A Human Rights Mechanism for South Asia
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FORUM-ASIA is a membership-based regional human rights organisation committed to the promotion and protection of all human rights including the right to development.

FORUM-ASIA was founded in 1991 in Manila and its regional Secretariat has been located in Bangkok since 1994. At present, FORUM-ASIA has 46 member organisations across Asia.

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Asian Human Rights DEFENDER

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Greetings from Bangkok!

I am happy to share with you the latest issue of the Asian Human Rights Defender.

Our main focus for this issue of the Asian Human Rights Defender is our recent efforts to push for the creation of a regional human rights mechanism within the South Asian Association for Regional Cooperation (SAARC) community. We have initiated this discussion in hoping to generate momentum on this subject, even as the newly-established ASEAN Inter-Governmental Commission on Human Rights (AICHR) is still slowly unfolding its wings to be able to perform up to expectations amidst severe limitations in mandate and context.

The main activities conducted towards this goal are the "First Sub-regional Workshop on a South Asian Human Rights Mechanism" held in Kathmandu in March 2010, and the workshop on “Establishing Regional Human Rights Mechanism in South Asia” during the People’s SAARC parallel civil society activities to the 16th SAARC summit in April.

FORUM-ASIA together with its members in this sub-region initiated this advocacy agenda because of the firm belief and long standing advocacy of the necessity of regional human rights mechanisms to complement and strengthen the international human rights system as enshrined in the Vienna Declaration and Plan of Action in 1993. We warmly welcomed the speech of Maldives President Mohamed Nasheed, who also called for the establishment of a such a mechanism during the 16th SAARC Summit.

More importantly, we believe that South Asia’s human rights situation demands a region-specific response from this community of states, especially on transboundary issues requiring the collective cooperation of states in the region, such as trafficking, migration, climate change, smuggling of arms, etc. Conflict and discrimination are two major areas that can be addressed by a mechanism specific to this sub-region. Nationally, ongoing or recently concluded armed conflicts have caused crises of democracy in almost all countries the region, and also long lists of cases of violations crying out for truth, accountability and justice which echo yearly in the UN system. Culturally, the issue of caste, ethnic, gender and/or religion-based discrimination contrasts starkly with claims of political and economic progress among countries in the region.

But to be able to create such a mechanism, SAARC itself, like ASEAN, should first formalise as a regional organisation. Overcoming traditional political dynamics among its member states is the biggest obstacle in achieving this goal. As the biggest country in terms of population and economy, the onus for this initiative is with India.

After hurdling this obstacle, it might be argued that the possibility for creating such a mechanism is not all that remote, and perhaps with a greater possibility than in Southeast Asia before 2005. Proportionally there are more democracies (at least as far as conducting direct elections) in South Asia, a bigger number of national human rights institutions, and more ratifications and signatures to international human rights treaties. While it is a separate matter to evaluate how deeply democracy and human rights norms are practised by SAARC countries or are actually experienced by the region’s diverse peoples, these formalities can be considered a good starting point.

This initiative relies on the support and push from South Asia’s vibrant civil society community, including the community of human rights defenders that have long demanded for a mechanism in the region. We shall join hands with them, and our partners elsewhere, in this advocacy agenda.

With the other articles on our other advocacies at FORUM-ASIA, we hope this issue would, in one way or another, help you understand our work and its mission to build Asian solidarity to promote and protect all human rights for all. Thank you to all our contributors.

Yap Swee Seng
Executive Director
Establishing a Robust Regional Human Rights Mechanism in South Asia

by Surya Deuja

South Asia, as one of the most polarized and poverty ridden regions in the world, is grappling with violations and abuses of human rights. On the one hand, governments in this region lack effective initiatives in fulfilling their obligation to respect, protect and promote human rights. They have refused to address the regional political situation, illiteracy and poverty, which are some of the root causes of impunity, and lack of good governance and transparency prevalent in South Asian countries. Moreover, internal conflicts and state anti-terror measures have resulted in violations of human rights by the state and abuses by non-state actors. On the other hand, there is growing realization that the attainment of human rights is achieved through the continuous struggle of the people for democratic rights.

However, there is no regional human rights mechanism for the entire Asian region, unlike those existing in other parts of the world such as Europe, Latin-America and Africa. In another part of the region, the successful establishment of a human rights body for the Association of Southeast Asian Nations (ASEAN), driven in part by the long efforts of the human rights defenders, has generated debate and discussion regarding the need for a regional mechanism in South Asia.

SAARC

The South Asian Association for Regional Cooperation (SAARC) was established in 1985 with the objective of promoting regional cooperation between seven South Asian countries—Bangladesh, Bhutan, India, Nepal, Maldives, Pakistan and Sri Lanka. However, continuing tension and hostilities between different countries of the region resulted in very little progress in terms of improving exchanges, trade and commerce. SAARC has not been able to achieve its basic objective of promoting the regional cooperation. The regional organization could not even hold its summits every year as stated in its Charter. The 2010 SAARC Summit in Bhutan was only its 16th summit despite having existed for 25 years.

In the name of national security and economic considerations, the governments in South Asia had been unwilling to focus their attention on human rights. They would rather look at the development and economic agenda at SAARC and other inter-governmental forums. The SAARC countries have already signed several conventions on narcotics, combating trafficking in women and children for prostitution, promotion of child welfare, among other areas (See article entitled “SAARC and human rights”). Similarly, several agreements have been signed on food security and specific social issues. However, there is no regional agreement which specifically focuses on human rights.

The interventions of the vibrant civil society movement of South Asia have contributed to increased awareness on human rights, including documentation of the violations com-
mitted by governments. However, concerted and consistent efforts are necessary from the civil society organizations and other key stakeholders to establish regional and sub-regional institutions and mechanisms for the promotion and protection of human rights. Therefore, there is a need for debate and discussions to establish such mechanisms in South Asia.

Ratification of International Human Rights Law

Majority of the SAARC member states have yet to ratify the optional protocols (OP) to the International Convention on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which would enable the respective bodies to receive individuals complaints on violations of these treaties. Only Maldives and Nepal have ratified both optional protocols, while Sri Lanka has ratified only the CEDAW OP. Among the SAARC countries, Bhutan has still not ratified the ICCPR, the International Convention on Economic, Social and Cultural Rights (ICESCR), and the Convention against Torture (CAT). Sri Lanka is the only member to have ratified the Convention on the Rights of Migrant Workers (CMW). Only Nepal has ratified the Second Optional Protocol to the ICCPR aimed at the abolition of the death penalty.

As for ratified treaties, implementation has been restricted by reservations of some countries, following narrow interpretation of treaties related to the civil and political rights, and limited willingness to implement economic, social and cultural rights and specific treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). None of the SAARC members except Nepal has officially ratified the ILO’s Indigenous and Tribal Peoples Convention (No. 169) which guarantees the “effective protection of [indigenous and tribal peoples] rights of ownership and possession” of land.

On the positive side, Bangladesh has recently ratified the Rome Statute, making it the youngest member of the International Criminal Court (ICC). Pakistan also ratified the ICESCR in 2008 and recently ICCPR, but has yet to do so for CAT. Of the seven south Asian countries, only Pakistan and Bhutan do not have National Human Rights Institutions (NHRIs).

Other Regional Mechanisms

Regional human rights mechanisms exist in Europe, the Americas and Africa. Regional instruments are regarded to be an appropriate complement to the universal human rights instruments of the United Nations. These agreements, for example, give due to consideration for cultural similarity within regions. Regional mechanisms can also strengthen human rights protection and promotion when States agree to be bound by decisions of regional judicial bodies like the European Court of Human Rights.

There are many variations among the different regional human rights systems. Still, a typical system comprises a charter, a commission and/or a court. In 1990, Asia-Pacific governments carefully examined three regional experiences of the African, European and Inter-American arrangements and noted five aspects on which regional systems differ:

1. the extent to which they go further and adopt even more stringent standards than the international system;
2. the extent to which the standards and decisions are binding upon States or are merely persuasive;
3. the extent of limitations allowed in the interests of national security or in declarations of States of emergency, such as the European system’s power of judicial review to determine whether an emergency exists or not;
4. what happens in situations of conflict between national law and regional law, where usually, the latter would prevail;
5. the extent of access and inputs that non-governmental organization (NGOs) have.

Recently, the recent success of Southeast Asia in establishing the ASEAN Intergovernmental Commission on Human Rights (AICHR) generated inspiration to the human rights defenders in other parts of Asia to advocate for other sub-regional human rights mechanisms.

Initiatives for a Regional Mechanism in Asia

There has been number of initiatives in Asia to establish a regional human rights mechanism. For instance, representatives of NHRIs and NGOs from the Asia Pacific region met in Sri Lanka in 1999 to discuss future cooperative efforts. The Workshop through the Kandy Declaration on Cooperation between NGOs and NHRIs recognized the “crucial importance of cooperation... in accordance to the Universal Declaration of Human Rights, international human rights instruments and the Vienna Declaration.” The Kandy Program of Action set out detailed structures and mechanisms of cooperation and outlined strategies for NGO-NHRI collaboration in the fields of education, complaints and investigations, public enquiries, relations with legislatures, legislation and the establishment of new national institutions. Since Kandy, NGOs from the Asia Pacific region have used the occasion of the Asia Pacific Forum of National Human Rights Institutions (APF) annu-
al meeting to hold parallel regional conferences on human rights and NHRIs in the Asia Pacific.

The establishment of the AICHR has inspired representatives of human rights NGOs in South Asia to push for a regional mechanism for South Asia through the Kathmandu Declaration 2010 ‘to call on the governments of South Asia to establish an independent, effective and accountable regional human rights mechanism with an explicit mandate of promoting, protecting and fulfilling human rights, through a process of wide consultation with NGOs and people’s movements at national and regional level”. Similarly, civil society organizations organizing parallel events under the People’s SAARC are launching various activities for the regional mechanism at SAARC level.

President Mohamed Nasheed in his address at the inaugural session of 16th SAARC Summit in Thimpu, Bhutan has proposed that ‘SAARC should consider establishing a regional human rights mechanism’.

