undertaken by the High Contracting Parties to the Convention, but with the entry into force of Protocol No. 1137 to the Convention on 1 November 1998, the control machinery was restructured so that all allegations are now directly referred to the European Court of Human Rights in Strasbourg, France. This Court is the first, and so far only, permanent human rights court sitting on a full-time basis. The rights protected by the Convention have been extended by Additional Protocols Nos. 1, 4, 6 and 7. Protocol No. 12 concerning the prohibition of discrimination was opened for signature on 4 November 2000 in Rome, in the context of the fiftieth anniversary celebrations of the Convention itself, which was signed in the Italian capital on 4 November 1950. Finally, Protocol No. 13 was opened for signature in Vilnius on 3 May 2002. This protocol concerns the abolition of the death penalty in all circumstances.



The Arab Charter on Human Rights-1994

The Arab Charter on Human Rights was adopted by the Arab League in 1994. However, although it was widely criticized at the time by many human rights organizations both within the region and beyond as failing to meet international human rights standards, not one Arab League State was prepared to ratify it. The Council of the Arab League adopted resolutions in 2002 encouraging the ‘modernization’ of the Charter to correspond with international human rights standards. A revised text of the Charter was adopted at the Summit of Heads of Member States of the League in May 2004.⁶ Many of those who followed the revision

⁶ Arab Charter on Human Rights, UN Office of the High Commissioner for Human Rights; League of Arab States, 2004

process continue to debate whether the new version is consistent with international human rights standards and should be ratified or rejected. This article sheds some light on this debate by analyzing whether the revised Charter is an improvement on the original text in terms of international human rights law. It does not aim to be a comprehensive review of all the Articles of the Charter, but rather aims to give a general overview of an instrument about which there is relatively little knowledge and understanding outside the Arab human rights community in the hope that this generates increased interest.

Greek Helsinki Monitor Brings Case to European Court of Human Rights

The Greek Helsinki Monitor (GHM), a non-governmental organization, advocated on behalf of 23 Roma schoolchildren against school segregation and the limited access to education for Roma students in Greece. Almost 400 Roma families live in the Greek town of Sofades, and nearly all of them live in Roma housing estates. Many of these estates are close to public schools that non-Roma children attend, but all of the Roma housing estates are in the attendance area for a school that caters almost exclusively to Roma children. GHM appealed to the Ministry of Education, pointing out "a clear ethnic segregation which violates both Greek law and international human rights norms including the European Convention on Human Rights." No action was taken. GHM then looked to the European Court of Human Rights to end social exclusion faced by the Roma schoolchildren in Sofades. The court ruled in favor of the pupils, stating that "the continuing nature of this situation and the State's refusal to take anti-segregation measures implied discrimination and a breach of the right to education."

Source: Amnesty International, "European Court again chides Greece over discrimination against Roma schoolchildren," accessed June 24, 2013, <http://www.amnestyusa.org/news/news-item/european-court-again-chides-greece-over-discrimination-against-roma-schoolchildren>.

The 2004 Arab Charter on Human Rights is a binding treaty since its entry into force in March 15, 2008. What is new and important in the new version of the Arab Charter on Human Rights is the confirmation of equality between men and women in the Arab World (article 3 & 3). The new version also guarantees children's rights (article 34 & 3) and the rights of handicapped persons (article 40). However, the main criticism of the old version remains unresolved in the new one: there is no effective enforcement mechanism. The mechanism of the Arab Charter needs improvements and modifications. One of these improvements and modifications should be the creation of an Arab Court of Human Rights.

ASEAN Intergovernmental Commission on Human Rights -2009

The establishment of the AICHR is yet another significant milestone in the evolution of ASEAN as it provides the concrete expression of Article 14 of the ASEAN Charter and ASEAN's commitment to build a more people oriented ASEAN Community. The body is mandated to promote and protect human rights by promoting public awareness and education, providing advice and capacity building to government agencies and ASEAN bodies, developing regional norms, obtain information from Member States, engaging with stakeholders and other institutions, conducting studies on thematic issues.

The mandate includes developing strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community and an

ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights.⁷ The other mandate of the mechanism is to enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information and promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States as well as to encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments.⁸ In the promotion front, it envisions the full implementation of ASEAN instruments related to human rights and provides advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request and helps engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organizations and other stakeholders

The mandate also has a provision for consultation, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights; obtain information from ASEAN Member States on the promotion and protection of human rights; develop common approaches and positions on human rights matters of interest to ASEAN. Finally, it has also a mandate to prepare studies on thematic issues of human rights in ASEAN and to submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting.

In Africa, the Americas, and Europe, the regional human rights systems have all or most of the following functions:

- a State reporting process, through which governments inform on their own implementation of regional human rights treaties
- monitoring human rights conditions through “rapporteurs” and other special mechanisms focused on particular countries or themes
- deciding complaints concerning alleged human rights violations by a Member State, and directing the State to provide redress where appropriate
- requesting or ordering emergency protection (often called interim, provisional or precautionary measures) when an individual or the subject of a complaint is in immediate risk of irreparable harm
- conducting public hearings, conferences, and seminars on human rights topics of concern
- issuing advisory opinions on the interpretation or application of regional human rights standards⁹

7 Terms of Reference of ASEAN Intergovernmental Commission on Human Rights Jakarta: ASEAN Secretariat, October 2015

8 Ibid

9 <https://www.newtactics.org/engaging-regional-human-rights-mechanisms>

The table reproduced below summarises the core characteristics of each system to be interpreted and compared in the light of the four guiding principles/yardsticks proposed in the introduction of this study. This summary establishes the benchmark of regional human rights protection systems:

1. Controlling Organs

| | | Political Organs composed of the representatives of governments | Independent expert bodies | Permanent or non-permanent judicial organs |
|---------------|--------------------------|---|--|---|
| EUROPE | Council of Europe | <p><i>Committee of Ministers of the Council of Europe</i></p> <p>(implementation of the judgments of the ECHR)</p> | <p>1. <i>European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT)</i></p> <p>2. <i>European Commission against Racism and Intolerance (ECRI)</i></p> <p>3. <i>European Committee of Social Rights (ECSR)</i></p> <p>4. <i>Advisory Committee under the Framework Convention for the Protection of National Minorities (ACFC)</i></p> <p>5. <i>Group of Experts on Action against Trafficking Human Beings (GRETA)</i></p> <p>6. <i>The European Commissioner on Human Rights</i></p> | <p><i>Single and permanent European Court of Human Rights</i></p> <p>(established in 1998; 47 judges, Strasbourg)</p> |

| | | | | |
|--|-----------------------|-------------------------------|---|--|
| | European Union | European Council (art. 7 TUE) | <ol style="list-style-type: none"> 1. European agency of Fundamental Right 2. European Ombudsman 3. European Data Controller | Court of justice of the European Union |
|--|-----------------------|-------------------------------|---|--|

| | | | |
|-----------------|--|--|--|
| AMERICAS | <ol style="list-style-type: none"> 1. Permanent Council 2. Inter-American Council for Integral Development | <ol style="list-style-type: none"> 1. Commission on the revention, Punishment and Eradication of Violence against Women 2. Committee on the Elimination of All Forms of Discrimination against Persons with Disabilities | <ol style="list-style-type: none"> 1. Quasi-Judicial Inter-American Commission established in 1959, 7 members, Washington D.C 2. Non-permanent Inter- American Court on Human Rights, established in 1979, 7 judges San José |
| AFRICA | <ol style="list-style-type: none"> 1. Assembly of Heads of State and Government of the Union 2. Executive Council of Ministers of the Union 3. Commission of the African Union; | The African Committee on the Rights and Welfare of the Child | <ol style="list-style-type: none"> 1. Quasi-judicial African Commission on Human and People's Rights; established in 1987, 11 members, Banjul 2. Non-permanent African Court on Human Rights established 2004, 11 judges, Arusha |

| | | |
|-----------------------------|--|---|
| ARAB STATES | <ol style="list-style-type: none"> 1. Council 2. Secretariat | <ol style="list-style-type: none"> 1. Arab Human Rights Committee, established in 2009, 7 members 2. Sub Commission on Human Rights |
| ASIA-PACIFIC (ASEAN) | <p>ASEAN Summit</p> <ol style="list-style-type: none"> 1. ASEAN Coordinating Council, SEAN Political-Security Community Council, ASEAN Economic Community Council, and ASEAN Socio-Cultural Community Council, 2. Committee of Permanent Representatives | <p>ASEAN Intergovernmental Commission on Human Rights (AICHR) established 2009, 10 members,</p> |

REGIONAL HUMAN RIGHTS REGIMES
[Overall Scoping]

| Organizations | Instruments | Preamble | Jurisdiction | Limitations |
|--|---|---|---|--|
| The African Union | African Charter on Human and Peoples' Rights | <ol style="list-style-type: none"> 1. To provide institutional framework for the protection of human and peoples' right. 2. Freedom, equality, justice, and dignity for the achievement of legitimate aspirations of African peoples. 3. Eradicate all forms of colonialism from Africa, 4. Enjoyment of rights and performance of duties to respects another's right. 5. Recognize and enhance interrelationship between civil and political rights with economic, social, and cultural rights along with right to development, 6. Total liberation by eradicating all forms of discrimination based on race, ethnic group, color, sex, language, religion, or political opinions. | The jurisdiction of the African Charter on Human and Peoples' Rights extends to the fifty-four African Union Member States who have ratified the Charter. | <p>Claw back clause within the Charter restricts protection of individual against State abuse. It allows the domestic laws to restricts rights guaranteed by the Charter. The charter has no defined limitations of Sate action towards its subjects in the following rights:</p> <ul style="list-style-type: none"> -The Right to Liberty -The Right to receive and disseminate information. -Freedom of Assembly -Freedom of Movement. -Right to Participate Freely in Government -Right o Property <p>2. It doesn't include the obligation of State party to criminalize Inhuman and degrading punishments and torture.</p> <ul style="list-style-type: none"> -The instrument doesn't have prvoisons to ensure "Right to fair trial" as per the standards of ICCPR. -Omitted to include rights of migrant workers. |
| Organization of American States | American Convention on Human Rights | <ul style="list-style-type: none"> - System of personal liberty and social justice within the framework of democratic institution. - Human rights are based upon the attribute of human personality. - In accordance with the principles of the Universal Declaration of Human Rights. - Establishment of structure, competence, and procedure to ensure civil and political, economic, social, | Among the 34 signatories only 22 Member States have acknowledged the recognition of the jurisdiction of the courts. Some States like Dominica have ratified the Convention, however, do not recognize the jurisdiction of the | <p>One of the limitations of the instrument is to broadly define and clarify Economic, Social and Cultural rights. Even though the instrument enshrines such rights as progressive rights it hasn't yet developed a coherent strategy to deal with justiciability of these right under the Convention.</p> <ul style="list-style-type: none"> -It Convention doesn't include the obligation of |

| | | | | |
|--------------------------|--|--|--|---|
| | | and educational rights. | court. ¹⁰ | State party to criminalize Inhuman and degrading punishments and torture. |
| Council of Europe | European Convention on Human Rights | <ul style="list-style-type: none"> i. universal and effective recognition and observance of the Rights. ii. achieving greater unity among member states by realization of human rights and fundamental freedoms. iii. have a common heritage of political traditions, ideals, freedom and the rule of law, for the collective enforcement of certain of the rights stated in the Universal Declaration. | The jurisdiction of the European Convention on Human Rights covers all the 46 members of the Council of Europe as all of the members have ratified the Convention. | <ul style="list-style-type: none"> -It Convention doesn't include the obligation of State party to criminalize Inhuman and degrading punishments and torture. -Omitted to include rights of migrant workers |
| Arab League | Arab Charter on Human Rights | | Out of the 22 member states of the Arab League, only 16 members have ratified the Charter. ¹¹ | <ul style="list-style-type: none"> -Strong emphasis of religion in the charter has become controversial on the grounds on International principal of religious neutrality. - The Charter doesn't abolish death penalty but regularize it. -It doesn't include right to political organization and participation. -Fails to recognize fundamental Economic and Social rights like right to housing and right to food. -Limitation on right to free association like to form trade union. -Vague exception of implementation of rights in context of national law limits the freedom granted by the instrument. |

