

The Islamic, Asian and CIS Perspectives on Human Rights Protection

Andrzej POGŁÓDEK

ABSTRACT

This chapter presents lesser-known non-European regional systems of human rights protection, which, unlike the Inter-American System of Human Rights Protection and the African System of Human Rights Protection, do not have mechanisms for individual complaints and a court-type body for the control of undertaken commitments. The regional systems of Arab-Muslims, ASEAN, SAARC and CIS will be discussed. All the mentioned regional systems (except SAARC and CIS) were built as a supplement to the universal system of human rights protection, yet partly in opposition to it, based on Muslim or Asian values. Therefore, the universalism of fundamental rights was undermined in favour of particularism, the conditioning of these rights and their content and scope by civilisational, cultural and religious conditions of individual countries. Currently, the acts in force in these systems concerning the protection of fundamental rights differ in their possible scope of limitations of fundamental rights, foundations and the scope of freedom of the States Parties. The systems provide limited mechanisms for monitoring the undertaken human rights commitments; however, they are being expanded. Among the systems discussed, the OIC and ASEAN systems have the greatest practical significance, while the GCC has the smallest.

KEYWORDS

Fundamental rights, human rights particularism, ASEAN, Arab-Muslim system, SAARC, CIS

1. Introduction

The subject of the chapter will be the presentation of lesser-known non-European regional systems of human rights protection, which, unlike the Inter-American and African Systems of Human Rights Protection, do not have mechanisms for individual complaints and a court-type body for the control of undertaken commitments. The regional systems of Arab-Muslims, ASEAN, SAARC and CIS will be discussed. All the mentioned regional systems (except SAARC and CIS) were founded on, and in a sense still are, supplements to the universal system of human rights protection, and partly in opposition to it, based on Muslim or Asian values. Therefore, the universalism of

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fundamental rights was undermined in favour of particularism, the conditioning of these rights, their content and the scope of civilisational, cultural and religious conditions of individual countries. Furthermore, currently, in the acts in force in these systems for the protection of fundamental rights, one can notice differences in the possible scope of limitations of fundamental rights, its foundations and the scope of freedom of the state's parties.

2. Islamic Perspective on Human Rights

The Islamic human rights system is established under the auspices of the Arab League and the Organisation of Islamic Cooperation (OIC), with a partly overlapping membership of 22 and 57 states, respectively. However, in the Gulf Cooperation Council, the Gulf Declaration of Human Rights was adopted in 2014.¹

2.1. *The Arab League*

The League of Arab States is an intergovernmental organisation of Arab states. Today the Arab League has 22 Member States (Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen). The Arab League Charter (1945)² is the organisation's founding document and contains the main provisions governing the structure and function of the League and its bodies. According to Article 2, the Arab League's purpose is the strengthening of the relations between the Member States, the coordination of their policies to achieve cooperation, safeguarding their independence and sovereignty and a general concern with the affairs and interests of the Arab countries. The same article identifies cooperation in six areas: economic and financial affairs, communications, cultural affairs, nationality, passports and visas, social affairs and health affairs. There is no mention of human rights in the Arab League Charter. Moreover, at the time of its adoption, there was no international system for the protection of human rights (the Universal Declaration on Human Rights was adopted in 1948). The Arab states have widely ratified international human rights treaties, although with reservations and exclusion provisions that enable individuals to submit complaints to the UN treaty bodies or the established national structures of monitoring the implementation of a respective treaty.

1 Gulf Declaration of Human Rights, 9 December 2014. See more: Alfadhel, 2017, pp. 89–98; El-Mumin, 2020, pp. 241–266; El-Mumin, 2020, pp. 1– 10.

2 Charter of the League of Arab States, 22 March 1945.

2.1.1. Arab Charter on Human Rights

The Arab Charter on Human Rights³ (ACHR) is the main Arab League treaty in the field of human rights. The ACHR, adopted in May 2004 in Tunis at the 16th Summit of the League of Arab States, entered into force on 15 March 2008, two months after the date of ratification by a seventh state, the United Arab Emirates, following its Article 49, which requires ratification by seven Member States of the League.⁴ Currently, it is ratified by 14 states. Its 1994 predecessor never entered into force due to a lack of ratifications. The Charter contains a preamble and 53 articles.

The preamble affirms:

‘The sovereignty of the law and its contribution to the protection of universal and interrelated human rights and convinced that the human person’s enjoyment of freedom, justice and equality of opportunity is a fundamental measure of the value of any society.’

The preamble provides that Member States adopt the Charter ‘[i]n furtherance of the eternal principles of fraternity, equality and tolerance among human beings consecrated by the noble Islamic religion’ and ‘having regard to the Cairo Declaration on Human Rights in Islam’. It rejects all forms of racism and Zionism, which constitute a violation of human rights and a threat to international peace and security, recognising a close relationship between them. It reaffirms the principles of the Charter of the United Nations (UN), the Universal Declaration of Human Rights (UDHR) and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, taking into account the Cairo Declaration of Human Rights in Islam.⁵

The rights and freedoms are formulated in a similar way to the international standards of human rights, with some important exceptions. Article 11 emphasises the importance of human rights, including the principle that ‘all human rights are universal, indivisible, interdependent and interrelated’ (Article 11(4)). However, some of the rights contained in the ACHR are, unlike in the international human rights system, guaranteed only to citizens. Article 4 regulates the suspension of rights in emergency situations, provided that these measures are not in conflict with other obligations under international law and do not entail discrimination solely on the grounds of race, colour, sex, language, religion or social origin. Article 43 states:

‘[N]othing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set force in the international and regional human rights instruments

3 The Arab Charter on Human Rights, 22 May 2004, entered into force 15 March 2008.

4 The first seven countries to ratify the Charter are: Jordan (28 October 2004), Algeria (11 June 2006), Bahrain (18 June 2006), Libya (7 August 2006), Syria (6 February 2007), Palestine (28 November 2007) and the United Arab Emirates (15 January 2008).

5 Mao and Gady, 2021, pp. 425–446.

which the states parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities.⁶

Additionally, according to Article 23, every violated person whose rights or freedoms are recognised in the Charter has the right to an effective remedy, even if the violation was committed by persons acting in an official capacity. Article 2 speaks of the right of all people to self-determination, free choice of political system, sovereignty and territorial integrity, with all forms of racism, Zionism and foreign occupation and domination constituting an obstacle to human dignity and a major barrier to the enjoyment of the fundamental rights. Moreover, all such practices must be condemned and efforts must be made to eliminate them. All people have the right to resist foreign occupation. Article 3 emphasises that its signatories:

‘Undertake to ensure to all persons subject to its jurisdiction the right to enjoy the rights and freedoms set forth in this document, without distinction based on race, color, sex, language, religion, opinion, thought, national or social origin, property, birth, physical or mental disability.’

It further emphasises the equality of men and women:

‘Men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Sharia, other divine laws and by applicable laws and legal instruments.’⁷

The right to life is recognised in Article 5, even though the ACHR allows the death penalty. According to Article 6, the death penalty may only be applied in cases of the most serious crimes, following the laws in force at the time of the crime, based on a final judgment delivered by a competent court. Anyone sentenced to death has the right to apply for pardon or commutation of punishment. An additional limitation is provided in Article 7, which states that this penalty may not be imposed on persons under the age of 18 years, unless otherwise provided for by the laws in force at the time of the crime. Article 11 declares that everyone is equal before the law. The ACHR prohibits torture and cruel or degrading treatment (Article 8), experimentation on human beings against their will and trade in human organs (Article 9) and slavery, sexual slavery, human trafficking, forced labour and the use of children in armed conflicts (Article 10). It guarantees the independence of the judiciary (Article 12) and the right to a fair trial (Article 13) that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge or decide on rights or his obligations. Trials shall be public, except

6 On the meaning of Article 43, see: Mattar, 2013, pp. 91–147.

7 Almutawa and Magliveras, 2020, pp. 1–27.

in exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights. Legal aid is guaranteed to those without requisite financial resources.

The criminal law guarantees in the ACHR include prohibition of arbitrary arrest (Article 14), retroactive application of the law (Article 15), the presumption of innocence and the right to defence, appeal or respect for the personal safety of the accused and their privacy in all circumstances (Article 16). Additionally, it prohibits the deprivation of liberty solely because of the inability to fulfil contractual obligations (Article 18), to be tried twice for the same crime (Article 19) and treating prisoners humanely (Article 20).

Furthermore, everyone has the right to the protection of the law against unlawful interference with his private, family or home life (Article 21) and to the recognition of his legal personality (Article 22). According to Article 24, every citizen has the right to participate in the management of public affairs directly or through freely chosen representatives and to run for office in accordance with the principle of equal opportunities, freedom of association and assembly. Article 32 expresses the right to information and freedom of opinion and expression, along with the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries, following the fundamental values of society, subject only to the restrictions required to ensure respect for the rights or reputation of others or protect national security, public order and public health or public morality.

Article 26 recognises freedom of movement per the applicable provisions of law. The expulsion of a foreigner requires a decision per the law; the expelled person may file a complaint unless important reasons of national security preclude this. Expelled collective are prohibited in all circumstances. Article 27 prohibits arbitrary or unlawful prohibition of leaving the country or forcing one to stay in any part of it, along with banishment and prohibition to return. The ACHR recognises the right to nationality (Article 29) and the right to seek political asylum (Article 28).

Regarding freedom of thought, conscience and religion, Article 30(1) states that 'no restrictions may be imposed on the exercise of such freedoms except as provided for by law'. Whereas, under Article 30(2), the freedom to manifest one's religion or beliefs or perform religious observances, either alone or in community, shall be subject only to such limitations as prescribed by law and are necessary in a tolerant society that respects human rights and freedoms for the protection of public safety, public order, public health or morals or the fundamental rights and freedoms of others. It is guaranteed that the parents or guardians have the freedom to provide for the religious and moral education of their children (Article 30(3)).

Article 31 guarantees the right to private property, emphasising that anyone 'shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property'. Article 33 speaks of the right of a man and a woman to enter into marriage with the consent of both parties, leaving the age required unspecified (the details are left to the law in force in the specific state). It prohibits forms of violence

and abuse in relations between family members, especially towards women and children.

The right to work, recognised in Article 34, includes the right to just and favourable conditions of work, appropriate remuneration to meet essential needs and those of family and regulate working hours, rest and holidays with pay, along with the rules for the preservation of occupational health and safety and the protection of women, children and disabled persons in the place of work. The ACHR recognises the right to freely form trade unions or join trade unions and freely pursue trade union activity for the protection of interests and the right to strike (Article 35), the right of every citizen to social security, including social insurance (Article 36), the right to an adequate standard of living for oneself and one's family (Article 38), the right to the enjoyment of the highest attainable standard of physical and mental health and the right of the citizen to free basic health-care services and access to medical facilities without discrimination (Article 39) and the rights of the disabled (Article 40).

The right to free and compulsory education, at least throughout the primary and basic levels, is recognised in Article 41, while Article 42 recognises the right to take part in cultural life and enjoy the benefits of scientific progress and its application. Additionally, it guarantees the freedom of scientific research and creative activity and ensures the protection of intellectual property. The ACHR recognises collective rights, that is, the rights of minorities, and the right to economic, social, cultural and political development (Article 37). According to Article 25, persons belonging to minorities may not be deprived of the right to enjoy their culture, use their language and practice their religion.

Articles 45–48 contain provisions relating to the Arab Human Rights Committee (AHRC), which supervises the implementation of the provisions of the ACHR. Article 48 obliges the parties to submit periodic reports and publish the final report of the AHRC. There is no provision for submitting individual complaints, as the ACHR does not have individual or collective complaint mechanisms.

2.1.2. Other Relevant Arab League Treaties

Among other human rights treaties in the Arab League system, the following should be noted:

The Charter of the Rights of the Arab Child⁸ was issued in 1983 and has been ratified by seven states (Jordan, Syria, Iraq, Palestine, Libya, Egypt and Yemen). The Charter emphasises that the rights guaranteed therein are to be provided to children without any discrimination. It emphasises the role of the natural family in raising, educating and caring for children. The basic rights of an Arab child are the right to family care and upbringing, the parents and/or guardian have the right to provide moral and religious education to the child, the social security and growing up in health and wellness, a suitable home that protects him and provides complete, balanced nutrition that is appropriate for his stage of growth, be known by a specific

8 Charter of the Rights of the Arab Child, 6 December 1983.

name and nationality from birth, free education and upbringing in the pre-school and basic education stages, integrated and balanced community and institutional social service, care and protection of the state from exploitation and physical and spiritual neglect, including limiting the possibility of employing children for work and ‘be open to the world around him, to be raised on the love of human good, and to realise the importance of peace and friendship among peoples, and the love of his brothers in humanity’.