Establishing a regional mechanism in South Asia

A robust human rights mechanism is necessary for the protection and promotion of human rights in the region especially on common human rights issues including rights of the migrant workers, human trafficking, minority rights and right to development. Such a mechanism could provide a less costly, more accessible and effective redress alternative to existing international processes and procedures. Some of the major opportunities that could be addressed by a regional mechanism are as follows:

- Overcome procedural and institutional weaknesses and shortcomings of some domestic jurisdictions and the international system.
- Overcome the lack of expertise and experience in human rights jurisprudence.
- More effective implementation and enforcement of human rights norms and standards.
- Draw on the concepts and values which are integral to the intellectual and religious traditions and world-views of South Asia.
- Address regional human rights problems (e.g. trafficking, refugees and displaced persons, migrant workers) more effectively.
- Establish credibility which would stem from being drawn up by governments, scholars, lawyers and civil society representatives of the region.
“On the issue of democracy and human rights, it is pleasing to note that South Asia is now a region of democracies. However, we all face challenges consolidating democracy and strengthening human rights.

“I believe SAARC should consider establishing a regional human rights mechanism, similar to the one being developed for the ASEAN region.

“This mechanism could help States promote and protect rights and freedoms in their jurisdiction.

“It could ensure that international human rights laws are observed and implemented by SAARC members.

“And such a mechanism could help people in our region develop a common understanding of universal human rights issues and perspectives.”

Quoted from the speech of Maldives President Mohamed Nasheed at the inaugural session of the 16th SAARC summit in Thimpu, Bhutan.

There are enormous challenges in establishing human rights mechanism in South Asia because of the legal and geo-political hurdles. The politics of the South Asia have been affected heavily by the continuing tensions in the Indo-Pakistan relations. Similarly, there are number of issues in South Asia—such as water, migrant workers, trafficking, minority and indigenous community, refugees and border disputes—which are also contentious issues which need to be settled through bilateral and multi-lateral mechanisms. Climate change and ecological degradation have become threats common to the region, not to mention the rest of the planet.

In this context, working towards establishment of the regional mechanism in South Asia will be a long and difficult journey. However, it is the high time for the region’s vibrant civil society to have collective voice for the regional mechanism. The international community, including the United Nations Office of the High Commissioner for Human Rights (OHCHR) and European Union (EU), should play supportive role for the establishment of the regional mechanism in South Asia in order to address the regional human rights issues and concerns.

Conclusion

SAARC’s commitment to protecting human rights is not supported in the SAARC Charter and other regional documents, except partially in two conventions related to trafficking and the welfare of the children. However, human rights organizations and activists must be wary of calling for regional human rights instruments and mechanisms because it might allow states to set standards far below those available in international mechanisms, and will lay the ground for the whittling down of rights and protections available to the people of the region.

SAARC has regional agenda and mechanisms on development related matters but it is high time for SAARC to have one focused agenda for a human rights mechanism. Regional human right organizations should continue pushing the agenda for regional human rights mechanism at the national, regional and international forum through concerted effort, shared vision and common strategies.
We, the seventy representatives of non-governmental organizations and people’s movements from Bangladesh, Bhutan, India, Indonesia, Malaysia, Nepal, Pakistan and Sri Lanka at the first Sub-Regional Workshop on a South Asia Human Rights Mechanism, gathered together in Kathmandu, Nepal from 24 – 25 March, 2010, with the participation of representatives from OHCHR, to critically discuss the prospects and strategies of advancing human rights promotion and protection through regional cooperation towards the establishment of South Asian human rights mechanisms.

Reaffirming the long tradition and history of the people’s movements and non-governmental organizations in South Asia struggling for democracy, human rights, justice and peace, including various initiatives under the People’s SAARC process in holding governments of SAARC accountable;

Taking note that the SAARC Charter adopted on 8th December 1985, expresses in Article 1 the vision of promoting peace, stability, amity and progress in the region; and in Article 3 awareness of the common problems, interests and aspirations of the peoples of South Asia and the need for joint action and enhanced cooperation within their respective political and economic systems;

Taking note that Article 4 of the SAARC Charter stipulates as one of the objectives of the SAARC promotion of the welfare of the peoples of South Asia and the improvement of their quality of life;

Welcoming the promotion of universal respect for observance and protection of human rights and fundamental freedoms for all, in particular the right to development, gender equality, welfare and interest of children and youth, promotion of social integration and strengthening of civil society as stipulated in Article 2.xii. of the Social Charter of SAARC adopted on 4th January 2004;

Recalling the adoption of the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, SAARC Convention on Regional Arrangement for the Promotion of Child Welfare in South Asia, Agreement on Establishing the SAARC Food Security Reserve;

Recalling the UNGA Resolution 32/127(1977) and Commission on Human Rights Resolution 24 (XXX-IV) (1978) on the appeals to States in areas where regional arrangements in the field of human rights do not yet exist to consider agreements with a view towards the establishment within their respective regions of suitable regional machinery for the promotion and protection of human rights;

Recalling the Vienna Declaration and Plan of Action (1993) which SAARC member states endorsed, reiterated the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist;

Taking note that the SAARC governments will be meeting for the 16th SAARC Summit to be hosted by the Bhutanese government in Thimpu, on the 28th and 29th April 2010;

Taking note that the next inter-governmental meeting of the Asia Pacific Framework on Regional Arrangement on the Promotion and Protection of Human Rights will be organized by the Office of the High Commissioner for Human Rights, and to be hosted by Thailand government in Bangkok on 21-23 April 2010;
Expressing grave concerns that widespread and systematic human rights violations, inter-state and intra-state conflicts continue to plague the region and hinder the enjoyment of peace, justice, democracy and a better quality of life by the peoples in the region;

Welcoming initiatives of Nepali Human Rights NGOs through the Magna Meet held on 10 December 2009 for the establishment of regional human rights mechanism in South Asia;

Recalling that SAARC countries continue to affirm the universal principles and values of human rights in a number of international instruments and in SAARC summit declarations and are obliged to respect those principles, including the right to health, education, food, water, development, and to be free from trafficking with specific reference to women, children, youth, and migrant workers.

Recognizing the need for SAARC to adopt a rights-based and gender-sensitive approach to the elimination of all forms of discrimination, including religious intolerance.

Noting that SAARC must address pressing multilateral issues that includes hunger, unemployment, and violence against women and children.

Resolved in the meeting:

- for the need to further strengthen the cooperation and solidarity among human rights organizations, non-governmental organizations and people’s movements of South Asian countries on a shared vision for the protection and promotion of human rights in the region;
- to support peoples’ processes in the region in strengthening people to people solidarity in order to make SAARC governments accountable and to work in cooperation with these peoples’ processes;
- to continue the work towards the establishment of an effective regional human rights network among the civil society and an independent and effective regional human rights mechanism to address human rights challenges faced by the countries in the region;
- to establish a working group to develop common strategies and effective cooperation among non-governmental organizations and people’s movements on capacity building, collective advocacy, lobby and joint strategies towards the establishment of a regional human rights mechanism in the region and to continue encourage more groups, including marginalized communities, to participate in the process;
- to call on the governments of South Asia to establish an independent, effective and accountable regional human rights mechanism with an explicit mandates of promoting, protecting and fulfilling human rights, through a process of wide consultation with non-governmental organizations, people movements at the national and regional level;
- to call on the national human rights institutions in Bangladesh, India, Nepal, Sri Lanka, Maldives and Afghanistan to forge closer and more systematic cooperation among themselves to address cross-border human rights violations and support the development of regional human rights mechanism in South Asia;
- to call on Pakistan and Bhutan to form as soon as possible national human rights institutions in conformity with the Paris Principles.
**SAARC and Human Rights**

Ratification of UN human rights treaties by SAARC member states

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**Total Ratification by treaty**

Most Ratifications: Bangladesh (12 out of 18 treaties)

Least Ratifications: Bhutan (3)

Most Ratified Treaties: CEDAW, CRC (all 8 countries)

Least Ratified Treaty: Convention on Enforced Disappearances (0, with 2 signatures)

Most Signatures (not ratifications): Pakistan

Countries with a National Human Rights Insititution: Afghanistan, Bangladesh, India, Nepal, Sri Lanka (5)

Elections: India (population 1.2 billion) is most populous country in the world that holds direct elections. Bhutan (population 691,000) held its first elections in 2008; it was previously an absolute monarchy.
### SAARC Conventions and Agreements

**SAARC Conventions**
- SAARC Convention on Combating and Prevention of Trafficking in Women and Children for Prostitution
- Convention on Promotion of Welfare of Children
- Convention on Mutual Assistance on Criminal Matters, July 2008
- SAARC Convention on Narcotics Drugs
- SAARC Regional Convention on Suppression of Terrorism
- Additional Protocol on Terrorism, Jan 2004

**SAARC Agreements**
- Agreement for establishment of SAARC Arbitration Council
- Final Agreement on Avoidance of Double Taxation
- Final Agreement on Customs Matters
- Charter of the SAARC Development Fund (SDF)
- Agreement on establishing the SAARC food bank
- Agreement on South Asian Free Trade Area (SAFTA)
- Agreement on the Establishment of South Asian Regional Standards Organisation (SARSO)
- Agreement on Avoidance of Double Taxation

Only one of the 14 SAARC conventions and agreements can be considered a human rights mechanism.

Most conventions relate to cross-border issues and cooperation related to crime.

All agreements relate to economic matters.

The full texts of these agreements and conventions can be found at [http://www.saarc-sec.org](http://www.saarc-sec.org).

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The people of South Asia share a contiguous geographical space, social and cultural history that shapes the people’s lifestyles, belief systems, cultural specialties, material practices and social relationships in the region. Therefore, these belief systems and cultural practices have been influenced by each other. It is unfortunate that the rulers of countries of this region have kept the people apart through the creation of walls of suspicion, hostility, intolerance, dis- and misinformation and the prevention of interaction amongst the people in order to maintain control over their societies. This has resulted in fraudulent legitimization of the system of operation and exploitation. This system also creates ideal conditions for the advancement of paranoia, war hysteria, and militarization, proliferation of nuclear weapons and dominance of the security forces along an ultra-nationalist ideology, which self-righteously curbs the democratic debate and dissent on many vital issues.

The establishment of the South Asian Association for Regional Cooperation (SAARC) was expected to overcome the traditional geographical hostilities, rivalries, and conflicts as well as to create a culture of friendship, mutual trust, mutual understanding, confidence and economic cooperation between the countries of this region.