10 <https://www.cidh.oas.org/basicos/english/Basic4.Amer.Conv.Ratif.htm>

11 <https://academic.oup.com/hrlr/article/21/3/506/6264817>

| | | | | |
|---|---------------------------------------|--|---|---|
| Association of South East Asian Nations | ASEAN Human Rights Declaration | <ul style="list-style-type: none"> i. Respect for and protection and promotion of human rights and fundamental freedoms, as well as the principles of democracy, rule of law and good governance. ii. Commitment to the UDHR, UN Charter and the other international human rights instruments to with ASEAN member states are parties. . iii. ASEAN's effort in promoting human rights including the Declaration of the Advancement of Women in the ASEAN Region and the Declaration on the Elimination of Violence against Women in the Asian Region. iv. Establish a framework for human rights co-operation. | <p>The 10 members of ASEAN have unanimously ratified the Declaration.</p> | <p>-The Declaration fails to include basic rights and fundamental freedoms: the right to freedom of association and the right to be free from enforced disappearance.</p> |
| South Asian Association for Regional Cooperation | SAARC Charter on Democracy | <ul style="list-style-type: none"> i. Welfare of the people, safeguarding diverse identities with opportunity to live in liberty, dignity, peace and happiness. ii. Promote freedom and social justice, rule of law, equal rights and opportunities of all citizens. iii. Ensure the fulfillment of fundamental human right along with institutionalizing equitable and sustainable development. iv. Broad based participation of people in governance and democratization within political parties for stability. v. Acknowledging linkage between democracy and development, poverty eradication, good governance and affirmative action fulfill the process of democratization. vi. gender inequality, exclusion and violence against women hinders | <p>All the SAARC members are party to the charter.</p> | <p>The convention doesn't focus specifically in Human Rights and Fundamental freedom. It doesn't qualify as sub-regional Human Rights Instruments. It highlights the need of regional Human Rights Instruments for SAARC.</p> |

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| | | development and women's participation and representation in decision making, and addressing the issues of indigenous people and marginalized including women in peace process contributes to sustainable peace. Effective measures to counter religious, ethnic and any other form of extremism. | | |
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REGIONAL HUMAN RIGHTS REGIMES

[Treaty-wise Prominence]

| Instruments | African Charter on Human and Peoples' Rights | American Convention on Human Rights | European Convention on Human Rights | Arab Charter on Human Rights | ASEAN Human Rights Declaration | SAARC Charter on Democracy |
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| UDHR | <ul style="list-style-type: none"> - Every individual is entitled to the fundamental rights enshrined in the documents regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. - Every individual is born equal before the law. - Prohibition of slavery, torture, inhuman or degrading treatment or punishment. - Right to life, liberty, and security of their person. - Right to a fair trial. - Right to be free from arbitrary arrest or detention. - Freedom of conscience, | <ul style="list-style-type: none"> - Every individual is entitled to the fundamental rights enshrined in the documents regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. - Right to recognition as a person before the law. - Prohibition of slavery, torture, inhuman or degrading treatment or punishment. - Right to liberty and security. - Right to fair trial. - Right to privacy. - Freedom of conscience, thought, and religion. - Freedom of expression and thought along with the right to seek, receive and impart information. - Freedom of peaceful assembly and association. - Rights of the family. - Right to nationality. | <ul style="list-style-type: none"> - Right to life. - Prohibition of torture or to inhuman or degrading treatment or punishment. - Prohibition of slavery and forced labour. - Right to liberty and security of person. - Right to a fair trial. - Prohibition on arbitrary arrest, detention, or exile (no punishment without law). - Right to respect for private and family life. - Freedom of thought, conscience, and religion. - Freedom of expression and thought along with the right to seek, receive and impart information. - Freedom of assembly and | <ul style="list-style-type: none"> - Every individual is entitled to the fundamental rights enshrined in the documents regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. - Right to life, liberty, and security of person. - Prohibition on arbitrary arrest or detention. - Right to a fair trial. - Every individual is born equal before the law. - Prohibition of torture or to inhuman or degrading treatment or | <ul style="list-style-type: none"> - Every individual is entitled to the fundamental rights enshrined in the documents regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. - Every individual is born equal before the law. - Right to effective remedy. - Right to life. - Prohibition of torture or to inhuman or degrading treatment or punishment. - Prohibition of slavery and forced labour. - Freedom of movement and residence. - Right to property. - Right to nationality. - Protection of family. - Right to fair trial. - Freedom of | <ul style="list-style-type: none"> - Right to participate in government. - Freedom from discrimination and right to equal treatment. |

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| | <p>thought, and religion.</p> <p>-Freedom of expression and thought along with the right to seek, receive and impart information.</p> <p>-Freedom of movement.</p> <p>-Right to participate in their government and to access public service.</p> <p>-Right to own property.</p> <p>-Right to work under equitable and safe conditions and shall receive equal pay for equal work.</p> <p>-Right to enjoy the best attainable health.</p> <p>-Right to education.</p> <p>-Right to participate in the cultural life of their community and the promotion and protection of their morals and values.</p> <p>-Protection of family.</p> <p>-Right to economic, social, and cultural development with due regard to their freedom and dignity.</p> | <p>-Right to property.</p> <p>-Freedom of movement and residence.</p> <p>-Right to participate in Government.</p> <p>-Right to equal protection.</p> <p>-Right to effective remedy (judicial protection).</p> | <p>association.</p> <p>-Right to marry.</p> <p>-Right to effective remedy.</p> <p>-Freedom of movement (Protocol).</p> <p>-Prohibition of discrimination.</p> <p>-Right to education (Protocol).</p> | <p>punishment.</p> <p>-Right to private and family life.</p> <p>-Right to participate in government.</p> <p>-Freedom of movement and residence.</p> <p>-Right to nationality.</p> <p>-Right to property.</p> <p>-Freedom of thought, conscience, and religion.</p> <p>-Freedom of peaceful assembly and association.</p> <p>-Right to form trade union.</p> <p>-Freedom from forced labor.</p> <p>-Right to work, equal opportunity, and equal pay for equal work.</p> <p>-Right to education.</p> | <p>thought, conscience, and religion.</p> <p>-Freedom of peaceful assembly and association.</p> <p>-Freedom of expression and thought along with the right to seek, receive and impart information.</p> <p>-Right to participate in government.</p> <p>-Right to work and to enjoy just and safe conditions of work.</p> <p>-Right to form trade unions.</p> <p>-Right to adequate standard of living.</p> <p>-Right to enjoy the best attainable health.</p> <p>-Right to education.</p> <p>-Motherhood and childhood are entitled to special care.</p> | |
| ICCPR | <p>- Right to freedom from discrimination.</p> <p>-Right to Equality before the Law and Equal Protection of the Law</p> <p>-Right to Life</p> <p>-Prohibition of Torture and Cruel, Inhuman and Degrading Treatment</p> | <p>RIGHT TO JURIDICAL PERSONALITY.</p> <p>RIGHT TO LIFE</p> <p>RIGHT TO HUMANE TREATMENT</p> <p>FREEDOM FROM SLAVERY</p> <p>RIGHT TO PERSONAL LIBERTY.</p> | <p>Right to life</p> <p>Prohibition of torture</p> <p>Prohibition of slavery and forced labor</p> <p>Right to liberty and security</p> <p>Right to fair trial</p> <p>No Punishment without law</p> | <p>Right to self-determination.</p> <p>Right against discrimination</p> <p>Equality of men and women.</p> <p>Right to derogation</p> <p>Right to life</p> <p>Right to juvenile</p> | <p>Right to life</p> <p>Right to personal liberty and security</p> <p>Right against slavery</p> <p>Right against torture.</p> <p>Right to freedom of movement and residence.</p> <p>Right to property</p> | |

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| -Right to Personal Liberty and Protection from Arbitrary Arrest | RIGHT TO A FAIR TRIAL | Right to respect for private and family life. | justice | Right to nationality. |
| -Right to Fair Trial | FREEDOM FROM "EX POST FACTO" LAWS. | Freedom of thought, conscience and religion | Right against torture. | Right to family. |
| -Right to Freedom of Conscience | RIGHT TO COMPENSATION | Freedom of expression | Right to Humane treatment. | No crime without law. |
| -Right to Receive Information and Free Expression | RIGHT TO PRIVACY | Freedom of assembly and association. | Right against slavery and trafficking. | Right to privacy. |
| -Right to Freedom of Association | FREEDOM OF CONSCIENCE AND RELIGION. | Right to marriage. | Equality before law. | Right to Freedom of thought, conscience and religion. |
| -Right to Freedom of Assembly | FREEDOM OF THOUGHT AND EXPRESSION. | Right to an effective remedy. | Right to fair trial. | Right to freedom of opinion and expression. |
| -Right to Freedom of Movement | RIGHT OF ASSEMBLY | Prohibition of discrimination. | Right to liberty and security. | Right to freedom of peaceful assembly. |
| -Right to Participate in Government | FREEDOM OF ASSOCIATION. | Right to derogation | No punishment without law. | Right to participate in government. |
| -Right to Property | RIGHTS OF THE FAMILY. | | Right to due process of law. | Right to vote. |
| - Right to Work | RIGHT TO A NAME. | | Right against double jeopardy. | |
| -Protection of the Family and Vulnerable Groups | RIGHTS OF THE CHILD. | | Right to privacy. | |
| -Right of All Peoples to Equality and Rights | RIGHT TO NATIONALITY | | Right to effective remedy. | |
| -Right to Self-Determination | RIGHT TO PROPERTY. | | Freedom of association and peaceful assembly. | |
| -Right to Free Disposal of Wealth and Natural Resources | FREEDOM OF MOVEMENT AND RESIDENCE. | | Right to minorities | |
| | RIGHT TO PARTICIPATE IN GOVERNMENT | | Right to freedom of movement and residence. | |
| | RIGHT TO EQUAL PROTECTION. | | Right to Nationality. | |
| | RIGHT TO JUDICIAL PROTECTION. | | Right to freedom of thought, conscience and religion. | |
| | . | | Right to information and freedom | |

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| | | | | of expression. Right to family. Right to work Right to form trade union | | |
| ICESCR | <ul style="list-style-type: none"> - Right to work and equal pay for equal pay with safe working conditions. - Protection of family. - Right to enjoy the best attainable health. - Right to education. - Right to participate in cultural life. - Elimination of discrimination against women. - Right to freely dispose of their wealth and natural resources. - Right to economic, social, and cultural development. - Right to self-determination. | <ul style="list-style-type: none"> - Protection of family. - Right to economic, social, and cultural development. - Educational rights. | <ul style="list-style-type: none"> - Right to education. (Protocol) - Protection of property. - Right to form and join trade unions. - Protection of family. | <ul style="list-style-type: none"> - Right to control their wealth and natural resources. - Right to work and in favourable and safe conditions. - Equal pay for equal work. - Right to form and join trade unions. - Right to education. - Right to participate in cultural life. - Protection of family. | <ul style="list-style-type: none"> - Right to property. - Right to work and in favourable and safe conditions. - Right to form and join trade unions. - Right to adequate standard of living. - Right to enjoy the highest attainable standard of health. - Right to social security, including social insurance. - Special protection of mothers before and after childbirth. - Right to education. | |
| CERD | <ul style="list-style-type: none"> - Elimination of apartheid. - Equal treatment before the law. - Right to the security of his person. - Right to participate in Government. - Freedom of movement and residence. | <ul style="list-style-type: none"> - Equal treatment before the law. - Right to security. - Freedom of thought and expression. - Freedom of peaceful assembly and association. - Right to nationality. - Right to property. - Right to movement and residence. - Right to participate in Government. | <ul style="list-style-type: none"> - Right to security. - Freedom of thought, conscience, and religion. - Freedom of expression. - Freedom of assembly and association. - Prohibition of discrimination. | <ul style="list-style-type: none"> - Right to property. - Right to security. - Right to equal judicial treatment. - Right to movement and residence. - Freedom of thought, | <ul style="list-style-type: none"> - Equal treatment before the law. - Right to effective remedy. - Right to security. - Right to freedom of movement and residence. - Right to property. - Right to nationality. - Freedom of | |

