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***Human Rights in Asia: Towards a new Regional
System of Human Rights Protection***

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Contents

List of Abbreviations	6
Introduction.....	9
Part I: Existing International law mechanisms for Human Rights protection in Asia.....	11
1. Introduction	11
2. Overview of the UN System for Human Rights Protection	11
2.1 Charter-based system.....	11
2.2 Treaty-based system	12
3. Engagement of Asian States in the UN System	13
4. Strengths of the UN System in Asia.....	14
5. Weaknesses of the UN System in Asia	15
6. Actual situation of human rights in Asia.....	16
6.1 The Universal Periodic Reviews findings	16
6.2 The Amnesty International's findings	19
7. Conclusion.....	20
Part II: Former Initiatives for developing regional human rights norms and mechanisms	21
1. Introduction	21
2. UN-sponsored Workshops in the Asia-Pacific Region	21
3. NGO initiated attempts for regional human rights norm development.....	22
3.1 Bangkok NGO Declaration on Human Rights (1993).....	22
3.2 Asia Pacific NGO Human Rights Congress Resolutions (1996)	23
3.3 Asian Human Rights Charter (1998)	23
4. Regional inter-state Organisations	24
4.1 Political and Economic Institutions	24
4.2 Human Rights Institutions	25
4.2.1 Asia Pacific Forum of National Human Rights Institutions (APF).....	25
4.2.2 Southeast Asia: Association of Southeast Asian Nations (ASEAN).....	25
4.2.3 South Asia: South Asian Association for Regional Cooperation (SAARC)	25
4.2.4 Inter-regional dialogues – Asia–Europe Meeting (ASEM).....	26
5. ASEAN Human Rights Bodies	27
5.1 Historical Overview.....	27
5.2 Function.....	28
5.3 Evaluation.....	29

6. Conclusion.....	31
Part III: Challenges faced by Asia and the Arguments in favour of the creation of a regional system	33
1. Introduction.....	33
2. Challenges and how to overcome them.....	33
2.1 Cultural hurdles – the “Asian values” debate.....	33
2.1.1 The idea of “Asian values”.....	33
2.1.2 Counterarguments.....	35
2.1.2.1 Historical context of human rights in Eastern civilisations.....	35
2.1.2.2 The East Asia Economic crisis (1997-1998).....	36
2.1.2.3 Political Manipulation	36
2.1.2.4 Other arguments	37
2.2 Emphasis on development and economic growth	37
2.3 Political reluctance – Historical tensions.....	38
3. What can a regional human rights system offer in Asia?.....	40
3.1 Cultural understanding	40
3.2 Better cooperation.....	41
3.3 Greater Efficiency.....	41
4. Conclusion.....	42
Part IV: The Way Forward for Asia	43
1. Introduction.....	43
2. Regional human rights systems in other regions.....	43
2.1 Comparative analysis.....	43
2.1.1 Europe.....	43
2.1.2 The Americas.....	44
2.1.3 Africa.....	45
2.1.4 The Arab Nations.....	46
2.2 Lessons learned for Asia.....	47
2.2.1 Political Will and Commitment.....	48
2.2.2 Financial and Political Challenges	48
2.2.3 Gradual Development.....	49
2.2.4 Education - Public Awareness - the role of Civil Society	49
2.2.5 A multi-layered approach to human rights protection- Focus on a Regional Court.....	50
3. Recent developments - prospects for the future	52

3.1 ASEAN's Adaptive protection	52
3.2 Civil society mobilisation-Towards an Asian Court of Human Rights.....	53
3.2.1 AICHR collaboration with CSOs	53
3.2.2 Call for a Strengthened AICHR.....	54
3.2.3 Financial aid for victims and fact gathering	54
3.2.4 Call for a Regional Human Rights Court	55
3.2.5 The Asian Human Rights Court Simulation Experience.....	55
4. Conclusion.....	56
Conclusion	58
Bibliography	59

List of Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACJ	Advisory Council of Jurists
ACMW	ASEAN Committee on the Implementation of the ASEAN Declaration of the Rights of Migrant Workers
ACSC	ASEAN Civil Society Conference
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AHRCS	Asian Human Rights Court Simulation
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
APEC	Asia-Pacific Economic Cooperation
APF	ASEAN Peoples' Forum
APF	Asia Pacific Forum of National Human Rights Institutions
APT	ASEAN Plus Three
ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
ASEM	Asia-Europe Meeting
BRICS	Brazil, Russia, India, China, and South Africa
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CoE	Council of Europe
CPED	International Convention for the Protection of All Persons from Enforced Disappearance

CPPCG	Convention for the Prevention and Punishment of the Crime of Genocide
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil society Organisations
ECHR	European Convention on Human Rights
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
EU	European Union
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICSPCA	International Convention on the Suppression and Punishment of the Crime of Apartheid
IDPs	Internally Displaced People
IHRL	International Human Rights Law
ILO	International Labour Organisation
IOs	International Organisations
LGBT	Lesbian Gay Bisexual and Transgender
LGBTQ+	Lesbian Gay Bisexual, Transgender and Queer
MINT	Mexico, Indonesia, Nigeria, and Turkey
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institutions

OAS	Organisation of American States
OHCHR	Office of the High Commissioner for Human Rights
OP	Optional Protocol
RSDL	Residential Surveillance at a Designated Location
SAARC	South Asian Association for Regional Cooperation
ToR	Terms of Reference
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCC	UN Conference Centre
UNESCAP	UN Economic and Social Commission for Asia and the Pacific
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNICEF	United Nations Children’s Fund
UPR	Universal Periodic Review
US	United States
WHO	World Health Organisation
WWII	World War Two

Introduction

The international law framework that has been crafted for the promotion and protection of human rights and fundamental freedoms entails both universal and regional institutions. Regional human rights systems and mechanisms have been developed in various areas of the world, with the most distinguishable ones being those of Europe, the Americas and Africa. All of these regional systems have functioning regional human rights courts, which have the authority to adjudicate on individual cases and have the ability to order binding remedies for the protection of individuals whose rights face imminent risks. Even though the protection of human rights at the regional level is considered to be a fundamental pillar of the promotion and protection of individual rights in international law, and despite the fact that the efforts for the improvement and strengthening of the existing regional systems have been incessant, the Asia-Pacific region remains up until now the only UN designated area, which lacks its own regional human rights mechanism. The existing mechanisms for the protection of human rights in the region have not been fully and completely developed, and the area does not have a pan-regional human rights court or commission, like those of the rest regional systems. While there are emerging and nascent human rights norms, institutions and procedures for implementing human rights in Asia, compared to the other regions of the world, they have not achieved the same level of integration, and they generally lack the enforcement element. The population of the Asian continent is the largest worldwide, and the region is unsurprisingly considered one of the most culturally, linguistically, religiously and politically heterogeneous ones in the globe. It is also one of the most historically challenged regions in the world. The continent struggled a lot due to colonialism and this fact decisively influenced the way the Asian peoples self-identify. Apart from that, even after gaining their independence, corruption, nepotism and governmental abuses were challenges present in most Asian nations. The colonial oppression shaped significantly the way Asians perceived the notion of human rights, which led to their need for a distinct and unique perspective when it comes to individual rights and freedoms. In this context, it is obvious that creating an integrated mechanism for a unified approach for the promotion and respect for human rights in Asia-Pacific is extremely hard, given that the whole perception of human rights itself cannot be generalised in a continent as large, diversified and complex as Asia.

This paper will argue that a regional human rights system in Asia is indispensable for the protection of human rights in the region, and will present and analyse the process of its realization. It is divided into four parts. Part I will present the current international law avenues for human rights protection in Asia, evaluate their efficiency and highlight the broader trend of poor ratification rates of international human rights treaties among Asian nations, with less than one-quarter of countries in the region being parties to major human rights treaties. Part II will enumerate the former attempts for the crystallisation of human rights norms and mechanism in Asia. Indeed, there have been numerous initiatives to establish regional human rights institutions and charters in the region, but all efforts have been more or less fruitless in the establishment of a robust human rights system. This part will also draw particular emphasis on the ASEAN human rights system, which is the most developed and significant one among the aforementioned attempts. Part III will depict the challenges faced in terms of the creation of a

regional human rights system in Asia, arguing that these challenges can indeed be surpassed, and will answer to the question of why such a regional mechanism is so beneficial for the Asian region. Then Part IV will include a comparative analysis between the currently established systems in other regions and indicate the lessons that Asia can obtain from the experience of these other systems, and it will also respond to the question of whether a functional and effective regional human rights mechanism in Asia is a feasible and reasonable goal, by showing the prospect of such an objective, particularly focusing on some recent positive and promising developments, that give hope regarding the future of the Asian human rights system. Before further proceeding it is crucial to clarify how the Asian region is perceived in this paper. Indeed, the area is too diverse for a general analysis to be conducted. Consequently, for the purposes of this paper, when referring to Asia, I am referring mostly to the sub-regions entailing East Asia, South Asia and Southeast Asia. In other words, Asia is treated as a fluid and flexible geo-political notion, comprising of countries with commonly shared elements, with no strictly and clearly defined geographical boundaries.

Part I: Existing International law mechanisms for Human Rights protection in Asia

1. Introduction

The absence of a regional system of human rights protection in the Asian Continent, signifies that the existing international law mechanisms for human rights defence in Asia, are mainly those of the UN. The function of the UN system, even though it can be of critical use for the global human rights advocacy, has a series of insuperable disadvantages in terms of protection of rights. Being the sole option for the peoples of Asia means that in many cases the victims of human rights offenses remain unshielded towards their violators, something that is more than evident if we take a look on the actual reported condition of human rights in a number of Asian states.

2. Overview of the UN System for Human Rights Protection

The UN system that has been developed for the protection of human rights globally operates through a very complex and at the same time comprehensive framework constituted of numerous institutions, mechanisms of promotion and monitoring, and specialised processes, which have been crafted for protecting human rights norms and values at a universal level¹. In order to understand the key features of this complex system it is imperative to draw a distinction between the Charter-based system of human rights protection, which applies to all UN members and the treaty-based system, which only applies to countries that have signed and ratified the respective international human rights treaties.

2.1 Charter-based system

The Charter-based system is founded on the universal values of human rights deriving from the UN Charter, and constituting one of its main purposes. It is mostly put into motion by the Human Rights Council (HRC). The UN HRC is an intergovernmental body whose main responsibility is the promotion and protection of human rights around the globe². Its activity includes reviews reflecting the situation of human rights in various States, dealing with urgent human rights abuses, and issuing recommendations to the UN member States³. The HRC also undertakes the Universal Periodic Review (UPR), a process of assessment of the records of human rights in every UN member. The UPR is a unique procedure, established in 2006, involving an interactive dialogue between states⁴. The reviewed States provide information about their human rights situation, and the rest participating States make recommendations in order to improve this situation, while at the same time the reviewed State is being held

¹ Par Engstrom, 'Human Rights: Effectiveness of International and Regional Mechanisms', in Nukhet Sandal (ed), *Oxford Research Encyclopedia of International Studies* (Oxford University Press 2010)

² Paul Hunt, 'Configuring the UN Human Rights System in the "Era of Implementation": Mainland and Archipelago' (2017) 39 *Human Rights Quarterly* 489

³ Engstrom (n 1).

⁴ Tae-Ung Baik, 'The implementation of Human Rights in Asia', in Tae-Ung Baik (ed), *Emerging Regional Human Rights Systems in Asia* (Cambridge University Press 2012)

accountable for not fulfilling its human rights obligations and commitments⁵. Apart from the HRC, there are also other UN bodies established for promoting human rights protection within the UN system. The Office of the High Commissioner for Human Rights (OHCHR), is the principal UN office for human rights protection⁶. Its work includes assisting the mission of the HRC, treaty bodies, and special procedures, raising awareness for issues of human rights at the universal level, and engaging in capacity-building efforts aiming at the amelioration of global human rights practices. The above-mentioned Special Procedures is another important aspect of the UN human rights system. The UN assigns special rapporteurs, independent experts and working groups with concrete missions, designed to tackle concrete human rights issues in certain countries, to conduct investigations through gathering evidence, document abuses and provide impartial assessments that can inform the international community and prompt action, to report specific violation of human rights and to issue recommendations addressed to the HRC and the General Assembly⁷. Finally, the UN is employed with a wide range of specialised agencies contributing to the protection of human rights within the limits of their specific mandate, with the most characteristic examples being the International Labour Organisation (ILO) focusing on labour rights and standards, the World Health Organisation (WHO) addressing health-related rights, the United Nations Educational, Scientific and Cultural Organisation (UNESCO), promoting the right to education and cultural rights, and the United Nations Children's Fund (UNICEF), advocating for children's rights and welfare⁸.

2.2 Treaty-based system

Contrary to the Charter-based system, the Treaty-based system is more limited, at least when it comes to its target States, given that its norms and rules apply only to the State parties to those international human rights treaties, with the exception of rules codifying or reflecting customary International Human Rights Law (IHRL). Key IHRL instruments, developed under the auspices of the UN, are the Universal Declaration of Human Rights (UDHR) (1948), the International Covenant on Civil and Political Rights (ICCPR) (1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)⁹. These instruments provide a clear picture of fundamental human rights and the States' obligations to respect, protect, and fulfil these rights¹⁰. Other important universal human rights treaties include the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984), the Convention on the Rights of the Child (CRC) (1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) (1990), the International Convention for the Protection of All Persons from Enforced Disappearance (CPED) (2006) and the Convention on

⁵ Engstrom (n 1).

⁶ Hunt (n 2).

⁷ Engstrom (n 1).

⁸ Hunt (n 2).

⁹ Engstrom (n 1).

¹⁰ Baik, 'The implementation of Human Rights in Asia' (n 4).

the Rights of Persons with Disabilities (CRPD) (2006)¹¹. All of the above treaties have developed treaty bodies, usually a committee, to monitor their implementation. These treaty bodies, like the Human Rights Committee (for the ICCPR) and the Committee on Economic, Social and Cultural Rights (for the ICESCR), are responsible for reviewing reports submitted by their state parties that have to do with their treaty obligations compliance rate, and thus provide observations and make recommendations in order to improve their human rights practices¹².

3. Engagement of Asian States in the UN System

The participation and cooperation of the Asian region in the mechanisms and instruments of the UN for the protection of human rights is far from homogeneous among the Asian states. Indeed, the Asian states' response to the UN System vary from getting actively involved and showing unequivocal support for human rights efforts and initiatives, to opposing and rejecting them completely¹³. While some states, such as China and Brunei, traditionally try to avoid the examination from the international community, there are examples of other countries such as Japan, South Korea and the Philippines, demonstrating a stronger commitment and eagerness to participate in UN forums and support resolutions aimed at the promotion of human rights. However, the big picture shows that the effectiveness of IHRL norms is hampered by the fact that a wide range of Asian countries have yet to ratify significant human right treaties and that local resistance makes the enforcement of international human right rules extremely problematic¹⁴. Certain Asian nations exhibit a selective approach to their involvement within the UN framework. For instance, most of the Asian countries would support resolutions pertaining to children's or women's rights, but would most frequently reject those dealing with freedom of expression, freedom of assembly, censorship of political opposition and different opinions¹⁵. Particularly in East Asia it is common for the governments to not granting their citizens the right to individual applications, complaints or petitions to UN human rights institutions, and as a result access to remedy for individuals is disproportionately restricted, leaving many violations of rights unpunished¹⁶. The selectivity of Asian states towards UN treaties can be easily understood by examining the ratification status of fundamental and major human right treaties up until now. All Southeast Asian States have ratified the CRC and the CEDAW¹⁷, while most Asian states have also ratified the ICCPR and the ICESCR¹⁸. On the contrary, only a few countries (Cambodia, Indonesia, the Philippines and Thailand) have ratified the CAT, and even less (only Cambodia and the Philippines) the Optional Protocol to

¹¹ 'United Nations Treaty Collection' <<https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>>

¹² Engstrom (n 1).

¹³ 'Demystifying Human Rights Protection in Asia' (FIDH 2015) available at <<https://www.fidh.org/en/region/asia/asia-and-human-rights-debunking-the-myths>>

¹⁴ Baik, 'The implementation of Human Rights in Asia' (n 4).

¹⁵ 'Demystifying Human Rights Protection in Asia' (n 14).

¹⁶ Baik, 'The implementation of Human Rights in Asia' (n 4).