The people welcomed the formation of SAARC across the region as it aroused the hopes and aspiration amongst them for a better South Asia. It was hoped that SAARC would enhance inter-people linkages to build a vibrant socio-political region. People dreamed of a new era of prosperity of qualitatively more humane, egalitarian, secular, democratic, ecologically balanced, socially just and sustainable South Asia. However, contrary to expectations, the SAARC failed to fulfill the promised goals of a better South Asia. Instead, economic policies pursued by ruling classes and parties of the region created a condition of exclusion and marginalization, and denial of rights, justice and democratic freedom for the majority of the masses in the region. Consequently, South Asia and its people now stand at a critical crossroads in the very testing history of the region. The logic and the trust of its policies and programs have led to the surrender of the sovereignty of the peoples, including their economic, social and cultural rights.

The present crisis calls for a new response. The regionalization of South Asia and its people, buttressed by the Structural Adjustment Policies (SAP) spell doom on the economic front. It represents a threat to democracy and unleashes the demon of communalism, thus increasing disparity and discrimination. It erodes livelihood opportunities, withdraws existing services and facilities, and instead encourages militarization and gender violence, bringing forth social and cultural deprivation. This process further reinforces and reconstitutes the older form of exploitative and oppressive structures in innovative forms. All this is of course, in the name of progress, modernization and reform.

Thus, with the official SAARC being unable to fulfill its promises, the idea of People’s SAARC floated almost a decade ago. The South Asian Alliance for Poverty Eradication (SAAPE) and other like-minded organizations discussed and deliberated in several form on this idea and on the nature, role and objectives of the People’s SAARC.

People’s solidarity in South Asia must legitimately cherish the vision...
and perspective of an alternative political, social, economic and cultural system in the region which will do away with all the discrimination associated with gender, caste, religion, language and ethnicity. Solidarity will lead to a situation free from exploitation and oppression; will inaugurate a climate in which each individual will have the opportunity to realize the full development of her or his human potential; will restore the balance and harmony with nature; will liquidate the artificial and inhuman barriers that divide lands, collectivities and minds and transcend all boundaries. Such a South Asia must be the goal of the people of this region and of their solidarity.

As a process, we feel that the people of South Asia should come together to face the challenge of combating marginalization of the vulnerable groups, degradation of environment, communal division and fragmentation through wider sharing of ideas, experiences and forging solidarity across the borders.

With this rationale, People’s SAARC (also known as South Asian People’s Assembly) was organized in 2007 in Kathmandu and 2008 in Colombo as larger mobilization and convergence of social movements, women and Dalit movements, trade unions, peasant organizations, indigenous people’s organizations and other various groups of the socially-excluded in the region.

People’s SAARC and Human Rights

The 36-point declaration in 2007 and 17-point declaration in 2008 were made during the People SAARC activities in Kathmandu and Colombo, respectively. Specific points related to human rights include:

- strengthen and institutionalize democracy, human rights and justice
- proportional participation of women at all levels of state and civil society institutions
- guarantee women to be free from all kinds of discrimination and live a life without any form of violence; considering women’s right to their body, sexuality and reproduction and make special provision for women’s access to health care from women’s perspective;
- guarantee sovereign rights of the people for food
- make firm commitments regarding state obligations to provide health, education and basic needs;
- SAARC states to ensure enforcement of Core Labour Rights at work places including Special Economic Zones (SEZs) and the informal sector;
- stop using state force against their own citizens in the name of so-called “war on terror”;
- Declare 2007-2017 as SAARC Dalits rights decade;
- ensure rights of the children; include child rights in school curricula and declare children as Zones of Peace;
- respect and recognize the identity of South Asian indigenous peoples and ensure their social, political, economic and cultural rights in the constitution;
- free the region from all forms of bonded labour system;
- setup a regional institutions and mechanisms such as a South Asian Tribunal of Justice to address human rights violations. Those responsible for war crimes and crimes against humanity must be prosecuted.
National Human Rights Institutions (NHRIs) in South Asia

Cooperation needed to challenge regional impunity

by Sushil Pyakurel

South Asia is a region of plurality in terms of culture, language, economic development, climate and environment. The abolition of dictatorial and military regimes in South Asia opened a way to establish a democratic system in most of the countries in the region. The other side of the story is that this is the region of where millions of people are forced to live under absolute poverty. Exclusion, exploitation and social injustice are rampant in each country. Impunity and lack of accountability, as well as extra-judicial killing, torture, disappearance and other forms of human rights violations, including from armed insurgencies, have become very common phenomena in most of the countries of South Asia. Human rights violations are part of an inherited legacy. South Asian criminal and penal laws and their accompanying institutions and institutional practices derive from archaic and punitive colonial legislation and are still largely an institutional practice.

A pro-active role of the NHRIs has been lacking in spite of the poor human rights record in the region. This, however, has necessitated the creation of a solidarity network of human rights across borders. A regional analysis shows a high level of commonality in patterns of human rights violations: discrimination is endemic, institutionalized and in many cases legalized. In the absence of a common forum or mechanism for protection and promotion, human rights violations have become integral to counter-insurgency operations conducted by the military. Though some countries in the South Asian Association for Regional Cooperation (SAARC) such as India, Nepal, Sri Lanka and Bangladesh and Afghanistan have relatively autonomous official statutory institutions, human rights violations are routinely perpetrated in police detention, including the routine use of torture across the region. Security laws tend to be poorly framed, routinely abused and used as blanket to cover and silence legitimate dissent rather than to tackle security.

This paper will discuss the salient features of the human rights situation of the South Asian region, and prospects and challenges of the national human rights institutions (NHRIs) in the context an advocacy for a regional human rights mechanism in South Asia.

NHRIs in South Asia

India

India, as “the largest democracy in South Asia”, considerably lacks a high ranking in its human rights record, despite the fact that India was the first nation to establish a National Human Right Commission among the South Asian countries. The Commission came into existence in October 1993, by virtue of the Protection of Human Rights Act 1993. Among the 28 Indian states, 14 had set up their own human rights commissions to deal with violations within their jurisdiction. However, the growing Naxalist insurgency has intensified killing, displacement, violence against minorities and security actions by the government. Rampant impunity is one of the growing of the human rights challenges.

Afghanistan

The American and allied troops have been in Afghanistan to fight against so-called “terrorists”. In a span of half a decade, millions of civilians have been displaced, tens of thousands of people have been killed,
and civil war has erupted. The deteriorating security situation severely hampers the enjoyment of human rights throughout the country, particularly by vulnerable people such as women, children, persons with disabilities and internally displaced persons. In this crucial context, the Government established the Afghanistan Independent Human Rights Commission (AIHRC) in 2002.

Pakistan

Although the people of Pakistan replaced the military government in 2007, the human rights situation has yet to progress as promised by the government. The death penalty remains widely used. In the interior regions, the imposition of war against its own citizens in the name of fighting against the Taliban have resulted in the forced displacement of thousands.

Nepal

The campaign for the establishment of a national human right institution was initiated even before the CPN (Maoist) armed insurgency in Nepal. However, the necessity of a human rights mechanism was felt more rigorously with the escalation of armed conflict and the massive violations of human rights. In May 2000, the National Human Rights Commission (NHRC) was formed four years after the promulgation of the National Human Right Commission Act in 1997. Notwithstanding the establishment of the NHRC as constitutional body, the achievement of the republican system and the Constituent Assembly, there has not been any success in guaranteeing a human rights friendly state; impunity has been growing even more rampantly and none of the past cases of human rights violations has been investigated properly.

Bhutan

More than 100,000 Bhutanese refugees in Nepal have been unable to enjoy their right to return to their homeland. They are instead forced to choose a third country for resettlement. This and the lack of a democratic system are some of the human rights issues in Bhutan. That even human rights defenders or jurists dare not to travel abroad to share on their country's situation also reflects the Bhutan's human rights situation.

Sri Lanka

In Sri Lanka, civil war between Liberation Tigers of Tamil Eelam (LTTE) and the government prevailed for two decades leading towards repression and rampant enforced disappearances. In between, the Sri Lankan government initiated to form a national human rights institution in 1996 to address the human rights concerns of its citizens. However, the democratic processes are increasingly restricted in the name of security, resulting in human rights and the rule of law being increasingly undermined.

Bangladesh

Bangladesh is in continuous political instability with an increasing number of human rights violation cases including extra-judicial killing, torture and several other forms of violations. The climate of impunity remains a serious obstacle to end human right abuse and killings. In March 2007, the government formed the Human Rights Commission that has yet to show active protection of human rights Bangladeshi citizens.

In this context, while examining the role of NHRIs as a mechanism for the protection and promotion of human rights in the South Asia, it could be argued that they have done very little to resist rampant violations. Showing a long legacy of loyalty to their political patrons, members of the commissions often turn their eyes away from serious cases. Even in the transitional context when tensions are high, the NHRIs in the SAARC region tend to take a back seat in comparison to initiatives of civil society.

Tamil refugees from the war against the LTTE.
Prospects and Challenges

Regional human rights systems, consisting of regional instruments and mechanisms, play an important role in the promotion and protection of human rights. Regional human rights instruments (e.g., treaties, conventions, and declarations) help to particularize international human rights norms and standards to reflect the particular human rights concerns of the region. Regional human rights mechanisms (e.g., commissions, special rapporteurs, and courts) then help to implement these instruments on real issues and cases.

There is no formal linkage among the NHRs of South Asia except for the annual meeting of the Asia Pacific Forum of National Human Rights Institutions (APF). While solutions to these human rights issues in South Asian countries are based on the national level, regional mechanisms on NHRIs could serve as a powerful tool to address human rights violations in each country. There is a need to develop a sub-regional mechanism in South Asia that can link national human rights institutions. The value of such a regional machinery lies in its capacity to contextualize international standards and to enhance their cross-cultural appeal and applicability. A regional machinery can fill the gaps in open-ended international norms, and address particular shared concerns on human rights issues in the region. It provides an additional avenue for NHRIs to play a catalytic role in shaping a rights framework at the national level. It could create a sense of solidarity among national institutions to collectively deal with culture of impunity and other urgent human rights problems in a more strategic way.

