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**Human Rights Council  
Advisory Committee  
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Item 2 (g) of the provisional agenda **Requests addressed to the Advisory Committee stemming from Human Rights resolutions:  
Regional and subregional arrangements for the promotion and protection of human rights**

Draft report on regional arrangements for the promotion and protection of human rights

(draft report, July 17, 2017) prepared by Changrok Soh, rapporteur of the drafting group

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I. Introduction

1. Pursuant to the adoption by the Human Rights Council of its resolution A/HRC/32/L.4, the Advisory Committee is mandated to prepare a report on regional arrangements for the promotion and protection of human rights, in particular on the progress made in the establishment of regional and subregional arrangements for the promotion and protection of human rights, their achievements in all regions of the world, the role that has been played and can be played in the future by the Office of the United Nations High Commissioner for Human Rights in advancing cooperation between international and regional human rights mechanisms, and to identify ways to increase the role that regional and subregional arrangements play in promoting and protecting human rights and to reinforce universal human rights standards including those contained in international human rights instruments, and to submit the report to the Human Rights Council at its thirty-ninth session (September 2018). It is hoped that this submission can take advantage of the celebrations marking the 70th anniversary of the Universal Human Rights Declaration and the 25th anniversary of the Vienna Declaration on Human Rights to promote the role of regional arrangements.

2. At its seventeenth session in August 2016, the Committee heard presentations from experts and held discussions on regional arrangements for the promotion and protection of human rights, and established a drafting group for the preparation of a progress report. The group currently comprises Mr. Bennani, Ms. Boisson de Chazournes, Mr. Coriolano, Ms. Hanania de Valera, Mr. Lebedev, Mr. Liu, Mr. Obata, Ms. Pabel (Chairperson), Ms. Reyes Prado, Mr. Soh (Rapporteur), and Mr. Yigezu.

3. At the same session of the Advisory Committee, the drafting group elaborated a questionnaire, in accordance with Council resolution A/HRC/32/L.4 in which the Council encourages the Committee to take into account the views and inputs of relevant stakeholders. The Questionnaire was disseminated to different stakeholders including Member States of the United Nations, international and regional organizations, relevant special procedures mandate holders and treaty bodies, national human rights institutions, and civil society organizations, with a deadline of 31 October 2016. As of XX February 2017, XX responses were received to the questionnaire, including XX from States, XX from NGOs, XX from NHRIs and XX from UN agencies.

II. Establishment of regional and subregional human rights mechanisms

4. This report identifies five regions where regional human rights mechanisms have been (or are to be) established; Europe, the Americas, Africa, the Arab states, and Asia.[[1]](#footnote-2) The first four regions already possess regional and subregional mechanisms while Asia only has a few subregional mechanisms. Although regional and subregional human rights bodies are very different, particularly in how their jurisdictions and responsibilities overlap, this study treats them as different facets of the same process of localizing the protection and promotion of human rights. An overview of these arrangements will be given below.

5. Europe has one of the most effective human rights regimes. Its origins date back to the formation of the Council of Europe in 1949 and the adoption of the European Convention on Human Rights and Fundamental Freedoms in 1950. The European Court of Human Rights (ECHR), established in 1959 and restructured by Protocol 11 in 1998, functions as the main human rights protection mechanism in Europe. All 47 Council of Europe member states are party to the European Convention on Human Rights. Judges are elected by the Council of Europe’s Parliamentary Assembly and enjoy high independence from their respective governments. The states can also file state-to-state complaints and in extreme cases even demand expulsion for flagrant and systematic violations of the ECHR. The ECHR exercises binding jurisdiction and its decisions create binding legal obligations for the state concerned.[[2]](#footnote-3) However, the European Social Charter, which addresses economic and social rights, is not subject to judicial enforcement.[[3]](#footnote-4) Other important mechanisms in Europe include the European Union Agency for Fundamental Rights and the Office for Democratic Institutions and Human Rights (OSCE).

6. The Inter-American human rights mechanism dates back to the approval of the American Declaration of the Rights and Duties of Man by the Organization of American States (OAS) in April 1948. The Declaration brought about the adoption of the OAS Charter and the Inter-American Commission on Human Rights (IACHR) was established in 1959 to enhance the implementation of human rights protections among the 35 member states of the OAS. Following the adoption of the American Convention on Human Rights in 1969, the Inter-American Court of Human Rights was established in 1979. The Inter-American Commission monitors member states’ human rights implementation by making country visits, publishing country reports and carrying out on-site observations. It also has a quasi-judicial function in that it can interpret human rights instruments created by the OAS and makes non-legally binding recommendations on individual complaints. Individual applications can be lodged with the Inter-American Commission based on the Declaration or the American Convention on Human Rights.[[4]](#footnote-5) All cases go through the Commission but only the OAS member states that have accepted the Court’s authority can be brought before it. Some other regional human rights treaties like the Protocol of San Salvador in Social, Economic and Cultural rights also allow for individual petitions to be lodged before the IACHR.[[5]](#footnote-6)

7. The African human rights mechanism emerged as a response to the challenges of decolonization, racial discrimination, environmental protection and refugees. The African Charter on Human and Peoples’ Rights (ACHPR, also known as the Banjul Charter or the African Charter) was adopted in 1981 and came into force in 1986. In accordance with the Charter, the African Commission on Human and Peoples’ Rights was set up in 1987. The African Court of Human and Peoples’ Rights was established by a Protocol to the African Charter in 1998, came into force in 2004, and was operational in 2006. As of September 2016, the African Charter has been ratified by 53 of 54 member states of the African Union, the exception being South Sudan and nearly half of the member states have ratified the Protocol to the Africa Charter. The Commission accepts individual and state applications based on the African Charter while the African Court on Human and Peoples’ Rights may receive complaints and/or applications either by the African Commission of Human and Peoples’ Rights, state parties to the Protocol, or African Intergovernmental Organizations. Non-governmental organizations with observer status before the ACPHR, and individuals from States which have made a declaration accepting the jurisdiction of the Court can also institute cases directly before the Court, but only six African Union member states have accepted the competence of the Court to handle such complaints. As of January 2016, the Court has received 74 applications and finalized 25 cases.[[6]](#footnote-7) Another important regional human rights mechanism is the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), which is tasked with promoting and protecting the rights enshrined in the African Charter on the Rights and Welfare of the Child (which came into force in 1999). In addition, there are subregional courts which deal with human rights violations such as the Economic Community of West African States (ECOWAS) Court of Justice and the East African Court of Justice.