¹⁷ Hao Duy Phan, 'The Legal Framework of Human Rights Protection in Southeast Asia', in Hao Duy Phan (ed), *A Selective Approach to Establishing a Human Rights Mechanism in Southeast Asia* (Brill 2012)

¹⁸ Hurst Hannum, 'Human Rights' in Simon Chesterman, Hisashi Owada and Ben Saul (eds), *The Oxford Handbook of International Law in Asia and the Pacific* (Oxford University Press 2019)

the CAT¹⁹. Moreover, the Philippines is notably the only State in Southeast Asia to recognise the OP of the ICCPR regarding the complaint procedure, when some neighbouring nations like Singapore or Vietnam, have firmly rejected these practices and have demonstrated resistance to more robust systems for monitoring human rights²⁰. For more information concerning the ratification rate in Asian countries see infra (Table 1). Before moving on, it is worth mentioning that, for the most part, there are notable gaps in Asian states' eagerness to interact with IHRL mechanisms and to embrace accountability measures, and their total engagement in IHRL treaties is still poor and sporadic.

TABLE 1: ASIAN STATES' TREATY RATIFICATION RATES ²¹														
	Brunei	Cambodia	China	India	Indonesia	Japan	Laos	Malaysia	Myanmar	Philippines	S. Korea	Singapore	Thailand	Viet Nam
CPPCG	-	R	R	R	-	R	R	R	R	R	R	R	-	R
ICERD	-	R	R	R	R	R	R	-	-	R	R	R	R	R
ICESCR	-	R	R	R	R	R	R	-	R	R	R	-	R	R
OP ICESCR	-	-	-	-	-	-	-	-	-	-	-	-	-	-
ICCPR	-	R	S	R	R	R	R	-	-	R	R	-	R	R
OP-ICCPR	-	S	-	-	-	-	-	-	-	R	R	-	-	-
ICSPCA	-	R	R	R	-	-	R	-	-	R	-	-	-	R
CEDAW	-	R	R	R	R	R	R	R	R	R	R	R	R	R
OP-CEDAW	-	R	-	-	S	-	-	-	-	R	R	-	R	-
CAT	S	R	R	S	R	R	R	-	-	R	R	-	R	R
OP-CAT	-	R	-	-	-	-	-	-	-	R	-	-	-	-
CRC	R	R	R	R	R	R	R	R	R	R	R	R	R	R
OPAC-CRC	R	R	R	R	R	R	R	R	R	R	R	R	R	R
OPSC-CRC	R	R	R	R	R	R	R	R	R	R	R	-	R	R
OPCP-CRC	-	-	-	-	-	-	-	-	-	-	-	-	R	-
OP2-ICCPR	-	-	-	-	-	-	-	-	-	R	-	-	-	-
CMW	-	S	-	-	R	-	-	-	-	R	-	-	-	-
CRPD	R	R	R	R	R	R	R	R	R	R	R	R	R	R
OP-CRPD	-	S	-	-	-	-	-	-	-	-	R	-	R	-
ICPPED	-	R	-	S	S	R	S	-	-	-	R	-	R	-

R: Ratified, S: Signed but not Ratified

4. Strengths of the UN System in Asia

Undoubtedly the current international human rights framework in Asia, meaning the UN human rights system of protection, has many advantages to offer for the peoples of Asia. As mentioned above, the UN has gradually developed over the years various bodies, whose

¹⁹ Phan (n 17).

²⁰ *ibid.*

²¹ 'United Nations Treaty Collection' <<https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>>

purpose is to monitor and promote the rights of individuals²². Over the years its approach has undergone a significant evolution and has ended up being more intrusive, focusing on ideas like accountability and enforcement, via the reports of its special rapporteurs. UN primary contribution is raising global awareness over human rights abuses, gathering support and thus influencing state behaviour. This is being achieved through various methods. The UN system exerts diplomatic pressure on national authorities to tackle violations of human rights by making violations known to a wider public through reports, urgent calls, press releases and public statements²³. The UN bodies' reports and recommendations, given their publicity, can draw the attention of the international community to human rights breaches in Asia, and consequently mobilises international advocacy which forces them to take action and cease these violations²⁴. In addition, the UN system helps establish and strengthen national human rights institutions (NHRIs) in Asian countries, which plays a crucial role for the promotion and protection of human rights at the domestic level, by providing technical support and resources that can broaden their effectiveness. Other benefits from the UN system include, the active involvement of NGOs and civil society organisations, which enhance the responsiveness of the system to human rights abuses, and the prioritisation of dialogue and cooperation among states and international organisations²⁵. In this respect it is highly valuable to mention the significance of the shadow reporting in the context of the Universal Periodic Review (UPR) process, which allows independent stakeholders, such as civil society organisations, to provide alternative perspectives on a country's human rights record, particularly regarding issues that may not be adequately addressed in the state's official report, thus enhancing transparency and accountability²⁶. This process helps to highlight human rights violations and offers a more comprehensive view of the state's actions in fulfilling its human rights obligations.

5. Weaknesses of the UN System in Asia

Nevertheless, the UN System has also a series of weaknesses that make it inefficient for protecting human rights in the Asian region. First and foremost, the UN does not have a firm and robust enforcement mechanism in order to implement human rights norms and make Asian states comply with internationally recognised human rights standards²⁷. Its ability is limited to issuing recommendations and condemning human rights abuses, and its authority does not permit it to impose any sanctions or directly confront human rights violators. The primary reason behind this inability lies in the fact that the UN system is operating in the context of sovereignty and sovereign equality of States, which is one of its fundamental principles. This principle ostensibly limits the UN's ability to enforce compliance, as many Asian States appear reluctant in accepting foreign influence in their internal matters, even if these have to do with

²² Engstrom (n 1).

²³ Phan (n 17).

²⁴ 'Demystifying Human Rights Protection in Asia' (n 13).

²⁵ Engstrom (n 1).

²⁶ Sharifah Sekalala and Haleema Masud, 'The Universal Periodic Review process. A strategy to tackle health sector corruption', (2021) Chr. Michelsen Institute (U4 Brief 2021:2) available at <<https://www.cmi.no/publications/7744-the-universal-periodic-review-process>>

²⁷ Engstrom (n 1).

human rights. The result is that the effectiveness of the UN system depends merely to the political will and diverse level of commitment of Asian governments to either implement or ignore its recommendations and adhere or not to international human rights norms²⁸. In many instances Asian states make their national interests a priority over their human rights obligations, leading to selective compliance, refusal to cooperate with the UN institutions, and denying access to human rights monitors²⁹. This political resistance is even more strong in countries with authoritarian regimes, like China, Laos, Brunei, or Vietnam, which view the UN mechanism as a threat to their authority and stability. Apart from the political factors that hinder the effectiveness of the UN system in Asia, there are also legal challenges. Among the legal obstacles faced are domestic laws that do not align with IHRL standards, like for example some Asian constitutions that restrict the extension of right to certain groups (i.e. foreigners and/or marginalised populations). Finally, there also exist cultural and social factors which make the implementation of human rights norms by the UN a difficult process. These challenges include concepts such as gender equality, LGBTQ+ rights, freedom of expression and opinion, that are usually viewed as hostile foreign impositions from “the West” and the high levels of impunity and corruption in certain Asian countries, with elites and military members taking advantage of the absence of accountability, and thus undermining the ability of the UN to apply changes. All these elements create without a doubt a challenging environment for the UN system of human rights to operate effectively and bear the desired results for the protection of rights.

6. Actual situation of human rights in Asia

The actual condition of human rights in many countries of the Asian Continent draw particular emphasis on the inadequacy of the current international law avenues for human rights protection in the region. In order to reach some conclusions on the level of protection offered and the current situation of human rights in a series of Asian countries, I will utilise the data provided by the most recent Universal Periodic Reviews (UPR) of each respective Asian State³⁰ and the Amnesty International “The State of the World’s Human Rights” report of April 2024³¹.

6.1 The Universal Periodic Reviews findings

The UPR is often criticised for its lack of depth and real dialogue. However, while it is not an analysis, given the huge participation of almost all states globally, it is valuable in portraying the situation of specific human rights violations among the countries of the world. In addition, the value of the UPR is elevated through the previously mentioned shadow reports (see supra “4. Strengths of the UN System in Asia”). These reports, as already explained, provide additional information that may contrast with or expand upon the states’ narrative, and as a result they ensure that diverse viewpoints are considered during the review process and they present independent assessments that can hold the reviewed states accountable for their

²⁸ Baik, ‘The implementation of Human Rights in Asia’ (n 4).

²⁹ ‘Demystifying Human Rights Protection in Asia’ (n 13).

³⁰ Available at <<https://www.ohchr.org/en/hr-bodies/upr/documentation>>

³¹ Amnesty International ‘The State of the World’s Human Rights’ (2024), available at <<https://www.amnesty.org/en/documents/pol10/7200/2024/en/>>

commitments and actions regarding human rights, prompting them to respond to specific concerns raised by civil society³². Therefore, shadow reporting is an essential tool for civil society to engage in the UPR process, ensuring that the voices of marginalised groups and critical issues are heard and addressed, this way enhancing the overall importance and impact of the UPRs. Based on the most recent UPR for various Asian countries the following remarks can be made.

As far as freedom of expression and assembly is concerned, in countries like Cambodia, India, Japan, Laos, China, Thailand and Vietnam, it is being constantly and widely restricted, with individuals, especially journalist and human rights defenders being arbitrarily arrested and facing criminal sentences because of their protest and the media being continuously censored to limit opposition. Significant limitations exist on the freedom of religion and belief in Myanmar, while legislation such as the Maintenance of Religious Harmony Act in Singapore raises concerns about the freedom of religious speech. In the Philippines the use of counter-terrorism measures negatively affects and targets human rights activism, as well as government opposers, with many allegations of harassment and targeted killings. On the other hand, problems with the prohibition of torture and ill-treatment of detainees have been reported in Malaysia, Cambodia, South Korea and Thailand. In Myanmar, the military may have committed war crimes when it comes to extrajudicial killings, torture, forced labour, and indiscriminate attacks. Numerous civilians, especially the Rohingya, are constantly being displaced and endure appalling living conditions, including camps for internally displaced people (IDPs). Laos has not adopted a comprehensive definition of torture, remaining inconsistent with international human rights norms, and armed ethnic groups have also been accused for abusing many individuals. In China, practices such as Residential Surveillance at a Designated Location (RSDL) pose great risks of torture, while in the Philippines and Laos, overcrowded conditions and alleged ill-treatments in detention facilities are also inconsistent with human rights and the prohibition of torture. Moreover, concerns about the right to fair trial and the rule of law were particularly raised regarding India, Vietnam, and Myanmar. In Cambodia as well, the rule of law and the separation of powers is constantly threatened, as Cambodia's judiciary is considered one of the most corrupted in the world, with various allegations of executive power influence and suppression of political opposition. As for Singapore, stakeholders urged for an amendment in the administration of justice and the respect for international standards concerning fair trial, especially with the repeal of legislation that allows detention without trial, like the Internal Security Act and the temporary provisions of the Criminal Law Act.

In addition, many instances of discrimination on the basis of sexual orientation, gender, religion, against persons with disabilities, and racial or ethnic minorities have been reported in India, Singapore and South Korea, among other states. Particularly in India, even though the caste system has been formally abolished, it still prevails in some rural regions. Certain castes and tribes are still subject to economic deprivation and continue to be marginalised from society. More in particular the problems include: i) Racial discrimination. In Brunei discrimination

³² 'The Universal Periodic Review process. A strategy to tackle health sector corruption' (n 26)

against ethnic minorities, such as Chinese individuals who face many barriers in getting permanent residency and citizenship, is widespread in the national legal framework. In Cambodia, ethnic minorities, such as long-term Vietnamese residents and Khmer Krom, are not being granted legal recognition of their status and are facing constant discrimination. In Japan migrants are often being discriminated. In Malaysia, as for the state of refugees, there have been complaints about the poor living standards and the lack of a basic infrastructure in several Orang Asli settlements. In China, migrant domestic workers face risks of abuse because of their working conditions, and particularly in the context of the “two-week rule” and the “live-in policy”. In Singapore migrant workers have been facing many challenges, especially during the COVID-19 period, due to inadequate access to information and limited support. ii) Discrimination against women. In Cambodia women are subjected to a high rate of gender-based violence, with no effective judicial protection and the police not conducting investigations for cases of domestic abuse. In Indonesia women’s rights are left with little protection, given the rise of incidents of gender-based violence during the COVID-19 pandemic, the absence of laws protecting the victims from online violence, and the discriminatory regulations for women, including mandatory jilbab laws. In Japan women’s rights are vulnerable due to the absence of a robust legal definition of discrimination against women, the numerous instances of domestic violence, and the lack of the legal recognition of marital rape. In China women are vulnerable because of the absence of laws protecting them from gender discrimination in employment, and domestic violence. In Thailand, despite the Gender Equality Act passed in 2016, problems resist, and in Vietnam, based on the report’s findings, gender equality continues to face obstacles as the media perpetuate misconceptions about women that prevent them from assuming leadership roles, among other challenges. iii) Discrimination against LGBT individuals. In Brunei LGBTIQ+ people face serious abuses of their rights, with laws criminalizing consensual same-sex activity still being in force, and in Thailand, they continue to face discrimination while their vulnerability is increased by the lack of legal recognition for same-sex couples and transgender identities, as well as by the obstacles in receiving social benefits and healthcare. iv) Discrimination against Indigenous peoples. In Indonesia the rights of Papuan indigenous people are being constantly violated, in Malaysia indigenous peoples are in need of recognition of their land rights and of the development of poverty alleviation programs that include their participation and in Japan they also face discrimination. v) Discrimination against religious minorities. In Japan, discrimination continues to affect minority groups such as Jehovah’s Witnesses and in Malaysia discrimination against Christians in the workplace because of their ethnicity as non-Malaysi is being perpetuated with historically more precedence given to Malays in public sector positions.

Finally, other issues include the death penalty, health related issues, children’s and privacy rights. The death penalty is yet to be abolished in many states including India, Myanmar, Singapore, China and Thailand, and it is being imposed for a series of crimes and offenses, even non-lethal ones, such as drug trafficking, in Indonesia, Laos and Brunei. In Indonesia, the COVID-19 pandemic, intensified health services issues, such as misappropriation of social assistance and vaccination being unevenly distributed. In Japan there were concerns deriving from children’s treatment in Child Guidance Centres and the imperative need for a legal framework and the establishment of independent monitoring bodies, while in China, children

faced the risks of sexual abuse, or the danger of separation from their family, in the cases of children left behind by migrant parents as a result of the Hukou System. Privacy rights are also at stake due to widespread use of mass surveillance systems by the Chinese authorities, and the general lack of respect to the internationally recognized privacy standards.

6.2 The Amnesty International's findings

When it comes to human rights, Amnesty International is one of the largest and most respected NGOs in the world. Its reports are highly respected and can provide great insight and impartial evaluation of the situation of human rights in each country of the world it operates.

In its 2024 Report the NGO reaffirmed the problems with freedom of expression, harassment and arbitrary detentions of activists and human rights defenders in Cambodia, Indonesia, Laos, Singapore, South Korea, Vietnam and China among other states. In Cambodia the government has conducted many forced evictions of families from the UNESCO World Heritage Site of Angkor, leading to significant hardship. In India detentions of human rights defenders and activists, forced evictions of over 260,800 people, and restrictions on journalists and activists have been investigated. In Malaysia the government used repressive laws that hinder the freedom of expression, like the Communications and Multimedia Act and the Sedition Act to silence critical voices and prevent peaceful protests. Films were banned due to content, indicating a lack of commitment to reform. At least 13 people died in police custody, raising concerns about detainee treatment and conditions. In Myanmar the human rights situation has significantly deteriorated as a result of the military coup d'état in February 2021. The military has severely restricted freedoms of expression, association, and assembly, leading to violence and arrests for dissenting opinions. Over 25,000 people have been arrested since the coup, with nearly 20,000 still in detention. Media freedoms are also heavily restricted, with journalists often sentenced to long prison terms. In the Philippines among the violations reported were the ongoing "war on drugs" and the ongoing restrictions on freedom of expression. At least 329 people were unlawfully killed in 2023. Human rights defenders and organisations are linked to banned communist groups, making them vulnerable to violence. Environmental activists and indigenous rights defenders have been reported missing, while counterterrorism laws are increasingly used against humanitarian organisations. In Thailand since 2020, over 1,938 people, among them 286 children, have been charged for peaceful protests, with many under decrees and laws related to the defamation of the monarchy and sedition. Concerns have been raised about online harassment targeting human rights defenders, with the government lacking protective measures, and a new law criminalising torture and enforced disappearances has been enacted.