There are some unprecedented proactive actions taken by the national human rights institutions across the region. For example, in August 2003, the National Human Rights Commission (NHRC) of Nepal led an unprecedented investigation into an alleged massacre in a place known as Doramba and made public its findings that the then Royal Nepal Army (RNA, now ‘Nepal Army’) was responsible for the extrajudicial killing of 19 suspected Maoists. This report on the Doramba Case is one example of how an NHRI can play an important role in investigation of grave violation of human rights. It further showed that the will power of an institution’s leadership plays a significant role in protecting human rights. The NHRC faced RNA officials’ ridicule, threats of dismissal, and denials in the months following the release of the report, as well as alleged threats and attempts to undermine further investigation. It demonstrates the limits imposed on courageous commissioners by an overarching system of impunity, reflected in the resistance of the armed forces to inquiry, the lack of sufficient structural support (including funding) to the NHRC itself, competing mandates of other bodies that lack independence, restrictions on looking into matters of military jurisdiction, and lack of impartiality of some commissioners.

Conclusion

It is essential for NHRIs to develop a common strategy to keep in check state-sponsored human rights violations as well as abuses committed by the non-state actors. The proactive actions undertaken by the Nepali NHRC to hold non-state actors accountable under the Geneva Conventions could be a lesson for the other national institutions across the region. Thus, discussion to identify possible structure and mechanism to collectively deal with the issues of impunity could be a step forward. However, their independence, impartiality to investigate, capacity to make recommendations to concerned authorities and guarantee to make perpetrators accountable should be a pre-condition to develop any regional mechanism. Autonomy should be the heart of all national human rights institutions. And they should, as argued by a Bangladeshi scholar Dr Abdullah Al Faruque, be free from four ‘Cs’ - collusion, corruption, clientism and caprice.

All SAARC members without human rights commissions must work to create one.

A strong and sincere political will is essential to develop a sub-regional human mechanism that can increase institutional accountability, enhance legitimacy, and increase public ownership and acceptability at large. However, it would be worthless to create any parallel structure or one which overlaps with ongoing efforts. There is an urgent need to find the ways to create common regional institution or mechanism to monitor adherence and implementation of various human rights conventions, charters and treaties signed by the member countries; and a collective effort to bring NHRIs together in order to provide redress to the victims of human rights abuses and impose sanctions on the perpetrators, whether state or non-state actors. All SAARC members that must ensure that their NHRIs comply with the minimum standards set out by the Paris Principles in order to responsibly and effectively carry out their duties so that they can play double roles as regional actor and as a national actors.
Lingering issues besetting democracy in Pakistan

by Zaman Khan
Human Rights Commission of Pakistan

The Preamble of the Constitution of Pakistan guarantees “fundamental rights, including equality of status, of opportunity and before laws, socio-economic and political justice, and freedom of thoughts, expression, belief, faith, worship and associations, subject to laws and public morality”, and that “independence of judiciary shall be fully secured.”

Political situation

Since March 2008, Pakistan’s government became a kind of democracy since the army was forced to relinquish its rule and made way for the people’s representatives to hold power. At present, however, the military seems to be back in the saddles and calling the shots. There is a tussle going on between different organs of the states, particularly the executive and judiciary. Meanwhile, the Constitutional Amendment Committee was reported to have reached a consensus and is about to present its work to parliament. The major amendment being proposed is to give the Prime Minister the role of a real chief executive of the country. This would mean democracy would function smoothly, but so far it is the President enjoying the powers of the then-military dictator General Pervez Musharraf.

The Judiciary

In the absence of vibrant civil society organizations and strong, mass-based political parties, the Supreme Court has had to deal with such issues as consumer rights and sugar prices. Chaudhry Iftkhar and other judges of the Superior Courts dismissed by General Musharraf were reinstated. The Supreme Court declared illegal imposition of emergency by Musharraf in November 2007. Still, there is rampant corruption at the lower levels of the judiciary, where long delays in serving justice are a normal practice. The failure of the criminal justice administration is also reflected in the increased incidence of crimes against women. The number of honour killings, rapes, domestic violence and acid attacks shot up in 2009.

Law Making

The performance of parliament has been very poor in 2009, during which it passed only four acts. Most of the legislation is still done done through Presidential ordinance, of which 61 were issued in 2009.

The National Reconciliation Ordinance (NRO) was introduced in parliament but later on withdrawn. It was declared illegal by the Supreme Court.

Parliament passed a bill giving approval of ‘Nizam-e-Adl Regulation 2009’ for the Malakand Region to establish a religious court.

The parliament adopted two bills to protect women: on domestic vio-
lence and sexual harassment of women at the work place

Conflicts

There is a kind of civil war going on in Pakistan, mainly characterized by dastardly terrorist attacks and resulting in the killing of many innocent people. Law enforcement agencies still use extra-judicial actions to deal with the situation.

Coming under attack from the security forces in their bastion is Swat and South Waziristan, religious militant groups have become desperate. They no longer spare mosques, bazaars, religious madrasas, seminaries and educational institutions.

According to unofficial figures, 2,586 incidents of terrorism took place, in which 3,021 people were killed and 7,334 injured.

The principle that military operations against terrorists should be carried out in a manner that does not violate human rights of both combatants and non-combatants is not always observed. In the aftermath of operations in Swat Valley, HRCP received complaints of extra-judicial killings and on the discovery of mass graves in the Malakand region. HRCP conducted a high-level fact-finding and also demanded a parliamentary inquiry into these allegations.

Military operations against the militants have driven hundreds of thousands of people from their homes, creating a massive humanitarian crisis. Presently, some 1.25 million people from the strife ridden tribal areas are still displaced. The government, international donors and civil society need to make determined efforts to help to internally displaced persons (IDPs). Any mishandling of IDPs could provide militant organizations an opportunity to find new recruits from amongst the up-rooted and frustrated young men.

US drone attacks against the militants also kill many civilians.

Law and Order

The police is corrupt and inefficient to the core and violates human rights with impunity. They publicly torture people.

Some 164 incidents of “target killings” took place in Balochistan, which killed 118 citizens and 158 security officials. In Karachi, 747 persons were killed out of which 291 were target killings, with 209 of the victims being political activists.

In Punjab, 255 people were killed in “police encounters”, including 28 policemen. In Sindh 74 suspects and 52 policemen were killed in encounters.

Kidnapping for ransom is rampant 2009, including 224 cases in Punjab, 163 in Sindh and 241 in Balochistan.

Suicides totaled 1,668 cases reported from all over Pakistan.

Disappearances and Detention

Although present regime claims that there are no disappearances, the fact is that lots of people are still missing. Their cases are still pending in the Supreme Court of Pakistan. It is a widely known fact that law enforcement officers all over Pakistan, and particularly in Balochistan, often pick up people from and keep them in illegal detention.

An informal moratorium remained on the implementation of the death penalty, even though 276 were meted the death sentence in 2009. Some 7,700 persons are on death row.

There are 86 jails with 81,409 prisoners in Pakistan, despite having a capacity for only 41,500 prisoners.

There are around 1,800 juvenile prisoners, majority of whom are under trial.

Due to alleged torture by prison staff, as many as 54 prisoners have died and 156 injured in jails. Among the most prominent of these cases is the one of Fanish Masih, a Christian youth accused of blasphemy.

Religious minorities

The year 2009 saw an increase in violent attacks on religious minorities while the government failed to take effective preventive measures.

An outright disrespect for freedom of religion, both by the state and non-state actors, including communal elements was also visible in the crimes and excesses perpetrated against religious minorities.

Police apparently looked away as gangsters went on rampage in Gojra against Christians, and in Karachi against Shia Muslims, where they looted and destroyed the properties of innocent businessmen. A Muslim factory owner in Muridke was brutally murdered by the mob in broad daylight, in the presence of police.

Shias have been target of terrorist attacks by religious extremists, particularly in Parachinar, Karachi and Dera Ismail Khan. In Balochistan, the Hazara Shia community had been under attack by sectarian militants in the last six years. More than 260 people belonging to Hazara community in Quetta died from target killings and more than 1,000 injured since 2003.

Ahmadis are the most vulnerable community. They continue to face discrimination and violence with five Ahmadis becoming the victims of target killing in 2009.

As the militancy surged in North Waziristan, thousands of Christians were forced to migrate from Swat and tribal areas, Peshawar, Mardan, and Nowshera.

About 80% of Hindu women do not possess national identity cards

Country Focus
and therefore did not have the right to vote. Due to the absence of papers, persons from the low Hindu castes could not get their marriage registered.

**Freedom of Expression**

In 2009, seven journalist were killed while performing their duty, bring to a total of 45 journalists killed since 2001.

There is complete censorship in Balochistan.

**Women**

According to the HRCP database, violence against women registered a sharp increase during 2009. A total of 1,404 women were murdered, including 647 women in honor killings; 928 cases of rape were reported; 563 women committed suicide, while 253 attempted suicide; 153 women were victim of burning.

Domestic violence cases (including torture, beating, shaving, amputation, and murder attempts) shot up from 137 in 2008 to 205 in 2009. However, data from the Aurut Foundation reported that 608 cases of domestic violence took place.

**Labour**

In 2009 socio-economic conditions of the labor force were precarious in Pakistan, with the twin pressures of inflation and unemployment making the situation worse.

Recent estimates by the official Task Force on Food Security show that nearly a quarter country’s population remained poor, or 62 million people living below the poverty line in the year 2009.

The minimum wage was fixed by government at 6000 Pakistani Rupees per month as of July 2008. However, 70% of companies did not implement this.

**Restriction on trade union activities is a permanent feature of industrial sector.**

According to National Trade Union Federation, the two labor courts in Lahore had been without a judge for the last few years.

**Children**

Some 3.5 million children continue working as labourers in the country in a blatant violation of the Constitution. The government has stopped taking interest in the education and health care of the children, especially in disadvantaged sections of society.

**Education**

According to a UNESCO monitoring report of 2009, Pakistan is one of the very few countries which failed to achieve even a single “Education for All” goal. Pakistan remains one of the few odd cases where despite modest increase in literacy rate, the number of illiterate persons keeps on increasing.

**Health**

Pakistan is currently spending only about 15 USD per capita in the health sector.

**Positive Aspects**

Despite not a very rosy picture of human rights situation in Pakistan, a large number of civil society organizations are working for human rights.

The present government can take credit for giving autonomous status to Northern Areas (Gilgit-Baltistan), holding elections, and the aforementioned passing two bills for the protection of women.

Pakistan also established a full-fledged Ministry of Human Rights in November 2008, and also ratified the International Convention on Economic, Social and Cultural Rights.
This statement was issued by 43 NGOs across Asia, who urge both the Thai government and protestors to refrain from violence and return to the negotiating table for a peaceful solution on 29 April 2010.