8. The current Arab Charter on Human Rights (ACHR) was adopted in 2004 by the Council of the League of Arab States (LAS) after the revision of an earlier version that was adopted in 1994 but not ratified by any member states. The Arab Human Rights Committee was established in 2009 to supervise the implementation of the Charter by its member states through state reports and periodic reports. The Committee also submits annual reports to the Council of LAS. As of September 2016, the ACHR has been ratified by 17 out of 22 member states of the LAS. However, the Arab Charter on Human Rights includes many provisions that do not comply with international standards, especially with regard to gender equality, the death penalty, and the right to derogations under emergency law.[[7]](#footnote-8) Another important mechanism to consider is the Organization of Islamic Cooperation (OIC), a transregional organization with members in Africa, the Middle East, Asia and even South America. The OIC’s Independent Permanent Human Rights Commission (IPHRC) was launched in 2011 and has identified the rights of women, rights of the child, human rights education and the right to development as its key priorities.[[8]](#footnote-9)

9. Asia does not yet possess a regional arrangement for the protection of human rights. However, some progress has been made at the subregional level, particularly in Southeast Asia. ASEAN’s first agreement to consider the establishment of a regional human rights arrangement was made in June 1993 following the Vienna Declaration and Programme of Action. In November 2007, the member states of ASEAN signed the Charter of the Association of South East Asian Nations (ASEAN Charter) in which the promotion and protection of human rights was expressed along with a commitment to the establishment of a regional human rights mechanism. Accordingly, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was established in July 2009. In 2012, ASEAN unanimously adopted the ASEAN Human Rights Declaration (AHRD) but a human rights court has not yet been established. Although progress at the subregional level is promising, a regional framework for the entire Asia region is still in the future.[[9]](#footnote-10) The discussion was started by the Korean Constitutional Court’s proposal to create an Asian Human Rights Court, which was announced at the 3rd World Congress of the World Conference on Constitutional Justice in September, 2014.

III. Achievements of regional and subregional human rights arrangements

Judicial and quasi-judicial decisions

10. The most visible contributions of regional human rights arrangements have occurred in the form of court rulings and attempts by commissions to sway the behavior of member states. The Inter-American Commission and the Court’s landmark decisions even have an impact on countries beyond the scope of the original ruling. For example, military officers from several Latin American dictatorships had benefited from amnesty laws until both the Commission and the Court ruled in Barrios Altos v. Peru that they were in violation of international human rights law. Consequently, several countries (Argentina, Chile, etc.) repealed their amnesty legislation and began to prosecute military officers for violations going back to the 1970s. In 1999 the Commission published a major report on the human rights situation in Colombia in which for the first time it considered international humanitarian law, i.e., the law of armed conflict, to identify the legal regime governing the ongoing internal armed conflict. Recently, the Inter-American Court has also played an important role in the Columbia peace process.

11. The decisions of the European Commission and Court have also had considerable impact on law and practice in several states. Examples of this include changes to detention practices in Belgium, Germany, Greece and Italy, the treatment of aliens in the Netherlands and Switzerland and other countries, press freedom legislation in Britain, wiretapping regulations in Switzerland, legal aid practices in Italy and Denmark, procedures to speed trials in Italy, the Netherlands, and Sweden, and privacy legislation in Italy.[[10]](#footnote-11) In Dudgeon v. United Kingdom in 1981, ECHR held that Northern Ireland’s criminal laws prohibiting consensual sex between consenting adult males violated the right to privacy, as protected by Article 8 of the ECHR. As a consequence of the judgment, homosexual sex between males was decriminalized in Northern Ireland in 1982.[[11]](#footnote-12)

12. In 2001, the African Commission on Human and Peoples’ Rights considered a communication that dealt with alleged violations of the human rights of the Ogoni people in Nigeria. It marked the first time the Commission was able to deal with alleged violations of economic, social and cultural rights in a substantial and firm approach.[[12]](#footnote-13) Another interesting example of court activism is the East African Court of Justice, which has reinterpreted its mandate to include cases of human rights violations.[[13]](#footnote-14) As well, the ECOWAS system, which is best known for its jurisprudence on women’s and children’s rights, allows *actio popularis*, the filing of complaints by third parties on behalf of victims, which even the European mechanisms does not permit.

Standard setting

13. Although court decisions, by establishing legal precedents, constitute a form of strong standard setting, regional arrangements are also successful at diffusing and reinforcing human rights norms and standards in their regions in cooperation with member states. The European human rights regime, in particular, has contributed to human rights advancements within European countries and serves as a reference model worldwide. The creation of, and high compliance to, human rights norms was possible due to strong pre-existing norms within Europe but the ECHR has also helped develop human rights standards in new member states, particularly with the accession of many Eastern and South-eastern member states after 1990. Montenegro, which acceded to the Council of Europe in 2007, is an excellent example of how a regional human rights mechanism can assist standard setting in a collaborative fashion, not just through court rulings. According to the government of Montenegro, the country has adopted numerous strategic documents and action plans including ones on displaced people, improvement of status for Roma and Egyptians, human trafficking, LGBT rights, protection of children and the elderly, and others. In terms of legal changes, Montenegro amended the Law on Prohibition of Discrimination, the Law on Gender Equality, the Law on the Protector of Human Rights and Freedoms and adopted the Law on Prohibition of Discrimination against Persons with Disabilities. In line with recommendations from the Council of Europe, Montenegro also included a comprehensive definition of hate speech in the Law on Prohibition of Discrimination as well.[[14]](#footnote-15)

