



# **Inclusive Political Participation and Representation**

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The Role of Regional Organizations

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## Preface

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Democracy involves popular control over decision making and equality between citizens in the exercise of that control. Popular control over decision making is achieved through inclusive political participation and representation in democratic institutions and processes in which each citizen has an equal right and opportunity to engage in and contribute to decision making. Without citizen participation, and the rights, freedoms and means to participate, the principle of popular control over government cannot begin to be realized. Without representation, public institutions that are socially representative of citizens cannot be developed.

Political participation and representation go beyond the act of voting in elections; they also embody the freedom of citizens to express their opinions and to mobilize to influence policy. Together, they ensure that democracy and democratic institutions are a genuine reflection of the will of the citizens.

Despite their fundamental importance to democracy, promoting and ensuring inclusive political participation and representation are still challenges for today. Democracies are not always able to provide equal opportunities for inclusive political participation and representation. Many citizens, in both established and newer democracies, are losing trust in existing political institutions and processes, which are seen as dominated by a select number of groups or elites. Unequal opportunities for participation and representation between men and women still exist worldwide. Minorities are still unable to participate or represent their interests in democratic institutions and processes.

This is why addressing these challenges—including gender imbalances and minority exclusion—is a priority for international organizations, national governments and citizens. The Second High-Level Meeting of the Inter-Regional Dialogue on Democracy, which was hosted by the Secretary-General of the Association of Southeast Asian Nations, adopted the theme ‘Promoting and ensuring inclusive political participation and representation in our regions’.



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Regional organizations are among the leading proponents of processes and institutions that promote and ensure political participation and representation. While their mandates vary, they consult and engage with civil society organizations, the private sector, academics and other regional interest groups. Regional organizations also carry out activities that are aimed at mainstreaming gender and promoting the participation of marginalized groups. Some have established parliaments or parliamentary assemblies, which complement their activities and help to promote legislative and democratic oversight.

As the mandates of regional organizations expand in their respective regions, they also become increasingly relevant to the lives of citizens. They are expected to deliver (and therefore represent) avenues through which citizens can participate and have their views represented.

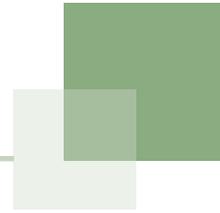
International IDEA—as the facilitator of the Inter-Regional Dialogue on Democracy—is pleased to present this publication, which documents and highlights the experiences and innovation of regional organizations in promoting inclusive political participation and representation. Focused on civil society engagement, gender mainstreaming and regional parliaments, this publication should not only provide food for thought for policy makers and practitioners, but also facilitate understanding of the contexts in which regional organizations operate.



*Vidar Helgesen*  
*Secretary-General*  
*International IDEA*

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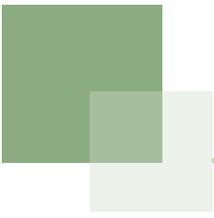
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## Acronyms

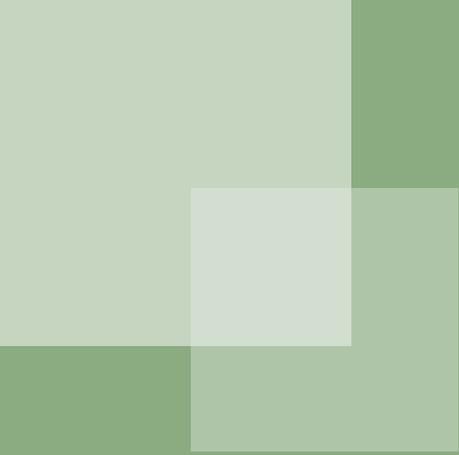
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<b>AEC</b>	African Economic Community
<b>ACSC</b>	ASEAN Civil Society Conference
<b>ACWC</b>	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
<b>AICHR</b>	ASEAN Intergovernmental Commission on Human Rights
<b>AICOHR</b>	Annual Colloquiums on Human Rights
<b>APA</b>	ASEAN People's Assembly
<b>AIPA</b>	ASEAN Inter-Parliamentary Assembly
<b>APF</b>	ASEAN People's Forum
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>ASEAN-ISIS</b>	ASEAN Institutes of Strategic and International Studies
<b>APSC</b>	ASEAN Political and Security Community
<b>ASC</b>	ASEAN Security Community
<b>AU</b>	African Union
<b>AWO</b>	Arab Women's Organization
<b>CAJP</b>	Committee on Juridical and Political Affairs
<b>CAWTAR</b>	Centre of Arab Women for Training and Research
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CICAD</b>	Inter-American Drug Abuse Control Committee
<b>CIDI</b>	Inter-American Council for Integral Development
<b>CIM</b>	Inter-American Commission of Women
<b>CISC</b>	Committee on Inter-American Summits Management and Civil Society Participation in OAS Activities
<b>COPE</b>	Council of Pacific Education
<b>CoR</b>	Committee of the Regions
<b>CROP</b>	Council of Regional Organizations in the Pacific
<b>CSOs</b>	Civil Society Organizations
<b>CWR</b>	Committee on Women's Rights
<b>DRC</b>	Democratic Republic of Congo
<b>ECOSOCC</b>	Economic, Social and Cultural Council

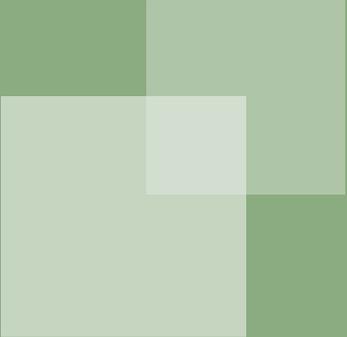



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<b>ECJ</b>	European Court of Justice
<b>EEC</b>	European Economic Community
<b>EPA</b>	Economic Partnership Agreement
<b>EPG</b>	Eminent Persons' Group
<b>EU</b>	European Union
<b>EWL</b>	European Women's Lobby
<b>EWS</b>	Early Warning System
<b>FRSC</b>	Forum Regional Security Committee
<b>IDEA</b>	International Institute for Democracy and Electoral Assistance
<b>ISDS</b>	Institute of Strategic and Development Studies
<b>LAS</b>	League of Arab States
<b>MCG</b>	Ministerial Contact Group
<b>MEP</b>	Member of the European Parliament
<b>MESICIC</b>	Mechanism for the Implementation of the Inter-American Convention against Corruption
<b>NDI</b>	National Democratic Institute
<b>NSA</b>	Non-State Actors
<b>OAS</b>	Organization of American States
<b>OAU</b>	Organization of African Unity
<b>PACER</b>	Pacific Agreement on Closer Economic Relations
<b>PANG</b>	Pacific Network on Globalization
<b>PAP</b>	Pan-African Parliament
<b>PIANGO</b>	Pacific Islands Association of Non-Governmental Organizations
<b>PIF</b>	Pacific Islands Forum
<b>PIPSO</b>	Pacific Islands Private Sector Organization
<b>PPAC</b>	Pacific Plan Action Committee
<b>PRNGO</b>	Pacific Regional Non-Governmental Organizations
<b>PRNSA</b>	Pacific Islands Forum and Pacific Regional Non-State Actors
<b>SAARC</b>	South Asia Association for Regional Cooperation
<b>SAPA</b>	Solidarity for Asian Peoples' Advocacies
<b>SAWAG</b>	SAARC Autonomous Women's Advocacy Group
<b>SDG</b>	SAARC Development Goals
<b>SOM</b>	Senior Officials Meeting
<b>TEC</b>	Treaty on the European Community
<b>TEU</b>	Treaty on European Union
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>WGHR</b>	Working Group on Human Rights

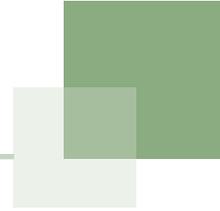


# Introduction



# Introduction

Raul Cordenillo and Karin Gardes



## Background

Participation and representation are two fundamental elements and principles of democracy. They affirm that a democracy is dependent on its citizens and that this ownership is expressed through meaningful participation by and representation of all citizens in democratic institutions and processes. Underpinning all this is the idea that every citizen, regardless of class, age, gender, sexual orientation, ability, group, culture and ethnic or religious background, should have an equal right and opportunity to engage with and contribute to the functioning of these institutions and processes.

The goal of any undertaking in this field is clear: to assist political institutions to become more responsive, responsible and representative. Political institutions and processes include political parties, parliaments and governments and their interactions with society. *Responsiveness* means that governments are able to react to the demands and needs of society at large, and that they are ready to openly and transparently interact with a variety of actors, including civil society. *Responsibility* means that governments can be held accountable by citizens. *Representativeness* means that governments work on institutionalizing political life and public political participation through legitimate institutions.

Supporting participation and representation today, however, remains a challenge. Perhaps the greatest of the challenges faced by democracies globally is how to connect people's needs and aspirations with accountable and representative political institutions. Some citizens, in all countries irrespective of their stage of democratic development, have come to mistrust their institutions. Often, citizens are not interested in participating in political processes in their traditional form, including in elections, in the belief that it makes no difference who is in power, that political institutions will do whatever they want and that the voice of the citizen does not have a sufficient level of influence.

Inequality of opportunity persists worldwide. Not all citizens in society are represented in policy discussions and many feel marginalized. Women, who constitute over 50 per cent of the world's population, continue to be under-represented as voters, political leaders and elected officials. Democracy cannot truly deliver for all of its citizens if half the population remains excluded from the political arena. Women's equal representation is a matter of justice and democracy. Democracy is not only about the right to vote—it is also about the right to be elected.

In some cases, access to political institutions is not available or even feasible because the frameworks or modalities for inclusive citizen involvement and engagement are not being implemented or are simply not in place. It is in this context that promoting inclusive political participation and representation remain priorities for international organizations and national governments. Regional organizations,<sup>1</sup> in particular, have initiatives and policies to encourage this in their respective regions. These include promoting civil society engagement, gender equality and mainstreaming, and parliamentary representation at the regional level.

## **Civil society and diversity**

An important mandate given to regional organizations by their member states is to establish and maintain relations with civil society organizations (CSOs)—at both the regional and national levels. Various mechanisms and modalities have been set up by regional organizations for regular dialogue, consultations and meetings at the technical and political levels. These include inviting CSOs to engage in the activities of regional organizations, developing a CSO register, consulting on the views of CSOs and other interest groups on regional initiatives, and implementing regional activities in cooperation with CSOs.

A good example of civil society participation in a regional organization is the Economic, Social and Cultural Council (ECOSOCC) of the African Union (AU). Established under the provisions of articles 5 and 22 of the Union's Constitutive Act, ECOSOCC is a vehicle for building strong partnerships between governments and all segments of African civil society. Among its objectives is to promote the participation of African civil society in the implementation of the policies and programmes of the AU. ECOSOCC is similar to the European Economic and Social Committee, which functions as the consultative body of the European Union (EU) and is another example of how regional organizations connect to organized civil society.



In the regional organizations' respective mandates to engage with civil society, special attention is paid to marginalized groups. Key provisions have been made in the relevant charters and declarations of regional organizations to protect and promote diversity in the regions. This is evident, for example, in the case of the regional organizations in Asia and the Pacific. In Southeast Asia, among the principles of the Association of Southeast Asian Nations (ASEAN) spelled out in article 2 of the ASEAN Charter are: 'respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice' as well as 'respect for the different cultures, languages and religions of the peoples of ASEAN, while emphasizing their common values in the spirit of unity in diversity'.

In the Pacific, the Biketawa Declaration of the Pacific Islands Forum (PIF), which outlines the guiding principles of good governance and courses of action for a regional response to crises in the region, commits its member states to: 'belief in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief' and to 'upholding democratic processes and institutions which reflect national and local circumstances, including the peaceful transfer of power'. In South Asia, article 2 of the South Asian Association for Regional Cooperation (SAARC) Social Charter provides that member states shall: 'ensure that disadvantaged, marginalized and vulnerable persons and groups are included in social development, and that society acknowledges and responds to the consequences of disability by securing the legal rights of the individual and by making the physical and social environment accessible' and 'promote universal respect for and observance and protection of human rights and fundamental freedoms for all, in particular the right to development; promote the effective exercise of rights and the discharge of responsibilities in a balanced manner at all levels of society; promote gender equity; promote the welfare and interests of children and youth; promote social integration and strengthen civil society'.

At the same time, the Americas illustrate how work in this area continues to develop and improve. Working groups were set up by the Organization of American States (OAS) to draft the American Declaration on the Rights of Indigenous People and the Inter-American Convention against Racism and All Forms of Discrimination and Intolerance. Both documents strengthen the rights of indigenous groups and help to combat racism through the inter-American human rights system.

## Gender equality and mainstreaming

Initiatives to promote gender equality and gender mainstreaming are also part and parcel of the work of regional organizations. Each regional organization has set up a different legal and institutional framework to address gender equality, including women's political empowerment. Table A presents the bodies, functions and indicative programmes or activities of the regional organizations in the fields of gender equality and gender mainstreaming. All the regional organizations have a dedicated body, in the form of a committee, commission or directorate, that is responsible for gender. These bodies have a mandate to coordinate, monitor and often implement the regional strategies endorsed by the member states of the respective regional organizations.

**Table A. Gender equality and gender mainstreaming by regional organization**

Regional body and function	Indicative programme/activity
The Women, Gender and Development Directorate (or Gender Directorate) of the AU Commission aims to advance the principle of gender equality through gender mainstreaming.	The African Women's Decade (2010–20) aims to reinvigorate commitments to accelerated implementation of agreed global and regional commitments on gender equality and women's empowerment. This includes, for example, support for women's participation in political and electoral processes, and the implementation of gender issues in the African Peer Review Mechanism and national action plans.
The ASEAN Ministerial Meeting on Women coordinates and monitors the implementation of ASEAN's key regional priorities and cooperation on women's issues and concerns.	The Work Plan for Women's Advancement and Gender Equality (2005–10) had its roots in the 1988 Declaration on the Advancement of Women in ASEAN, and the Work Plan to Operationalize the Declaration on the Elimination of Violence against Women (2006–10) that was built on existing national efforts and integrated all relevant priorities and measures into a consolidated action plan on violence against women.

<p>The European Commission Directorate for Employment, Social Affairs and Inclusion, and the Unit for Equal Opportunities of the European Parliament are, respectively, the regional executive and legislative arms of the EU on gender equality. They work on women's rights and gender equality.</p>	<p>The Strategy for Equality between Men and Women, 2010–15, proposes actions that follow a dual approach of gender mainstreaming and specific measures. It is the work programme of the European Commission on gender equality, and aims to stimulate developments at the national level and to provide a basis for cooperation with the other European institutions and stakeholders.</p>
<p>The League of Arab States Arab Women's Committee addresses women's issues in the region.</p>	<p>The Arab Women's Beirut Declaration established a framework and outline for the empowerment of women in the decade 2005–15.</p>
<p>The Inter-American Commission of Women (CIM) is a specialist organization of the OAS. It is the principal forum for debating and formulating policy on women's rights and gender equality in the Americas.</p>	<p>The Inter-American Program for the Promotion of Women's Human Rights and Gender Equity and Equality aims to systematically integrate a gender perspective into all organs, organizations and entities of the inter-American system.</p>
<p>The PIF Reference Group on Women, Peace and Security aims to provide an enabling environment at the regional level to support the implementation of the Regional Action Plan on Women, Peace and Security.</p>	<p>The Regional Action Plan on Women, Peace and Security, 2012–15, provides a broad framework at the regional level to help PIF member states and Pacific Territories accelerate implementation of existing international, regional and national commitments on women, peace and security.</p>
<p>The SAARC Technical Committee on Women, Youth and Children oversees and implements activities on women's empowerment in the region.</p>	<p>The SAARC Gender Equality and Empowerment Programme aims to address and realize gender equality and empowerment in the region.</p>

## Parliamentary representation at the regional level

Some regional organizations also encourage representation of the views of citizens of their member states at the regional level through parliamentary bodies or interparliamentary assemblies. This is in recognition of the complementary role of their respective regional parliaments or parliamentary assemblies. These roles take various forms depending on the institutional set-up in the region.

The most advanced in this regard is the EU, where the European Parliament, as a directly elected parliamentary institution, together with the other EU institutions, the Council of the European Union and the European Commission, exercise legislative and oversight functions. In addition to the European Parliament, the Committee of the Regions (CoR), which is a political assembly that provides the regional and local levels across the EU with a voice in EU policy development and EU legislation, also exercises oversight functions. In particular, the Lisbon Treaty obliges the Council of the European Union and the Commission to consult with the CoR whenever its proposals affect the regional and local levels.

The Pan-African Parliament (PAP), on the other hand, plays an advisory and consultative role. Unlike the European Parliament, and contrary to what its name implies, it does not have legislative powers, although this is currently being considered by the AU member states. The members of the PAP are not directly elected but are representatives of the national parliaments of the member states. The ASEAN Inter-Parliamentary Assembly and ParlAmericas are examples of looser parliamentary organizations that promote exchange among national parliamentarians in Southeast Asia and the Americas, respectively.

## **An overview of the chapters**

This publication brings together the background papers prepared for the Inter-Regional Workshop on Regional Organizations and Inclusive Political Participation and Representation, which took place in New York in October 2012. The chapters highlight the mandates and mechanisms for, as well as the experiences of, regional organizations in civil society engagement, gender equality and gender mainstreaming, and parliamentary representation at the regional level.

Some chapters are written from the perspective of the organizations themselves, explaining the work of regional organizations in promoting inclusive political participation and representation. Others are written from the perspective of an outside observer. Taking a policy-oriented approach, each chapter discusses policy implications and makes recommendations for policy makers and policy watchers at the regional and national levels to consider and take further.

Chapter 1, *Together We Can Achieve More: The Role of Civil Society Organizations in the Organization of American States*, provides an overview of the process leading to the development of the *Guidelines for the*



*Participation of Civil Society Organizations in OAS Activities* and the creation of the Register of Civil Society Organizations in the OAS. It also cites three specific cases of their implementation: during the negotiations prior to the adoption of the Inter-American Democratic Charter, at the annual OAS General Assembly and in the Follow-up Mechanism for the implementation of the Inter-American Convention against Corruption.

Chapter 2, *The Pacific Islands Forum and its Engagement with Civil Society Organizations*, presents the mechanisms set up by the PIF to allow CSOs to participate in its regional decision-making processes. It also discusses the efforts made by CSOs to engage more actively with both PIF leaders and the PIF Secretariat.

Chapter 3, *The Role of Epistemic Communities in Building an Inclusive ASEAN Political and Security Community: The Case of ASEAN-ISIS*, looks at the active engagement of the ASEAN Institute of Strategic and International Studies (ASEAN-ISIS) and its contribution to promoting multilateral political and security cooperation within and outside ASEAN. It also discusses the role that ASEAN-ISIS plays in promoting democracy through its support for ASEAN's Political and Security Community, and its support of and advocacy for human rights protection and promotion in Southeast Asia in particular.

Chapter 4, *SAARC: A Step Forward, Women's Inclusive Political Participation*, analyses SAARC initiatives on women's empowerment and the SAARC agenda on women's issues. It highlights the progress made and the challenges SAARC still faces in promoting women's empowerment at the regional level.

Chapter 5, *The League of Arab States and Gender: Political Participation and the Arab Woman*, looks closely at the role the League of Arab States (LAS) has played in fostering gender equality and gender mainstreaming. In particular, it examines the different milestones in the organization of mechanisms inside the LAS by examining the different activities implemented so far.

Chapter 6, *From Marginalization to Mainstreaming: A Guide to Gendering the European Union in 40 Easy Steps*, provides an overview of the key concepts, legal developments and strategies that are enabling women to participate ever more actively in the paid labour market and in political decision making across the EU. It is a potential 'how-to' guide to incorporating the principles of gender equality into a wide assortment of regional and international organizations.

Chapter 7, *The Role of the Pan-African Parliament in Promoting Inclusive Political Participation and Representation in Africa*, looks at the mission and objectives of the PAP. It also analyses its institutional and functional features, which are critical to performing its role of promoting political participation and representation in Africa, including political diversity and gender representation in its composition and work.

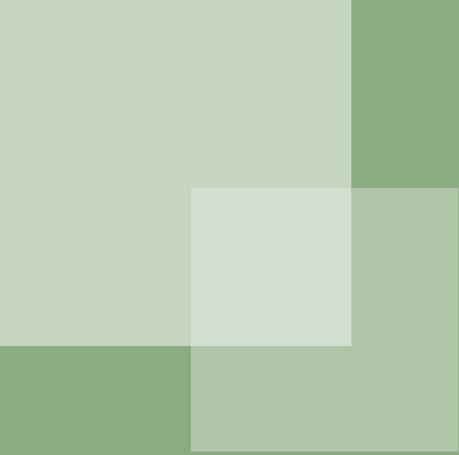
Chapter 8, *Political Participation, Representation and the Subsidiarity Principle: The Case of National and Sub-national or Regional Parliaments in the European Union after Lisbon*, explores the potential for greater involvement in the EU decision-making process by national and sub-national bodies and the challenges faced by these actors in the context of monitoring subsidiarity. In particular, it focuses on the important role and responsibility of the CoR, which has been granted an enhanced role in relation to subsidiarity by the Lisbon Treaty.

The chapters in this publication are just a cross-section of a larger group of papers prepared for the Inter-Regional Workshop. Details of the Workshop and all the background papers are available on the website of the Inter-Regional Democracy Resource Centre.<sup>2</sup>

### **Notes**

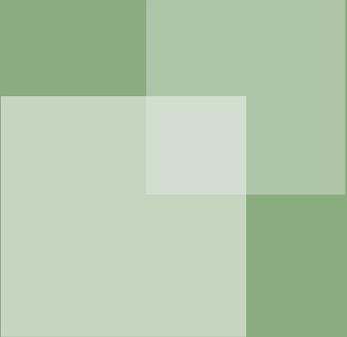
- <sup>1</sup> Regional organizations in this context are the participating organizations in the Inter-Regional Dialogue on Democracy. These are the African Union, the Association of Southeast Asian Nations, the European Union, the League of Arab States, the Organization of American States, the Pacific Islands Forum and the South Asian Association for Regional Cooperation.
- <sup>2</sup> Secretariat of the Inter-Regional Dialogue on Democracy, <<http://www.idea.int/democracydialog>>.





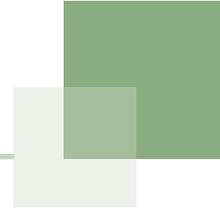
# **Chapter 1**

**Together We Can Achieve  
More: The Role of Civil  
Society Organizations in the  
Organization of American  
States**



## Chapter 1

Jorge Sanin and Eric Ambrose



# Together We Can Achieve More: The Role of Civil Society Organizations in the Organization of American States

## Introduction

The Organization of American States (OAS) is the principal political regional forum for the Americas for facilitating international cooperation among its member states to promote democracy, human rights, multidimensional security, and the advancement of sustainable and inclusive development. Since the enactment of the OAS Charter in 1948, the OAS has acknowledged the importance of the contribution of non-governmental actors to society and the development process, recognizing that only through cooperation with trade unions, cooperatives and cultural, professional, business, neighbourhood and community associations can OAS member states fully realize their aspirations within a just social order (OAS, 1948).<sup>1</sup> In particular, the General Assembly took a great stride forward in institutionalizing the means to take advantage of the expertise offered by non-governmental organizations (NGOs) with objectives aligned with those of the OAS when it adopted in 1971 a resolution to define the regulations for cooperative relations between the Organization and external actors (OAS, 1971).

These regulations opened the door for NGOs to provide advisory services and exchange information with the OAS and its General Secretariat on topics within their particular areas of competence. They also created provisions for special cooperative relations to carry out joint projects or contribute technical, administrative or financial resources to OAS programmes.

However it was not until 1999 that the OAS established an institution-wide mechanism for cooperation between the OAS and civil society organizations (CSOs). The 1971 regulations on cooperative relations were further strengthened in 1999 when the OAS Permanent Council adopted Guidelines for the Participation of Civil Society Organizations in OAS Activities, through resolution CP/RES. 759 (1217/99), establishing a Register of Civil Society Organizations. This approved the participation of CSOs in OAS activities and expanded their role and active involvement in the Permanent Council, the Inter-American Council for Integral Development (CIDI) and other specialized conferences of the OAS. The Guidelines continue to serve as the primary reference source for citizen participation in the OAS and have been broadly adopted by all of its organs, agencies and entities (OAS, 1999).

This chapter provides an overview of the process leading up to the adoption of the Guidelines and discusses three specific cases of their implementation: (a) during the negotiations prior to the adoption of the Inter-American Democratic Charter; (b) during the annual OAS General Assembly; and (c) in the Follow-up Mechanism for the implementation of the Inter-American Convention against Corruption (MESICIC).

The case studies are supplemented by a review of lessons learned on civil society participation as well as policy recommendations for regional organizations that can be used to enhance political participation and representation in their consultation processes.

During more than a decade of structured participation by CSOs in OAS activities, the Organization has encountered and overcome multiple challenges, but there is still room for improvement. Building on the solid foundation that has been established thus far requires a long-term commitment from the OAS and its member states, as well as a proactive and cooperative civil society in order to guarantee the sustainability of inclusive political participation and representation in the regional policy-making process.

## **Register of Civil Society Organizations in the OAS**

The Register of Civil Society Organizations in the OAS defines the requirements and criteria for CSO participation in the Permanent Council and CIDI, their subsidiary committees, ministerial-level meetings and specialist conferences. It represented an important step towards granting a permanent voice to civil society to present their recommendations on the most important topics tackled by the Organization.

For CSOs to be included on the Register they must: (a) have recognized expertise in a particular field or competence; (b) have an institutional structure, in particular mechanisms for accountability and legal representation; and (c) have a transparent financial structure (all the donors to the organization must be listed).

The creation of the Register of Civil Society Organizations was a long process that can be traced back to a mandate from the First Summit of the Americas, which took place in Miami, the United States, in 1994. In this summit, the heads of state and government agreed that a strong and diverse civil society gives depth and durability to democracy, and called on their governments to review the regulatory framework for non-governmental actors with a view to facilitating their operations and improving their participation (OAS, 1994).

In the same year, the Committee on Juridical and Political Affairs (CAJP) of the Permanent Council initiated an exhaustive study of the legal status of NGOs in the OAS. After three years of consultations with the OAS organs and the General Secretariat, the CAJP reported that the OAS had a long history of active CSO participation as observers in specialist conferences and contributions to technical meetings, especially in the areas of human rights, sustainable development and the fight against drugs and terrorism, for which some organs of the OAS had already incorporated their own guidelines for civil society participation into their statutes. For this reason, the CAJP suggested defining practical recommendations to ensure consistent practice and selection criteria across the OAS in order to enhance NGO relations (OAS, 1997).

The Second Summit of the Americas, which took place in Santiago, Chile in 1998, proved a valuable opportunity for member states to reiterate their commitment to a strengthened civil society. In the Summit's Plan of Action, the region's leaders agreed on an ambitious agenda to develop recommendations for institutional frameworks to stimulate the formation of responsible and transparent non-profit organizations and other CSOs, and entrusted the OAS to be the forum for the exchange of experience on existing initiatives aimed at promoting increased CSO participation in public affairs (OAS, 1998a).

As a result, the General Assembly, which met in Caracas, Venezuela later that year, resolved to 'instruct the Permanent Council to examine ways to increase the degree to which appropriate NGOs and CSOs may become more closely involved in, and contribute to, the activities of the Organization, and ways to implement the tasks entrusted to the OAS in the Santiago Plan of Action with respect to civil society' (OAS, 1998b).

The Permanent Council set up the Special Joint Working Group of the Permanent Council and CIDI on the Strengthening and Modernization of the OAS to follow up this mandate. It presented a report on its findings to the General Assembly in 1999. The report called for the establishment of a Committee on Civil Society Participation in OAS Activities within the Permanent Council to prepare guidelines for CSO participation before the end of the year.

This work culminated in a document that defined CSOs as: ‘any national or international institution, organization or entity made up of natural or juridical persons of a nongovernmental nature’ (OAS, 1999). It established the scope and governing principles of their participation, and the eligibility criteria or requirements for participation in OAS conferences and meetings of the Permanent Council, CIDI and their subsidiary organs. The Guidelines were approved by the Permanent Council on 15 December 1999 and endorsed by the General Assembly in 2000.

The most important aspect of this document was the creation of a register of CSOs approved by the Permanent Council to participate in OAS activities. The Register serves as the mechanism for CSOs to contribute not only to the technical areas of the OAS but also to speak in the political bodies. In addition, it allows both OAS member states and the General Secretariat to analyse the work of CSOs and their potential contribution to OAS programmes and activities, and gives CSOs unprecedented access to the political organs of the OAS and an opportunity to interact directly with member states in order to share information in their areas of expertise.

Status as a registered CSO allows organizations to designate representatives to attend, as observers, public meetings of the OAS organs and their subsidiary bodies. Registered organizations also gain access to documents or draft resolutions prior to meetings of the working groups or Committees of the Permanent Council or CIDI, and are invited to present written documents, make presentations, and provide expert advice with recommendations on the topics being addressed in order to contribute to the policy-making process.

A concrete example of how CSOs can make recommendations to the OAS is their contribution to the OAS General Assembly. In preparation for the OAS General Assembly, the Department of International Affairs of the Secretary for External Relations usually holds a Hemispheric Forum with Civil Society and Social Actors to offer its participants an opportunity to exchange ideas and develop proposals and recommendations about the main theme of the upcoming meeting. The recommendations of the Hemispheric Forum are

presented by representatives of CSOs to a special session of the Committee on Inter-American Summits Management and Civil Society Participation in OAS Activities (CISC). These recommendations contribute to the member states' deliberations on the Draft Declaration and to the resolutions related to the inter-American agenda to be adopted in the OAS General Assembly.

To date, approximately 400 CSOs from nearly every OAS member state and from outside the region have been registered to participate in OAS activities.<sup>2</sup> These organizations represent a wealth of expertise and knowledge in diverse areas of the inter-American agenda, such as human rights, democratic governance, transparency and the fight against corruption, public security, sustainable development, education, culture, access to justice, gender equality, the rights of disabled people and indigenous peoples, Afro-descendants and children, among other topics.

The CAJP's recommendation to develop consistent practices and selection criteria across the OAS has now been implemented in nearly every organ, agency and entity of the Organization. The statutes of the Permanent Council and its committees and working groups all use the Guidelines in resolution CP/RES. 759 to govern civil society participation. The same is true of meetings of the CIDI and its committees, and in other specialist conferences, such as the Inter-American Drug Abuse Control Committee (CICAD), the Inter-American Committee against Terrorism, the Inter-American Committee on Ports, the MESICIC and ministerial-level meetings on a variety of topics, such as justice, public security, sustainable development, education, culture, social development and employment, science and technology, and tourism, as well as meetings of national authorities on related topics.

The importance and value of the CSO Guidelines have been acknowledged by OAS member states in every regular session of the General Assembly since their adoption. The Guidelines have been supplemented on two occasions. First, in 2003, the Permanent Council approved resolution CP/RES. 840 (1361/03), Strategies for Increasing and Strengthening Participation by Civil Society Organizations in OAS Activities, charging the General Secretariat with promoting the Register in the OAS and sending the resolutions approved in each session of the General Assembly to registered CSOs for their comments. Second, it encouraged Permanent Council committees and working groups to invite registered CSOs to contribute to their deliberations, and to organize a meeting once a year within the Permanent Council on a matter of special interest to registered CSOs in a broad and substantive dialogue (OAS, 2003a).

Beyond the Permanent Council and the CIDI, the Strategies extended the scope of civil society participation by instructing member states to institutionalize an official dialogue on the topic of the General Assembly among the heads of delegation, the OAS Secretary General and CSOs. Implementation of the Strategy and the Guidelines, which granted CSOs the right to attend and present recommendations in their areas of expertise during OAS meetings, has advanced the recognition by the OAS of the importance of non-state actors in public life and their increasingly intertwined role at the national, regional and international levels.

The General Assembly endorsed the Strategy and recommended that the Permanent Council create a specific Fund for Civil Society Participation, which would welcome contributions from OAS member states, the Permanent Observers and other donors to support the implementation of the Strategies (OAS 2003b). The Fund was established by the Permanent Council in 2004 with the goal of providing financial support to facilitate the participation of registered CSOs in the General Assembly and Permanent Council, special meetings of the CISC and the Summit Implementation Review Group, the Summits of the Americas process, ministerial meetings and other OAS activities (OAS, 2004). Since its creation, the Fund has received only one contribution from an OAS member state (Chile in 2011), but it remains an important tool to which the General Assembly encourages member states to make contributions every year.

The Register has become an indispensable resource for OAS member states and the General Secretariat to strengthen their work and gain from the knowledge and views of CSOs, enabling new issues and concerns to be subsequently addressed by the OAS and CSOs to provide expert advice in their areas of competence, and contributing to consensus building in many spheres.

Every year, the OAS sees increased interest from CSOs in registering to participate in OAS activities and a reciprocal interest from its member states in welcoming the input and participation of CSOs in meetings as part of the process. As the number of registered organizations continues to rise, the OAS is seeing more substantive and inclusive participation by civil society in its activities and is taking steps to foster more open and proactive participation in the coming years.

## **Success stories**

The OAS has held approximately 120 meetings and forums with CSOs since 2002, during which participants have generated close to 2,300 recommendations on the regional agenda, and presented them to OAS member states within the framework of the political organs with a view to encouraging greater citizen participation in the OAS and establishing a culture of transparency in the decision-making process. These spaces permit civil society representatives not only to participate in meetings as observers, but also to exchange perspectives and interact with official delegates, comment on resolutions while they are being negotiated, and contribute to the implementation and monitoring of special initiatives.

Many OAS member states recognize that by inviting civil society and social actors to participate in OAS meetings, they can benefit from the knowledge and experience these organizations bring to the policy-making process. It also provides legitimacy to the decisions adopted by the OAS political bodies because they are taken in an open, participatory process, thereby increasing transparency and strengthening democratic principles.

This section focuses on three specific cases to demonstrate the impact of civil society participation on the policy-making process: the negotiation of the Inter-American Democratic Charter, the annual General Assembly and its preparatory process, and within the framework of the MESICIC.

### ***Inter-American Democratic Charter***

The Inter-American Democratic Charter has been recognized as the most complete inter-American instrument established to date for the promotion of democratic practices in the states of the western hemisphere and for facilitating multilateral cooperation to strengthen democratic governance in the region. With the adoption of the Charter in 2001, the member states unanimously agreed that: ‘The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it’. The Charter continues: ‘It is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy’ (OAS, 2001a).

Over time, the concept of civil society participation has evolved from being on an ad hoc basis to becoming an essential element of democratic governance and an indispensable part of the regional decision-making process. The negotiation process of the Charter was no exception.

The Third Summit of the Americas, held in Quebec, Canada, in 2001, introduced the so-called democratic clause to the Declaration of Quebec, in which OAS leaders recognized that strict respect for the democratic system is a shared commitment and an essential condition for their presence at the Summits of the Americas (OAS, 2001b). With this foundation, the heads of state and government instructed their ministers of foreign affairs to prepare an Inter-American Democratic Charter to reinforce OAS instruments for the active defence of representative democracy in order to prevent any unconstitutional alteration or interruption of the democratic order in an OAS member state.

After the Summit, the OAS member states presented a working document for the consideration of the thirty-first General Assembly, held in San José, Costa Rica, which approved the draft and asked the Permanent Council to broaden and strengthen the Charter, taking into account the opinions expressed by the governments, civil society and citizens of all the countries of the Americas. The member states opened the draft Charter to the public and invited CSOs to present their contributions, ideas and comments related to human rights and the defence and promotion of democracy through an online portal created by the General Secretariat on the OAS website. During this process, the OAS received 102 comments from nearly 70 CSOs, academic institutions and citizens from 20 countries. These contributions were compiled in a document that was presented to the OAS member states.

As a result, additional articles were incorporated into the draft text that underscored the actions to be taken by member states and the OAS to strengthen the democratic culture in the region, in particular through specific initiatives to stimulate civil society participation, teach democratic values and social justice to children and youth, and promote the full and equal participation of women in the political structures of their countries.

The 34 OAS member states unanimously adopted the Inter-American Democratic Charter at a Special OAS General Assembly, held in Lima, Peru on 11 September 2001, thereby establishing the principal elements of representative democracy and the hemispheric instruments that can be used for its defence. Today, the Charter serves as a guide for governments to improve the functioning of democratic systems, for the OAS General Secretariat to support member states to strengthen democratic institutions or preserve them when faced with a threat to the constitutional order, and for citizens of the Americas to make their governments accountable for their actions.

The tenth anniversary of the adoption of the Charter was celebrated with a series of outreach and commemorative activities designed to generate debate

and a renewed awareness among diverse sectors of society of this hemispheric instrument for democracy, combined with a dialogue in the Permanent Council on the effectiveness of its implementation by means of a chapter-by-chapter review of the Charter.

True to the spirit of the Charter, the OAS issued a call for recommendations from registered CSOs, and the Permanent Council held a special session with civil society to learn about their contributions to the strengthening of a democratic culture and to incorporate their recommendations into OAS efforts in this field. The recommendations focused on improving transparency in public expenditure, enhancing the effectiveness of the OAS in preventing crises and promoting democratic values, especially among the youth (OAS, 2012a).

At the conclusion of the dialogue process, the member states adopted a final report in which they reaffirmed the fundamental importance of the Democratic Charter and their continued commitment to the principles of representative democracy enshrined therein, including the interdependence between democracy and integral development, and broadening the concept of citizenship beyond its political and civic connotations to embrace economic, social and cultural rights (OAS, 2012b).

Although the Register of CSOs in the OAS was still in its infancy at the time of the Democratic Charter's adoption, civil society played a vital role in the deliberations, and the opinions and proposals it presented undeniably featured in the final Charter. Today, 12 years since its adoption, the OAS political bodies and the General Secretariat have vastly expanded their consultations with civil society, and citizen participation has become a staple of the Organization's decision-making process.

### ***OAS General Assembly and the preparatory process***

The General Assembly of the OAS is its supreme political organ, which brings together the ministers of foreign affairs of the 34 member states once a year in a regular session to address the most relevant issues in the region. Prior to the General Assembly, the member states engage in a six-month period of negotiations within the framework of the Permanent Council and the CIDI's committees and working groups to debate a primary declaration on a topic selected by the host country government, as well as nearly 75 other declarations and resolutions related to issues of hemispheric interest.

CSOs play an integral role in this process. As is noted above, one of the benefits of inclusion in the Register of Civil Society Organizations is the ability to present written documents, make presentations or make recommendations on draft resolutions or topics on the agendas of the Permanent Council or CIDI. Registered CSOs are authorized to attend all public meetings of the Permanent Council committees and present their recommendations, with the prior approval of the chair of the meeting, in order to contribute to their deliberations. This level of active participation in meetings has not reached its potential, however, due to the fact that the majority of the registered CSOs conducts their work outside Washington, D.C., and the costs associated with travel to participate in the meetings often prevent their attendance.