Concerning discrimination, the report made important observations and raised many concerns. In Japan Gender equality has declined, with women holding only 10% of parliamentary seats and less than 10% of ministerial posts. A controversial Immigration Control and Refugee Recognition Bill was passed, while discrimination against ethnic Koreans persists, with the government refusing to acknowledge or apologise for historical injustices, such as the massacre of ethnic Koreans. At the same time, despite some legal progress, including laws requiring the government to promote LGBT rights, discrimination against LGBT individuals remain

entrenched and the ban of same-sex marriage continues to be contested in courts. In Laos, the legal framework surrounding sexual violence was criticised for being inadequate. In China, there were concerns about the repression of Uyghurs and other Muslim groups in Xinjiang, with reports of systematic human rights abuses and a lack of accountability for these actions. In Malaysia, LGBT individuals faced increased discrimination as a result of protests fuelled by the decriminalisation of consensual same-sex conduct, affecting access to basic services, including healthcare. In South Korea, the Immigration Control Act was deemed unconstitutional, but the government insist on its implementation. The plan for abolishing the Ministry of Gender Equality affected gender equality and the criminalisation of consensual same-sex acts in the military, deteriorated LGBT rights.

Other issues highlighted by the report of Amnesty International concerned human trafficking and forced labour in Cambodia and Laos, hate crimes, particularly against Muslims and marginalised communities such as Dalits and Adivasis, in India, 26 incidents of unlawful killings by security forces involving 58 victims in Indonesia, the application of the death penalty in China, Singapore and Vietnam, the ill-treatment and poor detention conditions of migrants and refugees in Malaysia and Thailand, the problematic legislation affecting the rights of Indigenous peoples in Cambodia, and the restricted access to information and communication as a result of the internet shutdowns imposed by India. As for Myanmar, the report of Amnesty International, like the UPR, emphasised the alarming situation surrounding the Rohingya crisis. Over 2.6 million people are internally displaced due to ongoing conflicts, the military has obstructed humanitarian aid, particularly following natural disasters like Cyclone Mocha, and approximately 148,000 Rohingya and other Muslims remain internally displaced and face discrimination and segregation, constituting a form of apartheid.

7. Conclusion

Taking into account all the aforementioned information, it is obvious that further international law developments are highly needed in Asia. The universal system's inability to sufficiently confront the human rights problems of the region support the idea that Asia is in a desperate need for a new regional human rights mechanism to complement UN's efforts by providing additional layers of protection and accountability.

Part II: Former Initiatives for developing regional human rights norms and mechanisms

1. Introduction

The concept of a regional approach to human rights issues in Asia is not novel at all. In fact, there is a growing tendency for an enhanced regional cooperation among Asian States, a slow and gradual emergence of regional human rights norms and a series of initiatives for the development of regional human rights institutions. This part will analyse this progressive regional institutionalisation process of the Continent and will also focus on the ASEAN system of human rights protection, given its comparatively wider significance and influence amidst the rest former initiatives for a regional human rights mechanism.

2. UN-sponsored Workshops in the Asia-Pacific Region

The UN-sponsored Workshops on Regional Cooperation for the promotion and protection of Human Rights in the Asia-Pacific region, provided a comprehensive forum for discussion of human rights issues among states and NGOs in the region. These workshops brought together more than 30 governmental representatives from various countries, NGOs, and human rights institutions³³. These workshops were initiated in 1982 and encouraged regional collaboration and dialogue on issues related to human rights³⁴. They evolved to focus on concrete human rights issues and areas of collaboration, and constantly stressed the importance of gradually but steadily improving regional human rights structures and encouraging the countries that took part in the Workshops to adopt and exchange human-rights friendly practices³⁵. The UN Workshops moved slowly towards the development of regional institutions, and the failure to reach a consensus on the creation of a region-wide organization compelled states to adopt a cautious, slow-moving, gradual, building-block strategy during the late 1990s. At the conclusion of each workshop, a “Conclusion” document was adopted, that provided an overview of the discussions and included strategies and recommendations for enhancing national human rights mechanisms and encouraging the efficient application of human rights standards, ultimately improving the rights protection in the area³⁶. Overall, the discussions and agreements made at the UN-sponsored workshops aided the slow emergence of human rights

³³ Tae-Ung Baik, ‘Emerging human Rights Institutions in Asia’, in Tae-Ung Baik (ed), *Emerging Regional Human Rights Systems in Asia* (Cambridge University Press 2012)

³⁴ The original form of the intergovernmental human rights seminar in the Asia-Pacific was held in 1982 in Colombo, organized by the UN. It was followed by another Workshop organized by the UN in Manila in 1990 with hopes of establishing a regional human rights institution in the Asia-Pacific region, and it became a regular event thereafter. The second UN-sponsored regional Workshop was held in Jakarta (1993), the third in Seoul (1994), the fourth in Kathmandu (1996), the fifth in Amman (1997), the sixth in Tehran (1998), the seventh in New Delhi (1999), the eighth in Beijing (2000), the ninth in Bangkok (2001), the tenth in Beirut (2002), the eleventh in Islamabad (2003), the twelfth in Doha (2004), the thirteenth in Beijing (2005), the fourteenth workshop in Bali (2007) and the fifteenth Workshop was held three years later in Bangkok (2010) (Baik, ‘Emerging human Rights Institutions in Asia’ (n 33)).

³⁵ Baik, ‘Emerging human Rights Institutions in Asia’ (n 33).

³⁶ Tae-Ung Baik, ‘Human rights Norms in Asia’, in Tae-Ung Baik (ed), *Emerging Regional Human Rights Systems in Asia* (Cambridge University Press 2012)

standards in the Asia-Pacific region and promoted a shared commitment to tackling issues related to human rights. It can't be concluded that the adoption of the four-pillars, progressive, building-blocks strategy at the Tehran Workshop in 1997 was a failure, but it was certainly a compromise³⁷. The four sectors that were given priority effectively highlighted the significance of human rights concerns in the Asia-Pacific area, and these pillars had functioned as the centres of regional cooperation. Of course, this approach did not come without weaknesses. The Workshops were frequently seen as a club for government officials, and were criticised for being cut off from the real human rights struggles of the continent, given that they were unable to include actual domestic human rights issues into the conversation. On the other hand, very few NGOs actually attended the Workshops, and their involvement in their planning and execution was not particularly noteworthy. The Workshops also demonstrated the forum's inherent lack of general and overall consensus, as they were excessively focused on short-term developments, lacked a clear direction for long-term plans, and were unable to reach a consensus on the basic and straightforward question of whether to aim for future human rights cooperation at the sub-regional or regional level.

3. NGO initiated attempts for regional human rights norm development

Beyond the UN's support and influence, there are also some crucial moments for the regional human rights discourse in Asia, that were put forward by the collaborative work of various regional NGOs and civil society.

3.1 Bangkok NGO Declaration on Human Rights (1993)

Asian non-governmental organisations (NGOs) made a big collective effort to express their views on human rights through the Bangkok Declaration of 1993³⁸, a noteworthy non-binding declaration³⁹. At the same time that the World Conference on Human Rights was being organised in Vienna, 240 people from 110 NGOs met to create the declaration in Bangkok, where they argued that there was a need for a more coordinated approach to address the human rights concerns of the region. The Declaration adopted, emphasised the need for human rights mechanisms to consider the unique characteristics of the Asian nations, the respect for national sovereignty and the principle of non-interference in each state's internal affairs, arguing against the imposition of Western-centric human rights standards and underlined the concerns of the Asian States surrounding this matter. It thus called for a more balanced approach that focuses on the respect for local identities and traditions. Nonetheless, the Declaration reaffirmed the universality of human rights and called for their objective, non-discriminatory advancement, avoiding the application of double standards. It also stressed the interdependence of various human rights, including civil, political, economic, social and cultural rights, as well as the right to development and cultural diversity. In sum, the Declaration reflected a commitment to regional cooperation and served as a call for a bigger recognition of human rights within the

³⁷ Baik, 'Emerging human Rights Institutions in Asia' (n 33).

³⁸ Bangkok NGO Declaration on Human Rights, A/CONF. 157/PC/83, 19 Apr 1993, available at <<https://digitallibrary.un.org/record/170675?v=pdf>>

³⁹ Baik, 'Human rights Norms in Asia' (n 36).

Asian context, urging governments to protect these rights and pushing for a more inclusive universal dialogue on human rights issues.

3.2 Asia Pacific NGO Human Rights Congress Resolutions (1996)

Adopted in 1996, the Asia Pacific NGO Human Rights Congress Resolutions⁴⁰ represented the collective stance of over 117 non-governmental organisations (NGOs) covering over 28 states regarding a wide range of human rights matters within the Asia-Pacific region⁴¹. The resolutions covered critical human rights issues, such as child trafficking, the exploitation of minors, the protection of human rights defenders and national security laws. They called for the governments and NGOs to cooperate in combating human rights abuses and enhance accountability for these breaches. The Congress reaffirmed, just like in the Bangkok Declaration, the universality of human rights, while at the same time highlighting the particular difficulties faced by the Asia-Pacific region, and called for a tailored approach to human rights that would take into account the local contexts and the cultural sensitivities of the continent. In general, the Asia Pacific NGO Human Right Congress Resolutions of 1996 served as a significant expression of the region's civil society commitment to the promotion of human rights and the protection from the pressing human rights issues affecting the local communities.

3.3 Asian Human Rights Charter (1998)

After three years of discussions among more than 200 NGOs in Asia, the Asian Human Rights Charter⁴² was formally declared on May 17, 1998, in Kwangju, Korea⁴³. The Charter was drafted under the auspices of the Asian Human Rights Commission (regional NGO) with the goal of promoting discussion and action on human rights within the Asian context. There were three regional consultations: a South Asian Consultation in Colombo in January 1995, a South-East Asian Consultation in Hong Kong in Hong Kong in August 1995, and an East Asian Consultation in Hong Kong in January 1996⁴⁴. The official Declaration of the Charter represented a critical turning point in the development of an Asian consensus on human rights. Thousands of people worked together during the drafting process, demonstrating a widespread commitment to human rights in Asia. The legitimacy of the Charter and its foundation in the experiences and goals of many groups throughout Asia are further highlighted by this cooperative approach. The Charter specifically referred to itself as a "People's Charter", emphasising its focus on individual rights and dignity in Asia. By stressing out the need for States to be humane, open and accountable, and by working to eradicate cultural practices that go against recognised human rights norms, it attempted to solve the problems brought about

⁴⁰ Fernand De Varennes, *Asia-Pacific Human Rights Documents and Resources* (1st edition, Brill - Nijhoff 2000) page 116.

⁴¹ Baik, 'Human rights Norms in Asia' (n 36).

⁴² Asian Human Rights Charter (17 May 1998) available at <<https://www.refworld.org/legal/resolution/radr/1998/en/38601>>

⁴³ Baik, 'Human rights Norms in Asia' (n 36).

⁴⁴ Christopher Ward and Alison Duxbury, 'Perspectives on the Asian Human Rights Charter - A People's Charter' (1998) 1998 *Law Asia J* 99

by cultural relativism in the area. Many different types of rights were covered under the Charter, such as civil, political, economic, social and cultural rights. Naturally, the Charter was a non-binding instrument that acted as a guide for education and a basis for the development of solidarity actions among many stakeholders, such as NGOs, civil society, and individuals. Its main goal was to encourage dialogue and action on human rights matters in the Asian region. Human rights were believed to be protected only within the framework of democracy, and the right to development was considered an essential component of human dignity. Several Asian governments expressed scepticism about the Charter because they saw it as an attempt to impose Western ideals on their societies. As a result, some states have opposed adopting the Charter's principles, claiming that doing so would violate their unique political, economic, and cultural contexts.

4. Regional inter-state Organisations

The region's constantly evolving level of cooperation can be traced in the numerous inter-state organisations and institutions that have emerged during the recent years in the area. Political and economic institutions, as well as human rights institutions, indicate that the initial groundwork for the emergence of a regional human rights system in Asia has already been conducted.

4.1 Political and Economic Institutions

Political and economic organisations in Asia do not place a high priority on the protection of human rights, but they do show an early commitment to regional development and collaboration, which paves the way for later normative advances in the field of human rights within Asia. The regional political and economic institutions in the Asia-Pacific include⁴⁵: i) the UN Economic and Social Commission for Asia and the Pacific (UNESCAP), which was founded in 1947 and is primarily concerned with the region's social and economic development, ii) the Association of Southeast Asian Nations (ASEAN), a sub-regional organisation primarily concerned with political and economic cooperation in Southeast Asia, iii) the Asia-Pacific Economic Cooperation (APEC), a forum for promoting economic growth, cooperation, trade, and investment in the Asia-Pacific region, iv) the Asia Pacific Economic Cooperation (APF), founded in 1989 in response to the growing interdependence among Asia-Pacific states with the aim of advancing Asia-Pacific economic dynamism and sense of community, v) the ASEAN+3 (APT), a cooperative framework involving ASEAN and three East Asian countries, namely China, Japan, and South Korea, vi) the ASEAN Regional Forum (ARF), a platform for security dialogue in the Asia-Pacific region, vii) the East Asian Summits, a forum for leaders from East Asia and beyond for discussion over regional issues, and viii) the South Asian Association for Regional Cooperation (SAARC), whose mission is to accelerate economic growth and foster collaboration in economic, social, technical and scientific fields. All these institutions primarily focus on political and economic cooperation, but some also begun to address human rights as part of their agendas.

⁴⁵ Baik, 'Emerging human Rights Institutions in Asia' (n 33).

4.2 Human Rights Institutions

4.2.1 Asia Pacific Forum of National Human Rights Institutions (APF)

The Asia Pacific Forum of National Human Rights Institutions (APF) is a regional network comprising from national human rights institutions (NHRIs)⁴⁶ established under the Paris Principles⁴⁷. Launched by New Zealand, Australia, India, Indonesia, the Philippines, and other NHRIs, APF seeks to advance and defend human rights throughout the Asia-Pacific region. It tackles a variety of human rights problems, including the rights of indigenous peoples and the function of NHRIs in fighting corruption, and it promotes collaboration among its member institutions. The APF has also discussions concerning the imposition of legal sanctions on businesses that violate human rights. APF made a big step forward when it created the Advisory Council of Jurists (ACJ), an expert council, to further expand its institutional framework. Through its references on human rights concerns, the ACJ helps to localise the norms to suit the conditions of Asian States. The ACJ addresses emerging issues that are of common concern to Asian governments and interprets the existing human rights norms. It might evolve into an institutional body that examines complaints or individual cases under the APF. The ACJ also serves as a norm-building institution, through its advisory opinions.

4.2.2 Southeast Asia: Association of Southeast Asian Nations (ASEAN)

The Association of Southeast Asian Nations (ASEAN) is a regional alliance that was founded to enhance political and economic cooperation among its member states⁴⁸. It was first established during the Viet Nam War as an anti-communist coalition, but it has since changed to concentrate on regional economic growth, stability and peace. Despite its historical indifference to address human rights issues, ASEAN has achieved notable progress in this field, especially since the ASEAN Ministerial Meeting in 1993, when it recognised the significance and relevance of human rights. Since then, the organisation has created frameworks and human rights bodies throughout Southeast Asia to address these issues. These will be thoroughly analysed in the next section (see *infra*, “5. ASEAN Human Rights bodies”)

4.2.3 South Asia: South Asian Association for Regional Cooperation (SAARC)

The South Asian Association for Regional Cooperation (SAARC) was created as a regional organisation in 1985 in order to encourage economic and regional integration among its members in South Asia⁴⁹. SAARC is focused on a number of issues such as cultural interchange, social development and economic advancements. The Original Charter⁵⁰ of the organisation did not have provisions explicitly addressing human rights issues. Instead, its mandate

⁴⁶ Baik, ‘Emerging human Rights Institutions in Asia’ (n 33).

⁴⁷ Principles relating to the Status of National Institutions (The Paris Principles), adopted by General Assembly resolution 48/134, Dec. 20, 1993.