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| | <ul style="list-style-type: none"> - Right to property. - Freedom of conscience and religion. - Freedom of opinion and expression. - Freedom of peaceful assembly and association. - Economic, social, and cultural rights regardless of one's background. - Right to work. - Right to medical services. - Right to education. - Right to participate in cultural activities. - Right to access all public property. | <ul style="list-style-type: none"> - Economic, social, educational, and cultural rights regardless of one's background. - Right to remedy. | <ul style="list-style-type: none"> - Right to form and join trade unions. - Right to education. (Protocol) - Freedom of movement. (Protocol) - Protection of property. - Right to effective remedy. | <ul style="list-style-type: none"> conscience, opinion, and religion. - Freedom of assembly and association. - Right to form and join trade unions. - Right to work. - Right to participate in Government. - Right to Education. - Right to participate in cultural activities. | <ul style="list-style-type: none"> thought, conscience, and religion. - Freedom of opinion and expression. - Freedom of assembly. - Right to participate in Government. - Economic, social, and cultural rights regardless of one's background. - Right to work. - Right to form and join trade unions. - Right to medical services. - Right to housing. - Right to education. | |
| CEDA W | <ul style="list-style-type: none"> - Right to participate in Government. - Elimination of discrimination against women. - Right to education for all. - Right to work and to work under safe and equitable conditions, equal pay for equal work. - Every individual is equal before the law. - Freedom of movement and residence. - Equal rights regarding property. | <ul style="list-style-type: none"> - Right to participate in Government. - Every individual is equal before the law. - Freedom of movement and residence. - Right to education. - Prevention of discrimination on the grounds of marriage. - Equal rights regarding property. | <ul style="list-style-type: none"> - Prevention of discrimination on the grounds of marriage. - Prohibition of discrimination. - Right to education for all. - Every individual is equal before the law. - Freedom of movement and residence. - Equal rights regarding property. | <ul style="list-style-type: none"> - Every individual is equal before the law. - Right to work. - Right to education. - Freedom of movement and residence. - Equal rights regarding property. | <ul style="list-style-type: none"> - Every individual is equal before the law. - Freedom of movement and residence. - Equal rights regarding property. - Right to work and to work under safe and equitable conditions. - Right to enjoy adequate living conditions (housing, sanitation, water) - Right to education. | |
| CRC | <ul style="list-style-type: none"> Ensures protection of Child as stipulated in International Declarations and | <ul style="list-style-type: none"> - Right to Child - Right to name - Right against Capital Punishment for minors. - Separate Criminal | <ul style="list-style-type: none"> - Right to lawful detention of minor. | <ul style="list-style-type: none"> - Right against Capital punishment (unless stipulated by law at the time | <ul style="list-style-type: none"> - Right to children as inalienable, integral and indivisible part of human rights and fundamental | |

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| | Conventions | proceedings for minors. | | of commission of crime) | freedoms. -Right against child labor. -Right against social exploitation of child. -Right to equal social protection. - Special benefits during and after childbirth to mothers. -Right to maternal leave. | |
| CAT | -Prohibition of torture and inhuman treatment. | -Right to humane treatment | -Prohibition of torture, cruel, inhumane, and degrading punishment. | -Prohibition of physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment. - Criminalization of torture, cruel, degrading, humiliating or inhuman treatment. | -Prohibition of torture, cruel, inhumane, and degrading punishment. | |
| CRPD | -Right to special measures of protection to ensure physical and moral needs. | -No exclusive rights to persons with disability. | -No exclusive rights to person with disability. | -Obligation of state party to ensure rights and freedoms of persons with physical and mental disability. -Right to work | -Person with disability entitled to rights and freedom. - Right of persons with disabilities inalienable, integral and indivisible part of human rights and fundamental freedoms | |
| UNTC | -Charter doesn't enshrine migrant worker rights. -Adopted 114 Resolution on Migration and Human Rights. | - Migrant worker rights is not enshrined on the instrument. - Established INTER-AMERICAN PRINCIPLES ON THE HUMAN RIGHTS OF ALL MIGRANTS, REFUGEES, STATELESS PERSONS AND VICTIMS OF HUMAN TRAFFICKING | -The convention doesn't enshrine Migrant worker rights. | -Each State party shall ensure to workers who migrate to its territory the requisite protection in accordance with the laws in force. | - Right of Migrant as an inalienable, integral and indivisible part of human rights and fundamental freedoms. | |

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| CPPED | -The instrument has omitted protection against enforced disappearance. - The Commission has established "Guidelines on the protection of all persons against enforced disappearances in Africa" | -The instrument omitted enshrine protection against enforced disappearance. - The Organization of American States has established Inter-American Convention on Forced Disappearance of Persons. | -The instrument doesn't enshrine protection against enforced disappearance. - The European Court has however interpreted Enforced disappearance under Right to life, Prohibition of torture, Right to Liberty and Security and Right to an effective remedy. ¹² | -The instrument omitted to enshrine any protection against enforced disappearance. | -The instrument omitted to enshrine any protection against enforced disappearance. | |
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2. Modalities of Control

| | Inter-state complaints | Individual complaints | Regular Reports |
|-----------------------------|------------------------|-----------------------|--|
| EUROPE | Yes | Yes | Report by expert bodies |
| AMERICAS | Yes | Yes (via Commission) | Reports by expert bodies; state reports of and to the Commission |
| AFRICA | Yes | Yes (via Commission) | Reports by expert bodies; state reports of and to the Commission |
| ARAB STATES | Yes | No | State reports to the Arab Human Rights Committee |
| ASIA-PACIFIC (ASEAN) | No | No | No |

3. Implementation of Control

| | Judgement | Advisory opinion | Reports | Recommendations | Monitoring of the Implementation of the Judgement |
|-----------------|-----------|------------------|------------------|------------------|--|
| EUROPE | Yes | Yes | Yes | No | Yes (Committee of Ministers) |
| AMERICAS | Yes | Yes | Yes (Commission) | Yes (Commission) | No (Written procedure between the Court and the state concerned) |
| AFRICA | Yes | Yes | Yes (Commission) | Yes (Commission) | Executive Council and Assembly of the AU |

12 Missing Persons and Victims of Enforced disappearance in Europe, pg 38, para 1, Council of Europe, March 2016

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| ARAB STATES | No | No | No | No | No |
| ASIA-PACIFIC (ASEAN) | No | No | No | No | No |

REGIONAL HUMAN RIGHTS REGIMES

[Redress Avenues]

| Organizations | Instruments | Civil Society Space | Complaint Mechanisms | Emblematic Cases |
|--------------------------|---|--|--|---|
| The African Union | African Charter on Human and Peoples' Rights | <p>The African Charter provides that the African Commission must cooperate with other African and international institutions that are concerned with promoting and protecting human and peoples' rights.¹³</p> <p>Civil Society can take complaints of violation of human rights by the state party to the Charter.</p> <p>NGO Observer Status: Observer status is a formal recognition of an NGO and its authority to participate at the Commission. NGOs with observer status may make statements and answer questions during the Commission's public sessions. They may also be</p> | <p>Article 26¹⁵ of the African Charter on Human and People's Rights requires for the State Parties to have independent courts and must establish and improve national institutions that promote and protect the rights and freedoms.</p> <p>'The African Commission on Human and People's Rights' (the Commission) is established through article 30 for the promotion and protection of human and people's rights in Africa. According to article 47, if a State Party</p> | <p>Commission:</p> <p>1. <u><i>Social and Economic Rights Action Center (SERAC) v. Nigeria(2001)</i></u> <u><i>AHRLR 60 (ACHPR 2001)</i></u></p> <p>The communication alleges that the military government of Nigeria has been directly involved in oil production through the State oil company, the Nigerian National Petroleum Company (NNPC), the majority shareholder in a consortium with Shell Petroleum Development Corporation (SPDC), and that these operations have caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni People.</p> <p>The African Commission held that Nigeria violated Articles 4, 14, 16, 18, and 24 of the African Charter by condoning and facilitating environmentally degrading and polluting practices of oil companies in traditional Ogoniland, through military force.</p> <p><u><i>DRC v Burundi, Rwanda and Uganda (2004) AHRLR 19 (ACHPR 2003)</i></u></p> <p>This communication was filed by the Democratic Republic of Congo (DRC) against the Republics of Burundi, Rwanda and Uganda. DRC alleged that Burundi, Rwanda and Uganda (respondent states) had</p> |

¹³ Art 45 of the Charter

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| | | <p>invited to attend closed sessions dealing with issues that are of particular importance to their organization.</p> <p>NGOs with observer status can suggest items that relate to any human rights issue for inclusion in the African Commission's provisional agenda.</p> <p>Shadow Reports: NGOs and individuals may also submit shadow reports to the Commission on the human rights situation in their country. The Report could include any inaccuracies, discrepancies, inadequacies or supplementary material to the State Reports.¹⁴</p> <p>Civil society organizations can offer comments on State reports to help the Commission develop an initial list of questions for the State.</p> <p>Side Events: NGOs often organize</p> | <p>has good reason to believe that another State Party is violating the Charter, the former State can communicate in writing to the latter and they would have three months to respond. Additionally, article 49 also allows for State Parties to directly communicate with the Commission if they believe any other State Party is violating the Charter. Before applying these provisions, all domestic avenues must be exhausted unless the Commission decides the process would take too long. Articles 55 and 56 allow for communication other than those between State parties. Individuals and CSOs can</p> | <p>committed grave violations of human and peoples' rights in the Congolese provinces through the activities of rebels groups which the applicant alleged were supported by the respondent states</p> <p>The Commission concluded that the respondent states were in violation of several provisions of the African Charter and urged them to take measures to abide by their obligations under the UN Charter, the OAU Charter and the African Charter and to further pay adequate reparations to the victims of the violations.</p> <p>ACHPR</p> <p>0. <u>Zongo and Others v Burkina Faso (28 March 2014)</u></p> <p>In the Zongo case, the applicants alleged that the state of Burkina Faso failed to investigate and prosecute those responsible for the death of Nibert Zongo and three others, on account of their journalistic investigations, and that this unduly exposed journalists to the risk of working under fear and intimidation. The African Court found that the state's failure to investigate and prosecute the culprits constituted a violation of the freedom of expression as well as the right to have a person's cause to be heard by competent national courts under articles 7 and 9 of the African</p> |
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14 https://www.achpr.org/public/Document/file/English/Draft%20Shadow%20Reporting%20Guidelines_ENG.pdf