Conscious of this reality, the General Secretariat has since 2002 organized an annual Hemispheric Forum with civil society at OAS headquarters one or two months before the General Assembly to stimulate an exchange of ideas and provide dedicated space for CSO representatives to formulate recommendations on the theme of the General Assembly and the four pillars of the OAS: strengthening democracy, promoting and protecting human rights, fostering integral development and cooperation for multidimensional security. To facilitate increased civil society participation and ensure a balanced thematic and geographic representation, the OAS Department of International Affairs offers financial support to a limited number of CSO representatives to participate in the Forum.

The meeting boasts an average participation of 60 to 80 CSOs, in addition to officials from the General Secretariat and member states' representatives who participate in the panels or attend as observers. On the second day of the Forum, the final recommendations generated by civil society are presented, by the same participants, to the member states' representatives in a special session of the CISC, and are also widely distributed electronically in order to feed into the resolutions to be adopted in connection with the draft declaration of the General Assembly and other resolutions on the inter-American agenda. The special CISC meeting is in line with the mandate from the Strategies for Increasing and Strengthening Participation by Civil Society Organizations in OAS Activities, which called for an annual meeting, within the Permanent Council, on a matter of special interest to registered CSOs and for a broad and substantive dialogue.

This annual Hemispheric Forum has proved an effective method of involving civil society in the decision-making process prior to the General Assembly, and a good alternative that reduces the costs an organization would incur if it were required to travel more frequently. It also facilitates receipt of the

recommendations by the OAS member states by consolidating the input into a single source that represents the views of a broader sector of society.

Article 10 of the Rules of Procedure states that representatives of NGOs may attend the General Assembly as special guests, with the authorization of the Permanent Council and the consent of the government of the country in which the session is to be held (OAS, 2000). Nearly 200 representatives from more than 120 CSOs attend the General Assembly every year, where they can observe the Plenary Sessions and the General Committee.

Furthermore, CSOs assume more of the role of a protagonist the day before the opening of the General Assembly, in an informal conversation with the Secretary General in which they can engage in a frank and open discussion and share points of view and proposals about the region. The following day, civil society representatives, with the support of the General Secretariat, coordinate within thematic networks to present their proposals to high-level government authorities on the topic of the General Assembly, in a dialogue with the heads of delegation, the secretary general and civil society representatives. For their part, the member states share points of view on the policies that are being implemented by their governments and the OAS around these topics.

This dialogue has been held since 2003 and was institutionalized by resolution CP/RES. 840 (1361/03) as part of the Strategies for Increasing and Strengthening Participation by Civil Society Organizations in OAS Activities. It has become an important part of the General Assembly. Through greater integration of CSOs within thematic networks, CSOs can gain a keener understanding of the political process and enhance their cooperation to provide a more precise, unified message in order to deliver the demands of their communities to their governments. Similarly, the member state representatives have come to appreciate the value of the dialogue, hearing the voices of diverse sectors in society—and often responding directly to their proposals during their interventions. This dialogue will continue to take place in the coming years and will be fine-tuned to ensure the most inclusive process possible, which engages diverse interest groups and the non-governmental actors that contribute to the daily activities of the OAS.

### ***Mechanism for follow-up on the implementation of the Inter-American Convention against Corruption***

The MESICIC is an intergovernmental body within the framework of the OAS that supports member states in the implementation of the Inter-American

Convention against Corruption through a process of reciprocal evaluation that reviews how its states parties are implementing the Convention, determines where legal gaps still exist and where further progress is needed, and formulates recommendations to address such gaps. The MESICIC conducts its work through its Committee of Experts and a Conference of the States Parties. The Committee of Experts is responsible for technical analysis of implementation. It uses questionnaires to review the implementation of specific preventive measures and other provisions contained in the Convention.

Chapter V of the Committee of Experts' Rules of Procedure and other Provisions indicates that CSOs duly registered with the OAS may present specific proposals and submit documents of direct relevance to the issues addressed in a questionnaire with respect to the implementation of the Convention by a state party, for consideration in the drafting of the state party's country report.<sup>3</sup> CSOs are also able to present written documents on the same topic for distribution to committee members and present these documents at meetings, if they so request and with the approval of the Committee.

The Conference of the States Parties is responsible for reviewing the Mechanism's operations and providing guidance to the Committee of Experts to facilitate its technical analysis. CSOs duly registered with the OAS can ask to attend meetings of the Conferences of the States Parties as observers.<sup>4</sup>

Given the technical nature of the subject matter, the OAS Register of Civil Society Organizations allows member states to be confident about the degree of expertise and the representative nature of a CSO that wishes to respond to the questionnaires or present written documents to the Committee of Experts. Similar examples can be found in the context of the Inter-American Commission of Women, CICAD, the Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities and other specialized agencies of the OAS.

## **Sharing lessons learned and policy recommendations**

Since its foundation, the OAS has gradually built up relations with CSOs, but their full participation in OAS meetings only gained momentum in the past decade. The General Secretariat has learned many lessons during this time. This section highlights and shares these lessons, and makes a series of policy recommendations to address some of the challenges that the OAS still faces in the inclusion of CSOs in its decision-making mechanisms. One of the most important results of the efforts of the OAS in its relations with

CSOs is the institutionalization of the mechanisms for CSO participation. The growing recognition that civil society participation in OAS activities increases the available stock of ideas, as well as the capacities and resources to address a given issue, motivated the OAS to establish clear procedures and guidelines for citizen participation. These institutional mechanisms played an essential role in helping member states understand the role CSOs play in a meeting, to view civil society as a partner, and define the difference between public participation and decision making, the latter being the exclusive responsibility of governments.

In this process, the Register of Civil Society Organizations has been an invaluable instrument that has helped to build mutual trust between CSOs and member states. In addition, the Guidelines for Participation by Civil Society Organizations in OAS Activities define universal and consistent practice for civil society participation in OAS activities, which has led to a clearer understanding among all the parties involved about the rights and conditions of civil society participation. The OAS collaborates with multiple civil society networks that work in the areas of democracy and citizen participation, the fight against corruption, the protection of human rights, freedom of expression and access to public information, citizen security, as well as groups that fight discrimination on the grounds of gender, race, sexual orientation and gender identity, disability or age. It is important to encourage affiliations with thematic CSO networks that will support these efforts to build institutional capacity and facilitate the exchange of information before OAS meetings. This coordinated approach simplifies the process of debate during civil society forums and helps CSO representatives arrive at a consensus.

Despite these positive developments, however, CSOs could play a more significant role. Their participation should not be limited to the role of observers in meetings, but should consist of opportunities for direct dialogue with member states and the General Secretariat, the ability to present reports and make recommendations on relevant topics, and the chance to play an active role in all stages of the decision-making process. For this reason, the OAS and CSOs should work together to build more space for dialogue and cooperation in the future. In particular, the OAS should implement a mechanism that allows for direct dialogue and the flow of information between its member states, the Secretariat and CSOs in order to further deepen the concrete opportunities for collaboration among these institutions. Member states should also allocate more resources to allow CSO participation in OAS meetings. The OAS established a specific fund in 2004 to facilitate CSO participation in OAS organs, but thus far the fund has only received

one modest contribution in its eight years of existence. In addition to the fund, the General Secretariat receives other specific contributions to finance the travel and hotel expenses of civil society representatives for particular meetings, but these funds are limited. Member states should promote the engagement of CSOs, and a regular contribution to the fund is vital to maintaining a sustainable and consistent degree of participation by CSOs in the policy-making process. These budget resources should be utilized to cover the personnel costs of the technical assistance required for civil society programmes, and a portion should be dedicated to financing the travel expenses of CSO participants in important meetings, while ensuring an equitable gender, thematic and geographic representation.

The second lesson learned stems from the intergovernmental nature of the regional organizations and their responsibility for supporting member states in the implementation of and reporting on the mandates they adopt. Regional organizations play a unique liaison role between governments and non-governmental actors. Each actor is independent, and regional organizations need to be proactive in proposing inclusive policies that facilitate substantive and timely interactions between member states, the technical areas of the General Secretariat and CSOs in all stages of the policy-making process. The OAS member states and OAS political bodies sometimes have different views regarding the scope of civil society participation in the OAS. This type of disagreement is inherent in a multilateral process, and coordination of OAS political bodies and member states can be challenging and lengthy. Year after year, the OAS General Assembly encourages member states to report on their procedures and regulations for consultation with civil society and other social actors, and instructs the General Secretariat to continue to support member states in their efforts to increase the institutional capacity of their governments to receive, integrate and incorporate civil society input and advocacy (see OAS, 2012c). The General Secretariat has compiled a document about legislation on civil society participation in the Americas. This information was verified with member states' delegations and published on the OAS website to serve as a reference for other countries. The General Secretariat also regularly advises member states and the OAS political bodies on the processes for civil society participation in their activities, transmits recommendations received from registered CSOs to the appropriate authorities for dissemination, and compiles information in easy-to-use formats for future reference.

The OAS should try to strengthen the collaboration between CSOs and the member states. Regional organizations, in general, should strive for broad and inclusive participation by CSOs in their meetings to ensure both the availability of technical expertise and comprehensive analysis of the topics at

hand. With a database of nearly 5,000 CSOs from across the hemisphere, the OAS has divided this list of organizations by thematic area in order to deliver better-targeted messages to CSO specialists in the subject matter of a given meeting. This has resulted in more substantive feedback from civil society on technical topics such as anti-corruption or security. Many topics are cross-cutting, however, and it is essential to take account of the gender perspective and consider the impact on marginalized groups.

The last lesson learned concerns the flow of information between regional organizations and CSOs. An effective communications strategy is an essential part of facilitating inclusive political participation and representation of non-governmental actors in the policy-making process. Such a strategy should be proactive in order to deliver relevant, meaningful information in real time to CSOs, and should take advantage of information and communications technologies for this purpose. There is a high level of interest among non-governmental actors in assuming a greater and more active role in the regional policy-making process. An integral part of this is ensuring adequate access to information on OAS activities and opportunities for participation. The General Secretariat employs a comprehensive communications strategy that entails daily communications through a mass distribution system to more than 5,000 CSOs from across the hemisphere. This is combined with a modern website that is updated regularly with information about upcoming events, a Manual for Civil Society Participation in OAS Activities, a list of civil society organizations registered with the OAS, answers to frequently asked questions, the basic documents adopted by the General Assembly and Permanent Council related to civil society participation, as well as a resource about thematic civil society networks that serves to facilitate the exchange of information among different organizations with common goals. It is essential that these channels are regularly updated and, where possible, strengthened to allow for a better flow of information between the OAS and CSOs, and to allow the CSOs to take part effectively in the work of the OAS.

## Conclusions

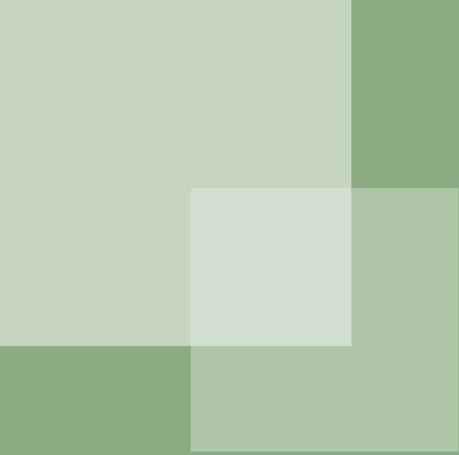
The OAS is a leader among regional organizations in its consultation process with civil society. The dialogue between OAS member states and civil society helps to build alliances and consensus around common action agendas, which is an essential dimension of democratic governance. Since the participation of CSOs was institutionalized by the Permanent Council in 1999, the OAS has promoted a more inclusive process that engages with the diverse interest groups and non-governmental actors that contribute to the daily activities of the Organization. Nonetheless, the system is not perfect.

Over the past 13 years, the member states, General Secretariat and CSOs have gone through a learning process about effective practices for civil society participation. Through greater integration of CSOs in thematic networks and expanded outreach efforts, civil society representatives have developed a greater awareness of political processes and the opportunities for their participation, and have increased their ability to make concrete, relevant and timely recommendations to OAS meetings. Similarly, member states and the OAS General Secretariat have become more conscious of the importance of civil society as a strategic partner, and now promote civil society participation as a key element of nearly all OAS-related activities. Building on the strong foundation that has been established will require a long-term commitment from all the parties involved, and the OAS is dedicated to continuing its efforts to ensure growing political participation and representation in the political processes to the benefit of the peoples of the Americas.

### **Notes**

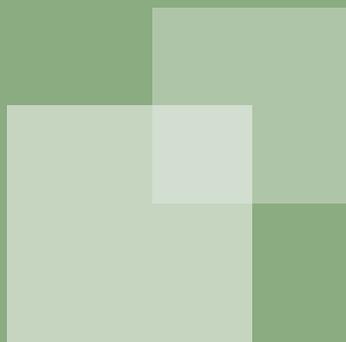
- <sup>1</sup> The Charter of the Organization of American States is available at <[http://www.oas.org/dil/treaties\\_A-41\\_Charter\\_of\\_the\\_Organization\\_of\\_American\\_States.htm](http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm)>.
- <sup>2</sup> The OAS Civil Society Website is available at <[www.civil-society.oas.org](http://www.civil-society.oas.org)>.
- <sup>3</sup> Rules of Procedure and other Provisions, Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption, <[http://www.oas.org/juridico/english/mesicic\\_rules.pdf](http://www.oas.org/juridico/english/mesicic_rules.pdf)>.
- <sup>4</sup> Rules of Procedure of the Conference of the States Parties of the MESICIC, <[http://www.oas.org/juridico/english/proced\\_conf.pdf](http://www.oas.org/juridico/english/proced_conf.pdf)>.





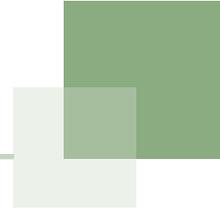
# **Chapter 2**

## **The Pacific Islands Forum and its Engagement with Civil Society Organizations**



## Chapter 2

Henry Ivarature



# The Pacific Islands Forum and its Engagement with Civil Society Organizations

## Introduction

Civil society organizations (CSOs) contribute significantly to economic and social development and to fostering democratization processes. CSOs often provide basic services, such as primary education, health care, clean water and sanitation, facilitating participation in local planning and budgeting, advocacy for human rights and special consideration for the needs of marginalized groups through the provision of shelter, counselling and support services (UNDP, n.d.). More recently, CSOs have become increasingly involved in regional and international affairs. For these reasons, governments and regional and international organizations need to meaningfully and genuinely include CSOs in their decision-making processes. This chapter focuses on the roles CSOs play at the regional level and the avenues created by the Pacific Islands Forum (PIF) for collaboration with CSOs in the Pacific region.

The first section describes the development of the mandate of the PIF to engage with CSOs. The second section discusses the forms of engagement CSOs have sought with the PIF over time. The third section examines the formal and informal arrangements that exist for engagement by CSOs, the PIF and the PIF Secretariat, including the 2013 Review of the Pacific Plan. The fourth section makes a number of recommendations and the final section presents the conclusions.

## The mandates of PIF and PIF-sanctioned bodies to support CSOs

Since 1995, PIF leaders have expressed a need to engage with CSOs to widen the field of participation in regional matters beyond government officials, elected leaders and ministers from PIF countries, regional organizations, donors and development partners. The decision to create a mechanism to engage with CSOs can be traced to a number of documents, such as statements from ministerial meetings and the declarations of PIF leaders.

Annex 2 to the South Pacific Forum Vision Plan of Action states that: ‘Opportunities for co-operation with other government, non-governmental organizations and international organizations, including other bodies in the Asia-Pacific are actively pursued and developed’ (PIF Communique, 1995). The statement represents the earliest available evidence of a PIF policy decision to develop opportunities for cooperation with CSOs. Essentially, this statement recognized the important role of non-governmental organizations (NGOs), including CSOs, in achieving the vision of the PIF. Despite this declaration, however, no real mechanism for engaging with CSOs was developed.

Consultative arrangements between CSOs and the PIF were reviewed by an Eminent Persons Group (EPG) in 2003. It was the first substantive review of the regional body since its establishment. In a landmark decision, PIF leaders resolved to see how they could better interact with CSOs: ‘The Leaders also noted the important role that representatives of civil society are playing in the development of the Pacific Islands. In this regard, Leaders resolved to include in the Forum Review Process an examination of enhancing the interaction between the Forum and civil society’ (PIF Communique, 2003).

PIF leaders acknowledged the views of CSOs in their Forum Communique of 2004:

Leaders received with appreciation the report of the Non State Actors (NSAs) noting the success of the recent NSA meeting in Apia. Leaders also agreed to the Secretary General providing feedback to the NSAs on the views of the Leaders and that he should continue to develop consultative arrangements between the NSAs and the Forum.

Although this particular PIF leaders’ decision relates to issues raised by CSOs about the South Pacific Nuclear Free Zone Treaty, PIF leaders also sought the development of a general consultative arrangement between CSOs and the Forum. PIF leaders reiterated the same message six years later:

Leaders welcomed the Secretary General's initiative to convey the views of civil society on a range of challenges facing the Pacific. Leaders recognised many of the issues identified by civil society were ones already on the regional agenda. Leaders highlighted this commonality and noted that meaningful engagement with civil society was vital in finding the best path forward. Leaders tasked the Secretariat to determine, as appropriate, practical means to ensure civil society perspectives continue to be reflected in Forum policy formulation and are able to be conveyed to future Forum Leaders' meetings (PIF Communique, 2011).

In the same Communique, PIF leaders, through the Waiheke Declaration, committed to engage meaningfully with CSOs in the region: 'We, the Leaders of the Pacific Islands Forum, meeting in Auckland, New Zealand, commit ourselves specifically to: ... Ensure the meaningful engagement of civil society and Pacific island communities in the development process' (Annex 1, PIF Communique, 2011). This statement by PIF leaders is unequivocal in its intention and meaning. It elaborates on the commitments in the Biketawa Declaration (PIF Secretariat, 2000), which committed the PIF to conduct itself in the governance of the region in an open, transparent, accountable, participatory, consultative and decisive, but fair and equitable, manner. Even in the resolution of conflicts or issues in the region, the Biketawa Declaration acknowledges the involvement of genuinely interested parties in bringing about a resolution to any crisis and acknowledges that this may include national actors and local players. The Biketawa Declaration seeks consultation with, and the participation and involvement of, CSOs (PIF Secretariat, 2000).

Other Forum Communiqués also acknowledge the contribution and efforts of CSOs and support engaging with CSOs in various regional initiatives: (a) environmental issues and biological diversity (PIF Communique, 1996); (b) sports and development (PIF Communique, 1997); (c) the economy (PIF Communique, 1999); (d) the South Pacific Regional Environment Programme (PIF Communique, 2000); (e) education (PIF Communique, 2001); (f) social development (PIF Communique, 2003); (g) the South Pacific Nuclear Free Zone Treaty (PIF Communique, 2004); (h) good governance (PIF Communique, 2007); (i) disability and the Millennium Development Goals (PIF Communique, 2010); (j) non-communicable diseases (PIF Communique, 2011); and (k) gender (PIF Communique, 2012). All these communiqués acknowledge the commitment of PIF leaders with regard to the role of CSOs in regional matters and how closely they seek to engage and work with CSOs.

## Forms of engagement advocated by CSOs

Over the years, CSOs have proposed various ways of engaging with the PIF. Some of these have been reiterated in their submissions on the Pacific Plan review and are discussed below. CSOs have recommended the creation of spaces for direct engagement with the PIF, including participation in a number of official meetings that are currently exclusive gatherings of government officials such as the Pacific Plan Action Committee (PPAC) and the Forum Officials Committee. CSOs have also asked for a place on the Council of Regional Organizations in the Pacific (CROP). Regional organizations such as the Secretariat of the Pacific Community, the PIF, the South Pacific Regional Environmental Programme, the University of the South Pacific and the Forum Fisheries Agency are currently members of the CROP, which is chaired by the Secretary General of the PIF. It is one of the regional platforms responsible for the formulation of regional priorities and initiatives.

CSOs have also advocated that specific issues should be considered by the PIF, such as the incorporation of United Nations Security Council resolution (S/RES/ 1325) on women and peace and security as an item on the agenda of regional and national security meetings—including the PIF Regional Security Committee. They also advocate the development of an appropriate mechanism in which representatives of CSOs, PIF member states and the private sector can discuss the implementation of the Pacific Plan. Underlying the argument for the development of this mechanism is the mandate derived from the Kalibobo Roadmap on the Pacific Plan, which states that:

Overall implementation of the Pacific Plan initiatives will be reviewed annually by Leaders who will receive a report, prepared in consultation with members of the PPAC, from the Chair and Secretary General prior to the Leaders meeting. These reports will include recommendations on future directions for the Pacific Plan.

Given the central role of regional organisations, a regional institutional framework that is appropriate to the development of the Pacific Plan will be established. A progress report on this will be provided to the 2006 Forum. Relations with Pacific territories, NSAs, civil society and development partners will be strengthened, and an annual outcomes-oriented process with non-state representatives from the business sector, academia, media, and civil society organisations will be established, to provide a platform for wider debate and feedback to the Leaders through the Secretary General (PIF Communiqué, 2005: Annex A, the 'Kalibobo Roadmap').



CSOs have recommended that the annual regional CSO forum, which coincides with the annual PIF leaders meeting, should be officially sanctioned and recognized by the PIF. This is an annual event organized entirely by CSOs under the auspices of the Pacific Regional Non-Governmental Organizations (PRNGO). This annual regional CSO gathering is a mechanism recommended by the EPG to review the PIF. It usually coincides with the PIF Leaders' Meeting. Its outcomes and statements are usually structured to reflect the agenda of the PIF and the initiatives implemented under the four pillars of the Pacific Plan – good governance, sustainable development, economic growth and security. They include recommendations on Forum issues. The statement is intended for the attention of PIF leaders and is conveyed to the PIF through the Secretary General. Some regional CSOs, however, believe their recommendations are either not noted or not recognized by PIF leaders. PIF senior officers and occasionally a PIF leader participate in the regional gathering of CSOs. Some present papers.

The final and ultimate goal is for representatives of CSOs to engage directly through a formal dialogue with PIF leaders at their annual meetings (Garrett, 2010). This has been an ongoing, and so far unsuccessful, discussion that compares unfavourably with the success of new regional players such as the Pacific Islands Private Sector Organizations (PIPSO), which recently secured such a dialogue. Regional CSOs have called for the PIPSO-PIF dialogue to be widened to include CSOs (PIANGO, 2013). CSO leaders intend to increase their leverage of PIF leaders by targeting pre-PIF committee meetings (RNZI, 2008).

## **Formal and informal arrangements set up by the PIF for engagement with CSOs**

The PIF and its Secretariat have developed a number of mechanisms for engaging with CSOs. These include a policy on consultative status and accreditation between the PIF and Pacific Regional Non State Actors (NSAs), the PIF Secretary General's Reference Group on the Pacific Plan, the PIF Secretariat-CSO Dialogue, the NSA Dialogue on Pacific Agreement on Closer Economic Relations (PACER) Plus, the participation of CSOs in the Economic Partnership Agreement (EPA) process, the Cairns Compact for Strengthening Development Coordination Peer Review, and the participation of representatives of CSOs at regional workshops organized by the PIF Secretariat and its partners. These mechanisms are discussed below.

### ***Policy on Consultative Status and Accreditation between the PIF and Pacific Regional NSAs***

The Policy on Consultative Status and Accreditation between the Pacific Islands Forum and Pacific Regional Non-State Actors (PRNSA) was developed in 2006 in consultation with representatives of CSOs in the Pacific. The Pacific Islands Association of Non-Governmental Organizations (PIANGO) was among the first CSOs to be granted consultative and accreditation status at PIF Secretariat meetings in 2007 (PIANGO, 2007).

Before the development of the policy, other arrangements and mechanisms were in place to allow CSOs to engage with the PIF. The first mechanism, the Forum Secretariat and Non-Government Organizations Policy Consultation Framework, was adopted in 2000 (Ogashiwa, 2008). This framework is the PIF Secretariat's earliest known mechanism for building cooperation and collaboration with CSOs. It owes its origin to the South Pacific Forum Vision Statement of 1995, which recognized NGOs as consultation partners in regional decision making. This was followed by the establishment of the Framework for Engagement with Pacific Regional Non-State Actors, which was adopted in 2002 (Ogashiwa, 2008) and was eventually replaced by the Policy on Consultative Status and Accreditation between the Pacific Islands Forum and PRNSA.

While a number of CSOs, including PIANGO, have been granted consultative status, a senior PIANGO official claims that CSOs are often not consulted and questions what consultative status really means (Garrett, 2010). He also notes the absence of any consultation between CSOs and the PIF between 2008 and 2010, although relations between the PIF and CSOs have improved since, as is explained below.

Although a formal framework for engagement between the PIF and CSOs was developed, endorsed by PIF and welcomed by both the PIF Secretariat and CSOs, the onus was squarely on the PIF Secretariat to make the process work. Therein lies the real challenge—how to operationalize and make the consultative and accreditation framework not only functional and operational, but also meaningful. At present, there is an absence of information on which CSOs have consultative and accreditation status, which PIF meetings they can attend as observers or participants, the composition of the consultative status committee, and whether this body has ever met and deliberated on CSO consultative and accreditation matters. The NSA liaison officer at the PIF Secretariat is tasked with 'coordinating Non State Actor engagement with Forum processes and work programmes, including the implementation and reporting of the Pacific Plan' (PIF Secretariat, 2011a).



### ***PIF Secretary General's Reference Group on the Pacific Plan***

The Secretary General's Reference Group on the Pacific Plan is a regional consultative mechanism. It is part of the ongoing effort by the PIF to build cooperation and collaboration with CSOs. The Reference Group engages with CSOs on the implementation and ongoing development of the Pacific Plan, and on the work of the PIF (PIF Secretariat, 2006). Of the 12 members of this group, eight are representatives of CSOs. The late Greg Urwin, while Secretary General of the PIF, saw this mechanism as an opportunity for representatives of CSOs to channel recommendations and invited CSOs to work with the PIF Secretariat on strengthening engagement with PIF leaders (PIF Secretariat, 2006). Other ways of engaging CSOs in the implementation of the Pacific Plan as well as other regional mandates involved the inclusion of CSO representatives in the programming of regional resources, such as consultations on the tenth European Development Fund (PIF Secretariat, 2006).

### ***PIF Secretariat-CSO Dialogue***

The PIF Secretariat-CSO Dialogue is a bi-annual gathering developed at the request of the Forum Regional Security Committee (FRSC) (PIF Secretariat, 2011c). It began in 2009 between official representatives of the PIF member state governments, in particular Suva and Fiji, and members of the CSO community. Peace building and conflict prevention were discussed and this set the scene for the development of a more structured mechanism for strengthening engagement with CSOs. The first meeting of the year is held before the FRSC, which allows the input from CSOs on conflict, peace and security issues to be considered by the FRSC. The second meeting is held within six months of the FRSC meeting and is structured to enable the PIF Secretariat to report to CSOs on the response of the FRSC to their input. The PIF Secretariat-CSO Dialogue is not exclusive to CSOs. A number of development partners and other intergovernmental organizations are also involved. This broadens the scope of engagement and interaction of CSOs through their dialogue with key development partners and other regional and intergovernmental organizations. Through this process, the considerations and concerns of CSOs are, where appropriate and necessary, incorporated into the agenda of the PIF. The PIF Secretariat-CSO Dialogue is a relatively new mechanism and is slowly building its shape and form. One area of weakness is the capacity of CSOs to meet the demands of sustaining substantive discourse and dialogue on peace, conflict and security and their capacity to attend meetings amid other competing priorities.

### ***NSA Dialogue on PACER Plus***

The NSA Dialogue on PACER Plus began in 2010 in Honiara, the Solomon Islands, at the initiative of the PIF trade ministers. It takes place annually at the margins of the Pacific Agreement on Closer Economic Relations ‘Plus officials’ meeting. PACER Plus is an economic framework for deepening trade and economic cooperation between PIF member states on matters of economic growth, trade, investment and employment creation. A number of CSOs, through the collaborative efforts of PIF member states, PIPSO and PIANGO, participate and engage in negotiations, present their views on the priorities of PACER Plus and ask questions about the progress of negotiations. The NSA Dialogue on PACER Plus is an example of a transparent, inclusive and open process of participation that integrates the perspectives, issues and concerns of CSOs, including on the content and progress of negotiations. For the PIF this reflects a genuine commitment to partnership with CSOs.

### ***CSO participation in the Economic Partnership Agreement process***

CSO participation in the EPA process is largely to comply with the Cotonou Agreement, which requires Pacific Island countries to consult with NSAs, including CSOs. For this purpose, the PIF Secretariat selects a number of CSO representatives to participate in the consultations, and in an advisory and reference group in relation to the EPA process. Given the complexity of the trade negotiations and of the subject matter, some CSOs have invested their own resources to better understand the process and the substantive technical issues. A number of CSOs have engaged the services of academics from the region with extensive experience in the structural adjustment issues resulting from economic and trade arrangements to provide independent advice on PACER and the EPA. These alternative perspectives have added value to the whole negotiation process, especially the quality of the analysis to better contextualize the positions of the Pacific Island states. All parties benefit from the diversity of perspectives, including the PIF member government representatives and the PIF Secretariat. A leading CSO in this area, particularly on economics, trade and investment issues, is the Pacific Network on Globalization.

### ***The Cairns Compact for Strengthening Development Coordination peer review***

Coordinated by the PIF Secretariat, the peer review process on the Cairns Compact for Strengthening Development Coordination also includes

consultations with CSOs at the country level. The review process ‘looks at how Pacific Islands Countries (PICs) formulate their priorities, turn them into budgets, implement plans, monitor and report on results as well as how development partners act collectively and individually to support these national priorities and processes’ (PIF Secretariat, 2011b). Peer reviews have been conducted in a number of PIF member states and have included consultations with national CSOs. The CSOs in PIF member states where a peer review process has been conducted have expressed appreciation and support for their involvement in the process (PIF Secretariat, 2010c, 2011b). According to the president of the Nauru Private Business Sector Organization, the peer review process helped obtain a better picture of the partnership that could be developed with government and an appreciation of the processes for engaging in the development of their country (PIF Secretariat, 2010c).

### ***Participation in regional workshops organized by the PIF Secretariat***

Representatives of CSOs have been invited to participate in many workshops organized by the PIF Secretariat and its partner organizations. The participation of CSO representatives is often fully funded by either the PIF Secretariat or partner development organizations that collaborate with the PIF Secretariat on these regional workshops, such as Pacific Aid Effectiveness and the Pacific Islands Countries Partners Meeting. Representatives of CSOs have also been consulted by the Forum’s Ministerial Contact Group (MCG), an eminent body of foreign ministers in the region, which has been tasked by PIF leaders to undertake consultations with the military regime in Fiji (PIF Secretariat, 2013b). These consultations help keep the MCG informed of the political situation in Fiji and of progress towards the restoration of democracy, on which a report is tabled for the information and consideration of PIF leaders. It also helps shape the position of the PIF on Fiji. The consultations with CSOs and other stakeholders in Fiji are organized by the PIF Secretariat.

All these mechanisms bring meaning to the concepts of accountability, transparency, responsiveness and participation in regional affairs, in particular for regional organizations that derive their membership from government appointees and selected observers. As intergovernmental organizations, these oversight and accountability roles are traditionally played by representatives of governments, in particular senior government officials whose advice largely forms the positions taken by elected leaders at ministerial and leaders’ meetings. Often, these meetings are purely administrative and process oriented. Oversight and accountability remain at the bureaucratic level.

Citizens hardly feature in these arrangements because there is no real or direct accountability link between the people and regional organizations. The accountability link that regional CSOs provide exposes the weakness in the accountability chain between citizens and regional organizations. Rhetoric on accountability and transparency should be backed up in practice and as pressure grows from stakeholders such as CSOs. With genuine acceptance from regional organizations, perhaps ownership of regional initiatives may also improve.

### **CSO engagement in the 2013 Review of the Pacific Plan: a brief account**

According to the Pacific Plan document, ‘the key initiative for civil society ... is to build strong partnerships with national and regional stakeholders and with development partners. An outcomes-oriented process is sought in collaboration with the private sector and academia to provide feedback to PIF leaders and to form a platform for debate on regionalism and the long term direction of the Pacific Plan’ (Pacific Plan 2005). The document also states that CSOs will be involved in participatory monitoring and evaluation processes to monitor the success or otherwise of the Pacific Plan. This commitment was reiterated by the prime minister of Vanuatu, Meltek Sato Kilman Livtuvanu, during his keynote address at the Pacific Islands Forum 40th Anniversary Leaders’ Lecture Series with a focus on the Pacific Plan.<sup>1</sup> The task ahead for the PIF Secretariat and CSOs is to work out an appropriate framework that supports their engagement and participation in monitoring and evaluating the next phase of the Pacific Plan.

On his appointment as a member of the Pacific Plan Review team in 2013, Sir Mekere Morauta pledged to undertake ‘a comprehensive, inclusive and deeply reflective review process’ (PIF Secretariat, 2012e). This commitment to be inclusive differs significantly from how the Pacific Plan was developed and endorsed in 2005. In January 2013, a two-phase extensive national consultation process commenced. The review team travelled to all PIF member states to hear views that would help map out the direction for future regional cooperation and integration. The first phase concluded with the submission of a preliminary report to the PPAC. It will be followed by a second phase of consultations after which the preliminary findings will be shared with the PPAC. The final report will be tabled at the PIF leaders’ annual meeting.

In an inclusive process, all stakeholders, including CSOs, were invited to submit written statements. The leader of the review team encouraged



‘organizations, special interest groups and individuals from far and wide to participate in this important process’ and to make their views known and to participate in shaping the future of the region (PIF Secretariat, 2013t). The paramount objective was to gather a ‘full and balanced perspective on social, economic and political issues shaping regional cooperation and integration (PIF Secretariat, 2013r). The review team held consultations with politicians, government officials, development partners, regional organizations (such as the CROP), the Forum Fisheries Agency and the Secretariat of the Pacific Community), aid agencies, academics, political commentators, CSOs, NSAs, private sector operators and faith-based organizations. A central element that underpins the objective of inclusiveness is to build public and regional ownership of the Pacific Plan, an issue that has plagued the Plan since its inception and endorsement. International IDEA in its submission to the review of the Pacific Plan commended the review team for its search for a mandate from the people, including CSOs.

Although CSOs were consulted by the review team during national consultations, the number of written submissions from CSOs at the national level was limited. A review of the PIF Secretariat website on the Pacific Plan Review on 22 May 2013, a week after the closing date for submissions, showed that only six CSOs had submitted written reports (FemLINKPacific, PANG, PRNGO, PIANGO, the Women’s Rights and Advocacy in the Pacific and the Niue Island United Association of Non-Governmental Organizations). There was also a submission from CSOs in Fiji and Niue.

In many respects, this is somewhat disappointing because CSOs had been highly vocal about the transparency of the consultation process, especially the participation of regional stakeholders, the identification and formulation of initiatives, and the development of the Pacific Plan. The endorsement of the Plan was even deferred until consultations were completed. Although PIANGO claims to have made arrangements for national CSOs to meet the review team, written submissions would have transparently and permanently set out their views on an important regional strategy for integration and cooperation (PIANGO, 2013).

## **Recommendations**

A number of recommendations flow from the review of the mechanisms set up by the PIF to engage with CSOs and allow them to participate in regional decision-making processes. The consultation mechanisms, the NSA Dialogue on PACER Plus and the PIF Secretariat-CSO Dialogue provide

useful examples for the PIF Secretariat to learn from and build on. The most urgent priority is to review the consultation processes currently in place with the aim of developing an overarching PIF-CSO engagement framework to replace the different consultation processes.

A number of mutually beneficial values and interests underpin the PIF-CSO engagement framework. Given the growing role of CSOs in socio-economic development in the region, a more specific challenge for the PIF is how to increase the engagement of CSOs to maximize their impact in supporting the decisions of PIF. Ideally, the PIF-CSO engagement framework should be broader in its aims and objectives. Moreover, it should be a more genuine framework for engagement than the existing consultative and accreditation framework, which seems to be unsatisfactory and is not thought by many CSOs to be working as intended. The PIF-CSO engagement framework should set out how the PIF will work with CSOs to define regional priorities, develop solutions and jointly assess, monitor and evaluate the results and outcomes of regional decisions, initiatives and priorities. The CSO consultations set up to review the Pacific Plan and its implementation could be carried afterwards and embedded in the proposed PIF-CSO framework.

In contrast to the views of PIANGO, the Policy on Consultative Status and Accreditation between the PIF and the PRNSA is seen by the PIF Secretariat as a useful mechanism and an indication of the PIF's commitment to engage with CSOs. However, many CSOs have been critical of its usefulness beyond a statement of policy intent. The consultative and accreditation policy is overly bureaucratic and laden with a number processes for seeking approval that appear to be more like barriers than mechanisms to enhance and facilitate the process of CSO participation in PIF meetings. The policy appears unsatisfactory and underused. It must be made functional, meaningful and workable, perhaps by bringing it into the ambit of the broader-based PIF-CSO engagement framework.

The increasing degree of engagement by PIF with CSOs itself necessitates a strengthening and building of the capacity of the Secretariat to manage its relations with CSOs. That the PIF Secretariat has dedicated a post to liaison specifically with CSOs is a major milestone. This commitment is acknowledged by CSOs. A possible missing link is managing relations in a structured arrangement in a PIF Secretariat-CSO engagement framework. Current consultative arrangements have emerged in an ad hoc manner without regard for the structure or framework of engagement.



Finally, the prospects for greater regional consultations and engagement between regional CSOs and the PIF and its Secretariat should be contextualized, especially the real challenges that confront the long-term sustainability of CSO involvement. In a study of the capacities of CSOs in six Pacific Island countries (Cook Islands, Federated States of Micronesia, Fiji, Solomon Islands, Tonga and Tuvalu) commissioned by the UNDP (n.d.), a number of challenges continue to confront CSOs. These include a lack of resources and technical expertise. In particular, the lack of resources affects the ability of CSOs to commit to long-term engagement with the PIF, since they have to finance their participation in PIF meetings, which in the long run is not sustainable. Perhaps, as part of the process of developing its growing relations with regional CSOs, it may be appropriate for the PIF Secretariat to thoroughly review the current regional mechanisms for engagement and to develop a dedicated Fund for Civil Society Participation, based on the model of the fund created by the OAS. This Fund would provide financial resources to facilitate participation in meetings and consultations by the accredited CSOs, thereby actively supporting the process of engagement between the PIF and CSOs.

## Conclusions

In their desire to engage CSOs in regional affairs, PIF leaders have since 1995 sought the cooperation of CSOs through the development of appropriate consultative arrangements through which their views and perspectives can be channelled. As recently as 2011, this call for ‘meaningful engagement of civil society and Pacific Island communities in the development process’ was reiterated in the Waiheke Declaration. A number of consultative and participatory mechanisms evolved in the 16 years after 1995, but the existing mechanisms still require improvement. It is therefore incumbent on the PIF Secretariat to take stock of its existing consultative mechanisms and work to develop a framework that brings about meaningful engagement with CSOs.