To guarantee these rights, states are obliged to strengthen the legislative framework by amending the relevant laws affecting children, and comprehensive policies and programmes to benefit children’s development and well-being. All measures should be guided by the best interest of the child. Furthermore, the Charter provides for cooperation between Arab countries for protecting children’s rights. It establishes a regular reporting procedure to the General Secretariat (Article 50) about the measures taken and achievements made to fulfil the provisions of the Charter, provided that these reports include a statement of the factors and difficulties that affect the degree of fulfilment of the obligations stipulated in the Charter.

The Arab Convention on the Status of Refugees in Arab Countries⁹ of 1994 has not entered into force to date. Additionally, attention should be paid to the Casablanca Protocol on the Treatment of Palestinian Refugees, adopted in 1965,¹⁰ which calls upon Member States to take the necessary measures to guarantee Palestinians full residency rights, freedom of movement within and among Arab countries and the right to work on par with citizens. However, these treaties provide narrower protection than the 1951 UN Convention Relating to the Status of Refugees, for example, they have no specific provisions relating to the number of rights, including the right to education and health.

The Arab Convention on the Status of Refugees obliges states to provide refugees a level of treatment no less than that accorded to foreign residents on their territories (Article 4) and prohibits discrimination against refugees based on race, religion, gender, country of origin and political or social affiliation (Article 7). The expulsion of a refugee is possible for reasons of national security or public order; however, it is subject to judicial review (Article 8). States shall issue to refugees lawfully residing in their territories identification cards and travel documents (Article 10). Refugees are obliged to respect the law of the host country (Article 11), refrain from performing any terrorist or subversive activity levelled against any country, including country of origin (Article 12) and for practicing his freedom of opinion and expression, a refugee shall refrain from attacking any country, including country of origin, nor shall he/she convey, by any means whatsoever, any such opinions or news that may create tension between the host country and other countries (Article 13). Nonetheless, there is no treaty body overseeing the implementation of the Arab Convention on the Status of Refugees. According to Article 15 of the Convention, this is entrusted to the Arab

9 Arab Convention on the Status of Refugees in Arab Countries, 27 March 1994.

10 Casablanca Protocol on the Treatment of Palestinian Refugees, 11 September 1965.

League Secretary General, who may request information from states, including on laws, regulations and decisions.

The Arab Convention on the Suppression of Terrorism,¹¹ adopted in 1998 and ratified by 16 Member States, entered into force on 7 May 1999. Among the Convention's problematic provisions is an overly broad definition of terrorism. According to it, terrorism is:

'[A]ny act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources (Article 1(2)).'

Moreover, the scope of a terrorist offence is defined broadly (Article 1(3)). Article 2 provides an exclusion from the scope of terrorism: '[a]ll cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, in accordance with the principles of international law, shall not be regarded as an offence'. However, it does not apply 'to any act prejudicing the territorial integrity of any Arab State'. It further excludes certain acts from the scope of political offence. The Convention establishes common procedures for intelligence (Articles 3–4) and judicial cooperation, with no guarantees for due process or non-refoulement (Articles 5–24).

2.1.3. Monitoring and Enforcement Mechanisms

The Arab regional human rights system currently has two bodies – the Arab Human Rights Committee and the Permanent Arab Committee on Human Rights – responsible for monitoring and enforcement mechanisms of the human rights obligations of States Parties. Furthermore, the establishment of an Arab Court of Human Rights (ACtHR) is envisaged.

2.1.3.1. Arab Human Rights Committee

The AHRC is the treaty body established in 2009 to oversee the implementation of the ACHR.¹² The ACHR is the first and, so far, the only Arab League treaty to have an independent supervisory mechanism embodied in the treaty. Pursuant to Article 45 of the ACHR, the AHRC shall consist of seven members elected by secret ballot by the States Parties to the Charter. The Committee shall consist of nationals of the States Parties, who must be highly experienced and competent in the Committee's field of work. The members shall serve in their personal capacity and shall be fully independent and impartial. They serve for four years and can be re-elected for one

11 Arab Convention on the Suppression of Terrorism, 22 April 1998.

12 Magliveras, 2016, pp. 155–157.

term. Only one expert from each country may sit on the Committee at any given time and due regard shall be given to the rotation principle.

Article 47 states that the members of the Committee shall enjoy the necessary immunities against any form of harassment, moral or material pressure or prosecution on account of the positions they take or statements they make while carrying out their functions. The Committee is responsible for:

1. Reviewing state reports: According to Article 48 of the Arab Charter, initial state reports are to be submitted within a year of the Charter entering into force in the State Party, with periodic reports to be submitted every three years. The Committee may request the States Parties to supply it with additional information regarding the implementation of the Charter. It shall consider each submitted report in the presence of the representative of the respective State Party. It shall discuss the report, comment thereon and make the necessary recommendations in accordance with the ACHR's aims. The AHRC shall provide State Parties with the guidelines on the form and content of the reports to ensure that they are prepared in a unified and comprehensive manner that would sufficiently explain the human rights situation in each state and the extent to which it is consistent with the ACHR's provisions.
2. Submitting annual reports to the Arab League: The Committee shall submit an annual report, with its comments and recommendations, to the Council of the League, through the intermediary of the Secretary-General.
3. Request information from Arab League bodies and Arab institutions
4. Interpret the Arab Charter: According to its Rules of Procedures, adopted in November 2014,¹³ the Committee has the authority to interpret the Charter to ensure the optimal implementation of its provisions. The absolute majority adopts the Committee's decisions, remarks and recommendations.

The Committee's reports, concluding observations and recommendations shall be public documents, which the Committee shall disseminate widely. The AHRC does not have the authority to receive individual complaints regarding human rights violations committed by Member States. The AHRC meetings are quorate if attended by the majority of members. The meetings and sessions are held at its headquarters or at those of the Arab League General Secretariat. It can hold meetings and sessions in any of the State Parties by invitation.

2.1.3.2. Permanent Arab Committee on Human Rights

The Permanent Arab Committee on Human Rights (PACHR) is the main political human rights body of the Arab League, established in 1968. Each Member State of the

13 Rules of Procedure of the Arab Human Rights Committee, 4 January 2021.

Arab League sends one representative. The PACHR¹⁴ provides that states should give due consideration to expertise in human rights when nominating representatives. Its main role is controlled by its internal regulations, including (Article 3):

1. Providing advisory opinions to Member States on various human rights issues based on the request of Member States.
2. Proposing the harmonisation of Arab agreements related to human rights in a manner consistent with international human rights standards and the international obligations of Member States in this regard.
3. Proposing and preparing draft Arab agreements related to human rights in accordance with international standards and the obligations of Member States in this regard.
4. Harmonising Inter-Arab agreements upon the request of the Member States.
5. Preparing studies and research related to human rights.
6. Studying the topics related to human rights referred to the Committee by the Council of the League, the General Secretariat or one of the Member States and submitting recommendations in this regard.
7. Cooperation with Arab committees within the framework of the League of Arab States on issues related to human rights.
8. Cooperation with the missions of the League of Arab States abroad regarding human rights issues.
9. Preparing a vision for the Arab position on human rights, regionally and internationally.
10. Strengthening cooperation with governmental bodies at the level of Member States in spreading and promoting human rights.
11. Providing technical support to Member States to follow up on the implementation of the recommendations of the treaty committees and non-treaty mechanisms of international and regional charters and agreements upon their request.

The PACHR's sessions are held twice a year. It can hold an extraordinary session as well. The Committee's meeting shall be valid if attended by representatives of the majority of the Member States. In the event of a lack of quorum, the meeting shall be held after 24 hours. (Article 4). The PACHR is restricted in what it can comment on. It can study matters referred to it by the Council, the Secretary General or Member States and prepare drafts of human rights treaties. However, it cannot mandate their adoption. Each Member State has one vote in the Committee. The Committee's recommendations shall be issued by consensus. If consensus cannot be achieved, the recommendations shall be issued by a majority of the members (Article 7).

Arab non-governmental organisations and National Human Rights Institutions may attend these sessions if granted observer status. An observer status requires

14 Internal regulations of the Permanent Arab Committee on Human Rights, September 2007.

NGOs to be registered in their home countries and with the Committee (Article 9). According to information from the Arab League, only 19 NGOs and one National Human Rights Institution (Morocco) had observer status in 2020.¹⁵ The reports of the Committee's sessions are only available in Arabic. The PACHR has a technical secretariat, which follows up on the report's implementation and the Committee's recommendations (Article 11).

2.1.3.3. Arab Court of Human Rights

In 2012, the Kingdom of Bahrain proposed the creation of an ACtHR.¹⁶ In 2014, the Ministerial Council of the Arab League adopted the statute of an ACtHR¹⁷ and opened it for ratification. The statute will enter into force after seven ratifications. The first country to ratify it was Saudi Arabia in 2016. The Court shall be constituted of seven judges and be based in Bahrain.

The Court's subject-matter jurisdiction, according to Article 16 of the statute, is: '... all suits and conflicts resulting from the implementation and interpretation of the ACHR, or any other Arab convention in the field of Human Rights involving a member State'. It may only look into facts that are committed after the entry into force of the statute regarding the state in question (Article 17). The jurisdiction is complementary to the national judiciary and does not supplant it. The Court may hear a case in the following cases: a) exhaustion of local remedies in the respondent state by a final and definitive judgment according to the national legal regime, b) the case with the same subject matter has not been filed before another regional human rights court or c) the case has been filed six months after the notification of the claimant of the definitive judgment (Article 18).

The statute restricts access to the Court to State Parties and accredited NGOs permitted by the state to submit complaints on behalf of individuals (Article 19).¹⁸ Article 21 allows the Court to issue opinions regarding any legal issue relating to the ACHR or any other Arab convention on human rights, based on the request of the League of Arab States' Assembly or any of the subsidiary organisations or authorities. Additionally, each judge is entitled to express dissenting opinions from the majority.

The Court shall be constituted of seven judges who are citizens of the States Parties. This number can be increased to 11 judges. Judges shall be elected for a four-year term and may be re-elected for a second non-renewable tenure. The Court may not include in its primary or reserve membership more than one judge of the same nationality (Articles 5 and 8). The judges should be persons known for their integrity and commitment to high moral values and possess competence and experience in legal or judicial office. They must have the qualifications required for appointment in the highest judicial or legal offices in their countries. Candidates with experience in

15 See: <http://www.lasportal.org/ar/sectors/dep/HumanRightsDep/Pages/CommitteeSuperVisor.aspx>.

16 Magliveras, 2016, pp. 157–170; Almutawa, 2021, pp. 506–532; Idem, 2022, pp. 479–500.

17 The Statute of the Arab Court of Human Rights, 7 September 2014.

18 Al-Dabbas *et al.*, 2024, pp.1793–1804.

the field of human rights are preferred (Article 7). The election of judges will be made by the Assembly of representatives of the States Parties by a secret ballot from a list of candidates. The candidates who receive the highest number of votes shall be selected as primary judges. The Assembly shall establish a list of reserve judges from among the candidates who were not elected as primary judges, according to the number of votes received (Article 6).

2.2. Organisation of Islamic Cooperation (OIC)

The Organisation of Islamic Cooperation (OIC) is an intergovernmental organisation established in 1969 to strengthen solidarity among Muslims. It now comprises 57 Member States. The OIC has devised several treaties, regulating cooperation in the political, economic, cultural and scientific areas. The OIC is headquartered in Saudi-Arabia.¹⁹ It has historically challenged the notion of universal human rights, instead promoting a conception of Islamic human rights.

The OIC Charter²⁰ was amended in 2008, incorporating the promotion of human rights and protection of fundamental freedoms into its objectives. Its preamble provides for ‘the promotion of human rights and fundamental freedoms [...] in Member States in accordance with their constitutional and legal systems, their international human rights obligations’. In Article 15 of the OIC Charter stipulates that the Independent Permanent Human Rights Commission (IPHRC) ‘shall promote the civil, political, social and economic rights enshrined in the organization’s covenants and declarations and in universally agreed human rights instruments, in conformity with Islamic values’.

2.2.1. Cairo Declaration of the Organisation of Islamic Cooperation on Human Rights (CDHR)

The Cairo Declaration of the Organisation of Islamic Cooperation on Human Rights (CDHR) is a declaration of the Member States of the OIC, first adopted in Cairo, Egypt, on 5 August 1990²¹ under the name Cairo Declaration on Human Rights in Islam, later revised in 2020 and adopted on 28 November 2020.²² It is the main reference document for human rights. It is a nonbinding declaration and serves as general guidance for the OIC Member States for human rights. It provides an overview of the Islamic perspective on human rights.