We, the undersigned human rights NGOs from across Asia, are deeply concerned over the political upheaval in Thailand and condemn the violence that took place in the recent political conflicts.

Violent clashes between Thai security forces and protestors of the United Front for Democracy Against Dictatorship (UDD) have resulted in 25 deaths (18 civilians, 6 soldiers and one foreign journalist) and more than 800 injured on April 10.

We regret that the violence has continued with more recent deaths (five people) and many more wounded (including foreigners) in a grenade explosion on April 22 in Silom, one of the prime business areas in Bangkok. We fear the worst, as Thai military and police have been authorized by the government’s Centre for the Resolution of the Emergency Situation, to use live bullets to disperse the protesters which on the latest incident on April 28 in Vibhavadi Rangsit Road, killed one soldier and wounded 18 people.

We strongly urge the Thai government and the UDD protestors to exercise extreme restraint from violence and to return to the negotiation table to find a peaceful political solution to the conflicts. The government of Thailand, in particular, must ensure that any crowd dispersal methods are in line with international principles.
as outlined in Principle 14 of the Basic Principles on the Use of Force and Firearms. Any disproportionate use of force by the security forces against demonstrators is deemed deplorable.

We further urge the Thai government and the UDD to work towards national reconciliation for the sake of the common people of Thailand.

Independent commission needed

We also urge the government of Thailand to immediately establish an independent commission to investigate the incidents and hold the perpetrators of violence accountable, regardless of their political affiliation as news reports and eye witness accounts have provided conflicting information on how these violent incidents occurred and the types of weapons and ammunition used in the conflict.

We welcome the establishment of a sub-committee by the National Human Rights Commission of Thailand to conduct an inquiry on the violation of human rights during the political crisis. We stress that the inquiry should be conducted in an independent, transparent and professional manner. This sub-committee should focus on investigating the facts surrounding the grave human rights abuses that have occurred since April 10, with clear conclusive evidence of who the perpetrators are.

We are extremely concerned that the closing down of more than 10 satellites and cable television stations and 36 internet websites has done more harm than good for the democratic transition and development in Thailand and may not be required by the exigencies of the emergency situation. If there is indeed hate speech perpetuated by certain media, charges can be brought against the media in a court of law, banning is not a solution. We call for the ban on the media to be lifted immediately.

As a party to the International Covenant on Civil and Political Rights (ICCPR), we wish to remind the government that while derogation of certain rights may be allowed during times of public and officially declared emergency, the measures of restricting rights should be taken only in the manner that is strictly required by the exigencies of the situation during the declaration of emergency and should not be inconsistent with other obligations under international law.

Non-derogable rights despite emergency

However, there are rights that are non-derogable, even in times of emergency. These rights include, among others, the right to life and the right to be free from torture, cruel, inhumane and degrading treatments or punishments. The Thai government is obliged to take all measures to prevent the violations of these non-derogable rights.

The human rights record of Thailand will be examined by the UN
Human Rights Council under the Universal Periodic Review in 2011. We call on the Thai government to continue to observe its obligations under international human rights law in these difficult times.

We hope for better solution through peaceful and lawful means and dialogue and express our wish to see progress, peace and solidarity in Thai citizen’s daily life. Human Rights Principle accepts no other means than internationally accepted norms and values of Law.

This statement was endorsed by:

- Ain O Salish Kendra (ASK), Bangladesh
- ALTSEAN BURMA, Thailand
- Asian Centre For Human Rights, India
- FORUM-ASIA, Thailand
- Burma Partnership, Burma-Thai border
- Burma Centre - Delhi, India
- Cambodian Human Rights And Development Association (ADHOC), Cambodia
- Center For Human Rights And Development (CHRD), Mongolia
- Commission For The Disappeared And Victims Of Violence (Kontras), Indonesia
- Dignity International
- Forum For Protection Of People’s Rights (PPR), Nepal
- Foundation For Media Alternatives (FMA), Philippine
- Global Partnership For The Prevention Of Armed Conflict -Southeast Asia And Asia-Pacific Solidarity Coalition, The Philippines
- Human Rights Working Group (HRWG), Indonesia
- Human Security Alliance (HSA), Nepal
- Imparsial, Indonesia
- Indonesian Solidarity, Australia
- Informal Sector Service Center, Nepal
- Indigenous Peoples Rights Monitor, The Philippines
- Initiatives For International Dialogue, The Philippines
- International NGO Forum On Indonesian Development (IN-FID), Indonesia
- Indonesian Corruption Watch, Indonesia
- Korean House For International Solidarity, South Korea
- Migrant CARE, Indonesia
- Migrant Forum In Asia, Philippines
- Nonviolence International Southeast Asia, Thailand
- Odhikar, Bangladesh
- Ovibashi Karmi Unnayan Program (OKUP), Bangladesh
- People Empowerment, Thailand
- Peoples Vigilance Committee For Human Rights (PVCHR), India
- People’s Solidarity For Participatory Democracy (PSPD), South Korea
- Southeast Asian Press Alliance (SEAPA) Thailand
- Southeast Asia Coalition To Stop The Use Of Child Soldiers (SEASUCCS), Philippine
- Student Federation Of Thailand
- Task Force Detainees Of The Philippine (TFDP), Philippine
- Taiwan Association For Human Rights, Taiwan
- The Asian Federation Against Involuntary Disappearances (AFAD), Philippine
- The International Federation For Human Rights (FIDH)
- Think Centre, Singapore
- Tibetan UN Advocacy, Switzerland
- Working Group On Justice Peace, Thailand
- Yayasan Sekretariat Anak Merdeka (SAMIN), Indonesia
- Young Progressives For Social Democracy (YPD), Thailand

This letter was sent to the Government and the United Front for Democracy against Dictatorship (UDD) on April 19 by 16 people’s organizations. The NGOs include: Newspaper Reporters Association of Thailand; Office of Peace and Governance, King Prajadhipok Institute; Research Centre for Peace Building, Mahidol University; NGO Coordinating Committee for Development (NGO-COD); Stop Hurting Thailand Network; Peace Network; Peoples’ Network Against Civil War; Academics for Democracy Group; Volunteers Network; May ‘92 Heroes’ Relatives Network; Buddhika Network; Thai Communities Foundation; Thai Attentive Student Group; Thammasat University Students Organization; Youth for Peace Group; Volunteer Centre, Thammasat University.

The violent outbreak that occurred on 10 April, 2010, which resulted in the deaths of 16 protesters and six soldiers and injuries to over 800 people, represents losses that pitch Thailand deeper into a crisis of violence and divisions.

Before we head further in that direction, we, 16 people’s organizations, would like to appeal to all sides to help change the course of Thailand away from catastrophic confrontation towards peaceful means and negotiations in order to resolve the conflict and lead Thailand out of the crisis. We would like to propose the following.

Let the loss of lives and blood on 10 April be a lesson to all that violence is not the path that will lead Thailand out of the crisis. It will instead worsen the conflict and therefore make reconciliation among the Thai people harder to achieve. The experience of other countries and in Thailand shows that the use of force to end a protest, or to oust protesters from an area, can never achieve success without bloodshed if there are tens of thousands of protesters
Violence will not solve Thailand’s crisis

involved, no matter how much care is taken to avoid it. In Thailand particularly, where unknown groups of people were involved in the violence, the bloodshed will be more severe and the situation could worsen. The protesters’ occupation of Ratchaprasong Intersection needs to be resolved, but not by the use of force to disperse the gathering, which would lead to greater loss of life and could degenerate into a civil war. On the protesters’ side, there must be a commitment to non-violence and no weapons should be allowed at the rally sites.

Both sides should take a step back in order to change course and avoid total disaster, and should instead adopt peaceful means to resolve the conflict. The Government should step back by revoking the State of Emergency, and the Red Shirt people should step back by moving their camp from Ratchaprasong Intersection to another area, or at least by providing space for businesses in the area, which include not only big companies but also small traders and workers who depend on their daily earnings for a living, to operate normally and reduce their losses. All sides should recognize that politics in the democratic system means “winning the people’s heart” not the use of force or coercion. Taking a step back to avoid further bloodshed does not mean a defeat, but instead a victory over people’s hearts as well as a political advantage. The side that agrees to step back first will gain political legitimacy and cause the other side to do the same. Thus Thailand will have another chance to find solutions to the conflict without having to sacrifice an exchange of lives.

Both sides should resort to negotiations and compromise to find solutions to the conflict. In the past negotiations, both sides have agreed that the political crisis and the division among the Thai people should end with the next election. The only difference was when the election should take place. The current parliament has one year and eight months remaining of its term. If the election could be brought forward to end the conflict, this should be a worthy path. Since The Government has already agreed to an early election, the Red Shirt people should also make a compromise on their time frame. They should recognize that many other people do not agree with a parliamentary dissolution and there are other opinions that both sides should take into consideration. Therefore, both sides should make concessions and find a time frame that is acceptable to all sides. In a democracy, no one side can ever get 100% of what they want. All the political parties in the parliament, especially the opposition Phuea Thai Party and those in the Government coalition, should make use of parliamentary mechanisms and negotiations in order to propose solutions for the country as well.

Both sides should stop presenting one-sided information. In a polarized society such as Thailand today, one-sided information that aims only to give legitimacy to one’s own side will only fuel hatred and further entrench divisions among the country’s citizens.

The military must not stage another coup d’état, which would deepen the crisis and would set back for decades the democracy that all sides have been trying to nurture and improve upon. Moreover, the military would have lost its legitimate role as law and order enforcers under the Government and become a direct opponent to the people. The resistance that would ensue would lead to the worst chaos befalling the country. From now on, all Thai people must learn to resolve problems by democratic means only.

Let the past losses be a lesson for Thai society that violence and crackdowns do not constitute resolutions for these problems. Democracy means that all must be able to live together with differences, not eliminating each other. If the Thai society adheres to peaceful and democratic means, we will be able to avert disaster and get back on the path out of the crisis without further bloodshed. Thailand’s democracy has come a long way; if we are patient we can surely get past the current crisis, which many countries have had to go through to achieve stable democracy. When we get through this crisis, it will be a victory for the country, for all sides and for us all.
In September 2009, the National Task Force of the Malaysian Federal Ministry of Women, Family and Community Development confirmed in a report that sexual violence and exploitation of Penan women and girls in Sarawak was happening. This had followed an earlier September 2008 report by the Switzerland-based Bruno Manser Fund, which itself echoed other reports dating back several years, asking state authorities to investigate similar possible sexual violence and exploitation experienced by Penan communities.