Before the PIF Secretariat proceeds, however, it needs to seek further guidance and clarification from PIF leaders about what they mean by the term ‘meaningful’. How do PIF leaders define ‘meaningful engagement’? This should provide the basis of their assignment to develop arrangements for ‘meaningful engagement of civil society and Pacific Island communities in the development process’. Important considerations would include accountability, transparency and participation at the regional level in regional affairs. These considerations would obviously bring a new dimension to the established processes of identifying issues, and developing and setting the

regional agenda. Is the PIF really prepared for the changes to the way it has conducted regional affairs and the degree of scrutiny associated with it? Certainly, regional CSOs ought to be credited for playing a contributory role on this front.

As stakeholders, CSOs are dissatisfied with their level of participation as genuine partners in advancing the agenda of the region in an inclusive and participatory manner. Naturally, the PIF Secretariat would contest these claims, pointing to the array of arrangements that are now in place. However, the health and welfare of the region matter, and these considerations should force both the PIF, through its Secretariat and CSOs, to build on existing mechanisms, assess their shortcomings and weaknesses, and make the necessary adjustments to strengthen the process of engagement. The growing array of consultative arrangements clearly demonstrates the ongoing commitment of the PIF Secretariat to engagement with CSOs. However, a broader governing framework is needed to support and guide this engagement. These mechanisms are still to be developed. They could help resolve the perceived lack of meaningful engagement and also strengthen the inclusion and participation of CSOs in regional affairs.

### **Notes**

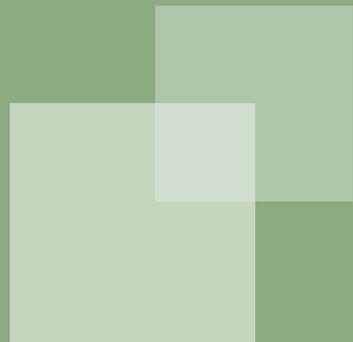
- <sup>1</sup> <http://www.forumsec.org/pages.cfm/anniversary/anniversary-news/keynote-address-by-vanuatu-pm-forum-chair-1.html>.





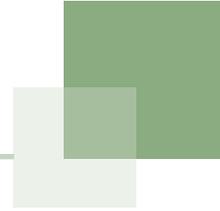
# **Chapter 3**

## **The Role of Epistemic Communities in Building an Inclusive ASEAN Political and Security Community: The Case of ASEAN-ISIS**



## Chapter 3

Mely Caballero-Anthony<sup>1</sup>



# The Role of Epistemic Communities in Building an Inclusive ASEAN Political and Security Community: The Case of ASEAN-ISIS

## Introduction

The role of non-state actors in international politics has become more prominent with the emergence of a number of transnational organizations that are able to influence policies and international relations. Increasingly, these transnational actors, think tanks, academics and members of the ‘unofficial policy community’ have been able to affect policies and help shape the nature of interstate relations through their ideas and activism. Often referred to as ‘track two’ bodies, one of their key features is their ability to organize a plethora of meetings or other forms of dialogue geared to pluralist discussion and agenda setting on issues of regional and international concern, including democratization. Through these meetings and exchanges of ideas, policy initiatives and recommendations are generated and usually forwarded through track one or official channels for consideration.

The linkages established between track two and track one through the transmission of ideas approximate the work of epistemic communities. By their nature, epistemic communities contribute to the decision-making processes of governments. As knowledge networks, their ability to provide information and translate knowledge into policy, as well as their capacity to create and strengthen their transnational networks, become valuable inputs for decision makers. More importantly, their capacity to set the agenda in a rapidly changing regional or global environment has become significant for

policy makers, given the compelling need to manage emerging and complex issues that have a bearing on regional and global governance.

In over two decades of active engagement with Association of Southeast Asian Nations (ASEAN) officials, the ASEAN Institute of Strategic and International Studies (ASEAN-ISIS) has remained one of the eminent think tanks and has contributed significantly to the promotion of multilateral political and security cooperation within and outside ASEAN. ASEAN-ISIS has also actively worked to promote democracy through its support for the ASEAN Political and Security Community (APSC), and its support and advocacy for human rights protection and promotion in Southeast Asia, in particular.

Against this background, the main objectives of this chapter are, first, to review the progress of the APSC by examining the regional mechanisms that evolved in the run-up to and adoption of the ASEAN Charter; and, second, to analyse the work of ASEAN-ISIS, a leading epistemic community in the region, in helping to advance ASEAN's goal of establishing a political and security community. Particular emphasis is given to its role in promoting democracy and human rights in ASEAN since the adoption of the ASEAN Political and Security Community Blueprint (ASEAN, 2003) and the ASEAN Charter (ASEAN, 2007).

Using ASEAN-ISIS as a case study, the chapter examines the broader question of the extent to which track-two networks or epistemic communities have been able to foster an enabling environment for inclusive political participation in the region in a post-Charter ASEAN. This is on the premise that in carrying out their missions, such entities also connect and work with other track-two actors and civil society organizations (CSOs) that share the same goal of promoting democracy.

## **ASEAN and the goal of building an ASEAN Community**

At the ninth ASEAN Summit in 2003, the ASEAN leaders adopted the Declaration of ASEAN Concord II, or the Bali Concord II, which envisaged the establishment of an ASEAN Community resting on three pillars: the APSC, the ASEAN Economic Community and the ASEAN Socio-cultural Community. This three-pillared ASEAN Community is supposed to reflect the comprehensive approach that ASEAN adopts and will always adopt when addressing the political, economic and social realities of the region. The adoption of the ASEAN Community is a reaffirmation of the ideals set out in ASEAN's Vision 2020 (ASEAN, 1997), which envisages a community

of caring societies that is ‘bonded together in partnership in dynamic development; living in peace, stability and prosperity’.

Of the three pillars of the ASEAN Community, it is the APSC that has generated the most interest not only because of the new mechanisms and initiatives that have been announced to address emerging security challenges in the region, but also because, on closer inspection, it speaks to many of the issues that have come to characterize the so-called new regionalism. Of particular significance among the trends towards a new regionalism is the issue of multilevel governance, which emphasizes the importance of participation and the inclusion of a multiplicity of actors in addition to the state. According to Hettne (2005: 544), new regionalism, when compared to the ‘old’ regionalism, is defined by its multidimensional approach, the types of actor that drive it and the societal levels at which it manifests itself.

The APSC, which was initially conceptualized as the ASEAN Security Community (ASC), was designed to provide a regional framework for ASEAN member states to handle security matters and disputes more effectively, and to raise security cooperation to a higher level. Given that most security issues in the region are now transnational, there was an increasing realization that the challenges facing ASEAN member states could no longer be resolved unilaterally. Nor was it enough to rely predominantly on the prevailing mode of bilateral arrangements. In short, the ASC was ‘meant to provide a sense of purpose, a practical goal, and a future condition that all [ASEAN] members should strive for.’<sup>2</sup> The ASC was transformed into the APSC in 2009.

In order to develop the APSC pillar, the APSC Blueprint (ASEAN, 2010: 5–20) proposed five areas of cooperation, or strategic thrusts: political development, norm setting and norm sharing, conflict prevention, conflict resolution, and post-conflict peacebuilding. With these areas of cooperation, the APSC aims to ensure that the peoples and member states of ASEAN live in peace with one another and with the world at large, in a just, democratic and harmonious environment (ASEAN, 2010: 5).

The inclusion of political development in the APSC Blueprint is particularly significant, given that not too long ago ASEAN obviously avoided discussing topics that could be interpreted as intrusions into the domestic political affairs of its member states. For those familiar with ASEAN processes, it was surprising that this phrase got past the drafting stage at the ASEAN senior officials’ meeting, let alone that ASEAN leaders agreed to its inclusion in the ASC Plan of Action and the subsequent APSC Blueprint. In order to gain a sense of the thinking behind its inclusion, it is noteworthy to examine the

specific strategies that were identified to encourage political development. These included: (i) promotion of the rule of law; (ii) promotion of good governance; (iii) promotion and protection of human rights; (iv) promotion of the principles of democracy; and (v) increasing the participation of relevant entities associated with ASEAN in moving forward ASEAN political development initiatives.<sup>3</sup> The inclusion of the participation of relevant entities is significant, as this effectively opened up space for non-governmental organizations (NGOs), CSOs and other actors to participate in the new regional processes and mechanisms that are unfolding in ASEAN. It is even more significant given that it was not until 2005, more than 40 years after ASEAN was established, that ASEAN officials first made mention of and officially recognized the need for ASEAN to be more ‘people centred’ and to get non-state actors to engage with and participate in ASEAN processes.

When viewed in the context of ASEAN’s history and the ‘ASEAN way’, the APSC Blueprint is certainly ambitious, which might understandably lead some to question the extent to which these ideas can ever be realized. For instance, the APSC Blueprint’s provision on the promotion and protection of human rights calls for a number of measures to be taken, including the establishment of an ASEAN human rights body and a commission on the promotion and protection of the rights of women and children. Beyond the value of their declaratory intent, this dramatic shift was aptly described by the former Indonesian Foreign Minister, Hassan Wirajuda (2004), when he said that through the A[P]SC, ASEAN had finally taken ‘the bull by the horns’ in so far as human rights and the development of a regional human rights regime were concerned.

In brief, the APSC Blueprint—and the subsequent establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)—demonstrate that at the very least, ASEAN elites have come a long way from their strident opposition in the 1990s (during the heyday of the ‘Asian values’ debate) to notions of individual and human rights. From these developments, it can thus be observed that the APSC has defined the normative foundations of an ASEAN brand of regionalism—one that aims to be both inclusive and participatory.



## **Beyond the APSC Blueprint: mechanisms for promoting democracy and human rights in ASEAN**

The mainstreaming of democracy and the human rights agenda in the APSC is certainly a milestone, but its prioritization within this first pillar of the ASEAN community owes much to the often unseen work of an array of non-state actors. These actors include track-two networks such as ASEAN-ISIS, which have worked closely with other CSOs and issue-oriented networks, including the Regional Working Group on Human Rights, to achieve this objective (Caballero-Anthony, 2005; Muntarbhorn, n.d.).<sup>4</sup> The regional mechanisms in ASEAN today, which are geared to promoting the overarching goal of an APSC, had a long gestation period and have benefitted from the long history of advocacy and lobbying. However, it was only really when the ASEAN Charter entered into force in 2008 that this push gained momentum.

### ***The ASEAN Charter***

The adoption the ASEAN Charter is seen as a watershed in the history of ASEAN. It provides the association with a legal personality, laying the legal foundation for inter-regional interaction in ASEAN. More importantly, the Charter clearly spells out its institutional norms and values, which commit member states to promote democracy, and protect human rights and human security. These norms are clearly spelled out in Chapter 1 of the ASEAN Charter, articles 1 and 2, on 'Purposes and Principles'. The Charter also provides for the establishment of new organs to 'boost its community-building process'. Two of these organs are described briefly below.

### ***The ASEAN Intergovernmental Commission on Human Rights***

The AICHR was established in October 2009 in accordance with article 14 of the ASEAN Charter and ASEAN's commitment to strengthen regional cooperation on human rights. The AICHR is considered a 'milestone in the ASEAN community-building process' and a 'vehicle for progressive social development and justice, the full realization of human dignity and the attainment of a higher quality of life for ASEAN peoples'. The Cha-am Hua Hin Declaration (ASEAN Secretariat, 2009) that established the AICHR recognized the 'contribution of stakeholders in the promotion and protection of human rights in ASEAN, and encourages their continuing engagement and dialogue with the AICHR'. The AICHR aims to be the 'overarching institution responsible for the promotion and protection of human rights in ASEAN'.

Operationally, the AICHR serves as an intergovernmental consultative body and is an integral part of the ASEAN organizational structure. Among its main functions are to: (1) develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community; (2) develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights; (3) enhance public awareness of human rights among the peoples of ASEAN through education, research and the dissemination of information; (4) promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN member states; (5) encourage ASEAN member states to consider acceding to and ratifying international human rights instruments; (6) promote the full implementation of ASEAN instruments related to human rights; (7) provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies on request; (8) engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including CSOs and other stakeholders, as provided for in Chapter V of the ASEAN Charter; and (9) consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights (AICHR Terms of Reference, 2009).

The ASEAN Human Rights Declaration was adopted by the ASEAN member states at the ASEAN Summit in Phnom Penh, Cambodia in November 2012. The Declaration directly affirms ‘all the civil and political rights in the Universal Declaration of Human Rights’. It has been criticized, however, by various stakeholders for containing clauses that could undermine human rights, including that ‘the realization of human rights must be considered in the regional and national context’ (art. 7).

### ***The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children***

The ACWC was established in April 2010 to enable the ASEAN Community to pursue a ‘constructive non-confrontational and cooperative approach to enhance the promotion and protection of the rights of women and children’ and to ‘adopt a collaborative and consultative approach with ASEAN member states, academia and civil society pertaining to the rights of women and children’.

The ACWC serves as an intergovernmental consultative body and is an integral part of the ASEAN organizational structure. Among its main functions are to: (1) promote the implementation of international instruments, ASEAN instruments and other instruments related to the rights of women and children; (2) develop policies, programmes and innovative strategies to promote and protect the rights of women and children to complement the building of the ASEAN Community; (3) promote public awareness of and education on the rights of women and children in ASEAN; (4) advocate on behalf of women and children, especially the most vulnerable and marginalized, and encourage ASEAN member states to improve their situation; (5) build the capacities of relevant stakeholders at all levels—administrative, legislative, judicial, civil society, community leaders, women and children mechanisms, through the provision of technical assistance, training and workshops—towards the realization of the rights of women and children; (6) encourage ASEAN member states to undertake periodic reviews of national legislation, regulations, policies and practices related to the rights of women and children; (7) facilitate the sharing of experiences and good practices, including thematic issues, between and among ASEAN member states related to the situation and well-being of women and children and to enhance the effective implementation of the Convention on the Elimination of All Forms of Discrimination Against Women of 1979 (CEDAW) and the Convention on the Rights of the Child of 1989 through, among other things, exchange visits, seminars and conferences; (8) encourage ASEAN member states to consider acceding to, and ratifying, international human rights instruments related to women and children; and (9) support the participation of ASEAN women and children in dialogue and consultation processes in ASEAN related to the promotion and protection of their rights (ACWC Terms of Reference, 2010).

Beyond the official mechanisms outlined in the ASEAN Charter, there were also significant efforts to move ahead with promoting political development in ASEAN. These efforts are reflected in the APSC Blueprint, which provides for the participation of ‘relevant entities associated with ASEAN’ in the ASEAN processes, that is, institutionalized meetings with ASEAN officials. These entities are grouped into four categories: parliamentarians, think tanks, business and CSOs (ASEAN Secretariat, 2008: 20, 46–49).

### ***The ASEAN Inter-Parliamentary Assembly***

Another regional mechanism that helps to promote political development and democracy in ASEAN is the ASEAN Inter-Parliamentary Assembly (AIPA). Although the AIPA is not an official organ of ASEAN, it is close to being

an informal regional assembly of elected parliamentarians. It is interesting to note that the AIPA was established in 1997, but it has only enjoyed the status of an entity associated with ASEAN since the adoption of the ASEAN Charter.

Originally established as the ASEAN Inter-Parliamentary Organization in September 1977, the AIPA's main functions are to promote cooperation among ASEAN parliaments and facilitate the achievement of the goals of the Bangkok Declaration of 1967 and the ASEAN Vision 2020 of an ASEAN Community. It also aims to maintain the exchange and dissemination of information, and establish coordination, interaction and consultation within ASEAN, to enable parliamentary contributions to ASEAN integration and to familiarize the peoples of Southeast Asia with policies aimed at realizing an ASEAN Community. It has established regular communication, interaction and consultation within ASEAN to ensure coherence and cooperation between ASEAN governments, the national parliaments of the ASEAN member states and stakeholders within ASEAN, and enhance relations with ASEAN bodies. The AIPA's president and secretary general represent AIPA in its relations and activities with ASEAN, including a regular annual interface with ASEAN leaders during the ASEAN summits (AIPA Secretariat, 2006).

### ***The ASEAN People's Forum***

The ASEAN People's Forum (APF) is an annual meeting between CSOs in the region grouped under the loose banner of the ASEAN Civil Society Conference (ACSC) and the ASEAN heads of government. The first formal meeting was held in 2009.

The APF has an interesting history. The first ACSC was convened during the 11th ASEAN Summit in December 2005 by the ASEAN Study Centre of the Universiti Teknologi Mara in Kuala Lumpur, under the auspices of the Malaysian Government, which held the ASEAN Chairmanship in 2005. The ACSC comprised a number of Malaysia-based NGOs as well as other NGOs from the ASEAN region. The first ACSC provided a platform for the CSOs to consolidate their positions on a number of regional issues and resulted in the first direct interaction between CSOs and ASEAN leaders during an ASEAN Summit.

The 2005 ACSC consequently led to the establishment of Solidarity for Asian Peoples' Advocacies (SAPA) in Bangkok in February 2006 as the next step for CSOs to engage with ASEAN with the aim of influencing its policy direction. SAPA<sup>5</sup> has been organizing and convening the ACSC since 2006.<sup>6</sup>

### ***From ACSC to APF***

During Thailand's Chairmanship of ASEAN in 2009, the government launched the APF and in the process brought the ACSC into its fold. At the 2009 ACSC/APF meeting, the secretary general of ASEAN, Surin Pitsuwan, and Thailand's foreign minister, Kasit Piromya, engaged in a two-hour dialogue with civil society representatives during the final plenary session. This was followed by a 30-minute interface between civil society representatives and ASEAN leaders before the 14th ASEAN Summit. In that meeting, representatives of the ACSC/APF presented their 'People's Statement' to the ASEAN leaders, which contained a number of policy recommendations on a variety of issues of regional concern for the ASEAN leaders to consider. The APF has been officially recognized by ASEAN since 2009. ASEAN has also agreed to meet officially with representatives of the APF before each ASEAN Summit.

## **Track-two engagement with ASEAN: the case of the ASEAN Institute of Strategic and International Studies**

### ***A brief history of ASEAN-ISIS***

ASEAN-ISIS was established as a regional NGO in June 1988. Since its establishment, ASEAN-ISIS has grown from its original five to nine member institutions. The original five members were:

- The Centre for Strategic and International Studies, Jakarta;
- The Institute of Strategic and International Studies, Kuala Lumpur (ISIS-Malaysia);
- The Institute of Strategic and Development Studies (ISDS), Manila
- The Singapore Institute of International Affairs, Singapore; and
- The Institute for Security and International Studies (ISIS), Bangkok.

In 1995, coinciding with ASEAN's enlargement to include Vietnam, the Institute of International Relations in Hanoi joined ASEAN-ISIS, followed by the Cambodian Institute for Cooperation and Peace in 1997, the Institute of Foreign Affairs in Vientiane, Laos in 1999 and the Brunei Darussalam Institute of Policy and Strategic Studies (BDIPS) in Bandar Seri Begawan in 2000. Except for the three 'new' members of ASEAN-ISIS, which are part of the foreign ministries in their respective countries, the five original members are relatively independent, non-governmental institutes (see Soesastro, Joewono and Hernandez, 2006; Caballero-Anthony, 2006b).

Noted for its role as a catalyst in track-two diplomacy in the region, ASEAN-ISIS has actively sought to provide ASEAN with policy inputs on various issues that affect the region for the consideration of decision makers in ASEAN. Its contribution has been officially acknowledged by ASEAN in many of its joint communiqués since 1993. It has been at the forefront of advocating new initiatives in the area of human rights and has called, among other things, for the establishment of a regional human rights commission. It has also led the discourses aimed at redefining the concept of security in Asia to focus on human security. Moreover, ASEAN-ISIS has advocated and worked for civil society participation in regional governance.

One modality that has been practiced by ASEAN-ISIS to get the attention of ASEAN officials is the submission of critical policy recommendations, in the form of memoranda, which are then sent by members to their respective governments and the ASEAN Senior Officials Meeting (SOM). Among these notable recommendations were the establishment of the ASEAN Regional Forum, the strengthening of the ASEAN Secretariat, adoption of the idea that saw the realization of the ASEAN Free Trade Area, the establishment of ASEAN human rights mechanisms and the establishment of the ASEAN People's Assembly (APA) (Caballero-Anthony, 2006: 233–254). This chapter focuses on the two ASEAN-ISIS contributions that are most relevant to the promotion of the politics of inclusion and participation: its work on building the ASEAN human rights mechanisms and the APA, which is often regarded as the precursor to the ACSC and the APF.

### ***ASEAN-ISIS and the evolution of AICHR***

In June 1992, ASEAN-ISIS published *The Environment and Human Rights in International Relations: An Agenda for Policy Approaches and Responses*. One of its key recommendations was for ASEAN to seriously consider the need for a regional mechanism on human rights protection. The ASEAN SOM in its meeting with ASEAN-ISIS in 1992 had indicated that it would report to the ASEAN Ministerial Meeting on how ASEAN should proceed on the issue of human rights. At that time, the idea of establishing a regional human rights mechanism did not receive much support. One of the major reasons cited for the lack of progress during this period was the lack of a common understanding on human rights issues (Wanandi, 1994: 329-333).

Despite the setback, ASEAN-ISIS persisted in its advocacy of human rights and in 1993 convened the first of the Annual Colloquiums on Human Rights (AICOHR). In addition to bringing together a number of human rights experts, academics and CSOs to discuss ways to push the human rights

agenda, ASEAN-ISIS worked closely with the informal Working Group on Human Rights (WGHR), which around the same time also began to push for annual dialogues with ASEAN officials. The informal WGHR became the Working Group for an ASEAN Human Rights Mechanism in 1996. In 2001, the Working Group saw its efforts pay off when ASEAN officials finally agreed to meet with it in the ‘Workshop for an ASEAN Regional Mechanism on Human Rights’, organized under the auspices of the Indonesian Foreign Affairs Department. The synergy between ASEAN-ISIS and the Working Group could not have been better. Through AICOHR, ASEAN-ISIS provided a platform for the WGHR to disseminate information on the progress of its work and engagement with the ASEAN SOM on the establishment of the ASEAN Regional Human Rights Commission.

### ***ASEAN-ISIS and the ASEAN People’s Assembly***

In tandem with its work on human rights promotion, ASEAN-ISIS also started to advance the idea of a People’s Assembly for ASEAN. The opportunity to launch this idea presented itself at the ASEAN Ministerial meeting in Brunei in 1995, when the Thai foreign minister at the time called for the establishment of a ‘congress for the peoples of ASEAN’. However, it took more than four years for the idea to be finally realized. The first APA was held in Batam, Indonesia, in November 2000 around the same time that the Fourth ASEAN Summit was held in Singapore. It brought together about 300 representatives of NGOs, grassroots leaders and activists, and business groups, as well as a few ASEAN government officials who came in a personal capacity: the former president of Indonesia, Abdurrahman Wahid, the former Indonesian foreign minister, Ali Alatas, and Jose Almonte, former national security adviser of the Philippines (CSIS, 2001; Caballero-Anthony, 2006: 53–73).

According to ASEAN-ISIS, APA was established to ‘create a regular people’s gathering where they would meet on a regular basis, discuss issues they consider timely, important and relevant; seek solutions for them and make recommendations to government on these matters’. In this regard, the role of ASEAN-ISIS was to serve as ‘[its] convenor, its fundraiser, its facilitator, its spokesperson, and its driving force in the initial years, until it takes a life of its own’ (CSIS, 2001; Caballero-Anthony, 2006: 53–73).

Through AICHOR and APA, ASEAN-ISIS found an effective way to maintain the momentum in pushing for democratization and human rights in ASEAN, and to allow for track-two engagement with ASEAN officials to be sustained,

albeit in a less-structured manner. AICHOR and APA demonstrate the multi-track approach that ASEAN-ISIS took to advance the goal of political development in ASEAN. For instance, within the APA framework, ASEAN-ISIS began to develop democracy and human rights scorecards in 2001. The human rights scorecard aimed to document and monitor the accession of ASEAN member states to the various international human rights conventions and instruments. The scorecard was further developed in 2003 to include monitoring the national legislation, orders, decrees, rules and regulations adopted by each ASEAN member state, which reflected their commitment to the international human rights instruments they had ratified. These cover the wide spectrum of human rights protection and include civil and political rights; social, economic and cultural rights; and the right to development. The main objective of the scorecard was for the peoples of ASEAN to have a useful tool to determine how far human rights promotion and protection have come in the region. Human rights advocates could also use it as a neutral instrument in their work on the promotion of human rights. This particular project dovetails well with the work of the ASEAN WGHR.

After it was first convened in 2000, the APA held six more meetings, in 2002, 2003, 2005, 2006, 2007 and 2009.<sup>7</sup> AICHOR has had an 18-year run since 1994, with the most recent AICHOR meeting held in 2011. In reviewing briefly the work of ASEAN-ISIS, it can be seen that through AICHOR and APA it has demonstrated how track-two engagement, think tanks and epistemic communities can contribute to the shaping and sharing of norms in ASEAN. The promotion of democracy as well as the protection and promotion of human rights are integral elements of ASEAN's norm building. Hence, the participation and engagement of an array of actors other than states are no less essential in ensuring that these norms are embodied in the normative framework that is to define ASEAN's political and security community.

### ***ASEAN-ISIS and the ASEAN Charter***

Against the background of rapid change in the region, ASEAN-ISIS knew that its work must continue. An opportunity presented itself when, in preparation for the drafting of the ASEAN Charter, ASEAN officials announced that there would be consultations between ASEAN's Eminent Persons Group (EPG), the group assigned to make recommendations on the drafting of the Charter, and CSOs. During this two-year process, ASEAN-ISIS, working closely with ASEAN SOM, was invited to submit ideas about the Charter. ASEAN-ISIS (2006) Memorandum No.1 on the ASEAN Charter was submitted to the ASEAN Foreign Ministers Meeting in Bali, Indonesia, in

April 2006, around the same time as the EPG was conducting its second consultative meeting.

The ASEAN-ISIS Memorandum was a full-length approximation of what it perceived should be in a Charter for ASEAN, including ASEAN principles, organs and institutional arrangements, consultation and decision-making processes, external relations, rights and obligations, financial matters and even sanctions (ASEAN-ISIS, 2006). Similar proposals were submitted by other track-two institutions such as the Institute of Southeast Asian Studies, which prepared its own document on framing the Charter and submitted it to the EPG and ASEAN SOM in time for the 11<sup>th</sup> Summit in Kuala Lumpur, Malaysia (ISEAS, 2005).

ASEAN-ISIS found the experience of being ‘part of the drafting process’ of the Charter an anticlimax. While much has already been written about how CSOs and other bodies reacted to the final version of the Charter, for ASEAN-ISIS the disappointment with what was perceived as a ‘weak Charter’ was very evident, leading one of their prominent members to call on ASEAN to ‘go back to the drawing board’ and come up with a document more in tune with Southeast Asian conditions and outlooks (Wanandi, 2007). While the Charter included the establishment of a regional human rights body, there was no information on how this body was going to function.

Nonetheless, in 2007 both the APA and the AICHOR meetings ‘celebrated’ ASEAN’s adoption of the ASEAN Charter and its inclusion of a regional human rights body. This achievement was seen by both meetings as one of the small victories sustained by track two and CSO engagement with ASEAN.<sup>8</sup> Despite these developments, ASEAN-ISIS acknowledges that huge challenges remain in taking the regional mechanisms and human rights measures forward. Hence, since 2007 ASEAN-ISIS has continued to explore ways to advance the work of building a political and security community through its work in AICHOR.

- The 14<sup>th</sup> AICOHR was held in 2007 to explore the role of a regional human rights commission in building and strengthening an ASEAN Security Community through discussions on regional human rights mechanisms. It aimed to promote the inclusion of human rights as a formal policy in the ASEAN Charter.
- The 15<sup>th</sup> AICOHR, held in 2008, served as the venue for discussion of the challenges and opportunities facing the establishment of the ASEAN human rights body in relation to building an ASEAN Security Community. Consensus decision making in ASEAN and the

absence of sanctions in the ASEAN Charter were identified as critical challenges for the ASEAN human rights body.

- The 16<sup>th</sup> AICOHR, held in 2009, examined how existing regional human rights networks might locate their advocacy roles in the context of the ASEAN Charter, and harmonized efforts to persuade and press governments to establish a strong and independent regional human rights body. Drawing from the collective experiences of the members of these networks and their perceptions of the requirements of the region, the 16<sup>th</sup> AICOHR served as a venue for cooperation to influence the form and structure of the regional human rights body, the qualifications and process of appointment of its members, and its relationship with ASEAN collectively and its member states separately. AICHOR 2009 also explored the oversight mechanisms that will be needed to ensure that the regional body will effectively implement its mandate on monitoring the promotion and protection of human rights in the region.
- The 17<sup>th</sup> AICOHR, held in 2010, looked at the relevance of human rights and human security to ASEAN integration; discussed the mandates, mechanisms and processes of the ASEAN Intergovernmental Commission on Human Rights and the prospects for the promotion and protection of human rights; and the promotion and protection of human rights in the context of ASEAN integration. It focused on the relationship between human rights and ASEAN community building in the context of the establishment of the AICHR.
- The 18<sup>th</sup> AICOHR, held in 2011, aimed to provide a venue for examining feasible ways by which human rights networks in Southeast Asia could locate their advocacy roles on migrants', women's and children's rights in the context of the ASEAN Charter, the AICHR and the ACWC.

## **ASEAN-ISIS today: going beyond regional mechanisms**

In the literature on international relations, epistemic communities and think tanks are recognized for the power of their ideas and the role of their ideas in influencing policies. The direct linkage between knowledge and policy, however, can often be tenuous and some analysts have criticized presumptions about the capacity of knowledge groups like ASEAN-ISIS to directly influence policy. Many scholars would also agree, however, that the mechanisms of knowledge transfer epitomized by think tanks or track-two bodies—through their dense network of meetings, dialogues sustained over a long period of time and transnational networks—do have an impact on social

learning through which ideas are shared, synthesized and disseminated. It is in these forums that new political and social realities are discussed and debated, and where ideas for policies are generated.

To this day, against the background of rapid changes in the regional environment, ASEAN-ISIS has continued to take this course, in spite of the fact that it has faced significant organizational challenges, particularly related to funding. Examining some of its initiatives post-ASEAN Charter, it could be said that it remains steadfast in its shared mission and goal of promoting a political and security community in ASEAN. This is certainly reflected in its current initiatives.

### ***Dialogue on Democracy and ASEAN Integration***

The Dialogue on Democracy and ASEAN Integration is one of the most recent initiatives by ISDS Philippines, one of the prime movers behind ASEAN-ISIS. Two dialogues have been convened in Manila since 2010. These meetings brought together a group of 50–80 local and international participants representing ASEAN governments, civil society networks and scholars from across Southeast Asia.

The dialogue is seen as an important entry point for realizing the APSC's goal of strengthening the foundations of democracy. Mindful of the reality that ASEAN has embarked, and will continue to embark, on internal organizational and normative changes, as well as further economic integration, it is becoming critical for ASEAN member states to address issues related to democracy. Among the key goals of the Democracy Dialogue is to build a broader constituency for democracy and democratic governance in ASEAN, since these elements are considered critical foundations of regional economic integration (DODAI, 2010).

At the second dialogue, held in 2011, a number of interesting ideas were raised that reflected a qualitative shift in the discourse on democracy and human rights—to one that is more demanding of democratic reforms and with much more urgency (DODAI, 2011). These include:

- that promotion of democracy is now among the purposes of ASEAN, as the Charter mandates it 'to strengthen democracy';
- that adherence to the principles of democracy and constitutional government must go hand in hand with ASEAN's political-security community agenda, and that promotion of democracy should be part of a community of shared values and norms;

- that ASEAN members should continue reforms and further strengthen domestic structures and institutions that support the development of democratic values, such as civic and formal education, the media, the judiciary, parliament, electoral systems, accountability of public officials, the national budget and resource allocation, human rights mechanisms, and civil society and people's organizations; and
- that the dialogue has confirmed that the role of civil society in continuously engaging and working with ASEAN and individual governments is indispensable, and as such the dialogue must continue in both structured and non-structured ways among the citizens of ASEAN at both the domestic and regional levels.

## Conclusions

With the emerging dynamics that have evolved since the adoption of the ASEAN Charter and the APSC, new mechanisms have evolved in ASEAN that are geared to support the process of community building underpinned by the norms and principles of democracy, human rights and a shared goal of economic prosperity. A trend towards more inclusion and participation is emerging in ASEAN. This is seen in the way CSOs have actively engaged with and participated in the new processes of regionalism that are taking place in the region. This captures the new regionalism in ASEAN that, as characterized in the literature, allows spaces for non-state actors to connect and exchange information, and contribute to and contest the norms that govern politics in the region.

A key actor among the non-state actors that have played a significant part in the evolution of ASEAN regionalism is the network of think tanks in the region—ASEAN-ISIS. ASEAN-ISIS was an early entrant to the track-two process in ASEAN, and over the last two decades has provided critical points of intervention and contributions to the policy discourse shaping ASEAN community building. The highlight of its impact on policy, particularly with regard to opening spaces for participation and inclusion in regional processes, is its role as the prime mover in getting CSOs to be part of ASEAN's community-building project. Through APA and AICHOR, ASEAN-ISIS has facilitated the building of constituencies for democracy and human rights.

Since ASEAN-ISIS had its first institutionalized meeting with ASEAN officials in the early 1990s, the regional political and security landscape has changed dramatically and now features newer track-two networks. Examples include the Network of East Asian Think Tanks and the Shangri-La Dialogue. ASEAN-ISIS continues to be relevant and is still a significant actor

in regional processes. This is reflected in the indicators outlined in a study by Diane Stone (2011). According to Stone, the achievement of ASEAN-ISIS is in the fact that it has built a network that still prospers. Its achievements can also be seen in its: '(1) ability to have institutionalized meetings with the ASEAN SOM, which in turn has acknowledged the role of ASEAN ISIS in the Joint Communiqués of the ASEAN Ministerial Meetings; (2) solicitation of ASEAN SOM for their views on issues that ASEAN senior officials would like to have studied; and (3) [its ability to have] developed collaborative research and dialogues that have attracted scholarly interest' (Stone, 2011).

## Policy recommendations

Against the changing regional and global environment, where should ASEAN and ASEAN-ISIS go from here?

- *Intensify efforts to promote and 'root' democratization in ASEAN*

It should not be assumed that the ASEAN Charter will automatically bring about an ASEAN Community that observes human rights, the rule of law and democracy. Even as ASEAN member states appear to speak the language of democracy, there should be no let-up in efforts to advance the goal of a democratic political community. As Carolina Hernandez (2012), one of the stalwarts of ASEAN-ISIS and a key initiator of many ASEAN-ISIS projects, argues:

Serious work needs to be done to promote democracy in the ASEAN region whose member states remain diverse including in their political regimes and governance styles. There is a need first of all to level off on the meaning of democracy as understood by official ASEAN and other relevant actors outside officialdom even before they converge on the same page about democracy and adopt measures to promote democracy in the region.

Without a minimum common understanding of democracy, no regional measures for democracy promotion in the region can be effectively crafted and implemented. This is precisely the rationale behind the dialogue on democracy and ASEAN integration (DODAI) program launched by ISDS three years ago.

- *Support efforts by ASEAN member states in transition*

The dramatic political changes that have taken place in Myanmar are another watershed in ASEAN's history. When it became an ASEAN member state in 1997, the country became a 'problem' not only for the international community but, more importantly, for ASEAN as it navigated between presenting a common front vis-à-vis its relations with the outside community and managing the differences and tensions among its membership.

Given that other ASEAN member states, such as Indonesia and Thailand, have had their own experiences of political transitions, there should be a concerted effort by Myanmar's neighbours to support its democratization, given that transitions can often be difficult or precarious. Countries that have a similar history of military rule should be more proactive in sharing the important lessons learned in transforming the role of the military and moving it away from the political realm. In this regard, issues such as security sector reform and security governance should be promoted, and it is in these challenging areas where the expertise of epistemic communities such as ASEAN-ISIS would be useful.

- *Make building a 'civil society' a key priority in the APSC*

A vibrant civil society underpins a democratic political system. For ASEAN to be a meaningful political and security community defined by the principles of democracy, the rule of law and respect for human rights, it is essential that more space is opened up for broader citizen participation in addressing a number of domestic and regional challenges. This means that support for civil society participation should start at the national level, and evidence of such should not only be seen in regional processes.

- *The development of regional mechanisms such as AICHR and ACWC must be supported by all stakeholders*

It has been observed that the development of AICHR as a credible mechanism for human rights promotion and protection in ASEAN has been incredibly slow. Since the results of the review process are imminent, ASEAN-ISIS and other CSOs should step up efforts to explore and make recommendations on how AICHR can move forward in operationalizing its mandate. While it is encouraging that efforts were made by AICHR to get CSOs involved in preparations for the adoption of the ASEAN Human Rights Declaration, their involvement was seen as only symbolic, given that the meetings convened by AICHR were more for information than to consult CSOs and seek their

input. In this regard, ASEAN-ISIS should continue with AICHOR, as these types of meetings generate considerable intellectual capital.

- *ASEAN-ISIS to boost efforts to make itself relevant to new regional challenges*

Like any mature organization, ASEAN-ISIS faces issues of stewardship amid generational change, sustainability in the face of funding problems, and relevance amidst the emergence of other think tanks and networks. Despite these challenges, ASEAN-ISIS should capitalize on the fact that it is a known and recognized regional institution that continues to be consulted by ASEAN officials on strategic issues. It is because of its strategic advantage that ASEAN-ISIS should continue to make itself relevant while maintaining its own independent stance. As is noted by Carolina Hernandez, while other CSOs and think tanks have remained peripheral to the official ASEAN circle and have been thwarted in their attempts to engage ASEAN officials, 'it is important for [ASEAN-ISIS] to get the ear of ASEAN officials in order to effect productive engagement with them without tempering policy positions...'.<sup>9</sup> Thus, it remains incumbent on the members of ASEAN-ISIS to continue its mission and to find ways to creatively engage with ASEAN officials. Moreover, since the ASEAN Secretariat is also facing organizational changes and institutional challenges, there is a more compelling reason for ASEAN-ISIS to reach out and offer to help where it can. Finally, as a track-two network ASEAN-ISIS has presented itself as a conduit between CSOs, NGOs and governments. It should therefore continue to extend its network and build partnerships across a number of CSOs and other epistemic communities and networks.

## Notes

- <sup>1</sup> The author would like to thank Gianna Gayle Amul for her research assistance in finalizing this paper.
- <sup>2</sup> See 'Indonesia Proposing ASEAN Security Community Concept', *Jakarta Post*, 16 June 2003.
- <sup>3</sup> Relevant entities here would include track-two networks such as ASEAN-ISIS and some recognized CSOs such as the ACSC and the AIPA.
- <sup>4</sup> Since its establishment and first meeting in 1996, the Regional Working Group on Human Rights has been able to sustain its advocacy for the creation of a regional human rights mechanism within ASEAN. The group achieved a significant breakthrough in 2000 when ASEAN officials at the annual SOM agreed to institute regular meetings with the group.
- <sup>5</sup> SAPA worked in cooperation with Thailand-based CSOs to organize and

convene the first joint ACSC/ APF in 2009. SAPA has become an open platform for consultation, cooperation and coordination between Asian CSOs aimed at enhancing their influence on regional intergovernmental mechanisms. SAPA has four working groups: (1) ASEAN; (2) human rights; (3) migration and labour; and (4) agriculture and rural development. Most of the members of SAPA were active participants in the APA. Thematic task forces were set up under the SAPA Working Group on ASEAN. The Working Group on ASEAN wanted to influence ASEAN's reform process through its submissions to the EPG on the three pillars of the ASEAN Community, the high level task force drafting the ASEAN Charter and the high level panel drafting the terms of reference of the AICHR. The other task forces are: the Task Force on ASEAN Human Rights, the Task Force on ASEAN Migrant Workers and the Task Force on Freedom of Information.