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| | | <p>side events, which are educational, awareness raising, or networking events focused on a particular topic. Commissioners frequently participate in these events</p> <p>NGO Forum: the NGO Forum provides a platform for NGOs to discuss the human rights situation in Africa, lobby, and build their advocacy networks. Moreover, Commissioners often participate in the NGO Forum and incorporate language from NGO Forum resolutions into Commission resolutions.</p> | <p>utilise this provision to bring complaints to the Commission.</p> <p>The 'African Court for Human and People's Rights'(the Court) was established through the 'Protocol to the African Charter on Human and People's Rights on the establishment of an African Court on Human and People's Rights' (the Protocol). According to article 5 of the Protocol, the Commission, the State who lodged the complaint to the Commission, the State against which the complaint was lodged, the State whose citizen is a victim of human rights violation and African Intergovernmental Organisation</p> | |
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| | | | <p>can submit cases to the Court.¹⁶</p> <p>Article 5(3)¹⁷ specifically indicates that the Court may entitle relevant NGOs with observer status and individuals to submit cases directly as well.</p> <p>However, article 34(6)¹⁸ states that the working of the article 5(3) is conditional on the States making a declaration of acceptance of the provision.</p> | |
| <p>Organization of American States</p> | <p>American Convention on Human Rights</p> | <p>Civil Societies provide information during in loco visits by the Inter-American Commission on Human Rights. CSOs provide first hand documents on human rights violation.</p> <p>CSOs can also file the complaints on behalf of the victim against the</p> | <p>Article 33 of the American Convention on Human Rights (the Convention) establishes the Inter-American Commission on Human Rights (the Commission) and the Inter-American Court of Human Rights (the</p> | <p>IACHR:</p> <p>1. <u>Lezmond C. Mitchell, United States of America (IACHR, Report No. 211/20. Case 13.570)</u></p> <p>On April 3, 2017, the Inter-American Commission on Human Rights received a petition and request for precautionary measures alleging the international responsibility of the United States of America for the violation of the rights of Lezmond M., a citizen of the United States and a member of the Navajo Nation, who is on federal death row.</p> <p>On April 26, 2018, the Commission notified the parties of the application</p> |

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| | | <p>violation of human rights by the state.</p> <p>CSOs participate in the joint meetings with the Working Group and in consultations.</p> | <p>Court).¹⁹ Article 44²⁰ allows ‘any person or group of persons, or any nongovernmental entity legally recognised in one or more member states’ to lodge petition regarding denunciation or complaints of violation of the Convention by a State Party to the Commission. Article 45²¹ states that the provision for communication by a State Party regarding a violation by another State Party can only be utilised if they have officially adhered to the Convention or recognised the competence of the Commission.²² The requirements</p> | <p>of Article 36 (3) of its Rules of Procedure, since the petition falls within the criteria established in its Resolution 1/16, and placed itself at the disposition of the parties to reach a friendly settlement.</p> <p>The Court: <u>Claude Reyes et al. vs. Chile (2006)</u></p> <p>After requests and appeals for accessing information on government contracts were denied by the Chilean government and the Chilean Supreme Court, a civil society organisation brought this case to the Inter-American Court. The Court ruled that the Chilean government must provide the requested information and adopt the necessary measures in terms of adopting or modifying its domestic law to ensure the right of access to state-held information. This decision inspired the adoption of FOIAs in other countries under the jurisdiction of the Inter-American Court, such as Nicaragua (2007), Chile (2008), Guatemala (2008), Uruguay (2008), El Salvador (2011) and Brazil (2011). In countries without a FOIA, such as Colombia, Costa Rica and Argentina, civil society has used this ruling to successfully request public information from their governments.</p> |
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Commented [1]: Fact check please, not sure if I understood the article properly.

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| | | | <p>for the submission of complaints is given by article 46,²³ According to article 61 of the Convention, only State parties and the Commission are able to submit a case to the Court.²⁴ Individuals do not have direct recourse to the Inter-American Court, they must go through the Commission for any human rights violations complaint.</p> | |
| <p>Council of Europe (CoE)</p> | <p>European Convention on Human Rights</p> | <p>The CoE deems the participation of Civil Society to be essential as it is a part of preserving the democratic process.²⁵ NGOs are able to apply for a participatory status within the CoE.²⁶</p> <p>The INGOs enjoying</p> | <p>Article 19 of the Convention establishes the European Court of Human Rights (the Court).³¹ According to article 33, a State party to the Convention or its Protocols can take a</p> | <p><i>Ireland v United Kingdom (5310/71)</i></p> <p>Ireland v United Kingdom is a landmark European Court of Human Rights case which has become crucial concerning cases regarding 'cruel and unusual treatment'. The Court ruled that the UK government was guilty of "inhuman and degrading treatment", of men interned without trial. The Court found that while their internment was an interference of the convention rights, it was justifiable in the circumstances. However, they ruled that the practice of the five techniques and the practice of beating</p> |

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25 <https://rm.coe.int/1680656cef>

26 <https://www.coe.int/en/web/ingo/participatory-status>

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| | | <p>participatory status:</p> <p>a. may address memoranda to the Secretary General;</p> <p>b. shall have access to the agenda and public documents of the Parliamentary Assembly in order to facilitate their attendance at public sittings of the Parliamentary Assembly;</p> <p>c. are invited to the public sittings of the Congress of Local and Regional Authorities and to contribute to its work according to its rules;</p> <p>d. are invited to attend seminars, conferences, colloquies of interest to their work according to the applicable Council of Europe rules;</p> <p>e. may be invited to contribute individually or through the Conference of INGOs to the work of intergovernmental committees in accordance with the terms of Committee of Ministers' Resolution CM/Re</p> | <p>case regarding a violation by another States party to the Convention or its Protocols to the Court. Furthermore, article 34 allows for individual complaints by any person, non-governmental organisation or group of individuals who claim to be victims of violation by one of the State parties to the Convention or its Protocols. Article 35 lays out the criteria for admissibility.</p> | <p>prisoners constituted inhumane and degrading punishment in violation of the convention, although not torture.</p> |
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| | | <p>s(2011)24;</p> <p>f. may be invited to provide, through their specific activity or experience, expert advice on Council of Europe policies, programmes and actions;</p> <p>g. may request to be registered on the list of INGOs entitled to lodge collective complaints in the framework of the Additional Protocol to the European Social Charter which foresees a system of collective complaints (Article 1b);</p> <p>h. are invited to co-operate closely with the Commissioner for Human Rights, notably by communicating to him any information that they deem to be useful for his mission of promoting respect for human rights;</p> <p>i. may be consulted by the Secretary General, in writing or by means of a hearing, on</p> | | |
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| | | <p>questions of mutual interest.²⁷</p> <p>During the decision-making process, the CoE has given CSOs much significance. There are four levels of participation denoted during this process.²⁸ Information' is the first level where public authorities are responsible for providing relevant information to the public. The second level is 'Consultation' which allows public authorities to consult NGOs regarding specific policy or development. NGOs can give their feedback, comments, and views. The third level is 'Dialogue' which can be initiated by either the NGOs or public authorities to have a discussion regarding policies and their development. The final and the highest level of participation is 'Partnership'. The</p> | | |
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27 https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168068824c

28 <https://rm.coe.int/code-of-good-practice-civil-participation-revised-301019-en/168098b0e2>

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| | | <p>CoE has mentioned²⁹ a non-exhaustive list of activities for NGOs' participation during the decision-making process. These include inputting ideas, agenda setting, drafting, decision-making, implementing, monitoring and reformulating during the decision-making process along with public authorities.</p> <p>According to case law, NGOs are also able to bring a case before the European Court of Human Rights.³⁰</p> | | |
| Arab League | Arab Charter on Human Rights | <p>League of Arab States grant observer status to CSOs, only those recognized by Member States, to observe meetings of the LAS and its Committees.³² NGOs are only able to present their recommendation two months in advance and if a Member State agrees. NGOs are able to contribute to the deliberations of</p> | <p>Currently there is no complaint mechanism within the Arab regime. The Statute of the Arab Court of Human Rights 2014 was formulated for the establishment of an Arab Court. However, the Statute has yet to be</p> | |

29 <https://rm.coe.int/code-of-good-practice-civil-participation-revised-301019-en/168098b0e2>

30 Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania

32 Beirut Background paper

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| | | <p>Arab Human Rights Committee, however, they restricted and high regulated.³³</p> <p>The Arab Permanent Committee on Human Rights does not have ability to accept individual complaints or conduct country inquiries by request of CSOs. Officially, the Committee can only receive reports and information from CSOs officially registered as NGOs in their countries of origin.³⁴</p> <p>When Member States prepare their reports, CSOs are invited to prepare a shadow/parallel report for the Arab Human Rights Committee. When the Committee meets the state representative to review the report, CSOs are able to join and observe. When the Committee and</p> | <p>ratified by the seven requisite and the Court has yet to be established as well.³⁶</p> <p>Additionally, there has been significant criticism regarding the Statute of the Arab Court of Human Rights for not having suitable measures and not meeting international standards.³⁷ Article 40 of the Charter establishes the Committee for human rights. However, they do not have the ability to accept individual complaints or conduct country inquiries by request of CSOs. Officially, the Committee can only receive reports and information</p> | |
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33 Beirut Background paper

34 <https://blogs.lse.ac.uk/vaw/regional/arab-league/arab-human-rights-committee/>

36 <https://academic.oup.com/hrlr/article/21/3/506/6264817>

37 <https://www.icj.org/wp-content/uploads/2015/04/MENA-Arab-Court-of-Human-Rights-Publications-Report-2015-ENG.pdf>

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| | | the States come to an agreement regarding the conclusion, recommendations and remarks, CSOs can promulgate them. They are able to initiate follow ups with the Member States. ³⁵ | from NGOs registered in their countries of origin. | |
| Association of South East Asian Nations | ASEAN Human Rights Declaration | ASEAN Intergovernmental Commission on Human Rights (AICHR) is capable of having consultative relationship with CSOs. ³⁸ The accredited CSOs are able to give a written statement regarding AICHR's operations to the ASEAN Secretariat who would circulate it to the AICHR. The relationship allows for AICHR to consult CSOs for their views and advice, however, AICHR is not bound to the advice. Seminars can be held to provide information and workshops for intensive discussions to develop techniques, skills and methods in | Currently there are no complaint mechanism for the ASEAN. | |

35 <https://blogs.lse.ac.uk/vaw/regional/arab-league/arab-human-rights-committee/>
38 https://aichr.org/wp-content/uploads/2019/01/Guidelines_On_The_AICHR_Relations_With_CSOs.pdf

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| | | relevant fields. Accredited CSOs could be requested to do specific studies by the AICHR. CSOs can help implement projects carried out by AICHR. ³⁹ There are Annual Conferences of Civil Society based upon a conglomeration of civil society actors in the ASEAN. ⁴⁰ | | |
| South Asian Association for Regional Cooperation | SAARC Charter on Democracy | | Currently there no complaint mechanism for the SAARC. | |

REGIONAL HUMAN RIGHTS REGIMES

[Critical Review]

| Organizations | Instruments | Non-Conformity w/International Instruments | Areas of Improvement | Remarks |
|-------------------|--|--|--|---|
| The African Union | African Charter on Human and Peoples' Rights | <ul style="list-style-type: none"> • Omitted to recognize 'Right to Privacy' and 'Right Against Forced or Compulsory Labor' explicitly. • Article 7 mentions Right to Fair Trial which is inadequate as compared to the provisions mentioned in the ICCPR. • Article 13 provisions on 'Right to Political | African Charter on Human and People's right embodying the principle of Universality, has a gap in a form of claw-back clause to address. -There is a need to broaden the scope of protection under "Right to Free Association" | The inclusion of term "ethnic group" on non-discrimination provision has broadened the horizon of protection of minority. However, African Charter doesn't fully embody the spirit of International Human Rights Instruments. There |

39 https://aichr.org/wp-content/uploads/2019/01/Guidelines_On_The_AICHR_Relations_With_CSOs.pdf

40 <https://www.hrwg.or.id/wp-content/uploads/2021/08/Civil-Society-Participation-in-ASEAN-draft-2.pdf>