14. This collaborative approach is evident in Africa as well. In its fifth session, the African Commission on Human and Peoples’ Rights resolved that state parties should incorporate the teaching of human rights into their educational curricula and establish committees on human rights at national, subnational and regional levels. Some African countries such as Nigeria have incorporated the provisions of the African Charter into their domestic law. The Commission has also sponsored a number of seminars and international conferences that covered a broad spectrum of issues such as community work, economic, social and cultural rights, HIV and AIDS in Africa, prisons, and women’s rights in Africa.[[15]](#footnote-16)

Publication of country reports, on-site observation and country visits

15. Regional arrangements also play a crucial role in collecting and disseminating information about human rights conditions in the region, which allows cross-country comparisons and the development of best practices. Unfortunately, the effectiveness of these efforts vary by region. In 2014, the European Court’s Press Unit launched six new factsheets on the European Court’s case-law concerning, in particular, elderly people, persons with disabilities, political parties and associations, hunger strikes in detention, migrants in detention, and domestic violence. It has now prepared a total of 59 factsheets in English and French, many of which have been also translated into German, Italian, Polish, Romanian, Russian and Turkish with the support of the governments concerned. The Press Unit has also prepared country profiles covering each of the 47 member states. In addition to general and statistical information on each state, the country profiles provide information on the most noteworthy cases concerning that state.[[16]](#footnote-17)

16. In 1970-1980, for example, the Inter-American Commission put pressure on repressive governments. Its reporting on Chile under military law had particular significance to internal and international human rights advocates. In the early 1990s, the IACHR began to closely monitor countries with fragile democratic institutions which were still experiencing political violence. The Commission published four reports on the human rights situation in Haiti between 1990 and 1995 and three reports on Guatemala between 1993 and 2001. In 1998, the Commission visited Peru, and prepared a comprehensive report on its human rights situation. The report was released in June 2000 and it was crucial in ending the Fujimori regime.[[17]](#footnote-18) More recently, two reports were issued on Bolivia (2005), and reports on Honduras were issued (2009, 2010) which helped to draw attention to serious human rights problems in these countries. The Commission also publicized prominent individual cases, such as its issuance of a public condemnation of the murder of human rights defender Marisela Escovedo in Mexico.[[18]](#footnote-19) The Commission regularly conducts on site visits to countries and publishes press releases with its recommendations. The IACHR issues its Annual Report in which it highlights the most serious human rights violations in the Americas. It also publishes thematic reports, the latest ones refer to criminalization of human rights defenders and human rights standards relation to human mobility.[[19]](#footnote-20) As well, the Inter-American Commission has been asking for transparency about Guantanamo and urging its closure since the early 2000s.

17. While the African Commission on Human and People’s Rights is responsible for reviewing state compliance through biannual state reports on country efforts to implement the African Charter, many states combine several years’ worth of reports instead of submitting biannual reports. Moreover, seven member states have yet to submit a report at all. This can be attributed to a lack of resources and interest in those states. African Commission communications have a mere 15% implementation rate. Nevertheless, even this level of transparency has had an impact. According to the government of Kenya, the reporting requirements of the regional mechanism have played a major role in strengthening the rights of indigenous people. Kenya’s new Constitution provides several avenues for the protection and strengthening of indigenous peoples’ personal and collective rights. Article 27 obligates the State to develop legislation and affirmative action’s programs. Article 56 obligates the State to provide for adequate representation of ‘marginalized groups’ in all levels of government, execute affirmative action on behalf of these groups, and promote the use of indigenous languages and the free expression of traditional cultures. Article 100 requires the legislature to enact a law which will promote the representation of marginalized communities.[[20]](#footnote-21)

18. The Arab Human Rights Committee carried out its first examination of state reports in 2012-2013, starting with Jordan, Algeria and Bahrain. The concluding remarks of the Committee are now published on its website in Arabic. Civil society organizations are allowed to disseminate these concluding remarks in their countries for public outreach (through the media, websites and social networks) and follow-up with the national authorities.[[21]](#footnote-22)

IV. Challenges faced by regional and subregional human rights arrangements

Structural and financial challenges

19. Broadly speaking, structural challenges refer to how a lack of political will, membership issues, or greater than expected demand have manifested themselves in poorly resourced or imbalanced regional arrangements. The global human rights system is trying to do more with less. Thus, the greatest obstacle to the effective functioning of the Inter-American Commission and the Court is the lack of adequate human and financial resources. The Commission’s 30 staff lawyers, who are presently handling nearly 1,250 open cases, cannot keep pace with the annual increase in the number of petitions and thus cannot meet the reasonable expectations of states and victims for their prompt resolution. For example, the Inter-American Commission receives an average of over 2,000 new petitions each year.[[22]](#footnote-23)

20. Membership issues also hinder the Inter-American Commission and the Court. As of 2013, 25 of 35 OAS member states have ratified the Convention, while two have denounced it subsequently, leaving 23 active parties. Only 21 of these parties acknowledged jurisdiction of the Inter-American Court in contentious cases. Notably, the United States and Canada have not ratified the convention. The United States remains the largest donor of voluntary funds to the IACHR, despite the fact that it has not signed the 1977 American Convention on Human Rights. The United States contributed $2.3 million a year and an additional $300,000 to the Special Rapporteur for Freedom of Expression. Very few OAS member states contribute voluntary funding to the IACHR and the I.A. Court.[[23]](#footnote-24) In 2016, when the IACHR faced its most serious financial crisis, the OHCHR was crucial in calling attention to the problem.