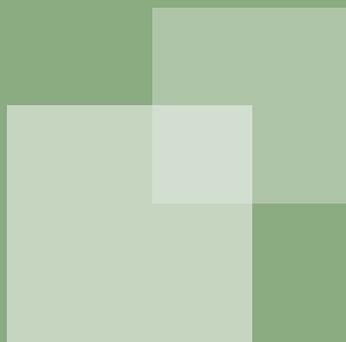
- <sup>6</sup> After the first ACSC in 2005, the next meetings were held in 2006 and 2007.
- <sup>7</sup> The 2009 APA served as an assessment of the APA's engagement process with ASEAN. The APA has not been held since then to avoid duplication with the ACSC/APF.
- <sup>8</sup> It is worth noting that the Working Group for an ASEAN Human Rights Mechanism had formally assisted ASEAN officials in including human rights commitments in the Vientiane Plan of Action of 2004, through its annual meetings with ASEAN SOM.
- <sup>9</sup> Personal interview with Professor Carolina Hernandez, founding president and chief executive officer of ISDS, 25 September 2012.





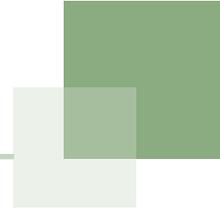
# Chapter 4

## **SAARC: A Step Forward, Women's Inclusive Political Participation**



## Chapter 4

Indu Tuladhar



# SAARC: A Step Forward, Women's Inclusive Political Participation

## Introduction

This chapter analyses the initiatives on women's empowerment introduced by the South Asian Association for Regional Cooperation (SAARC), the SAARC agenda on women's issues, and progress and challenges related to advancing the gender agenda and promoting women's empowerment at the regional level. It also sets out the need for a stronger regional mechanism for institutionalizing the achievements of SAARC on gender and women's empowerment in order to promote women's participation and representation in politics. On the basis of current commitments by SAARC leaders at the national and regional levels, the recommendations are based around a people-centric framework in which the citizens of SAARC member states and their governments can form a partnership to advance the issues. It concludes with a key recommendation on the appointment of a Gender Accountability Commission as a regional mechanism to ensure the empowerment of women and gender equality in the SAARC region.

## Background

SAARC was founded in December 1985 to advance peace, development and stability in South Asia. The SAARC Charter makes a commitment to regional cooperation and was signed by the heads of state of Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri-Lanka, and later Afghanistan. The member states have agreed to take decisions on the basis of unanimity. Bilateral and contentious issues are excluded from the deliberations of SAARC and regional cooperation is seen as complementary to bilateral cooperation (art. IV, SAARC Charter).

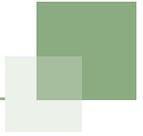
SAARC broadly recognizes the role of women in the development agenda. From the early stages of its evolution, it formed a Technical Committee on Women and Development, which is responsible for the implementation, coordination and monitoring of programmes, ministerial-level meetings, engagement at the policy level and SAARC Summit Declarations. (The SAARC Summit is the highest authority, the heads of state or government meet once a year or when considered necessary by member states) (art. 3, SAARC Charter).

### ***SAARC Summit on women's issues***

The importance of gender equality was only recognized at the sixth SAARC Summit in 1991. Ever since, SAARC has given priority to women and development. The Sixth SAARC Summit also proclaimed the 'Decade of the Girl Child, 1991–2000' and formulated a National Plan of Action, a major intervention by SAARC to address the needs of girls in the region.

The Eighth SAARC Summit (1995) recognized the increased political and social consciousness in the region, and realized the need to eliminate gender disparities and promote women's empowerment in order to promote socio-economic development. This was followed by the adoption of resolutions such as the Kathmandu Resolution on Women and Family Health. The Ninth Summit (1997) re-emphasized the need for enhanced cooperation to bring women into the mainstream of socio-economic development in the region. The Tenth Summit (1998) continued to express concerns about gender issues, realizing the need for 'affirmative action and legislative measures' to address the existing range of structural discrimination, violence against women, and other such challenges. The summit also raised concerns about the impact of conflict on women and girls. The heads of state and government also recalled the dire need for regional cooperation and collaboration to address the issue of the trafficking of women and children in the region. The Eleventh Summit (2002) adopted a Regional Convention on Combating the Crime of Trafficking in Women and Children for Prostitution, which entered into force in 2005 (SAARC, 2008).

In addition, SAARC has made advances on social issues through its development of a Social Charter, which was signed during the Twelfth Summit in January 2004 and was marked as a historic development in the region. The concept was initiated during the review of progress in the social sectors at the Tenth Summit. The Charter highlights a broad range of issues to promote social development, such as poverty eradication, youth mobilization



and the protection of children, and emphasizes the empowerment of women as one of the key areas in advancing social issues in the region.

Over time, SAARC has steadily shifted its approach from 'women in development' to gender equality and women's empowerment. However, SAARC did not seem collectively to realize the importance of women's meaningful participation in decision making, particularly political participation, until its Fourteenth Summit in New Delhi in 2007. In the meantime, the thirteenth Summit (2005) endorsed the SAARC Development Goals (SDGs) (2007–2012) as recommended by Independent South Asian Commission on Poverty Alleviation. The eighth SDG is to ensure effective participation by the poor and women in the anti-poverty policies and programmes. The major indicators set for achieving this goal are the percentage of women in local government, parliament or the civil services and the implementation of gender budgeting—the amount of budget expenditure on women and the poor as a percentage of the total budget (ISACPA, 2007).

At the Fourteenth SAARC Summit (2007), the heads of state clearly accepted the need for women's full participation in all strata of society, including participation in decision-making processes in order to achieve equality and development. In addition, the SAARC leaders further emphasized women's empowerment and made it one of the major objectives of regional cooperation. The Fifteenth Summit, in Colombo, Sri Lanka in 2008, maintained regional cooperation on bringing women fully into the mainstream of development on the basis of gender equality. It called for women's economic empowerment and skills development, while addressing key health issues and violence against women. The leaders also gave directions for the elimination of all forms of discrimination and abuse against women and guaranteed the right of women to live in society in a dignified manner.

The Sixteenth SAARC Summit (2010) did not make any specific declaration on women, but expressed satisfaction about the ongoing initiatives to promote gender equality and women's empowerment through regional cooperation in the Summit Declaration. Moreover, in the Sixteenth SAARC Summit Declaration,<sup>1</sup> all the SAARC leaders welcomed the nomination by the Government of the Maldives of a woman as the tenth secretary general of SAARC. The need for collective efforts by parliamentarians in South Asia was discussed and recognized, and the convening of a 'Conclave of SAARC Parliamentarians' in line with the SAARC Charter was recommended. The SAARC Secretariat was directed to convene a Working Group, comprised of nominees from the member states, to work out the modalities for the establishment of such a conclave.

The Seventeenth SAARC Summit (2011) directed the convening of an Intergovernmental Expert Group Meeting to discuss the establishment of a regional mechanism to ensure the empowerment of women and gender equality in the region, with a focus on national legislation including timely realization of the Millennium Development Goals and the South Asian Development Goals. The meeting was set for October 2012. The expert group is an ad hoc mechanism that allows SAARC member states to send officials from the line ministries or independent experts on the relevant issues. Such meetings are generally facilitated by the SAARC Secretariat.

### ***Ministerial-level decisions on women's issues***

Since its establishment, there have only been four ministerial-level SAARC meetings on women's issues: in 1986, 1990, 1993 and 1995 (SAARC, 1990). The first SAARC Ministerial Meeting on Women in Development reviewed the overall situation of women in South Asian countries and identified the areas that require the greatest attention, such as the low level of literacy, poor enrolment in schools, high drop-out rates, the lack of vocational and technical training as well as marketing and credit facilities, and the low level of political participation and involvement in policy making and its implementation. The resulting initial Programme of Action focused on three areas: workshops (Women and the Law, Women and the Environment, Women and Social Forestry, Forestry); training (eg. Rural Management for Women, Public Cooperation for Women) and Exhibitions (handicraft and designs by women, exhibitions of work by women artists) (SAARC, 1990). The ministerial meeting agreed to examine and prepare specific programmes for implementation at the regional level. Some were integrated into a women's development programme, 'SAARC 2000: A Basic Needs Perspective', with an emphasis on Women in Development (SAARC, 1990). The Third Ministerial meeting focused on women and health. It adopted the Kathmandu Resolution on Women and Family Health in 1993. At the fourth meeting, ministers called for a reflection of the SAARC perspective on women to be taken to the Fourth World Conference on Women, which focused on the eradication of poverty, mainstreaming empowerment and decision making, a national machinery for women and girls, and violence against women and girls.

### ***The Technical Committee on Women in Development***

A regional consultation and collaboration on women's issues was initiated by the establishment of a Technical Committee on Women in Development under the SAARC Integrated Programme of Action in 1986. The first



meeting of the Technical Committee led to the finalization of a Regional Plan of Action on Women, based on the 'Joint Communiqué' of the First Ministerial Meeting on Women in Development, along with a calendar of activities for 1986–88. As is noted above, the calendar of activities focused on training, workshops and a handicraft exhibition (SAARC, 1990). The second to the fifth meetings reviewed and updated the ongoing calendar of activities and proposed some new ideas and activities for 1989–90. The Women in Development approach, which focuses attention on women in development projects, dates from the 1970s. This approach does not focus on gender relations based on social processes and reproductive roles. Nor does it address the root causes of gender inequality. The approach provided some guidance to SAARC's development plan to bring women into the development framework, but global experience shows it failed to achieve gender equality or influence national policies. Women-focused programmes criticize the marginalization of women and how the Women in Development approach excluded women from mainstream development work (ADB, 2003).

The Technical Committee meetings focused on pertinent issues and called for collaboration on legislation on women's property rights, a scientific assessment of women's contribution to the economy, with gender-disaggregated data, and recognized the need for a Women's Group in the SAARC Secretariat. The Committee was merged into the Technical Committee on Social Development in 2000. The Committee on Women in Development had held 13 meetings. Over the period, SAARC made some progress on developing a policy framework and implementing some activities, such as the publication of a SAARC Women's Journal, a Guidebook for Women in Development, a Calendar of Activities for 1989–90, proclamation of the Decade of the Girl Child and Adolescent Girl, and conducting various workshops and meetings to promote the role of women in development (SAARC, 1990).

### ***The Technical Committee on Women, Youth and Children***

The Technical Committee on Social Development was dissolved in 2002 after only one meeting. The meeting focused on children's issues and reviewed progress on SAARC Autonomous Women's Advocacy. In 2004, a new Technical Committee on Women, Youth and Children was created under the Regional Integrated Program of Action. The new technical committee was to manage a range of regional cooperation on issues related to women, youth and children in the region, in general. There have been five meetings of the committee, the most recent in July 2011.

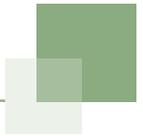
The first meeting, in Dhaka, Bangladesh in November 2005, recommended ensuring the effective implementation of its mandate with reference to article VI of the SAARC Charter, which includes ensuring effective participation in activities by the member states, and coordination at the national level of effective implementation of decisions taken in the areas of women, youth and children by: holding regular meetings of the Sectoral Focal Points; promoting regional cooperation on improving legal, judicial and regulatory mechanisms in member states in respect of the provisions stipulated in the conventions under its purview; formulating and implementing programmes and efforts to harmonize policies and practices; and adopting regional goals and strategies in national development programmes.

Subsequent meetings mainly focused on reviewing progress with the preparation of the SAARC Gender Database and its implementation, reviewing the Decade of the Girl Child in SAARC, developing and endorsing a Standard Operating Procedure for implementing various provisions of the SAARC Convention on Combating the Crime of Trafficking in Women and Children for Prostitution and planned a workshop on various issues related to women. The Committee is also responsible for youth and children's issues, therefore committee meetings did not focus exclusively on women.

## **Progress and challenges**

SAARC has made significant progress in realizing the dire need for regional cooperation on empowering women, including women's participation at all levels of decision-making bodies in the region, in order to achieve its goals. SAARC has even progressed its understanding of how to deal with women's issues in the region, which initially took a Women in Development approach but slowly shifted to gender equality and women's empowerment. This has given ample opportunity for SAARC to address women's issues in a positive way through training, information and participation in decision making and advocacy.

Since adopting the Regional Convention on Combating the Crime of Trafficking in Women and Children for Prostitution in January 2002, SAARC has developed a Standard Operating Procedure, as well as a framework for a Plan of Action for the SAARC Decade of the Girl Child, 1991–2001, which sets out guiding principles, goals, priority concerns, a strategic direction and an action programme on resource mobilization. The SAARC Autonomous Women's Advocacy Group was formed to advocate mainstreaming gender and make recommendations on gender-related issues and programmes.



SAARC extended its collaboration with the United Nations Development Programme, signing a memorandum of understanding in 2001. As is noted above, the SAARC Secretariat has developed a SAARC Gender Database. It has also created the post of gender specialist to provide support to the director of social affairs in mainstreaming gender in SAARC's development goals; support the SAARC Secretariat to develop operational guidelines, directives and manuals for mainstreaming gender and inclusion; analyse the gender situation, identify gender issues and concerns, and recommend ways to address these; formulate projects for the SAARC Gender Equality and Empowerment programme; and draft or review SAARC programmes and policy documents to ensure that gender is mainstreamed. However, SAARC has yet to appoint anyone to this post.

Despite the progresses outlined above, women's participation in parliament in South Asia is the lowest of all the regions. On average, women hold only 7 per cent of ministerial positions and 15 per cent of seats in national parliaments (Afghanistan: 28 per cent in 2011; Bangladesh: 18.5 per cent in 2008; Bhutan: 8.5 per cent in the National Assembly; India: 10.7 per cent in the 15th Lok Sabha; the Maldives: 7 per cent in 2011 down from 12 per cent in 2007; Nepal: 33 per cent in June 2012, but Constituent Assembly now being dissolved; Pakistan: 22 per cent in 2011; and Sri Lanka: 6 per cent in 2011) (World Bank, n.d.). Some South Asian countries, such as Nepal, Pakistan, Bangladesh and Afghanistan, have adopted a quota system. In India, a Women's Reservation Bill was passed by the Rajya Sabha in March 2010 but the issue is still pending in the Lok Sabha.<sup>2</sup> In South Asia, only 7 per cent of women are members of a political party (UN Women, 2012).

There are numerous challenges to overcome in order to advance inclusive political participation and representation of women at the decision-making levels within the respective SAARC member states and at the regional level. These challenges require a holistic approach to the structure of SAARC and its relationships among the member states; the limitations on implementing and monitoring its declarations; and the socio-economic, cultural and political contexts in the region.

There are still huge questions left regarding the implementation of the policy framework in order to transform policies into the reality of people's lives in the region. Even the Fourteenth SAARC Summit reflected that it had become just a declaratory body, emphasizing the urgent need to move SAARC from a declaratory to an implementation body. Despite being critical about its own effectiveness, however, SAARC has not taken a solid move forward to improve women's lives and promote gender equality and women's empowerment.

During the 27 years of SAARC's existence, it was supposed to hold a Summit each year, but there have been only 17. In most of the cases this was due to political problems in the respective member states. Only four ministerial-level meetings discussed women. The SAARC Autonomous Advocacy Group of Prominent Women Personalities met in 2004 to discuss its terms of reference and related matters, but there have been no further meetings. SAARC forms more and more technical committees, but they do not function. The SAARC structure is ineffective at addressing women's issues in the region. It shows a lack of political will on women's issues. This is one of the foremost challenges to the participation of women at decision-making levels in SAARC. SAARC has made efforts to pursue a Regional Plan of Action. SAARC leaders have recognized the importance of gender equality and empowerment through regional cooperation. However, implementation of these plans has been limited.

SAARC was founded on the principles of sovereign equality, territorial integrity, political independence, non-use of force and non-interference in internal affairs (art. II, SAARC Charter), but relationships among the member states are asymmetric in terms of size, resources, military and economic capacity.

The deputy director of the SAARC Human Resources Development Centre, Kabir M. Jahangir, has emphasized the need for results-oriented intervention for the benefit of the millions in the region. He has advocated quick and tangible moves towards the implementation of all the SAARC Action Plans, strengthening the SAARC Secretariat, SAARC Bodies and SAARC Regional Centres, and expediting their operations along with expanding the SAARC budget through increased contributions by each member state.

The challenge for SAARC is 'structural reinforcement'—it does not have coherent modalities and effective mechanisms for follow-up and implementation. Shamashad Ahmad has expressed the need for a conceptual reorientation of the founding principles of SAARC—a 'serious review of the Charter on the basis of experiences of the past 27 years to overcome the shortcomings and outdated elements, especially the provisions on the "principle of cooperation, Inter-governmental structure, financial arrangements and general provisions concerning decision-making"'. He also recommends developing cooperation strategies based on the political will of the member states (Ahmad, 2012).

The Islamic Republic of Afghanistan is a comparatively new member of SAARC. It joined in 2007, signing the Joint Declaration of the 14<sup>th</sup> SAARC



Summit. It is not secure and it is politically unstable, which may hinder the strengthening of regional cooperation. Saleem Ahmed, the current SAARC secretary general, sees the main reason for the ineffectiveness of SAARC as its lack of political commitment and its failures to evolve a positive identity and image for the regional grouping or to proactively and productively build itself.

SAARC has not been able to invest its resources and time in a balanced manner to achieve its set objectives. Cooperation on women's issues do not receive priority at the implementation level. It will remain a challenge to get national attention and reprioritize investment towards women's participation within SAARC.

Decision making in SAARC is on the basis of unanimity, which is another challenge of its structure because it excludes bilateral and contentious issues from its deliberations. Particularly on women's issues, this causes great difficulties because not all the SAARC member states are on the same page in terms of understanding and perceiving women's rights in a national or regional context. Pakistan and Bangladesh, for example, have ratified the UN Convention on the Elimination of All Forms of Discrimination against Women with a reservation.

In addition to the institutional and relationship challenges among the member states, there are social, economic and cultural challenges that impede the empowerment and inclusion of women at the decision-making level in the SAARC region. Patriarchal societies and attitudes have not been challenged in SAARC, as in many countries in the world. Women face problems in moving ahead in politics because social attitudes to women in politics are negative. A study conducted in Nepal shows that patriarchal social thought 40 per cent and a traditional outlook 39 per cent are the major reasons for negative social attitudes towards women's political involvement. Other reasons include gender discrimination 14 per cent and the negative attitudes and behaviour of the current political leadership (mostly male) towards women in Nepal.<sup>3</sup> These attitudes prevent women from entering politics or competing against male colleagues. Women become stuck in a role for many years.

The Second South Asian Regional Conference on Combating Violence against Women in Politics: Revisiting Policies, Politics and Participation, organized by South Asia Partnership International in Kathmandu in 2008, identified the regional challenges for women's participation in politics in South Asia. It listed eight major challenges, such as translating parties' exploitative tendencies into affirmative action, changing the social mindset and institutional barriers, the

growing incidence of election violence in South Asia, gender-based violence against women in politics and the lack of a multi-stakeholder approach to tackling violence against women in politics. It also highlighted the limited priority given by UN agencies to violence against women in politics in South Asia. A final point was the lack of attention paid to gender-based violence in the SAARC Gender Database. The conference clearly stated that half-hearted reforms will not work and a more comprehensive approach is required (SAP International, 2009).

The SAARC member states have appointed more women leaders than many other regions in the world, including the first woman prime minister in 1960, but the SAARC countries are not free from prevailing social values and norms. Research has identified that traditional party leadership is one of the basic obstacles to women's participation—the biased attitude of the leadership, the attitude that senior positions are for life and a lack of trust are all part of the culture in internal party politics that hinders political access for women.

There are many issues that surround this, such as the culture, the lack of women's organized pressure to lead, lack of education, limited access to economic resources and limited mobility. In addition, none of the political parties acknowledge women's reproductive role as a social responsibility. Many women discontinue their active political participation when they have children.

In Nepal, for instance, despite a binding legal provision ensuring women's proportional representation in the party lists for election to the Constituent Assembly, no political party included more than 33 per cent women in their list of candidates. It was only after the Election Commission refused to register the parties that they eventually prepared a new list including 50 per cent women. This is evidence that voluntary commitments do not lead to full implementation—it required binding laws and strong oversight bodies to force parties to stick to the spirit of gender inclusion in Nepal's context as democratic political culture is yet not fully practised. On the other hand, many active women politicians have to sacrifice their political life after getting married. Even female politicians who are married to male politicians have to leave the stage while their husbands reach the top (International IDEA, 2005).

Despite what is written in the policy framework, the unwritten rules are stronger in nearly all the SAARC countries. The godfather culture still exists, and the policy and practice of nominations further reinforce and continue such practices.



## **Future perspectives and policy recommendations**

The SAARC member states' growing commitment to institutionalizing multiparty democracy can be seen as a key opportunity for inclusive participation by women at all levels of decision making in its bodies and other political institutions. The most notable point is that many of the SAARC member states at the national level have been taking affirmative action to increase women's participation in local government and their national parliaments.

The recommendations made below focus on three major areas. First, political-level interventions mainly focused on changes in approach and mindset, as long-term strategies. Second, at the institutional level, the focus of attention is the creation of a 'SAARC Gender Accountability Commission', as a medium-term strategy. The third set of recommendations focuses on policy-level interventions that can be implemented using existing structures and mechanisms in a short- to medium-term strategy.

### ***Political-level interventions***

#### **An Independent Technical Committee**

For inclusive political participation by women, thoughtful and proactive action by member states and strong political will are paramount. They require time and commitment as well as the investment of resources in developing a policy framework, functional mechanisms and aggressive moves for the implementation of commitments. However, the current structure has neither binding force nor financial commitments, but is based on voluntary contributions by member states. A review of the SAARC Charter is needed based on nearly three decades of experience in order to enhance its structures, accountability mechanisms and financial commitments. The recommendation is therefore to form an independent Technical Committee prior to the 2014 SAARC Summit in order to review and evaluate the gaps in the existing structure of the SAARC framework, revisiting a Charter that was built on mistrust and fear among member states and providing clear guidelines for change to take to the Summit.

## **A partnership charter of non-reciprocal and reciprocal agreements among SAARC member states**

In 2008, India's prime minister, Manmohan Singh, took a key step in strengthening bilateral relationships with SAARC member states. India took non-reciprocal and unilateral action in key areas, such as reducing the list of sensitive items subject to trade tariffs from 480 items to 25. The non-reciprocal nature of India's actions found favour with other SAARC member states, which have begun to emulate them. The sustainability of this non-reciprocal relationship is open to question, but the immediate benefits outweigh the negatives.

SAARC has to remove fear and mistrust among its member states, creating a long-term partnership agenda that redefines its relationships and accountabilities. Thus, the formation of a partnership charter is recommended that includes both non-reciprocal and reciprocal agreements among the SAARC member states on trade, human rights, gender, education and health care, among other things. There should be clear sanctions for those that breach mutually agreed SAARC policies. This would not interfere with national sovereignty but enhance the mutual benefits and sustainability of SAARC. In relation to non-reciprocal benefits, member states need to use national resources to benefit the whole of the SAARC region, such as India's financial declaration on supporting humanitarian programmes across the region.

### ***Establish a new SAARC body to address gender issues***

#### **A SAARC Gender Accountability Commission**

In the long run, there is undoubtedly a need for a strong and independent central mechanism that will play a catalytic role in advancing the status of women in the region. Creating such a regional mechanism will ensure cross-national participation and accountability. This would increase women's effective participation in politics at decision-making levels. Against this background, the possible structure of a central mechanism, a SAARC Gender Accountability Commission, is outlined below, including its composition and jurisdiction and the need for accountability to member states (Figure 4.1).

The Commission would have a partnership focus in which governments and citizens can play a creative role in enhancing gender equality and gender mainstreaming. Effective national women's commissions would need to be accountable to their national parliament and to be adequately resourced.



## **The structure of the commission**

The SAARC Gender Accountability Commission would be an independent commission with a nominated representative from each member state's National Women's Commission. If any member state does not have such a national mechanism, a representative from the Ministry of Women could be nominated.

There would also be an Independent Advisory Bureau from each country, appointed by the respective government in a free and open selection process. At the functional level, the Independent Advisory Bureau representatives and National Commission members would have equal status in the Regional Commission. Together, there would be 16 members of the National Commission who would serve for a maximum of four years.

## **Jurisdiction of the Commission**

The Gender Accountability Commission would protect and promote equality and non-discrimination, women's human rights and oversee their effective implementation. In order to perform its duties, the Commission would review the existing laws and policies related to women's rights and gender equality, and their implementation, every three years, and make recommendations to the SAARC Summits. The SAARC Summits would make policy directives on the basis of such recommendations, which must be binding on the member states. For this purpose the Commission would work jointly and in partnership with civil society.

The Commission would take all necessary measures to strengthen the instruments of SAARC that are mandated to promote and protect women's human rights, and combat violence against women at all levels, based on the recommendations of the Commission.

The Commission would also receive reports from member states every three years to ensure that developments and challenges were being monitored and make recommendations. The SAARC secretary general would transmit these recommendations to SAARC Summits.

Through the representative of the National Women's Commission, with the support of an appointed member of the Independent Advisory Bureau (typically the member from that specific country), member states would undertake to implement programmes and carry out activities of civic

education with a special focus on the rights, responsibilities and entitlements of citizens and the promotion of women’s human rights.

Overall, the Commission would coordinate, harmonize and continue the programme undertaken on a short-term basis. The commissioners and the appointed representative member of the Independent Advisory Bureau would meet annually for not more than ten days to consider the reports submitted by each country. The meeting would be held in rotation in each member state.

**Figure 4.1. SAARC Gender Accountability Commission**



### **Policy level**

#### **Immediate appointment of gender focal person in SAARC secretariat**

The Technical Committee for Women in Development identified the need to appoint a gender specialist in the SAARC Secretariat. It made moves to appoint the specialist and called for applications, but the process failed to identify anyone for the position. Consequently, there is no gender specialist in the SAARC Secretariat. The SAARC Secretariat must take immediate steps to appoint a gender specialist with terms of reference.

#### **Regional-level investment on consciousness building**

Bringing women into the political process is not only a goal, but also a key means of challenging structural violence and discrimination against women built on deep-rooted patriarchal values at the ideological and system levels. SAARC needs to be aware of and address legal, political, cultural and social

boundaries that may interfere with the political involvement of women, focusing on women's oppression in the patriarchal system, and expressions of male domination and control over all social and political institutions. Failure to address these issues will undervalue the role of women in politics, and patriarchal dominance will continue with little accommodation to women politicians at the sub-national levels. SAARC must invest in resources of a largely preventative nature, such as raising consciousness or eliminating discrimination, along with developing policy frameworks, mechanisms and other arrangements. This could include maintaining a database on women's status in general and policy analysis on the existing legal frameworks of SAARC member states on inclusive women's participation and other relevant legal measures.

### **Re-energize the SAARC Autonomous Women's Advocacy Group**

As is noted above, SAARC made progressive attempts to establish the SAARC Autonomous Women's Advocacy Group (SAWAG) in 2002. The group was comprised of national prominent personalities. The major objective of the group was to advocate mainstreaming gender and make recommendations on gender-related issues and programmes in the region. However, there was only one meeting and it has been inactive since 2004. There is a need to re-energize SAWAG with a new spirit so it can become a strong advocacy group in the region for increasing resources, strengthened institutional mechanisms, developing an appropriate policy framework and advancing the status of women.

### **Promote affirmative action in SAARC countries**

In a liberal democracy there is a need to create a legal regime, the rule of law, by demanding and ensuring equal rights and self-determination for women within the framework of the legal system. SAARC should play a catalyst role in creating space for member states to have this public policy debate, in communication with the media and through education, in order to change habits based on a continuation of patriarchy, discrimination, prejudice and inequality. SAARC should seize the opportunity to create new norms, taking the law as the determining agent or means. SAARC must play a catalyst role through critical analysis of laws and ending discriminatory laws in favour of affirmative action to create substantial equality, along with special electoral mechanisms for promoting women's participation in decision making.

## **Engage with national political parties through a Conclave of SAARC Parliamentarians**

SAARC has already discussed and recognized the need for collective efforts by the parliamentarians of South Asia. A Conclave of SAARC Parliamentarians was recommended in line with the SAARC Charter. The SAARC Secretariat was directed to convene a Working Group, comprised of nominees of the member states, to work out the modalities for establishing such a conclave. However, it is not yet in place. In this context, the recommendation is to form a Conclave of SAARC Parliamentarians with clear instructions on the meaningful participation of women parliamentarians.

Through the Conclave, SAARC should engage with national political parties in order to transform party statutes and culture. There is a need to continue to engage with political parties in a strategic manner with the support of women's wings of the respective political parties to strengthen interparty women's networks and women's groups in parliament.

## **Regional intervention on women's empowerment in politics**

SAARC needs to introduce a Women's Empowerment Programme in the long term and as a short-term, time-bound programme for progressive investment in women's empowerment in order to promote women's access to leadership positions within party structures at the national level. While developing such a programme, multifaceted and multidimensional programme interventions will be required. To increase the effective bargaining and negotiation capacity of women leaders, as well as the capacity of women in political parties, capacity-building interventions will be required from the local to the national levels. SAARC could play a pertinent role in harmonizing legal frameworks.

## **Conclusions**

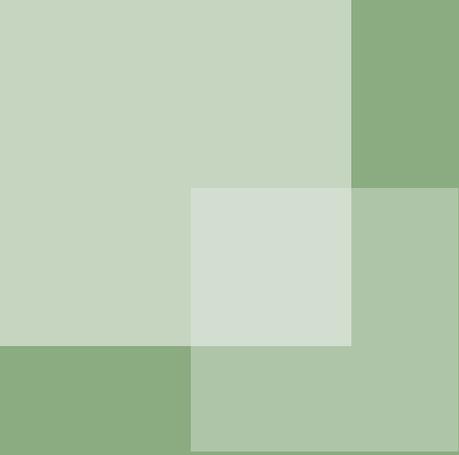
In the 27-year history of SAARC, it has made steady progress in recognizing the importance of the agenda of women's empowerment, including women's participation in decision making. SAARC member states have made progress in developing affirmative policies on women's participation in politics at the national and local levels, which has inspired SAARC member states to develop regional policy on women's participation in decision making. Nonetheless, SAARC is weak on the implementation of its policies. SAARC has formed and reformed technical committees time and again, but these committees have failed to address women's agendas and turned SAARC into a declaratory body.

SAARC faces a number of challenges in the region in addressing not only women's agendas, but also economic, social, political and cultural issues. SAARC does not have strong political will to achieve its goals. Structural limitations, financial arrangements and its decision-making process all hinder progress and even effective functioning. In addition, SAARC must consider the geopolitical situation in the region and is not able to address the psychology of fear among member states that it is based on. The overarching social and cultural barriers are strong factors that prevent gender equality.

Given all these opportunities and challenges, SAARC must develop long-term and short-term plans based on its lessons learned from 27 years of experience. Creating a SAARC Gender Accountability Commission is one recommendation. Certainly, SAARC must revisit its current mechanisms in order to create a more effective and efficient structure.

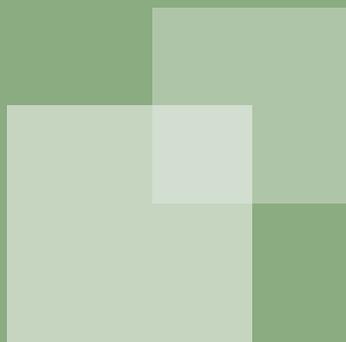
### **Notes**

- <sup>1</sup> <<http://www.saarc-sec.org/userfiles/16thSummit-Declaration29April10.pdf>>.
- <sup>2</sup> <<http://ibnlive.in.com/news/winter-session-upa-hopes-passage-of-womens-reservation-bill/437378-37-64.html>>.
- <sup>3</sup> <[http://renaissance.org.np/images/downloads/1369762348womens\\_political\\_participation\\_survey\\_report.pdf](http://renaissance.org.np/images/downloads/1369762348womens_political_participation_survey_report.pdf)>.



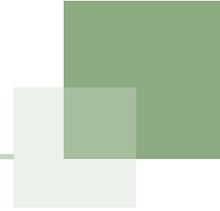
# **Chapter 5**

## **The League of Arab States and Gender: Political Participation and the Arab Woman**



## Chapter 5

Doaa Abdelaal and Eleonora Mura



# The League of Arab States and Gender: Political Participation and the Arab Woman

## Introduction and background

Over the past two years, North Africa, and to a lesser extent the Arab Peninsula, have witnessed a series of significant changes that started with the Arab uprisings in Egypt, Tunisia and Libya, and were followed by different national processes of transition to democracy, and in the case of Syria by an ongoing conflict. Every national transition to democracy is unique. The current transitions in North Africa and the Middle East have in common the quest for change and reform expressed by citizens, especially the vocal younger generations and women. North African and Middle East regimes have come to the realization that without serious and meaningful reform, they cannot continue to exist. The protesters have shown that the era of despotic regimes is over and they are demanding inclusive democratic governance.

Women have been at the heart of the revolutionary process, participating in demonstrations and marches, lobbying and advocating for equal opportunities and increased access to leadership and decision-making positions. Women were also more politically active than before and won seats in various parliaments and in the institutions that governed (or still govern) the transition period. This is notable, given that despite the progress achieved in recent years, Arab women continue to struggle for equal treatment and political participation. In the Arab world, the issues of equality between genders and the advancement of women still face many obstacles and challenges, ranging from discriminatory laws to high rates of illiteracy, low rates of female labour participation and, not least, a culture of social subordination and male dominance.

At the time of writing, Arab governments, civil society organizations (CSOs) and especially women's and youth groups are facing enormous challenges. Debates about constitutional reform are dominating the scene. The most debated issues are: the type of government system to adopt, presidential or parliamentary; the rights and freedoms of different groups, including women from ethnic or religious minorities; the freedom of the media; and the overarching choice between a religious or secular state. In countries like Egypt and Tunisia, citizens are already feeling frustrated by the political processes that have evolved following the revolution. In Syria, unrest is still ongoing and costing hundreds of lives every day.

Nonetheless, this time of change and reform has shown that not only national actors but also international actors have a role to play. International and regional institutions have already played a major role in the period of transition by providing technical and financial support. The League of Arab States (LAS), in particular, as the Arab regional actor, has shown strong leadership and determination, especially when dealing with the cases of Libya and Syria. In February 2011, the LAS suspended Libya after hundreds were killed by Qaddafi's forces during an anti-government uprising.<sup>1</sup> Soon after, the LAS backed United Nations (UN) Security Council resolution 1973, which authorized attacks on Libyan air defences.<sup>2</sup> The LAS also responded to the protests and bloodshed in Syria. In August 2011, it issued its first condemnation of the Syrian Government's repression of nationwide uprisings, calling for an immediate end to the violence. In November 2011, Syria was suspended because it had not complied with an agreement calling for a halt to military action and talks with the opposition to Assad's regime.<sup>3</sup>

Notwithstanding the important role the LAS has played and continues to play, the Arab uprisings have also highlighted the need for the LAS to implement internal structural reforms in order to continue to be a relevant actor in the region in the aftermath of the revolutions. These reforms include a restructuring, reshaping and strengthening of the mechanisms created to foster gender equality and gender mainstreaming.

These mechanisms were created in the early 1970s. Since that time, the Arab region has witnessed an increasing consciousness of gender issues at the regional and national levels, and at the governmental and non-governmental levels. The initiatives implemented in the region by these different actors have contributed to the progress and steady empowerment of Arab women in economic, social and political terms. The LAS is one of the actors in the region that since the 1970s has been active in tackling the specific challenges for women in the Arab world and promoting the advancement of the status of women.

This chapter looks closely at the role the LAS has played in fostering gender equality and mainstreaming, and especially in creating a conducive environment for its member states to adopt measures to foster women's political participation. It examines the different milestones in the organization of mechanisms inside the League, looking in detail at the different activities implemented so far. The chapter concludes with a set of policy recommendations on the way forward in further promoting women's empowerment and political participation. These call for the LAS to implement the necessary reforms to make it more responsive to the challenges following the Arab uprisings, especially enhancing the role of Arab women in the governance institutions of the League's member states.

## **The League of Arab States: brief introduction**

The LAS was formed in 1945 in an attempt to give political expression to the Arab nations. The original charter members were Egypt, Syria, Lebanon, Transjordan (now Jordan), Iraq, Saudi Arabia and Yemen. A representative of the Palestinian Arabs, who did not sign the Charter because he did not represent a recognized government, was given full status and a vote in the Arab League. The Palestine Liberation Organization was granted full membership in 1976. The other current members are Algeria, Bahrain, Comoros, Djibouti, Eritrea, Kuwait, Libya, Mauritania, Morocco, Oman, Qatar, Somalia, Sudan, Tunisia and the United Arab Emirates.

The League's main organs are the Council, the Special Committees and the Permanent Secretariat. The Secretariat has its headquarters in Cairo. The Charter of the LAS provides for coordination among the signatory nations on education, finance, law, trade and foreign policy, and it forbids the use of force to settle disputes among member states. A joint defence treaty was signed in 1950.

Special committees have been established to support and represent the Council. The League has a number of committees: the Political Committee, the Culture Committee, the Communications Committee, the Social Committee, the Legal Committee, the Arab Oil Experts' Committee, the Information Committee, the Health Committee and the Human Rights Committee, as well as the Permanent Committee for Administration and Financial Affairs, the Permanent Committee for Meteorology, the Committee of Arab Experts on Cooperation, the Arab Women's Committee, the Organization of Youth Welfare and the Conference of Liaison Officers.

The League's annual summits conclude with the issuance of a final declaration on the subject discussed at each meeting. Summits in Tunisia, Algeria and Sudan explored the link between economic development and improving the conditions of Arab women, including increasing their level of participation in political life and the elimination of all forms of violence against women. The Tunis Declaration explicitly mentions increasing women's participation in the political, economic, social, cultural and educational fields, and reinforcing women's rights and status in society

The LAS created an Arab Parliament in 2005. The Council of the Arab League, at its 17<sup>th</sup> General Conference, in Algiers, Algeria, amended its Charter to include a Transitional Arab Parliament as an official institution of the League.<sup>4</sup> The main objective of the Arab Parliament is to give the citizens of the Arab world a voice alongside that of Arab governments. Currently, there is no system of direct representation to elect the members of the Arab Parliament. Each national parliament of the 22 member states nominates four parliamentarians. The members of the Arab Parliament are not considered representatives of their national parliaments but instead represent the Arab nation and its interests as a whole.<sup>5</sup>

## **The status of women in the Arab world**

The condition of women in Arab countries has undoubtedly advanced in recent years, allowing women to make outstanding contributions to the social, economic and political life of their respective countries. Several laws discriminating against women were reformed, while new laws were issued to fight violence against women. To achieve gender equality, some countries have amended their nationality laws to enable women to pass on their nationality to their children. Some family law provisions were also amended to increase the minimum age of marriage. Furthermore, some countries passed legislation on quotas in order to increase the number of women in parliament and on local councils (UNDP, 2005).