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| | | <p>Participation' is incomplete in comparison to international standard.</p> <ul style="list-style-type: none"> ● Existence of Claw-back clauses. Claw-back clauses 'permit a state, in its almost unbounded discretion, to restrict its treaty obligations or the rights guaranteed by the African Charter. ● Non-inclusion of 'Right to trade Union' when there's provision on 'Right to Free Association'. ● Excludes the right to housing, food and social rights mentioned in the ICESCR. ● Individuals owe duties to the "family and society", this can be seen as protecting oppressing family structure and predicted to clash with women rights. | <p>through inclusion of trade union.</p> <p>- Derogation clause could be a good addition to limit the action of state and protect individual freedom and liberty.</p> | <p>is a vacuum of enforcement mechanism.</p> |
| Organization of American States | American Convention on Human Rights | <ul style="list-style-type: none"> ● Omitted to recognise 'right to health', ● Inadequate mechanism to address justiciability of Economic, Social and Cultural Rights. | <p>- The Commission is not able to directly refer a case to the Court. A straightforward manner of communication regarding cases must be developed between the Court and the Commission.</p> | <p>The Convention adequately embody Civil and Political Rights in the spirit of International Human Rights Instruments. However, there is a gap in addressable of Economic, Cultural and Social Rights. The Organization has adopted various treaty to address</p> |

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| | | | | rights not adequately addressed in the Convention, however it still lacks any mechanism to ensure justiciability for violation of Economic, Social and Cultural Rights. |
| Council of Europe | European Convention on Human Rights | -The instrument doesn't recognize Rights of Migrant workers along with Protection Against Enforced Disappearances. | The Convention hasn't explicitly enshrined protection against enforced disappearance. The courts have been interpreting cases of enforced disappearance in context of Civil and Political rights addressed in the Convention. There would be a greater scope of individual protection against State action if the particular protection would be enshrined. | The Convention has embraced the spirit and the principles of International Human Rights instrument. However, the jurisdiction of the convention would be further strengthened if it could address enforced disappearance and obligation of state to criminalize torture and inhuman punishment. |
| Arab League | Arab Charter on Human Rights | -Arab Charter doesn't embody the International Principle of "Religious Neutrality" because of the Charter's references to religion. -It further limits the rights enshrined within the Charter by failing to limit State's Action against individuals including in rights. -It has omitted to enshrine Protection | -The Charter has regionlized the essence of Universal Human Rights. Rather than seeking the States to change their domestic laws, the Charter limits its rights by providing discretionary power to local laws. | The Charter acts as a regulatory tool for the party states. The demarcation of regulatory role of the Charter blurs as the Charter allows the supremacy of domestic laws over Universal Human Rights and its principles. |

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| | | <p>against Enforced Disappearances along with limiting Right to freedom of Association.</p> <p>-Charter recognizes the right to life, freedom and security of person (art 5),t does not prohibit the death penalty or encourage its abolition but only regularize it.</p> <p>-The Charter however fails to provide for the right to political organization and participation.</p> <p>-It’s standards falls short from the International Instruments on protection of “Right to fair trial”.</p> | | |
| <p>Association of South East Asian Nations</p> | <p>ASEAN Human Rights Declaration</p> | <p>-The rights enshrined is made subject to national laws, instead of requiring that the laws be consistent with the rights.</p> <p>-Declaration fails to include the right to freedom of association and the right to be free from enforced disappearance.</p> <p>-Balancing Human Rights with individual duty in ASEAN space for government intervention and regressive state action.</p> | <p>-ASEAN has various claw back clause, for example “In accordance to law” in Right to life. It limits the scope of rights within the Declaration. - Furthermore it needs to have a concrete language of limitation in Rights instead of vague terms like “morality”. The open spaces for State’s intrusion in Rights are the fundamental Gap in the declaration that needs to be addressed.</p> | <p>-ASEAN Human Rights Declaration through its claw back clause and vague terminologies limits the protection of individual rights against state.</p> <p>- It further more lack a comprehensive independent Human Rights mechanism, independent body to promulgate binding laws, an individual complaint mechanism and independent investigative bodies.</p> |

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| South Asian Association for Regional Cooperation | SAARC Charter on Democracy | -SAARC Charter hasn't been adequately emulated Civil and Political rights, Economic, Social and Cultural Rights, Rights to Children, Right of Persons with disability, Right against Torture, Protection against Enforced Disappearances along with Rights of Migrant workers as enshrined by International Human Rights Instruments. | SAARC Charter on Democracy doesn't qualify as a Regional Human Rights Instrument, however it is the only instruments that acknowledges Universal Human Rights like Civil Political and Socio-economic rights. However, the instrument is not comprehensive instrument to address Regional Human Rights and its implementation. | There is an urgency of adoption of a comprehensive and binding Human Rights Instrument for the SAARC region. |
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ASEAN DECLARATION AND AICHR: COMPLIANCE AUDIT

Contextual Background

The promulgation of the ASEAN Charter in 2008 was described as ASEAN's constitutional moment. Negotiated during the course of 2007 by the High-Level Task Force (HLTF), the ASEAN Charter came into force in December 2008. It gave ASEAN a legal personality, and sought to establish ASEAN's values and norms, including the rule of law, democracy and good governance. The ASEAN Charter is currently slated for a review.⁴¹ However, ASEAN leaders, policymakers and experts are divided on the very topic of whether the Charter needs review; and, if so, what the priority areas are. Many differences of opinion stem from the fact that the vision for ASEAN's future is varied and contested. Should ASEAN proceed with deeper integration and community building? Should it hold on to its principles of non-interference and sovereignty? Are the principles and institutions of ASEAN sufficiently effective for community building? Ideas about sovereignty and regional community and institutions are not mutually exclusive. There is however a tension between one and the other that reflects an underlying and largely unresolved question in the ASEAN Charter and the movement towards ASEAN Community. The year 2022 marks the 13th year since the Charter entered into force. This occasion presents an opportunity for ASEAN to review the

⁴¹ Article 50 of the ASEAN Charter states that "This Charter may be reviewed five years after its entry into force or as otherwise determined by the ASEAN Summit"

provisions of the Charter document, and to also review ASEAN’s progress on human rights safeguards and promotion.⁴²

ASEAN on Human Rights Arena

On human rights front, there are still massive differing views. The inclusion of human rights in the ASEAN Charter – as a principle for the group and with a human rights commission – was controversial.⁴³ While some ASEAN countries tend to regard such an agenda as a platform to interfere with their domestic politics, a number of members like the Philippines are pushing for more robust human rights protection in the region. The inclusion of human rights into the agenda shows that ASEAN has to respond to the challenges arising from the assertion of human rights as universal values. This goes beyond the defensive policy of the mid-1990s, when “Asian values” were asserted in contrast to human rights as “Western values”.⁴⁴ The ASEAN Charter refers to universal principles in terms of democracy and human rights. However, Article 6 of the ASEAN Human Rights Declaration clearly states that it is the responsibility to protect and promote human rights lies with ASEAN member states. This is a state-centric approach rather than entrusting such roles on the regional community as a whole, or by empowering individual citizens and non-governmental organizations.

Ratification Record of ASEAN Member States

| Country | CERD | ICCPR | ICESR | CEDAW | CAT | CRC | CMW | CED | CRPD |
|-------------|------|-------|-------|-------|-----|-----|-----|--------|--------|
| Brunei | | | | X | | X | | | Signed |
| Cambodia | X | X | X | X | X | X | | X | X |
| Indonesia | X | X | X | X | X | X | X | Signed | X |
| Laos | X | X | X | X | X | X | | Signed | X |
| Malaysia | | | | X | | X | | | X |
| Myanmar | | | | X | | X | | | X |
| Philippines | X | X | X | X | X | X | X | X | X |
| Singapore | | | | X | | X | | | X |
| Thailand | X | X | X | X | X | X | | Signed | X |
| Vietnam | X | X | X | X | | X | | | Signed |

Note: ‘X’ means ratified/acceded.

Source: United Nations Office of High Commissioner on Human Rights website, <<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>>.

The ASEAN Charter also emphasizes the responsibilities of individuals. This contradiction constitutes one of the fundamental problems the ASEAN Charter faces on the question of human rights. The concerns of “interference” are even stronger in respect of specific rights.

42 Ibid

43 See for instance: Koh, Tommy (2009) “The Negotiating Process”, in Tommy Koh, Rosario G. Manalo and Walter Woon (eds) *The Making of the ASEAN Charter* (Singapore: World Scientific), pp. 58-9.

44 Ibid

For instance, Article 25 (2) of the ASEAN Human Rights Declaration states that citizens have “the right to vote in periodic and genuine elections”. Those ASEAN member states who do not hold free elections will not accept a strict interpretation of such a clause.⁴⁵ Yet while there are objections to specific human rights provisions, there remains a more general mandate in the ASEAN Charter for the protection of human rights. The codification of principles, norms and practices in the Charter is in itself a rights-based approach towards community-building in ASEAN. Article 1 (7) of the Charter established that the promotion and protection of human rights is one of the purposes of ASEAN. Recommendation: Focus on improving publicity of AICHR’s work The very existence of the ASEAN Intergovernmental Commission on Human Rights (AICHR) was a milestone and important start as a confidence-building measure towards greater public discourse in ASEAN on human rights. Despite this, AICHR has faced much criticism from observers. Common criticisms include not only that AICHR does not have powers to investigate and punish human rights offenders but they do not respond quickly enough to issues. AICHR is accused of serving merely serves as a shield for governments against criticism. The AICHR has been operating on a “promotion first, protection later”⁴⁶ approach with regard to human rights in ASEAN. Yet, there is little public information about its work. Some ASEAN member states like the Philippines have taken it upon themselves to brief civil society organisations on their work on human rights. However, not all ASEAN members do so, and the process of providing information is largely unsystematic.

Ten years since its establishment, AICHR has yet to fully function as a regional human rights mechanism that meets the expectations of civil society. From 2010 to 2018, AICHR spent over six million USD conducting 121 activities approved by the AMS. Unfortunately, these activities have not resulted in any significant improvement in the human rights situation on the ground, or for the peoples of ASEAN who need its protection. Southeast Asia has faced frequent numerous human rights violations and abuses, ranging from the worst crimes against the Rohingya and other religious and ethnic minorities in Myanmar, to numerous enforced disappearances across the region, to extra-judicial killings in the Philippines, attacks on independent media, dissolution of the legal opposition, and the shrinking of civic space and freedom of expression in the region. The human rights situation in the region is deteriorating, but all the issues remain unaddressed by AICHR.⁴⁷

Despite having protection-related provisions in its Terms of Reference (TOR) that can be creatively utilised to meaningfully address the situation, AICHR tends to succumb to the political will of ASEAN Member States. The human rights commission chooses to hide behind the non-interference principle of ASEAN and to sideline the rule of law, democracy, and respect for fundamental freedoms. This has resulted in the grave neglect of fulfillment

45 ASEAN Human Rights Declaration, November 19, 2012

46 As often characterised, albeit by detractors of AICHR. See for instance, Robert Evans, ‘U.N. Rights Chief “Disappointed” On New ASEAN Body’, Reuters India, 22 July 2009.

47 Ibid

human rights on the ground and continually resulted in the irrelevance of AICHR and ASEAN as a whole to address people’s struggles.⁴⁸

It is evident that individually and collectively, the AICHR, AMS and ASEAN have failed to create or develop a viable human rights mechanism. The mechanism is considerably weaker compared to those in Africa, the Americas, and Europe, which have the power to investigate and consider complaints. States often respectfully submit their positions to these bodies, and the mechanisms take steps to prevent and stop violations, provide redress and accountability, and ensure that violations are not repeated.