21. The African Commission for Human and Peoples’ Rights also faces many structural and resource challenges. Among them are a lack of capacity to ensure that the system is accessible to rights holders and that norms and standards are effectively implemented and enhanced at the national level, member states’ non-compliance with their obligation to submit regular reports, challenges in implementing the Commission’s decisions, and a very limited operating budget. In 2002/3, for instance, the Commission only had a budget of $790 000, though this was subsequently increased to around $7.9 million in 2011.[[24]](#footnote-25) As with the OAS, fiscal challenges are compounded by membership problems. As of February 2016, only seven of the 30 state parties to the African Protocol had made the declaration recognizing the competence of the Court to receive cases from NGOs and individuals. The seven states are; Burkina Faso, Cote d’Ivoire, Ghana, Mali, Malawi, Rwanda and Tanzania.[[25]](#footnote-26) Moreover, only 26 states have accepted the Court’s jurisdiction. In its survey response, Kenya noted a lack of political will to implement Court decisions and a lack of adequate funding as the main obstacles.[[26]](#footnote-27)

22. Although it boasts the best funded regional arrangement in the world, Europe also has a problem with structural imbalances. Within the European system, the ECHR makes provision for civil and political rights only, while the European Social Charter (ESC) covers social and economic rights. The two are not treated equally. While accession to the ECHR is a condition of Council of Europe membership, this is not a requirement for the ESC, underlining the lesser status accorded to social and economic rights in the European system.[[27]](#footnote-28) Ironically, the most critical problem appears to be the mounting number of individual complaints. A combination of factors – the Court’s positive public reputation in some countries, its expansive interpretations of the Convention, a distrust of domestic judiciaries in some countries, and entrenched human rights problems in others – has attracted tens of thousands of new individual applications annually. These cases often last for years, resulting in a mounting backlog. As of September 2016, ECHR has issued more than 10,000 judgments but has more than 74,000 pending cases. Some say the ECHR is becoming a victim of its own success and now faces a docket crisis of massive proportions. There also remains substantive questions about how the Court accomplishes its core mandate – protecting civil and political liberties enshrined in the Convention – and whether the mechanisms it uses to achieve that goal need to be revised in response to changes in the legal and political landscape of human rights protection in Europe.[[28]](#footnote-29) On a positive note, however, this backlog has been decreasing since 2014 due to institutional reforms.

Procedural challenges

23. Procedural problems are typically the result of institutional design decisions, subsequent modifications, or day-to-day operational behaviors that serve to limit a regional arrangement’s efficacy or scope. While the Arab Charter on Human Rights, which was founded in 1945, was the first regional mechanism recognized by the UN, it took almost sixty years before member states adopted the Charter. Although the Arab League sought to include international human rights experts in the process of revising the 1994 draft, their recommendations were ultimately discarded by the member states.[[29]](#footnote-30) Except for the fight against corruption, the commitments made in Tunis in 2004 with regard to democracy, the rule of law, and good governance have not been translated into regional action.[[30]](#footnote-31) The final draft for the statute of the Arab Court of Human Rights has been revised to prevent individuals from applying directly to the Court and gives member states the sole right to file complaints. This undercuts the very reason of setting up the Court. The Arab Human Rights Committee can only receive state reports and issue recommendations. It cannot decide on individual or inter-state complaints, nor interpret the Charter.

24. The Inter-American Court also has no strong institutionalized form of follow-up – only a minority of court judgments are implemented. The Court typically remains deferential to state sovereignty in their efforts to promote human rights. Moreover, individual complaints often take too long before the commission and the court, resulting in a backlog of court cases. It can take three or more years for the Inter-American Court to forward a petition to the relevant state for an initial response. According to the court’s 2015 annual report, it received 2,164 petitions in 2015 alone, adding to a backlog of thousands of pending cases.[[31]](#footnote-32)

25. The majority of the African Commission’s 11 members are part-time, which limits the capacity of the Commission and its independence. Court judges are also elected by the African Union to ensure independence.[[32]](#footnote-33) However, some scholars consider the African Charter’s coverage of human rights to be incomplete by international standards. For example, Article 6 of the African Charter states that “no one may be deprived of his freedom except for reasons and conditions previously laid down by law.” This means, as long as there is a preexisting law, governments may deprive people of their freedoms.[[33]](#footnote-34) Yet, it should be noted that these “claw-back” provisions are fairly common legal language and that the African Commission has so far maintained a strict interpretation of them, thereby preventing their abuse.

26. The ASEAN Charter fails to provide an effective enforcement mechanism, as it continues to emphasize sovereignty, territorial integrity, and non-interference in domestic affairs. Thus, the ASEAN commission is comprised of government appointees accountable to their governments, who can remove the appointees at their discretion. It operates by consensus, which gives each state an effective veto over the Commission’s decisions. In fact, AICHR’s mandate does not contain explicit provisions for receiving and investigating complaints of human rights violations. Discussions of complaints take place during closed meetings, so it cannot be confirmed if and what cases have been discussed. The AICHR has yet to take public action in response to a complaint. Although NGOs are striving to improve human rights conditions in Asia, this is proving to be difficult because the Commission has largely excluded civil society organizations from participation in its initiatives.[[34]](#footnote-35)

V. Role of OHCHR in the advancement of regional and subregional human rights arrangements

27. Mandated by Human Rights Council resolutions, the OHCHR has consistently organized workshops aimed at enhancing cooperation between the United Nations and regional human rights mechanisms, which includes information-sharing on best practices and lessons learned, as well as discussions on new possible forms of cooperation.[[35]](#footnote-36) International workshops on regional arrangements, preceded by consultations, were held in 2008, 2010, 2012, 2014, and 2016. Moreover, the OHCHR has a dedicated section, the National Institutions and Regional Mechanism and Civil Society Section (NRC), which is responsible for supporting regional mechanisms. Although a key achievement has been the creation of a network of focal points for cooperation between regional mechanisms—which holds annual meetings and coordinates the biannual workshops—this activity is all coordinated by a single person in the NRC Section, suggesting that the OHCHR requires more human and financial resources to properly support emerging and existing regional mechanisms.