Its 1990 version did not have any mention of universal human rights. Instead, the declaration was expressly based on Islamic values. The preamble stated that ‘fundamental rights and universal freedoms ... are an integral part of [Islam]’ and are ‘binding divine commandments’ revealed to the Prophet Muhammad in the Quran.

19 Gieryńska, 2017, p. 244.

20 Charter of the Organisation of Islamic Cooperation (OIC), 4 March 1972.

21 Cairo Declaration on Human Rights in Islam, 5 August 1990. See more about the provisions of the old version of this declaration: Toumi, 2023, pp. 771–773.

22 Cairo Declaration of the Organisation of Islamic Cooperation on Human Rights, 5 August 1990.

Stating that '[a]ll the rights and freedoms stipulated in this Declaration are subject to the Islamic shari'ah' (Article 24), robbing human rights of their inalienability. Article 25 further made the Islamic Shari'ah 'the only source of reference for the explanation or clarification of any of the articles of this Declaration'. Islam was present in several detailed provisions of the declaration, for example, Article 10 stated:

'Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism.'

The 2020 version of the Declaration is more closely aligned with universal human rights norms. The revisions secularised the document by removing many of the references to Sharia and Islam. The OIC removed the mention of Sharia from the articles, though retaining it in the preamble. The current version does not contain an equivalent of former Article 10 and does not state, 'the husband is responsible for the support and welfare of the family'. However, it omits several rights, including the freedom of peaceful assembly and association and universal suffrage. The preamble states that 'all human rights are universal, indivisible, interdependent and interrelated and must be treated globally in a fair and equal manner, on the same footing, and with the same emphasis; and that it is the duty of States'. However, 'the significance of national and regional particularities and various historical, cultural and religious backgrounds' should be taken into account. The need was emphasised to ensure and protect the human rights, as safeguarded by the teachings of Islam. The exercise of these rights is to take place 'without prejudice to the principles of Islam which affirm human dignity and the respect and protection of human rights'.

It is important to interpret the Declaration in Article 25(a) of the CDHR, which stipulates, '[E]very one has the right to exercise and enjoy the rights and freedoms set out in the present declaration, without prejudice to the principles of Islam and national legislation'. Additionally, Article 25(b) states:

'Nothing in this declaration may be interpreted in such a way as to undermine the rights and freedoms safeguarded by the national legislation or the obligations of the Member States under international and regional human rights treaties as well as their sovereignty and territorial integrity.'

Furthermore, the Declaration in Article 12 guarantees refugees and migrants equal rights to the enjoyment of the human rights recognised therein. Article 1 of the CDHR expresses the principle of equality, without discrimination on the grounds of race, colour, language, sex, religion, sect, political opinion, national or social origin, fortune, age, disability or other status. It prohibits gross and systematic human rights violations, including slavery, servitude, forced labour and human trafficking.

Regarding the right to life (Article 2), the CDHR recognises 'the duty of State to protect this right from any violation', adding that 'No one shall be arbitrarily deprived

of this right'. It maintains the possibility of imposing the death penalty. However, it limits it to 'the most serious crimes in accordance with the law in force at the time of the commission of the crime'. It prohibits its use against minors and pregnant or nursing women. Furthermore, it prohibits 'to resort to such means that may result in genocide or the annihilation of mankind'. The Declaration in Article 4 guarantees the right to liberty and safety and prohibits torture. In states that no one shall be 'subjected to arbitrary arrest or detention, kidnapping or enforced disappearances', 'deprived of his/her liberty except on such grounds and in accordance with such procedures as are established by law', 'subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment', 'subjected to inhuman treatment while in custody; defendants shall be separated from convicted persons' and 'subjected to medical or scientific experiments, nor can their organs be used, without their free and informed consent and full heeding of potential medical complications'.

Similarly, the first sentence in Article 3 guarantees the right to 'inviolability and the protection of his/her good name and honor, during his/her life, and after his/her death'. The right to access to justice and fair trial (Article 22) states that 'due process and justice is guaranteed to everyone through competent, independent authorities and impartial tribunals, established by law, within a reasonable time'. It includes the right to the presumption of innocence, the right to defence, personal criminal liability, the principle of *nullum crimen sine lege* and *nulla poena sine lege* and the right to be compensated for victims of lawfully proven miscarriage of justice.

Regarding women's rights, Article 6 recognises their equality with men and states that a woman has the right to 'her own legal status and financial independence, and the right to retain her maiden name and lineage' and 'the right to motherhood in line with Allah's creation'. Article 5 emphasises their equal right to marry and form a family. Additionally, Article 6 declares:

'State and the society shall take all necessary measures to eliminate difficulties that impede the empowerment of women, their access to quality education, basic health care, employment and job protection and the right to receive equal remuneration for equal work as well as their full and effective participation in all spheres of life.'

The article adds that 'Women and the girl child shall also be protected against all forms of discrimination, violence, abuse and harmful traditional practices'.

Article 7 of the CDHR recognises the rights of the child:

'To such measures of protection as are required by his status as a minor, including nursing, education as well as material, and moral care, on the part of his family, society and the State. Both the fetus and the mother must be protected and accorded special care.'

It emphasises the state's obligation:

'To respect the responsibilities, rights and duties of the parents, and when applicable, legal guardians to choose the type of education of their children, including the religious and moral education, in conformity with their religious beliefs and ethical values while taking into consideration child's best interest as well as their evolving mental and physical capacities.'

Additionally, it points out that 'children have commitments toward their parents, relatives and kin'. Article 8 recognises the right to recognition everywhere as a person before the law. The right to freedom of movement is recognised in Article 11. The right to work, to fair wages, rest and leisure, including reasonable limitation of working hours and holiday allowances and promotions, and the right to form with others and join trade unions are recognised by Article 14. The right to own property (Article 16) and expropriation is not permissible except for the requirements of public interest and upon payment of full and fair compensation. Article 9 of CDHR recognises the right to education, including compulsory and free primary education. The right to protection of privacy is recognised in Article 19, while the right to the enjoyment of the highest attainable standard of physical and mental health is guaranteed by Article 18.

Article 13 recognises the right to nationality. According to it, 'no one shall be arbitrarily or unlawfully deprived of his/her nationality nor denied the right to change his/her nationality'. Article 20 recognises the right to freedom of thought, conscience and religion. It indicates that 'no one shall be subject to coercion, which would impair his/her freedom to have or to adopt a religion or belief of his choice'. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the rights and fundamental freedoms of others. Article 21 recognises the right to freedom of opinion and expression. Restrictions on this freedom may be imposed by law, limited to the following categories: propaganda for war, advocacy of hatred, discrimination or violence on grounds of religion, belief, national origin, race, ethnicity, colour, language, sex or socio-economic status, respect for human rights or reputation of others, matters relating to national security and public order and measures required for the protection of public health or morals. However, it introduces restrictions to freedom of expression, stating that this right 'should not be used to violate sanctities of the dignity of prophets, religions, religious symbols or to undermine moral and ethical values of society'. Article 22 recognises the right to participate in the conduct of public affairs, directly or indirectly through freely chosen representatives, the right to assume public office in accordance with the principles of equality of opportunity and non-discrimination, following the national legislation, and the freedom of peaceful assembly and association in accordance with national legislation.

However, the CDHR contains rights that are absent from the universal system of human rights. In Article 3, the first sentence provides for the protection of honour

during life and after death, while the second sentence protects people's remains and burial place. Additionally, it protects marriage as a union between a man and a woman and points to women's right to financial independence and retaining their name, eliminating the difficulties and discrimination that women face (Article 6). Article 5 indicates that 'the family is the natural and fundamental group unit of society. It is based on the marriage between a man and a woman'. Article 15 recognises the right to legitimate economic and financial gains 'without monopolization, deceit or harm to oneself or to others' and 'usury is absolutely prohibited'. Article 17 provides additional protection for intellectual property rights. Article 10 guarantees the right to self-determination. According to it, all 'peoples freely determine their political status and freely pursue their economic, social and cultural development'. It states:

'[F]oreign occupation, subjugation and colonialism of all types are totally prohibited. Peoples suffering from occupation, or colonialism have the full right to freedom and self-determination. It is the duty of all States and peoples to support the struggles for the elimination of all forms of colonialism and occupation.'

Additionally, it states that people 'have the right to protect their political independence, national sovereignty, territorial integrity and unity, as enshrined in the UN Charter'. Article 23 protects the rights of all persons during war and armed conflict following the International Humanitarian Law, including 'but not limited to non-combatants, older persons, the infirm, persons with disabilities, women, children, civilians, journalists, humanitarian workers and prisoners of war'. Moreover, people are 'prohibited to desecrate holy places and places of worship, damage natural resources and environment and cultural heritage'. However, it also does not contain a ban taking hostages under any form or for any purpose contained in Article 21 in the 1990 version.

2.2.2. *Covenant on the Rights of the Child in Islam*

The OIC Covenant on the Rights of the Child in Islam²³ was adopted in June 2005. It has not entered into force due to a lack of ratifications. The Covenant lists several children's rights, the approach to which sometimes differs from that of the UN system. Notably, the exercise of the right provided for in the Covenant takes place 'in accordance with the regulations and without prejudice to Islamic Shariah'. Furthermore, refugee children have the right to enjoy the rights guaranteed therein 'to the extent possible' (Article 21). Article 1 includes the principle of equality and the prohibition of discrimination. The right to life (Article 5) is guaranteed from 'when he is a fetus in his / her mother's womb or in the case of his/her mother's death; abortion should be prohibited except under necessity warranted by the interests of the mother, the fetus, or both of them'. Article 7 recognises the child's right to an identity, which includes,

23 Covenant on the Rights of the Child in Islam, 28 June 2005.

inter alia, the right to ‘know his/her parents, all his/her relatives and foster mother by suckling’. Article 8 guarantees the preservation of family cohesion.

The Covenant recognises several personal rights and freedoms of the child, including the right to forming your personality, the right to express their opinions freely in all matters affecting them and the right to respect their personal life (Article 9). Nevertheless, the parents or legal representative of the child:

Are entitled to exercise Islamic and supervision over the conduct of the child who shall not be subject of any restrictions other than those imposed in conformity with law and are necessary for the protection of public order, public security, public morals, public health, or the protection of the fundamental rights and freedoms of others.

Article 10 recognises the right to form and join any peaceful civilian gathering. Article 11 guarantees every child the right to upbringing, that is, it is ‘the responsibility of his/her parents or legal guardian, as the case may be, and in which the institutions of the state, within their means, shall assist them’. Article 12 recognises the right to free and compulsory basic education by learning the principles of Islamic education (as well as belief and Shariah) and the provision of the necessary means to develop their mental, psychological and physical abilities to allow them to be open to the common standards of human culture. The Covenant mentions the right to rest and activity times (Article 13) and the right to custody and maintenance (Article 14). The latter includes, among others, the right to benefit from social security and the right to a living standard suitable to their mental, psychological, physical and social development, along with the right to alimony.

The Covenant recognises the right to physical and psychological care (Article 15). Additionally, disabled children and children with special needs have the right to ‘receive a special care that guarantees his/her full rights and is commensurate with his/her case and the conditions of his /her parents or of the one responsible for him/her, as well as with available capabilities’ (Article 16). Furthermore, the Covenant requires the protection of the child from illegal use of drugs, intoxicants and harmful substances or participation in their production, promotion or trafficking; all forms of torture or inhumane or humiliating treatment in all circumstances, conditions or his/her smuggling, kidnapping or trafficking, and abuse, particularly sexual abuse. An unusual provision is the protection against cultural, ideological, information and communication invasion. It further prohibits the involvement of children in armed conflicts or wars (Article 17). Article 18 prohibits children from performing ‘any risk work, or work which obstructs his/her education or which is at the expense of his/her health as well as physical or spiritual growth’. It fixes a minimum working age, with working conditions and hours.

Article 19 regulates issues related to depriving a child of liberty. It orders expeditious consideration of such cases by a specialised juvenile court, with the possibility of the judgment being contested by a higher court once the child is convicted, and the establishment of a minimum age under which the child may not be tried. Article 20

indicates that '[p]arents or the one legally responsible shall be obliged to provide good education and upbringing for the child' and must protect the child from:

'Practices and traditions which are socially or culturally detrimental or harmful to the health, and from practices which have negative effects on his/her welfare, dignity or growth, as well as those leading to discrimination between children on basis of sex or other grounds.'