⁴⁸ Baik, ‘Emerging human Rights Institutions in Asia’ (n 33).

⁴⁹ *ibid*.

⁵⁰ SAARC Charter (adopted on 8 Dec 1985) available at < <https://www.saarc-sec.org/index.php/about-saarc/saarc-charter> >

concentrated on more general development goals such as raising the living standard of its member state's citizens, and encouraging the cooperation in the region. However, over time SAARC came to deal with human rights as well, through a number of declarations and initiatives, with a particular emphasis on the protection of women's and children's rights⁵¹. The organisation adopted two treaties in 2002, addressing specific issues of human rights protection: the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution⁵² and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia⁵³. Then in 2004, SAARC adopted its Social Charter⁵⁴, which constituted a major step towards tackling social challenges and promoting human rights in the region. The Charter sought to strengthen the cooperation among its member States on a wide range of social issues, including health, children's rights and gender equality, emphasising on the promotion of social justice and solidarity. The Social Charter signalled an official recognition of the significance and importance of addressing human rights problems and shifting towards a heightened awareness of social and human rights challenges in the region. Despite its important commitment to human rights, the Social Charter's ability was limited when it came to enforcing human rights norms, as it did not impose any enforceable duty or obligation on the organisation's members. Finally, in 2011, when the SAARC Charter of Democracy⁵⁵ was introduced, the member states expressed "a shared commitment to the rule of law, liberty, and equal rights of all citizens"⁵⁶ and "reaffirmed faith in fundamental human rights and in the dignity of the human person"⁵⁷. Overall, SAARC has sporadically and occasionally taken action for expanding its cooperation in the field of human rights, but the efficacy of its actions has been frequently questioned, especially given the fact that none of the aforementioned instruments have any particular mechanism in place for enforcing their provisions.

4.2.4 Inter-regional dialogues – Asia–Europe Meeting (ASEM)

The Asia-Europe Meeting (ASEM) is an inter-regional organisation, that promotes communication and collaboration between Asian and European nations⁵⁸. The ASEM was founded in 1996 and its goal was the enhancement of cooperation in the areas of politics, economy, culture and security. Every two years, the organisation – which has members from the European Union, ASEAN, and other Asian countries – has summits to discuss a range of

⁵¹ Hannum (n 18).

⁵² SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002) available at < <https://www.saarc-sec.org/index.php/resources/agreements-conventions?limit=20&limitstart=20>>

⁵³ SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia (2002) available at < <https://www.saarc-sec.org/index.php/resources/agreements-conventions?limit=20&limitstart=20>>

⁵⁴ SAARC Social Charter (2004) available at < <https://www.saarc-sec.org/index.php/resources/agreements-conventions?limit=20&limitstart=20>>

⁵⁵ SAARC Charter of Democracy (2011) available at < <https://saievac.org/2012/01/23/saarc-charter-of-democracy-2/>>

⁵⁶ *ibid*

⁵⁷ *ibid*

⁵⁸ Baik, 'Emerging human Rights Institutions in Asia' (n 33).

topics. Informally addressing shared interests and challenges, ASEM fosters cooperation on matters pertaining to trade, investment, and social concerns, including issues of human rights.

5. ASEAN Human Rights Bodies

Given its importance as a human rights institution in Southeast Asia, ASEAN and its human rights bodies will be presented with more detail in this section.

5.1 Historical Overview

ASEAN was established as a sub-regional organisation on August 8, 1967, in Bangkok, Thailand. The organisation's founding and initial members were five, namely Indonesia, Malaysia, the Philippines, Singapore, and Thailand⁵⁹. In the historical context of the Cold War and many regional conflicts of the time, ASEAN arose from the shared desire to support economic progress and stability in the region. The ASEAN Declaration⁶⁰, signed by its founding members, set forth the organisation's goals, which focused on the promotion of economic growth, the improvement of cultural interaction, and the enhancement of regional peace and security⁶¹. Although not specifically addressing human rights, the declaration laid the groundwork for future discussions about the subject⁶². In the following years, ASEAN expanded its members. Brunei joined in 1984, followed by Viet Nam in 1995, Laos and Myanmar in 1997, and Cambodia in 1999, bringing the total members to ten⁶³. During this time, ASEAN concentrated on issues like trade, liberalising economic cooperation, and creating different sectoral organisations to handle particular problems like tourism, transportation and agriculture. The establishment of the ASEAN Regional Forum (ARF), in 1994, aimed to encourage and enhance communication and collaboration on security matters within the Asia-Pacific region. This was a major step forward in addressing regional security issues and promoting multilateral dialogue. The adoption of the ASEAN Charter in 2007⁶⁴, aimed to improve the organisation's institutional framework and legal standing. The Charter specified the fundamental principles, targets, and methods for decision-making of ASEAN and established it as a rules-based institution. The Charter also laid the foundation for the ASEAN Community Vision 2025. This initiative sought to build a more cohesive and connected ASEAN community and its three pillars included the Political-Security Community, the Economic Community, and the Socio-Cultural Community. The relevance of human rights within the ASEAN's framework was progressively acknowledged over time, and this led to the emergence of subsequent initiatives that promoted and safeguarded these rights throughout the region. In the 1980s, NGOs and the UN pushed for a regional treaty to advance and defend

⁵⁹ Vitit Muntarbhorn, 'Developing Regional Mechanisms: Process and Progress', in Withit Mantāphōn (ed), *Unity in Connectivity? Evolving Human Rights Mechanisms in the ASEAN Region* (Brill 2013)

⁶⁰ ASEAN Declaration (Bangkok Declaration) (8 August 1967) available at <<https://cil.nus.edu.sg/database/cil/1967-asean-declaration/>>

⁶¹ Muntarbhorn (n 59).

⁶² Baik, 'Emerging human Rights Institutions in Asia' (n 33).

⁶³ Muntarbhorn (n 59).

⁶⁴ ASEAN Charter (adopted 20 November 2007, entered into force 15 December 2008) available at <<https://aichr.org/key-documents/>>

human rights, which sparked the movement for a human rights mechanism in Southeast Asia⁶⁵. Resolutions encouraging Asian States, including ASEAN members, to think about establishing human rights mechanisms were repeatedly adopted by the UN General Assembly and the Human Rights Commission during the 1980s and the 1990s. The discussions on this topic were officially launched in 1993 when the Foreign Ministers of ASEAN recognised the need for a regional human rights body in their Joint Communiqué⁶⁶. The 2007 Charter stressed the value of democracy, sound governance, and the rule of law as necessary elements of regional stability and growth⁶⁷. It also urged the member states to promote and protect human rights and fundamental freedoms, and it ultimately led to the creation of the ASEAN Intergovernmental Commission on Human Rights (AICHR), which was entrusted with the promotion and protection of these rights in the region. The AICHR, was formally launched in the 15th ASEAN Summit in Phuket, Thailand, in October 2009⁶⁸. The journey towards the development of the AICHR was long and required numerous discussions, debates and negotiations between ASEAN's member states, which illustrated and reflected the diverse levels of commitment among them. Although its efficiency has usually been disputed, the creation of the AICHR represented a formal acknowledgement of human rights as a priority within the ASEAN agenda and was considered as a significant development in the ASEAN's approach to human rights. The ASEAN Human Rights Declaration, adopted in 2012⁶⁹, reaffirmed the member states' commitment to the protection of fundamental rights and freedoms, while stressing the importance of these rights in relation to the ASEAN's objectives⁷⁰. The historical development of ASEAN reflects the organisation's evolution from a regional organisation merely focusing on political and economic cooperation to a more comprehensive institution addressing a variety of issues, including security, socio-cultural matters and human rights issues. Despite its various challenges, ASEAN plays a vital role in the promotion of peace and cooperation in Southeast Asia, and it has made a significant contribution in the protection and advocacy of human rights on the sub-regional level.

5.2 Function

The ASEAN human rights system operates through several key mechanisms and principles. The main organisation in charge of advancing and defending human rights among the ASEAN members is the AICHR.⁷¹ It is a consultative body that provides a forum for member states to communicate and work together⁷². Its main goal is to raise public awareness of human rights issues by promoting human rights through a variety of activities, such as education, research and information sharing⁷³. The AICHR recognises the role that civil society plays in advancing

⁶⁵ Phan (n 17).

⁶⁶ Joint Communiqué of the 26TH ASEAN Ministerial Meeting (24 July 1993) available at < <https://cil.nus.edu.sg/databasecil/1993-joint-communication-of-the-26th-asean-ministerial-meeting/>>

⁶⁷ Baik, 'Human rights Norms in Asia' (n 36).

⁶⁸ Phan (n 17).

⁶⁹ ASEAN Human Rights Declaration (18 November 2013) available at < <https://aichr.org/key-documents/>>

⁷⁰ Hannum (n 18).

⁷¹ Muntarbhorn (n 59).

⁷² Baik, 'Emerging human Rights Institutions in Asia' (n 33).

⁷³ Muntarbhorn (n 59).

human rights, and thus it vividly interacts with many civil society organisations so as to include their viewpoints and concerns into its human rights agenda. This engagement is indispensable in order to guarantee that the peoples' voices are being heard and are taken into consideration in the human rights discussions, and to make the system more receptive to the needs and demands of the people. The AICHR also works alongside other ASEAN Bodies, including the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) and the ASEAN Committee on the Implementation of the ASEAN Declaration of the Rights of Migrant Workers (ACMW)⁷⁴. The effective coordination of these bodies is deemed necessary for comprehensively dealing with the human rights challenges of the region.

5.3 Evaluation

With regards to its regional integration and human rights agenda, ASEAN has achieved a notable progress throughout the years. It has shown a collaborative approach to human rights the Southeast Asian region, altering the perception of human rights from a merely domestic issue to a shared regional duty⁷⁵. The process of establishing AICHR involved both state and non-state actors, demonstrating that ASEAN regionalism is not just a top-down initiative but also incorporates bottom-up influences from civil society and think tanks. AICHR's establishment also showed ASEAN's willingness to confront and negotiate its internal differences in an open and transparent manner, showcasing a more proactive stance in addressing contentious issues. Nevertheless, there are numerous institutional issues with the ASEAN human rights system. The AICHR is considered as a relatively weak institution, lacking enforcement capabilities⁷⁶. Its lack of independence is one of its main shortcomings. It is believed that the AICHR's ability to hold member states governments accountable for abuses of human rights is compromised by its overly strong ties to such governments⁷⁷. The protection mandates of the AICHR and other ASEAN mechanisms are also described as weak⁷⁸. The system places a strong emphasis on using education and awareness-raising initiatives to advance human rights⁷⁹. Nonetheless, there are a lot of obstacles in the protection aspect of the system, which includes the conduct of investigations, and addressing the reported violations. This limits their ability to confront and address the human rights abuses in an effective manner. But even with more powerful mandates, the AICHR could not substitute the role of a human rights court⁸⁰. Therefore, its primary flaw is the lack of a judicial body with the authority to hear cases and render legally binding judgements. One essential component of any functional human rights system is having a legal mechanism for victims of human rights breaches to seek justice or remedies. This lack of a court means that they do not have one. Apart from a court,

⁷⁴ Hannum (n 18).

⁷⁵ Petcharamesree Sriprapha, 'ASEAN Human Rights Regime and Mainstreaming the Responsibility to Protect: Challenges and Prospects', in Charles T. Hunt Noel M. Morada (eds), *Regionalism and Human Rights Protection: Reflections from Southeast Asia and Africa* (Brill Nijhoff 2019).

⁷⁶ Baik, 'Emerging human Rights Institutions in Asia' (n 36).

⁷⁷ Phan (n 17).

⁷⁸ Hien Bui, 'The ASEAN Human Rights System: A Critical Analysis' (2016) 11 *Asian Journal of Comparative Law* 111.

⁷⁹ Muntarbhorn (n 59).

⁸⁰ Bui (n 78).

the AICHR's capacity to hold states accountable for abuses is further restricted by the absence of an individual complaints' mechanism⁸¹. Persons cannot seek redress at the regional level without such procedures. This situation gives the impression that member states can potentially commit human rights violations without any sanctions or scrutiny from the AICHR⁸². In fact, the only action the AICHR may take in response to specific violations is to issue general recommendations or guidelines, which member states might not always take very seriously. It goes without saying that this limited capacity generally undermines the AICHR's standing as a human rights body, as people may lose faith in its ability to achieve any significant change, if they believe that their complaints will not be heard neither by the member states nor by the organisation itself. This inevitably, can also lead to a lack of participation of human rights civil society advocates, which would further reduce the AICHR's overall impact in the region.

Furthermore, there are a number of barriers to the AICHR's work related to the principle of non-interference in a state's internal affairs⁸³. The above-mentioned principle bears close resemblance to the formal practices and principles of ASEAN that govern the diplomatic relations within the organisation⁸⁴. These principles are primarily comprised of four key components: consideration for the domestic affairs of the member states, avoidance of confrontation, refraining from the use of force, and reaching decisions through consensus. This approach reflects the traditional processes of decision-making adopted in many Southeast Asian societies. It encourages "quiet diplomacy"⁸⁵, according to which states should avoid open and direct criticism for one another. This can indeed promote a wider cooperation but often comes at the expense of addressing important issues, such as human rights abuses, which are either ignored completely or inadequately addressed. While this approach has historically helped the region to maintain regional peace, it has made it difficult to tackle urgent situations, resulting in an inaction towards human rights violations and restricting of the AICHR and the ASEAN human rights system as a whole. It can be hard to strengthen regional cooperation on human rights when some member states see reform ideas as threats to their internal affairs and sovereignty, and showcase a strong resistance to allow for robust mechanisms that could lead to intervention in national matters. For instance, the reluctance in adopting individual complaints procedures by ASEAN, is often tied to this principle of non-interference.

The deficiencies of the ASEAN system are illustrated if we look at specific examples of its failure to address concrete human rights violations⁸⁶. First of all, ASEAN did not do enough to prevent the human rights abuses in Myanmar during the military regime ruling the country from 1962 to 2011. Despite the political will to stop these violations, there were no efficient tools or procedures in place to deal with these kinds of problems. Even after Myanmar joined ASEAN, human rights breaches persisted since the organisation lacked the enforcement tools necessary to help the Burmese people. On the other hand, Thailand's political crisis in May

⁸¹ Muntarbhorn (n 59).

⁸² Phan (n 17).

⁸³ Muntarbhorn (n 59).

⁸⁴ Phan (n 17).

⁸⁵ *ibid.*

⁸⁶ Bui (n 78).

2014 serves as another illustration of ASEAN's inefficiency. Although Thailand was among the founding members of ASEAN and was once thought to be a more liberal democracy, the nation was subject to serious violations of human rights. The criticism of ASEAN's insufficient response during this crisis showed that the organisation's ability to deal with human rights abuses was not substantially enhanced by the creation of a human rights framework. These instances suggest a wider inadequacy in addressing human rights concerns, since it may be argued that ASEAN's human right system has had little to no impact on safeguarding freedoms and rights in Southeast Asia. Moreover, yet another example of ASEAN's failure to adequately address severe human rights abuses is the plight of the Rohingya⁸⁷. A humanitarian catastrophe that has attracted international attention and outrage has resulted from the terrible persecution of the Rohingya, a Muslim minority in Myanmar. Effectively addressing the Rohingya situation was hampered by ASEAN's adherence to the principle of non-interference. Collective action is limited since member states are often hesitant to become involved in what they see as another state's domestic affairs. ASEAN's reputation was at great jeopardy due to its insufficient response to the Rohingya crisis. Inaction damaged its credibility around the world by demonstrating to the international community that it is incapable of handling gross human rights breaches.

Despite the initial hopes for AICHR to serve as a robust regional human rights body, it has been described as "toothless" and fairly weak⁸⁸. The AICHR's creation ultimately reflected a compromise between the need to uphold local values and the push to adopt international human rights standards, resulting in a weaker mandate that falls short of the ideal standards established by international principles. When the Terms of Reference (ToR)⁸⁹ were up for revision in 2014, the member states decided not to carry out the review, hence the 2009 terms of reference remained unaltered. Does this imply that ASEAN was not yet prepared back then to adhere to international human rights standards? Is it prepared now? This is still to be determined. The creation of stronger protection mechanisms and the development of new regional human rights instruments are two topics of ongoing discussion regarding how to improve the ASEAN human rights institution. AICHR has been up until now unable or unwilling to create a human rights system that is pertinent to the need of its people and has not yet demonstrated the ability to serve as a reliable regional human rights body. Contrary to global human rights expectations, ASEAN and the AICHR are a disappointing outcome in the pursuit of an effective and credible human rights institution in Southeast Asia.