28. The OHCHR supports the establishment and operation of national and regional human rights organizations through capacity building, such as training and technical assistance, and facilitating information flows.The technical assistance program integrates support for national institutions with other forms of UN assistance. However, more needs to be done for effective capacity building. Kenya noted that it has faced a challenge with regard to training on various human rights issues. It says more support is required towards human rights awareness campaigns, especially for the abolition of the death penalty and training of government officers on the human rights based approach to programming and planning to build their capacity to provide service delivery in a meaningful way.[[36]](#footnote-37) The Council of Human Rights of Egypt also notes that OHCHR can play an important role by conducting training for the staff of the concerned institutions, assisting in developing information and documentation systems, and facilitating exchange of experience with relevant institutions, especially those belonging to the international system of human rights protection. OHCHR could also help establish regional offices and human rights centers that provide an additional structure promoting the concept of regional protection of human rights.[[37]](#footnote-38)

29. The OHCHR also assists the diffusion of international human rights standards to regional arrangements.In the case of the League of Arab States, the OHCHR provided assistance in revising the Arab Charter on Human Rights to improve its compliance with international human rights standards.[[38]](#footnote-39) The OHCHR has encouraged the Africa Union’s security architecture to adopt a human rights approach and has supported the 2017 AU High Level Dialogue on Human Rights as well as planning for the 10 Year Action and Implementation Plan for the Promotion and Protection of Human Rights. In the Americas, the OHCHR supported IACHR during its 2013 reform process and help raise public attention during its budgetary crisis in 2016. In the Middle East, likewise, valuable training on UN human rights mechanisms was provided to the OIC’s IPHRC in 2017. Of course, there are still challenges. It has been pointed out that the OHCHR may consider facilitating staff exchange and peer advice for regional mechanisms, and provide regular training and publish its performance assessment of regional mechanisms to identify areas where the OHCHR can provide further support.[[39]](#footnote-40)

30. Working towards this end, the OHCHR has set up 12 regional offices and is currently carrying out plans to establish more in Asia. The OHCHR’s regional offices have facilitated various forms of planning and cooperation between international and regional/subregional mechanisms. Key examples of these strategic activities include the Joint Declaration on the reinforcement of cooperation with the Council of Europe in 2013 and the participation of judges from the ECHR in the UN Human Rights committee session of July 1, 2016. The OHCHR, which signed a joint declaration with IACHR in 2014, now participates in planning activities, which included meetings in Washington and Panama City in 2016. Another accomplishment was a workshop of regional and subregional human rights courts held at Strasbourg in 2015, which allowed the sharing of jurisprudence and best practices by judges and experts from Africa, the Americas, and Europe.

31. The OHCHR is pivotal for bridging the gap between regional human rights mechanisms and the broader international community. Joint public statements with regional and subregional organizations, for example, have been an important tool in denouncing violations and also in assisting states to comply with international legal standards. As a global voice of the international community in the human rights field, OHCHR should not only make sure that universal human rights are understood and implemented globally, but should also look into the specificities of different regions, including religious and cultural dimensions, in order to enrich the universal human rights framework, expand the common ground between various civilizations, and minimize the contradictions and misconceptions about the understanding and practice of human rights worldwide.[[40]](#footnote-41)

VI. Other actors’ contribution to regional and subregional human rights arrangements

National human rights institutions

32. NHRIs, which vary in size and capacity from country to country, support regional mechanisms indirectly by protecting individual human rights at the state level. In one example, the Equal Opportunities Commission (EOC) of the Hong Kong Special Administrative Region, China, is in charge of implementing four anti-discrimination ordinances in Hong Kong, namely the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance, and the Race Discrimination Ordinance. The EOC has conducted surveys on LGBT rights, and released a report on discrimination in employment.[[41]](#footnote-42)

33. NHRIs also support regional mechanisms directly by creating connections for national actors at the international level. For instance, the National Council for Human Rights of Egypt says that the effectiveness of the African human rights mechanism can be improved by strengthening cooperation with NHRIs, increasing awareness of the competences and goals of both the Commission and the Court, exchanging experiences with other regional mechanisms, and learning from success stories that made these institutions more effective. It also noted that the African Union Commission and the Network of the African National Human Rights Institutions (NANHRI) signed a memorandum of understanding in January 2016, and developed guidelines on the role of NHRIs in monitoring the implementation of the findings of the African Commission and judgments of the African Court.[[42]](#footnote-43)

34. Due to their role of ensuring fluid connections with human rights actors, NHRIs have the potential to foster active dialogue between UN and regional human rights regimes worldwide. NHRIs network both with each other and with the OHCHR in Geneva on a regular basis through annual meetings in addition to regional meetings. Given the now recognized international status of NHRIs, their potential to advance human rights is manifest.[[43]](#footnote-44) The Iberoamerican Federation of Ombudsman (FIO) has played this role in the Americas, linking national, regional, and the UN systems. Another example is the Asia Pacific Forum of National Institutions, one of the most effective collaborations in the region. Established in 1996, this organization aims to support the establishment and efficient operation of national human rights institutions in Asia. Currently it is made up of 22 NHRIs. The Asia Pacific Forum’s key roles include building stronger national human rights institutions; providing advice and expertise; collaborating and sharing knowledge; promoting gender equality; contributing at the national, regional, and international level; and supporting effective leadership and governance.[[44]](#footnote-45) Thus, the Forum opens up new avenues for strengthening human rights protections for the inhabitants of the region.

Civil Society

35. Civil society played a crucial role in the emergence of Europe’s human rights regime. In May 1948, the European Movement organized the Congress of Europe with the objective of developing a blueprint for progress towards greater European cultural, economic and political unity. In the summer of 1949, the European Movement prepared a first draft of a European Convention on Human Rights as well as a Draft Statute for a proposed European Court of Human Rights. After much debate, a somewhat modified draft was signed and put into effect in September 1953. Similarly, the European Torture Convention was prepared jointly by the International Commission of Jurists and the Swiss Committee Against Torture.

36. NGOs push reluctant governments to step up their human rights protection efforts by pressuring them to ratify international human rights treaties. After ratification, they also help evaluate compliance. NGO monitoring and reporting serves as invaluable sources of information for the enforcement authorities of regional regimes. In one example, the International Commission of Jurists (ICJ) complained to the European Committee of Social Rights that child labor incompatible with the European Social Charter was common in Portugal. This led to the country amending its Constitution to prohibit employment of school children and increasing the minimum age for employment, which caused a dramatic drop in violations.[[45]](#footnote-46)