The Covenant contains three obligations for its States Parties under Article 4:

1. Respect the rights of the child guaranteed therein
2. Respect the responsibilities and rights of parents, legal guardians or other persons that are legally responsible for the child, as required by the child's interest
3. End action based on customs, traditions or practices that conflict with Islamic Sharia and the rights and duties stipulated in this Covenant.

2.2.3. Monitoring and Enforcement Mechanisms

The Covenant of the Rights of the Child in Islam envisions an Islamic Committee on the Rights of the Child, to meet biannually to discuss implementation progress (Article 45). Since the Covenant has not been ratified by a sufficient number of OIC members, no such committee has been established. Currently, the only monitoring body is the Independent Permanent Human Rights Commission (IPHRC).

The IPHRC was commissioned in 2005 after the OIC Council of Foreign Ministers held a programme titled 'OIC Ten-Year Programme of Action'. A resolution was adopted by the 3rd Extraordinary Islamic Summit held in Mecca, Saudi Arabia, on 7 December 2005. However, the partial formation of the commission took place by the 11th Islamic Summit, which was hosted between 13 and 14 March 2008 by Senegal in Dakar. It was formally created by the 38th session of the Council of Foreign Ministers between 28 and 30 June 2011 in Astana, Kazakhstan, with the adoption of its Statute.²⁴

The IPHRC consists of 18 professional human rights-trained members. They are elected by the OIC Council of Foreign Ministers from three continents – Arab, Africa and Asia – with six members from each continent. Nominated by their governments, the members are elected for a term of three years. A member may serve in the commission only twice, and the term is renewable only once. The IPHRC organises two annual sessions focused on its principles. The dates are decided by the OIC Secretariat and IPHRC's bureau. The OIC's executive director is responsible for the preparation and submission of the Draft Agenda and Programme of Works to the commission members for final approval. The sessions' documents consist of reports, proceedings, conclusions and recommendations. The Secretary-General of the OIC is responsible

24 Statute of The OIC Independent Permanent Human Rights Commission, 28-30 June 2011. Rules of Procedure of the OIC Independent Permanent Human Rights Commission (IPHRC), 28-30 June 2011.

for the annual presentation of the session report to the Council of Foreign Ministers, which includes the IPHRC's activities.

IPHRC's objectives and mandates cover a range of activities, including the following:

1. Advising OIC's policy-and-decision-making bodies on all matters concerning human rights.
2. Undertaking studies and research in the field of human rights.
3. Advancing human rights and fundamental freedoms in Member States and fundamental rights of Muslim minorities and communities in non-Member States in conformity with the universally recognised human rights norms and standards, with the added value of Islamic principles of justice and equality.
4. Promoting and strengthening human rights in Member States by providing 'technical cooperation and assistance in the field of human rights and awareness-raising'.
5. Pursuing interfaith and intercultural dialogue to promote peace and harmony among various civilisations and promote the true image of Islam.
6. Extending support to Member States and their national institutions in the promotion and protection of human rights for all in an independent manner.
7. Reviewing OIC's human rights instruments and recommending ways for their fine-tuning, as and where appropriate, including recommending new mechanisms and covenants.
8. Promoting cooperative working relations with relevant bodies of the UN and OIC, along with relevant regional human rights mechanisms.
9. Promoting and supporting the role of Member States' accredited civil society organisations.
10. Participating in missions for observing elections in Member States.

Additionally, the IPHRC has some specific mandates given to it by the Council of Foreign Ministers, such as reporting on islamophobia and incitement to hatred and monitoring the human rights situation of Muslim minorities in Kashmir, Myanmar and the Central African Republic.²⁵

2.3. The Gulf Cooperation Council (GCC)

The Gulf Cooperation Council (GCC) is an intergovernmental alliance of six monarchies on the Arabian Peninsula, namely Bahrain, Saudi Arabia, Qatar, Kuwait, Oman and the United Arab Emirates (UAE). It was created in 1981, as a way of fostering regional unity and cohesion in economics, education and culture. The Gulf Human

25 OIC Independent Permanent Human Rights Commission (IPHRC) (n.d.) *Mandate of the Commission*, 30 June 2011.

Rights Declaration (GHRD) was adopted by the High Council of the GCC in its summit in Doha in December 2014. The leaders of the Gulf states reaffirmed, in the preamble of the GHRD, their commitment to universal and regional human rights benchmarks, namely, the UDHR, ACHR and the CDHR. The interpretation of rights depends on a Muslim state's interpretation of Shari'ah. Several protected rights have an additional caveat that requires such protection to be in accordance with domestic law.

The GDHR emphasised Islamic custom and tradition in its preamble. It emphasised:

'Deep belief in the dignity of the human being, respect for his rights and their commitment to the protection of those rights that are ensured by the Islamic Sharia law which embody the firm and noble values and principles in the conscience of their communities and constitute the basic constants of their policies at all levels.'

According to Article 44, the exercise of rights and freedoms takes place without prejudice to the provisions of Islamic Sharia law. However, the rights are subject to restrictions that are determined by the regulation (law) for securing and respecting the rights and freedoms of others and public order (Article 46), as the GDHR may not limit the rights and freedoms contained in national law or arising from other international obligations of its signatories (Article 47).

The GDHR is composed of 47 articles, covering fundamental rights and freedoms, including the right to life (Article 1), equality before the law (Article 2), freedom from slavery (Article 3), prohibition on medical and scientific experiments without the consent of the individual (Article 5), freedom of opinion and expression (Article 9), freedom of movement (Articles 10 and 11), legal personality (Article 12), nationality (Article 13), marry and form a family (Article 15), private life (Article 16), a standard of living adequate for the well-being of themselves and their family (Article 17), the child's right (Article 18, Article 19), live in a clean environment free of pollution (Article 20), healthcare (Article 21), comprehensive care and rehabilitation and consolidation for all people with special needs (Article 22), education (Article 23), work and just and favourable employment conditions, along with employees' and employers' rights (Article 24), protection and welfare (Article 25), social security and insurance (Article 26), property (article 27), cultural rights (Article 29), political participation (Article 30), freedom of association (Article 31), access to litigate with full independence of the judiciary (article 32) and other criminal law guarantees (Articles 33, 34, 35, 37, 38 and 42), prohibition of torture (Article 36), the right to seek asylum (Article 42) and appeal in the event of a violation of rights and freedoms (Article 45).

However, the GDHR, in Article 4, expresses that '[h]uman organs trade, shall be prohibited, and shall be considered as a violation of human rights, and a crime to be penalised by the regulation (law)'. Article 28 guarantees the right to enjoy national property and resources and the right to benefit from public services. The regulations relating to freedom of religion are original. Article 6 provides 'Freedom of belief and

the practice of religious rites is a right of every human according to the system (law) without prejudice to public order and public morals'. Article 7 provides 'Respect for the heavenly religions, absence of contempt for them or insulting their prophets or symbols, and respect for the cultural diversity of other nations is guaranteed according to the system (law)'.

The declaration recognises terrorism as a violation of human rights (Article 40) and indicates the obligation to respect the rules of International Humanitarian Law concerning armed conflicts (Article 43). It recognises that '[c]onsequences (burdens) of disasters and emergencies shall be the common responsibility of both the government and the community' (Article 39). The GDHR further recognises the family as the natural and fundamental group unit of society, originally composed of a man and a woman (Article 14). It orders promotion of goodness, love, fraternity, tolerance and other noble principles and values (Article 8).

3. Asian Perspective on Human Rights

In Asia, no one human rights system covers the entire region. A major hindrance to a pan-Asian human rights system is the absence of a shared identity between its 53 diverse states. However, there are sub-regional-level initiatives. There are two regional organisations in Asia with human rights mandates: the Association of South-east Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC).

3.1. Association of Southeast Asian Nations (Asean)

ASEAN was established in 1967 by five states – Thailand, Indonesia, the Philippines, Malaysia and Singapore. Brunei joined in January 1984. ASEAN grew substantially in the late 1990s, with the end of the Cold War when four countries joined in rapid succession – Vietnam in July 1995, Laos and Myanmar (Burma) in July 1997 and Cambodia in April 1999. Additionally, Papua New Guinea and Timor-Leste have observer status. ASEAN's main purpose was to guarantee peace and stability within the region. Currently, it has three pillars: the ASEAN Economic Community (AEC), the ASEAN Political-Security Community and the ASEAN Social-Cultural Community. Economic integration is a key focus of ASEAN.

For decades, the protection of fundamental rights has been on the sidelines of ASEAN activities. The first declaration in Asia to involve multiple nations was the Southeast Asian declaration called the Declaration of the Basic Duties of ASEAN Peoples and Governments (1983).²⁶ However, since the early 1990s, this issue emerged, as evidenced by the adoption of the Bangkok Declaration on 2 April 1993²⁷ by several

26 Southeast Asian declaration, called the Declaration of the Basic Duties of ASEAN Peoples and Governments, 9 December 1983.

27 Bangkok Declaration, 8 August 1967.

Asian countries, including all ASEAN members. It reaffirmed the commitment of its signatories to respect fundamental rights guaranteed in the UN system and emphasised respect for sovereignty, the principle of non-interference in internal affairs, peaceful resolution of disputes and the right to development.²⁸ The Bangkok Declaration stated:

‘[We] [r]ecognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of norm-setting, bearing in mind the significance of national and regional particularities and the various historical, cultural and religious backgrounds.’

The same year, in September, the ASEAN Inter-Parliamentary Organization (AIPO) adopted the Kuala Lumpur Declaration of Human Rights (KLDHR).²⁹ The KLDHR was adopted by the 14th General Assembly of the AIPO in October 1993. It represented an early initiative to include human rights in the ASEAN agenda. It is the only comprehensive enumeration of human rights from ASEAN before the adoption of the ASEAN Human Rights Declaration (AHRD). It stated that the protection of fundamental rights should take into account respect for national sovereignty, territorial integrity and non-interference in the internal affairs of sovereign states. It noted that, in these rights, the rights and freedoms of the individual should be balanced with their duties towards the community. It further stated that human rights are influenced by the historical experiences of each country and changing economic, social, political and cultural conditions. On the one hand, it pointed to the dynamism of human rights and, on the other, to the impossibility of their simple universalisation.

Both declarations were an expression of ‘Asian values’ presented in the early 1990s by Mahathir bin Mohamad and Lee Kuan Yew. The concept of Asian values referred to Confucian ideas, deeply rooted in these societies, indicating that the Western understanding of rights and freedoms did not fit the local cultural context and certain limitations were the price for social stability and economic development.³⁰ The caution of ASEAN states towards the doctrine of human rights is reflected in the relative level of ratification of various UN treaties concerning these rights and the reservations expressed when signing them. Hence, the adoption of the new ASEAN Charter on 20 November 2007 paved the way for the development of the ASEAN regional system for the protection of human rights. Next came the adoption of the Cha-Am Hua Hin Declaration on the Intergovernmental Commission on Human Rights (2009). The subsequent adoption of the AHRD (2012) and the Phnom Penh Statement on the Adoption of the AHRD, as the framework for regional cooperation for the promotion and protection of human rights, embodied the commitment of the governments of ASEAN

28 Stępień, 2010, pp. 23–31.

29 Kuala Lumpur Declaration on Human Rights, September 1993.

30 Gawlikowski, 1999, pp. 192–237; Drelich-Skulska, 2007, pp. 96–103; Brzuszczyk, 2020, pp. 115–134.

to safeguard the human rights and fundamental freedoms of its people. Hence, the protection of fundamental rights has become a part of the cooperation agenda of ASEAN Member States.

3.2. Asean Charter

The ASEAN Charter³¹ was adopted on 20 November 2007. The Charter, which entered into force on 15 December 2008, includes the protection of human rights as a goal and a principle in Articles 1(7) and 2(2.7). The Charter calls for ‘respect for fundamental freedoms, the promotion and protection of human rights and the promotion of social justice’, giving rise to political and legal obligations on the part of the Member States. However, it reaffirms the sovereign independence of all members, alongside an explicit commitment to ‘non-interference in the internal affairs of ASEAN Member States’, and provides that decision-making will be based on traditional ASEAN principles of consultation and consensus. Furthermore, it highlights the need for the establishment of a human rights body, as outlined in Article 14, which states that ‘In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body’.

3.3. Asean Human Rights Declaration

The AHRD³² was adopted unanimously by the ASEAN Member States on 18 November 2012. Its adoption was accompanied by the Phnom Penh Statement,³³ which provides that ASEAN Member States:

‘REAFFIRM (sic) further our commitment to ensure that the implementation of the AHRD be in accordance with our commitment to the Charter of the United Nations, the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and other international instruments to which ASEAN Member States are parties, as well as to relevant ASEAN declarations and instruments pertaining to human rights.’