Case Study of Lack of viable Human Rights Mechanism:

In the context of Human Rights violations and strategic state violence in Myanmar, ASEAN leaders adopted the ASEAN Five-point consensus. The consensus includes a provision of humanitarian assistance without discrimination. The consensus is still facing various reservations within ASEAN states. UN Security Council has formulated a draft resolution on Myanmar. However ASEAN members have shown various contentions regarding language on the draft. China, India and Russia have shown strong emphasis on presidential statements rather than a resolution.

This highlights the impaired agency of the UN Security Council in the context of the lack of a Regional Human Rights Mechanism. Regional Mechanism exudes authority over their State members, however, the lack of action mechanism within the frame work in the context of ASEAN has impaired Humanitarian and Human Rights intervention in Myanmar. The ASEAN is functioning on nominal approach that acts as ASEAN representative, which doesn’t address question of accountability in the context of Human Rights Violation. There is a need of and independent body to make binding decisions that States are obligated to follow, strong mechanism for independent investigation of Human Rights and a mechanism for independent complaints.

HR Provisions in the Constitutions of ASEAN Member States

| No. | Rights that are guaranteed | State |
|-----|-------------------------------------|--|
| 1. | Right to life and livelihood | Philippines, Thailand, Malaysia, Cambodia, Singapore, Indonesia |
| 2. | Right to equality, personal freedom | Philippines, Thailand, Malaysia, Cambodia, Myanmar, Singapore, Indonesia |
| 3. | Right to property | Philippines, Thailand, Cambodia, Myanmar, Vietnam, Indonesia |
| 4. | Right to safety | Philippines, Cambodia, Indonesia |

⁴⁸ Ibid

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| 5. | Right to be free from arbitrary arrest, detention and raid | Philippines, Thailand, Malaysia, Laos, Myanmar, Vietnam |
| 6. | Right to privacy on communication and correspondence | Philippines, Vietnam |
| 7. | Freedom of opinion and expression, the press | Philippines, Thailand, Malaysia, Cambodia, Laos, Myanmar Singapore, Vietnam, Indonesia |
| 8. | Freedom of assembly | Philippines, Thailand, Malaysia, Cambodia, Laos, Myanmar, Singapore, Vietnam, Indonesia |
| 9. | Right to deliver objection and petition | Philippines, Thailand, Laos, Vietnam |
| 10. | Freedom to practice religion or belief | Philippines, Thailand, Brunei, Malaysia, Cambodia, Laos, Myanmar, Singapore, Indonesia |
| 11. | Right to information and communication | Philippines, Thailand, Vietnam, Indonesia |
| 12. | Right to a just trial | Philippines, Thailand |
| 13. | Right to be free from coercion, torture and intimidation | Philippines, Cambodia, Indonesia |
| 14. | Right to be presumed innocent until proved guilty | Philippines, Thailand, Vietnam |
| 15. | Right to be free from slavery and forced labour | Philippines, Thailand, Malaysia, Singapore |
| 16. | Right to be free from cruel and degrading punishment | Philippines, Myanmar, Indonesia |
| 17. | Right to be free from imprisonment due to the inability to pay debt or tax | Philippines |
| 18. | Right to be free from being adjudicated and punished twice for the same act | Philippines, Malaysia |
| 19. | Right to be free from being punished based on retroactive legislation | Philippines, Thailand, Malaysia, Myanmar, Indonesia |
| 20. | Right to take part in the government of the country, directly or through freely chosen representative (to participate in elections) | Philippines, Thailand, Brunei, Malaysia, Cambodia, Laos, Myanmar, Vietnam, Indonesia |

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| 21. | Right of indigenous people, ethnic group, tribe, and traditional community to conserve local customs and wisdom | Philippines, Thailand, Laos, Indonesia |
| 22. | Right to place of dwelling | Philippines, Thailand, Vietnam, Indonesia |
| 23. | Right to healthcare | Philippines, Thailand, Cambodia, Laos, Vietnam, Indonesia |
| 24. | Right to protection and equality for female labour | Philippines, Cambodia, Myanmar, Vietnam |
| 25. | Right to partake in social, political and economic life | Philippines, Thailand, Cambodia, Vietnam, Indonesia |
| 26. | Right to education | Philippines, Thailand, Cambodia, Laos, Myanmar, Singapore, Vietnam, Indonesia |
| 27. | Right to be equal before the law and have the protection of the law | Thailand, Malaysia, Cambodia, Laos, Myanmar, Singapore, Vietnam, Indonesia |
| 28. | Right to be free from discriminative treatment on any grounds | Thailand, Cambodia, Laos, Indonesia |
| 29. | Freedom of movement | Thailand, Malaysia, Cambodia, Vietnam, Indonesia |
| 30. | Right to family's right, dignity, reputation and privacy | Thailand |
| 31. | Right to confidentiality of personal data | Thailand |
| 32. | Right of children, juveniles, women, pregnant women, elderly and persons with disabilities to protection and service | Thailand, Laos, Myanmar |
| 33. | Right to freedom of venture and occupation, and guarantee of work safety | Thailand, Cambodia, Laos, Myanmar, Vietnam, Indonesia |
| 34. | Right to academic freedom | Thailand |
| | | |

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| 35. | Right to welfare, public facility and relief from the state for the poor and groups with special needs | Thailand, Laos, Indonesia |
| 36. | Right to sue government institution owing to an action perpetrated | Thailand |
| 37. | Right to follow up and request responsibility from political officials | Thailand, Laos |
| 38. | Right to form unions and associations | Thailand, Malaysia, Cambodia, Laos, Myanmar, Singapore, Vietnam, Indonesia |
| 39. | Right to not be banished or excluded | Malaysia, Singapore |
| 40. | Right to social security | Cambodia, Indonesia |
| 41. | Right of housewives to have the same value as when they are working outside the house | Cambodia |
| 42. | Right to perform strikes and demonstrations | Cambodia |
| 43. | Right of women to be free from discrimination and exploitation | Cambodia, Vietnam |
| 44. | Right of children to life, growth and development, to obtain education, protection and be free from discrimination | Cambodia, Vietnam, Indonesia |
| 45. | Right and freedom to perform study, research and development of science and technology | Laos |
| 46. | Right to establish a family and to generate offspring through a lawful marriage | Indonesia |
| 47. | Right of peoples to collectively advance themselves in a fight for their rights | Indonesia |
| 48. | Right to nationality | Indonesia |

| | | |
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| 49. | Right to prosper and deserve a healthy environment | Indonesia |
| <i>Source: ASEAN Human Rights Working Group 2012</i> | | |

SAARC: SCOPE FOR HUMAN RIGHTS

One of the most welcome developments in South Asia has been the emergence of the South Asian Association for Regional Cooperation (SAARC) in 1985 which aims for promoting regional cooperation to work together, in a spirit of friendship, trust and understanding, to improve people's quality of life; to accelerate economic growth, social programs, cultural development, to strengthen self-reliance among South Asian states and to promote collaboration in economic, social, technical and scientific fields. Even after the 36 years since its establishment, no program has been effectively implemented to achieve the Charter goals or to establish South Asian identity as an integrated region in addressing issues of human rights and development despite repeated commitments from the member countries of the SAARC expressed through their constitutional, legal and national policies as state party to international human rights treaties.⁴⁹

Although it was witnessed in the recent years that the democratization process in the SAARC region was gradually gaining ground, thus seemed to be moving in a positive direction. Nevertheless, the long-standing issue of securing genuine democracy, protecting the human rights of the people of the region and maintaining just peace is yet to be resolved. The south Asian society is encountering the encroachment on non-derogable rights such as the right to life, freedom from torture and bondage. Meanwhile the economic and political policies of the Indian state are calculated to achieve the interest of expansionism rather than regional cooperation. The incidences of systematic violation of human rights, military repression and repressive laws to deal with the demand for democratic and fundamental human rights by the peoples of South Asia particularly by various indigenous communities, dalits, the disabled, women, children and other marginalized section of the society are the routine of the day.

The SA region is the homeland of the great majority of the population and natural resources of the global village. The SA region is the only region in the world where there is no any regional instrument which governs human rights as enshrined in the 1948 Universal Declaration of Human Rights and other international human rights treaties. Gross violation of civil and political rights has become a systematic and constant pattern in many South Asian countries resulting in displacement, mass exodus, illegal detention, arbitrary arrest, extrajudicial execution, rampant torture, disappearance and so on.

49 Human Rights System for SAARC: Problems and Perspectives, HURIGHTS, Gyan Basnet, [June 2014 - Volume Vol. 76](#).

People are equally deprived of their economic, social and cultural rights resulting in malnutrition, infant mortality, homelessness, discrimination, poverty, hunger and other forms of social injustices. While the sub-continent has more than enough food, yet people starve to death in some SA countries. The great majority of South Asians are poor because of the inequitable ownership and control of the means of production, capital, technology, land and other productive assets.⁵⁰

The human rights debate in South Asian countries is mired in concepts such as human rights with a the South Asian perspective or South Asian flavor of human rights. The most important distinction, however, is between the interests of the government and those of the people. In the context of public debate, only the interests of the government have been projected. The existence of significant ongoing human rights abuses is either not acknowledged or underplayed by the South Asian governments or their mainstream media. South Asian governments have ratified some international human rights instruments. However, in practice, the regimes of the region score one of the lowest in the world in safeguarding the rights of their citizens. One cannot help but question whether South Asian governments collectively care about their citizens' interest in having human rights enforced through a regional platform.⁵¹

SAARC: Rights and Wrongs

The stated goals of the SAARC Charter are that the countries will work together, in a spirit of friendship, trust and understanding, to improve the people's quality of life; to accelerate economic growth, social programs, and cultural development; to strengthen self-reliance among South Asian states; and to promote collaboration in economic, social, technical, and scientific fields. Since its inception, SAARC has established the South Asian Visual Exchange (SAVE) which produces a television series, broadcast to all eight member states, that periodically highlights the cultural heritage of each country and is designed to foster cultural awareness.⁵² The SAARC countries have signed, several Conventions/Charters on Narcotic drugs; combating trafficking in women and children for prostitution; promotion of child welfare, etc. Several agreements have also been signed on Food Security Resort and specific social issues, which require concerted and coordinated actions for the effective realization of their objectives. At the 1995 SAARC summit held in India, government representatives even discussed long-term goals of eliminating poverty and expanding a visa exemption system that allows citizens freer cross-border travel. In the 12th SAARC Summit, a Social Charter was signed on 4th January 2004 at Islamabad. To date, however, no program has been effectively implemented to achieve the Charter goals, and new ideas have not moved past the discussion stage.⁵³

50 Ibid

51 Human Rights System for SAARC: Problems and Perspectives, HURIGHTS, Gyan Basnet, [June 2014 - Volume Vol. 76](#).

52 Defining Human Rights: Auditing Regional Mechanisms, Gopal Krishna Siwakoti, PhD, Working Paper, 2008

53 Ibid

South Asia region, the homeland of one-fifth of the world's population is still grappling with daunting human rights challenges, such as impunity, the lack of political will if not sheer disinterest of a number of governments to comply with their human rights obligations, continued curtailment of civil and political rights as well as widespread poverty and underdevelopment. Countries in the region are buffeted by increasing challenges from internal strife and unrest, the threat of terrorist attacks followed by attack against democratic rights, fundamental freedoms and civil liberties in the name of counter-terrorism measures and national security legislations.