6. Conclusion

Considering the precedent analysis, it is clear that historically the region is pushing for the development of a regional human rights system. The progressive crystallisation of regional human rights principles and the signs of widespread cooperation between Asian states in

⁸⁷ Sriprapha (n 75).

⁸⁸ Dwi Ardhanariswari Sundrijo, 'Regionalising Global Human Rights Norms in Southeast Asia: A Lesson Learned' in Dwi Ardhanariswari Sundrijo (ed), *Regionalizing Global Human Rights Norms in Southeast Asia* (Springer International Publishing 2021).

⁸⁹ AICHR, 'TOR of AICHR (2009) available at <<https://aichr.org/key-documents/>>

various domains, including most recently this of human rights, highlights that the foundation is there for the future development of an Asian regional human rights system.

Part III: Challenges faced by Asia and the Arguments in favour of the creation of a regional system

1. Introduction

The utter formation of a robust human rights system in the Asian region does not come without difficulties. The particularities and diversity of the region, as already mentioned, can hamper the evolution of existing human rights mechanisms and the creation of novel ones with enhanced strength. This section will analyse the various challenges that Asia face in its combat for a strong regional human rights institution, but it will be argued that these obstacles can actually be lifted. In addition to that the current part of this paper will address the reasons behind the necessity of the regional human rights system in Asia. Answering the question of why we need a regional system for the protection of human rights, as well as naming the benefits of such an advancement for the peoples of the continent, is indispensable if such a system is to be created in the near future.

2. Challenges and how to overcome them

Challenges that need to be addressed if a complete human rights mechanism is to finally emerge in Asia include the following aspects, which however can and are being surpassed one way or another.

2.1 Cultural hurdles – the “Asian values” debate

The vast cultural, religious and linguistic diversity across Asia complicates the efforts to establish a unified regional identity and pan-regional cooperative frameworks. A number of the universal human rights principles may conflict with various Asian cultural and religious traditions, making it difficult to implement them⁹⁰. Gender and caste hierarchies, for example, are deeply rooted in society and usually serve as justifications and perpetuate discriminatory and authoritarian practices against women and other marginalised groups. This can hinder the promotion of equality and poses some challenges to the adoption and enforcement of human rights norms. In addition, a strong emphasis on collectivism – which is common in many Asian societies – can erode the idea and value of individual rights since it tends to put group interests over those of the individuals. These cultural particularities gave rise to the so-called “Asian Values” debate.

2.1.1 The idea of “Asian values”

The concept emerged for the first time in the 1990s, and its supporters claimed that some internationally recognised rights and freedoms are incompatible with certain Asian cultural characteristics⁹¹. This viewpoint is frequently presented as an example of exceptionalism, in which some cultures – especially those of Asia – are thought to have unique traits that allow

⁹⁰ Baik, ‘The implementation of Human Rights in Asia’ (n 4).

⁹¹ Damien Kingsbury, ‘Universalism and Exceptionalism in “Asia”’ in Leena Avonius and Damien Kingsbury (eds), *Human Rights in Asia: A Reassessment of the Asian Values Debate* (Palgrave Macmillan US 2008).

for various interpretations of human rights. The majority of states in any region assert that they are “exceptional” in one respect or another, hence it is not unexpected that some Asian nations argue that Asian cultural values are distinct⁹². Southeast Asia seems to be the region where this perspective is most widespread, and Malaysia and Singapore have constantly articulated it. According to “Asian values”, civil and political rights are culturally particular and cannot be applied universally without exceptions⁹³. In fact, it was suggested that applying Western Standards to non-Western cultures is a sort of Western neo-colonial cultural imperialism, thus putting in question the entire concept of the universality of human rights. Indeed, it is widely considered in non-Western countries that the international human rights standards are way closer to western standards⁹⁴. Western liberal democracies are often viewed as the ideal models for upholding international standards of human rights, as they have evidently higher levels of compliance with human rights obligations, which influences the level of scrutiny they receive during the various UN monitoring processes. This creates a perception that liberal democracies are more aligned with human rights norms compared to other states. Contrary to these assumptions, the “Asian values” point of view stressed the necessity for defining and understanding rights within the context of one’s own local particularities (cultural relativism). A brief but useful synopsis of the “Asian values” debate suggests that the core principles of Asian values are: privileging the nation and community over the individual, emphasising consensus over conflict, calling for social harmony and respect for authority, and prioritising law, social order, and security over individual civil and political rights⁹⁵. From the “Asian values” point of view, most Asian countries give precedence to community, family, and collective well-being over individual rights, arguing that a communitarian approach would better suit Asian societies than an individualistic approach influenced by Western liberalism⁹⁶. Selfishness, moral decay and societal instability, are the consequences of promoting and giving precedence to individual rights and freedoms according to the “Asian Values” supporters, who thus put emphasis on the significance of the collective approach of rights and duties⁹⁷. The respect for authority and social hierarchies is also considered indispensable for preserving stability and order in society, and the Western focus on defying authority in the pursuit of personal freedom and individual rights is again heavily criticised by the advocates of the debate. A few advocates have also called attention to alleged shortcomings in Western human rights practices, claiming that these countries frequently fail to maintain the very principles they support and try to promote⁹⁸. The western democracy’s superiority perspective often overlooks the complexities and contradictions within western-style democracies, which face their own challenges and problems regarding human rights practices, since their institutional frameworks

⁹² Hannum (n 18).

⁹³ Kingsbury (n 91).

⁹⁴ Tobias Kelly, ‘The UN Committee against Torture: Human Rights Monitoring and the Legal Recognition of Cruelty’ (2009) 31 *Human Rights Quarterly* 777.

⁹⁵ Hannum (n 18).

⁹⁶ Surya P Subedi, ‘Chapter 5: The Impact on the Universality of Human Rights of the Shift of Power to the East’, in Surya P Subedi (ed), *Human Rights in Eastern Civilisations* (Edward Elgar Publishing Limited 2021).

⁹⁷ ‘Demystifying Human Rights Protection in Asia’ (n 13).

⁹⁸ Kingsbury (n 91).

may not always efficiently prevent human rights abuses⁹⁹. All these are highlighted and supported by the “Asian Values” advocates and has led some to doubt the validity of western human rights advocacy and accuse Western states of hypocrisy. The widespread criticism of “Western” views of human rights most likely stems from the colonial rule’s historical effect in the region. The political argument claiming for a tight correlation between the political systems that have facilitated economic growth and economic success of East Asian countries, commonly known as the “Asian Tigers”, is another aspect of the “Asian values” rhetoric. Taiwan, South Korea, Hong Kong, Singapore, and other “Asian Tigers” saw notable economic growth while operating under various authoritarian or quasi-authoritarian regimes¹⁰⁰. Due to these accomplishments, there has been made the argument that these political structures are compatible with economic growth, and put into question the idea that democratic models of the West are always universally applicable. The predominance of Western narratives in the debate of rights and governance is challenged and it is argued that the economic success of the above-mentioned States, demonstrate that different political systems can also promote growth. These countries’ economic prosperity has cultivated a feeling of pride in their national identity, which has enabled their leaders to advance an exceptionalist narrative that argues that their political structures are valid and efficient within their particular cultural conditions. Cultural elements such as Confucian principles which emphasise the importance of social harmony, discipline and education are often viewed as the foundation of the distinct Asian political styles of governance and overall success, undermining the significance of Western democratic values and ideals.

2.1.2 Counterarguments

The debate, from my point of view, is highly outdated and irrelevant, and there are various counterarguments that can contradict its core ideas.

2.1.2.1 Historical context of human rights in Eastern civilisations

The “Asian values” argument overlooks the historical background of human rights in Asia, which entails a rich and abundant heritage of moral and philosophical thought, supporting the idea of individual rights and dignity, in most Eastern civilisations¹⁰¹. Critics of the debate reject the notion that human rights are exclusively a Western invention, pointing out that many Asian cultures have their own conceptions of justice and rights that are consistent with universal human rights principles. Human rights ideals can be particularly traced in Hinduism and Buddhism, which have influenced the legal systems and cultural identities of many Asian nations. While Buddhism and Hinduism did not explicitly teach human rights in the modern terms, they did establish the fundamental ideas that underpin the ideas of human rights. The analysis of their texts show that both religions support moral principles including tolerance, non-violence, respect of human life, the necessity of duties alongside rights, and the

⁹⁹ Kelly (n 94).

¹⁰⁰ Kingsbury (n 91).

¹⁰¹ Surya P Subedi, ‘Chapter 2: Human Rights Values in Eastern Civilisations’, in in Surya P Subedi (ed), *Human Rights in Eastern Civilisations* (Edward Elgar Publishing Limited 2021).

preservation of personal liberty and human dignity. This demonstrates that the concept of human rights has existed for centuries in many eastern societies and it has had a great influence in the contemporary philosophy around human rights. As a result, it is ostensible that drawing a dichotomy between Western and non-Western values, especially when it comes to human rights ideals, is becoming increasingly irrelevant in the context of IHRL. Despite the historical roots and origins of contemporary human rights law in Western thought, all states are currently bound one way or another by international human rights standards, which extend beyond spatial and cultural frontiers, as people and communities all around the world have a shared aspiration for dignity, freedom, and justice, regardless where they live or where they come from. The categorisation of these rights in a dipole of Western and non-Western values, undermines and neglects the universality of human rights, the contributions of diverse cultures to their development and the shared commitment to upholding, promoting and protecting them.

2.1.2.2 The East Asia Economic crisis (1997-1998)

The 1997-1998 East Asia economic crisis had an enormous impact on the debate about “Asian values”¹⁰². The crisis questioned the very core of the “Asian values” argument: that the success of the Asian countries’ economies could be traced to their authoritarian rule. The leaders who had used the promotion of “Asian values” as a justification for restricting civil rights and liberties were discredited when the rhetoric based on the argument that authoritarian control and “Asian values” were required to achieve economic success was destroyed. Because of the disastrous consequences that many Asian states’ economies suffered from, including those representing a model of economic success, like Thailand and Indonesia, there came a partial revision of their convictions on the link between “Asian values” and economic development. Also, a change of political climate took place many Asian countries in the aftermath of the crisis. This was witnessed, for instance, in Indonesia, in a drastic political shift that took place toward the democratisation of its government and a more vocal interest for human rights in the post-Suharto political era. Overall, the economic collapse led to a sharp turn, in which the “Asian values” debate as a whole began to lose public and political acceptance. It also set off an increase in regional human rights advocacy. With the failures of the authoritarian regimes being more apparent, there was a momentum for civil society groups and pro-democracy movements to fight for a greater recognition of civil and political rights in the region.

2.1.2.3 Political Manipulation

The political use of “Asian Values” can question its legitimacy as a cultural argument. It is possible to view the entire discussion as a tool for political manipulation¹⁰³. Political leaders may use this debate on rights as a pretext for imposing restrictions on political liberties, authoritarian policies, and repression of their opposition. Political regimes can stay in power and pretend to respect local customs and to represent the beliefs or wishes of the people by characterising certain rights as superfluous or culturally inappropriate. The discussion around “Asian values” draws a divisive line between “the West” and “the East”, often portraying the

¹⁰² Kingsbury (n 91).

¹⁰³ *ibid.*

latter as the victim of Western imperialism, and is thus characterised by a form of strategic essentialism, which rejects the universality of human rights on the basis of cultural differences.

2.1.2.4 Other arguments

Other counterarguments against the “Asian values” include the following. The idea of “Asian values” frequently suggests a single set of principles and standards that are prevalent in all Asian cultures, with no exceptions¹⁰⁴. However, many scholars contend that there is actually no single and homogenous “Asian perspective” that is universally applicable because of the region’s enormous cultural, historical, and socioeconomic diversity. As a result, it is impossible to define a singular set of “Asian values” universally applicable across the whole region. The claim that there are certain specific values that justify and support authoritarian rule or the denial of individual rights is also refuted by this diversity. On the other hand, the rhetoric surrounding “Asian values” started to become fragmented, as many states and leaders understood and implemented the idea in varied ways¹⁰⁵. This lack of consistency and coherence of the arguments made it challenging to present a unified front against the universality of human rights. Finally, the data reflected when looking at the public opinion in several Asian states, challenges the assumption that Asians view the communal ideals as a priority compared to their own individual liberties¹⁰⁶. Indeed, whenever they are given the opportunity, many citizens advocate their will for individual freedom and democratic governance, which suggests that the rejection of “Western-style” rights is not so common after all.

2.2 Emphasis on development and economic growth

For many Asian countries, economic development has been a top priority¹⁰⁷. As a result, economic cooperation – particularly trade and development – have been the main focus of Asian regional integration. Discussion about human rights is often marginalised by this market-driven approach. The question of how human rights and economic development relate to one another has been debated for many years. “The main obstacles to the realisation of the right to development lie at the international macroeconomic level, as reflected in the widening gap between the North and the South, the rich and the poor”, according to the 1993 Bangkok Declaration. It further notes that efforts to establish a just and equitable global economic order “must go hand in hand with the creation of uniform human rights norms”. An economy-first approach often results in States prioritising economic growth and national security before individual rights. A long-running debate in Asia has been whether, considering the limited resources in many developing nations of the continent, priority should be given to economic, social and cultural rights -especially the right to development - over civil and political ones. However, countries that do not show respect for civil and political rights have realised that the so-called “human right” to development provides a convenient alternative that can be used to excuse actions that would otherwise be considered violations of human rights. Even though the

¹⁰⁴ Subedi (n 91).

¹⁰⁵ ‘Demystifying Human Rights Protection in Asia’ (n 13).

¹⁰⁶ Kingsbury (n 91).

¹⁰⁷ Hannum (n 18).

United Nations Declaration on the Right to Development¹⁰⁸ states that “the human person... should be the active participant and beneficiary of the right to development”, it is still challenging to fairly distribute development’s benefits. Many Asian countries have achieved great progress at the top and sometimes middle of the economic pyramid, while failing to guarantee that the poorest are not left behind. The argument over how to accomplish the often-unclear goal of “development”, whether couched in terms of human rights or socioeconomic principles, is unlikely to be concluded any time soon, even if the rights to participate in and benefit from development without discrimination are recognised. Thus, the precedence to the right to development cannot be used as an excuse in order to disrespect international human right standards. Also, we must not forget that Asia is not the same continent, in terms of economic conditions, as it was back in the 1990s, when the argument was articulated for the first time. Today Asia is home to numerous economic giants (i.e. China, India, S. Korea, Japan etc.) who are considered well-beyond economically developed, and can actually shape significantly the world’s economy. Furthermore, the concerns for the establishment and promotion of a right to development are not limited to Asian countries, as apart from the UN Declaration on the Right to Development, the UN Human Rights Council has embarked since 2018 on the drafting of a Convention on the Right to Development¹⁰⁹. A first Draft Convention text was ready by January 2020, and then a session of the Intergovernmental Working Group on the Right to Development was conducted in May 2023, concluding on a revised Draft text. If adopted by the UN General Assembly, 20 countries would then have to ratify the convention for it to come into force. It is argued that the Convention can potentially provide meaningful protection that is yet not sufficiently available in current international human rights treaty laws to individuals, communities and populations and it remains to be seen to what extent the States involved in the treaty-making process will ensure that the final treaty advances in this direction. But in general, this step on the universal level, shows once more, that the priority given to development cannot be used anymore to avoid the obligations deriving from human rights norms.

2.3 Political reluctance – Historical tensions

Political and economic factors in the Asian continent, may create resistance against a widespread regional collaboration for human rights. The chaotic differences in ideology and systems of governance that shape the political landscape in the Asian continent, can result in various competing interests and diverse agendas among the Asian States¹¹⁰. This political variety -from democracies to dictatorships- hampers the development of a coherent approach to human rights. At the same time, the disparities in the levels of economic development and the different economic priorities can sometimes serve as impediments to the region’s cooperation, given that wealthier and economically developed states may have completely

¹⁰⁸ Declaration on the Right to Development adopted by UN General Assembly Resolution A/RES/41/128, “The right to development” 4 Dec 1986

¹⁰⁹ Koen De Feyter, ‘The Convention on the Right to Development. Drafting a new Global Human Rights Treaty’ (2022) 77 *Comunità internazionale* 413.