37. We can see the productive engagement of NGOs in other regional mechanisms as well. The Center for Justice and International Law has participated in over 300 cases before the Inter-American Commission and the Court on behalf of more than 13,000 victims. Its success has translated into, among other things, the payment of monetary reparations (more than $66 million to almost 2,500 victims), the re-opening of investigations and cases that had earlier been met with impunity, public apologies by high-ranking government officials, and changes in the laws and practices of states.[[46]](#footnote-47) In Africa, Amnesty International was pivotal in spreading human rights values through its Campaign for the African Charter on Human and Peoples’ Rights. It called on organizations throughout Africa to join in the campaign to raise awareness of the African Charter by organizing radio broadcasts, exhibitions, symposiums, and distributing translated versions of the Charter. By the end of 1991, it succeeded in persuading five out of its ten target governments to ratify the Charter. The African Regime’s Rules of Procedures of the Commission allows NGOs to sit in on public sessions of the Commission and of its subsidiary bodies.[[47]](#footnote-48)

38. Although Asia does not yet have a regional human rights arrangement, civil society is actively laying the ground work. In 1993, more than 110 NGOs from 26 countries across Asia adopted the Bangkok NGO Declaration of Human Rights, a hopeful step towards cooperative trans-border human rights activism. Continued efforts to build a comprehensive system of human rights norms led to the Asian Human Rights Charter in 1998, an important demonstration of the existence of a normative consensus among Asian civil society. Although many countries in the region do not have strong domestic civil societies, Asian NGOs have compensated by creating transnational networks focusing on networking, coalition-building, capacity-building and advocacy across borders while putting effort into monitoring, documentation, campaigning, and training. For instance, Forum-Asia, one of the most prominent transnational NGOs based in South East Asia, has been implementing human rights advocacy programs in ASEAN countries to ensure the effectiveness of ASEAN human rights institutions and is also making strenuous efforts to bring public awareness and government attention to regional human rights cooperation in Asia.

39. As of now, however, many NGOs – especially those in Africa, Asia, and the Middle East – suffer from a lack of legal protections and general resources to successfully carry out their activities.[[48]](#footnote-49) According to CIVICUS’s online monitor, civil society space is narrowed, obstructed, repressed, and even closed in most countries around the world, with only a few Northern European countries and New Zealand classified as truly open.[[49]](#footnote-50) Shrinking civil space suggests that NGO efforts to create subregional and regional mechanisms from the bottom-up cannot succeed unless they receive sustained support and coordination by international actors.

VII. Implications for the Protection of Human Rights through Regional and Subregional Human Rights Arrangements

40. The foregoing analysis of the achievements and challenges of regional human rights arrangements suggest that the most important factors determining the success or failure of regional human rights mechanisms include the following factors:

A. Commitment

i. The intent and will of individual states to conform to regional and international standards

ii. Signing and ratification of most, if not all, of the powerful states of the region

iii. Changes in laws or legal practices by individual states in the region

iv. Securing adequate human and financial resources

B. Procedures

i. Ensuring the institutional independence of judges from national interests and influences

ii. Resolving case backlogs and delays in court procedures and preventing future backlogs

iii. Enforcement mechanism for decisions by regional human rights mechanisms

iv. Monitoring mechanism to follow up on decisions and increase transparency

v. Maintaining the integrity and neutrality of regional mechanisms

C. Collaboration

i. Alliances between global and local human rights organizations to uphold international standards and hold perpetrators of violations accountable

ii. Role of NHRIs in coordinating and strengthening the implementation of the arrangement’s decisions and increasing the likelihood of compliance

iii. Protection of and participation by members of civil society in submitting petitions, representing victims, pressuring responsible actors, and following up on court decisions

41. Ideally, the efficient functioning of a regional mechanism requires all three factors to operate in unison. A lack of member state commitment undercuts the vitality of the entire structure while a mismatch between commitment and collaboration will create adversarial relationships that complicate the procedural level. Although the potential for procedural flaws and inefficiencies exist in all regional arrangements, a synergistic relationship between member state commitment and collaboration with international and civil society actors helps identify and manage these problems and, in the best cases, literally ties all three levels together into a closely functioning and self-reinforcing system.

42. Conceptualizing successful regional mechanisms as integrated systems of commitment, procedures, and collaboration has important implications for ongoing efforts to create new regional arrangements. First, it highlights the importance of member state commitment but emphasizes that this factor does not exist in isolation. Collaboration with domestic and international actors is required even in the presence of strong member state commitment, just as domestic and international actors cannot succeed without member state commitment. This suggests that thinking sequentially is problematic when creating new arrangements. Rather, a successful regional arrangement requires the parallel development of self-supporting levels of collaboration, procedures, and commitment. Modest but balanced arrangements that are allowed to evolve organically may be more sustainable than ambitious projects that seek to do too much too quickly.

43. Guaranteeing member state commitment for a regional human rights arrangement may be hindered because of different styles of state governance. In contrast to norms prevailing in other regions, many Asian countries regard human rights issues as a domestic issue. Since non-interference in domestic affairs is one of the principles explicitly underlying ASEAN’s founding documents, efforts to internationalize human rights protections within the ASEAN framework are expected to encounter procedural problems. Moreover, Asian countries tend to prioritize government-centered policy initiatives for creating economic development and accept the relegation of individual rights for the collective good.[[50]](#footnote-51) These differences, combined with Asia’s growing economic and political clout in the world, suggest that a simple transference of European models may not be a realistic expectation.

44. Strong commitment by a powerful country or small group of countries could be one way to generate momentum for a regional arrangement in Asia. As we have seen, a similar role was played by the United States in creating and financing the Inter-American human rights mechanism. For many international regimes, the presence of a leading nation is very important. In Asia the role of countries with large populations and with regional dominance such as China, India or Japan are critical in facilitating the establishment of a regional system. However, many leading Asian powers do not appear to be willing to take on this role. China, for example, puts emphasis on the right to self-determination and collective rights. India is criticized for its rampant discrimination of minorities and communal violence. Japan is unwilling to account for its past war-crime human rights violations.[[51]](#footnote-52) Even ASEAN, which is making progress in creating a subregional arrangement, needs to identify a leading nation to push the movement forward.[[52]](#footnote-53)

45. Thus, there appears to be three possible routes to creating an Asian regional human rights arrangement. The first is the *narrow approach*. This would consist of the creation of a small subregional human rights arrangement that is geographically limited but marked by a high degree of commitment, procedures closely modeled on best cases, and deep collaboration with international actors and civil society. For example, an Asian human rights regime could be centered on New Zealand and expand to neighboring countries. This approach would have the advantage of maximizing the protections for the inhabitants of member states in accordance with international standards but could experience growth difficulties if its convention and enforcement mechanisms were perceived as too intrusive.

