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The UN and Regional Mechanisms: Cooperating for the Promotion of Human Rights

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Facilitator: **Kica Matos**, The Atlantic Philanthropies

Speakers: **Gastón Chillier**, Centro de Estudios Legales y Sociales (CELS); **Vivian Lozano**, OHCHR

Vivian Lozano works in the OHCHR in its section for regional mechanisms. She explained that Africa, the Americas, and Europe have the most developed regional systems.

Africa has the AU, African Commission on Human Rights, and the African Court. The Commission is officially a non-judicial body but functions in a quasi-judicial way: it hears cases, has the power to undertake visits to African countries, and can appoint special rapporteurs on countries and topics. States have to report to them on implementation. They have adopted a Charter on Human and Peoples rights. The African Court was established only a few years ago, and has only made one ruling on one case so far.

In **the Americas**, there is an Inter-American Commission or IACHR (which functions in the same way as the African Commission above), and the Inter-American Court, which has developed an interesting and substantial jurisprudence through rulings on over 200 cases.

In **Europe**, the Council of Europe is the largest intergovernmental body. The European Court issues rulings and determines reparations, but states decide how they will make reparations. There is also an expert European Commissioner on Human Rights, who can undertake visits and has a mandate to promote human rights. Additionally, there are bodies for specific issues, including racism, social rights, the prevention of torture, and frameworks for national minorities. The Organization for Security and Cooperation in Europe (OSCE) also has an Office on Democracy and Human Rights (ODHR) which undertakes promotional activities.

In 2009, the **ASEAN** region created a new inter-governmental organization for human rights. It is governmental, rather than composed of independent experts, but it is supposed to monitor human rights in the region. Because it is so new, there is an important opportunity now to shape it for the future.

In the **Middle East**, there is a league of Arab states and within this there is an Arab Committee on Human Rights, which is meant to undertake promotional activities. Many countries still need to ratify it. Additionally, the Organization of the Islamic Conference (OIC) is the largest inter-governmental organization in the world after the UN. It is unlikely to be very independent, however, because members will be nominated by states and can be changed whenever states want. But the agreement is still being drafted and it is unclear whether members will join more than one, and which charter they'll follow.

In 2008, there was a workshop to promote cooperation among regional mechanisms and appoint a focal point for all of them, which led to the creation of her section within the OHCHR. Cooperation still needs to be established, including information sharing, opportunities to meet, joint activities (such as country or special rapporteur visits), and joint trainings and publications. Follow up to get countries to adopt the recommendations made during the UPR is a key challenge, which will require continued cooperation between regional mechanisms and the UN.

Gastón Chillier discussed the history of CELS, an organization created in 1979 in Argentina by victims of the dictatorship, to organize visits by the Inter-American Commission on Human Rights and to work against forced disappearances. They are now a multi-issue organization with 50 staff and a 1.2 million budget, working at a national level in Argentina. They make use of global and regional human rights frameworks to strengthen their national work, and promote these standards within Argentina. International and regional standards are part of Argentina's constitution, and they are an important tool to enhance human rights domestically, and to challenge domestic systems. They have found the Inter-American system to be a useful mechanism throughout their history, and it also helps to provide them with a voice in Geneva.

Due to jurisdictional issues, some decisions of the Court are more legally binding on states than others. Individuals may bring cases to the Commission and the Court to target specific policies. They use the UN system to complement recommendations by the Commission or Court as a way to push items on the political agenda.

The war on terror is now bringing some old issues to new relevance. Lessons learned include:

- Try to exhaust mechanisms the national level first, both to obtain faster remedies for the victim and to strengthen national mechanisms.
- Combine the use of regional mechanisms with domestic advocacy – regional mechanisms are just tools, and are not the center for necessary changes.
- If resorting to the regional process is a possibility, talk to the state while the case is in court about conclusions.

Points in discussion:

- The African Commission was set up by the AU, and the African Court is very new – NGOs haven't been taking cases there so far. The African Court wanted to absorb the Commission but NGOs opposed this because they find it useful that the Commission creates reports.

- Article 5 of the African Charter on Human and People's rights helped the Commission draft the Robben Island Guidelines for the prevention of torture, cruel, inhuman, and degrading treatment in Africa in 2002.
- When Zimbabwe's government was criticized on its human rights record at the AU meeting four years ago, with a report written up giving them specific recommendations, this surprised and embarrassed the Zimbabwean delegation and got a lot of African publicity and media (example of a regional body being able to take a stronger stand than the international community).
- What happens when levels of regional and international instruments are not compatible? Sometimes cases are ruled non-admissible. Broadly, they should be compatible in some way – they all recall the UDHR. The international level may be brought in in various ways such as education, promotion, and bringing in special rapporteurs, that do not require strict compatibility with regional instruments. International standards are based on universality – their standards should be a minimum, and other instruments should go higher, not lower. Some provisions of certain mechanisms are controversial, but in general, they avoid contradictions in decisions, which is one reason the OHCHR aims to cooperate with regional mechanisms. E.g., the OIC will promote human rights according to Islamic values, but the agreement does say that it will be based on the UDHR and international standards. The ASEAN region does not yet have a charter on human rights but they are drafting one with the involvement of NGOs.
- Possibilities for future regional bodies include the Pacific, Asia, and the Indian sub-continent region, but it has taken a long time already to begin an ASEAN mechanism. For perspective, ten years ago there were no national human rights institutes, and now they are very important.