¹¹⁰ Tae-Ung Baik, ‘Analytical Framework: Human Rights Systems in Asia’, in Tae-Ung Baik (ed), *Emerging Regional Human Rights Systems in Asia* (Cambridge University Press 2012).

different objectives and goals than the developing ones. Furthermore, there are also historical reasons behind the reluctance of Asian states for unity. Many Asian nations were divided and dominated by Western powers during the colonial era, which has highly influenced and shaped modern regional identities and groupings. The process of defining the area can be seen as a means of conquest or external control, since it affects how nations perceive one another and interact with each other. There are also numerous transitional justice issues from previous regimes and past conflicts which remain unresolved up to this day, further perplexing regional inter-state relations¹¹¹. These include crimes against humanity and war crimes that call for remedies and accountability. The relationships among many Asian countries are still impacted from the unresolved tensions deriving from the events of WWII, the Korean and the Vietnamese wars, which foster a culture of distrust and reluctance for establishing formal organisations. The region must strike a difficult balance between the need for reconciliation and the pursuit of justice for past atrocities in order to become more united. This historical and politico-economic context illustrates how challenging it is to form a coherent regional identity and to create a regional framework for collaboration throughout the whole Asian region.

Despite the aforementioned obstacles and the continent's seeming fragmentation, regional integration in Asia is constantly advancing. Regionalism is being fuelled by globalisation, and in order for Asian nations to be competitive at the global market, they need to work together more and more¹¹². Though unity is indeed hard to be achieved, it is becoming highly feasible in the context of a world that is rapidly changing, as seen by the recent initiatives (see supra, Part II) that took place during the last decades particularly in East Asia. Economic links and technological improvements have led to an increasing interdependence among East Asian countries, a fact that has produced a cooperative environment and framework for resolving human rights challenges. This regional collaboration has laid the groundwork for a formal and effective human rights mechanism in Asia. Adding to that, today, even some of the most oppressive regimes in Asia are starting to adopt a human rights language and recognise the significance of certain rights, even if this is conducted in a limited, selective and a strategic way. This change demonstrates that there is a widespread understanding among Asian states, that human rights norms cannot be completely disregarded, given the international scrutiny surrounding them. Moreover, the fact that the BRICS (Brazil, Russia, India, China, and South Africa) and MINT (Mexico, Indonesia, Nigeria and Turkey) are constantly gaining influence on a global level, suggests that these countries can have a substantial impact on the discussion around human rights in a number of different ways¹¹³. These states' rapid rise signifies a change in the balance of power in the global sphere, one that may pose a threat to the West's long-standing dominance in shaping the human rights agenda. As these countries become more powerful, they might try to speak up more on behalf of developing states. This is a great opportunity for these countries to promote a fairer human rights agenda that respects universal standards, but also takes into account the diverse cultural viewpoints of many different states. If the countries that hesitate to adhere to the international human rights standards, believe that

¹¹¹ Baik, 'The implementation of Human Rights in Asia' (n 4).

¹¹² Baik, 'Analytical Framework' (n 110).

¹¹³ Subedi (n 96).

their interests and cultural sensitivities, are better represented by the BRICS and the MINT countries, they may take a more positive approach towards human rights, which could of course positively affect the Asian region. Lastly, there are some signs that demonstrate a political commitment for overcoming the above-mentioned political difficulties and tensions, and establishing an Asian human rights system¹¹⁴. More in particular, on 11 October 2023, the UN Conference Centre (UNCC) hosted in Bangkok, Thailand the Asia-Pacific Regional Dialogue for Human Rights 75. More than 250 people attended the event, which was organised by the Office of the UN High Commissioner for Human Rights (OHCHR). In order to accelerate the discussion on regional collaboration to advance human rights and take further steps towards a regional human rights mechanism in the spirit of the UDHR, the Asia-Pacific Regional Dialogue brought together Regional Inter-Governmental Organisations, National Human Rights Institutions, UN agencies and entities, Special Procedures Mandate Holders, civil society organisations, youth organisations, academia and more. The areas of discussion included the establishment of regional human rights mechanisms, the region's current state of development, global lessons to be learnt, and directions for the future. This occasion undoubtedly indicates that the conversation on the establishment of regional human rights mechanisms in the Asia-Pacific region is very much alive.

3. What can a regional human rights system offer in Asia?

A regional human rights system can have a number of important benefits for Asia including inter-state cultural understanding, enhanced regional cooperation and greater protection of human rights.

3.1 Cultural understanding

The cultural proximity among the member states of a regional human rights institution offers the chances for a better and more effective protection of international human rights norms¹¹⁵. A regional system is crafted in a way that allows it to operate through the lens of the particularities of a certain region. Having a better understanding of cultural nuances, historical backgrounds and local contexts can result in an efficient human rights protection tailored to the needs of the region, while at the same time not distant to the global human rights standards. This localised understanding can help the Asian States handle more effectively human rights breaches¹¹⁶. As the regional institution would be staffed with persons of Asian origin, who are more familiar with the realities that Asian countries face, they could ultimately achieve a reconciliation of moral Asian traditions and international human rights norms, while reducing the risk of political manipulations by governments or local elites, especially given the fact that many Asian governments have openly declared their scepticism towards “western-centric” human rights frameworks. Balancing the cultural and political diversity, the distinct levels of

¹¹⁴ Asia-Pacific Regional Dialogue for Human Rights 75 Summary Report, available at <<https://bangkok.ohchr.org/aprd-hr75/>>

¹¹⁵ Baik, ‘Emerging human Rights Institutions in Asia’ (n 33).

¹¹⁶ Buhm-Suk Baek, ‘Do We Need Regional Human Rights Institutions in the Asia-Pacific Region?’ (2011) 56 Korean Journal of International Law 47 available at <<https://ssrn.com/abstract=2194045>>.

economic development and the plethora of different legal systems among the individual States is a real challenge that only a regional human rights system can achieve¹¹⁷.

3.2 Better cooperation

Regional bodies can provide incentives and facilitate regional cooperation among states leading to regional dialogue and a more collaborative environment that reduces political tensions, which can result to stronger human rights protection and compliance with human rights obligations¹¹⁸. The existence of a regional system creates a sense of regional solidarity and collective responsibility that make states more likely to cooperate and support each other in dealing with human rights concerns, and inevitably making the responses to the human rights violations more effective. Another important benefit of regional institutions is the so-called “neighbourhood effect”¹¹⁹. The concept refers to the phenomenon where in a regional system, Member States may invite neighbouring States with more or less similar socio-economic and security goals to join the forum, and enforce compliance with international human rights obligations. This way, while regional bodies in Asia may emerge with a small number of states at first, this “neighbourhood effect” can gradually increase the number of participating states, promoting more effectively human rights norms in the region.

3.3 Greater Efficiency

The regional system would fill most of the gaps of the UN system given their flexibility, adaptability, enhanced legitimacy and the spatial proximity between its members. As mentioned above the Global human rights mechanisms struggle to offer an efficient human rights protection to the Asian region due to the unique challenges and diversity of the region. A regional system could address the limitations of the global system and provide a more responsive approach to human rights issues in the region¹²⁰. First of all, regional bodies can operate as a medium between global and national institutions, especially in cases of states unwilling to cooperate with the UN are reluctant to accept any intervention from international institutions¹²¹. Regional institutions can also strengthen the legitimacy of human rights interventions compared to the UN or individual states. The UN while having a greater authority than a regional body, is not always welcome to intervene in cases of abuses. One of its fundamental principles is the principle of state sovereignty and non-intervention, which can limit the response of the UN to human rights abuses. On the contrary, a regional system, while broadly compatible with the spirit and the standards of the universal human rights norms and treaties, can respond more adequately to human rights concerns, given that the Asian States are more inclined to agree to a regional human rights treaty that would allow criticism from neighbouring countries, rather than the international community as a whole, due to the political tension of many Asian nations with developed Western countries. At the same time

¹¹⁷ Baik, ‘Emerging human Rights Institutions in Asia’ (n 33).

¹¹⁸ Baik (n 116).

¹¹⁹ *ibid.*

¹²⁰ Baik, ‘Emerging human Rights Institutions in Asia’ (n 33).

¹²¹ Baik (n 116).

geographical proximity of the member states of the regional institution can offer more quick and timely solutions in cases of human rights violations¹²². Finally, the regional system offers a more accessible avenue for the victims and human rights defenders to seek remedy and support¹²³. Currently they face many challenges in reaching international human rights agencies and seeking protection from the violating state, particularly in Asian countries, where the international bodies struggle to operate in an effective manner. Asking for help from a neighbouring state is usually easier than pursuing redress in the international community.

4. Conclusion

The path towards an Asian Human Rights system is certainly not an easy one. The obstacles abound and are the main reason behind the historical inability of the region to reach a consensus for the development of its own regional human rights system. Nevertheless, the problems and particularities can be overcome with the right approach, and since a regional human rights system in Asia has a lot of benefits to offer in the region's way towards enhancing its level of human rights protection, Asia should absolutely move towards the direction of a regional human rights system.

¹²² Baik, 'Emerging human Rights Institutions in Asia' (n 33).

¹²³ Baek (n 116).

Part IV: The Way Forward for Asia

1. Introduction

This final part is dedicated to the prospects for the creation of a regional human rights system in Asia. For this purpose, this part will include a comparative analysis between the existing regional human rights systems in other continents-regions. This comparison will help us draw some meaningful conclusions regarding the lessons that should be learned by Asia when working on the development of its own human rights system. Apart from this analysis, this part will also enumerate and evaluate some of the most important recent advancements and initiatives concerning the establishment of the Asian Human Rights system, in order to showcase that there is indeed progress in this respect in the area, through a continued and gradual evolution.

2. Regional human rights systems in other regions

Based on the UDHR and the UN Charter, Regional Human Rights Institutions were created following the atrocities of World War II, as a means to integrate human rights agendas at the national, regional and international levels. Each region faced its own challenges and concerns, and for each area there were distinct historical and political reasons that led to the development of the different regional systems. Thus, regional human rights systems, show both elements of uniformity and diversity in their origins. The regional human rights institutions typically comprise three essential components: i) a list of the human rights that are agreed on the basis of a human rights treaty or a charter at the regional level, ii) permanent bodies like regional human rights commissions and courts to supervise and promote human rights norms and iii) hard law compliance mechanisms and procedures, which are legally binding and can ensure the protection of such rights. In order to demonstrate why it is desirable to develop a regional human rights system in the Asian region, this section will offer a brief comparative analysis between the current regional human rights systems in other areas, and thus illustrate how these systems have positively contributed to the promotion and protection of rights in said regions, primarily focusing on the specific advantages that can and should be reflected in Asia as well.

2.1 Comparative analysis

Regional human rights institutions exist in Europe, the Americas, Africa and the Arab nations. A comparison between the currently established regional systems in other areas of the world, can show how these systems operate and highlight their strengths and weaknesses. In the context of the discussion for the development of a regional human rights system in Asia this comparative analysis is deemed necessary.

2.1.1 Europe

Europe possesses a highly efficient and relatively successful regional human rights framework. In an effort to restore democracy, the rule of law, and peace to the region, following the atrocious events of WWII, the continent adopted the European Convention on Human Rights

and Freedoms (ECHR), its principal human rights instrument, and founded the European Court of Human Rights in 1950¹²⁴. Respecting human rights was vital for European states in order to maintain the democratic rule and prevent the rise of dictatorships. States in the West were also able to create an exclusive human rights system as a response to the ideological conflict between Eastern and Western European nations. The European Commission of Human Rights was founded in 1954, only to be abolished later on in 1998, under Protocol 11. With this Protocol the European Court of Human Rights was established as a permanent court and assumed the responsibilities of the former Commission. The 27 EU member states and the additional 19 members of the Council of Europe are currently under the jurisdiction of the European Convention on Human Rights (ECHR). Regarding the mechanism's success, the influence of the ECtHR's case law within and outside Europe is widely acknowledged¹²⁵. The region's overall level of protection for human rights is elevated by the Court's unique procedure for individual applications. Although this mechanism is one of the major strengths of the system, it has also caused the Court to face significant challenges, due to the excessive workload that it has to deal with. The institutional support for the Court's rulings provided by the Committee of Ministers, which monitors the execution of the ECtHR's judgements, is another advantage of the European system. Additionally, there is a continuous progress in the coordination between various actors in the European system, and particularly between the EU and the CoE. On the other hand, a shortcoming of the ECHR, is its limited jurisdiction over social, economic and cultural rights, which leaves the control over these rights in the hands of the European Committee of Social Rights (ECSR), a less powerful body that supervises the European Social Charter and lacks judicial authority as well as the ability to receive individual complaints. Overall, the European system is considered to be the most comprehensive and influencing regional human rights system in the world.

2.1.2 The Americas

Another well-functioning regional human rights system is that of the Americas¹²⁶. The Americas have the oldest regional human rights protection system. In 1948, a coalition against communist threats and a rising regional solidarity developed during the movements for independence led to the adoption of the Inter-American Declaration on the Rights and Duties of Man. Then, in 1959 came the creation of the Inter-American Commission of Human Rights. Lastly, 1969 was the year that the American Convention on Human Rights (ACHR) was ultimately adopted. ACHR focuses on civil and political rights. Nonetheless it also has additional protocols that also deal with economic, social and cultural rights, and the eradication of the capital punishment across the region. However, compared to the main convention these protocols are relatively weak when it comes to protection mechanisms, as the individual complaints mechanism is only reserved for breaches of rights regarding trade unions and education. In 1979, the Inter-American Court of Human Rights was founded. While the Inter-American Commission on Human Rights is tasked with quasi-judicial and promotional

¹²⁴ *ibid.*

¹²⁵ 'The Role of Regional Human Rights Mechanisms | Think Tank | European Parliament' <[https://www.europarl.europa.eu/thinktank/en/document/EXPO-DROI_ET\(2010\)410206](https://www.europarl.europa.eu/thinktank/en/document/EXPO-DROI_ET(2010)410206)>.

¹²⁶ Baek (n 116).

responsibilities, the state-parties to the American Convention are subject to the judicial power of the Inter-American Court¹²⁷. Among the main advantages of the Inter-American system is that the Inter-American Court issues extremely progressive rulings, especially with regards to reparations, and the Commission, when executing its promotional duties, has the power to conduct investigations regarding the situation of human rights in any of the OAS member states, through country visits, on-site observations, and the publication of country reports. The Interamerican Court also has the competence to receive individual complaints. However, one problem arising with regard to this competence is that the Commission filters all the Complaints before they reach the Court. As a result, individual complaints cannot be filed directly to the Court, but instead it is the Commission who files the complaint, which accounts for the small number of complaints that eventually make it to the Court. Other weaknesses include the Court's non-permanent nature, its inadequate funding, and the Inter-American system's lack of a robust institutionalised mechanism for monitoring the execution of its rulings, making compliance with its judgements contingent upon the pressure and influence of civil society. The Inter-American systems is procedurally advanced, yet it isn't always effective. The differences among its member states in a variety of areas (i.e. legal and socioeconomic heterogeneity) is one of the major issues the OAS must deal with. There is also an imbalance of powers, with the US, being the sole superpower in the region, constantly undermining and weakening the political influence of the OAS's human rights institutions. Another drawback is the fact that out of the 35 members of the OAS, only 25 have ratified the Convention (with the US being the most notable example of a state that has not), and not all of them have acknowledged the Court's authority to adjudicate on claims of human rights abuses. Furthermore, the fact that there are two human rights instruments, the American Declaration on the Rights and Duties of Man on the one hand, and the American Convention of Human Rights on the other hand, is contesting the efficacy of the human rights protection system in the Americas.

2.1.3 Africa

Moving on, Africa is home to yet another significant regional human rights system¹²⁸. In 1981, the African Charter on Human and People's Rights (ACHPR) was adopted. The African human rights agenda stressed out the right to self-determination as a result of colonisation and the regional actions sparked by the apartheid regime and South Africa's widespread human rights violations. One of the unique characteristics of the African Charter are its recognition of collective rights, declaring legal duties towards society, the community (referred to as ubuntu) and the family, and the particular emphasis put on the importance of the right to development, as this is stipulated in Article 22 of the Charter. The Protocol establishing the African Court of Human and People's Rights was adopted in 1988, the same year that the African Commission on Human and People's Rights was established. The African Court on Human and People's Rights was finally founded in 2006. Unlike other regional human rights courts, the Court has a special provision that specifies that human rights treaties ratified by African Member States

¹²⁷ 'The Role of Regional Human Rights Mechanisms | Think Tank | European Parliament' (n 125).