However, despite the progress made in recent years, many Arab women continue to struggle for equal treatment. Many legal provisions, in particular family and personal status laws, entail discrimination against women and give them lower status than men, especially when it comes to inheritance, custody of children, the right to divorce and property rights in general. In some countries, these laws have been reformed to achieve gender equality, but the prevailing culture of a traditional patriarchal society hinders the application of the reformed legislation, thereby continuing to allow discrimination

against women. This means that despite the efforts of the Arab countries, there is still a gap between legislation and reality. Furthermore, in some cases the application of the law is also hindered by religious leaders who continue to preach the subordinate role of women in society, relying on an incorrect interpretation of the Koran (ESCWA, 2009).

The social environment also plays an important role in the disadvantaged position that Arab women have in the social and economic sectors. The rate of women's participation in the economic field is still low compared to other regions in the world. Obstacles to Arab women's participation in the economy include the low level of literacy among women accompanied by their lack of skills. Often, the early age of marriage also plays a significant role, especially when young girls are forced to drop out of school in order to take care of the household.

In the field of political participation, despite the achievements in terms of the increased number of women in decision-making positions, in part due to the enactment of gender quotas, the proportion of Arab women participating in elected parliaments is still one of the lowest in the world.

As the 2005 *Arab Human Development Report* effectively summarized: 'In public life, cultural, legal, social, economic and political factors impede women's equal access to education, health, job opportunities, citizenship rights and representation. In private life, traditional patterns of upbringing and discriminatory family and personal status laws perpetuate inequality and subordination'. Given this background, this chapter describes the mechanisms set up by the LAS to address the challenges and obstacles faced by Arab women preventing gender equality, women's empowerment and women's political participation.

## **Mechanisms for fostering gender equality and gender mainstreaming**

In recent years, the LAS has started an internal process of reforming its structure in order to allow women to assume leadership positions. In the process of internal reform, some women have been promoted to leading positions in the General Secretariat and in 2004 the first woman assistant to the secretary general was appointed (Waduda, 2005). The General Secretariat of the LAS has focused on three priorities for achieving the advancement of women:<sup>6</sup>

- a) establishing the structures and mechanisms to advance the status of women;
- b) introducing plans and strategies to advance the status of women; and
- c) translating these plans and strategies into programmes and activities.

Several mechanisms have been established to address the above priorities: (a) the Women's Committee and the Women's Affairs Directorate; (b) the Arab Women's Organization; and (c) the League's specialist agencies and programme activities to enhance gender equality.

### ***The Women's Committee and the Women's Affairs Directorate***

In 1971, the Council of the LAS established the Committee on the Status of the Arab Women under its Department of Social Affairs (Decision No. 2828). The Committee is intended to be a technical specialist organ to coordinate the efforts of national women's mechanisms and to emphasize the collective Arab work related to women. The committee includes representatives of the 22 member states at the governmental and non-governmental levels. Regular meetings are held to discuss the empowerment of women and to study the situation of women and Arab families economically, socially, politically and legally. The Committee also supports Arab cooperation and coordinates efforts to support women and families and to follow up international and regional efforts to advance women's rights.

The literature reports that the initiative of the League was motivated by exhortations from the 1968 Conference of Arab Ministers of Labour for the establishment of a permanent Committee on the Status of Women within the League.<sup>7</sup> Strong advocacy by the women's associations of Egypt also played a big role in persuading the LAS to create an ad hoc committee dedicated to the status of Arab women (Elwan Shwikar, 1974).

The Statutes of the Committee set as a primary objective: 'the realization of equality of men and women in all spheres of life' (Berkovich, 1999), which included looking into women's political participation. The Committee is also committed to fighting and preventing the passage of any legislation in member states that discriminates against women.

The Committee organized a intergovernmental conference one year after its establishment on Arab Women and National Development. This called on Arab governments to set up institutional mechanisms to collaborate with the Committee and to follow up the international agreements on women's rights (Youssef Bin Yazza, 2010). The conference was organized in collaboration with the UN. In 2004, a separate directorate was established for Women's

Affairs. This directorate falls under the Social Affairs sector along with ten other specialist directorates.

### ***The Arab Women's Organization***

The Arab Women's Organization (AWO) is an intergovernmental organization established under the umbrella of the LAS in March 2003. Its headquarters is in Cairo. It emerged from the Cairo Declaration issued by the First Arab Women's Summit, which convened in Cairo in November 2000 in response to a call by Egypt's then first lady, Suzanne Mubarak, and which was co-organized by the National Council for Women in Egypt, the Hariri Foundation in Lebanon and the LAS.

The AWO is composed of: a Supreme Council, consisting of all the region's 'first ladies' or their representatives (The president of the Supreme Council serves for two years and is rotated alphabetically according to the system adopted by the Arab League); an Executive Council of representatives of member states, entitled to suggest the main public policy of the AWO and make recommendations that must be approved by the Supreme Council; and a General Secretariat, which consists of a general director assisted by a number of technical and administrative employees.

The relationship between the AWO and the LAS is set out in article 15 of the Convention establishing the organization. This article specifies that the organization should present its annual plan to the Social and Economic Council of the League and consult on issues related to its mandate. Article 16 specifies that the organization should be committed to the rules of coordination between the different Arab organizations and cooperate on work with the League Council, the Social and Economic Council of the LAS and the Council of Social Affairs Ministers in the Arab Countries. Article 17 states that the organization should cooperate with governmental and non-governmental regional and international organizations working on women's issues, provided that these organizations have the same goals as the AWO and the LAS.<sup>8</sup>

AWO policies are based on the Strategy for the Enhancement of Arab Women as well as the recommendations of the forums organized under the framework of the first and second Arab Women's Summits. The AWO has set priorities to promote the empowerment of women in a number of areas:

- education, especially eradication of female illiteracy;
- health and the environment, especially strengthening health care and

- promoting women's awareness of environmental hazards;
- media, especially changing the negative image of Arab women;
- social development, especially promoting gender awareness in strategic and action planning;
- the economy, especially poverty alleviation for women;
- politics, especially enhancing women's political participation; and
- the legal sphere, especially amending laws that discriminate against women or prevent them from taking an active role in society.

The activities that the AWO has undertaken since its establishment have focused on assessing the wide range of projects being implemented to foster the empowerment of Arab women, and providing training and awareness-raising sessions for the political empowerment of women in the Arab region. The AWO has sponsored four conferences among the different national, regional and international actors that work in the field of women's empowerment in the Arab region. These conferences took place in Bahrain, Abu Dhabi, Tunis and Algiers. The main objective of these consultations has been to derive policy recommendations on the way forward to promote and improve access by Arab women to leadership positions. These high-level political conferences also urged LAS member states to conduct objective evaluations of the mechanisms, programmes and measures put in place since the 1970s in order to understand how to improve them and how to enhance coordination among the different institutions designed to promote gender equality.

The main challenges identified during these consultations were the political, cultural, religious, economic and institutional factors that pose particular obstacles to Arab women accessing leadership positions. In particular, the continued marginalization of women stems from the unequal power relations operating at many levels of society from the most personal to the highly public.<sup>9</sup> In some countries, inequalities are still present in legislation that discriminates against women. Furthermore, patriarchal notions of power, traditional practices and religious interpretations contribute to diminished access by women to economic and political participation. The high-level conferences presented AWO member states with a series of policy recommendations to enhance women's political participation, inviting Arab states to develop and activate mechanisms to provide women with access to decision-making positions, and urging Arab states to undertake a scientific and objective assessment of their programmes to develop women's capacities in the political field and to support future plans and programmes.



### ***The League's specialist agencies and programmes***

The Arab League has 25 specialist organizations with different administrative affiliations.<sup>10</sup> Some of these organizations dedicate programmes and activities to promoting women's issues and gender equality (Waduda, 2005):

- In many Arabic countries women make up half or more of the workforce in rural areas. The Arab Organization for Agriculture Development has a dedicated department for woman in rural areas. This department carries out different projects and activities in support of women's economic empowerment in rural areas.
- The Arab Center for the Study of Arid Zones and Dry Lands implements dedicated activities on women and their role in preserving natural resources in dry zones. It has a variety of specific programmes dedicated to capacity building with women in particular to teach them how to diversify their income.
- The Arab Labour Organization focuses on the economic empowerment of women and works in collaboration with the Women's Committee of the League.
- The Arab Organization for Education, Science and Culture has adopted measures to create a conducive environment that encourages women to participate in higher education. Many of its efforts are focused on making policy recommendation on reform of the education systems of the member states in order to facilitate women's access to tertiary education.
- The Arab Investment and Export Credit Guarantee Corporation has adopted a gender equality policy that governs their recruitment, promotion, compensation, medical insurance and retirement rules. It also focuses on building the capacity of its female staff through training and opportunities for women to represent the organization in high-level meetings and conferences.
- The Arab Academy for Science and Technology has adopted a gender policy on recruitment and promotion. The organization also encourages its women students to travel to foreign universities to study for their PhDs.
- The Arab Organization for Industrial Development and Mining stresses the importance of a gender dimension in all its projects and activities on industrial development in different Arab countries.

## **Milestones on the journey of Arab Women towards empowerment**

Despite the establishment of the Women's Committee inside the structure of the LAS, it was not until 1996 that the first High-level Arab Conference on Women took place in Amman, Jordan.<sup>11</sup> This was an important milestone in the journey of Arab women towards political, social and economic empowerment and the protection of women's rights (Ghazaleh, 2010). The work of the conference culminated in the formulation of the 'Arab Plan of Action for the Advancement of Women to the year 2005'. This Plan was later adopted by the Council of Arab Ministers of Social Affairs of the LAS. The unified Arab Plan of Action included objectives, policies and measures aimed at enabling women to fully exercise their rights, emphasizing the elimination of the remaining obstacles to the integration of women into a sustainable development process. Among these obstacles, the Plan identified inequality between men and women in the sharing of power and decision making at all levels, insufficient mechanisms at all levels to promote the advancement of women, and the permanent and increasing burden of poverty on women. The Plan also mentioned as particular areas of concern inequality of access to education, health care and employment, and violence against women.

The 2005 Plan was based on the international covenants related to human rights and the rights of women and children, and on national reports and plans of action submitted by the Arab countries. The Plan also took into consideration the recommendations and comments of non-governmental organizations (NGOs) and CSOs. The plan urged Arab governments to establish policies and take action to overcome the challenges and obstacles hindering the empowerment of Arab women. It also exhorted Arab governments to establish and strengthen central mechanisms for dealing with women's issues at the highest level. In order to implement the Plan, governments and regional and international organizations, as well as financial institutions and funds, agreed to join together to make the necessary financial arrangements. Budgetary resources were allocated and priority was given to supporting NGOs working in the field of empowering Arab women.

The Arab Plan of Action gave special attention to institutional aspects. It urged that programmes and activities organized by the UN Commission on the Status of Women, the Department of Women's Affairs in the General Secretariat of Arab States as well as other relevant international and regional organizations and institutions should be coordinated. It also stated that an official mechanism concerned with women's issues should be established and directly linked to the highest executive authority, with its own budget sufficient



for the implementation of the programmes and projects for the advancement of women contained in the national plans and strategies of each Arab country.

Following the establishment of the Beijing Platform for Action after the fourth UN Conference on Women, in Beijing in 1995, the LAS committed to an Arab Programme of Work. This was endorsed by the Arab Ministers of Social Affairs in 1997. The Arab Plan of Action was translated into a Unified Arab Programme for Action that focused on three priorities: poverty, the family and women's political participation. The Economic and Social Commission for Western Asia and the Arab League directly monitored the phases of implementation of the Arab Plan of Action and the Unified Arab Work Programme as well as the Beijing Programme for Action by continuing contact with all the Arab countries at the official government, private and research levels. The UN Development Programme, the UN Population Fund and UNIFEM took part directly in these efforts along with the LAS and the Centre of Arab Women for Training and Research (CAWTAR).

In subsequent years, the LAS in collaboration with ESCWA and in compliance with UN resolutions on follow-up and full implementation of the Beijing Platform for action, prepared a series of reports monitoring the efforts undertaken by the Arab countries to implement the Beijing Platform. All the above efforts, along with the strong political will of the leaders of the Arab countries in the direction of empowering women, led to the Arab Women's Summit in Cairo in November 2000 and the setting up of a specialist body: the AWO.

Furthermore, a big political opportunity for the advancement of Arab women was presented at the Arab summits in Tunisia in 2004 and Algeria in 2005. On these occasions, for the first time, Arab leaders discussed the issue of advancing Arab women's rights. The Tunis Declaration explicitly mentions widening women's participation in the political, economic, social, cultural and educational fields and reinforcing women's rights and status in society by pursuing the promotion of the family and the protection of Arab youth.<sup>12</sup>

In addition the year 2004 is also the year in which the Arab States approved the Arab Women's Beirut Declaration,<sup>13</sup> which establishes a framework and outline for the empowerment of women in the coming decade (2005–2015), i.e., follows the ten-year review of the Beijing Conference.<sup>14</sup> The document in particular insists on the need for member states to conduct a consistent review and updating of national legislation and amend discriminatory legislation (including the legislation on political parties and electoral systems). The document also insists on the establishment of mechanisms to foster women's

equality and political participation, including dedicated ministries, councils, bodies and commissions. The document cites the need to attain by women in some Arab countries their political rights. This could be achieved by the allocation of quotas to women in the parliaments of some countries.

### **Arab countries' achievements in the areas of gender equality and women's political participation**

The Beijing Platform of Action, the Arab Plan of Action and article 4 of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which has been ratified by 20 LAS member states, recognize that sometimes governments need to implement affirmative action initiatives or 'temporary special measures' to advance gender equality. The LAS, through the work of the Women's Committee, recommended that governments take affirmative action on policies and practices that enhance gender parity in political representation. This section focuses on the implementation of such measures or gender quotas, the progress and achievements of Arab countries in fostering women's political participation and in particular their presence in the parliamentary assemblies of LAS member states.

In the past decade, many Arab countries have introduced measures to improve the representation of women in national parliaments. These measures include reform of the electoral system and in particular amendments to election law. The most significant change in some Arab countries was the introduction of different forms of gender quotas in parliament, while at the same time political parties introduced measures to promote women's representation in parliament.

Tables 5.1 and 5.2 show that applying different types of gender quotas resulted in an increase in the number of women in national parliaments, although such measures were sometimes questioned by women's organizations in different Arab countries because women candidates were not always free to express their opinions in parliament but had to follow the party line. In other cases, the women elected belonged to the same elite that continued to promulgate legislation that denied women opportunities to reach leadership positions. However, in countries without a gender quota, the number of women in parliament is much lower.



Additional measures were introduced in the different Arab countries:

- In Iraq, an electoral law indicated that one out of the first three candidates of each political party must be a woman.
- In Sudan, a quota system has been introduced in the lower chamber (the National Assembly) reserving 60 seats for women of a total of 446 seats. Following the 2010 elections, 114 seats in the National Assembly were filled by women (26 per cent).<sup>15</sup>
- In Tunisia, the electoral law stipulates that political parties must have half their party list places filled by women
- Egypt is a case that was contested by many women and human rights organizations in the country. In the parliamentary election of 2010 a gender quota was made law in the form of reserved seats, and women's participation in parliament rose from 2.7 per cent to 12 per cent. The practice was seen at that time, however, as a measure to increase the representation of the ruling National Democratic Party. Egypt changed the law for the 2012 elections, so each party must now nominate at least one woman on every list. The effect on women's participation was striking. Egypt now has one of the lowest shares of women parliamentarians, at less than 2 per cent.<sup>16</sup>
- Algeria's Electoral Law 12-03 of 2012 introduced variable quotas, which require between 20 and 50 per cent of the candidates for parliament to be women, depending on the number of seats in each electoral district.<sup>17</sup> This has resulted in women representing 31.6 per cent of the seats in parliament.

**Table 5.1. Arab League countries with an electoral gender quota**

Country	% Women before quota (2001)	Adopted	% Women 2007	% Women 2012
Algeria	3.4%	2002	7.7%	31.6%
Djibouti	0	2002	13.8%	13.8%
Egypt	2.4%	2009	12.7 % (2010 election)	2.0%
Iraq	7.6%	2004	25.5%	25.2%
Jordan	1.3%	2003	6.4%	10.8%
Libya	N/A	2012	7.7%	16.5%
Mauritania	N/A	2006	22.1%	22.1%
Morocco	0.6%	2002	10.5%	17.0%
Somalia		2004	8.2%	13.8%
South Sudan	N/A	2012		26.5%
Sudan	9.7%	2005	18.1%	24.6%
Tunisia	11.5%	2004	22.8%	26.7%

**Source:** Data compiled by the Inter-Parliamentary Union on the basis of information provided by national parliaments. The data on the introduction of election gender quotas is available at [www.quotaproject.org](http://www.quotaproject.org).

**Table 5.2. Arab League countries without an electoral gender quota**

Country	% Women 2001	% Women 2007	% Women 2012
Bahrain	N/A	2.5%	10.0%
Comoros	N/A	3.0%	3.0%
Kuwait	0	1.5%	6.3%
Lebanon	2.3%	4.7%	3.1%
Oman	N/A	0	1.2%
Qatar	N/A	0	0.0%
Saudi Arabia	N/A	0	0.0%
Syria	10.4 %	12.0%	12.0%
UAE	0	22.5%	17.5%
Yemen	0.7%	0.3%	0.3%

**Source:** Data compiled by the Inter-Parliamentary Union on the basis of information provided by national parliaments. The data on the introduction of election gender quotas is available at [www.quotaproject.org](http://www.quotaproject.org).



## The way forward and policy recommendations

Arab leaders have underscored the importance of essential legislation aimed at ensuring wider participation by women in different sectors on the basis of equality of opportunity and non-discrimination. At the Arab Economic, Social and Development Summit, held in Kuwait in January 2009, Arab leaders reiterated their commitment to empowering women as a way of consolidating the principles of equality, justice and social equity through the implementation of common Arab projects to decrease the rate of poverty, limit unemployment, develop education and improve the standard of health care in implementing the Millennium Development Goals.<sup>18</sup>

The work of the LAS in terms of the studies conducted, joint activities between the League and other regional organizations, and the different programmes established by the League or one of its affiliated specialist associations has helped introduce measures to improve the representation of women in parliament, often through gender quotas and the establishment in almost all Arab countries of relevant ministries, councils and commissions. In addition, 20 Arab Countries have ratified the CEDAW.<sup>19</sup>

In the first decade of the 21<sup>st</sup> century, the General Secretariat of the LAS undertook activities aimed at enhancing the concept of women's empowerment, including the publication of the *Arab Charter on Human Rights* and the *Arab Women's Law* as reference documents for legal texts in member countries when passing, amending or unifying women's legislation, and putting the two documents on the LAS website. It also published the *Arab Strategy for the Family*, a plan to develop education in Arab countries, and declared 2008–18 a decade for education in the Arab region. The General Secretariat is currently preparing an Arab strategy and operational plan of action, 'Fighting women's illiteracy in the Arab region', as well as 'Fighting domestic violence' and a 'Regional strategy to protect Arab women: security and peace', based on relevant Arab and international resolutions. It is also maintaining its efforts at collaboration with international and regional specialist organizations, in particular the UN Entity for Gender Equality and Empowerment of Women, UN Women, formerly known as UNIFEM, and CAWTAR, to ensure the implementation of these programmes.<sup>20</sup>

Despite all these efforts, the proportion of Arab women participating in elected parliaments is still among the lowest in the world. The number of women candidates in elections remains very limited, and the number of women in leadership positions insignificant. Women are challenged by the current impact of violence and war, as in Iraq, Syria and the Palestinian

Territories, as well as illiteracy, poverty, violence and discrimination. Even the most progressive legislative frameworks have not achieved the desired goals because of social traditions and restrictions related to customs that women have to face, as in the case of Egypt and Tunisia.

Following the Arab uprisings, expectations were high for the advancement of women in different spheres, including the political. In practice, the Arab uprisings have not led to an increase in the number of women involved in political decision making. The risk of a deterioration in women's rights is a very real one as is demonstrated, among other things, by the proposal to replace references to equality between women and men with a description of women as 'complementary' to men in Tunisia's constitution, the proposal to lower the marriage age to ten in Egypt and the proposal to reintroduce polygamy in Libya.

A recent report by the Foundation for the Future (2011), assessing the needs of civil society in Libya, highlights that women want to combat their social exclusion and the system of traditional culture, which are obstacles to women's participation in politics as voters and candidates, and advocate a greater role for women in the political sphere. It is a sphere women want to be included in as government employees and representatives, but also as elected members of assemblies. They called for quotas to be set up. The report explains that women requested training on constitutional matters in order to be able to voice their demands as the new constitution was being drafted.<sup>21</sup>

The same report indicates a certain lack of knowledge among Libyan women of their rights as prescribed in international agreements and conventions. Moreover, in Libya's male-dominated, patriarchal society, women's leadership is close to invisible. In recent episodes of violence, violations of women's rights have escalated, with numerous accounts of violence strategically targeted at women and girls, including the use of rape, intimidation and persecution as weapons of war. The situation is no different in Tunisia, long known for its advanced women's rights in law. Several constraints on the activity of women in public life were identified in a report by the National Democratic Institute (NDI) and several steps have been taken to enhance the presence of women in politics (NDI, 2012). The NDI report recommends that the media contribute by presenting role models of women active in political life. Political parties should work at the local level to identify and develop young women who want to be active in politics. CSOs should work actively to expand their work to reach more women who want to be active in public life.<sup>22</sup>

While fully understanding the constraints in terms of policy implementation, this chapter makes a set of policy recommendations that could improve the level of progress achieved by the various initiatives targeting women's empowerment in the Arab region. The recommendations are based on a 2008 report by the AWO, which surveyed projects on Arab women's empowerment and proposed a set of findings and recommendations on the way forward. From the AWO report it emerges that structural weaknesses are limiting the impact of the mechanisms and projects that have been set up to advance the status of Arab women. In particular, the AWO noted that the programmes in the Arab region suffer from an absence of strategic vision; a lack of proper monitoring, evaluation and follow-up mechanisms, and poor coordination among the various partners and stakeholders. In addition, the implementation of the Plan of Action is often inadequate because insufficient funds and resources are allocated to meet their objectives. In order to address some of the shortcomings identified in the AWO report, the recommendations focus on fostering a comprehensive vision and a holistic strategy to tackle the issue of women's empowerment in the Arab region.

### ***Constitutional and legal framework***

It is essential that gender equality and women's empowerment are enshrined in the Pact of the LAS, as is the case for the African Union. Enshrining the promotion of gender equality in article 3 of the Constitutive Act gave a new impetus to the work of the African Union on gender equality. If the League included gender equality among its objectives, this priority would be treated more urgently by Arab leaders and enjoy stronger political and institutional backing.

It is highly recommended that the declarations from the Arab summits specify clearly how to mainstream gender balance in the different institutions of the League. For example, in the Algeria Summit declaration (March 2005) there was a decision to establish a transitional Arab Parliament for five years until the final establishment of a permanent one, and in the different articles that describe the formulation of this parliament it was noted that the different parliaments in the Arab countries would nominate representatives to the parliament, taking into consideration the representation of women. The decision could have set an example by requiring a representation percentage of at least 50 per cent, which would have obliged the Arab states to revise the representation of women in their parliaments.<sup>23</sup>

In addition to the force that would come from enshrining the promotion of gender equality, the mandates of the regional mechanisms such as the Committee on the Status of Women and the AWO need to be further clarified, specifying their goals and objectives and emphasizing their role in the promotion of gender equality. At the moment, the competencies and strategic vision of these two regional mechanisms are unclear. This has often led to problems during the implementation of their policies and programmes, such as the reproduction of similar projects. Spelling out clearly the mandates and strategies of these two organizations will improve the effectiveness of their work and allow better coordination and collaboration among them. These two entities also need to put in place regular channels of communication to strengthen their collaboration and better develop their synergies in the pursuit of a common goal. Finally, they need to improve their collaboration with civil society and in particular with women's organizations.<sup>24</sup>

It will be important to create a mechanism for regular consultations between the AWO and CSOs. These consultations must include not only women's organizations but also political parties, trade unions and other organizations working on political, social and economic issues. This will help to mainstream gender in the work of the AWO. It is also recommended that the LAS organize a special convention on women's political participation, which could be used as a mechanism to monitor the performance of the Arab countries.

### ***Policy and implementation framework***

The time is ripe for the LAS to adopt a comprehensive gender policy and to endorse the principle of gender mainstreaming. A unique gender policy indicating the precise targets that the League is committed to achieve will help the Arab region progress towards the goals in the Arab Plan of Action. The policy would also have to indicate a clear strategy to attain these objectives while at the same time establishing the mechanisms and programmes to be implemented. A unified policy will also avoid the duplication of efforts in this field by assigning specific actions and tasks to specific institutions. At the same time, adopting a gender mainstreaming approach will allow the LAS to mainstream gender in any of their planned actions, including policies and programmes not directly targeting women's empowerment but tackling broader social issues in general.

As is noted above, the Arab countries have made several efforts to reform their legislation in order to promote women's equality and foster women's political participation. However, now it is time to work on the effective

implementation of such legislation, designing tools and taking measures that can overcome the structural obstacles to gender equality. While developing these tools and measures, it is essential that gender-disaggregated data and statistics are made available as well as qualitative data on the dynamic nature of political participation by women in senior decision-making positions. It is important to understand the outcomes and impacts of women's empowerment programmes and positive measures in terms of real change in the status of women, and to integrate the findings of these analyses into future policies and programmes.

### ***Monitoring and financing framework***

Effective monitoring and evaluation systems need to be designed to assess the progress in realizing gender equality goals and learn lessons for future action. In order for the monitoring to be effective, serious efforts need to be undertaken to develop gender-sensitive indicators to measure the progress made. The variety of programmes and projects implemented in the Arab world by national, regional and international actors has led to a lack of comprehensive monitoring. As a result, as is stated in the 2008 AWO report, the lack of documentation on and evaluation of the work on women's empowerment has hampered the development and formulation of future strategies.

Often, the lack of proper evaluation stems from inadequate funding and staff capacity. In this light, it is clear that to allow for proper monitoring, an increase in budgetary allocations is required from national, regional and international sources. At the same time, gender equality programmes cannot depend only on external donors but need to be funded by the national budget and to benefit from a specific voice on the national budget.

In addition to the above specific policy recommendations, it is clear that more attention and efforts should be invested in mobilizing and sustaining the political will to promote gender equality and strengthen the regional mechanisms to promote gender equality and women's political participation. Regional organizations have an increasingly important role to play in fostering positive change when it comes to achieving important objectives in the field of women's empowerment. Arab leaders can use the platform of the LAS to pressure national administrations to comply with international goals and standards, and to foster women's empowerment and participation.

## Conclusions

Having reflected on the work that the LAS and the AWO have done so far to foster gender equality and gender mainstreaming, these concluding remarks pose a series of provocative questions aimed at understanding the achievements so far and reflecting on the road ahead.

The work of the LAS in fostering gender equality and gender mainstreaming has been remarkable. Since the 1970s, the League has set up institutions to deal at the regional level with the issue in all spheres of life. Furthermore, in the past decade the LAS has created an ad hoc organization to support the work of the Commission on the Status of Arab Women, the AWO. Finally, political commitment to fostering gender equality and mainstreaming has been declared at the highest level at successive Arab summits, where the issue of Arab women was placed at the core of the political and economic development of the Arab world. The question remains: How to assess the impact of all these efforts on the life of women who are active in politics? It is time that the LAS built on the work of past decades and channelled it towards establishing regional coalitions and networks that not only link politically active women, but also develop future leaders from the women who became active in political life following the Arab uprisings.

The LAS member states have also demonstrated their commitment to women's equality. To date, 20 Arab states have signed and ratified CEDAW. It is worth noting that in 2000 only ten Arab countries had signed this important Convention. More than half the Arab League's member states have introduced electoral gender quotas, and this has resulted in a net increase in the proportion of women parliamentarians in the region.

However, despite these important achievements the results have been mixed and the objective of equality between men and women in all spheres of life is far from being attained. It is important to ask whether it is time to reform the mechanisms of the LAS that work on gender equality, their approach and that of their partners in the Arab states.

The current moment of democratic transition in the Arab world, with its challenges and space for reform, presents the LAS with an opportunity to shape the future of Arab women and support their quest for more inclusiveness, political participation and leadership opportunities. In order to be more relevant and to further improve its work in the domain of gender equality and gender mainstreaming, the LAS will need to go beyond the political commitments made during its summits and move to design clear

objectives as well as long- and medium-term strategies to advance the status of Arab women, committing more financial and non-financial resources to the advancement of women. The policy recommendations above provide some ideas to make the LAS more influential and relevant in moving forward the commitments and declarations made at recent summits of relevance to women's empowerment and to the economic and social development of the Arab region.

## Notes

- <sup>1</sup> Statement from the LAS meeting at the level of permanent delegates, 22 February 2011, <<http://bit.ly/VAJKB7>> (In Arabic).
- <sup>2</sup> Decision of the LAS Council at the ministerial level, 12 March 2011.
- <sup>3</sup> A summary of these actions can be found in a press release from the LAS secretary general, 1 December 2011, <http://bit.ly/VG8qxi> (In Arabic).
- <sup>4</sup> Taken from an explanatory memo on Arab-Arab relations on the LAS web portal.
- <sup>5</sup> For more details on the Transitional Arab Parliament see <http://bit.ly/UU9wmG> (In Arabic).
- <sup>6</sup> Waduda 2005. See also Roweida 2011.
- <sup>7</sup> Jamal al-Din Afghani and Qasim Amin strongly advocated female emancipation in the late 19<sup>th</sup> century. Women intellectuals like Bahithat el-Badiyah fought for compulsory education.
- <sup>8</sup> The agreement establishing the AWO is published on the Organization's website, <http://www.arabwomen.org>.
- <sup>9</sup> For a full discussion of the challenges for women in politics see DIPD 2012.
- <sup>10</sup> For a list of organizations and their affiliations to the League, see <<http://goo.gl/eQ0GH2>>.
- <sup>11</sup> The High-level Conference was a joint cooperative effort by the General Secretariat of the LAS, the Secretariat of ESCWA and CAWTAR.
- <sup>12</sup> See the translation of the Summit declaration at <<http://www.arab-hdr.org/publications/other/ahdr/ahdr2009e.pdf>>.
- <sup>13</sup> <<http://www.unfpa.org/gender/beijing10/docs/arab.pdf>>.
- <sup>14</sup> <<http://www.arab-hdr.org/publications/other/ahdr/ahdr2005e.pdf>>.
- <sup>15</sup> <<http://www.unicef.org/gender/files/Sudan-Gender-Equality-Profile-2011.pdf>>.
- <sup>16</sup> <See the Egypt Unified Database, <http://bit.ly/VIJVQ6>>.
- <sup>17</sup> <<http://www.quotaproject.org/uid/countryview.cfm?ul=en&country=66>>.
- <sup>18</sup> <<http://www.un.org/womenwatch/daw/beijing15/docs/E%20ESCWA%20ECW%202009%20IG.1%203.pdf>>.
- <sup>19</sup> For a list of countries that have ratified and their dates of ratification see <[http://haifaag.com/Publications/Arab\\_women-1-12-2010.pdf](http://haifaag.com/Publications/Arab_women-1-12-2010.pdf)>.

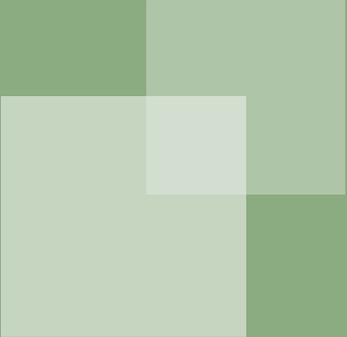
- <sup>20</sup> *Consolidated Arab Report on the Implementation of the Beijing Platform for Action +15*.  
<<http://www.un.org/womenwatch/daw/beijing15/docs/E%20ESCWA%20ECW%202009%20IG.1%203.pdf>>.
- <sup>21</sup> Foundation for Future (2011). *Assessing Needs of Civil Society in Libya: An Analysis of the Current Needs and Challenges of the Civil Society in Libya*, <<http://foundationforfuture.org/en/Portals/0/PDFs/ASSESSING%20NEEDS%20OF%20CIVIL%20SOCIETY%20IN%20LIBYA.pdf>>.
- <sup>22</sup> NDI (2012), *Women's Political Participation in Tunisia after the Revolution*, <<http://bit.ly/Yc5EuJ>>.
- <sup>23</sup> See the Declaration of the 2005 Algeria Summit on <<http://goo.gl/hL9Sr0>> (in Arabic).
- <sup>24</sup> There have been many calls to reform the LAS to enhance its regional influence. One example is the Arab NGOs Beirut Summit Letter, 19–22 March 2004, which refers to the holding of parallel NGO conferences to coincide with Arab League summits. Pegging their conference to the Arab League meetings would help to ensure both continued follow-up and broader public attention to their reform proposals. See Yacoubian (2005). Women's issues could have a specific segment of such a non-governmental summit.





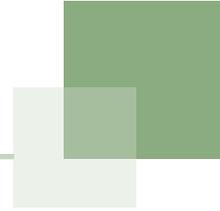
# Chapter 6

**From Marginalization to  
Mainstreaming: A Guide to  
Gendering the European  
Union in 40 Easy Steps**



## Chapter 6

Joyce Marie Mushaben



# From Marginalization to Mainstreaming: A Guide to Gendering the European Union in 40 Easy Steps

## Introduction

Despite the European Economic Community's (EEC) early reputation as a 'rich male industrialists' club', a small group of committed women, including a Belgian lawyer, Éliane Vogel-Polsky, soon grasped the strategic potential inherent in the serendipitous adoption of article 119 of the EEC Treaty on 'equal pay for equal work' in 1957—even though its real purpose was to protect the French textile industry from countries lacking equal pay mandates. Since the 1970s, two generations of feminist experts and activists have produced a multitude of studies focused on EEC and European Union (EU) gender policies. In the process, they have forged and professionalized networks, established endless databases and introduced new discursive frameworks, all in pursuit of 'the balanced participation of women and men' in public and private life. They discovered two formidable allies early on, the Commission and the European Court of Justice (ECJ), and eventually strengthened the powers of the only democratically elected EU institution itself, the European Parliament. Paradoxically, the community's least powerful organ would provide a significant launching pad for feminist-inspired 'critical acts' leading to representational 'critical mass'—as well as for the active 'gendering' of the EU *acquis communautaire*, which is binding on all EU member states.

Drawing on a recent book reviewing the institutional and policy-centred evolution of the EU through a gender lens (Abels and Mushaben, 2012), this chapter can do little more than provide a brief overview of the key concepts, legal developments and strategies that are enabling women to

participate ever more actively in the paid labour market as well as in political decision making across 27 EU member states. The chapter summarizes the key lessons of different equality instruments: equal treatment, positive action and gender mainstreaming. It demonstrates the ways in which women have succeeded in redirecting the EU's agenda and 'norming' even without the benefit of parity of representation in its core institutions, and considers the 'institutionalization' of gender equality requirements by way of the EU *acquis communautaire*. It then presents a potential 'how-to' guide on incorporating gender equality principles into a wide assortment of other regional and international organizations—based on the wisdom of feminist 'hindsight' and social mobilization accrued since the 1970s. The chapter concludes with a few personal reflections on the lessons to be learned from the EU per se.

## Conceptual and strategic framing

Tracing the history of *gendering* the EU dating back to 1957, feminist scholars have documented the extent to which gender has become *a dominant factor* in some policy domains, and at least a consistent variable in others. Indeed, the incorporation of gender equality into formal EU policy documents and policy frameworks (European Commission 1996, 1997, 2002, 2008a, 2008b; Council 1996) has become breathtaking in its normality, although practice often lags behind. Each decade has given rise to a dominant policy approach that evolved into a specific type of strategic framing that, in turn, introduced new 'tools' and accountability mechanisms that have spilled over from one policy domain to another.

It is possible to characterize the 1970s as a period that focused primarily on *equal treatment*, that is, efforts to accord women 'the same rights' as men. The logic here was that simply removing pre-existing legal barriers, such as provisions barring women from certain professions, would adequately level the playing field, allowing all women the chance to compete for jobs and participate in public life. The 1957 'equal pay' mandate applied only to the paid workplace, however, completely ignoring the extremely unequal division of labour at home. Core actors at this point were the European Commission (hoping to advance integration), women's grassroots movements tied to second-wave feminism and the ECJ (van der Vleuten, 2012). Having accorded itself the power of judicial review in 1964, that is, the power to 'interpret' treaties and regulations, it declared article 119 'directly effective' and thus legally binding on all member states. When national governments continued to resist, women pushed the Commission to draw up three further Equality Directives, specifying the 'ends' but not the 'means' states must adopt in order

to comply. Despite a wave of supportive ECJ verdicts (Cichowski, 2007) and Commission assistance, gender activists began to realize that inequality had much deeper roots.

Attempting to enter the paid workforce in larger numbers in the 1980s, the better-educated women of the baby boom generation quickly discovered that formal professional qualifications were not enough to break into new occupational fields, much less to 'shatter the glass ceiling' regarding leadership positions. Certain differences between the sexes, including but not limited to biological factors, required a degree of *special treatment*, that is, women-targeted programmes necessary to counter centuries of socially constructed disadvantage (Woodward, 2012). This era saw the introduction of *positive action or affirmative action*. The idea was to 'encourage' states and employers to become proactive in remedying past forms of discrimination by establishing pilot projects, training programmes and gender-sensitive preferential recruitment strategies. The 'movers and shakers' of this period included the European Commission, the ECJ, limiting some initiatives to prevent 'reverse discrimination' against men, ever more professional women's networks, female members of the European Parliament (MEPs) and so-called *femocrats*, or feminists who had secured civil service jobs in their home states or in relevant offices or Directorates-General (Employment and Social Affairs) in the EU itself. They were actively supported by increasing numbers of feminist professors at a wide assortment of European universities who turned sex-disaggregated data collection and gender analysis into a scholarly enterprise.

The usual government foot-dragging and national implementation problems aside, feminist theorists were acquiring an ever more sophisticated understanding of the *structurally* embedded nature of gender exclusion. Overcoming centuries of discrimination was going to take a lot more than the formula: 'add women, childcare and stir'. A series of UN-sponsored conferences addressing women's rights (in Mexico City, Nairobi and Vienna) made it clear to even the most committed feminists that 'not all women look alike' and that a wide assortment of gender differences, including differences among women, had to be considered across all stages of the policy planning, implementation and monitoring process.