Despite these confirmations, actions to bring perpetrators to justice and to initiate appropriate actions to protect Penan women and girls from further sexual violence and exploitation continue to disappoint.

The issues are extremely serious and this Mission was organised to investigate the situation in Penan communities in Sarawak, to document incidents of sexual violence and exploitation, and also investigate the wider issues that contribute to these incidents and their persistence. The Mission also set itself the task of highlighting the appropriate necessary action points for the relevant authorities and other stakeholders.

Visiting three (3) Penan communities and one (1) Kenyah community, and listening to evidence and experience from representatives of 13 Penan communities, the Mission recorded seven (7) new cases of alleged sexual violence. These are to be added to the earlier instances documented by other reports, including by the National Task Force.

The forms and patterns of violence are presented in this report. They cover rape, assault, abduction, forced ‘marriage’, domestic violence and ongoing harassment. The forms and patterns are indicative of a persistent situation relating to sexual abuse of Penan women and girls. There would seem to be no excuse for any authority either to deny the existence of such sexual abuse or to refuse to take appropriate action.

In documenting the sexual violence and exploitation perpetrated against Penan women and girls in Middle and Ulu Baram, the Mission also documented more general issues facing Penan women and children, and the Penan communities at large, as giving the wider context in which the sexual violence and exploitation take place.

The wider issues discussed in this Report include:

- The wide disconnect between state government claims that they have provided appropriate services and spent millions on the Penans, and the reality that the majority of the Penans live in desperate poverty.
- The persistence of poverty amongst Penan communities continues to render them more vulnerable to dependency, exploitation and violence.
- Central to their experience of poverty has been the loss of land.

(Note: This article is a reprint of the Executive Summary of a fact-finding mission report entitled A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia conducted on November 2009 by the Penan Support Group, FORUM-ASIA and the Asian Indigenous Women’s Network. The report was released on 6 July 2010. The full report may be downloaded at http://forum-asia.org/2010/Penan_Report.pdf)
and the denial of land rights, crucially affecting their security, autonomy, livelihood, culture and sustainability.

- This loss of land, autonomy and ability to be self-sufficient follows from the ‘development policies’ of the state government, which encourage the exploitation of the land and the forest for commercial and private gain.
- Logging and other land concessions are highly lucrative and are given to private companies closely tied to the ruling state government. The result is that there is little monitoring of logging and little enforcement of good practice, with the result that the land and forest claimed by groups like the Penans being destroyed.
- Attempts to protect their land and their land rights, culture and future sustainability has often brought the Penans into conflict with both state authorities and logging companies, often conducted with threats and intimidation against the Penans, including against Penan women and children, and on occasion with actual violence. This environment of conflict gives an important wider context to the sexual violence perpetrated against Penan women and girls.
- This violence is rarely challenged by the state authorities, which give little respect to Penan rights of redress. Rather, the state authorities have consistently denigrated those Penans, including women and girls, who have attempted to raise land and community issues, and have attacked local and foreign non-governmental organisations who have attempted to support the Penans.
- The absence of positive support from state authorities in investigating and finding solutions to grievances has undermined the trust of communities like the Penans in the authorities, and has left them even more defenceless and vulnerable.
- This is linked to the fact that the Penan right to development, as underpinned by international covenants such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), has been undermined by the by the federal and state governments insistence that they, the government, know what is best for the Penans and other indigenous communities.
- The lack of respect for the Penan right to development is further evidenced by the denial of basic citizenship rights to a significant number of Penans, who continue to lack identification cards. This means that these Malaysian citizens cannot enjoy the basic rights of citizenship, including access to basic services and the right to vote. Lack of such cards increases also the chances that state authorities like the police will not act on reports.
- There is considerable evidence of problems in basic service provision, not least health and education. The lack of any support for Penan students in mastering Malay, result in high non-attendance and drop-out rate. There is no indication that the curriculum is sensitive to this or to other Penan concerns. Prejudice and bullying are also reported, leading to loss of confidence and low self-esteem amongst Penan students. These are factors which do not help protect against violence and exploitation, including sexual violence.
- The ‘development’ path pushed by the state and federal authorities shows no evidence of any understanding of the particular challenges facing (Penan) women and children, and the often negative experience of ‘development’ by women. This includes the persistence of a power imbalance between men and women, symptomatic in the prevalence of violence against women.
- The present situation facing communities like the Penans is that their land and their lives are increasingly being encroached on by outsiders, not least those working in logging camps. These outsiders exhibit little respect for the way of life of the Penans, or for the rights of women. All seven of the new allegations of sexual violence and
exploitation had a logging company worker (or workers) as perpetrators of the violence.

This Report is not the first report to highlight the systematic manner in which the basic human rights of the Penans (in common with other Malaysian indigenous peoples), and the rights of Penan women and girls in particular, have been undermined by the attitude and policies of federal and state authorities. This report argues that, in failing to uphold native customary rights to land, state authorities have robbed indigenous communities of a fundamental right and the basis of their culture, and severely impacted both the security and sustainability of such communities. This includes safeguarding the rights and place of Penan women and girls. In failing to respect their overall right to development (in which the Penans control its direction and pace), and in failing to understand the gender dimensions of development, state and federal authorities have left both the Penans in general, and the Penan women and girls in particular, disempowered, dislocated, dependent, and without sympathetic support — in other words, in a highly vulnerable situation. In failing to adequately provide services sensitive to the needs of communities like the Penans, they have missed a major opportunity for supporting the Penans and Penan women and girls in the difficult transition between the traditional and the modern, and specifically have missed a major opportunity to support and empower Penan women and girls in battling sexual violence and exploitation.

The Report documents the apparent indifference to Penan complaints and argues that this compounds the disrespect shown to the community and compounds the likelihood that sexual violence and exploitation will be tolerated rather than prosecuted and protected against. The Report notes that the lack of state response has left the Penans distrustful, a situation where any violence or exploitation is more likely to remain unreported. This vicious circle must be broken if any meaningful protection against (sexual) violence and exploitation is to be provided.

In making explicit the link between the sexual violence and exploitation experienced by Penan women and girls and the wider factors that help define and ‘allow’ it, this Report argues that positive steps to alleviate the violence and exploitation must necessarily include steps taken to address the wider issues. In other words, beyond the obvious need to properly investigate and resolve individual cases of sexual abuse and exploitation is the need to tackle the wider issues facing Penan women and girls and the Penan community.

The Report quotes one Penan woman, who simply says “The ultimate solution is to revoke the logging licences.” This, the report argues, is a starting point to tackle the wider issues of the dispossession, disempowerment, and impoverishment of the Penans. Moving beyond that, the Report argues that, to properly protect and nurture the Penan community, including the women and girls, state and federal authorities, and all other stakeholders, must fundamentally change their attitudes and approach. Acknowledging, valuing and committing to putting the Penans at the centre of their own development, complete with recognition of their rights to land and culture, will give a foundation on which appropriate polices, provision and support can be based. Added to this is the necessity for understanding and acting upon the way policies and attitudes impact on gender relations.

This basic principle of respect is in line with national and state government statements and commitments to the principles set out by internationally agreed conventions and declarations: for example, the UNDRIP, Convention on the Elimination of all forms of Discrimination Against Women, and the Convention on the Rights of the Child. Malaysia has signed up to these basic principles, and their obligations need to be translated into positive practice. A series of recommendations are attached for consideration and action.

This Report argues that, if these recommendations are followed, there is every chance that the lives of the Penans, and the lives of Penan women and girls, will improve. We cannot afford to do nothing. The situation facing women and girls in Penan communities such as those we visited is extremely serious. Their vulnerability to sexual exploitation and violence is so well documented by so many different reports that something has to change if we are to protect them. Or are we simply looking at another report such as this one, in five years’ time, ten years’ time, documenting the same abuses, the same deterioration, the same violence? Let us work together to make sure this does not happen.
A new hope for human rights in Japan?

by Toru Hisada

This article is a revised version of a background paper prepared as part of the efforts of the Asian NGOs Network on National Human Rights Institutions (ANNI) to encourage the Japanese government to establish a national human rights institution.

Despite its wealth as a nation, Japan faces a number of human rights issues. These include gender inequality, the rights of women, people born out of wedlock, Buraku minorities, employment and labor, death penalty, rights of the accused, "comfort women", human trafficking, right of non-Japanese citizens, refugees, indigenous and minority peoples, people with disabilities and children. This brief paper will give an incomprehensive background regarding some lesser known human rights issues in Japan.

Layoffs of temporary workers (Haken-giri)

Japanese firms have for decades employed temporary workers (Haken Syain) dispatched from employment agencies. In recent years, following the easing of the Worker Dispatching Law, firms have employed even larger numbers of temporary workers. By 2007, the number of temporary workers grew to around 4.5 million and by 2008, they occupied more than 30% of the Japanese labor force.

Yet, after the recent global economic crisis, which has caused a recession in Japan, many firms have laid off these temporary workers. The estimated number of layoffs from October 2008 to March 2009 ranges from 131,000 to 400,000. As these workers are not formally employed, they are generally not entitled to benefits and rights which are available to those with formally employed status. For instance, many of these temporary workers are not entitled to unemployment benefits because technically, they have not been employed for more than a year by the same employer. Also, in many cases, they were laid off before the end of their contract.

The lack of safeguards under labor laws means that there is no compensation available for these workers. Moreover, it is hard for them to find new jobs under the current recession, causing many of them to be homeless. Many of them have resorted to living in public areas, internet cafés or shelters provided by the government. As the recession continues, this situation is likely to continue, thus making poverty as one of the most serious issues in Japan.

Rights of the accused

The police in Japan have the authority to detain suspects without charges for a maximum of 72 hours. This imposes upon the suspect undue psychological pressure to confess. In some cases, the courts have admitted that confessions have been forced and have consequently ordered prisoners to be released. In the past, Japanese courts have had a high rate for conviction, which is regarded as an indication that the accused are not receiving a fair trial.