The establishment of the 'South Asia Forum' for the generation of debate and discussion during the 16th SAARC held in Thimphu, and continuing the idea of the SAARC democracy Charter have provided additional blocks for further strengthening the region's commitment to human rights.⁵⁴ However, compared with development in the African, European, Inter-American and ASAEN region, the activities and initiatives of SAARC are in a very preliminary stage. South Asia is lagging behind to learn from the success stories and learned lessons of other regional organization such as European Union which has already managed to transcend beyond the national borders among to work together towards enhancement of democracy, human rights and economic integrity from various mechanisms including use of Euro as a single currency. Likewise, the positive steps initiated by African regional organizations for security and human rights and the commendable work carried out by the Latin American regional mechanism for the protection and promotion of human rights, including making the concerned member states accountable to gross violation of human rights including enforced disappearances. SAARC has immense opportunity to learn from the existing regional mechanisms on its future policies on regional mechanisms for democracy and human rights.⁵⁵

The most effective action for the protection and promotion of human rights must take place at the national level. However, in South Asia, most national human rights institutions are still too weak and lack independence. Many critics are hesitant with reasonable doubt that SAARC will not be able to yield effective results unless there is a guarantee of democracy and the rule of law and adherence to and implementation of international principles of human rights norms.

Ex-Maldivian president Mohammad Nasheed proposed a 'SAARC Human Rights mechanism' during the 16th SAARC summit held in Thimphu, Bhutan. As the host of this summit, the Maldives had a crucial role to play in including issues of human rights in the working list in the 17th SAARC summit held on 10-11 December 2011. However, no concrete proposal on human rights was discussed except the reiteration for a regional mechanism for the promotion of good governance and human rights during the inaugural

54 16th SAARC Summit Declaration, **Sixteenth SAARC Summit 28-29 April 2010, Thimphu Silver Jubilee Declaration**

55 Ibid

speech of President Nasheed in Maldives Summit.⁵⁶ Similarly, South Asian civil society had expectation that South Asian countries will raise concern on human rights as India, with its proposal of South Asia Forum, Bangladesh with its proposal of 'SAARC Democracy Charter', Nepal as the supporter of a civil society-proposed human rights mechanism, Pakistan and Sri Lanka as champions of climate change issue were expected to play an important role in the 17th summit. However, as in the previous sessions the 17th summit held on also could not integrate itself with the millennium expectations of SAARC citizens. The four ministerial agreements signed during the summit namely SAARC Agreement on Rapid Response to Natural Disasters, SAARC Seed Bank Agreement, SAARC Agreement on Multilateral Arrangement on Recognition of Conformity Assessment and SAARC Agreement on Implementation of Regional Standards were endorsed without mentioning any direct linkage with human rights and addressing the demand for the establishment of regional human Rights mechanism in the South Asia.⁵⁷

Since the establishment of the SAARC, civil society has been encouraging the governments for regional inter-governmental initiatives for the promotion of freedom, justice and peace. The South Asia People's Forum:" People's SAARC"⁵⁸ organized in 2005 brought together national and international social activists, intellectuals and secular and democratic forces interested in the preservation of the secular, pluralistic and democratic fabric of the South Asian society. In 2007 and 2008, SAAPE mobilized its resources and members to make 'Peoples SAARC', a broader and larger event. In 2010 representatives of non-governmental organizations and people's movements across the SAARC region at the "*First Sub-Regional Workshop on South Asia Human Rights Mechanism*", gathered together in Kathmandu with call for the establishment of the regional human rights mechanism in South Asia. As an important follow-up to the Kathmandu workshop, a half day workshop was conducted by FORUM-ASIA at the premises of "People's SAARC" in India, New Delhi on 21 April 2010 to broaden, strengthen and consolidate efforts in building sub-regional campaigns on establishment of human rights body for South Asia. Similarly, with aim to facilitate strong advocacy for the regional mechanism, a seminar on "*The need of Inter-Governmental Human Rights Mechanism in South Asia*" was organized in Islamabad, Pakistan on 16 November 2010.

The Fifth General Forum of the Solidarity for Asian People's Advocacy (SAPA) Working Group on South Asia held on 18th February 2011 in Dhaka, Bangladesh discussed on the issue of regional human rights mechanism in South Asia and *SAARC Charter of Democracy* and came out with strong recommendation to the South Asian governments in addressing the situation of human rights violation through human rights mechanism and participation of civil society in SAARC process. In addition to this, prominent civil society members gathered in Kathmandu for the '*Second Sub-Regional Workshop on Human Rights Mechanism in South*

56 16th SAARC Summit Declaration (29 April 2010), April 30, 2010, Thimphu Silver Jubilee Declaration "Towards a Green and Happy South Asia"

57 Ibid

58 The South Asia People's Forum:" People's SAARC" organized by PVCHR, Wiros Lokh Institute, INSEC and LOKOJ held from January 15 to 17, 2005 brought together National and International social activists, intellectuals and secular and democratic forces interested in the preservation of the secular, pluralistic and democratic fabric of the South Asian society

Asia on 25-26 July 2011 to develop concrete strategy to generate dialogue and discussion on establishing a regional human rights body in South Asia. The workshop recommended an informal working group and identified need of full involvement of civil society in development of human rights instruments and mechanisms is essential for the credibility and legitimacy of systems.

Charter of Democracy: A Ventilation of Opportunity?

In February 2011, the SAARC Council of Ministers have adopted the Charter of Democracy which was mooted by Bangladesh at the 16th SAARC Summit in 2010. The charter gives expression to the collective commitment of the member states to promote and preserve the values and ideals of democracy as well as democratic institutions. Among others, the Charter has provision to ensure the supremacy of the Member States' respective Constitutions and uphold their spirit; continue to strengthen democratic institutions and reinforce democratic practices, including through effective coordination as well as checks and balances among the Legislature, the Executive and the Judiciary as reflected in the respective Constitutions. One of the key features of the Charter is to guarantee the independence of the judiciary and primacy of the rule of law, and ensure that the processes of appointments to the Judiciary as well as the Executive are fair and transparent.⁵⁹

Interestingly, the Charter also enshrines a commitment to adhere to the UN Charter and other international instruments to which Member States are parties. It advocates the recognition to the role of political parties and the civil society in a democracy and renounces unequivocally any unconstitutional change of an elected government in a Member State.⁶⁰

Accordingly, the Charter also enshrines the provision for Member States to reinforce the linkage of development and democracy, promote democracy at all levels of the government along with sustainable development and alleviation of poverty through good governance, equitable and participatory processes.⁶¹ The other characteristic include strengthening democratic institutions and processes in all national endeavors with due focus on decentralization and devolution, promoting equality of opportunity, equality of access and equality of treatment at the national level, in keeping with the respective constitutional provisions, as safeguards against social injustices and stratification. The Charter embodies the notion of ensuring gender mainstreaming in government and society and upholding participatory democracy characterized by free, fair and credible elections.⁶²

Lastly, the Charter encourages all democratic forces in South Asia, including elected representatives of the people, to unite against any unconstitutional change in government in any South Asian country, and work towards the restoration of democracy in keeping with the SAARC Charter and promote adherence to these decisions and fulfillment of this Charter, if

59 Defining Human Rights: Auditing Regional Mechanisms, Gopal Krishna Siwakoti, PhD, Working Paper, 2008

60 Ibid

61 SAARC Democracy Charter, 2010

62 Ibid

necessary, through an institutional mechanism.⁶³ Despite all these doctrines, principles and pledges, the Charter has failed to establish the notion of indivisibility and interdependence between democracy, human rights, development and peace. Even more than two and half decades in existence, no attempt has been made by SAARC to categorically discuss human rights issues in the sub-region. Indeed, the promotion of human rights is not a goal listed by the SAARC Charter. The SAARC member governments are wary of the very notion of human rights, even though their representatives in international for a vouch for their commitment to promote and protect human rights. The SAARC has, for instance, as a gesture of commitment to addressing regional issues, adopted the Child Welfare and Trafficking Convention in 2002 but with narrow definition, weak implementation and laden with contradictions and exceptions.⁶⁴

CONCLUDING OBSERVATIONS

It is regrettable that not all countries around the world have ratified or acceded to the major instruments on human rights and what is needed is a movement not to promote regional institutions in isolation but to persuade and pressurize the governments to accede to the treaties without further delay. In order to drive the endeavor along with a progressive track, attention must be paid to proceed carefully and gradually, so as to win the confidence of all governments of the regions.

Universal human rights standards are rooted in many cultures. We can learn from different cultures in a pluralistic perspective and draw lessons from the humanity of these cultures to deepen respect for human rights. In our region, our countries represent a combination of various peoples and religions. While we acknowledge the importance of respecting human rights is the responsibility of all States regardless, of their political, economic or cultural circumstances.

As human rights are of universal concern and are universal in value, the advocacy of human rights cannot be considered to be an encroachment upon national sovereignty. The observance and protection of human rights are a global concern to which all States are called upon to contribute. In the last nearly 75 years, human rights now form part of international customary law which have become an inter-state concern and are no longer a matter for the exclusive determination by individual States. This is the substance of an emergent global culture of human rights. Violation of civil, political and economic rights frequently results from the emphasis on economic development at the expense of human rights. Violation of social and cultural rights is often the result of political systems which treat human rights as being of secondary importance.

Finally, no country can attain genuine development if it is not truly free from the current undue global economic and political nexus. International economic forces have great impact

⁶³ SAARC Documents, SAARC Charter of Democracy, January 23, 2012

⁶⁴ <http://saievac.org/2012/01/23/saarc-charter-of-democracy-2>

on human rights which help divide between North and South in terms of global rights and resource base, compounded by elitism, perpetuates social and economic disparities. Thus, the States in the region should refrain from derogating human rights standards for reasons of national security, securitization of migration, conditionalities of the international financial institutions, maintaining law and order or the equivalent and to recognize that they are bound to respect all human rights for all in their totality in all circumstances through fostering a truly democratic culture.

Despite sustained efforts by civil society, the respective Governments especially in Asia region have not made any serious effort to adopt a uniform Human Rights Code or Convention and to provide any common forum or mechanism to supervise adherence and implementation of the same. The Asian regional instrument would be an appropriate complement to the universal human rights processes of the UN due to, *inter alia*, greater cultural similarity within the region.⁶⁵ The regional mechanisms may prove also stronger, with States agreeing to the adjudication of human rights cases by judicial bodies with powers to make binding decisions, while judicialisation at the global level remains lacking.

Needless to say, the reasons which had led to the institution of regional arrangements in other regions of the world are also valid for the Asia region. These include: the provision of assistance to the individual against the State; the creation of the right atmosphere for the promotion of human rights; increased awareness amongst governments and program in the human rights field; and increased awareness by the UN of problems peculiar to the region.

The establishment of a mechanism for the promotion and protection of human rights in Asia could provide an impetus to the development of regional arrangements in other field of endeavor such as economic and political co-operation. That would be the converse of the experience of other regions but there was no reason why the experience of Asia should not be different. If there were special characteristics in the region it would be preferable to adopt a "negotiation" rather than a "protective" approach. In any case, the negotiation must not undermine the basic internationally adopted and exercised principles, norms and values.⁶⁶

On the other hand, there should be a cautious move that the necessary political will, a prerequisite for evolving intergovernmental collaboration for the promotion of a regional framework at the international level is no feasible. It is obvious that a regional approach in Asia region, instead of offering a promise, is more likely to pose a threat to the cause of human rights in as much as there are a number of authoritarian regimes in the regional arrangements run the risk of being overwhelmed by the representatives of these regimes, with counter-productive results for human rights.⁶⁷

65 The implementation of human rights in Asia, Published online by Cambridge University Press: 05 December 2012

66 Defining Human Rights: Auditing Regional Mechanisms, Gopal Krishna Siwakoti, PhD, Working Paper, 2008

67 Ibid

RECOMMENDATIONS FOR REFORM

1. Regional Instruments in General

*In Accordance to *Vienna Declaration and Program of Action 1993*

| | | | | |
|--|--|---|-------------------------------------|--|
| Litmus test for Regional Instruments | <i>Universality/ Non- Compartmentalization</i> | <i>Indivisibility/ Interdependence (Non-alienation)</i> | <i>All Human Rights for All</i> | <i>Women Rights are Human Rights</i> |
|--|--|---|-------------------------------------|--|

Universality, Indivisibility, and Interdependence

- 1993 Vienna Declaration and Program of Action highlighted that universality, indivisibility, and interdependence of International Human Rights must be embraced on all fronts with no conditions/conditionalities attached and interpreted. Regionalism in adopting human rights doctrine should be discouraged in favor of a universal global approach. This exercises moral pressure on governments and governmental organizations to promote and protection of Human Rights. It allows the International Community to crusade against gross violations of human rights such as arbitrary arrests, illegal detention, disappearance, displacement, destruction, and political killings.
- Universal Human Rights should not be ignored on any ground in a regional context. While advocating multiculturalism, those cultural practices which derogate from universally accepted human rights, including women's rights, must not be tolerated. Hence, while cultural and religious specificities have an impact on universal standards, they can not be used as a pretext to justify their violations. Cultural differences must not be used to justify violations of human rights.
- All regional human rights instruments and mechanisms should be built as having evolved and developed within their respective historical, and socio-cultural contexts. Any proposed inter-governmental mechanisms should be evaluated based on political realities in the region but without compromising internationally accepted norms, values and standards.