The UN Conference in Beijing and the 1995 Platform for Action served as a crucial turning point for EU equality advocates. By 1996, both the Council of Europe and the EU had adopted *gender mainstreaming* as a binding operational precept, having studied the progress made under this new approach to 'women in development' introduced at the 1985 Nairobi

conference. The Commission itself came to appreciate women as a driving force for European integration. The 1991 Maastricht Treaty introduced the first ‘co-decision’ powers for the European Parliament, where female MEPs constituted a ‘small but significant minority’ (see below). In exchange, the Commission subsidized the creation of the European Women’s Lobby (EWL) in 1990, to serve as a ‘roof organization’ for hundreds of grassroots groups spread across the EU member states. The EWL can now mobilize more than 2,500 member organizations, as well as appeal to increasing numbers of non-governmental organizations for ‘more data’ and substantive expertise (Lang, 2009).

While equal treatment centred on securing the ‘same rights’ for women, positive action accepted the need for ‘special rights’ in areas in which the sexes evince significant differences. Gender mainstreaming, by contrast, calls for a policy-by-policy evaluation as to whether women and men will encounter similar or diverging consequences *before* a policy is actually adopted, funded or implemented. Gender mainstreaming in the EU context is defined as: ‘the systematic integration of the respective situations, priorities and needs of women and men in all policies...mobilising all general policies and measures specifically for the purpose of achieving equality by taking into account at the planning stage, their effects on the respective situations of men and women in implementation, monitoring and evaluation’. As a modus operandi, it requires a *gender impact statement*, compiled by *gender experts* under ‘*gender-proofing*’ criteria. All internal units must establish gender mainstreaming sections which, in turn, provide *gender-sensitive training* for such units—starting with lessons on how to sex-disaggregate all available statistics. Gender mainstreaming, moreover, necessitates measurement and monitoring, anticipating a policy’s likely impact on existing gender relations, fostering ‘ownership’ and accountability among relevant stakeholders and some evidence of institutional learning in subsequent policies (European Commission, 2008).

Although the gender mainstreaming approach specifies that the EU continue to pursue a dual strategy (mainstreaming *plus* specially targeted initiatives), many member states have eliminated their own women-specific programmes, ostensibly as cost-saving measures, under the erroneous rubric: ‘we are all mainstreamers now’ (Sauer, 2001). Figure 6.1 is a template for gender assessments during the initial phase of EU policy planning. In 2000, equality advocates began to intensify their focus on differences among women as well as men, based, for example, on ethnicity or religion—adding a new emphasis on *anti-discrimination*, which recognizes the problem of *intersectionality* or *multiple discrimination* (Woodward, 2007).

The temporal delineations offered here are but ‘lines in the sand’—all these strategies are still being utilized to some degree, depending on the policy domain. Similarly, all have been underscored by intermittent ECJ verdicts reinforcing or refining their conditions of use, while also rendering them ‘directly effective’ for all member states. Gender experts realize that there is no ‘one size fits all’ instrument or strategy for fostering equality. Our combined studies (Abels and Mushaben, 2012) reveal, *first*, that different instruments have proved sometimes more, sometimes less effective across various stages of EU development. The general trend has been to move from *symbolic politics* to *soft law* and then to *hard law* instruments (see below) over periods ranging from one to two decades. One major exception is employment policy, which began with a treaty ‘primary law’ provision (art. 119, EEC Treaty). Equality advocates nonetheless had to resort to court rulings and softer, secondary law measures in order to enforce it. Europe’s women still earn, on average, only 77 per cent of what men are paid for the same or ‘comparable’ work (van der Vleuten, 2007). Agricultural policy, one of the oldest community endeavours, has seen very little gendering since the 1950s (Prügl, 2012), in stark contrast to the relatively new field of Research, Science and Technology, which has benefited immensely from the infusion of Central/East European women since the 2004–05 enlargements (Abels, 2012; Petersen, 1995; Beveridge, 2008).

**Figure 6.1. Evaluating the need for the gender mainstreaming of European Commission proposals**

<p>Step 1 <b>Evaluation of gender relevance</b></p>	<p>Requires analysis of <b>sex-disaggregated data</b></p> <p>Q1 Does proposal concern one or more target groups? Will it affect daily life of part(s) of population?</p> <p>Q2 Are there differences between men and women in this policy field?</p> <p>If answer to either Q1 or Q2 is POSITIVE, gender IS relevant to the issue, and systematic gender impact assessment should be undertaken.</p>
<p>Step 2 <b>Gender impact assessment according to several criteria</b></p>	<p>Criteria for gender impact assessment include:</p> <ul style="list-style-type: none"> <li>• Participation</li> <li>• Resources</li> <li>• Norms and values influencing gender roles</li> <li>• Rights and access to justice</li> </ul>
<p>Step 3 <b>Implementation of results; Mainstreaming respective policy</b></p>	<p>How can the proposed policy contribute to eliminating gender inequalities and promote the objective of equality between men and women?</p>

*Source:* European Commission, 1997.

*Second*, concrete contextual factors, such as economic boom or bust conditions, labour shortages or surpluses, may help or hinder the application of equal treatment, positive action and gender mainstreaming at different points in time. *Third*, specific mechanisms are better received by some member states than others, but new framing can be used to win over laggards. The trick is to turn gender equality into a win-win proposition for would-be naysayers, for example, by adopting the language of ‘economic efficiency’. *Fourth*, it emerges that certain instruments work better in particular policy arenas, and that administrators in select policy settings make better use of available tools and best practice. Finally, the EU approach to many emerging problems or crises on the horizon, for example, the rapid aging of many member states’ populations, has become increasingly holistic, applying further constructs such as social inclusion, social protection and active citizenship, allowing for the extension of these originally gendered strategies to other disadvantaged social groups, such as ethnic minorities.

## From under-representation to critical acts and critical mass

The European Commission's desire to overcome citizens' waning enthusiasm for the EEC by the mid-1970s, especially in light of the first major post-war recession, led it to introduce direct elections to the European Parliament in 1979. The ECJ's expanding powers of judicial review and the youth of the mostly 'advisory' assembly—beyond symbolic veto powers—facilitated women's great leap forward in a representative sense. Hardly visible under the 1957 appointment system, women's parliamentary presence rose significantly after the first direct elections. Male political party leaders could reward loyal but subordinate female party activists without sacrificing legislative seats equipped with 'real' powers at home. The exponential increase in female MEPs, from 5.5 per cent (1978) to 11 per cent (1979) to 35 per cent (2011) enabled women to engage in critical acts, symbolic, consciousness-raising politics that triggered 'an irreversible take-off' for women (Dahlerup, 1988: 276; Mushaben, 1998) well before they had reached the level known as critical mass.

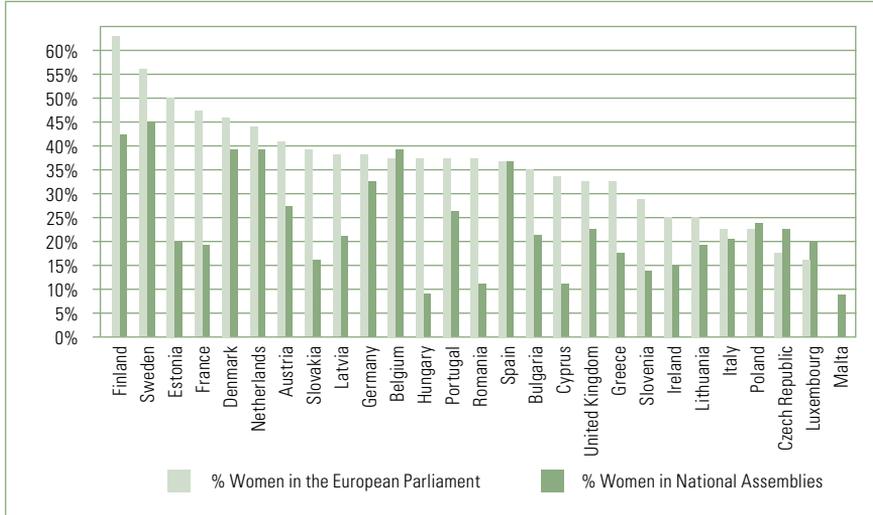
Borrowed from nuclear physics, critical mass refers to the smallest number of atoms one needs to 'split' by way of some external force in order to generate enough energy to induce a self-sustaining chain reaction. Unlike non-rational atomic particles, a core group of committed, thoughtful women can strategize, engage in symbolic politics and forge alliances with powerful coalition partners, enabling them to trigger fundamental changes in their surroundings long before they have secured positions of power proportionate to their share of the population. The term critical mass embodies the shift from a small, barely visible group, whose presence can easily be ignored, to a larger, salient minority capable of pressuring for real change. The Scandinavian experience suggests that this occurs once women hold about 30 per cent of the seats. Using their position in the European Parliament to help their counterparts run for office at the national level, women representing a majority of member states crossed the 30 per cent threshold in the European Parliament between 1992 and 1997. They also significantly raised the share of female mandates in their national legislatures, in part thanks to assistance from female MEPs (see Table 6.1). By 2000, women had reached the 30 per cent mark in many national parliaments of the EU member states as well. In 2012, women's share of the seats in the European Parliament, on average, exceeded 34 per cent. Only three countries registered less than 20 per cent.

**Table 6.1. Women in National Assemblies (NA) and the European Parliament, 1992 and 1997**

Member states	Date of election	Total % in NAs	Total % in EP	Date of election	Total % in NAs	Total % in EP	Difference in % in NAs and EP in 1997
Austria				1995	26.8	33.3	+ 6.5
Belgium	1991	10.1	16.7	1995	12.0	32.0	+ 20.0
Denmark	1990	33.0	37.5	1994	33.0	37.5	+ 4.5
Finland				1995	33.5	50.0	+ 16.5
France	1988-89	4.8	22.2	1997	10.9	27.6	+ 16.7
Germany	1990	21.5	32.0	1994	26.2	34.3	+ 8.1
Greece	1990	4.7	4.2	1996	6.3	20.0	+ 13.7
Ireland	1989	8.4	6.7	1997	12.0	26.7	+ 14.7
Italy	1992	8.6	12.3	1996	11.1	13.8	+ 2.7
Luxembourg	1992	13.3	50.0	1994	20.0	33.3	+ 13.3
Netherlands	1989-91	24.4	28.0	1994/95	31.3	32.2	+ 0.9
Portugal	1991	8.7	12.5	1995	13.0	12.0	- 1.0
Spain	1989	13.9	15.0	1996	24.6	28.1	+ 3.5
Sweden				1994	40.4	40.9	+ 0.5
United Kingdom	1992	7.4	14.8	1997	18.2	18.4	+ 0.2
<b>Total Average</b>		<b>11.0</b>	<b>19.3</b>		<b>17.0</b>	<b>26.5</b>	<b>+ 8.1</b>

*Sources:* Mushaben (1998: 83), compiled from PANORAMA data, pp. 7–12; Inter-Parliamentary Union 1995/1997; European Parliament, DG 1, July 1997.

**Figure 6.2. Women in National Assemblies and the European Parliament, 2012**



**Source:** Equality and Diversity Unit, Directorate-General for Personnel, “Women in the European Parliament,” International Women’s Day, 8 March 2012.

Relying on their own expertise and networks across the member states, women tended to mobilize in areas where formal competencies and rules did not yet exist, creating their own ‘velvet triangles’ (Woodward, 2004), as opposed to the so-called iron triangles of politicians, bureaucrats and business leaders found among men. Their first move was to establish an ad hoc European Parliament committee on ‘the status of European women’. By 1981, 25 women and ten men had produced an extensive study (the Maij-Weggen Report) analysing self-collected data from extra-parliamentary meetings they had staged with grassroots groups in Milan, Manchester and Copenhagen. A two-day parliamentary debate on the report—attended mostly by women—gave birth to a formal Committee of Enquiry on the Situation of Women, which became a permanent Committee on Women’s Rights (CWR) in 1984. The CWR presented a 116-point ‘resolution’, adopted by a vote of 125 to 17 in January 1984. Less than half the eligible MEPs bothered to vote. Most of its points were taken up by the European Commission and incorporated into a New Action Plan (1982–1985). The Commissioners subsequently formed their own Advisory Committee on Equal Opportunities for Women and Men (Vallance and Davies, 1986; Agustin, 2012).

Critical mass led to a stream of ever more critical acts. Among the most significant changes witnessed by the end of the 1990s were: (1) shifts from negative reactions to women's presence to signs that decision makers welcomed their input; (2) a strengthening of women's performance, thanks to 'old girl' networks that shortened learning processes for new MEPs; (3) a new 'political culture' accepting gender issues as part of the normal agenda; (4) a transformation of political discourse; (5) innovative, consensus-driven approaches to decision making; (6) the adoption of new norms and fundamental rights; and (7) increases in women's power through professionalized networks (Mushaben, 1998).

In particular, the extraordinary degree of female self-mobilization and networking since the early 1980s has added programmatic substance as well as 'implementational teeth' to what began as merely symbolic commitments to equality. Organizational offshoots have ranged from the Women's Employment Bureau, the Women's Information Bureau and the Centre for Research on European Women, to the Women in Employment Network. Emerging within the framework of the Second Action Programme (1986–1990) were the Network on the Diversification of Occupational Choices, the Network for Positive Action in the Private Sector, the Working Group on Higher Levels of the Public Service, the Steering Committee on Equal Opportunities in Broadcasting and Television, and the IRIS Network. The European Commission also sponsored the formation of a Childcare Network, a Network for Local Employment Initiatives, the Action Research Programme on Equal Opportunities in Teacher Training and Initiative NOW (New Opportunities for Women). DG-V (Employment, Social Affairs and Inclusion) financed many specialized studies to persuade EU member states of the inadequacy of existing national laws, and to facilitate contacts among the initiatives.

In short, if there is a policy for it, there will be manifold groups at multiple levels pushing to secure this gender issue a permanent space on the Commission's agenda. Over the years, this has allowed equality advocates to make effective use of what Anna van der Vleuten (2005, 2012) has labelled 'the pincer effect'. Having analysed the role of key EU actors, women's networks, and transnational and grassroots interest organizations, particularly in relation to equal pay, she determined that women in decision making really do make a difference. Committed individuals ranging from feminists in DG-V's Equal Opportunity Unit, the European Parliament, European Commission judges or advocates-general, to ministers from countries with a strong commitment to equality have become very successful at playing the EU's multilevel governance game. By mobilizing nationally and working with transnational

coalitions, women can now ‘squeeze’ their home governments into policy compliance and norms from above and below. As a result, they have secured more equality rights than the Community’s ‘founding fathers’ could have ever imagined, even in less progressive member states such as Greece, Cyprus and Poland (Stratigaki, 2012; Galligan and Clavero, 2012).

Equality activists have forced member states to eliminate countless laws rooted in sex discrimination, while strengthening the European Parliament’s potential for democratizing the EU overall, beginning with the powers of European Parliament ‘co-decision’ added to the Maastricht Treaty (1991), expanded further under the Amsterdam (1997) and Lisbon Treaties (2009). They have obliged the Commission to provide substantial support for pilot projects, Action Programmes, educational campaigns and implementation assistance across the EU-27. Despite the persistently small number of women found in the European Commission, the Council of the European Union and the ECJ, the EU began to pool capacities and resources in ways that suggest another paradox. Since the 1980s, a distinctive mode of what feminists call ‘power with’ (Deutchman, 1993) has come to replace the more conventional mode of decision making, ‘power over,’ throughout the EU. The supranationality practiced by EU member states entails neither an abdication of national authority nor the imposition of decisions from above, but rather a ‘pooling of sovereignty’. It avoids power exercises based on winner-takes-all thinking. Women were the first to learn that the most effective use of power in the global age is one utilizing a win-win strategy.

## **Evolution of the *gender acquis***

The EU currently claims to offer the most progressive gender regime in the world. Consisting of over 30,000 legal acts (of more than 100,000 pages), the EU *acquis communautaire* refers to ‘the cumulative body of European Community laws, comprising the EC’s objectives, substantive rules, policies and, in particular, the primary and secondary legislation and case law—all of which form part of the legal order of the European Union’.<sup>1</sup> This includes virtually all the treaties—understood as the cumulative EU ‘constitution’—and the regulations, directives and decisions established by the European Commission and approved by the Council of Ministers and the European Parliament, along with all of the verdicts issued by the ECJ since the 1950s. All member states are bound to comply with all components of the *acquis*, although some inevitably wind up being sanctioned or fined for their recalcitrant implementation—unequal pay is still an issue across the region. Since 1993, all states hoping to join the EU must adopt, implement and

enforce all the components of the *acquis* as a precondition for admission.<sup>2</sup> The *acquis* is dynamic, however, constantly evolving and expanding with each new initiative or field of endeavour.

As is noted above, the general pattern regarding equality policies has been to move from symbolic politics to secondary or soft law, and then to primary or hard law instruments over periods ranging from one to two decades. Information campaigns orchestrated by the EWL, unofficial European Parliament ‘hearings’ interrogating Commission nominees about gender policies in their would-be domains and mobilizing reports for ‘gender summits’ (Athens in 1992) fall into the symbolic category. These activities took place outside formal institutional settings, at a time when EU decision-making processes per se had yet to be ‘carved in stone’. They usually gave rise to multi-year Action Programmes relying on the voluntary participation of select member states, employers or trade unions, usually benefiting from Commission subsidies, as in the field of vocational training.

Provisions classified as *secondary law* are often directed at specific groups but do not always dictate a particular mode of implementation. Regulations and Directives are binding on all, while Decisions affect—or sanction—only the targeted parties, such as individual corporations or EU member states. Regulations take direct effect: they are binding in and of themselves as part of (or nullifying) national law. Mandating clear goals but allowing member states to adopt their own specific means or tools, Directives require ‘transposition’ and implementation through national legislation. Extending parental leave, for example, usually means incorporating such provisions into a country’s extant welfare state or benefits scheme. As Table 6.2 indicates, the most important directives affecting women’s status across the EU pertain to employment, occupational training, working conditions, statutory pensions, private social security schemes, the rights of the self-employed and assisting spouses, as well as access to goods and services. States that fail or refuse to implement directives as part of national law within the specified time frame may be subject to initial Commission warnings, then fines, or may even trigger an ECJ judgement that results in binding law for all.

So-called *soft law mechanisms* are intended to experiment, educate, support, evaluate and eventually help to generate ‘best practice’ for the EU as a whole. They include pilot projects, multi-year Action Programmes, Medium-Term Objectives and year-long campaigns, such as the European Year of Intercultural Dialogue (2008). More recently, the EU has turned to another soft law mechanism known as the *Open Method of Coordination*. Rather than wait many years to get all 27 member states to join in policy development

and coordination in areas that potentially infringe their sovereignty, member states that choose to participate assign themselves specific goals, indicators, benchmarks and timetables. They then hold each other accountable through National Action Plans, annual reporting requirements and shared evaluation processes.

All treaties and their subsequent amendments, along with the accumulated ECJ jurisprudence, are classified as primary law. After years of mobilizing, negotiating and nudging reluctant national leaders into collectively binding values and objectives, the European Commission proposes amendments to existing treaty provisions, or adds articles creating a justification for EU involvement in new policy domains. Whereas formerly all complaints regarding gender discrimination and inequality had to be tied to paid employment (art. 119), article 13 of the 1997 Amsterdam Treaty now obliges member states to prevent discrimination based on sex, religion, national origin, age, disability and even sexual orientation in areas such as housing, insurance coverage and educational opportunity. The Charter of Fundamental Freedoms, embraced in 2000, contains an even more expansive catalogue of 'human rights'. It was recently accorded legal standing as an appendix to the Lisbon Treaty.

Despite thwarted efforts to adopt a proper constitution for Europe, the Lisbon Treaty of 2009 espouses gender equality as one of the 'fundamental values' of the EU, making it permanently binding on all member states: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the member states in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail' (art. 2, Lisbon Treaty). It moreover seeks to 'combat social exclusion and discrimination, and shall promote ... equality between women and men' (art. 2(3), Lisbon Treaty). This proactive objective moreover extends to all Community endeavours. As article 8 declares: 'In all its activities, the Union shall aim to eliminate inequalities, and to promote equality between men and women' (Abels and Mushaben, 2012: 2; Bisio and Cataldi, 2008).

**Table 6.2. Main parameters of the EU gender acquis**

Primary law*	Secondary law*	'Soft law' provisions	Case law*
Treaty of Rome	1975 Equal Pay Directive		
Art. 119 (principle of equal pay for equal work)	1976 Equal Treatment Directive		1976 <i>Defrenne</i> cases (affecting pay, as well as pensions as 'pay deferred')
Treaties of Amsterdam and Nice amending the Treaty on European Union	1979 Social Security Directive	1982–86 AP1	
Art. 2	1986 Occupational Social Security Directive and	1984 Rec. positive measures	
promotion of gender equality figures as Community task	Self-Employment Directive	1986–90 AP2	
Art. 3	1992 Pregnant Workers Directive	1991–95 AP3	1986 <i>Rummler v. Dato-Druck Bilka v. Germany</i>
gender equality as transversal objective of the EU	1996	1992 Rec. against sexual harassment and Rec. on child care	
Art. 13	Parental Leave Directive	1996 Rec. for women's participation and Com. on trafficking in women	
entitles the Commission to take initiatives to combat discrimination based, among other grounds, on sex	1996 Second Occupational Social Security Directive	1996-2000 AP4 and STOP I	

\* This is not an exhaustive list. A complete account would amount to multiple volumes.

Art. 141 (old Art. 119)	1997 Burden of Proof Directive		
	2002 Implementation of Equal Treatment Directive	1997 DAPHNE I	
		2001 STOP II	
	2004 Access to Goods and Services Directive	2001-2006 AP5	1998 <i>Tanja Kreil v. the Federal Republic of Germany</i>
	2006 Recast Directive Equal Treatment in Employment and Occupation		
		2004 DAPHNE II	
		2007 'Progress'	

**Source:** Locher, 2012: 70-71.

One core problem is that the EU often fails to practice what it preaches within its own institutions. The composition of neither the Commission nor the Council or even the ECJ embodies ‘the balanced participation of women and men in decision-making’. As late as February 2008, the Swedish Commissioner for Communications and Commission vice president, Margot Wallström, declared publicly that she was tired of seeing the EU under the ‘reign of old men’ (*EU Observer*, 2008). Another dilemma is that each member state has the power to appoint one Commissioner or a judge, who is more likely to be male. The EU has yet to apply gender mainstreaming to policy domains stretching from agriculture to transport (Prügl, 2012), although some EU member states have embraced the procedure in some ministries, even adopting limited versions of ‘gender budgeting’. Nonetheless, the biggest barriers to effective implementation of gender equality as a fundamental, ‘constitutionalized’ EU value remain the dearth of female decision makers and dedicated administrators at all levels, member-state resistance, a lack of political will and the absence of effective supranational sanctions. When all else fails, there is the time-honoured EU tradition of ‘shame and blame’, usually based on expert-derived ‘scorecards’ that have been known to push even the worst laggards into complying with established EU behaviour and norms (Zeff and Pirro, 2006).

## A guide to gendering the EU in 40 'easy' steps

Another, quasi-historical dilemma facing gender equality activists is that most of them have been extremely busy trying to mobilize people, resources and allies for decades in order to 'right' greater social, legal and political 'wrongs'—some of which still exist in their own university departments (see Dahlerup, 2010). Although they have learned many things along the way, they have seldom found time to chronicle their own progress, evaluate their strengths or pinpoint their own weaknesses en route, much less to draw up visionary plans for the next ten years. This is an appeal to younger gender equality activists: never ignore the lessons of earlier eras. The first women to mobilize on behalf of your gender rights were a lot smarter and tougher than you think. Having observed the evolution of EU gendering processes for nearly three decades from across the Atlantic, there have been four distinct stages, which have concentrated primarily on: (1) the consciousness raising of the 1970s; (2) building an internal policy community throughout the 1980s; (3) professionalizing and internationalizing an assortment of expert networks and research teams throughout the 1990s; and (4) intensified institutionalizing, (re)norming and mainstreaming gender equality as a fundamental community commitment since 2000. Below are 40 'easy' (albeit somewhat subversive) steps that external equality entrepreneurs might find useful in making other diversity-related goals a regular, valued and implementable component of organizational agendas in accordance with the aims of International IDEA.

### A subversive guide to achieving gender equality

#### Stage one: consciousness-raising

- 1) Form an ad hoc committee with 'a few good women' or committed persons at lower levels of decision making, even if they appear relatively powerless.
- 2) Begin collecting preliminary data regarding a fairly self-explanatory variable such as equal pay, no matter how hard they may be to find.
- 3) When the data show that things are worse than you thought, urge your home government to begin disaggregating its own official statistics according to sex. Do not expect it to jump at your request.
- 4) Publicize the gaps through an official agency or public organization. Emphasize the need for 'more data'.
- 5) Look for contradictions in the institution's own goals. Read its statutory documents very carefully and ask if they apply to you.

- 6) Take immediate or spontaneous advantage of ‘unanticipated consequences’ or changes in the political opportunity structure.
- 7) Do not consider any prospect for change ‘too small’. Do not be afraid to cultivate allies in strange places, even if the motives of others do not always overlap with your own.

### **Stage two: building a policy community**

- 8) Stimulate a ‘public outcry’ over discriminatory findings among groups tied directly to the issue or data at hand.
- 9) Use this small but loud response to pressure an appropriate agency into funding an ‘initiative’ or ‘pilot project’.
- 10) Find a few big, preferably corporate, players willing to experiment at someone else’s expense. Praise them publicly.
- 11) Form a division or office within an existing agency to ‘monitor’ and later to implement the initiatives; put it in charge of ‘analysing’ the results.
- 12) Arrange for a regular flow of subsidies, no matter how limited, to institute longer-term pilot projects or ‘action plans’.
- 13) Bring in stakeholders by stressing words like ‘efficiency’ and ‘productivity’. Gather more data, and initiate annual reporting requirements for participants. Emphasize the positive in publicizing results.
- 14) Utilize your expanding database to hire ‘experts’.
- 15) Insist on using your own terminology where possible, but use Euro-speak (or organizational speak) with modifiers whenever necessary to keep disinterested (or potentially adversarial) parties engaged in a ‘dialogue’.
- 16) Cultivate some degree of *gender expertise* in every agency connected to your issue. Routinize contacts and information exchanges among experts, allowing them to develop a supportive ‘culture within a culture’.
- 17) Encourage experts to form their coalitions, building networks with external organs of their own choosing.

### **Stage three: professionalization and internationalization**

- 18) Develop recognizable spokespersons and cultivate select media relationships.
- 19) Expand external networks through links with professional associations, and cite each other regularly as experts.

- 20) Urge networks to establish cross-sectional and inter-institutional ties.
- 21) Commission studies that promote regional and international comparisons; use these to establish more cross-national and grassroots networks. Never assume one is more important than the other.
- 22) Hold international conferences and ‘summit meetings’ as functions officially subsidized by the home institution. Require member states to send official delegations and country reports. If they do not have a gender expert, they will have to appoint one to write a report.
- 23) Have your ‘language’ gradually recognized as official parlance.
- 24) Develop new indicators for use in presumably ‘gender-neutral’ domains; make sure they have some connection to the longer-term goals of the established powers.
- 25) Help isolated ‘gender experts’ use the ‘official parlance’ to introduce new strategic frameworks within their own agencies.
- 26) Come together as a unified group (despite your differences) to lobby higher authorities: the more organizational units promoting your cause, the better—even if it does lead to problems of coordination and control.

#### **Stage four: institutionalization, ‘norming’ and mainstreaming**

- 27) Persuade external contacts and networks to utilize your experts, offices and data as the point of ‘first contact’ with the main institution.
- 28) Foster increasing specialization among recognized gender scholars; apply for grants, produce ‘counter-expertise’ and find ways to incorporate it into all ‘official findings’, even if only as a ‘critical response’.
- 29) Draw up legislative proposals, based on cross-cutting rationales, and have your experts appointed to organs overseeing ‘equality policies’.
- 30) Overwhelm stubborn officials with longitudinal data, especially when they argue ‘there is no problem here’. Present your own positions as ‘the majority view’.
- 31) Seize the right to participate during the ‘problem-definition’ and ‘policy-formulation’ stages. Conduct symbolic hearings on policies (or against officials) detrimental to your cause.
- 32) Lobby to have your self-assumed powers incorporated into core legal documents first as protocols, then as treaty provisions.
- 33) Push to have subsequent treaties expand your influence not only in procedural-operational terms but also by inserting new ‘values’ and ‘objectives’ into constitutional documents as a launching pad for future pilot projects, legal actions and compliance monitoring.

- 34) Add a requirement for annual national progress reports.
- 35) Develop a corps of cross-national legal experts and lawyers. Introduce courses on your expanding body of jurisprudence at all member-state universities, presenting it as a 'growth industry'. Keep your eyes open for precedent-setting cases at lower levels.
- 36) Think about ways to 'consolidate' the array of experts you now have spread throughout the institution, before someone unfriendly to your cause does it in the name of budget cuts. Engage in 'self-study' and propose reforms, using a 'pincer' effect. Get it in writing that new programmes will not be eliminated at the expense of tried and tested ones.
- 37) Act as if your once 'radical agenda' has become 'the routine'. Have officials sign up to your innocuous-sounding language, like gender mainstreaming, even if most have not yet figured out what it means.
- 38) Initiate more 'Stage One' activities at the highest level of decision making, even if it temporarily alienates ostensible 'allies' intent on using your networks to achieve their own institutional goals. Do not forget to use 'symbolic politics' to prove to your grassroots constituencies that you have not been co-opted by 'the system'.
- 39) Appoint more experts, develop more indicators, publish your data in multiple languages and recruit hordes of sympathetic academics to write scholarly articles on your progress. Convince them that 'institutions matter' and that institutions can sometimes transform themselves in ways never anticipated, opening the door to societal transformation. Encourage them to 'mainstream' their own research in 'non-feminist' journals.
- 40) Repeat often that 'it is, after all, a New Millennium', and wait for generational change to kick in.

## **Concluding reflections: a Nobel Peace Prize well deserved**

The 60-year history of the EU testifies to the extent to which equality activists everywhere can often turn 'the law of unanticipated consequences' to their own advantage. The original aim of the European project was to bring peace and prosperity to a region ravaged by two world wars. The limited integration process set in motion by the Community's founding fathers in the early 1950s has not only successfully extended democracy to countries subject to decades of dictatorial rule, stretching from Portugal to Romania, but also secured an incredible catalogue of human rights and individual freedoms for societal groups intentionally excluded from its very conceptualization, the current global financial crisis notwithstanding.

The dilemma for those who wish to cultivate a stronger European identity among average citizens is that gender equality policies that look great on paper must ultimately be implemented and monitored at the national level. When this finally happens, average citizens are inclined to assume that they have their own governments to thank for the dramatic improvements that EU activists have brought into their lives since the 1970s. One clear example involves the extended maternal and paternal leave policies that German Labour Minister Ursula von der Leyen—a physician and mother of seven children – finally succeeded in passing over the objections of her conservative party colleagues under Chancellor Angela Merkel. The bill had already been personally rejected by Chancellor Gerhard Schröder, despite the active support of all five of his female Cabinet ministers and in spite of the fact that he led a Social Democratic-Green coalition government that claimed to champion equality between the sexes. It was only the threat of EU fines that turned the final legislative gears in the Bundestag and Bundesrat, but average citizens credit CDU-Minister von der Leyen for the much-wanted reform.

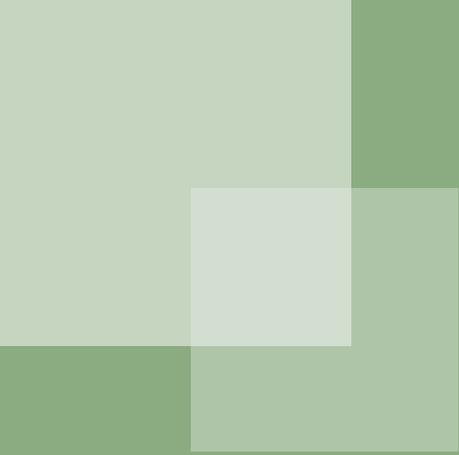
The societal changes evoked by the supranationalization of gender equality policies have been observable, dramatic, very far reaching and life transforming for millions of Europe’s women and girls. Two generations of gender equality experts and activists have witnessed three full decades of *herstory* in the making—moving from the ‘empty glass’ days of article 119 of the EEC Treaty to a glass that is half full in some policy fields, if still only wetting the surface in others. Younger scholars, such as Heather Macrae (2010), are more sceptical about the ‘gender myth’ that has ostensibly become a part of the EU’s contemporary identity. Similarly, Amy Elman (2007) supplies a rigorous critique of inadequate EU responses to violence against women and same-sex marriage rights. Younger cohorts will need to invent their own strategies, framing concepts and tool-kits, in the spirit of completion, deepening and enlargement, to cover new equality challenges that have yet to be defined—but they should not automatically abandon approaches and mechanisms that have worked in the past.

As the ‘40 easy steps’ to achieving gender equality nonetheless suggest, women’s long march through the EU institutions has required an extraordinary amount of persistence, energy, creativity, professional networking, data collection and relentless lobbying, coupled with heavy doses of sisterly solidarity. Those who were born within years of the Community’s creation remember the personal political struggles and stereotypes of the 1960s and 1970s, providing a deeper appreciation of how far women have progressed as a result of the EU’s existence. The process of gendering the EU has consistently confirmed the wisdom of trailblazing anthropologist

Margaret Mead: ‘Never doubt the ability of a small group of committed, thoughtful people to change the world. Indeed, it’s the only thing that ever has.’

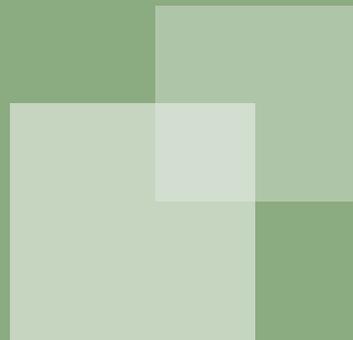
### **Notes**

- <sup>1</sup> As of 2009, there were 10,785 directives and regulations, 10,014 modifications of existing legislation, 10,322 ECJ verdicts, countless treaties and international agreements, along with 579 recommendations, 3,545 communications, 51 white papers and 150 green papers. See [www.europa.eu](http://www.europa.eu).
- <sup>2</sup> This includes the current applicants, Turkey and Croatia.
- <sup>3</sup> This is not an exhaustive list. A complete account would amount to a few volumes.



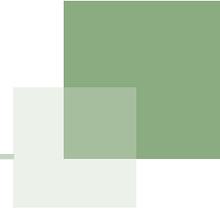
# **Chapter 7**

## **The Role of the Pan-African Parliament in Promoting Inclusive Political Participation and Representation in Africa**



## Chapter 7

Frank Kayitare



# The Role of the Pan-African Parliament in Promoting Inclusive Political Participation and Representation in Africa

## Introduction

A number of regional parliaments and parliamentary assemblies exist all over the world. Their composition and functional modalities vary, based on the provisions enshrined in the individual intergovernmental treaty that established them. In Africa, there are a number of regional parliaments serving the regional economic communities on the continent, and the Pan-African Parliament (PAP) serves the continental organization—the African Union (AU).

The history of the PAP dates back to June 1991, when African heads of state and government met in Abuja, Nigeria, to discuss the possibility of establishing an African Economic Community (AEC).<sup>1</sup> These discussions resulted in the Abuja Treaty, which entered into force in 1994. Article 4 of the Treaty sets out the objectives of the AEC, which include promoting social and cultural development, integrating African economies in order to increase self-reliance, promoting endogenous and sustainable development, and coordinating and harmonizing policies to foster good governance and inclusive political integration. The Treaty also made provision for the establishment of various organs of the community in its article 7, one of which is the PAP.<sup>2</sup>

The PAP was supposed to be established during the sixth and final stage of the AEC process.<sup>3</sup> The primary objective of this continental parliament is to ensure that the peoples of Africa are fully involved in the economic development and integration of the continent (art. 14). The PAP was thus

envisaged as a platform for representation of and participation by African peoples in decisions affecting the continent. It is important to note that article 6 (f) (IV) of the Abuja Treaty envisages that citizens of African states will directly elect their representatives to this body, rather than the current process of nomination by their governments from among national parliamentarians.

However, in 1999, when African heads of state and government gathered in Sirte, Libya, for the Fourth Extraordinary Summit of the Organization of African Unity (OAU), they decided to establish an African Union and to accelerate the process of implementing the Abuja Treaty. The Sirte discussions resulted in a decision to significantly shorten the timeframes outlined in the Abuja Treaty. This also meant accelerating the establishment of the institutions, including the PAP (Mpanyane, 2009).

Unfortunately, this ambition and enthusiasm obscured the importance of systematically putting in place the necessary structures and methodology for establishing such a critical institution, and preparing the grassroots to participate both in electing their representatives and meaningfully participating in its work. Some analysts have suggested that the Sirte Declaration made the PAP a 'rushed project' compared to the evolution of similar supranational entities such as the European Parliament, and that this had serious implications for its capacity to perform the expected responsibilities and roles of a conventional legislative body (Anani, 2013). The PAP was launched in March 2004 under article 17 of the AU Constitutive Act. It is composed of a Presidency, a Bureau with members who represent the five regions of Africa and ten committees, which work on specific thematic issues or can be constituted on an ad hoc basis under the Rules of Procedure of the PAP.<sup>4</sup>

This chapter looks at the mission and objectives of the PAP, and analyses the institutional and functional features critical to the performance of its role in promoting political participation and representation in Africa. It provides an analysis of how its composition and mandate, as well as the relationship between the PAP, other AU organs and national or regional entities such as the national parliaments in Africa, facilitate or complicate its role of ensuring effective political participation by and representation of all African voices in the AU integration process. In this context, it looks in particular at the issues of promoting political diversity and gender representation in the composition and work of the PAP.



## Context

Parliaments are generally perceived to be mirrors of the character of their state, party systems and political culture. The traditional role of a parliament is to represent the citizens and to reflect their needs and preferences as expressed through elections. Parliament is a multifunctional institution that performs a variety of roles. Key among these are lawmaking, and exercising oversight over, approving and overseeing the use of public resources by scrutinizing national budgets.

The performance of parliaments and their capacity to enhance democracy in Africa from the early years of independence to much of the post-independence period have been mixed (Bratton and van de Walle, 1997: 61–89). Much of this period was characterized by parliaments with weak institutional and technical capacities, in the face of much stronger executives. In recent years, however, African parliaments have begun to exert greater influence over how their countries are governed (Africa All Party Parliamentary Group, 2008). Nonetheless, challenges linked to insufficient constitutional and other legislative support and infrastructure continue to constrain most parliaments on the continent. Even where parliaments are given robust powers by national constitutions, the political realities inside and outside of parliament mean that parliamentarians are often restricted in the exercise of their duties. Problems of institutional capacity in terms of the available resources, expertise and facilities also exist in most parliaments. These challenges notwithstanding, there is a revival of belief in parliaments as potential agents of democratic change, and there are parliaments that exhibit best practice on the African continent (AU, n.d.).