46. The second is the *wide approach*. This would consist of the negotiation of a broad and inclusive human rights arrangement that encompasses the entire region. Due to widely divergent cultural values, styles of governance, and member state preferences, a successful agreement would necessarily reflect the lowest common denominator. In all likelihood, this organization would be under-funded, procedurally handicapped, and would limit the opportunities for civil society engagement. Nevertheless, its existence would be highly symbolic, provide at least a modicum of protection to the largest number of people, and could help socialize member states to show more commitment in the future.

47. The third route to a regional arrangement in Asia would consist of a *networked approach*, which closely resembles the method adopted in Africa. This would consist of the development of multiple and overlapping subregional mechanisms among like-minded countries. These subregional mechanisms would not have the same procedures because compromises will be necessary when establishing each body, realistically taking into account which provisions the member states are comfortable ratifying and which they will be comfortable implementing. Attention should be focused on to what extent compromises can be made. Thus, we could see the proliferation of organizations based on sub-regions, such as Central, Eastern, Northern, Southeastern, Southern and Western Asia. These organizations would cooperate together but reflect each sub-region’s distinctive approach to human rights protections. In parallel, other international agreements could be created at the regional level that focus on addressing common needs, such as child poverty or the rights of the elderly, or technical issues such as consumer privacy rights. In the long run, of course, efforts would be needed to integrate these diverse subregional rights systems and single issue regimes into a coherent whole. Crisscrossing the region with a network of subregional arrangements would allow countries to move at their own pace. In doing so, they would be encouraged by international civil society and assisted by the UN system. As human rights progress and cooperation appears unlikely among nationalistic and growth-oriented governments, it is important to explore the contributions of human rights cooperation from the bottom up.[[53]](#footnote-54)

48. It is clear from the case of Europe and other successful regional arrangements in Africa and the Americas that strong regional cooperation and coordination greatly contributes to the consolidation of universal human rights. The networked approach is not only effective in creating new regional mechanisms, it will also revitalize existing ones. Joint-networks are essential for ensuring that overlapping global, regional, subregional and national human rights actors maximize their potential and avoid jurisdictional conflict. For stronger and more effective regional mechanisms, all actors including governments and civil societies will need to play important roles in promoting multi-level cooperation, which includes national assemblies, courts, NHRIs, private sector representatives and scholars from various fields. Specifically, there needs to be awareness that sustainable procedures are the result of a careful balance between commitment and collaboration. Finding this balance requires careful research, honest negotiations, and a willingness to listen and learn by local and international actors alike. Put simply, human rights can be implemented to the fullest extent only when governments, citizens, and international society are willing to be engaged in the process.

VIII. Conclusions and recommendations

Conclusions

49. Among all regions, Europe has one of the most effective human rights regimes. All Council of Europe member states are party to the European Convention on Human Rights. The European Union also acceded to the ECHR. Judges enjoy high independence from their respective governments. The ECHR exercises binding jurisdiction and its decisions create binding legal obligations for states. Nevertheless, serious problem with the regime include a large backlog of cases, resistances by some powerful states, and public misunderstanding.

50. In comparison, other regional human rights regimes are also struggling to overcome serious limitations. Some of them do not enjoy the membership of all states within their respective regions. In the case of the Inter-American human rights mechanism, the United States of America and Canada and most Caribbean states have not ratified the relevant convention. Likewise, some African and Arab states have not ratified their respective regional human rights conventions either. In Asia, there is no region-wide human rights arrangement. The regimes also have many limitations, including the problem of judges’ independence and inability to enforce their decisions. Lack of political will by relevant states and insufficient funding are also serious obstacles.

51. Despite these limitations, regional human rights regimes have made important achievements. The European regime has made great strides in changing laws and practices in its member states, including enhancing the protections for vulnerable populations such as same-sex couples and the rights of indigenous people. The Inter-American Commission has helped defend and protect human rights activists and issued reports on member states. The African Commission and the Arab Human Rights Committee publish reports which are used by civil society actors to further advocate for the protection and promotion of human rights.

52. The United Nations is pivotal in this process because it is in the position to work with all regional mechanisms and promote further exchange of information and good practices among mechanisms. South-south cooperation is vital in strengthening existing regional mechanisms and for developing new ones. The UN can also strengthen the international legal order by actively promoting jurisprudence exchange between regional mechanisms, active dialogue regarding common issues and best practices. More specifically, the partnership between the OHCHR (particularly through its regional and country offices and through its special procedures and treaty bodies) has proven crucial in the promotion and protection of human rights. The OHCHR helps regional mechanisms and states with drafting human rights instruments, conducting Universal Periodic Review follow-ups, supporting the work of NHRIs, providing platforms and training, and by acting as a bridge between global and regional mechanisms.

53. NHRIs and civil societies have also contributed to regional and subregional human rights arrangements. NHRIs hold a special role as an institutional bridge between individuals and states as well as states and international society. Meanwhile, members of civil society have made significant contributions in ensuring the long-term effectiveness of regional human rights arrangements. NGOs, although facing resource constraints and shrinking civil space, successfully spread human rights values, lobby governments, publish independent reports, create blueprints for further human rights progress, draft human rights conventions and even help create new international bodies. This bottom up pressure can help make regional arrangements work more smoothly in cases of strong member state commitment and can help generate commitment where it is initially lacking.

54. At their best, regional human rights mechanisms can change state laws and practices, promote the rights of the most vulnerable populations, and serve as a reference model for member states and neighboring regions. To achieve optimal results from these arrangements, there is a need to ensure that most, if not all, states within the region ratify the relevant conventions. There is also a need to ensure the independence of judges and the provision of an enforcement mechanism for their decisions. The implementation of a monitoring mechanism to follow up on decisions is also necessary, as is allowing members of civil society to participate in the process. More broadly, there must be collaboration with the OHCHR, state governments, local governments, NHRIs, corporations and NGOs at all stages of the mechanism’s development and operation. Lastly, securing human and financial resources is vital for ensuring effective operations.

