

## 11<sup>th</sup> Informal ASEM Seminar on Human Rights

“Regional and National Human Rights Mechanisms” 23-25 November 2011, Prague, the Czech Republic

### Key Messages

Over 120 civil society and government representatives gathered at the 11th Informal Asia-Europe Meeting (ASEM) Seminar on Human Rights, the largest multi-sector gathering on human rights between the two regions.

Hosted by the Czech Ministry of Foreign Affairs at the Czernin Palace in Prague, the event took place on 23-25 November. The Asia-Europe Foundation, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, the French Ministry of Foreign and European Affairs and the Philippine Department of Foreign Affairs organised this seminar.

The seminar aimed to examine how international human rights architecture can be best strengthened at the regional and national levels. Present at the Seminar, were the ASEAN Intergovernmental Commission on Human Rights (AICHR) representatives of Indonesia, the Philippines, Singapore and Thailand, as well as representatives of national human rights institutions (NHRIs), human rights ambassadors, representatives of justice and foreign affairs ministries, academics, activists and human rights defenders.

The 11<sup>th</sup> Informal ASEM Seminar on Human Rights convened four working groups for an open and in-depth dialogue on regional and national mechanism-building. Specifically, the working groups focused on national human rights mechanisms, regional human rights mechanisms, the procedural effectiveness of regional human rights mechanisms, and the multi-level architecture of human rights mechanisms.

The following are the key messages from the participants of the Seminar:

#### “Human Rights start at home” – The prominent role of the state and NHRIs

- 1.1. The state has the duty to protect its people, to promote human rights and to prevent their violation. The need for strong and effective domestic institutions to effectively address human rights violations was stressed by all working groups.
- 1.2. The state has the responsibility to build mechanisms and procedures to operationalise human rights. The only way to overcome the lack of political will is to establish mechanisms and procedures that hold states accountable. This implies that the state has to allocate adequate resources to NHRIs.
- 1.3. The Paris Principles should not be re-negotiated due to the potential difficulty that could arise in reaching consensus on new normative standards for NHRIs. Rather, the participants felt that the development of NHRI best practice examples and a progressive application of the Paris Principles will ensure their continuing development as a dynamic set of norms. The Paris Principles should be seen as minimum standards – a floor rather than a ceiling – for the establishment and strengthening of NHRIs.
- 1.4. NHRIs should be given as broad a mandate as possible, which should include review of the police, military and intelligence services. NHRIs should also be equipped to perform a dual role – protection (control and monitoring) and promotion (education and awareness-building) of human rights.
- 1.5. European NHRIs can benefit from studying the functioning of Asian NHRIs, some of which have more experience in handling individual complaints and facilitating redress through courts.
- 1.6. NHRIs must develop appropriate partnerships with civil society – as required by the Paris principles.
- 1.7. While it is essential that NHRIs are independent, states should ensure the accountability of NHRIs by giving them a legislative mandate requiring a system of reporting and monitoring that can help inform parliament and public opinion.

#### A three-level approach to human rights promotion and protection

- 2.1. Complaints-handling
  - 2.1.1. Complaints-handling is a crucial aspect of human rights protection. However, the group also saw human rights institutes in the context of a more systemic approach targeted at driving social change. Participants agreed that these functions were complementary and that complaints-handling could be left to the judiciary or also shared with NHRI as befitting the specific situation. The role of NHRIs in complaints-handling becomes more crucial when traditional systems are weak or susceptible to corruption, when the justice system is ineffective and the courts are not competent enough to both interpret and implement relevant national, regional and international laws.
  - 2.1.2. With regard to addressing human rights violations, the principles of subsidiarity and exhaustion of domestic remedies should be strengthened and emphasised.

- 2.2. The development of human rights
  - 2.2.1. Human rights must continue to be seen as dynamic and evolving, with new rights being created and recognised. Jurisprudence is devoted to the development of human rights, taking into consideration new developments, doctrines, norms and domestic laws.
  - 2.2.2. With regard to the process of establishing human rights, states or the international community often “recognise” a right and then endeavour to implement it in the long-run. The development of human rights (especially in the context of economic and social rights) lies in narrowing the gap between the principle of the right in question and its effective application in society.
- 2.3. Education, awareness-building and dialogue
  - 2.3.1. There is a need for people to know of their rights if the human rights system is to be used effectively and is to be respected by all stakeholders.
  - 2.3.2. There was strong agreement on the need for specific programmes dedicated to educating public officers (including state officials, members of parliament, lawyers and judges, diplomats, military, police and security forces as well as social services) on human rights, their promotion and protection in order to address the perceived current lack of awareness.
  - 2.3.3. Awareness-building and the education of state officials should not just extend to knowledge of human rights and the system of human rights protection, but also to the role of human rights defenders who are vulnerable to attack and reprisals. The safety of human rights defenders must be given the highest priority and all reprisals against them need to be vigorously prosecuted and remedied.
  - 2.3.4. ASEF is requested to put the findings and recommendations of this seminar before ASEM member states in a manner whereby they can be considered and debated with a view to action being taken on them. ASEF is requested to broaden its scope by including more issues that could be discussed via this forum informally.
  - 2.3.5. In the Vienna Declaration and Programme of Action (June 1993), the World Conference on Human Rights recommended to States to consider drawing up a National Plan of Action identifying steps to improve the promotion and protection of human rights. ASEM could act as a platform for sharing experiences regarding the implementation of the National Plan of Action.
  - 2.3.6. The European Union (EU) and ASEAN must share experience on how to operationalise human rights with a clear mandate for non-governmental organisation (NGO) participation at the national and international levels. NGO participation will make the regional and international human rights framework more representative.