However, while in Africa, Europe and Latin America, the Member States commit to binding regional human rights treaties, the AHRD is a non-binding declaration. It includes 40 paragraphs under six headings. It reiterates several human rights laid down in the UDHR and other international human rights instruments to which ASEAN Member States are parties. However, the AHRD goes beyond the UDHR by explicitly including the rights to water and sanitation and the rights to solidarity, development, a clean environment and peace.

31 Charter of the Association of Southeast Asian Nations, 20 November 2007.

32 Association of Southeast Asian Nations (ASEAN) (2012) *ASEAN Human Rights Declaration (AHRD) and Phnom Penh Statement on the Adoption of the AHRD*, 18 November 2012.

33 Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration (AHRD), 19 November 2012.

The AHRD's preamble places it in the context of 'adherence to the purposes and principles of ASEAN as enshrined in the ASEAN Charter', referring to 'other international human rights instruments of which ASEAN Member States are parties'. The first part of the AHRD, entitled 'General Principles' (Articles 1-9), commences with an assertion of the inherent freedom of all persons and their equality in dignity and rights (Article 1). Article 2 holds that every person is entitled to equality in the rights set out in the AHRD. Article 3 guarantees every person's right to recognition by equality before and entitlement to protection of the law. Article 5 states that every person has the right to an effective and enforceable remedy, to be determined by competent authorities, 'for acts violating the rights granted to that person by the constitution or by law', rather than the rights granted under international law. Article 4 identifies particular social groups ('women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups') and recognises that their rights are 'an inalienable, integral and indivisible part of human rights and fundamental freedoms'.

The AHRD subjects the enjoyment of fundamental rights to a 'balancing' with state-imposed duties on individuals. Article 6 mentions that 'The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives'. However, 'It is ultimately the primary responsibility of all ASEAN Member States to promote and protect all human rights and fundamental freedoms'. Nevertheless, in Article 7, it distinguishes regional human rights standards from universal standards and those in other regional systems, providing:

'All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. At the same time, the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, and cultural, historical and religious backgrounds.'

Hence, Article 7 is a limitation of rights pursuant to the international human rights law called Margin of Appreciation.

Article 8 mentions:

'The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others. The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order,

public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.’

Therefore, it permits limitations and restrictions for all rights across the AHRD. Additionally, it allows them without imposing the required conditions of necessity and proportionality and for purposes more expansive than under international law. Article 9 refers to the need to avoid ‘double standards’ and ‘politicization’ in the realisation of human rights and freedoms.

The next 16 articles (Articles 10–25) set out civil and political rights. The provisions mark a relatively minor departure from the rights set out in the UDHR in 1948, with the absence of reference to the right of association notwithstanding. Article 10 affirms ‘all the civil and political rights in the Universal Declaration of Human Rights’. Article 11 affirms the inherent right of people to life and includes a positive obligation to protect life ‘by law’. However, it does not address the death penalty. Article 12 refers to the right of ‘personal liberty and security’. However, it expresses no positive obligations in circumstances of non-arbitrary arrest, search or detention. Regarding the prohibition on servitude or slavery, Article 13 adds that persons shall not be subject to ‘human smuggling or trafficking in persons, including for the purpose of trafficking in human organs’. The prohibition on torture or cruel, inhuman or degrading treatment or punishment is explicitly mentioned in Article 14.

Article 15 guarantees every person the right to freedom of movement and residence within the borders of each state. Furthermore, every person has the right to leave any country, including their own, and return to their country. Regarding the right to asylum, Article 16 states that ‘Every person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements’. This right is contingent on national law. Article 17 includes the right of every person to ‘own, use, dispose of and give’ lawfully acquired ‘possessions’ and provides that ‘no person shall be arbitrarily deprived of such property’. Article 18 asserts that every person has a right to a nationality ‘as prescribed by law’. Article 19 identifies the family as the ‘natural and fundamental unit of society’. It identifies the right of men and women to freely marry, form a family and dissolve a marriage; however, it does not provide for equal rights between the sexes in these instances. Article 20(1) provides for the presumption of innocence and a fair trial before an independent, impartial tribunal, before which the accused is guaranteed the ‘right to defence’. However, it does not provide the right to appeal, compensation for wrongful conviction or the safeguards accorded to juveniles in the criminal justice process. Article 20(2) recognizes the principles of *nulla poena sine lege* and *nulla poena sine lege*, and Article 20(3) provides that, no person shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of each ASEAN Member State.

Article 21 guarantees the ‘right to be free from arbitrary interference’ with people’s privacy, family, home or correspondence, including personal data, or ‘to attacks upon that person’s honour and reputation’. The first sentence of Article 22 states that ‘Every

person has the right to freedom of thought, conscience and religion'; however, it does not mention the right to 'have or adopt a religion'. The second sentence provides no positive obligation on the state to ensure the free observation, manifestation and practice of a particular religion. It only states that 'all forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated'. The AHRD does not stipulate the right to change religion and manifest religion in teaching, practice, worship and observance. Article 23 expresses the 'right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information'. According to Article 24, 'Every person has the right to freedom of peaceful assembly'. Regarding participation in the government, Article 25 guarantees that 'Every person who is a Citizen of his or her country has the right to participate in the government of his or her country, either directly or indirectly through democratically elected representatives, in accordance with national law'. Furthermore, it provides 'the right to vote in periodic and genuine elections, which should be by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors, in accordance with national law'.

The third section sets out 'Economic, Social and Cultural Rights'. Article 26 affirms 'all the economic, social and cultural rights in the Universal Declaration...', with these described in Articles 27-34. However, Article 33 states that economic, social and cultural rights are to be realised 'progressively' and 'to the maximum of [Member States'] available resources'. Additionally, Article 34 provides that Member States may determine the extent to which non-nationals may avail of these rights. The AHRD recognises the rights to 'adequate and affordable food, freedom from hunger and access to safe and nutritious food' (Article 28(a)) and to clothing (Article 28(b)), housing (Article 18(c)) and medical care and social services (Articles 28(d), 29(1) and 30). However, the AHRD goes beyond the UDHR by explicitly guaranteeing 'the right to safe drinking water and sanitation' (Article 28(e)), 'the right to a safe, clean and sustainable environment' (Article 28(f)) and protection from discrimination in treatment for 'people suffering from communicable diseases, including HIV/AIDS' (Article 29).

Article 27(1) provides every person the right 'to enjoy just, decent and favorable conditions of work and to have access to assistance schemes for the unemployed'. Article 27(2) asserts the right to form and join trade unions in accordance with national law. Article 27(3) brings certain rights of children out of the family context into the work context, stating:

'No child or any young person shall be subjected to economic and social exploitation. Those who employ children and young people in work harmful to their morals or health, dangerous to life, or likely to hamper their normal development, including their education should be punished by law. ASEAN Member States should also set age limits below which the paid employment of child labour should be prohibited and punished by law.'

The right to education (including universal and free access to primary education) is recognised in Article 31. Article 32 includes the rights to freely take part in cultural life, enjoy the arts and the benefits of scientific progress and its applications and benefit from the protection of the moral and material interests resulting from any scientific, literary or appropriate artistic production of which one is the author. While Articles 10–25 and 26–34 set out the first and second generation rights, Articles 35–38 set out the third generation rights, including collective rights to development and peace. However, other third-generation rights are omitted, for instance, reference to the rights of indigenous peoples, suggesting their partial or selective promotion. Significantly, the AHRD does not set out a collective right to self-determination, nor identify distinct threats such as colonialism or neo-colonialism, distinguishing the Declaration from the ACHPR (1981) and from the Bangkok Declaration (1993).

In the third substantive part of the AHRD, Articles 35–37 set out the right to development. Article 35 expresses the right to development as ‘an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic, social, cultural and political development’. The second sentence of Article 35 inserts a reference to inter-generational needs. The third sentence states that ‘the lack of development may not be invoked to justify the violations of internationally recognised human rights’. Article 36 mentions that ASEAN Member-States ‘should’ adopt ‘people-oriented and gender responsive’ development programmes, with the aim of poverty alleviation, the creation of conditions for ‘the peoples of ASEAN to enjoy all human rights recognised in this Declaration on an equitable basis’ (with reference to ‘the protection and sustainability of the environment’) and ‘the progressive narrowing of the development gap within ASEAN’. Article 37 recognises the implementation of the right to development requiring both national policy and ‘equitable economic relations, international cooperation and a favourable international economic environment’, and the obligation on ASEAN states to ‘work with the international community to promote equitable and sustainable development, fair trade practices and effective cooperation’.

The fourth part, in Article 38, sets out the right to peace, providing that ‘[e]very person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, such that the rights set forth in this declaration can be fully realised’. The fifth and final part of the AHRD consists of two articles. Article 39 provides for cooperation among ASEAN Member States for the promotion and protection of human rights and with other national, regional and international entities, following the ASEAN Charter. Article 40 provides:

‘[N]othing in this Declaration may be interpreted as implying for any State, group or person any right to perform any act aimed at undermining the purposes and principles of ASEAN, or at the destruction of any of the human rights and fundamental freedoms set forth in this Declaration and international human rights instruments to which ASEAN Member States are parties.’

The AHRD, in the future, may create the foundations for an Asian system of human rights protection based on values other than European values. As a non-binding document, it does not violate the international legal obligations of ASEAN Member States regarding protecting fundamental rights resulting from international treaties ratified by these states, which are a part of the universal human rights system. Additionally, it is the latest set of standards in human rights adopted by all Member States. The AHRD is an interesting document among the acts internationalising the protection of fundamental rights. It presents the fundamental rights differently from the current European human rights system. The link between fundamental rights and the performance of duties that each person has towards the community deserves special attention. It recognises the existence of some collective human rights (the right to development and the right to peace). Moreover, it devotes a lot of space to social rights. Most importantly, it indicates that the idea of human rights must take into account and respect the differences in the models of political, social and economic systems, cultural and religious differences and the different historical experiences of each country. This is especially valuable since sometimes the instrumentalisation of human rights becomes a tool for political pressure. Hence, the AHRD is a good foundation for future binding instruments of this organisation in the area of human rights.

3.4. Other Asean Declarations and Conventions

Aside from the AHRD, ASEAN Member States have adopted several declarations and conventions on the protection of specific human rights. The 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu Declaration)³⁴ addresses the human rights obligations of both receiving as well as sending states. The obligations of the receiving states include, '[f]acilitate access to resources and remedies through information, training and education, access to justice, and social welfare services', '[p]romote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers', provide migrant workers, who may be victims of discrimination, abuse, exploitation, violence, with adequate access to the legal and judicial system and facilitate the exercise of consular functions to consular or diplomatic authorities of states of origin when a migrant worker is arrested or committed to prison or custody or detained in any manner.

The obligations of the sending states include, '[e]nsure access to employment and livelihood opportunities for their citizens as sustainable alternatives to migration of workers' and regulation of the issue of 'recruitment, preparation for deployment overseas and protection of the migrant workers when abroad as well as repatriation and reintegration to the countries of origin'. The provisions of the Declaration do not apply to undocumented migrant workers (Paragraph 4). The provisions of the Cebu Declaration were developed in the ASEAN Consensus on the Protection and Promotion of

34 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, 13 January 2007.

the Rights of Migrant Workers (2017)³⁵ and ASEAN Declaration on the Protection of Migrant Workers and Family Members in Crisis Situations and its Guidelines.³⁶

The ASEAN Convention against Trafficking in Persons, Especially Women and Children³⁷ (ACTIP) was signed by ASEAN leaders during the 27th ASEAN Summit, on 21 November 2015 in Kuala Lumpur, and entered into force on 8 March 2017, once six ASEAN Member States had deposited the instrument of ratification of the Convention. It is ASEAN's first regional legally binding instrument to combat human trafficking, aiming to strengthen regional cooperation against human trafficking among ASEAN Member States. It builds on the ASEAN Declaration against Trafficking in Persons particularly Women and Children, which was adopted in 2004.³⁸ The purposes of this Convention are to (1) prevent and combat trafficking in persons, especially women and children, (2) protect and assist victims of trafficking in persons and (3) promote cooperation among the parties to meet these objectives. The ACTIP recognises the need for more coordinated collaborative efforts across the region to prevent and improve responses to human trafficking. For example, it emphasises the protection of the integrity of passports and identity documents, exchange of information on migratory flows and strengthening of the supervisory capabilities and monitoring mechanisms in migration. The overarching goal is to ensure that ASEAN Member States have effective justice systems that penalise human trafficking perpetrators and protect the human rights of the victims. Hence, it contains provisions on criminalisation of human trafficking, participation in an organised criminal group, laundering of proceeds of crime, corruption and obstruction of justice.

The Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN³⁹ of 2013 references the Convention on the Elimination of Violence Against Women (CEDAW) and its treaty body. The declaration provides for 1) the enactment or amendment of national legislations, 2) integration of legislations, policies and measures for the prevention and elimination of violence against women and children and protection and assistance of the victims/survivors, 3) development of strategies to eliminate harmful practices, which perpetuate gender stereotyping and violence against women and children, 4) adoption of a gender responsive, child sensitive and age-responsive public policies, 5) strengthening of existing national mechanisms, 6) promotion of research and data collection and analysis, good practices, sharing of information and exchange of experts, social workers and service providers, including NGOs and 7) bilateral and regional cooperation.

35 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, 14 November 2017.

36 ASEAN Declaration on the Protection of Migrant Workers and Family Members in Crisis Situations and its Guidelines, 10 May 2023.

37 ASEAN Convention against Trafficking in Persons, Especially Women and Children, 21 November 2015.

38 ASEAN Declaration against Trafficking in Persons Particularly Women and Children, 29 November 2004.

39 Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN, 9 October 2013.

3.5. *Asean Mechanisms and Procedures*

ASEAN has established several mechanisms to support the implementation of its human rights declarations. These are the ASEAN Inter-governmental Commission on Human Rights (AICHR), 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 on the Protection and Promotion of the Rights of Migrant Workers (ACMW). All three are supported by the ASEAN Secretariat. These focus on the promotion rather than on the protection of human rights. In other words, they seek to raise awareness on human rights; however, they do not offer a complaints mechanism for individuals or groups or a procedure for the Member States to report on their commitments at the regional level.

3.5.1. *Asean Inter-Governmental Commission on Human Rights (AICHR)*

The AICHR is an ‘overarching institution responsible for the protection and promotion of human rights in ASEAN’.⁴⁰ It was inaugurated by the ASEAN leaders on 23 October 2009 at the 15th ASEAN Summit in Cha-Am Hua Hin, Thailand,⁴¹ following Article 14 of the ASEAN Charter and as a part of its political-security pillar. According to its Terms of Reference (ToR),⁴² the AICHR is an intergovernmental body with an advisory function.⁴³ It is comprised of 10 government representatives, one per ASEAN Member State. The selection processes of the AICHR representatives differ by state; however, they must, at a minimum, take into account the individual’s integrity and competence in the field of human rights and ensure gender equality within the Commission. Member States are not obliged to have a transparent or consultative selection process. Each AICHR representative serves a term of three years and may be re-appointed for a second term. The government may decide at any time to replace its AICHR representative, without notice or explanation.

The Commission operates through consultation and consensus, following Article 20 of the ASEAN Charter. This means that it cannot act without the full agreement of all 10 representatives. Its mandate includes:

1. Developing strategies for the promotion and protection of human rights and fundamental freedoms
2. Enhancing public awareness of human rights through education, research and dissemination of information
3. Undertaking capacity building for the effective implementation of ASEAN Member States’ international human rights treaty obligations and ASEAN human rights instruments
4. Encouraging ASEAN Member States to ratify international human rights instruments

40 Ramcharan, 2010, pp. 204–206.

41 Cha-Am Hua Hin Declaration on the Inter-governmental Commission on Human Rights, 23 October 2009.

42 ASEAN Inter-governmental Commission on Human Rights (Terms of Reference), 20 July 2009.

43 Khoo, 2017, pp. 66–75.

5. Providing ASEAN with advisory services and technical assistance on human rights matters upon request
6. Engaging in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders
7. Obtaining information from ASEAN Member States on the promotion and protection of human rights
8. Developing common approaches and positions on human rights matters of interest to ASEAN
9. Preparing thematic human rights studies
10. Performing any other tasks assigned by the ASEAN Foreign Ministers Meeting.

One of its mandates was ‘to develop an ASEAN Human Rights Declaration’. However, its mandates do not contain explicit provisions for receiving and investigating complaints of human rights violations. The AICHR is tasked with mainstreaming human rights across sectors and can influence and engage with all three ASEAN pillars. The Commission’s ToR require a review of its work ‘with a view to further enhancing the promotion and protection of human rights within ASEAN’ (Articles 9.6 and 9.7 of the ToR). The AICHR’s priority areas are found in the Five-Year Work Plan, which is based on its 10 mandates outlined in the ToR. Each year, it specifies the high-priority programmes and activities for the year based on the Work Plan and in response to emerging exigencies on human rights in the region. It holds two regular meetings per year and additional meetings when necessary, providing annual reports to the ASEAN Foreign Ministers and other reports, as required.⁴⁴

3.5.2. Asean Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)

The ACWC was established in 2010 as part of ASEAN’s socio-cultural pillar of cooperation to develop policies and programmes to benefit women and children in ASEAN countries.⁴⁵ Each ASEAN country sends two representatives to ACWC – one each for women’s rights and children’s rights. The representatives serve for three years and can only serve two terms. The government may decide at any time to replace its representative without notice or explanation. The ACWC ToR requires that the representatives be appointed through a transparent, open and participatory selection process. When appointing representatives, the Member States must take into account the candidates’ competence in women and/or child rights, their integrity and gender equality within the Commission.

The ACWC meets at least twice a year and can hold additional meetings on special topics, if required. Its decision-making is based on consultation and consensus,

44 Wahyuningrum, 2014, pp. 13–23.

45 Pisanò, 2016, pp. 321–332; Wahyuningrum, 2015, pp. 91–98.

following Article 20 of the ASEAN Charter. This means that, like the AICHR, the ACWC cannot act without the full agreement of all its representatives. It sends an annual report to the ASEAN Ministers Meeting on Social Welfare Development (AMMSWD) and a copy to the ASEAN Committee on Women (ACW) and other relevant ASEAN sectoral bodies. The AMMSWD meets once every three years.

Like the AICHR, the ACWC does not have a specific mandate to receive and investigate complaints of human rights violations. Its ToR⁴⁶ defines its purpose, mandate and functions. Its primary purpose is to promote and protect the human rights and fundamental freedoms of women and children in ASEAN. It is tasked with upholding rights contained in the CEDAW and the Convention on the Rights of the Child (CRC), which all 10 ASEAN Member States have ratified. Its mandates include:

1. Promoting the implementation of international and ASEAN instruments on the rights of women and children.
2. Advocating on behalf of women and children, especially the most vulnerable and marginalised, and encouraging the Member States to improve their situation.
3. Promoting public awareness and education about the rights of women and children in ASEAN, including promoting research on the situation and well-being of women and children.
4. Assisting, upon request by ASEAN Member States, in fulfilling their international human rights reporting obligations on women's and children's rights.
5. Encouraging the Member States to collect and analyse sex disaggregated data and undertake periodic reviews of national legislation, policies and practices related to the rights of women and children.
6. Facilitating the sharing of experiences and good practices between ASEAN Member States to improve the implementation of CEDAW and CRC.
7. Supporting the participation of ASEAN women and children in dialogue and consultation processes in ASEAN related to the promotion and protection of their rights.

The ACWC is obliged, by its ToR, to keep the public periodically informed of its work and activities.

3.5.3. *Asean Committee on the Implementation of the Asean Declaration on the Promotion and Protection of the Rights of Migrant Workers (ACMW)*

The ACMW was established in 2007 to ensure the effective implementation of the Cebu Declaration. It is composed of one senior from each of the Member States and a representative from the ASEAN Secretariat. Its purpose, as defined by its Statement

46 Terms of Reference ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, 22 October 2009.

of the Establishment,⁴⁷ is to ensure that the commitments made under the Cebu Declaration are implemented and develop an ASEAN instrument for the protection and promotion of the rights of migrant workers.

Its functions are as follows:

1. Explore all avenues to achieve the objectives of the Declaration
2. Facilitate the sharing of best practices in the ASEAN region on matters concerning the promotion and protection of the rights of migrant workers
3. Promote bilateral and regional cooperation and assistance on matters involving the rights of migrant workers
4. Facilitate data sharing on matters related to migrant workers for enhancing policies and programmes to protect and promote the rights of migrant workers in both sending and receiving countries
5. Encourage international organisations, ASEAN Dialogue Partners and other countries to respect the principles and extend support and assistance to the implementation of the measures contained in the Declaration
6. Promote harmonisation of mechanisms between both sending and receiving countries that promote and protect the rights of migrant workers to implement the ASEAN commitment reflected in paragraph 17 of the Declaration
7. Work closely with the ASEAN Secretariat in the preparation of the report of the Secretary-General of ASEAN to the ASEAN Summit
8. Work towards the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers

However, the ACMW, as an intergovernmental body, does not have a complaints mechanism or a state reporting procedure. It meets annually and reports to the Senior Labour Officials Meeting (SLOM).

3.6. South Asian Association for Regional Cooperation (SAARC)

SAARC, founded in 1985, primarily aimed to further economic and regional integration. It has eight Member States – Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. SAARC's model of cooperation is based on the principles of sovereignty and non-interference.⁴⁸ The SAARC Charter of 1985⁴⁹ makes indirect references to human rights in Article 1(b), stating that all individuals should have the opportunity to 'live in dignity and to realise their full potential'. It neither lists specific measures nor encourages the development of an SAARC human rights body. However, it has adopted several conventions addressing specific human rights.

47 Statement of the Establishment of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, 6 July 2012.

48 Ahammad, 2024, pp. 1-15.

49 SAARC Charter, 8 December 1985.

The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (SAARC Convention on Trafficking)⁵⁰ came into force in 2006. Its purpose is to promote cooperation to effectively deal with the various aspects of prevention, interdiction and suppression of trafficking of women and children, the repatriation and rehabilitation of trafficking victims and prevent the use of women and children in international prostitution networks, particularly where SAARC countries are the countries of origin, transit and destination. It emphasises that the trafficking of women and children for prostitution is a human rights violation. It recognises that trafficking can occur with or without the consent of the victim and does not require the victim to move across borders. However, it is limited to trafficking for prostitution and does not include the trafficking of men.

The SAARC Convention on Trafficking includes a commitment to recognise human trafficking as a crime ‘under their respective criminal law and shall make such an offence punishable by appropriate penalties which take into account its grave nature’ (Articles III and IV). Hence, in court proceedings conducted in such cases, judicial authorities ‘shall ensure that the confidentiality of the child and women victims is maintained and that they are provided appropriate counselling and legal assistance’ (Article V). Articles VI and VII contain provisions on mutual legal assistance and extradition. However, the Convention does not mention the need to cooperate multilaterally or inter-regionally with non-SAARC countries. The subsequent articles concern measures to prevent and interdict trafficking of women and children (Article VIII), and care, treatment, rehabilitation and repatriation of the victims (Article IX).

The 2002 Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia⁵¹ is a regional affirmation of the international commitments made under the UN Convention on the Rights of the Child, which the Convention defines as ‘as a comprehensive international instrument concerning the rights and well being of the child’. The Convention recognised ‘the best interests of the child’ as a principle of paramount importance, stating that ‘the primary responsibility of looking after the well-being of the child rests with the parents and family’. However, the state has the right and authority to ensure the protection of the best interests of the child. A key focus is knowledge sharing through training programmes and the promotion of greater awareness through mass education.

The Convention further ensures that national laws:

1. Protect the child from any form of discrimination, abuse, neglect, exploitation, torture or degrading treatment, trafficking and violence
2. Prohibits child labour and the entry of children into hazardous and harmful labour

50 Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 5 January 2002.

51 Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 5 January 2002.

3. Orders that juvenile justice is administered in a manner consistent with the promotion of the child's sense of dignity and worth, with the primary objective of promoting the child's reintegration in the family and society
4. Provide special care and treatment to children in a country other than the country of domicile and expectant women and mothers who are detained along with infants or very young children, and promote, to the best possible extent, alternative measures to institutional correction, keeping in mind the best interest of the child
5. Introduce compulsory civil registration of births, marriages and deaths in an official registry to facilitate the effective enforcement of national laws, including the minimum age for employment and marriage

The 2004 Social Charter⁵² states, as one of its objectives, the promotion of universal respect for the observance and protection of human rights. It refers to existing human rights standards, particularly women's rights (Article VI), children's rights (Article VII), the right to health (Article IV) and the right to education and human resource development (Article V). The Social Charter speaks about the fight against drug addiction (Article IX). It highlights the right to development, emphasising the need for poverty alleviation, along with:

'Access to basic education, adequate housing, safe drinking water and sanitation, and primary health care should be guaranteed in legislation, executive and administrative provisions, in addition to ensuring of adequate standard of living, including adequate shelter, food and clothing.'