Adhering to the Essence of recognized International Human Rights.

- The regional instruments under no circumstances should compromise the very essence of internationally recognized civil, political, economic, social, cultural, and developmental rights. The global and regional approaches to the promotion and protection of human rights need to be mutually supportive and complementary.

Instruments Mandated without Reservation

- If an instrument is indeed set up, it should be mandated to apply without reservation the International Bill of Human Rights, CEDAW, the Convention Against Torture, the Declaration of the Rights to Development, and other relevant human rights instruments. The member states of the instrument must accede to major international

instruments before their membership to the arrangements. Similarly, the right of individuals and NGOs to petition the mechanism must be guaranteed and such petitions or appeals should not preclude concurrent appeals to the various UN mechanisms for the protection of human rights.

Ownership to Concluding Remarks of UN Treaty Body

- Regional Instruments must take ownership of the UN treaty body. The suggestion of approaches to apply treaty provisions and the clarification of the State's responsibilities should be addressed and incorporated into the provisions of regional instruments.
- Furthermore, the clarifications on the State's responsibilities and application of Regional Instruments should embody the spirit of concluding remarks of the UN treaty body. Such recommendations should be effectively realized in the domestic context.

Sustainable Development Goals and Human Rights

- Regional Instruments should align with all the 17 Sustainable Development Goals, 2030 Agenda. Regional Instruments must recognize the interdependence of Human Rights and social, economic, and environmental sustainability and incorporate them in the implementation of the instruments.

Climate Change, Forced Migration, and Human Rights

- Forced displacement and migration due to Global Warming and Climate Change, is a crucial issue regarding the Basic Human Rights of individuals. Regional Instruments on Human Rights must gradually incorporate the Rights of victims of forced displacement and migration. The Instruments must incorporate both rapid and slow onset of the adverse effect of Climate Change and its effects on Human Rights.

Pandemic and Human Rights

- Right to Health in the ongoing context of the Global Pandemic resulting in an adverse impact on the most vulnerable society in terms of deprivation of the Right to Food, Right to Education, Right to Health, and Right to livelihood. Instruments should invest in a dedicated mechanism to address and confront this issue.

Migration and Refugee Rights

- Regional Instruments must incorporate, the 1951 Refugee Convention with prioritizing non-refoulement, and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families-1990.
- The Instruments must incorporate the Global Compact on Migration, 2016, and Global Compact on Refugees, 2018 within their regional framework.

2. ASEAN Declaration And AICHR

Clawback Approach

- ASEAN Human Rights Instruments has a clawback approach that threatens the principle of Universality of Human Rights. This allows to limit State's responsibilities and limits individual protection against the State. There should be a standard limitation of State's right that echoes the spirit of Universal Human Rights Treaties.

Vague Interpretation

- ASEAN Human Rights Instruments also incorporates vague clauses in its Article. It lacks a concrete language of limitation in Rights, instead using vague terms like "morality" in the context of Limitation State's intrusion on individual rights. There is should be a clarification comments regarding these vague interpretation and if possible amendment of vague terminologies.

Amendment to Nominal Approach

- ASEAN is functioning as a nominal body and lacks any independent body to make binding decisions. There should be independent bodies to make dinding decisions that Sates are obligated to follow. There should also be a formulation of strong Human Rights Mechanism to conduct independent investigation of Human Rights Violations and a mechanism for Independent Individual complaints. It further more should create a strong, impartial, effective, independent and competent mechanism for complaint handling and redress.

Cross-pollination of ASEAN Organs and AICHR

- Cross-pollination with other ASEAN organs would serve the AICHR's strategic objective to promote human rights in the region. In addition to working closely with the ACWC, the AICHR could also work with the ASEAN Institute for Peace and Reconciliation³⁴ to mainstream human rights in the process of reconciliation and peace. The AICHR needs to establish its expertise and gain recognition from all ASEAN organs to be able to function as an overarching human rights body, as stipulated in article 6.8 of the ToR.

Maximization of Civil Society Forum

- AICHR is not popular among the general population in ASEAN states. This hampers the capacity of AICHR to address, promote and raise awareness regarding regional Human Rights issues. This can be addressed by maximization of outreach programs through Civil Society Forums and events that can be maximized by the AICHR to promote its work and, more importantly, its mandate to protect human rights. For example, the ASEAN Civil Society Conference (ACSC)/ASEAN People Forum³⁵

can help raise awareness about human rights in ASEAN and of the AICHR's role among the citizens of all ten ASEAN countries.

Advisory Function

- The AICHR needs to function as an advisory body as well as complement the existing human rights measures and mechanisms. While the roles of the national human rights institutions are limited by geographical jurisdictions, the AICHR can address cross-border issues such as trafficking in persons or migrant workers' rights through its advisory function.

Ratification of all Nine Human Rights Instruments:

- ASEAN should persuade and encourage all Member States to become a State Party to all widely ratified Nine International Human Rights instruments with a periodic reporting obligation.

Civil Service Space

- As there must be transparency and accountability to the peoples, AICHR should actively and publicly respond to human rights crises, including through the creation of a robust complaint mechanism that is accessible to vulnerable individuals and groups, and the enhancement of engagement with CSOs as equal partners for the promotion and protection of human rights in the region. It emphasizes on the transparency and accountability to the general public.
- As uniform policies are absent within the region, a comprehensive human rights approach and solution from the AICHR would help prevent victims from being exposed to further dangers and risks of exploitation, trafficking and subjection to forced labour, abuse and discrimination.
- The AICHR should become involved in the process of drafting the 'Instrument to Protect and Promote the Rights of Migrant Workers', which is led by the ASEAN Committee of the implementation of the Declaration to Protect and Promote the Rights of Migrant Workers. Input from the AICHR would help establish a nexus between human rights and migration in ASEAN. The other cross-border human rights challenge under the competency of the AICHR is the rights of refugees. The AICHR should be able to discuss the matter and help find regional solutions.
- The promotion of information about human rights more broadly across ASEAN can, over time, foster greater understanding and acceptance. It is recommended that ASEAN focuses on improving the publicity ("promotion first") of AICHR's work, and seek to increase efficiency within AICHR's current scope.
- AICHR should revamp and step up its communications strategy through new media to improve publicity. Best practices in the promotion of human rights issues in other

regions of the world should be identified, while more ASEAN member states should institute more consultation processes with civil society organizations.

3. SAARC Member States

Need of Human Rights Body

- Establishment of an independent, effective and accountable 'Human Rights Commission' with an explicit mandate of monitoring, promotional and recommendatory powers can assist South Asian member states in addressing human rights concerns in their respective areas of jurisdiction; ensure that international human rights laws are observed and implemented by SAARC countries who have agreed to them; and help South Asian people to have a common understanding of universal human rights issues and perspectives.

Need of Independent, Effective and Accountable Regional Human Rights Mechanism

- In order to translate the commitment expressed by SAARC through number of framework, Conventions, Declarations and established mechanisms, it should establish an independent, effective and accountable regional human rights mechanism by expanding the 'SAARC Social Charter' and 'SAARC Charter on Democracy' through an enabling protocol with an explicit mandates of promoting, protecting and fulfilling human rights, through a process of wide consultation with non-governmental organizations, people movements at national and regional level.

Space for Civil Society

- SAARC should recognize the role of the National Human Rights Institutions (NHRIs) and civil society in SAARC process towards consolidating democracy and human rights in addressing the pressing human rights issues of the region including gross violations of human rights and abuses, hunger, unemployment, and violence against women and children. SAARC needs to review its current practice merely functioning by bureaucracy restricting access of civil society organizations in the debate, dialogue and agenda setting. The voice of the people of South Asia and their opinion mostly unheard more especially on how they want to pursue the democratization and human rights.
- The foreseen mechanism should recognize the role of national and local NGOs for the promotion and protection of human rights and the activities of such organizations should be encouraged and assisted. The need to protect the members of such organizations who stood up for the defense of human rights has become an important issue in the region. Similarly, the role of NGOs in the area of education and dissemination of information of human rights should be considered as a complementary task.

Adequate Reporting Mechanism from States

- There should be a regular reporting system by states on their implementation of internal Human Rights Standards with NGO participation in the drafting of the reports and the meetings of the mechanism and its deliberation should generally be open to the public. More importantly, no aspect of government operation, including military and security forces and no officials should be immune from scrutiny or investigation. The member governments must be required to disseminate information on the mechanism, and how it operates.
- In the context of people in the region often encounter difficulties in obtaining documents and other material of the UN system concerning the promotion and protection of human rights, more human rights clearing houses to act as depositories for such material should be established in each country of the region and that the UN should examine how it could assist in establishing more of such clearing houses.

MAJOR WEB SITE REFERENCES

- East African Court of Justice Rules of Procedure, Rule 60(1). Also available online at
- http://www.eacj.org/docs/RULES_OF_PROCEDURE_2013.pdf.
- East African Court, Court User's Guide, *supra* note 997, at 12.
- East African Community, "East African Court of Justice - Review of Judgments," accessed Nov. 2013,
- http://www.eac.int/index.php?option=com_content&id=24&Itemid=156&limitstart=5
- "Chapter 8: Article 33: Jurisdiction of National Courts," in Treaty Establishing the East African Community, accessed Jan. 16, 2014,
- http://eac.int/treaty/index.php?option=com_content&view=article&id=99&Itemid=
- East African Court of www.asean.org/22769.htm
- www.rfi.fr/actuen/articles/115/article_4416.asp
- www.ohchr.org/Documents/Publications/training9chapter3en.pdf
- www.eschr-net.org/.../resources_show.htm
- www.un.org/.../comp303.htm
- www.hrlr.oxfordjournals.org/content/10/3/504.full
- www.refugeerightsasiapacific.org/pdf/APRRN-Newsletter-May-2011-1.pdf
- www.law.monash.edu.au/castancentre/publications/hrs-mech-asia-pacific-sub.2.pdf
- www.wcl.american.edu/.../saarc42.htm
- <http://www.aseansec.org/DOC-TOR-AHRB.pdf>
- www.Ohchr.Org/Documents/Publications/Training9chapter3en.Pdf
- www.nationsencyclopedia.Com/.../Human-Rights-REGIONAL-HUMAN-RIGHTS-INSTRUMENTS.H.
- <http://www.saarc-sec.org/SAARC-Charter-of-Democracy/88/>
- www.saape.org/cms/index.php?option=com_content...id
- <http://www.rediff.com/news/2007/mar/29saarc.htm>
- Emerging Regional Human Rights Systems in Asia , pp. 233 - 294
- DOI: <https://doi.org/10.1017/CBO9781139058445.005>[Opens in a new window], Cambridge University Press, 2012