Death penalty

Japan is one of the countries in Asia that actively imposes the death sentence. Inmates on death row and their families are not given adequate advanced notice of the scheduled date and time of the execution, which may cause undue psychological suffering to the inmates and their families. Also, there is an absence of a mandatory system for review of capital punishment cases. This deprives the right of appeal for death row convicts.

The DPJ government

The August 2009 victory of the Democratic Party of Japan (DPJ) in the House of Representatives marked the end of more than 50 years of almost uninterrupted rule by the Liberal Democratic Party (LDP).

The LDP was widely viewed to have been unable to respond to the fundamental changes in Japanese society. There has been a need for a better social security system (including pension, medical and nursing care) and safety network systems for the underprivileged. Also, the Japanese
economy has been greatly affected by the global economic crisis. It has caused the emergence of several social issues such as unemployment and poverty. Finally, the decades-long, single party dominance by the LDP since 1955 has caused a collusive and corrupt relationship between politicians, high-ranking government officials, and companies. Structural problems have also emerged, such as keeping the large decision making powers in the hands of high-ranking government officials.

The DPJ’s victory is regarded as the beginning of an era of growing accountability and competitiveness in Japanese politics. It also marks an important departure from the LDP’s foreign and domestic policy. As a party which emphasizes its policies on social welfare and the nation’s life, the key points in its manifesto are as follows:

- Reinforcing the power of politicians over the bureaucrats on policy making. This is to decrease the influence of vested interests over policy makers.
- A large-scale incentive package (including child allowance and free high school education) to increase household disposable income.
- Establishment of a more reliable and secured social security system for pension, medical and nursing care service, especially for the elderly.
- Increasing the employment rate by providing subsidies and establishing job training system for people who look for jobs and by reviewing the Worker Dispatching Act.
- A more independent foreign policy pushing for an equal alliance relationship with the US, by saying ‘no’ more than before on issues which are not in Japan’s interests.

Policy on human rights issues

The DPJ government identifies the human rights issues listed above as important issues, as can be seen from their manifestos for House of Representatives elections of 2009.

The DPJ government promises that it will make interrogations of the accused more transparent, including the possibility of recording it, so as to be able to review possible cases of false admissions. Imposition of capital punishment has been postponed since September 2009 when new Minister of Justice Keiko Chiba was appointed. As a human rights lawyer, she has also dealt with issues regarding women and children in Japan. Nevertheless, she has not promised until now that she will not impose death penalty while she is in office.

Finally, the DPJ government has promised the creation of a national human rights institution (NHRI) under the Cabinet. The justice minister said that, from an international perspective, it would only be natural to establish an NHRI in the country and she will try her best to establish such an agency as soon as possible. (See the reprint of the Ministry of Justice report on the proposed NHRI on page 29).

On 4 June 2010, with the resignation of Prime Minister Yukio Hatoyama, Naoto Kan was appointed as a new head of DPJ, and consequently the new Prime Minister of Japan. Kan comes from the family with ordinary background, which is different from the most of the past prime ministers who became MPs or prime minister by succession from their fathers. Kan had also been actively engaged in the student movement, and in addition had actively engaged in civil society activities before he was elected MP. For these reasons, he is expected to bring in the civil society perspectives in the politics and policies of his government including human rights for better respect, protection and promotion in Japan.
“New Establishment of Human Rights Remedy Agency”

An interim report of the Minister, Senior Vice-Minister and Parliamentary Secretary of the Ministry of Justice, in June 2010, provides details on the proposed NHRI.

1. The name of the bill
   The bill will be named which clearly indicates the content of the bill, i.e. the establishment of Human Rights Remedy Agency to provide remedies and prevent damages by human rights violations, prescription of remedies etc.

2. Establishment of Human Rights Remedy Agency (Human Rights Commission)
   Human Rights Commission will be established as an independent body of the government conforming to Paris Principles. The commission is envisaged to be established under the Cabinet Office and its structure, the authorities over remedies and so on is further discussed.

3. Human Rights Commission
   Missions of the Commission are to redress and prevent human rights violations, to enlighten human rights, to promote comprehensive human rights protection policies for the nationals, to provide opinions to the government regarding human rights situation in Japan and so on.

4. Local Human Rights Commission
   It is necessary to establish local organizations for the effective investigation and remedies. However, it is further discussed so that the new system starts to function without delay, including utilization and enhancement of the existing organization.

5. Civil Liberties Volunteers
   Regarding the Civil Liberties Volunteers, it is further discussed to activate and enhance the existing system through utilization of the existing volunteers and its organization.

6. Provisions related to the media
   No specific provisions regarding the human rights violations by the media are made in the bill. It is the agenda for further consideration based on their voluntary efforts by the media.

7. Special Procedures
   The fact finding investigation is further discussed including no punitive clauses are made for refusing a cooperation to the mission.

8. Procedure for Remedies
   Procedure for Remedies is further discussed based on the situation around the development of laws after the submission of the report by the Council on Human Rights Protection.

CCHRJ welcomes announcement to establish Japan NHRI

The Minister, Senior Vice – Minister and Parliamentary Secretary of the Ministry of Justice announced a ‘New Establishment of Human Rights Relief Agency (Interim Report)’ yesterday, 22 June 2010. Citizens’ Council for Human Rights Japan (CCHRJ) has, in cooperation with other civil society organizations, asked the Japanese government for the establishment of national human rights institution (NHRI) in Japan conforming to the Paris Principles. The Interim Report reflects our points and we thus largely welcome it, especially the following:

1. The report mentions the establishment of “Human Rights Commission” (hereinafter, the Commission) which conforms to the Paris Principles and is independent of the government;

2. the establishment of the Commission under the Cabinet Office instead of the Ministry of Justice; and

3. ‘No specific provisions regarding the human rights violations by the media are made in the bill. It is the agenda of further consideration based on the voluntary efforts by the media’

The points above largely correspond to our contentions and significantly developed from the previous Human Rights Protection Bill submitted by the former coalition government of Liberal Democratic Party and New Komeito. CCHRJ appreciates the courageous decision. For further considerations on the specific details, CCHRJ urges the government to continue the positive considerations based on the viewpoints mentioned in the report.

In relation the establishment of a new Commission, we expect the government to conduct the open and transparent procedure by ensuring the opportunities to consult with various human rights organizations and organizations of the people concerned. We ask for the ruling Democratic Party of Japan, to make further efforts toward the establishment of NHRI in accordance with the Paris Principles in cooperation with the government.

CCHRJ will also strive for the establishment of NHRI by cooperating with the government, which is independent of the government and is able to provide effective redress for human rights violations.
Human rights defenders in Asia have struggled for many years to have a regional body with a mandate to investigate individual complaints of human rights violations, monitor and report on the human rights situations in its member states, conduct visits and investigations, raise awareness on human rights issues, and issue recommendations pertaining to human rights violations of member states.

A potential was seen for the Association of Southeast Asian Nations (ASEAN) to establish such a body when it adopted the ASEAN Charter at the 13th ASEAN Summit in November 2007. Under Article 14 of the ASEAN Charter, a human rights body shall be established as one of the mechanisms by which ASEAN member states can “pursue closer interaction and cooperation to forge shared norms and create common mechanisms to achieve ASEAN’s goals and objectives in the political and security fields”. In 2008, human rights defenders in the region submitted their recommendations for the mandate and powers of the ASEAN human rights body. Such a mechanism, if effectively implemented, was envisioned to be an invaluable tool for human rights defenders for their own protection and promotion of their rights. Such a mechanism was also hoped to help ASEAN governments integrate international human rights norms and principles into their domestic laws, and promote a common human rights culture throughout the Southeast Asian region.

On 20 July 2009, during the 42nd ASEAN Ministerial Meeting in Phuket, Thailand, the ASEAN adopted the Terms of Reference (TOR) of the newly-established ASEAN Intergovernmental Commission on Human Rights (AICHR). It was no surprise that the TOR gave the AICHR a decidedly weak mandate, taking on the stance of promoting human rights first and neglecting the very important aspect of protecting human rights. In fact, as it currently stands, the TOR effectively precludes the AICHR from developing protection powers in the future. Specifically, the TOR is peppered with numerous provisions that would hinder it from affording protection to human rights defenders in the region.

Reprise of “Asian Values”

The TOR expressly states that one of the purposes of the AICHR is to uphold international human rights standards under the Universal Declaration of Human Rights (UDHR) and the Vienna Declaration and Programme of Action (VDPA). However, it also stipulates under paragraph 1.4 that one of the purposes of the AICHR is to “promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities.”

Paragraph 1.4 may be viewed as a reprise of the ill-defined “Asian
values” doctrine and may potentially run counter to the universality principle of human rights embodied under the UDHR and reasserted under the VDPA. The “Asian values” doctrine was pushed forward by certain Asian leaders, particularly those from Singapore and Malaysia. This doctrine was based on the premise that human rights of individuals are subordinate to the “collective interest” which is economic growth. Traces of this doctrine are found throughout the TOR.

These Asian leaders had maintained that the universality of human rights is subordinate to values that are particularly unique to the Asian region. Certain governments in Asia have often adopted culturally relativist discourse to justify poor human rights records, excuse specific human rights violations, and to avoid taking stances on the human rights records of neighboring countries. This resolution, which directly contradicts the VDPA, would indeed be a painful and enormous setback for human rights defenders in Asia who have fought and struggled against this “Asian values” doctrine.

Women human rights defenders from the Asian region have also been subjected to human rights violations as a result of certain traditional or customary practices and cultural prejudices. Paragraph 1.4 of the TOR is indeed potentially dangerous as it could legitimize certain negative practices against human rights defenders, particularly women human rights defenders.

Recurring non-interference

Paragraph 2.1 (a) of the TOR provides that the AICHR shall have as one of its guiding principles the “non-interference in the internal affairs of ASEAN Member States”. The principle of non-interference and respect for the independence, sovereignty, equality, territorial integrity, and national identity of each member state have always been one of the core operating principles of the ASEAN.

Many member states of the ASEAN have notoriously disdained human rights records with human rights defenders facing extreme risks and hardships as they undertake their work of promoting and protecting human rights. In Burma, for instance, there have been numerous reports of illegal arrests, detention, and torture of human rights violations following the Saffron Revolution in 2007. The principle of non-interference may be invoked by Burma to prevent the investigation into these reports. In Vietnam, human rights defenders who face unlawful suits against them for expressing critical views against government policies will also not be able to seek protection under the AICHR if Vietnam invokes this principle to deflect investigations into these violations.