The provisions relating to the need to stabilise the population are unusual. The Social Charter states that population stabilisation 'should aim to bring stabilisation in the growth of population in each country, through voluntary sustainable family planning and contraceptive methods, which do not affect the health of women' (Article VIII). Hence, the Social Charter may constitute the beginning of a future regional system of human rights protection.

In the Charter of Democracy⁵³ (2011), the SAARC Member States committed to strengthening democratic institutions and reinforcing democratic practices, including through effective coordination and checks and balances among the Legislature, the Executive and the Judiciary. It guarantees the independence of the Judiciary and primacy of the rule of law and ensures that the processes of appointments to the Judiciary and the Executive would be fair and transparent, recognising political parties and civil society.

The Technical Committee on Women, Youth and Children is the monitoring mechanism within SAARC. Its members are government representatives. It reviews

52 Social Charter, 4 January 2004.

53 Charter of Democracy, 23 January 2012.

the status of the implementation of the Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia and the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.

4. Protection of Human Rights in the Commonwealth of Independent States

The conclusion of the Agreement establishing the Commonwealth of Independent States (CIS),⁵⁴ signed by the leaders of Russia, Belarus and Ukraine at a meeting in Minsk on 8 December 1991 can be considered the starting point of regional integration processes in the post-Soviet era. On 22 January 1993, the Charter of the Commonwealth of Independent States was adopted.⁵⁵

Concerning the protection of human rights, Article 3 of the CIS Charter proclaims one of the organisation's goals to ensure human rights and fundamental freedoms for all, irrespective of race, ethnicity, language, religion, political or other beliefs. This norm has been specified in the Declaration of the Heads of State of the CIS on international obligations in the field of human rights and fundamental freedoms on 24 September 1993.⁵⁶ This document noted the responsibility of Member States to protect the rights and freedoms of individuals and confirmed the commitment to the goals and principles enshrined in the UN Charter and the UDHR. Furthermore, Article 5 stated 'a firm intention to develop and conclude shortly the Convention of the Commonwealth of Independent States on Human Rights'. Hence, on 26 May 1995, the CIS Convention on Human Rights and Fundamental Freedoms was adopted.

4.1. Cis Convention on Human Rights and Fundamental Freedoms

The Convention on Human Rights and Fundamental Freedoms of the CIS (CIS Convention on Human Rights)⁵⁷ was opened for signature in Minsk on 26 May 1995, and signed by seven of the eleven CIS Member States (Armenia, Belarus, Georgia, Kyrgyzstan, Moldova, Russia and Tajikistan). It has since been ratified by the Russian Federation, Tajikistan and Belarus and entered into force on 11 August 1998, the day the third instrument of ratification was deposited by Belarus. It was later ratified by Kyrgyzstan. In other words, most Member States of the Commonwealth neither

54 Соглашение о создании Содружества независимых государств, Минск, 8 декабря 1991 года [Agreement on the Establishment of the Commonwealth of Independent States, Minsk, 8 December 1991].

55 Устав Содружества Независимых Государств, Минск, 22 января 1993 года [Charter of the Commonwealth of Independent States (Minsk, 22 January 1993)].

56 Декларация Совета глав государств Содружества Независимых Государств от 24 сентября 1993 г., [Declaration of the Council of Heads of State of the Commonwealth of Independent States, 24 September 1993].

57 Конвенции Содружества Независимых Государств о правах и основных свободах человека, 26 мая 1995 г., Минск [Conventions of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms, Minsk, 26 May 1995].

ratified the fundamental document on the protection of human rights in the Eurasian region nor signed it.

The CIS Convention comprises a preamble and 39 articles. It enshrines a broad list of fundamental human rights, incorporating the provisions and principles of several universal and regional human rights instruments. Articles 1-29 cover all the rights protected, while the remaining articles deal with interpretation, authorised restrictions, reservations, arrangements for entry into force and other matters.

The Convention recognises the right to life (Article 2), adding that ‘until abolished, the death penalty may be applied only in pursuance of a judicial sentence for particularly grave offences’. The death penalty cannot be imposed on women who are pregnant at the time of sentencing and on persons for crimes committed before the age of 18 years, and cannot be executed in the case of women who are pregnant when the sentence is to be carried out. Furthermore, it includes a prohibition on torture or cruel, inhuman or degrading treatment or punishment, emphasising that ‘[n]o one shall be subjected to medical or scientific experiments without his free consent’ (Article 3). It further prohibits slavery or servitude and being constrained to perform forced or compulsory labour (Article 4).

The Convention guarantees equality before the law and prohibits discrimination ‘on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property or official capacity, place of birth or other status’ (Article 20). Persons belonging to national minorities have the right to express, preserve and develop, without hindrance, their ethnic, linguistic, cultural or religious identity (Article 21). Following Article 19 ‘[e]veryone whose rights and freedoms are violated shall be entitled to be effectively restored to his rights and freedoms’. Following Article 5, everyone shall have the right to liberty and security. However, it specifies the cases in which deprivation of liberty may occur and the rights of a person deprived of liberty.

Article 6 recognises the right to a court, the presumption of innocence and the rights of the person accused of committing a criminal offence. Article 7 guarantees that no one shall be ‘held liable for an act which did not constitute an offence under national legislation or International law at the time when it was committed’ or ‘convicted or punished a second time for an offence for which he has already been convicted or punished’. Furthermore:

‘[N]or shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed. If, after an offence is committed, a law establishes a lesser punishment for it or eliminates liability for it, the new law shall be applicable’.

It includes the right to have the judgment of the court reviewed by a higher judicial body and apply for a pardon or request a lighter sentence.

The Convention prohibits the deprivation of liberty for reasons ‘merely on the ground of his inability to fulfil a contractual obligation of any kind’ (Article 8), and

ensures the right to respect for private and family life, home and correspondence (Article 9), the right to freedom of thought, conscience and faith (Article 10) and the right to freedom of expression (Article 11). Moreover, it recognises the right to marry and form a family (Article 13) for both men and women, according to the national legislation'. A marriage requires 'the free and full consent of the intending spouses'. Article 13 further guarantees the economic, legal and social protection of family life for creating the necessary conditions for the development of the family, which is the fundamental unit of society.

The Convention recognises the right to liberty of movement and freedom to choose residence (Article 22), the right to recognition of legal capacity (Article 23) and the right to citizenship (Article 24). It prohibits the expulsion of citizens and deprivation of the right to enter the territory of the state of which one is a citizen, and the collective expulsion of aliens (Article 25).

'Among the political rights, it recognises the right to freedom of peaceful assembly and to association with others, including the right to form and join trade unions for the protection of interests (Article 12). Additionally, it recognises the right to 'take part in the management and conduct of public affairs, either directly or through freely chosen representatives', 'vote and to be elected at elections held on the basis of universal and equal suffrage by secret ballot, that guarantees the free expression of the will of voters' and 'have access, on general conditions of equality, to the public service of his country' (Article 29).

The CIS Convention contains several economic, social and cultural rights. Article 26 guarantees the right to own property. Deprivation of property can only occur in public interest, under a judicial procedure, following the conditions laid down in national legislation and the generally recognised principles of international law. Article 14 recognises the right to work, protection from unemployment, equal remuneration for equal work, including work-related benefits, identical conditions for work for all and equal treatment in the quality assessment of work. Article 18 recognises the right to occupational rehabilitation, vocational training and social reintegration facilities. Article 28 lists the measures that states are obligated to follow for the right to vocational training.

Article 15 guarantees the right to health protection. Article 16 guarantees the right to social security, including social insurance, according to the person's age, in cases of illness, invalidity, loss of breadwinner and upbringing of children and in other cases provided for in national legislation. Article 17 recognises the rights of the child. The right to education (Article 27) includes compulsory and free elementary and fundamental education. The Convention adds that it 'shall respect the right of parents to ensure for their children such education and teaching as corresponds with their own convictions and national traditions'.

The rights and freedoms set out in the Convention are guaranteed to everyone (Article 1). The CIS Convention foresees a control mechanism in the form of the Human Rights Commission of the Commonwealth of Independent States (CIS Commission on Human Rights). The Commission monitors the execution of the Convention by issuing recommendations, and its members are appointed representatives of the State Parties.

4.2. Other CIS Conventions on Human Rights Protection

In addition to the 1995 Convention, attention should be paid to the Convention on Provision for Rights of Persons Belonging to National Minorities (1994) and the Convention on Standards of Democratic Election, Voting Rights and Freedoms in the Member States of the Commonwealth of Independent States (2002). Additionally, the CIS has several other conventions, treaties and agreements relating to the protection of human rights, including the Convention on the Status of Correspondents Representing Mass Media of a Member State of the Commonwealth of Independent States in Other States of the Commonwealth (2004),⁵⁸ Convention on the Legal Status of Migrant Workers and Members of Their Families of the Member States of the Commonwealth of Independent States (2008),⁵⁹ and those relating to cooperation in criminal matters and combating terrorism.

1.1.1.1. 4.2.1. Convention on Provision for Rights of Persons Belonging to National Minorities

The Convention on Provision for Rights of Persons Belonging to National Minorities⁶⁰ is an international treaty signed by 10 CIS countries (Ukraine and Azerbaijan – with reservations) in October 1994 in Moscow. It entered into force in 1997 after ratification by Belarus, Azerbaijan and Armenia. It was ratified and entered into force for Tajikistan in 2001 and in Kyrgyzstan in 2003. Monitoring the implementation of the convention is entrusted to the Commission on Human Rights, as provided for by the CIS Charter (Article 13). However, this body is not endowed with any ‘hard’ powers in this regard and there is no obligation to submit periodic reports on the implementation of the Convention’s provisions.

The Convention is the only universally binding act of international law that contains a definition of the concept of a national minority. According to it:

58 Конвенция о статусе корреспондента, представляющего средство массовой информации государства – участника Содружества Независимых Государств в других государствах Содружества, 16 апреля 2004 года [Convention on the Status of a Correspondent Representing a Mass Media Outlet of a CIS Member State in Other CIS States, 16 April 2004].

59 Конвенция о правовом статусе трудящихся-мигрантов и членов их семей государств – участников Содружества Независимых Государств, 14 ноября 2008 года [Convention on the Legal Status of Migrant Workers and Members of Their Families of the CIS Member States, 14 November 2008].

60 Конвенция об обеспечении прав лиц, принадлежащих к национальным меньшинствам, 21 октября 1994 года [Convention on the Protection of the Rights of Persons Belonging to National Minorities, 21 October 1994].

‘For the purposes of the Convention, the concept of persons belonging to a national minority shall be understood as persons permanently residing in the territory of one of the Contracting Parties and having its citizenship, who are distinguished by their ethnic origin, language, culture, religion or tradition from the rest of the population of the given Contracting Party’ (Article 1).

However, belonging to a national minority is not, according to it, a matter of objective circumstances, that is, distinct ethnic origin, language, religion, culture or tradition; instead, it is a subjective matter, that is, related to the free choice of each individual. Furthermore, the Convention provides that recognising oneself as a member of a national minority will not cause any adverse effects for such a person (Article 2). It emphasises that persons belonging to national minorities will be guaranteed civil, political, social, economic and cultural rights and freedoms in accordance with generally recognised international standards in human rights and national law. Additionally, it contains a prohibition of discrimination against persons belonging to national minorities, indicating that each country ‘shall take measures to prevent any discrimination against citizens on its territory on the grounds of belonging to a national minority’. However, the measures are not specified. It is indicated that ‘respect for the rights of persons belonging to national minorities also means that these persons fulfill their duties towards the state in whose territory they live’ (Article 3).

In the following part, the Convention indicates that persons belonging to national minorities have the right, individually or together with members of their group, to express, maintain and develop their ethnic, linguistic, cultural or religious identity without hindrance. This is accompanied by an obligation to consider the legitimate interests of national minorities in policies and take the necessary measures to create favourable conditions for preserving their ethnic, linguistic, cultural or religious identity. It is stipulated that such measures serve the interests of the whole society and may not lead to the infringement of the rights of other citizens (Article 4). Article 8 indicates that persons belonging to national minorities are guaranteed the right, individually or together with members of their group, to profess their religion and perform religious rites following their faith, to maintain cultural facilities, acquire and use items necessary for the performance of worship and conduct religious education in their native language. However, such activity may not be inconsistent with the national legislation.