The PAP's vision and aspirations for Africa and the African people are almost identical to those of the European Parliament, the Latin American Parliament, the Central American Parliament and the MERCOSUR Parliament. The creation of these bodies should be seen in the context of the expectations and confidence that their constituents, the citizens of their member states, have in the ability of parliaments to facilitate integration while upholding good political and economic governance.

As is the vision for similar continental parliamentary bodies, the PAP is meant to provide a common platform for African peoples and their grassroots organizations to become more involved in discussions and decision making on issues related to integration and the African continent.<sup>5</sup> This citizen participation through the members of the PAP demonstrates the aspirations of the AU to move away from making continental initiatives purely the

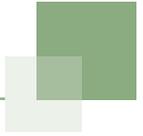
business of governments, by including all citizens in the processes aimed at integrating them.<sup>6</sup>

### ***The objectives, mandate and powers of the PAP***

The objectives of the PAP are set out in article 3 of the PAP Protocol. They include to: (a) promote human rights, democracy, peace and security; (b) facilitate cooperation and development on the continent; (c) strengthen continental solidarity and build a common destiny among the peoples of Africa; and (d) encourage good governance, transparency and accountability in the AU member states. Equally important is the objective of familiarizing the peoples of Africa with the objectives and policies of integrating the African continent. The objectives of the PAP therefore place key processes related to the political, governance and economic architecture of the African continent right at the centre.

Article 11 of the Protocol sets out the functions of the PAP:

1. Examine, discuss or express an opinion on any matter, either on its own initiative or at the request of the Assembly or other policy organs and make any recommendations it may deem fit relating to, inter alia, matters pertaining to respect of human rights, the consolidation of democratic institutions and the culture of democracy, as well as the promotion of good governance and the rule of law;
2. Discuss its budget and the budget of the Community and make recommendations thereon prior to its approval by the Assembly;
3. Work towards the harmonization or coordination of the laws of member states;
4. Make recommendations aimed at contributing to the attainment of the objectives of the OAU/AEC and draw attention to the challenges facing the integration process in Africa as well as the strategies for dealing with them;
5. Request officials of the OAU/AEC to attend its sessions, produce documents or assist in the discharge of its duties;
6. Promote the programmes and objectives of the OAU/AEC, in the constituencies of the member states;
7. Promote the coordination and harmonization of policies, measures, programmes and activities of the regional economic communities and the parliamentary fora of Africa;
8. Adopt its Rules of Procedure, elect its own president and propose to the Council and the Assembly the size and nature of the support staff of the PAP;



9. Perform such other functions as it deems appropriate to achieve the objectives set out in article 3 of this Protocol.

These powers are important, but not sufficient for such a key institution of African integration. Nonetheless, it still has the potential to achieve its original purpose as set out in the Abuja Treaty—influencing and scrutinizing other AU institutions, including the African Commission—if the legal and functional challenges it faces are addressed. In addition to effectively performing the conventional roles of a legislature, successful reform would enable the PAP to contribute to legitimizing the whole process of political integration on the continent.

Currently, both the Protocol and the PAP Rules of Procedure give it minimal authority in terms of a legislative function, suggesting that the AU heads of state and government were reluctant to turn it into a fully fledged lawmaking body for the continent. The powers of the PAP are mainly consultative in nature, limited to making recommendations to the AU. This advisory and consultative role is important, however, in preparing both the institution and Africa's citizens for effective representation and participation if or when the PAP Protocol is amended.

Thus far, using the provisions in the Protocol as a basis, the PAP has attempted to elaborate its oversight functions in clearer terms in its Rules of Procedure. These refer to 'overseeing' the development and implementation of policies, and having AU officials 'furnish explanations in plenary'. This is a fairly restricted conception of oversight that confines it to a passive role. The notion of oversight is potentially broader and needs to be elaborated further in terms of specific activities, in addition to demanding that AU officials submit documents and furnish explanations to the plenary. The PAP also needs to clarify how it is, or will become, accountable to its constituents in carrying out these activities.

The fact that the Protocol allows the PAP to determine and elaborate its Rules of Procedure is important. The Rules of Procedure serve as both a control and a co-coordinating instrument. They could in the meantime be used as leverage to define and operationalize some of the limited powers and functions of the PAP as set out in the Protocol. The political leadership within the PAP should be willing to constantly engage with the AU heads of state and government in order to address the problem of the limited scope of the powers and functions of the institution, as defined in the various legal and other instruments of the AU. The fact that the PAP is meant to evolve, and that the final decision lies with the AU heads of state and government, effectively makes its current status uncertain.

### ***The place of the PAP within the AU institutional architecture***

In analysing the mandate of the PAP, it is crucial to clarify the entire institutional design of the AU, its roles and functions, and the PAP's relationship with other AU organs. The roles and functions of the PAP are clearly shaped by the fact that the institution is still evolving. The AU itself is still comparatively young, and is thus still evolving and developing its 11 organs. This means that a clear understanding of the PAP's formal responsibilities and duties, as well as its relationships with the entire AU system, is also a work in progress. Formal elaborations of the roles, functions and relationships to each other of these organs as contained in the protocols and statutes of the various AU organs remain untested. For instance, the PAP, the Economic, Social and Cultural Council and the Court of Justice might be seen as playing direct roles in AU decision-making processes through the Assembly. However, the relevant provisions related to the powers and functions of these institutions do not appear to allow for this.

It is important to note that the PAP Protocol widens the scope of the PAP's competences further than was foreseen in the AEC Treaty and the Constitutive Act of the AU. Whereas the Constitutive Act simply intended to ensure the participation of African people in the economic development and integration of the continent (art. 17), the Protocol mentions the promotion of good governance, the harmonization of national laws and examination of the AU's budget (art. 11). This creates a contradictory situation, given its current mandate, which limits its capacity to constrain the internal decision-making process or the budget of the AU. The role of the PAP is predominantly external—in so far as it exercises some influence over the AU member states, mainly informally through its members at the national level—not at the executive level of the AU.

It is therefore evident that in addition to the weaknesses related to the mode of election of its members, which are discussed below, the PAP also shares some of the political weaknesses of most of Africa's national legislatures—dominated by the executive and under-capacitated both legally and financially.

### ***The achievements of the PAP to date***

The PAP has contributed to debates on key issues of concern to regional integration on which the AU has a mandate. These include serious political matters such as the decolonization of the Saharawi Arab Democratic Republic, and peace and security issues such as Darfur in Sudan. It has also contributed to debates on, and the development of a continental mechanism to promote,



peace and security.<sup>7</sup> The PAP has conducted numerous fact-finding missions across the continent, such as in Côte d'Ivoire to investigate justice, governance and human rights issues in 2011,<sup>8</sup> and in Liberia to investigate human rights issues. Fact-finding missions aim to gather first-hand information by engaging directly with the parties involved and assessing the situation on the ground.

The PAP has also dispatched numerous delegations to election observation missions, such as in the Democratic Republic of the Congo (DRC) (2006), Kenya (2007), Zimbabwe (2008) and Angola (2008). These missions resulted in recommendations and resolutions calling for action from different relevant AU member states or the organs of the AU. As a result of its lack of powers to enforce such resolutions, however, there is little evidence that these important and laudable undertakings have informed the actions of the AU Assembly or individual member states.

### ***Institutional arrangements***

According to article 12(5) of the PAP Protocol, the president and the deputy presidents (equivalent of speaker and deputy speakers at the national level) are the office bearers of the PAP. Four deputy presidents represent the four of the five regions of Africa not represented by the president. The president and his four deputies form the PAP Bureau. The Bureau is the structure responsible for the organization and operation of the PAP. In the performance of its functions, the PAP Bureau is assisted by a Secretariat, composed of a clerk, two deputy clerks and other management and technical staff as per article 12(6) of the Protocol. Staff recruitment must also take account of regional and national balance.

The PAP has ten permanent committees responsible for various thematic issues,<sup>9</sup> which meet for two weeks, twice a year just before each general session of the PAP. In line with the Rules of Procedure and article 14 of the PAP Protocol, the PAP holds Ordinary Sessions at least twice a year; the calling of an extraordinary session has to be agreed to by at least a two-thirds majority. There is no committee in charge of political or institutional matters, which could give impetus to increased popular participation or at least provide regular counsel to the PAP on the internal functional changes needed to improve the level and efficiency of participation by African citizens in the AU processes. In order to overcome this difficulty, the PAP has set up ad hoc committees or called on its Committee on Rules, Privileges and Discipline to fulfil this function.

Due to its deliberative approach to democracy, the PAP's decision making is by consensus or a two-thirds majority. This deliberative approach is in recognition of the diverse nature of African political cultures, and a way to assist member states to overcome the suspicions and divisions that sometimes inform interstate relations on the continent (IDASA, 2003: 12).

### **Composition**

The composition of the PAP is determined by article 4 of the PAP Protocol, which stipulates that each AU member state shall be represented by five members, at least one of whom must be a woman. The representation of each member state must also reflect the diversity of political opinions in its national parliament or any other equivalent deliberative organ. The PAP currently has 235 members representing 47 of the 54 AU member states that have ratified the Protocol. However, this number fluctuates from time to time, for example, if a member state has been suspended due to an unlawful change of government, as is the case currently with Egypt, the Central African Republic and Madagascar. The requirement for member states to reflect national political diversity and gender balance suggests that what is emerging on the continent is an AU that is seeking to ensure that the integration process is not a mere institutional arrangement between states, but a pluralistic and inclusive process.

Nonetheless, the fact that members of the PAP are currently not directly elected by universal suffrage raises questions about whether the PAP can be regarded as a representative, and therefore a democratic, parliament. It remains to be seen whether the planned reforms will result in direct elections to the PAP by universal suffrage, and whether this kind of election is indeed feasible. Coordinating and funding elections in 54 countries is likely to be both complex and expensive (Kisiangani, 2010). This challenge should also be looked at in the context of Africa's experience with electoral democracy, which has been mixed. Progress has been made in some countries, but challenges remain in others with regard to the transparency of the electoral processes.

That the PAP Protocol provides safeguards to ensure that political diversity and gender representation are respected seems to be a realization, at least in principle, that citizens' participation is an essential ingredient of the unfolding democratization process on the continent. The gender quota reflects the AU's acknowledgement that there can be no democracy or development on the continent if women and men are not equally involved in these processes. Mechanisms to encourage gender equity, as well as those promoting youth,



civil society and minority participation, are essential at the continental level because they have the potential to influence gender sensitivity and inclusivity at the national level.

In practice, almost all the national parliaments follow the rule that members of opposition parties must be part of the national delegations to the PAP. This helps to increase its legitimacy. For those countries with bicameral systems, delegates to the PAP must come from both chambers.

The PAP provides an arena for African parliamentarians to discuss common problems. In terms of effective representation of citizens, however, the fact that its members are selected by national parliaments and not directly elected means that this is at best indirect at the moment.

### **The challenge of political diversity and the review process of the Pan-African Parliament**

Mistry (2000) highlights that the African journey to regional integration has been influenced and dominated by two conflicting predispositions: the tendency to adhere to political separation based on historical or colonial borders while at the same time seeking to move towards greater political unity to overcome colonially derived territorial divisions.

Modern African polities can be divided into four categories: those relatively mature and stable democracies that have endured for a significant period of time; those that have begun moving towards a democratic transition; those that have experienced transition but suffer from political instability; and those that have successfully democratized and are likely to become consolidating democracies. This means that representative bodies such as parliaments are also constituted differently and enjoy different degrees of legitimacy, power and effectiveness from one African state to another.

African states also differ radically in terms of their colonial experience (Lusophone, Francophone and Anglophone), and this has a significant bearing on their approaches to political life. There is also diversity in the extent to which different African countries recognize and promote inclusive political participation, that is, take account of gender, youth and minority considerations. Some states actively promote the use of quotas such as gender-based quotas to ensure that marginalized groups are included in public life. Others do not.

The PAP has close links with national parliaments and the sub-regional parliaments of the Economic Community of West African States, the Southern Africa Development Community, and other such groups, the political environments of which are as diverse as the African people they represent. The relationship between the PAP and national parliaments is particularly important for various reasons. First, national parliaments are closer to the key AU decision makers, for instance foreign ministers and heads of state, and can therefore constantly engage them on issues of regional integration. Second, thus far, national parliaments—in the majority of cases at least—are the ones with a mandate to ratify international instruments entered into by their respective governments. This makes them crucial allies of a supranational parliament that is supposed to adopt continental norms that must be ratified and implemented at the national level. Third, the AU Council of Ministers is an important structure in the process of continental integration, as it handles all technical issues and advises the heads of state on integration. National parliamentarians, through national parliamentary committees on regional or multilateral relations, can engage with ministers at the national level and influence—or even control—their actions on matters related to integration. To successfully undertake these actions however, the political environment and the legislative framework at both the national and the PAP levels must be favourable enough to allow parliamentarians to be representative, accountable, transparent, inclusive, participatory and responsive to the aspirations and expectations of the citizens they represent.

### ***The PAP review process***

In accordance with article 25 of the PAP Protocol, a review of the PAP commenced at the end of its first term in 2009.<sup>10</sup> Member states are currently reviewing its operation and effectiveness, examining the extent to which the objectives, purpose and vision for which the PAP was established have been attained; the challenges the PAP has faced; and what changes are necessary to enable it to discharge its duties more effectively. The review seeks in particular to address the constraints related to its weak mandate and functional capacities discussed above.

The implications are immense and could be far-reaching not only for the PAP but also for other AU organs. If a transformation takes place, it may become necessary for the member states to review the protocols of other AU organs to facilitate cooperation and serve as a practice interface between the various institutions. For example, the executive and judicial institutions of the AU would also have to be reviewed to clearly spell out the separation of powers and complementarity between these institutions.



A group of AU experts submitted a proposal on the changes required to the AU heads of state and government at the AU's Sixth Ordinary Session in January 2012. The summit recommended that the group further examine the implications for all AU institutions. As far as the information available on the PAP and AU websites is concerned, this is still a matter for discussion at the heads of state and government level. There are, however, positive signs that the amendments might be approved sooner rather than later, from the recent statements by both the AU Commission chair, Dlamini Zuma, and the president of Ghana, Dramani Mahama, during the opening of the PAP session in Midrand, South Africa, in May 2013.<sup>11</sup>

If the outcome of the ongoing review process is positive, it will herald a new era for both the PAP and the continent. It will attest to the genuine commitment by African heads of state and government, as AU institutional designers, to the concept of the PAP as a supranational institution with the mandate and powers to effectively represent African citizens.

## **Policy recommendations**

### ***Strengthen the mandate, powers and functional capacities***

First, although both the AU Constitutive Act and the Protocol establishing the PAP reflect a commitment to delegating decision-making powers to the PAP, they also contain clawback clauses that restrict its powers, seemingly to protect the sovereignty of member states. Thus, for instance, article 2(3) (i) of the Protocol effectively restrains the PAP from acquiring greater legislative, budgetary and supervisory powers.<sup>12</sup>

A commitment to regional integration, however, comes with a responsibility to respect the principle of subsidiarity—states ceding or delegating part of their sovereignty to supranational bodies. To achieve the objectives of the AU, member states must balance sovereignty concerns with the need for effective supranational institutions that will lead the continent to much-needed economic and, eventually, political integration. This delegation of sovereignty chimes with the resolve to trust and abide by the norms adopted by these institutions. The current debate on reform of the PAP should therefore be fast-tracked to allow the PAP a stronger mandate to perform the conventional duties of a parliament: making laws, effectively overseeing the AU organs and enforcing accountability.

The example of European Union (EU) might be useful in inspiring the AU integration process and, where necessary, picking up some lessons. As a complex cluster of institutions, the EU was the result of an ambitious idea that had serious implications for the principle of national sovereignty. Although concern about sovereignty still plays a role in EU regional integration decision making, empowering the European Parliament played an important role in persuading EU citizens about integration and continues to contribute to a gradual change of attitude on sensitive issues such as immigration.

In addition, power without means remains power on paper. The PAP needs to be given sufficient resources—both financial and technical—to be able to deliver on its mandate. Resource constraints remain a fundamental challenge to its effectiveness, exacerbated by the fact that most of its funding comes from donors and is therefore unpredictable and unsustainable. Political commitment by the heads of states and government must be accompanied by the provision of adequate financial support to the PAP so that it is able to access skilled staff, perform outreach activities so that citizens are more engaged and involved, and afford the materials and equipment needed to function effectively as a parliament.

### ***Legitimacy and effective representation***

The mode of election to the PAP presents a challenge in terms of whether its members in fact have a mandate at all from the citizens of their respective countries. This is not just because their constituents do not have a say about whether a member should be delegated to the PAP, but also because the majority of citizens that votes for parliamentarians at the national level is not even informed about the PAP and its work. These two issues raise questions about the legitimacy of the PAP and its ability to promote the participation of all Africans in the continent's integration process.

This situation also means that members of the PAP face contradictory expectations: they are supposed to represent all the peoples of Africa while also acting in their personal and independent capacity (art. 6 of the Protocol). Since they are selected by their national parliaments, which can end their mandate at any time, and citizens have no say in their delegation to the PAP, this does not seem to conform with the provisions of the Protocol. This obstacle and contradiction will only be addressed by direct, universal suffrage. This would also allow members to solely represent their citizens in this continental body, and give them more time to dedicate and make them more committed to the integration project.



A move to universal suffrage would not be without its problems. To begin with, the members would be less connected to their national leaders and thus likely to lose their leverage with national governments, which will remain the real decision makers in the AU for the foreseeable future. Linked to this is the fact that coordinating elections in 54 countries would be a very expensive and complicated exercise. Most African governments cannot fund their own national electoral processes. This is an issue that the AU experts currently carrying out the review need to consider very carefully.

### ***Enhancing public participation***

The PAP, national and sub-regional parliaments are only as strong and effective as they are allowed to be by the political environment in which they operate. To contribute to democracy, the political environment should allow them to be representative, accountable, transparent, inclusive, participatory, and responsive to the aspirations and expectations of the citizens they represent in carrying out their functions. As is discussed above, many African countries have weak legislatures, but it is these legislatures that currently provide the members of the PAP. There is no question of the importance of the relationship with national parliaments. Member states must be committed to implementing the same reviews at the national level to allow parliaments to fulfil their mandates, which in turn will ensure the effectiveness of the PAP and its cooperation with these national institutions.

Practical modalities are needed on how national parliaments could assist the PAP to broaden citizen participation in its work. National parliamentarians could help the PAP draw on indigenous knowledge and practice. Joint civic education campaigns could be organized to inform citizens about the PAP and the way in which it affects their lives. Attempts should be made by the PAP through national parliamentarians to circulate the records of its discussions and decisions, and to seek input more widely on the continent.

Last but not least, for the PAP to truly fulfil its mandate as the representative of the people of Africa, it needs to enhance its visibility. For this, the PAP and its committees should, inter alia, engage with more civil society organizations, hold meetings or sittings in areas of interest, such as conflict hotspots, and more actively engage with other non-state actors, such as the private sector. This should be an inbuilt institutional mechanism.

## Conclusions

The Protocol establishing the PAP reflects a strong commitment to the promotion of democratic principles and good governance, transparency and accountability in Africa. It is in this domain that the PAP could make its greatest contribution. The decision to send a delegation to assess the situation in Darfur, and the bold reports from its election observation missions to Zimbabwe and the DRC, among other activities, create the hope that this parliament will not shy away from practical engagement with continental issues. This and other functions are squarely in line with the view that improvements in governance in any sub-region or country on the continent are in the direct interest of each individual African country.

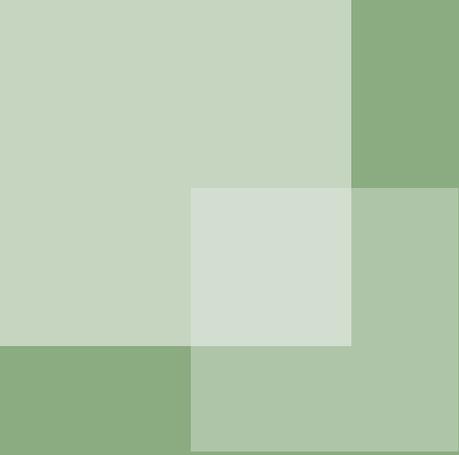
Within the constraints discussed above, however, it can be concluded that the principle of national sovereignty continues to shape the approaches of African leaders to political integration. This is highly likely to delay the granting of full legislative powers to the PAP. In addition, there are the various institutional, structural and substantive challenges that the PAP as an institution must also address if it is to consolidate itself as a supranational parliamentary body with a key role to play in promoting effective representation and political participation of all the peoples of Africa in the AU integration agenda.

If the issues raised above are addressed, the PAP will move closer to being a parliament that will help Africans and their countries alter their material conditions, so that they can escape from poverty and the challenges of underdevelopment. This is the vision contained in the AU Constitutive Act and the Protocol establishing the PAP—an institution that is truly representative, truly participatory and truly democratic. It would be an institution in which all African peoples would have a voice and could hold their representatives accountable.

## Notes

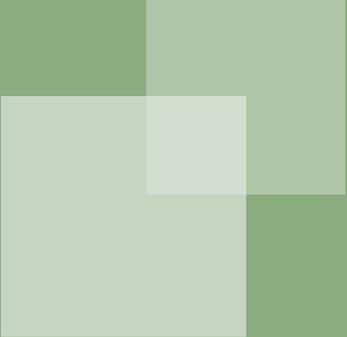
- <sup>1</sup> The discussions led to the signing of the Treaty Establishing the African Economic Community, in Abuja, Nigeria, in June 1991. This treaty became popularly known as the Abuja Treaty.
- <sup>2</sup> The other organs are: the Assembly of Heads of State and Government, the Executive Council (foreign ministers), the African Court of Justice and Human Rights, the AU Commission, the Permanent Representatives Committee, Specialized Technical Committees, the Economic, Social and Cultural Council and financial institutions.

- <sup>3</sup> Article 6 (f) (IV) of the Treaty elaborates the modalities for the establishment of the AEC.
- <sup>4</sup> Rules of Procedure of the Pan-African Parliament, adopted by the PAP on 21 November 2004, in Midrand, South Africa.
- <sup>5</sup> <<http://www.pan-africanparliament.org>>.
- <sup>6</sup> Articles 3(g), 3(h) and 4(m) of the Constitutive Act of the African Union firmly and clearly provide that the objective of the AU is to promote democratic principles and institutions, popular participation and good governance; and to promote and protect human rights in accordance with the African Charter on Human and Peoples' Rights. See <<http://au.int/en/content/constitutive-act-african-union>>.
- <sup>7</sup> See the Reports and Recommendations of the Pan-African Parliament, <<http://www.pan-africanparliament.org/>>.
- <sup>8</sup> Mission reports are available at <<http://appablog.wordpress.com/2011/10/06/the-pan-african-parliament-pap-adopts-reports-on-cote-d%E2%80%99ivoire-and-saharawi-republic/>>.
- <sup>9</sup> The PAP Permanent Committees are: the Committee on the Rural Economy, Agriculture, Natural Resources and Environment; the Committee on Monetary and Financial Affairs; the Committee on Trade, Customs and Immigration Matters; the Committee on Co-operation, International Relations and Conflict Resolution; the Committee on Transport, Industry, Communications, Energy, Science and Technology; the Committee on Health, Labour and Social Affairs; the Committee on Education, Culture, Tourism and Human Resources; the Committee on Gender, Family, Youth and People with Disability; the Committee on Justice and Human Rights; and the Committee on Rules, Privileges and Discipline.
- <sup>10</sup> See the Recommendations and Resolutions of the Sixth Ordinary Session of the Pan-African Parliament: <<http://www.pan-africanparliament.org/Controls/Documents.aspx?DID=1263>>.
- <sup>11</sup> In her address to the PAP on 6 May 2013, the chair of the AU Commission, Dlamini Zuma, stated: '...I strongly believe that the vision of the African Union can only be realized with the full participation of its peoples. It is the people who give legitimacy to governments, to the institutions as well as the vision of the future that Africa aspires to attain; hence, the important role of the Pan-African Parliament. To play its rightful role, PAP must be stronger, offering a greater voice to the people of Africa through universal suffrage, capable of promoting the enactment of relevant policies and laws necessary for growth and development both at the national and continental levels and play an oversight role...'. See: <<http://au.int/en/content/address-chairperson-african-union-commission-he-dr-dlamini-zuma-third-pan-african-parliament>>.
- <sup>12</sup> It gives the PAP consultative and advisory powers.



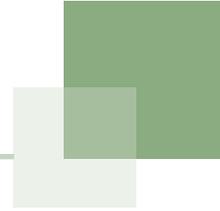
# Chapter 8

**Political Participation,  
Representation and the  
Subsidiarity Principle:  
The Case of National and Sub-  
national Regional Parliaments  
in the European Union after  
Lisbon**



## Chapter 8

Pierre Schmitt, Dr Tom Ruys and Dr Axel Marx



# Political Participation, Representation and the Subsidiarity Principle: The Case of National and Sub-national Regional Parliaments in the European Union after Lisbon

## Introduction

In the context of the decision-making processes of the European Union (EU), the principle of subsidiarity ensures that legislative decisions are taken as closely as possible to citizens and that the EU may only intervene in certain specific circumstances. In particular, the principle holds that, in areas that do not fall within its exclusive competence, the EU shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states, either at the central level or at the sub-national, regional or local level, but can instead, by reason of the scale or effects of the proposed action, be better achieved at the EU level (Treaty on European Union, TEU, Article 5(3)).

The subsidiarity principle remains an empty shell without mechanisms to verify and enforce compliance. Its effectiveness depends on regular checks in order to verify whether, in each given case, legislative action is justified at the EU level. Initially, the only option for states to enforce compliance was to invoke the principle as a ground for annulment in the context of an action for annulment against a legislative instrument brought by a member state government before the European Court of Justice (ECJ), in other words, after the legislation had already been passed at the EU level.

In 1997, however, specific monitoring mechanisms were introduced by the ‘Protocol on the application of the principles of subsidiarity and proportionality’, attached to the Treaty of Amsterdam.<sup>1</sup> Ever since, the European Commission has been under an obligation to consult national and local institutions and civil society prior to proposing specific legislative acts.

The Treaty of Lisbon has further reinforced and improved these monitoring and enforcement mechanisms. In particular, every draft legislative instrument must be systematically communicated to all the national parliaments of the EU member states. Under this Early Warning System (EWS), the national parliaments then have an eight-week period in which to object to the draft EU legislative act on grounds of subsidiarity and may ultimately block the EU decision-making process if sufficient support is gathered from among the member states. In addition, the Treaty of Lisbon has empowered national parliaments as well as the Committee of the Regions to institute an action for annulment against a specific EU legislative instrument on account of an alleged violation of the subsidiarity principle.<sup>2</sup>

Interestingly, the Treaty of Lisbon and the amended Protocol on the application of the principles of subsidiarity and proportionality (the Protocol) attached to it have also opened the door for closer involvement in the monitoring process by sub-national or regional parliaments with legislative powers. In the context of the EWS, article 6 of the Protocol explicitly states that ‘it is for each national parliament or each chamber of a national parliament to consult, where appropriate, regional parliaments with legislative powers’.

The impact of this novelty should not be underestimated. An estimated 70 per cent of EU legislation has a direct impact on regions and localities in Europe.<sup>3</sup> Large parts of EU legislation, moreover, have to be implemented by European regions. Eight of the 28 EU member states (Austria, Belgium, Finland, Germany, Italy, Portugal, Spain and the United Kingdom) have regions with legislative powers. Other EU member states also have sub-national bodies, including regional assemblies, without legislative powers.

In spite of the impact of the EU decision-making process on regions throughout the EU, and in spite of the sometimes wide-ranging powers of sub-national or regional assemblies and their importance for, and proximity to, EU citizens, the multitude of sub-national entities within the EU has for a long time been ignored by the main actors of EU construction—the EU member states—and kept out of the EU decision-making process. Some of these entities, chief among them the German *Länder*,<sup>4</sup> have struggled to obtain political representation on EU bodies. Together with the progressive

acceptance of the principle that legislative decisions must be taken as closely as possible to citizens, this has gradually led to a recognition that sub-national, regional and local authorities ought to be more closely involved in EU construction and that elected authorities close to citizens ought to be able to express their views on the EU legislative process.

According to the president of the European Commission, Jose Manuel Barroso: ‘If we are to address the complex challenges facing us, all the players in society—the European institutions, national, regional and local authorities, the social partners and civil society—must act together in order to move forward in the same direction. It is only in partnership that we can make Europe progress.’<sup>5</sup>

Against the background of this change in mentality, the legal changes brought about by the Lisbon Treaty have the potential to greatly enhance political participation by sub-national policy-making bodies in supranational/regional decision-making institutions. This presupposes, however, that both national and sub-national or regional parliaments with legislative powers can adapt to this evolution and modify their internal rules of procedure in order to fulfil these new prerogatives. In addition, specific mechanisms of cooperation need to be established between these bodies in the eight EU member states in which sub-national or regional parliaments have legislative power to ensure effective organization of the subsidiarity check and a follow-up of the position taken by the national parliament.

This chapter explores the potential for greater involvement in the EU decision-making process of national and sub-national bodies and the challenges faced by these actors in the context of subsidiarity monitoring. It focuses on the important role and responsibility in this regard of the Committee of the Regions (CoR), an advisory body consisting of representatives of sub-national, regional and local bodies that has been granted an enhanced role in relation to subsidiarity monitoring by the Lisbon Treaty.

The next section introduces the subsidiarity principle in the context of the EU decision-making process and the way in which it has been strengthened by successive Treaty reforms, in particular by the Lisbon Treaty. Then the EU decision-making process and the impact of the subsidiarity principle on this process are described. A proper understanding of the wider functioning of this decision-making process and of the EU institutions directly participating in the legislative process—the European Commission, the European Parliament and the Council of the European Union—is required prior to examining the specific institutional mechanisms for political participation

by sub-national entities.<sup>6</sup> This chapter also looks at the role of the CoR as the EU body representing sub-national, regional and local authorities, and distinguishes this body from the EU institutions that participate directly in the legislative process. A brief overview is provided of the origins of this body, its roles and, most importantly, its enhanced competences and responsibilities with regard to the subsidiarity principle under the Lisbon Treaty. The final part of this chapter concentrates on the involvement of national and sub-national or regional parliaments in subsidiarity monitoring resulting from the introduction of the EWS. It also discusses the potential impact on political representation and participation of sub-national bodies caused by this new institutional mechanism. It identifies the challenges faced by these entities and makes a number of policy recommendations.

## The subsidiarity principle in the context of the EU

The subsidiarity principle has its origins in the early 1990s, when the EU was facing criticism from its citizens for its lack of accessibility. During their discussions on the Treaty of Maastricht,<sup>7</sup> EU member states took several decisions aimed at bringing the EU closer to the citizens of its member states. They notably established the CoR—an advisory body representing sub-national regional and local authorities—and inserted the subsidiarity principle, as is noted above

The subsidiarity principle was inspired by German legislation regulating relations between the federal state (*Bund*) and the regions (*Länder*), and reflects these bodies' reluctance to transfer their competences to the EU (Craig and De Burca, 2008: 103). The overall approach to the application of the subsidiarity principle was decided by the European Council in Edinburgh in December 1992,<sup>8</sup> and integrated into a Protocol annexed to the TEU by the Treaty of Amsterdam.<sup>9</sup> The subsidiarity principle became an operational and legally binding concept that could at least theoretically serve as a basis for annulment of EU legislation before the ECJ.

Since 1992, the subsidiarity principle has been continually reinforced by the EU member states in the subsequent treaties. In particular, the central position of the principle in the EU architecture was reinforced by the Treaty of Lisbon of 2007. EU member states included in the preamble of the TEU a provision affirming their resolution 'to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity'. They repealed the provision on subsidiarity in the Treaty on the European

Community (TEC) and incorporated it into article 5(3) of the TEU, adding an explicit reference to the sub-national, regional and local dimensions of subsidiarity. Moreover, they replaced the 1997 Protocol on the application of the principles of subsidiarity and proportionality with a new Protocol of the same name but that explicitly granted a role to national parliaments in ensuring respect for the principle of subsidiarity.<sup>10</sup> The amendment to article 5(3), TEU reads: ‘The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality, national Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.’

The subsidiarity principle is often associated with the principle of proportionality, according to which ‘the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties’ (art. 5(4), TEU). The proportionality principle guides the intensity of EU action, or the form and nature of its intervention, for both exclusive and shared competences. Rather than asking who should act, which is the essence of the subsidiarity principle, the proportionality principle asks what the form and nature of EU action should be. Any decision at the EU level must favour the least restrictive option (European Commission, 2011: 2).

The principle of subsidiarity has two fundamental roles: it limits the exercise of powers by the EU and it limits the *conferral of* powers to the EU (Constantinesco, 1991: 439–59).<sup>11</sup> Its first role is fundamental in the decision-making process of EU legislation: the principle of subsidiarity constitutes a filter for the exercise of powers at the EU level and guarantees that—in areas in which the EU has no exclusive competence—it may only intervene if the principle of subsidiarity is respected. The aim of this principle is to ensure that decisions are taken at the optimum level for EU citizens. The second constitutional aspect of the subsidiarity principle reflects the idea that EU integration has to respect the diversity of cultural and linguistic identities within the member states. It is thus a political principle governing the actual conferral of powers according to the idea that every decision has to be taken as close to the citizen as possible (Wouters, Verhey and Kiiver, 2009).

As set out in article 5(3) of the TEU, the subsidiarity principle only applies in relation to competences that are shared between the EU and its member states. It is thus not relevant for exclusive competences of the EU.<sup>12</sup> Conversely, for shared competences,<sup>13</sup> the principle of subsidiarity guides the choice between EU action and national action, and states that action by member states should be preferred as a matter of principle, except if the

need for EU action can be demonstrated. It submits EU action to both a decentralization test and an efficiency test. Indeed, the EU may act only if the proposed action cannot be sufficiently achieved by the member states, at the central or sub-national, regional or local levels, *and* if it can be better achieved at the EU level.

While the effectiveness of the subsidiarity principle depends on regular controls in order to verify whether action at the EU level is justified, compliance of the EU's legislative work with the subsidiarity principle cannot easily be verified by operational criteria (European Commission, 2011). Prior to its amendment by the Treaty of Lisbon, the Protocol on the application of the principles of subsidiarity and proportionality mentioned conformity tests to be performed by EU institutions to validate compliance with the principle, referring to concepts such as 'necessity' or 'EU added value'. In its new (post-Lisbon) version, the Protocol no longer refers to these criteria,<sup>14</sup> but instead concentrates on procedural aspects to ensure that all actors have an opportunity to give their opinion on subsidiarity. The European Commission considers compliance with the subsidiarity principle to be a dynamic process, subject to an assessment by policy makers in a specific context, and not as a rule. This requires a high level of transparency by all key actors in substantiating and expressing all arguments on subsidiarity.

The application of this principle is in the first place the responsibility of the institutions of the EU,<sup>15</sup> most notably the European Commission, the European Parliament and the Council of the European Union, which are obliged to respect the 2007 Protocol on the application of the principles of subsidiarity and proportionality. Thus, ever since the 1997 Treaty of Amsterdam introduced specific monitoring mechanisms, the European Commission has been under an obligation to consult national and local institutions and civil society before proposing legislative acts.

In addition, an important role has been reserved for the CoR. Pursuant to the changes brought about by the Treaty of Lisbon, the CoR may contest draft EU legislative acts before the ECJ if it considers that the principle of subsidiarity has been infringed or if its institutional rights were infringed on matters on which consultation is required. In addition to these monitoring mechanisms, the Treaty of Lisbon has extended the obligation of the European Commission, the Council of the European Union and the European Parliament to consult the CoR throughout the legislative process on many different areas.

Finally, the Lisbon Treaty has associated national and sub-national or regional parliaments with the subsidiarity monitoring process. Most notably,

national parliaments have been granted the power to raise objections to draft EU legislative acts on the grounds of subsidiarity within eight weeks in the context of the EWS. The different actors concerned—the EU institutions, the CoR and the national and sub-national or regional parliaments—are addressed in greater detail below.

## **The place of subsidiarity in the EU decision-making process: the role of the US institutions**

The main legislative procedure in the EU is the ordinary legislative procedure.<sup>16</sup> According to article 289(1) of the Treaty on the Functioning of the European Union (TFEU), '[t]he ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. This procedure is defined in Article 294'. This procedure gives the same weight to the European Parliament and the Council of the European Union in the joint adoption of EU legislation proposed by the European Commission. In the classic institutional balance, the Council of the European Union represents the interests of the member states, the European Parliament represents those of citizens and the interests of the EU are represented by the European Commission. It therefore seems logical to concentrate the decision-making process between these three institutions. It is noteworthy that this construction leaves no room for representation of the interests of the regions within Europe. Besides this ordinary legislative procedure, a special legislative procedure is organized by the treaties for specific cases in which the European Parliament may adopt EU legislation with the participation of the Council or vice versa (art. 289(2), TFEU).

The ordinary procedure starts with a proposal from the Commission.<sup>17</sup> Already at this stage, article 2 of the 2007 Protocol on the application of the principles of subsidiarity and proportionality states that: '[b]efore proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal'. Moreover, the draft legislative act<sup>18</sup> shall contain a justification with regard to the principle of subsidiarity to make it possible to assess compliance with this principle. This political judgment is very important to ensure that subsidiarity issues are taken into consideration from the beginning (European Commission, 2011: 2). Article 5 of the Protocol specifies that:

This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by member states, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

The European Commission is responsible for making the correct choices as to the opportunity (subsidiarity) and form (proportionality) of proposals for EU action at an early stage of policy development. It publishes annual reports on subsidiarity and proportionality, which present the mechanisms put in place by the Commission to ensure respect for this responsibility (European Commission, 2012: 3). In its 2012 report covering the year 2011, it explains notably that it has published roadmaps for all major initiatives, in which it outlines its intentions and presents initial justification with regard to subsidiarity and proportionality.<sup>19</sup> These ideas are later analysed through stakeholder consultation and an impact assessment process, which accompanies proposals that are expected to have a significant impact. The Impact Assessment Board systematically examines the quality of this analysis and frequently requests a stronger justification for the need for action at the EU level. A statement on subsidiarity is contained in the explanatory memorandum attached to each legislative proposal.

Once the proposal is ready, the European Commission sends it to both the European Parliament and the Council.<sup>20</sup> It is also communicated to the national parliaments of the EU member states,<sup>21</sup> which may respond by submitting a reasoned opinion in the context of the EWS.

According to the Inter-Institutional Agreement on subsidiarity,<sup>22</sup> the European Parliament and the Council must also ensure the proposal's conformity with the principles of subsidiarity and proportionality. Both have to provide a justification wherever an amendment they propose affects the scope of the EU's action. Within the Council, the Committee of Permanent Representatives ensures that the principles of subsidiarity and proportionality are respected.<sup>23</sup> In the European Parliament, there is a specific rule in its internal Rules of Procedure on the 'Examination of respect for the principle of subsidiarity', which states that compliance is verified by the relevant committees dealing with the legislative file and by the Committee on Legal

Affairs. Moreover, the committee in charge of the file may not take a final vote before the eight-week deadline has expired.<sup>24</sup> After this eight-week period, the European Parliament and the Council discuss the proposal in two successive readings. If they do not reach an agreement, the proposal is transmitted to a Conciliation Committee, composed of members of the Council and the European Parliament, which discusses the proposal with representatives of the Commission. Once this Committee has reached an agreement, the text is brought before the European Parliament and the Council for a third reading in order to be adopted.