¹²⁸ Baek (n 116).

are considered to be under its jurisdiction. Despite the fact that Africa has all the necessary components for a functioning regional human rights mechanism, the system nevertheless has some significant flaws that limit its efficacy¹²⁹. These flaws are mostly structural in character, with the main problem being the political indifference of certain members to effectively engage in the regional system and cooperate. The theoretically effective African mechanism suffers from the possibility of falling under hostile political influence and states' reluctance to accept outside criticism of their human rights records. Consequently, the promising biannual reports have remained a fairly useless tool, and the African Peer Review Mechanism (APRM), a novel and innovative monitoring procedure that includes a country's self-assessment, has suffered from similar hurdles. On the other hand, even though it has a broad mandate to promote human rights, which distinguishes it from the rest regional systems, the African Commission faces challenges in implementing it due to its insufficient funding. Not only does the Commission have a lack of financial resources, but it also lacks human capital because the majority of its commissioners have senior national positions. Naturally, this creates more doubts regarding the Commissioners' independence. While the African Court has been met with great expectations, not all African States have accepted its jurisdiction, and the Court, like the Commission, continues to suffer due to a shortage of financial and human resources. In addition to that, individual complaints, can only be filed via the Commission (with very limited exclusions). In sum, even though the African regional human rights system has a lot of potential, the international community must provide it with substantial financial and professional support if it is to become more effective in advancing and defending human rights.

2.1.4 The Arab Nations

Finally, the Arab nations also have established a regional human rights system, which nonetheless, remains highly underdeveloped. The Arab Human Rights System is unfavourably compared to other regional systems, such as the European, Inter-American, and African human rights regimes. Even so, the very creation of such a system is encouraging and ought to be viewed as a step in the right direction for the defence of human rights in the Arab States¹³⁰. The Arab Charter of Human Rights which was developed in 2004 and entered into force in 2008 after being ratified by 7 states, is not consistent with the international standards for human rights in several ways. As a result, it requires revision and the adoption of several additional protocols. This also applies to the Arab Committee on Human Rights, whose work relies on its members' independence being respected and guaranteed. The Arab Human Rights Committee, has a very restricted mandate focused primarily on monitoring and reviewing the implementation of the Charter based on reports submitted by state parties¹³¹. It thus lacks any real enforcement powers. Its role is confined to making recommendations to the League of Arab States based on its review, which means that it cannot compel states to comply with human rights standards or address violations directly. It also does not have the authority to receive individual or state communications or complaints, which significantly limits its

¹²⁹ 'The Role of Regional Human Rights Mechanisms | Think Tank | European Parliament' (n 125).

¹³⁰ *ibid.*

¹³¹ Ahmed Almutawa, 'The Arab Court of Human Rights and the Enforcement of the Arab Charter on Human Rights' (2021) 21 Human Rights Law Review 506.

effectiveness as a human rights enforcement mechanism. Overall, the Arab Committee is considered a body with significant shortcomings in terms of accountability and enforcement, highlighting the need for a more effective mechanism to address human rights violations within Arab states. Moreover, there are numerous obstacles in the way of civil society's participation in the Arab system. The necessary frameworks for the development of civil society and, in particular, for guaranteeing NGOs a place in the regional system for protecting human rights are absent from Arab countries. Despite these limitations, the Committee has accepted statements from NGOs and has promised to ensure regular access for them to its sessions. This indicates some level of engagement with civil society, although it does not compensate for the lack of a robust enforcement mechanism. The establishment of an Arab Court of Human Rights is seen as a crucial step towards addressing the enforcement void left by the Arab Charter. The Statute of the Arab Court of Human Rights (2014)¹³² aimed to fill this void. Despite its potential, the Court has faced criticism for not providing a direct right of individual petition. Critics argued that this limitation undermines its effectiveness and ability to serve as a genuine human rights enforcement body. However, some counterargued that the Court should still be welcomed as an important development within the context of the Arab human rights system, even if it is not perfect. They suggested that the Court could help foster a culture of human rights in the Arab world, by providing advisory opinions and resolving interstate complaints. This could create pressure on member states to reform the Court and eventually allow for individual petitions. The idea is that a weakly legitimate Court could still contribute to the development of human rights norms and practices in the region, through a gradual, internally driven process of reform rather than a sudden imposition of external standards. The effectiveness of the Court is enhanced if Arab states feel a sense of ownership over the system, which is more likely to occur if reforms are initiated from within rather than imposed from outside. Of course, the importance of engaging with NGOs in the process of establishing the Court could not be overlooked, as by accrediting NGOs to bring individual complaints, the Court could enhance its legitimacy and effectiveness, thereby contributing to a stronger human rights culture in the region. In summary, while the Arab Court of Human Rights is viewed as a significant step towards improving human rights enforcement in the Arab World, its effectiveness will depend on addressing its limitations, and encouraging active participation from civil society. All the above-mentioned concerns around the Arab Court on Human rights can analogously be transferred to the debate over the potential Asian Human Rights Court, given the great similarities these two regions share.

2.2 Lessons learned for Asia

Asia could benefit a lot from the evolution of the above-analysed regional human rights systems and their established human rights frameworks, especially those of Europe, the Americas and Africa. Asia's institutionalisation process can be concluded, despite the current disorganised efforts, by gaining valuable experience from the way these systems operate, and

¹³² Statute of the Arab Court of Human Rights adopted with the Council of the LAS Resolution no 7790 EA (142) C 3, available at <https://aci.hl.org/texts.htm?article_id=44&lang=ar-SA>.

Asian states have great examples of how to increase human rights protection throughout the region, via a multitiered approach to human rights institutions.

2.2.1 Political Will and Commitment

Any regional system must be able to guarantee that its member states are prepared and ready to uphold and enforce human rights standards¹³³. The European system has been comparatively effective and successful, exactly due to the collective dedication and commitment to global human rights norms, as well as the typically good human rights records of the European nations¹³⁴. This political will, is considered to be the major factor contributing to the power and effectiveness of the European regime, rather than the mere existence of the regime itself. A similar commitment is required from Asian States in order to support the creation and operation of a regional human rights institution and avoid viewing it as a threat to national sovereignty. Thus, it is indispensable to overcome political reluctance and resistance and secure a sufficient number of state ratifications, challenges that also existed in the American and African system.

2.2.2 Financial and Political Challenges

A broad variety of political systems, including democracies, authoritarian regimes and hybrid systems, is found throughout Asia¹³⁵. This diverse landscape is comparable to that of the Americas and Africa, where countries have likewise very distinct levels of political freedom, and models of governance. However, the experience from these other regions shows that human rights developments can coexist with these political challenges. For instance, the Inter-American Court of Human Rights was established amid circumstances unfavourable for the protection of human rights. Many state parties to the American Convention of human rights had not ratified a great number of international human rights treaties and had not accepted the jurisdiction of their respective monitoring bodies, while at the same time the detrimental effects of poverty, corruption, and the lack of education concerning the promotion and protection of human rights created a discouraging environment for human rights advancements. The unstable political conditions in Latin America, similar to those in many Asian states, resulted in the drafting of the provision of Article 46 of the ACHR, that allows for multiple exceptions to the exhaustion of local remedies, contrary to the European system where democratic values are predominant and more stable¹³⁶. Since many Asian States lack democratic institutions, it may be necessary to take these provisions into account when establishing regional human rights institutions in the Asian Region. In addition to the political difficulties, financial problems also exist. Asian economies are very different from one another, with some growing quickly, while

¹³³ Baik, 'Emerging human Rights Institutions in Asia' (n 33).

¹³⁴ Debra L DeLaet, 'An Emerging Asian Human Rights Regime as a Tool for Protecting the Vulnerable in Asia?: Lessons from the UN Human Rights System and Other Regional Human Rights Regimes', in Fernand de Varennes and Christie M. Gardiner (eds), *Routledge Handbook of Human Rights in Asia* (Routledge 2018).

¹³⁵ Hao Duy Phan, 'A Selective Approach to Establishing a Strong Human Rights Mechanism in Southeast Asia: The Case for a Southeast Asian Court of Human Rights', in Hao Duy Phan (ed), *A Selective Approach to Establishing a Human Rights Mechanism in Southeast Asia* (Brill 2012).

¹³⁶ Baik (n 116).

others having significant economic struggles¹³⁷. This is also similar to the economic inequality that exists among the countries in Africa and the Americas. These inequalities may affect a state's ability to fund human rights organisations and initiatives. The African and the Inter-American systems' experiences show that financial resources are essential to the functioning of human rights courts. In order to guarantee the sustainability of its human rights mechanisms, Asia needs to tackle possible financial obstacles at an early stage of the institutionalisation process.

2.2.3 Gradual Development

Building a strong human rights system requires a selected and sequential approach, according to the example of other regions¹³⁸. The European system's evolution – from the European Commission and Court to a permanent human rights court – shows how crucial it is to modify structures to increase effectiveness and how building a strong human rights instrument needs time and effort. The European Court of Human Rights took some time to become as reputable and efficient as it is today. Similarly, the African Court on Human and Peoples' Rights required a significant amount of time to be established in Africa, due to the time-consuming process of achieving enough ratifications¹³⁹. Nevertheless, the Court's mere eventual establishment indicates that an area may be forced toward the creation of a regional human rights institution, through coordinated initiatives and interactions amongst the various stakeholders, including states, NGOs, and regional entities. This slow evolution and gradual development demonstrate that creating a strong human rights framework is a process that calls for patience, persistence and relentless effort¹⁴⁰. Consequently, Asian countries ought to look at the long-term and accept that creating a robust human rights system and a well-functioning human rights court, call for consistent work and little steps forward. Thus, the region needs a phased approach, progressively putting in place mechanisms that fit its particularities, while taking into account the obstacles and successes of the rest regional systems.

2.2.4 Education - Public Awareness - the role of Civil Society

Apart from the above it is essential to establish a grassroots human rights culture¹⁴¹. An inspection of other regions highlights the importance of educating the wider public and raising awareness for human rights issues, which has proved to be a difficult task in the institutionalisation process of other regions, and especially Africa. Education and public awareness can enable people to hold governments responsible and fight for their rights. The Inter-American Commission's country reporting and investigating under Article 41 of the ACHR, have greatly increased public awareness in the region and mobilised the international community, even though it lacks the power to interfere in the internal affairs of individual member states, giving valuable lessons for the Asian region¹⁴². It also worths mentioning here,

¹³⁷ Phan (n 135).

¹³⁸ *ibid.*

¹³⁹ Baik, 'Emerging human Rights Institutions in Asia' (n 33).

¹⁴⁰ Phan (n 135).

¹⁴¹ *ibid.*

¹⁴² Baik (n 116).

that it is possible for a regional court to be established and human rights education to be promoted at the same time¹⁴³. This dual approach can raise public awareness while creating the required institutional framework for a regional court. Moreover, it is crucial to involve civil society organisations in the regional human rights process. It has been argued¹⁴⁴ that focusing on rights stakeholders rather than the United Nations or State pressure, can prove way more effective in advancing human rights. Civil society participation emphasises the open-endedness of human rights standards. The presence of an active domestic civil society facilitates a genuine two-way interaction between local actors and international institutions¹⁴⁵. Local NGOs interact with both international treaty bodies and state actors in order to provide a vibrant transnational sphere that can enhance the effectiveness of international agreements in improving domestic human rights standards. Local actors can articulate their specific claims and provide contextual knowledge, while international actors rely on this feedback to adapt standards to local contexts. Their participation can also help bridge the gap between citizens and governments, support victims, advocate for human rights and foster a culture of accountability and participation while enhancing the overall efficacy of regional human rights mechanisms, resonating with local contexts and needs. Like other successful models in the Americas and Africa, countries such as Indonesia, the Philippines and Thailand have thriving networks of non-governmental organisations (NGOs) that may promote human rights education and advocacy. The dynamics of human right mobilisation from civil society and NGOs show that they can work as catalysts for change, regarding human rights, as they are capable of driving change and influencing state behaviour, particularly when they can effectively mobilise support and engage with international legal frameworks¹⁴⁶.

2.2.5 A multi-layered approach to human rights protection- Focus on a Regional Court

The experience of Europe indicates that no single mechanism is likely to be able to address every issue preventing the advancement and protection of human rights¹⁴⁷. Instead, to tackle diverse challenges pertaining to different aspects of human rights promotion and protection, a network of diverse human rights bodies may be required. Numerous national and regional mechanisms are in place in the European system to defend human rights. It is thought to have an extremely sophisticated system of preventive mechanisms against rights abuses, which include ad hoc visits, empirical studies, active inspections and investigations etc.¹⁴⁸ The comprehensive protection of human rights is made possible by this multi-layered strategy. Asia could consider creating an analogous framework that combines a number of mechanisms to successfully handle human rights issues. Along the same lines, both the Inter-American and the African system include both a human rights commission and a court, allowing for an effective

¹⁴³ Phan (n 135).

¹⁴⁴ Beth A Simmons, 'Introduction', in Beth A Simmons (ed) *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

¹⁴⁵ Gráinne de Búrca, 'Human Rights Experimentalism' (2017) 111 *American Journal of International Law* 277.

¹⁴⁶ Beth A Simmons, 'Reflections on Mobilizing for Human Rights' (2012) 44 *Journal of International Law and Politics* 729.

¹⁴⁷ Phan (n 135).

¹⁴⁸ Baek (n 116).

approach to human rights protection. With the help of this dual mechanism, the commission may handle urgent cases and focus on the promotion of human rights norms and values, while the Court serves as a judicial avenue for redress for the victims of the human rights violations.¹⁴⁹ Mechanisms for monitoring and reporting the situation of human rights in each of the member states are also part of the Inter-American system. Frequent reporting motivates governments to take action by keeping human rights issues in the public eye. The Inter-American system, through its multiple tools, has addressed not only specific individual cases, but has also tackled systemic problems including poverty, discrimination, inequality and lack of access to justice that led to various human rights abuses. This deeper approach supports long-lasting transformation by addressing the underlying causes of the violations of human rights. Asia should think about adopting a similar structure to guarantee the implementation of corrective as well as preventive means, providing for accountability and transparency through monitoring mechanisms, and resolving systemic problems within its human rights regime to encourage long-term change. Notwithstanding, it is more than necessary to stress out that the existence of a regional human rights court is a prerequisite for the function of a regional human rights system and the effective implementation of human rights rules, despite the various other mechanisms that may be in place. In fact, Europe's robust regional court of human rights (ECtHR) is largely responsible for the continent's successful application of human rights¹⁵⁰. Other weaker procedures can rely on this foundation as a solid base. In the event that their preventative and promotional initiatives fail to yield significant results, a protective mechanism for adopting legally binding and enforceable judgements still exists¹⁵¹. The success of the European Court of Human Rights emphasises how crucial it is to have a powerful judiciary that is free from political interference and competent to adjudicate cases pertaining to human rights. In order for an Asian human rights court to be successful as well, it must also be built to function autonomously and without influence from the government, guaranteeing its ability to delivering unbiased and impartial rulings. Unlike Europe, the Americas have incomplete jurisdiction over their member states, which affects the Inter-American Court's authority¹⁵². One of the main shortcomings of the American human rights system is that not all OAS members have ratified the ACHR. On the contrary, the Inter-American Commission's complete and overall authority of monitoring and dealing with specific abuses of rights, proves vital in promoting individual rights and maintaining the system as a functional tool. Moreover, regardless of a state's acceptance of the Convention, the Inter-American Court of Human Rights has broad jurisdiction to render advisory opinions to any member of the OAS¹⁵³. This adaptability of the American legal system can also teach how an Asian Court of Human Rights might operate in the future. Overall, it is evident from the comparison with the existing regional systems, that Asia should not limit itself to the idea of a single body (such as the AICHR), and it needs to establish a number of competent bodies, among which a well-functioning and strong regional court.

¹⁴⁹ Phan (n 135).