The Convention indicates the obligation to ensure the right to participate in social and state life, resolving matters concerning the protection of national minorities’ interests at the regional level. Particularly, Article 5, paragraph 2, mentions that each state guarantees persons belonging to national minorities the right to establish, following the national legislation, various organisations (associations, communities, etc.) of an educational, cultural and religious nature to preserve and develop ethnic, linguistic, cultural and religious identity. The organisations shall have the same rights as granted to other similar organisations concerning the use of public buildings, radio, television, the press and other media. According to Article 9, organisations of persons

belonging to national minorities of an educational, cultural and religious nature may be financed from voluntary monetary and other contributions and may receive assistance from the state based on its legislation. They may receive further assistance from state and social organisations of other parties to the Convention, while maintaining the requirements provided for by the legislation of the state in which they are based. In practice, in the area of participation in social and state life, the Convention does not refer to other rights that could be granted to national minorities, such as the possibility of establishing guaranteed representation in representative bodies at the local level and in the parliament and the obligation to take into account the interests of national minorities when changing the state's administrative division.

The Convention recognises the right of persons belonging to national minorities to maintain contacts among themselves without obstacles in the country of residence and the right to maintain links with citizens and organisations of states with which they share a common ethnic origin, culture, language or religious beliefs (Article 6). It further recognises the right to spell names and surnames in the manner accepted in the native language and use the native language, including access to media broadcasting in that language. Additionally, states should create, following the national legislation, conditions for the use of the language of national minorities in contacts with official authorities, where possible and necessary (Article 7). Articles 10 and 11 define the actions to be taken by states that are parties to the Convention to support the preservation of the ethnic, linguistic, cultural and religious identity of national minorities.

4.2.2. Convention on Standards of Democratic Election, Voting Rights and Freedoms in the Member States of the CIS

The Convention on Standards of Democratic Election, Voting Rights and Freedoms in the Member States of the CIS⁶¹ is a CIS convention signed in October 2002 and entered into force in 2003 after ratification by Kyrgyzstan, Russia and Tajikistan. Later, Armenia, Moldova, Kazakhstan and Belarus became parties to the Convention. Georgia and Ukraine are signatories to the Convention (both accompanied the signing with reservations).

The Convention's preamble sets out the reasons for its adoption, including the belief 'that elections are one of the political and legal instruments of a stable civic society and a sustainable development of the state'. Democratic elections are one of the highest direct expressions of the people's power and will and are the basis of elective bodies of governmental power and local self-government, of other bodies of people's (national) representation and elective officials (Article 1(1)). The main restriction in the Convention is the inadmissibility of any direct or indirect participation of foreign subjects in the electoral process (Article 1). It describes in detail the principles of

61 Конвенция о стандартах демократических выборов, избирательных прав и свобод в государствах - участниках СНГ, 7 октября 2002 года [Convention on Standards of Democratic Elections, Electoral Rights and Freedoms in States – Members of the CIS, 7 October 2002].

electoral law, including universal suffrage (Article 2), equal suffrage (Article 3), direct suffrage (Article 4), secret ballot (Article 5), periodicity and an obligatory nature of elections (Article 6), open and transparent elections (Article 7), free elections (Article 8), authentic elections (Article 9) and fair elections (Article 10).

Article 11 states that the preparation and conducting of elections, provision for and protection of citizens' voting rights and freedoms and their observance are to be borne by electoral bodies (election commissions) whose status, competence and powers are established by the Constitution and legislative acts. Article 12 regulates the financing of elections, the election campaign of candidates and political parties (coalitions). The financing of measures connected with elections is executed at the expense of budget resources. Additionally, it enshrines the principle of forming election funds for candidates, political parties and coalitions from state funds, along with personal funds and voluntary cash donations from physical and/or national legal entities. It prohibits any foreign donations, including those from foreign physical and legal entities, for candidates, political parties (coalitions), participating in elections or other public unions and organisations, which directly or indirectly, or in any manner relate to or are under a direct influence or control of the candidate, political party (coalition) and facilitate or contribute to accomplishment of goals of the political party (coalition). The other provisions are combined into the principle of openness and transparency of election financing and donations to candidates and political parties (coalitions) participating in the elections.

Article 13 enshrines the principle of state information support for elections and campaigning activities, which is primarily revealed through the freedom to collect and disseminate information and the involvement of the media in this process. Hence, the principle of equality, equal access of all candidates and other election participants to the media and telecommunications for election campaigning is important. The Convention contains regulations concerning the observation of the electoral process by both domestic observers (Article 14) and international observers (Article 15). It proclaims the right to appeal and responsibility for the violation of electoral rights as an important right. Article 16 states:

'In the case of breach of the election standards, of the citizen's voting rights and freedoms, proclaimed in this Convention, the person or persons whose rights are infringed should have the right and possibility to appeal and to restore the infringed rights at courts. One should have the right to appeal to electoral bodies in the cases stipulated by the laws. ... persons guilty of perpetration of actions (inaction) forbidden by the laws should bear responsibility in accordance with the laws.'

The Convention establishes, as a principle, the publication of election documentation in the state's official language, in the official languages of the composite parts of the territory of state, in accordance with the procedure stipulated by the national laws, and in languages of the nations and nationalities, national minorities and ethnic

groups in the territories of their compact living (Article 17(1)). It indicates that measures that should not be considered as discriminatory are:

a) special measures undertaken in order to provide for adequate representation of any part of the country's population, in particular, of national minorities and ethnic groups, which actually is, due to political, economic, religious, social, historical and cultural conditions, deprived of the possibility to avail itself of an equal standing in respect of political and election rights and freedoms as the rest of the population; b) limitation of the right to elect and be elected with respect to citizens recognised by a court as incapable as well as of those being kept in detention upon the court's sentence.

It acknowledges:

'[L]imitations regarding nomination of candidates, lists of candidates, relating to creation and activities of political parties (coalitions), citizens' voting rights and freedoms can be applied in the interests of defence of the constitutional system, national security, maintenance of public peace, protection of public wealth and morality as well as protection of rights and freedoms of citizens; however, the given limitations should comply with international obligations of the state' (Article 18).

Article 19 sets out the obligations of the parties to the Convention related to its implementation. Article 21 establishes the status of the Interstate Electoral Council to render assistance in observing elections in the states party to the Convention and observe the fulfilment of the Convention's provisions. Article 20(1) emphasises:

'[N]othing in this Convention shall prevent fulfilment by the states of their international commitments on preserving citizen's voting rights and freedoms. In particular, the states should honestly fulfil the duties and obligations that they have undertaken in accordance with the international agreements and treaties of which they are the parties.'

4.3. Control Mechanism

The establishment of the Human Rights Commission of the CIS is provided for by Article 33 of the CIS Charter, as an advisory body of the Commonwealth that monitors the implementation of human rights obligations by the Member States (Article 34). The Regulation on the Commission was accepted, which established norms on its composition and work organisation, the procedure for considering appeals of the parties and the procedure for considering appeals of individuals and non-governmental organisations. However, the Commission was never created. Hence, until recently, the 1995 CIS Convention did not have an effective mechanism for monitoring its implementation.

On 14 October 2022, the Council of Heads of State of the CIS approved a new version of the Regulation.⁶² In July 2023, the procedure for the formation of the CIS Human Rights Commission was completed, which included representatives and deputy representatives from the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Russian Federation, the Republic of Tajikistan and the Republic of Uzbekistan. Following the Regulation, the Commission shall include persons who are citizens of the Member States, possessing high moral qualities and recognised competence in human rights and freedoms, and who have experience in protecting them. Each state shall appoint its representative and deputy representative to the Commission for a term of four years, notifying the CIS Executive Committee. Any state may decide to terminate the powers of its representative or deputy representative in the Commission, notifying the CIS Executive Committee. The meetings of the Commission shall be convened following its rules of procedure; however, not less than once a year. It holds closed meetings, except in cases where its decision provides otherwise. The decisions shall be made by consensus and shall be advisory in nature.

The Commission shall adopt its own rules of procedure, which shall determine the quorum, the procedure for holding meetings, making decisions, developing and reviewing reports and other aspects of its work.⁶³ Following the Regulation, the Commission has the right to prepare thematic reports on topical issues of promoting and protecting human rights and freedoms in the CIS. Such reports are advisory in nature and may contain proposals for improving the CIS legal framework and the legislation of states for the promotion and protection of human rights and freedoms, and as recommendations aimed at uniting the efforts of states to promote and protect human rights in the CIS (paragraph 12). The Commission has the right to consider national reports submitted by states on the promotion and protection of human rights and freedoms in their states (paragraph 13).

The Commission has the right to, within the framework of its competence, consider appeals from parties and/or individuals on issues of possible violation of human rights, if each of the interested parties has recognised the competence of the Commission regarding the relevant category of appeals following its legislation and has sent a notification to the CIS Executive Committee. Such recognition may be revoked by the relevant party (paragraph 15). However, at present, the Commission cannot consider such appeals, since the Decision of the Council of Heads of State of the CIS does not define the conditions of admissibility and the procedure for considering such appeals.

62 Положение о Комиссии по правам человека Содружества Независимых Государств, 14 октября 2022 года [Regulations on the Human Rights Commission of the Commonwealth of Independent States, 14 October 2022].

63 Правила процедуры Комиссии по правам человека Содружества Независимых Государств, Приняты решением Комиссии по правам человека Содружества Независимых Государств от 29 ноября 2023 года. [Rules of Procedure of the Human Rights Commission of the Commonwealth of Independent States, Adopted by the Decision of the Human Rights Commission of the Commonwealth of Independent States on 29 November 2023].

Additionally, when signing the Decision on the approval of the new version of the Regulation, certain states made reservations. Particularly, the Republic of Armenia declared the exclusion of the application of paragraph 15, which regulates the consideration by the Commission of appeals on issues of possible violation of human rights, while the Republic of Tajikistan did not recognise the competence of the Commission to consider appeals of parties and individuals, as provided in paragraph 15. The Commission shall submit an annual report of its activities to the Council of Heads of State of the CIS.

5. Conclusions

The human rights protection systems presented in this chapter complement the universal human rights system and allow for the specificity of individual regions and the challenges they face in this area. In the Arab system of human rights protection, there are binding documents in this area; however, in many of them, the low level of ratification is noteworthy, and some, such as the Statute of the ACtHR, which would strengthen the control mechanisms in this system, have still not been ratified. This organisation has Acts related to the protection of children's rights and the rights of refugees.

In the case of the OIC, the basic act in human rights protection is the Cairo Declaration; however, in the remaining acts, there are non-binding declarations or political statements. Within this system, there is a Pact on the Rights of the Child; however, it has not entered into force due to the insufficient number of ratifications. Similar to the Arab League, there is no extensive system of control over the OIC's implementation of obligations. In the case of the GCC, only the Gulf Declaration of Human Rights was adopted in 2014, which is a non-binding document. This subsystem lacks effective mechanisms for monitoring compliance with the commitments of the Declaration, and separate protection for groups particularly vulnerable to fundamental rights violations. Simultaneously, the Member States of this organisation are members of the Arab League and the OIC.

In ASEAN, this system is dominated by various non-binding documents (Declarations) concerning the protection of fundamental rights and the protection of the rights of certain groups, such as migrant workers and women and children, concerning human trafficking and violence. Regardless of the non-binding nature of these acts, they are supported by various guidelines and action programmes. Within the organisation, there are certain procedures for monitoring the implementation of the commitments; however, they are limited and, as in the case of other discussed systems, do not provide for individual complaints or the establishment of a judicial body. The second organisation in Asia is SAARC, which has binding conventions on the protection of women and children who are victims of human trafficking and the protection of children's rights. However, it lacks a general document on fundamental rights and is not replaced by documents, such as the Social Charter or the Charter

of Democracy, referring to democratic institutions. It has a modest mechanism for monitoring only the commitments concerning the two previously mentioned sensitive groups.

In the CIS, there are binding international agreements on human rights, including those concerning the protection of certain groups of people (e.g., members of national minorities). Until recently, it lacked any mechanism for monitoring the commitments undertaken. However, now it has the Human Rights Commission of the CIS operating, albeit with limited powers.

In my opinion, the system for protecting fundamental rights within ASEAN and the OIC has the greatest practical significance. In the future, it is possible to develop the SAARC system. The practical significance of all the discussed systems results from the possibility for the states that create them to account for the regional perspective on fundamental rights and coordinate and agree on their position at the UN forum. However, it seems difficult to establish a binding, judicial mechanism for protecting human rights in these systems due to the strong emphasis by the Member States on their sovereignty and the principle of non-interference in the internal affairs of the States Parties.

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