55. The implications of this study for the prospects of a new regional mechanism in Asia is that all actors including governments and civil societies must play strong roles in promoting a mechanism of multi-level cooperation. Although there are several possible routes to creating a regional arrangement in Asia, and improving existing mechanisms elsewhere, it is certain that it cannot be accomplished by simply mimicking mechanisms from other regions and requires strong state leadership, supplemented by all relevant stakeholders such as national assemblies and legislatures, courts, NHRIs, law enforcement agencies, and even corporations.

Recommendations

56. Member states under regional human rights arrangements need to make greater efforts to guarantee adequate funding for the latter. Without funds, even the best designed procedures will struggle to adequately protect human rights. The sustainability of regional arrangements require strong commitment by member states and the active participation and oversight of other human rights organizations, both domestic and international. That being said, worsening economic conditions around the world mean that regional arrangements may face increased competition for access to state budgets. There needs to be innovative thinking and experimentation by human rights practitioners and the international community to find ways to enable regional arrangements to do more with less. Leveraging new technologies for greater efficiencies or streamlining traditional methods of human rights litigation are just a few of the ways that resource constraints could be managed in the years ahead. Another fascinating possibility is using private-public partnerships to forge new types of funding arrangements between regional human rights mechanisms and Western donors, especially large charitable foundations.

57. Asia may consider establishing a human rights court or a similar human rights institution with a relevant mandate, taking into account lessons learned from other regimes. One way to create the necessary political consensus for this court would be an innovative adaptation of the pre-existing UPR process. Since all Asian countries participate in the Universal Periodic Review (UPR) process, this could be leveraged to facilitate discussions on enhancing regional human rights cooperation. Ideally, a regional UPR sub-forum would include the expanded participation of civil society, scholars, and other relevant stakeholders. The talks in this new forum could focus on cooperative solutions to common problems, peer reviews, and encourage states to share their experiences on how to implement the recommendations of the UPR. Ultimately, this would set the groundwork for a regional mechanism.

58. More support needs to be given to the actors that play key roles in creating the foundations of regional human rights cooperation at the national and local level, particularly parliaments and legislatures, law enforcement agencies, courts, and municipal or local governments. A regional human rights mechanism is only as strong as the local actors responsible for implementing and guaranteeing its protections. The facilitation of horizontal cooperation between these actors will permit the dissemination of best practices and help create state preferences for regional human rights cooperation from the ground-up. As such, this report reiterates the Advisory Committee’s earlier recommendation that local governments participate more in UN human rights mechanisms.[[54]](#footnote-55) UNCHR’s support for human rights education at the level of local communities in Georgia in 2015 is noteworthy in this regard.[[55]](#footnote-56)

59. Regional human rights arrangements can further improve their effectiveness by improving their communication and information dissemination. The government of Montenegro recommends, for instance, the appointment of focal points for the European Court and the Council of Europe who would regularly disseminate information about special procedures and treaty bodies.[[56]](#footnote-57) This could involve cooperation with human rights institutions inside their jurisdictions, such as NHRIs, civil society groups, and individual scholars, as well as coordination and information sharing with other regional human rights arrangements. Moreover, regional mechanisms must be more effective at explaining their importance to the general public, not just stakeholders, because popular support is essential for maintaining high levels of commitment.

60. Human rights institutions, including regional human rights regimes, should cooperate by tackling region-wide thematic issues, including but not limited to, women’s rights, children’s rights, the rights of migrants, and the rights of the disabled. Efforts should be made to develop the treaties on specific subjects and systems into effective tools for the promotion of human rights.[[57]](#footnote-58) An excellent case in point are the Sustainable Development Goals (SDG), which officially aim to “realize the human rights of all.”[[58]](#footnote-59) Regional cooperation in the practical implementation of the SDGs not only has tangible developmental benefits for the countries involved but can also be used to create the scaffolding of future regional human rights instruments, particularly those protecting economic and social rights. Economic, social and cultural rights may be the best place to expand regional mechanisms.

61. The OHCHR needs to play a key role in facilitating the creation of a regional or subregional human rights mechanism in Asia and in improving the operation of existing arrangements in other regions. It could accomplish this by continuing to act as an information clearing house that provides detailed, technical advice on best practices and by creating forums where negotiations and exchanges of ideas can occur. This could include offering regular news letters that bring together updated information from regional human rights mechanisms, including on best practices, lessons learned, decisions, recommendations, reports, calendars and planned visits.[[59]](#footnote-60) The OHCHR could also help to establish regional offices and human rights centers that provide additional institutional support for promoting the regional protection of human rights.[[60]](#footnote-61) More substantively, thematic issues of common interest such as the fight against racial and ethnic discrimination, rights of persons with disabilities, gender equality, violence against women, and protection of vulnerable groups are areas where the OHCHR can contribute.[[61]](#footnote-62)

62. However, this report acknowledges that the OHCHR cannot do more without adequate resources. Strengthening the relationship between the UN system and regional mechanisms through research, capacity building, and organizing workshops will require the allocation of more personnel and financial resources to the task, even if this requirement can be offset somewhat by the innovative use of technology. It is recommended that a special unit within the NRC section be created to coordinate all activities involving regional mechanisms. This unit will require more staff than the one person currently allocated to regional mechanisms, preferably one P4 and one P3 or P2. This section will also require additional funding to take on a broader scope of activities.

63. In addition to supporting a network of focal points, this special unit could conduct an exhaustive review of the OHCHR’s activities regarding RHRMs to date and develop a comprehensive strategy detailing how the regional, subregional, and international human rights systems can be integrated into an effective whole. This would include elaborating criteria and methodological tools for evaluating and comparing regional mechanisms, determining their needs, compiling information on best practices, and devising capacity building benchmarks. Ultimately, this unit will seek to support the establishment of regional and subregional mechanisms and strengthen the effectiveness of existing mechanisms, which will require horizontal and vertical information-sharing and enabling their greater participation in UN bodies.

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