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

- 3.1. Participants echoed the idea conveyed in Article 14 of the Preamble of the Universal Declaration of Human Rights – human rights implementation relies on all the organs of society. They acknowledge the recent shift in discourse towards the examination of the role of corporations, NGOs and other non-state actors.
- 3.2. There was consensus that, given that NHRIs do not generally have binding decision-making powers, it is important for them to establish good working relationships with other national authorities. The implementation of their recommendations is often aided when supported by other stakeholders such as the media, civil society organisations, and United Nations (UN) human rights experts.
- 3.3. The role of civil society, described as the “eyes and ears of the people”, was deemed critically important in the articulation of human rights issues that affect the most disenfranchised sectors of society. Identified civil society roles included the provision of paralegal assistance, the documentation of human rights abuses, and constructive engagement with both Government and NHRIs, while also serving as a watchdog. The participants agreed that for civil society to be able to play its proper role, it would be necessary to recognise, respect and empower the sector, and the state should be very cautious in seeking to regulate it.
- 3.4. With regard to the development of National Plans of Action, limited resources mean that priorities will have to be defined. The participants suggested that such a prioritisation would gain greater acceptance if decisions were made in consultation with civil society.
- 3.5. Regional frameworks are helpful in setting minimum standards, aligning human rights promotion and protection practices with regional sensibilities, and developing solutions adapted to the regional context. They have the potential to help improve domestic law by imposing higher standards.
- 3.6. The fact that there are higher levels of protection for some rights at the regional level was deemed positive. The regional space can provide the laboratory for emerging rights that are subsequently taken up internationally.
- 3.7. Regarding the AICHR, participants observed that while its human rights “promotion” capacity was developed, its “protection” capability remains lacking. Nonetheless, they recognised that AICHR is a work

- in progress and that the institutionalisation of a clear “protection” mandate is achievable, considering that AICHR’s Terms of Reference will be reviewed in 2014.
- 3.8. There is a need to strengthen coordination mechanisms at all levels. In this way, regional mechanisms could simultaneously serve as a bridge between national and international instruments as well as a “back-up” for individuals whose rights have been violated (once they have exhausted domestic remedies).
  - 3.9. Regional treaties and frameworks could bring extra scrutiny to domestic affairs, demanding greater accountability and encouraging greater efficiency at the national level.
  - 3.10. Countries with successful systems of human rights promotion and protection tend to have very strong constitutional courts and also ensure the conformity of local laws to international conventions.
  - 3.11. Factors to be taken into consideration in promoting coherence include the following:
    - 3.11.1. Regional initiatives must always conform to the human rights principle of universality and, at the very least, with the Universal Declaration of Human Rights; international standards must serve as the minimum acceptable level of protection, including at the regional level;
    - 3.11.2. Ensuring coherence must be a continuing effort that recognises the need for human rights protection systems to evolve; coherence at the regional level requires respect for the principle of subsidiarity as is the case with the European Court of Human Rights (ECHR);
    - 3.11.3. It was agreed that the margin of appreciation doctrine, which is recognised by states as a counterpart to the subsidiarity principle, has an important role to play at the regional level.
    - 3.11.4. The system of obligatory referral of questions to the European Court of Justice is another useful tool to promote coherence at the European regional level;
    - 3.11.5. Another European initiative that promotes coherence is the EU Charter of Fundamental Rights which serves as a bridge between the EU and the ECHR.
  - 3.12. In promoting coherence, it is important not to overlay the problem of fragmentation. A diversity of systems of protection and related jurisprudence could potentially serve to provide better protection of human rights. While participants were unable to conclude if a multiplicity of actors is a drawback or an advantage, they did stress that dialogue and communication among these institutions is key.

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

- 4.1. Compliance with the Paris Principles is critical to NHRI effectiveness. Discussions highlighted a number of other factors, beyond formal compliance with the Paris Principles, which could enhance the effectiveness of institutions. These include the quality of leadership, the transparency of decision-making and operations, the accountability of the NHRI to various stakeholders, and the credibility of the institution in the eyes of the public. NHRI effectiveness depends also on the strength and functioning of other state institutions and agencies, such as the courts.
- 4.2. The group also discussed whether there was merit in having international expert bodies undertake a ranking of countries according to their levels of human rights compliance. It was accepted that this idea has a lot of merit but its application could be troublesome. It might be less sensitive instead to have a body that tracks global trends of compliance. Any initiative of this kind needs to be based on data generated through reliable indicators.
- 4.3. Human rights mechanisms at every level need to be visible, accessible and transparent in their working methods in order to inspire public confidence. The concomitant principle of transparency is accountability. Human rights duty bearers must be held accountable for their actions.
- 4.4. Public confidence in human rights mechanisms is enhanced when they deliver effective remedies that are actually enforced. One idea to promote public confidence is for governments to publish an annual human rights report and for this to be debated in Parliament.
- 4.5. Public confidence will be strengthened if and when overloaded human rights mechanisms are given the adequate resources in order to function efficiently.
- 4.6. Public confidence will also be enhanced if politicians and other commentators do not abusively use human rights discourse to achieve political ends or denigrate human rights for the same purpose.
- 4.7. The media play a critical role in promoting public confidence, but to perform this role effectively, they need extensive training on human rights in general and on their own role as a stakeholder.