## The Committee of the Regions

The CoR is an advisory body set up by the 1992 Treaty of Maastricht with a view to bringing citizens closer to the EU. It was established to represent sub-national, regional and local actors within the EU. Initially, the Committee had 189 members, who were ‘representatives of regional and local bodies’ and had to ‘be completely independent in the performance of their duties, in the general interest of the Community’ (art. 198(a), TEC). These members were appointed by the Council of the European Union for a four-year term, acting unanimously on the proposals of the EU member states. In 2001 (Treaty of Nice), EU member states agreed that members of the CoR should be representatives of sub-national, regional and local bodies who either held a regional or local authority electoral mandate or were politically accountable to an elected local or regional assembly.<sup>25</sup> Moreover, EU member states decided to increase the maximum number of members of the CoR to 350. With the entry into force of the Treaty of Lisbon, the term of office of CoR members was extended to five years, which corresponds to the length of the term of the European Parliament.

As an EU body representing sub-state authorities in the broad institutional construction of the EU, the CoR has a somewhat ambiguous status. It was established in the early 1990s to respond to the strong demand for political representation by a number of regions, especially in Germany. These regions aspired to the creation of an EU institution to defend their interests and express their views in the decision-making processes of the EU. On the other hand, the majority of national governments of the EU member states opposed this approach, which was deemed to constitute a threat to the intergovernmental construction of Europe. Eventually, the national governments denied the status of a full-fledged European *institution* to the CoR and only granted it advisory status. Thus, the CoR was established with the complex task of combining ‘the whole diversity of sub-national interests in a consensus input

in EU policy solutions delivered in the form of nonbinding opinions to the Commission and the Council' (Domorenok, 2009: 144). The difficult position of the CoR is further aggravated by the fact that it represents a multitude of diverse sub-national interests, and is expected to simultaneously represent sub-national or regional parliaments with far-reaching and constitutionally protected legislative competences (e.g. the German regions) as well as, for instance, municipalities with restricted administrative powers. As a result, the CoR has faced the risk of internal conflicts, which has threatened to undermine its legitimacy. This situation has disillusioned some of the most influential members of the CoR, who have directed their efforts to other channels of defence of sub-national interests within the EU (Jeffery, 2002). Nonetheless, the CoR seems to have found an equilibrium in recent years and the Treaty of Lisbon has strongly reinforced the role of this EU body.

The European Commission, the European Parliament and the Council of the European Union are obliged to consult the CoR when legislating in a broad array of domains, including transport; employment; social policy; education, vocational training, youth and sport; culture; public health; trans-European networks; economic, social and territorial cohesion; environment and climate change; and energy (Art. 307 TFEU). In addition, the European Parliament, the Council or the Commission can decide to consult the CoR on any other area, especially in cases related to cross-border cooperation. As a general rule, the CoR may issue an opinion on its own initiative whenever it wants. As of 2010, the CoR has modified its Rules of Procedure to include an explicit reference to the subsidiarity and proportionality principles in all its opinions.<sup>26</sup>

Several agreements have been signed between the CoR and the decision-making institutions to organize their mutual cooperation. In 2001, a Protocol was signed with the European Commission. This Protocol was revised in 2005 and again in February 2012. It aims to strengthen cooperation and exchanges between the Commission and the CoR and to improve the implementation of the Protocol on the application of the principles of subsidiarity and proportionality.<sup>27</sup>

Relations between the CoR and the European Parliament have been more ambiguous. The latter used to be in the front line of placing regional and local questions on the political agenda of the EU (Warleigh, 2002). Furthermore, before it became a directly elected body in 1979, the European Parliament was composed of nominated members of the national parliaments. Against this background, the European Parliament seemingly feared that a competing body representing regional and local authorities might 'usurp some of the

[European Parliament]'s prerogatives with regard to regional and local issues' (Loughlin, 1997: 161). As a consequence, it was not easy to construct a dialogue between these two EU bodies. Nevertheless, in recent years, the CoR has launched a number of cooperation initiatives with the European Parliament.

The CoR has the right to contest EU draft legislative acts before the ECJ for possible infringement of the principle of subsidiarity that impinges on regional or local competences or its own institutional rights in policy areas in which consultation is required.<sup>28</sup> The former president of the Committee of the Regions has stated that:

We see this new right to challenge EU laws in court more as a deterrent than an actual threat. We are convinced that this new possibility will deepen our relations with other EU institutions and national parliaments. We will exercise this right with caution, but with great conviction in cases where we feel it is necessary to defend the subsidiarity principle in EU lawmaking. However, we hope that swift implementation of all Lisbon Treaty provisions, which reinforce subsidiarity already in the pre-legislative stage and during the adoption of new EU laws, will ensure that it never comes to that.<sup>29</sup>

So far, the ECJ has taken a minimalist approach to the subsidiarity principle (Biondi, 2012).

The enhanced competences and responsibilities with regard to subsidiarity have required the CoR to establish a continuous dialogue with national parliaments. Joint strategies had to be developed with these parliaments to apply the Protocol on the application of subsidiarity and proportionality and to consult effectively with representatives at the sub-national, local and regional levels, especially sub-national regional parliaments with legislative powers.<sup>30</sup> In 2004, a Subsidiarity Monitoring Unit was established by the CoR Secretariat General. This Unit gathers information and has set up contact points in the various regions of Europe. Moreover, the Unit coordinates the CoR's subsidiarity monitoring network, which permits sub-national regional and local actors to exchange information on the impact of EU legislative acts from a subsidiarity perspective.<sup>31</sup> By July 2012, the network consisted of 138 partners.<sup>32</sup> In 2011, it carried out targeted consultations on five Commission initiatives: the Connecting Europe Facility, Less Bureaucracy for Citizens, Review of EU Air Quality, Emissions Policy and Energy Efficiency, and Roma Integration.<sup>33</sup>

In addition, the CoR has created a ‘subsidiarity grid’ to provide its rapporteurs with a coherent analytical framework for the various impacts of subsidiarity to be considered when drafting opinions. Last but not least, the CoR has created a regional exchange database website (REGPEX) to support the subsidiarity analyses of sub-national or regional parliaments as part of the EWS and to provide a means to exchange information between regional parliaments and governments with regard to subsidiarity.<sup>34</sup>

## Early Warning System

The Lisbon Treaty aspires to ‘encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views on draft legislative acts ... as well as on other matters which may be of particular interest to them’.<sup>35</sup> The objective is to enhance the democratic legitimacy of the EU. To help national parliaments ensure the compliance of EU institutions with the principle of subsidiarity (art. 5, para. 3, TEU), the Treaty of Lisbon introduced the EWS, which is described in articles 6 and 7 of the 2007 Protocol on the application of the principles of subsidiarity and proportionality. In essence, national parliaments have eight weeks, starting from the date of transmission of the draft legislative act, to submit a reasoned opinion to the presidents of the European Parliament, the Council of the European Union and the European Commission if they consider that the draft infringes the principle of subsidiarity. Furthermore, as the Protocol makes clear, it is for each national parliament to consult, where appropriate, with regional parliaments where they have legislative powers.

There are no specific requirements on the procedure to be followed by national parliaments to establish their reasoned opinions, or on the form that these reasoned opinions should take. Nonetheless, in order to distinguish the political dialogue from the subsidiarity control mechanism, Commission President Barroso requested national parliaments in December 2009 ‘to distinguish in their opinions as far as possible between subsidiarity aspects and comments on the substance of a proposal, and to be as clear as possible as regards their assessment of a proposal’s compliance with the principle of subsidiarity’. As to the content of and the reason behind these reasoned opinions, Barroso assured national parliaments that the Commission will ‘consider all reasoned opinions raising objections as to the conformity of a legislative proposal with the principle of subsidiarity [...] even if the different reasoned opinions provide different motivations as to the non-compliance with the principle of subsidiarity’.<sup>36</sup>

The institutions from which the draft legislative act originates must take account of all reasoned opinions received. Moreover, article 7 of the Protocol states that if a certain proportion of national parliaments objects to a specific proposal within the eight-week deadline, the EU institution concerned is obliged to review its draft legislation. Whether the different thresholds are reached is calculated on the basis of the ‘votes’ expressed by the different national parliaments. It should be noted in this context that in principle each national parliament has two votes, except for bicameral parliamentary systems, in which each chamber can cast one vote. The total number of votes to be cast is therefore 54.

If reasoned opinions represent at least one-third of all votes, the draft must be reviewed by the institution from which it originates. The institution may decide to proceed with, amend or withdraw the draft, but it is required to justify its decision. This is the so-called yellow card procedure. In policy areas concerning freedom, security and justice, the threshold is a quarter rather than one-third of the votes of national parliaments.<sup>37</sup> There is also an ‘orange card’ procedure. If a *majority* of national parliaments considers that a draft legislative act infringes the subsidiarity principle, the proposal must be reviewed by the relevant institution. If it decides to maintain the proposal, the case is referred to the European Parliament and the Council of the European Union, which make their decision after the First Reading. They may reject the proposal on the grounds of an infringement of the subsidiarity principle by a 55 per cent majority in the Council or a majority vote in the European Parliament.

In 2011, the European Commission received 64 reasoned opinions from national parliaments (European Commission, 2012: 4). This is an increase of almost 75 per cent compared to the previous year, when the subsidiarity control mechanism was launched. These 64 reasoned opinions concerned 28 different Commission proposals, among which the two most discussed were the ‘Common Consolidated Corporate Tax Base’ (nine reasoned opinions) and the temporary reintroduction of border controls at internal borders in exceptional circumstances (six reasoned opinions). The most active national parliaments in this regard were the Swedish *Riksdag*, the Luxembourg *Chambre des Députés* and the Polish *Sejm and Senat*. The European Commission replied to each of these reasoned opinions in the context of the political dialogue.

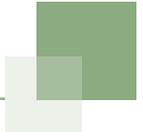
A number of observations can be made in this respect. At first sight, a major obstacle for parliaments involved in the EWS is the tight eight-week deadline. This difficulty is further aggravated by the amount of EU draft legislation proposed by the European Commission and sent to national parliaments.

The screening of all these documents in search of subsidiarity issues is very time consuming and difficult to organize for numerous national parliaments, and even more so for sub-national or regional parliaments. The parliament may lack the staff and financial resources to cope with such important work. Moreover, there may be a lack of political interest in national parliaments in engaging in the process. Most national parliaments have a classic majority/opposition structure, meaning that there is generally little space to modify government bills and that EU issues are not discussed when this is not politically profitable for parliamentarians. Despite these challenges, the introduction of the EWS is likely to lead a greater number of national parliaments to pay closer attention to the EU decision-making process.

It is interesting to note in this respect that the European Commission recently received its first ‘yellow card’ from national parliaments. On 30 May 2012, the College of Commissioners confirmed that the reasoned opinions received from 12 national parliaments’ chambers (Belgium, Denmark, Finland, France, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Sweden and the UK) on the so-called Monti II regulations<sup>38</sup> amounted to 19 votes—over one-third of 54, thus passing the threshold for the ‘yellow card’ procedure. On 12 September 2012, the EU Employment Commissioner announced the withdrawal of the proposal to the European Parliament’s Employment Committee.<sup>39</sup> The orange card has not been used so far.

An important novelty introduced by the Treaty of Lisbon is the opening up of the EWS to sub-national or regional parliaments in the EU member states, which has the potential to strengthen sub-national representation at the EU level.<sup>40</sup> The explicit mention—for the first time—of the role of sub-national or regional parliaments in an EU Treaty has given rise to many expectations. Although article 6 of the 2007 Protocol on the application of the principles of subsidiarity and proportionality does not oblige national parliaments to consult sub-national regional assemblies, but only permits them to do so,<sup>41</sup> in practice national parliaments are increasingly sending all EU draft legislative acts to those sub-national regional parliaments with legislative powers.

There are currently 75 sub-national or regional parliaments in Europe with legislative powers, established in eight EU member states: Austria, Belgium, Finland, Germany, Italy, Portugal, Spain and the United Kingdom. The sub-national or regional structures differ radically from one EU member state to another. Some member states, such as Germany, Belgium or Austria, are highly decentralized federal states. Next, there are decentralized regionalized states, such as Italy, where regions and provinces have legislative powers, and Spain,<sup>42</sup> where regions have legislative powers. Finally, there are asymmetrical



regionalized states, such as Finland, where, for historical reasons, only the Swedish-speaking Åland Islands have legislative powers; Portugal, where only the islands of the Azores and Madeira have legislative powers; and the United Kingdom, where the regions of Scotland, Wales and Northern Ireland each have different powers and status.

The changes brought about by the Lisbon Treaty have the potential to greatly enhance these parliaments' political participation in EU decision making, but sub-national or regional parliaments aspiring to closer involvement in the EWS still face several hurdles.<sup>43</sup> First, even if the national authorities are willing to cooperate with regional parliaments for the purpose of subsidiarity monitoring, there may still be certain legal and constitutional obstacles. A good example is the situation in Belgium, where the seven parliaments at the national and sub-national levels have drafted an inter-parliamentary cooperation agreement to organize the subsidiarity check according to the respective competences of each parliament and to distribute the votes among the parliaments. Political and constitutional objections, however, mean that the agreement has not yet entered into force.

Second, most sub-national or regional parliaments analyse EU draft legislative acts on a case-by-case basis. As a consequence, they need to develop an efficient mechanism for selecting acts that are relevant to them and that may potentially infringe the subsidiarity principle. Furthermore, the time allowed to regional parliaments to prepare a position on subsidiarity is very short, since they have to send it to the national parliament, which in turn must have an opportunity to consider it before the end of the eight-week deadline. Finally, some sub-national or regional parliaments show signs of disillusionment over the lack of efficiency and visibility of the EWS. Their work will only have a real impact if it is taken over by national parliaments and if the threshold of votes can be attained to trigger a yellow or orange card procedure.

These last two conditions are at first sight beyond the control of sub-national or regional parliaments. Nevertheless, a number of measures can be taken to cope with these difficulties. First, close cooperation is needed between the executives and the legislatures. Sub-national and national parliaments should amend or conclude cooperation agreements with the relevant governments. These governments may have more expertise and means to cope with subsidiarity monitoring. Consequently, they should help the parliaments to filter EU draft legislative acts and provide subsidiarity analysis. Moreover, they should inform the parliaments of the list of envisaged legislative initiatives according to the Commission's work programme. A right to full information exists in Austria for both chambers of the national parliament, and this constitutes an efficient early filtering system.

Second, specific cooperation measures should be set up for those member states with sub-national parliaments with legislative powers to ensure effective communication between parliaments and follow-up of the positions raised with the national parliament by sub-national parliaments. The establishment of a Conference of Presidents of sub-national regional parliaments, like those in Austria and Spain, might improve the horizontal exchange of information and coordination between these parliaments and enhance communication with the national parliament, especially in member states with numerous regional parliaments.

Third, from an internal perspective, it might be useful for the parliaments—whether national or sub-national—to assign responsibility for subsidiarity monitoring to a single Committee (e.g., an ‘EU Affairs Committee’). This centralization would certainly accelerate the process, since this Committee could rapidly develop its experience and a uniform procedure to efficiently monitor subsidiarity. Fourth, deadlines should be imposed on the different phases of the procedure. This idea has been implemented by the German Community in Belgium in new rules on subsidiarity checks and permits in order to accelerate the process.

Fifth, strong cooperation should be established among parliaments across the EU to exchange information on EU draft legislative acts and subsidiarity issues. This would help them individually identify potentially contentious proposals and prepare their positions. Furthermore, such cooperation could significantly enhance the number of positions raised and consequently increase the chances of attaining the thresholds to trigger the yellow or orange card procedures. The CoR could serve as a forum for the exchange of information between these national and sub-national parliaments. It set up a database (REGPEX) in February 2012 in order to facilitate these exchanges between sub-national regional parliaments.

In the 20 EU member states in which sub-national or regional parliaments do not have legislative power, a number of regional assemblies and other relevant stakeholders are involved—to various degrees—in the EWS. Diverse mechanisms have been set up by these regional assemblies and other relevant stakeholders to assess subsidiarity in EU draft legislation. Since these sub-national or regional assemblies have no legislative powers, they do not formally participate in the EWS. Nonetheless, they could be invited to express their opinion through informal channels, in the form of a consultation by the national parliament on EU draft legislative acts with a specific regional or local impact. Moreover, the delegation within the CoR could function as a consultation point. In some member states, the national committees that

assess subsidiarity issues hold their meetings in public, so that any interested parties, including regional or local authorities, can give their opinion on the subject. Finally, these regional and local authorities can defend their positions through European associations representing their interests.

## Conclusions

In recent years, a number of developments within the European treaties have highlighted a recognition by EU member states of the need to improve democratic representation within the EU in order to bring citizens closer to the EU. A fundamental evolution in this regard is the reinforcement of the subsidiarity principle by the Treaty of Lisbon and the enhanced competences and responsibilities granted to the CoR. This EU body represents regional and local authorities within the EU, but has only an advisory role and may not issue binding opinions. Nevertheless, the Treaty of Lisbon has given it the competence to bring cases to the ECJ for infringements of the principle of subsidiarity by an EU draft legislative act that impinges on regional and local competences or its own institutional rights in policy areas where consultation is required. This important competence has not yet been exercised, but it reveals an interesting evolution in the perception of the CoR within the EU.

Another important development is the creation of the EWS by the Treaty of Lisbon. This institutional mechanism permits national and sub-national or regional parliaments to oppose EU draft legislative acts that infringe the principle of subsidiarity by issuing reasoned opinions. If certain thresholds of support are attained, a yellow or orange card is triggered and the proposal must be amended or withdrawn. This important power constitutes the first recognition of the political participation of national and sub-national or regional parliaments within the EU. Yet, a number of obstacles and challenges could reduce its efficiency, not least the tight time frame of eight weeks within which these reasoned opinions must be issued. Moreover, as far as sub-national or regional parliaments are concerned, their position has to be transmitted to the national parliament, which then decides whether to include it in a reasoned opinion. Nevertheless, a recently triggered yellow card against a European Commission proposal demonstrates that the system is operational and that national and regional parliaments can and do express their opinions in the EU decision-making process.

Furthermore, certain recommendations could be made to both national and sub-national or regional parliaments to improve the efficiency of the EWS: they should develop and formalize cooperation with their corresponding

executive bodies in order to share information related to subsidiarity, and to speed up their analysis with regard to EU draft legislative acts. Similarly, sub-national or regional parliaments should cooperate with their national parliament in order to exchange information and ensure the effective follow-up of their positions at the national level and subsequently at the EU level. From an internal point of view, national and sub-national or regional parliaments should assign subsidiarity checks to an EU Affairs Committee, and impose strict internal deadlines on the different phases of the procedure. Finally, at the EU level, stronger cooperation among parliaments could improve the detection of potentially contentious proposals and help prepare positions. Such cooperation could significantly increase the number of positions raised and consequently increase the chances of attaining the thresholds imposed to trigger the yellow or orange card procedures. This could be coordinated by the CoR, through its REGPEX database. This database will provide information on contact points and the procedures established by regional parliaments to monitor subsidiarity.

The EWS provides a unique opportunity for both national and sub-national or regional parliaments to participate in the EU legislative process and to oppose any proposal that might contravene the subsidiarity principle. Although this system has already proved operational, certain improvements are needed in national and sub-national or regional parliaments' internal rules of procedure and through the conclusion of efficient agreements on cooperation with external actors at the sub-national, national and EU levels in order to significantly enhance the ability of national and sub-national or regional parliaments to intervene in the EU sphere of decision making.

## Notes

- <sup>1</sup> The Treaty of Amsterdam was signed on 2 October 1997 and entered into force on 1 May 1999.
- <sup>2</sup> The Treaty of Lisbon was signed on 13 December 2007 and entered into force on 1 December 2009.
- <sup>3</sup> Committee of the Regions, <<http://cor.europa.eu/en/about/Pages/key-facts.aspx>>.
- <sup>4</sup> Germany's *Länder* are well organized and the most independent regional entities in Europe, which explains why they were so keen to obtain influence at the EU level. See Suszycka-Jasch and Jasch, 2009: 1252.
- <sup>5</sup> Jose Manuel Barroso, European Commission President, quoted in <<http://www.cor.europa.eu/en/documentation/brochures/Documents/84fa6e84-0373-42a2-a801-c8ea83a24a72.pdf>>.

- <sup>6</sup> Prior to the Treaty of Lisbon, the EU was an entity supported by three pillars, the first consisting of the Community Treaties, the second consisting of the provisions on a Common Foreign and Security Policy and the third consisting of the provisions on cooperation in the fields of justice and home affairs. The EU constituted an overarching structure with a single institutional framework but the decision-making process varied from one pillar to another. Two separate treaties governed the EU: the TEC and TEU. These founding Treaties were reviewed on several occasions by EU member states, the most recent one being on 13 December 2007 with the signature of the Treaty of Lisbon. This Treaty abolished the pillar structure of the EU and replaced the European Community and the EU with a new EU with legal personality exercising both the former Community and non-Community competences. It did not, however, replace the existing treaties with a single treaty. As a consequence, EU action is still based on the modified TEU and on the TEC, renamed the TFEU. Both treaties are published in the *Official Journal* C 83 of 2010.
- <sup>7</sup> The Treaty of Maastricht, provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community, was signed on 7 February 1992 and entered into force on 1 November 1993.
- <sup>8</sup> Overall approach to the application by the Council of the subsidiarity principle and article 3b (now art. 5(3), TEU) (1992). This approach was adopted even before that Treaty provision entered into force.
- <sup>9</sup> Protocol on the application of the principles of subsidiarity and proportionality, Treaty of Amsterdam amending the TEU, the treaties establishing the European Communities and Related Acts, *Official Journal* C 340, 10 November 1997.
- <sup>10</sup> Protocol on the application of the principles of subsidiarity and proportionality, Treaty of Lisbon amending the TEU, the treaties establishing the European Community, *Official Journal* C 306, 17 December 2007.
- <sup>11</sup> For further discussion of these two principles see Lenaerts et al. (2011: 131–34).
- <sup>12</sup> According to article 3 of the TEFU, these areas are the customs union, the competition rules necessary for the functioning of the internal market, the monetary policy of the eurozone, conservation of marine resources and common commercial policy.
- <sup>13</sup> According to article 4 of the TFEU, these areas are the internal market, social policy, cohesion, agriculture and fisheries, the environment, consumer protection, transport, trans-European networks, energy, freedom, security and justice, and certain public health matters.
- <sup>14</sup> Nevertheless, the Commission continues to refer to these tests as part of its analytical framework.
- <sup>15</sup> Seven bodies have the status of ‘European institutions’: the European Parliament, the European Council, the Council of the European Union, the European Commission, the Court of Justice of the European Union, the European Central

Bank and the Court of Auditors. Next to these institutions, there are a number of other advisory bodies: the European Economic and Social Committee, the Committee of the Regions, the European Investment Bank and the European Ombudsman.

<sup>16</sup> This section presents a general description of the EU decision-making process, focused in particular on the integration of the subsidiarity principle by the EU institutions. For a detailed overview of the legislative process within the EU see Lenaerts et al. (2011: 645–85).

<sup>17</sup> Legislative acts can also be submitted to the ordinary legislative procedure on the initiative of a group of Member States, of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice of the European Union or the European Investment Bank. See Articles 289(4) and 294(15) TFEU.<sup>8</sup>

<sup>18</sup> This notion is defined in article 3 of the 2007 Protocol on the application of the principles of subsidiarity and proportionality as ‘proposals from the Commission, initiatives from a group of member states, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act.’

<sup>19</sup> These roadmaps are available at <[http://ec.europa.eu/governance/impact/index\\_en.htm](http://ec.europa.eu/governance/impact/index_en.htm)>.

<sup>20</sup> The European Parliament may also issue a proposal and in the area of Freedom, Security and Justice, a proposal may originate from the Commission or from a quarter of the member states. A request for the adoption of legislation may be presented by the ECJ or the European Investment Bank. Finally, the European Central Bank may issue a recommendation for a legislative act.

<sup>21</sup> According to article 4 of the Protocol on the application of the principles of subsidiarity and proportionality, all draft legislative acts and amendments have to be forwarded by the European Commission, the Council and the European Parliament to national parliaments.

<sup>22</sup> *Official Journal* C 329, 6.12.1993, p. 132.

<sup>23</sup> Council Decision 2009/937/EU, *Official Journal* L 325, 11.12.2009, p. 35.

<sup>24</sup> Rule 38a.

<sup>25</sup> This rule was inserted into the TEC by the Treaty of Nice. The Treaty of Nice was signed on 26 February 2001 and entered into force on 1 February 2003. Treaty of Nice amending the TEU, the treaties establishing the European Communities and certain related acts, *Official Journal* C 80/1, 10 March 2001. Currently, the provision governing this issue is Article 300, paragraph 3, TFEU.

<sup>26</sup> *Official Journal* L 6, 9 January 2010, p. 14.

<sup>27</sup> <<http://cor.europa.eu/en/about/interinstitutional/Documents/EN.pdf>>.

<sup>28</sup> Article 8 of the 2007 Protocol on the application of the principles of subsidiarity and proportionality.

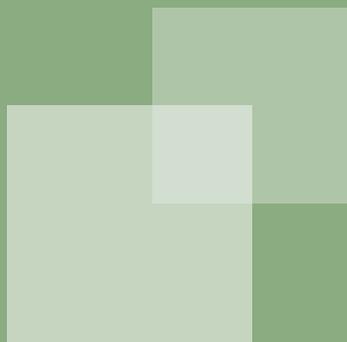
- <sup>29</sup> Press release, Committee of the Regions, CdR/09/12113 on 4 December 2009.
- <sup>30</sup> Committee of the Regions opinion on the application and monitoring of the subsidiarity and proportionality principles (2005).
- <sup>31</sup> ‘The network operates on several levels: enabling the political participation of local and regional authorities in monitoring implementation of the subsidiarity and proportionality principles, raising awareness of the practical application of the subsidiarity and proportionality principles, keeping Committee of the Regions rapporteurs and members abreast of input related to subsidiarity and proportionality emanating from a representative network of local and regional players, identifying measures for better lawmaking, cutting red tape and increasing the acceptance of EU policies by EU citizens’, <<http://www.cor.europa.eu/pages/EventTemplate.aspx?view=folder&id=66e2c45b-37a2-4598-a645-11d7fc19f462&sm=66e2c45b-37a2-4598-a645-11d7fc19f462>>. The network was established on the basis of two opinions of the Committee of the Regions: ‘Better Lawmaking’ (CdR 121/2005) by Michel Delebarre; and ‘Guidelines for the application and monitoring of the subsidiarity and proportionality principles’ (CdR 220/2004) by Peter Straub.
- <sup>32</sup> CoR, List of Partners, The CoR Subsidiarity Monitoring Network, available at <[https://portal.cor.europa.eu/subsidiarity/Documents/SMN%20-%20List%20of%20Network%20Partners/SMN%20-%20List%20of%20Network%20Partners%20-%20EN%20-%2010%20Jun%202013\\_MASTER%20LIST.pdf](https://portal.cor.europa.eu/subsidiarity/Documents/SMN%20-%20List%20of%20Network%20Partners/SMN%20-%20List%20of%20Network%20Partners%20-%20EN%20-%2010%20Jun%202013_MASTER%20LIST.pdf)>.
- <sup>33</sup> COM(2011)665, COM(2010)747, SEC(2011)342, COM(2011)370 and 173 respectively.
- <sup>34</sup> <<http://extranet.cor.europa.eu/subsidiarity/regpex/Pages/default.aspx>>.
- <sup>35</sup> Preamble to the Protocol to the Lisbon Treaty on the role of national parliaments in the EU.
- <sup>36</sup> <[http://ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/np/index\\_fr.htm](http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/np/index_fr.htm)>.
- <sup>37</sup> Article 7, para. 2 of the 2007 Protocol on the application of the principles of subsidiarity and proportionality.
- <sup>38</sup> Commission proposal for a Council regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services, COM(2012)130.
- <sup>39</sup> For further information see <<http://www.euractiv.com/fr/node/514793>>.
- <sup>40</sup> CoR study on the Subsidiarity Early Warning System of the Lisbon Treaty – the role of regional parliaments with legislative powers and other subnational authorities (drafted by the Leuven Centre for Global Governance Studies (Pierre Schmitt, Tom Ruys and Axel Marx) in consultation with the Edinburgh Institute of Governance (Charlie Jeffery, Wilfried Swenden, Niccole Pamphilis and Barbara Gaweda), 2013, available at <<http://cor.europa.eu/en/documentation/studies/Documents/subsidiarity-warning-system-lisbon-treaty.pdf>>.

- <sup>41</sup> See the analysis by the British House of Lords, ‘House of Lords: How will the Lords EU Committee operate these new powers?’, available at <<http://www.parliament.uk/documents/lords-committees/eu-select/subsidiarity/use-new-powers.pdf>>.
- <sup>42</sup> For a detailed description of Spanish regional parliaments’ policies toward subsidiarity see De León (2012: 305–22).
- <sup>43</sup> These observations are partly drawn from the CoR study on ‘The Subsidiarity Early Warning System of the Lisbon Treaty – the role of regional parliaments with legislative powers and other subnational authorities’ drafted by the Leuven Centre for Global Governance Studies (Pierre Schmitt, Tom Ruys and Axel Marx) in consultation with the Edinburgh Institute of Governance (Charlie Jeffery, Wilfried Swenden, Niccole Pamphilis and Barbara Gaweda), 2013, available at <<http://cor.europa.eu/en/documentation/studies/Documents/subsidiarity-warning-system-lisbon-treaty.pdf>>.





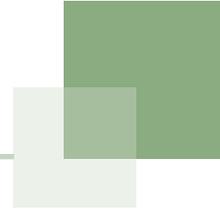
# Conclusion



## Conclusion

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By Raul Cordenillo and Karin Gardes



Recognition that regional organizations are at times better placed than national institutions or other international organizations to address transnational issues has resulted in the expansion of their mandates and areas of responsibility. These include various economic, political and social issues, such as trade, finance, human rights, democracy, conflict prevention and resolution, disaster management and public health.

Alongside these expanded mandates and areas of responsibility are the increasingly vocal calls by citizens to not only be consulted, but also to participate in the decision-making processes of regional organizations. Citizens increasingly demand that their voices are heard and taken into consideration in the initiatives and policies of regional organizations.

This combination of expanded mandates and active demands by citizens is the reason why efforts to support more inclusive political participation and representation are increasingly among the objectives and priorities of regional organizations today. The benefits of engaging with citizens in the formulation, implementation and assessment of regional initiatives and policies are widely recognized. By allowing citizen participation in the formulation of regional initiatives and policies, the likelihood of these initiatives and policies reflecting the collective perceptions and needs of all citizens increases dramatically. In addition, involving citizens in the implementation of such policies ensures accountability and responsiveness. Critically, inclusive political participation and representation by citizens ensures the legitimacy and credibility of regional organizations and their member states.

Three areas in which regional organizations promote and encourage inclusive political participation and representation are engagement with civil society and other stakeholders, the promotion of gender equality and gender mainstreaming, and recognition of parliamentary representation at the regional level. This publication highlights the respective mandates, experiences and lessons learned by regional organizations in these three areas.

## Civil society and stakeholders

Their mandate to promote inclusive political participation and representation puts regional organizations in a position to engage with civil society organizations (CSOs) and stakeholders. This mandate, in particular, is an expression of the political will and commitment of the member states of these regional organizations to be more inclusive and to engage with the citizens of their member states. An example of this can be found in the Association of Southeast Asian Nations (ASEAN) Charter, which provides that one of the purposes of ASEAN is to ‘promote a people-oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building’.

Such a mandate also allows regional organizations to involve their member states in their work in this field. In the case of the Organization of American States (OAS), its General Assembly encourages its member states to report on existing procedures and regulations regarding consultations with civil society and other social actors. It also mandates the OAS General Secretariat to continue to support member states in their efforts to increase the institutional capacity of their governments to receive, integrate and incorporate civil society input and advocacy. In the case of the Pacific Islands Forum (PIF), there is equal recognition of the importance of developing and building civil society consultation on regional issues at the national level. This enables representatives of the PIF member states to deliberate on these issues with their national stakeholders and not just at the regional level.

The best way to ensure implementation of the mandate is through institutionalization of engagement with civil society and stakeholders. Such institutionalization could involve the establishment of regional mechanisms like the Register of Civil Society Organizations in the OAS, which is considered an invaluable instrument that has helped to build mutual trust between CSOs and member states. This mechanism has enabled the OAS to obtain more substantive feedback from civil society on topics such as anti-corruption measures and security. Allowing for these consultative mechanisms has enabled the OAS to address many cross-cutting issues, such as gender and marginalized groups, which include Afro-descendants, indigenous peoples, children and adolescents, and people with disabilities, among others.

Another way of institutionalizing consultation with CSOs is regular meetings between civil society and the regional organization, which facilitate the input of civil society into the policy agenda and future discourse of regional organizations. This is clearly the case for ASEAN-ISIS, which is one of the



eminent think tank networks in the region that contributes significantly to promoting multilateral political and security cooperation within and outside ASEAN, as well as to promoting democracy through its support for ASEAN's Political and Security Community, and its support and advocacy for human rights protection and promotion in Southeast Asia, in particular.

It should be noted that institutionalization would require the secretariats of regional organizations to strengthen and build their capacity to manage relations with civil society and stakeholders. In addition to designating dedicated units or officers, as is the case for the PIF and the OAS, the necessary resources should also be in place. This is especially the case when civil society has limited resources to engage with regional organizations. One way to address this problem is the establishment of a dedicated fund for civil society engagement.

Ultimately, in order to promote civil society engagement, regional organizations should communicate effectively with their stakeholders. Certainly, an effective communications strategy that is proactive and delivers relevant and meaningful information in real time to civil society is an essential part of promoting inclusive political participation and representation. For example, the European Economic and Social Committee, which is the consultative body of the European Union (EU), uses its web portal to present its initiatives and communicate with stakeholders. They also have a 'take part' tab, which provides information on how citizens can get involved in the work of the committee.

## **Promoting gender equality and gender mainstreaming**

An effective communications strategy is particularly important in the case of promoting gender equality and gender mainstreaming, where awareness raising on gender issues is a crucial starting point for building the policy framework for promoting gender equality. This is how the EU has made advances in its work on gender: from consciousness raising, to building a gender policy community, to professionalizing efforts at gender equality and institutionalizing gender mainstreaming. The EU institutions—the European Commission and the European Parliament—played a central role in promoting gender mainstreaming. Based on the experience of the EU, other regional organizations such as the South Asian Association for Regional Cooperation (SAARC) and the League of Arab States could build on their existing regional bodies and initiatives to strengthen recognition of the challenges of addressing gender issues in their respective regions.

A comprehensive and holistic gender policy should secure and reflect the political will and commitment of the member states of regional organizations to address gender inequalities. It should also identify a strategy to achieve qualitative and quantitative targets while, at the same time, avoiding any duplication with efforts taking place at the national level.

As in the case of civil society engagement, it is equally important that efforts to promote gender equality are institutionalized in the regional organization. This includes not only a high-level/ministerial body to oversee its implementation, but also a dedicated unit or officer in the secretariat of the regional organization itself. Such a unit or officer could also promote the mainstreaming of gender in the regional organization while, at the same time, advocating best practice.

It should be pointed out that effective monitoring and evaluation systems need to be designed to assess progress in achieving gender equality goals and learn lessons for future action. In this context, careful attention must be paid to developing gender-sensitive indicators to measure the progress made. Importantly, positive recognition must be given where it is due. By doing so, awareness is raised within the regional organization of the need to work towards full gender equality and systematic gender mainstreaming, and allies and fellow advocates can be found and encouraged.

## **Parliamentary representation at the regional level**

Participation by representatives of the citizens, that is, parliamentarians, in the work of regional organizations is increasingly being recognized as crucial to ensuring the legitimacy of regional bodies. As regional organizations undertake regional integration, whereby—through the principle of subsidiarity—their member states cede or delegate part of their sovereignty, legitimacy through popular representation becomes central. Effective institutions must be set up to manage these delegated competencies and responsibilities. Such institutions should ensure that the interests of the citizens are taken into account—and that those elected by the citizens are better placed to safeguard these interests.

The case of the European Parliament, which is a directly elected legislative body in the EU, is a clear example. This is also the model for the Pan-African Parliament (PAP) of the African Union. In its current state, however, the PAP has only an advisory function and has focused its efforts on promoting political diversity and gender representativeness in its composition.



In addition to the direct election of parliamentarians to the European Parliament, the EU has allowed a voice for its regional and sub-national bodies through the Committee of the Regions (CoR). This is a recognition by EU member states of the need to improve democratic representation in its institutions. Although the CoR plays only an advisory role and cannot issue binding opinions, the Lisbon Treaty has empowered it to bring cases of infringement of the principle of subsidiarity to the European Court of Justice.

Parliamentary bodies and assemblies can complement and support the work of regional organizations. When they are set up, however, regional organizations and their member states must have an understanding of their structure and the human and financial resources that they will require in order to function properly. Moreover, their inclusion in regional integration efforts should be considered in the broader light of allowing citizen participation in the work of regional organizations. At the same time, citizens must be made aware that their parliamentarians also represent their interests at the regional level.

## **The way forward**

Initiatives and policies by regional organizations are evolving to promote inclusive political participation and representation. These include the introduction of new mandates or the establishment of new mechanisms. This dynamic is just one reflection of the importance attached to citizen engagement. It also highlights the growing experience and expertise of regional organizations in this area.

The Inter-Regional Dialogue on Democracy endeavours to capture these experiences, build on the lessons learned and facilitate exchange among regional organizations in this area. In so doing, it can also help regional organizations in their democracy-building efforts. This publication is the second in a series that shows democracy in action at the regional level.

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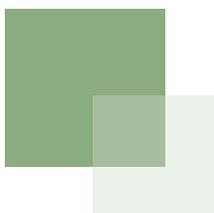
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## About International IDEA

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### **What is International IDEA?**

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide.

The objectives of the Institute are to support stronger democratic institutions and processes, and more sustainable, effective and legitimate democracy.

### **What does International IDEA do?**

The Institute's work is organized at the global, regional and country levels, focusing on the citizen as the driver of change.

International IDEA produces comparative knowledge in its key areas of expertise: electoral processes, constitution building, political participation and representation, and democracy and development, as well as democracy as it relates to gender, diversity, and conflict and security.

International IDEA brings this knowledge to national and local actors who are working for democratic reform, and facilitates dialogue in support of democratic change.

In its work, International IDEA aims for:

- increased capacity, legitimacy and credibility of democracy;
- more inclusive participation and accountable representation; and
- more effective and legitimate democracy cooperation.

### **Where does International IDEA work?**

International IDEA works worldwide. Based in Stockholm, Sweden, the Institute has offices in Africa, Asia and the Pacific, Latin America and the Caribbean, and in the West Asia and North Africa regions.