¹⁵⁰ Baik, 'Emerging human Rights Institutions in Asia' (n 33).

¹⁵¹ Phan (n 135).

¹⁵² *ibid.*

¹⁵³ Baik (n 116).

3. Recent developments - prospects for the future

A number of significant steps have been made in the recent years, moving the region closer to the realisation of its own independent human rights system, that are positively evaluated and can create hopes for future development. The majority of these steps are mostly driven from civil society, showcasing the general shift in IHRL in recent years. The traditionally top-down focus in human rights has begun to turn towards a bottom-up focus on activists, advocacy groups, affected communities, and social movements, highlighting the importance of supporting genuinely community-led legal mobilisation, while at the same time proving that even political and societal authoritarianism shapes opportunities for effective mobilisation¹⁵⁴.

3.1 ASEAN's Adaptive protection

ASEAN'S adaptation process represents a strategic approach in enhancing human rights protection within the constraints of the region's state-centric and soft law framework.¹⁵⁵ This process involves three phases. The first phase is based on building institutional and programmatic foundations to foster an environment that is better suited for protecting human rights. This phase entails two primary actions: i) the improvement of the operational protocols so as to successfully interact with national, regional, and international human rights stakeholders and ASEAN sectoral bodies, aiming to create a regional framework for human rights, motivate member states to ratify and abide by relevant human rights treaties, and enhance the collection of data and transparency, and ii) the programmatic regularisation, which includes workshops and mass media campaigns, that aim to inform the public and the ASEAN leaders about various human rights concerns, to increase the understanding and to promote the overall human rights culture in the region. Summing up, the first phase lays the foundations for the next two phases, which expand on these institutional and programmatic initiative in order to enhance ASEAN's capacity to protect human rights. The second phase of ASEAN's Adaptive Protection intends to strengthen scrutiny protections through thematic reporting. Thematic studies are carried out by ASEAN authorities to address specific human rights issues inside member states. A range of stakeholders, including ministries, international organisations, provide insight into the development of these reports. The goal of these thematic reports is to increase data transparency and motivate governments to publicly recognise issues related to human rights. The reports offer a franker evaluation of the advancements and the downturns in member states' human right practices by pointing out the problems. Each thematic report concludes with specific and concrete recommendations, urging ASEAN members to fulfil their human rights obligations and carry out the required amendment of their practices. The subjects covered in these reports have progressively become more sensitive over the years, reflecting a tendency towards a closer scrutiny and examination of the region's policies on human rights. The second phase deepens the protective investigations into human rights within ASEAN by promoting greater accountability and transparency, building on the groundwork laid in the first

¹⁵⁴ Gráinne de Búrca, 'Legal Mobilization for Human Rights: An Introduction', in Gráinne de Búrca (ed) *Legal Mobilization for Human Rights* (Oxford University Press 2022).

¹⁵⁵ Hsien-Li Tan, 'Adaptive Protection of Human Rights: Stealth Institutionalisation of Scrutiny Functions in ASEAN's Limited Regime' (2022) 22 *Human Rights Law Review* 3.

phase. The third phase of ASEAN's Adaptive Protection approach regards the slow and gradual introduction of protective scrutiny measures aimed at empowering human rights protection. This phase includes setting up autonomous mechanisms for monitoring, reporting and handling complaints over human rights abuses. These mechanisms are supposed to play a fundamental role in the ASEAN system of human rights protection. The establishment of an informal complaints' procedure, offering people and organisations the chance to report human rights violations and seek remedies via the ASEAN Secretariat, is definitely a noteworthy development with regards to this phase. The third and final phase of ASEAN's adaptation seeks to create a more independent and effective institutions for the defence of human rights in Southeast Asia, and marks a significant turning point in the evolution of the ASEAN human rights framework. Despite the diverse challenges deriving from the region's political and cultural resistance to embrace a strong and strict human rights inspection mechanism, ASEAN's adaptation is seen as an effective approach towards progressively evolving the ASEAN human rights regime. By putting the emphasis on the protective monitoring over the judicial enforcement, this process seeks to follow the example of the UN human rights system and allow for a step-by-step development of human rights norms within the ASEAN region.

3.2 Civil society mobilisation-Towards an Asian Court of Human Rights

Civil society Organisations (CSOs) have proven to be very effective in mobilising support for human rights issues at the regional and international level, and their interactions with supranational organisations have also contributed to this improvement. CSOs have shown an active engagement and a great variety in the ways they are mobilising with regards to strengthening the Asian human rights protection mechanisms, and advocating in favour of the establishment of a regional human rights court in Asia, while at the same time in the particular context of ASEAN, thanks to the continuous efforts of CSOs, grave human rights abuses, namely the Rohingya crisis in Myanmar and the extrajudicial killings in the Philippines, have gained worldwide attention.

3.2.1 AICHR collaboration with CSOs

The AICHR has widened the opportunities to work and collaborate with CSOs¹⁵⁶. Regarding their cooperation there is proof demonstrating that the AICHR occasionally employs third parties, such as CSOs, to expand its authority and exert pressure on the governments of its member states. In order to increase the chances for CSO-AICHR partnerships, the AICHR launched a process in 2015 for CSOs to become accredited as AICHR consultants. Once accredited, CSOs can collaborate formally with the AICHR on particular and specific studies or papers, they can offer written statements, and make suggestions concerning policies that are associated with AICHR's work. The AICHR has been enhancing its relationship with CSOs ever since the Guidelines on the AICHR's Relations with CSOs were adopted on February 11,

¹⁵⁶ Stanati Netipatalachoochote, 'Towards a Southeast Asian Human Rights Court: Mobilizations of Civil Society Organizations and the ASEAN Intergovernmental Commission on Human Rights', in Stanati Netipatalachoochote, Aurelia Colombi Ciacchi and Ron Holzacker (eds), *The human rights protection system in Southeast Asia and ASEAN: towards a regional human rights court* (University of Groningen 2020).

2015, and as of now, 30 CSOs have earned AICHR accredited status. Additionally, the growing number of CSO applications for Consultative Relationships with the AICHR, indicates the CSO's desire and motivation to work alongside the AICHR. The AICHR arranged in November 2017 an interface meeting with CSOs, in order to exchange views on the potential revision of the AHRD and as a part of the 2018 AICHR-CSO Symposium.

3.2.2 Call for a Strengthened AICHR

The most common and public form of mobilization from CSOs is their call for a more robust and stronger AICHR¹⁵⁷. FORUM-ASIA (a large CSO) constantly called and urged the body to act in conformity with its Terms of Reference (ToR) and the mandate deriving from them, regarding the Rohingya who were persecuted in 2017, in Rakhine state in Myanmar. The most notable and worth mentioning result of FORUM-ASIA's pressure concerning this particular case, was the AICHR's employment of articles 4.10 and 4.12 of its ToR in order to request information from the rest members of the organisation, and to demand the conduct of special investigations in the form of a thematic study into the Rohingya crisis, respectively. These two demands are noteworthy because the AICHR is not specifically tasked with conducting investigations. Pursuant to article 4.12 the AICHR is only required to prepare research on specific ASEAN human rights abuse instances. FORUM-ASIA has proposed an innovative and unique measure for the AICHR to be capable of carrying out investigations, using the mechanisms already established for the thematic study and information requesting. Apart from this clever utilization of current mandates to scrutinise human rights breaches, other CSOs have advocated for the AICHR to be granted jurisdiction to receive, look into and resolve complaints formally and officially. For the AICHR Training/Symposium which was held in Chiang Rai, Thailand, from October 13-15 2018, a number of CSOs published in 2018 a shared statement. It covered a series of current human rights concerns, such as boosting legal and investigative frameworks to handle cases of human rights violations. CSOs have been working incessantly to get the AICHR to convey these ideas to the governments of ASEAN and to extend its mandates of human right protection, so that it can examine complaints and look into specific instances. CSO assemblies, continuously urged ASEAN governments and the AICHR body itself to find more effective and adequate ways to tackle the region's issues, in the context of the ASEAN Summit and the AICHR Meeting. This implies that CSO's mindful work appear more represented and that their attempts are successful when governments and the AICHR take into account their advice and recommendations.

3.2.3 Financial aid for victims and fact gathering

CSOs may be able to contribute financially to the AICHR so that working groups can be formed to create and adopt a convention that would serve as the foundation for a court¹⁵⁸. The fact that CSOs have already contributed money to the defence of human rights further suggests that they will be capable and eligible for successfully assuming this potential role. Several well-known CSOs in the area, including FORUM-ASIA, have invested financial resources in providing

¹⁵⁷ *ibid.*

¹⁵⁸ *ibid.*

shelters for witnesses and victims of human rights abuses, including the victims of the Rohingya crisis. FORUM-ASIA collaborated with global civil society organisations including Human Rights Watch and Amnesty International to gather information on the ground, provide financial support to victims, construct camps for Rohingya orphans, and house witnesses. A team from FORUM-ASIA was sent to the Philippines to collaborate with local activists and CSOs in order to gather information on victims of President Duterte's "War on Drugs" campaign. In addition, CSOs have the ability to obtain external funding from international organisations, as well as from fellow CSOs abroad. It would be beneficial to think about securing outside funding in order to independently establish a regional court that would operate outside the limited scope of governmental budget control.

3.2.4 Call for a Regional Human Rights Court

A more recent kind of mobilisation pertains to CSOs explicitly and expressly demanding not only an enforced AICHR, but an outright call for a regional human rights court¹⁵⁹. In Manila, Philippines on 26-29 April 2017, there were two regional civil society gathering events held simultaneously the ASEAN Civil Society Conference/ASEAN People's Forum (ACSC/APF) and the 30th ASEAN Summit. By providing alarming facts surrounding the issue of extrajudicial killings, the civil society organisations present in the ACSC/APF meeting called and pressured the state representatives attending the other event, the ASEAN Summit, to show respect for the universally recognised human rights norms and standards, and to exchange thoughts and suggestions for the establishment of an independently functioning regional human rights court to adjudicate and deal with such issues. For this purpose, CSOs also reached out to international organisations for their contribution. More in particular, there was a calling in 2018 for the HRC to exercise pressure to the members of ASEAN, encouraging them to collectively develop a regional human rights court, so as to overcome the AICHR's systemic weaknesses, which have resulted in it being largely unresponsive and insufficient when it comes to gross human rights breaches, such as the extrajudicial killings in the Philippines, the democratic decay in Cambodia, and the Rohingya catastrophe in Myanmar. Beyond urging ASEAN nations to create an ASEAN human rights court, another group of CSOs went one step further and they intended to use the Asia Pacific region's ability to form an Asia Pacific human rights court. For this goal, it was proposed that the involvement of more developed countries such as Japan, Australia and New Zealand, would accelerate the process of creating a court in the wider region.

3.2.5 The Asian Human Rights Court Simulation Experience

In 2018, a coalition of NGOs, think tanks, and academic institutions in Taipei, Taiwan, launched the Asian Human Rights Court Simulation (AHRCS)¹⁶⁰. Yu-hsiu Hsu, a retired professor and former judge of Taiwan's Constitutional Court, was the driving force behind the initiative. Developing a platform to simulate human rights court proceedings was the main purpose of this experience. A working committee was established to supervise the AHRCS's

¹⁵⁹ *ibid.*

¹⁶⁰ Mark L Shope and Wen-Chen Chang, 'Civil Society and Regional Human Rights Development in Asia: Lessons from the Asian Human Rights Court Simulation' (2022) 29 *Indiana Journal of Global Legal Studies* 59.

formation. Experts from several countries made up this group, which was in charge of selecting judges and planning the court's inaugural case. The case of *Chiou Ho-shun v. ROC (Taiwan)* was presented at the historic first hearing of the AHRCS in 2019. This case provided a useful illustration of how human rights issues could be tackled in a courtroom environment. The AHRCS was intended to be more than just a moot court. Its objectives included providing an oversight of existing domestic courts and auditing their procedures and practices. This reflects a high level of commitment to raising the quality of human rights judgements in the region. The AHRCS is viewed as an important experiment in regional human rights development, providing insights into the potential for a formal human rights court in Asia. It underscores how crucial it is for stakeholders to keep the dialogue vivid and to work collaboratively in order to efficiently address the difficulties pertaining to human rights. The AHRCS made several important contributions to our knowledge of the development of human rights in the area. The AHRCS is certainly a significant step towards the establishment of an official Asian Human Rights Court. The simulation shows that such a mechanism is both essential and feasible, and it offers insightful knowledge on the institutional design and operational procedures that could be implemented in a future court. One of the primary lessons learned from this experience was the critical role of civil society in advancing and protecting human rights. The formation of the AHRCS was at a great extent due to the active and decisive participation of NGOs and community organisations, highlighting the necessity of a continued cooperation between judicial bodies, NGOs, IOs and civil society. The Participants' feedback on the AHRCS was very positive in general and included comments from academics, NGOs, and legal professionals. A lot of people saw the simulation as a great way to discuss human rights problems, and learn about how a regional human rights court functions. Participants emphasised the simulation's educational value, pointing out that it gave them new perspectives on the intricacies of human rights law and the legal proceedings surrounding it. It was believed that this educational opportunity would improve awareness and advocacy in the area. Despite its positive reception, the AHRCS faces significant challenges moving forward. These include securing funding, ensuring the ongoing engagement with stakeholders, civil society and regional organisations, involving a wider range of participant to enhance inclusivity, and, and finding a way to establish its credibility, authority and legitimacy, especially given the fact that this is only a simulation and not an official court.

4. Conclusion

Having all this in mind, it can be argued that the already formed regional human rights systems in the rest continents can pave the way for Asia into establishing a very well-functioning regional human rights system tailored to its unique and diverse needs. Asia has even the chance to surpass these other systems, in terms of success, if the Asian States closely examine the way these systems operate, so as to adopt the strong elements of each one and avoid their mistakes or systemic failures. In addition, this part concludes that the conditions for the establishment of the Asian Human rights system are steadily maturing. This is indeed the case, if one takes a closer look at the most recent adaptations and innovations primarily driven by civil society in the region. Many significant steps have been made, advocating that the adoption of a legally

binding instrument which will ultimately lead to the establishment of a regional human rights court, is getting closer each year that passes by.

Conclusion

In summary, the precedent analysis leads us to several conclusions. The protection of human rights in Asia needs further strengthening, given the insufficiency of the current legal framework, something that can be achieved by the highly awaited regional human rights system in the region. The ongoing interactions and discussions among Asia-Pacific states indicate a gradual evolution of human rights norms. While the instruments already developed on the regional and sub-regional levels are non-binding and entail primarily soft law approaches, they have undoubtedly contributed to a growing recognition of the systemic and widespread human rights issues in the region and the imperative need for collaborative efforts to address them. Undoubtedly, the emergence of a potential human rights mechanism analogous to those of the other regions, would not be a panacea for each and every human rights abuse in Asia. It could, nonetheless, operate in an efficient way so as to complement and empower the work of the international and national systems of human rights protection, instead of replacing them, given that a regional system can reflect the needs and specificities of the area, while simultaneously monitoring the practice of each state in the region so as to adopt and implement the internationally recognised human rights standards, thus offering additional layers of protection and accountability. The process will indisputably not be an easy task for Asia, given the structural difficulties that have hampered the establishment of such a system up to date, but the benefits of a regional human rights system significantly outweigh the challenges. These benefits of regionalism are evident if we examine the three already functioning human rights mechanisms especially in Europe, the Americas and Africa, which have deeply impacted and enhanced the level of protection offered to their people, thus providing valuable insights for Asia to follow on their steps and create a successful regional system. Furthermore, the goal is certainly not out of reach, as there are positive signs which advocate that the challenges may progressively be surpassed. In this regard it has been strongly emphasised that civil society organisations are indispensable players. Although, the Asian region is widely known as one of the most oppressive and authoritarian areas globally, with the foundations for a flourishing participation of civil society evidently missing, there is still a plethora of NGOs, contributing at a great extent to the reinforcement of individual rights, particularly if we take a glance at the most recent developments and initiatives that bring the realisation of the Asian human rights system closer to reality. Overall, this paper intended to demonstrate that the discussion surrounding human rights and the regional mechanism in Asia is far from being closed, and while the process for this development might be slow and gradual, the consistent and persistent efforts towards this direction indicate that it is only a matter of time before the peoples of Asia enjoy as well, a fully-complete system for a better protection of their fundamental rights and freedoms.

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