Lack of independence

The credibility and effectiveness of the AICHR shall rely to a great extent on the integrity, independence, and capacity of its members. It should be noted that there are no clear guidelines on the selection process for members of the AICHR. Selection of representatives is left to each member state’s domestic processes and there is no safeguard to ensure only independent human rights experts are appointed through an open and transparent process. Under the current TOR, there is no assurance that members of the AICHR have expertise on human rights, nor is there any guarantee that they shall be sitting as independent experts, free from interference from the government. Paragraph 5.2 merely provides that “[e]ach ASEAN Member State shall appoint a Representative to the AICHR who shall be accountable to the appointing government.” Representatives shall serve a term of three years and may be re-appointed for one more term. Although the duration of the term of its members is clearly stipulated, member states, under paragraph 5.6, would still have the discretion to remove or replace its representatives on the AICHR. This will potentially compromise the independence of an AICHR member who is beholden to the government for his or her being in the commission.

The selection and appointment process is an essential cog in the wheel that would make any institution independent, accountable, transparent, and effective.

The abovementioned provisions will definitely hinder the AICHR from developing powers that would be effective enough to truly protect human rights defenders in the region. On the other hand, there is paragraph 2.5 of the TOR that states that the AICHR shall adopt an “evolutionary approach” that would contribute to the development of human rights norms and standards in the ASEAN. Although this paragraph manifestly disregards the fact that there are urgent human rights issues currently facing the region, this opens an avenue for civil society to vigorously monitor and pressure the ASEAN to fast-track such an evolution and in the right direction. This avenue should be used by civil society to urge the ASEAN to set a clear direction of development for the AICHR so that the current existing flaws in the TOR may be rectified.
Effective Rules of Procedures needed to deal with violations

This is a statement by the Solidarity for Asian Peoples’ Advocacy Task Force on ASEAN and Human Rights on 22 March 2010, calling on the ASEAN Intergovernmental Commission for Human Rights to ensure effective Rules of Procedures in dealing with human rights situations.

In the launch of the civil society version of the Rules of Procedure (RoP) for the ASEAN Intergovernmental Commission on Human Rights (AICHR), the Solidarity for Asian Peoples’ Advocacy Task Force on ASEAN and Human Rights (SAPA TF-AHR) calls on the AICHR to adopt a set of rules that will ensure its own independence and effectiveness in dealing with human rights protection and promotion in the region.

The RoP is expected to be discussed in the first official meeting of the AICHR from 28 March – 1 April 2010 at the ASEAN Secretariat in Jakarta. The RoP will define how the AICHR will carry out its duties and implement the mandates agreed by the member states of ASEAN as concluded in the Terms of Reference (ToR) of AICHR from July 2009.

“We have put in a request on March 9 to the Chair of AICHR to have a dialogue with civil society on the RoP during their first meeting. However, we have yet to receive a reply confirming such a dialogue from the Chair. We hope the reply will come in soon,” said Yap Swee Seng, the Co-Convenor of SAPA TF-AHR and also executive director of Asian Forum for Human Rights and Development.

Recommendations by SAPA

Among the key mechanisms and procedures recommended by the SAPA TF-AHR to be adopted in dealing with human rights include:
• A petition mechanism, which will receive and respond to cases of human rights violations;
• On-site observation;
• Public hearings or inquiries;
• Friendly settlement;
• Establishment of sub-committees, working groups and committees for specific tasks;
• Appointment of independent human rights experts to become country and thematic specific rapporteurs;
• Thematic reports, country reports and annual reports.

It also proposed that the AICHR should establish an independent and professional Executive Secretariat, appoint a Vice Chair from among its members, civil society participation to be included in the RoP in order for civil society organizations and other stakeholders to attend meetings of AICHR, submit information on human rights violations, access to information of the work of AICHR, make suggestions on meeting agenda for AICHR, and coordinate its works with other sectoral bodies such as the ASEAN Commission on Women and Children, among others.

Civil society participation

“It is absolutely vital to adopt a set of good and progressive rules of procedure that recognizes the importance of the participation of civil society, national human rights institutions and other stakeholders to ensure the effective functioning of the AICHR,” said Chalida Tajaroensuk, the Thailand focal point of the SAPA TF-AHR, and executive director of the People’s Empowerment Foundation.

“In dealing with the overarching role of the AICHR and the alignment with other sectoral bodies such as the ASEAN Commission on Women and Children, we proposed that this should be done consistently with international human rights laws and standards,” said Wanee Bangprapha Thitiprasert, representing the Southeast Asia Women’s Caucus on ASEAN and Asia Pacific Forum on Women, Law and Development.

The ASEAN Commission on Women and Children was launched in April during the ASEAN Summit in Hanoi.

“We proposed that the RoP also devise procedures to protect individuals or groups, who provide information, cooperate with the Commission, attend public hearing and give testimonies. The country representative should recuse himself if the case being deliberated involves his or her home country. These procedures are especially important in the case of Burma,” said Khin Ohmar, the representative of the SAPA Task Force on ASEAN and Burma.
Civil Society Proposal for the AICHR Rules of Procedure

Solidarity for Asian Peoples’ Advocacy Taskforce on ASEAN and Human Rights

On 23 October 2009, ASEAN established the ASEAN Intergovernmental Commission on Human Rights (AICHR) in line with Article 14 of ASEAN Charter. This Commission is the first regional human rights mechanism established in the Asian region. There is a need to ensure that the AICHR will be an effective, credible and accountable institution to address human rights violations, and to advance the promotion and protection of human rights in Southeast Asia (SEA) in accordance with international human rights standards.

These civil society proposals are the result of the “Regional Consultation on the Rule of Procedure of the AICHR” organized by FORUM-ASIA and SAPA TF-AHR in Bangkok on 25-26 February 2010. The regional consultation was attended by civil society organization representatives from ASEAN countries and international legal experts, including those from the Inter-American and African regional human rights mechanisms.

Solidarity for Asian Peoples’ Advocacy Task Force on ASEAN Human Rights (SAPA TF-AHR) submitted this proposal for the Rules of Procedure (RoP) to the AICHR on 19 March 2010 for consideration in drafting its official RoP. AICHR discussed the RoP during its first official meeting from 28 March – 1 April 2010 in Jakarta, Indonesia.

The RoP is a key document that will detail the processes and procedures of how AICHR will carry out its mandate and functions as outlined in its Terms of Reference. The key recommendations in civil society’s proposal for the RoP are as follows:

### Civil Society Participation in the AICHR

The Commission should ensure and facilitate civil society participation and involvement in its processes and activities. This should include:

- An open and transparent process of selection of representatives to the Commission, laid out in the RoP, where civil society may nominate candidates for selection in the internal selection process of the Member States. (Article 2.3)
- In the preparation of work plans and budgets, the Commission should consult with civil society organizations, national human rights institutions and other stakeholders. (Article 8.1)
- Sessions of the Commission shall be ordinarily open to the public. (Article 10.2)
- Each regular session shall include a consultation meeting with civil organizations (Article 10.3)
- Civil society organization may propose items for the Provisional Agenda for each regular session. (Article 11.1)
- Decision-making in the Commission shall be based on consultation, especially with civil society organizations. (Article 22)
- In the preparation of annual reports and other reports, the Commission shall give due considerations to information provided by civil society, national human rights institutions and other stakeholders. (Article 58)
- The Commission shall conduct frequent and regular consultations with civil society at national as well as regional level. (Article 69.3)
- In the process of review of its Term of Reference, the Commission shall consult with civil society organizations and other stakeholders. (Article 77)
- The Commission shall create mechanisms to ensure meaningful participation of marginalized and vulnerable groups. (Article 69.5)
Civil Society Proposal for the AICHR Rules of Procedure

Independence, Effectiveness, Accountability and Transparency

• Despite being appointed by the Member States, each member of the Commission shall act impartially in discharging his or her duties, upholding human rights principles rather than serving any other interests. (Article 2.4)
• Annual budgets and funding should be transparent and subject to public scrutiny. The Commission shall report the identity and amount of all funding sources in its annual report. (Article 8.3)
• The Commission shall submit an annual report to the ASEAN FMM and have it published. (Article 55)
• The Commission shall make information of its work available and accessible to the public, including publishing key documents on a well maintained website. Members of the public shall also have the right to request information related to the work of the Commission not published on the website and the Commission shall provide the requested information in a timely manner. (Article 72)

AICHR and Human Rights Protection

In the exercise of its mandate and functions to develop strategies to promote and protect human rights (Article 4.1 of ToR) and to obtain information from member states on the promotion and protection of human rights (Article 4.10 of ToR), civil society organizations propose the Commission shall develop the following mechanism in the RoP:

• Petitions or communications on human rights violations received from any person or group of persons or non-governmental entity, shall be received, duly investigated, and responded to after it is determined admissible. The Commission may conduct on-site visits to collect additional information, utilize friendly settlement mechanisms to address issues, provide recommendations on the cases after investigation, and request that the State concerned adopt precautionary measures while such procedures are underway. (Chapter V)
• When an inquiry requires an on-site observation, the State shall furnish the Commission with all necessary facilities and applicable standard for carrying out its mission such as: 1) having the ability to interview any persons, including members of groups, entities or institutions freely and in private, including civil society organizations; and 2) the State shall grant the necessary guarantees, including protection, to persons who provide the Commission with information, testimony or evidence of any kind. (Article 54)
• The Commission may decide to hold public hearings on its own initiative or at request of an interested party. The purpose of a hearing is to receive information, follow up recommendations, precautionary measures, or general or particular information related to human rights in one or more Member States of ASEAN or in the SEA region. (Chapter VIII)
• Persons appearing before the Commission need to be encouraged to providing all necessary evidence without fear of intimidation of any kind. Therefore, the Commission must provide such persons with protection and security. (Article 61)

The full text of this civil society proposal can be downloaded at http://forum-asia.org/2010/CS_RoP_for_AICHR.pdf
Overarching Role and Alignment with other Sectoral Bodies

- The Commission shall take steps to ensure that other bodies within ASEAN adhere to international human rights standards, by assigning its members to observe other bodies within ASEAN, providing advice and assistance, conducting periodic human rights audits and developing practical human rights guidelines for other ASEAN bodies. (Article 70)
- The Commission shall consider input from appropriate ASEAN sectoral bodies, including on its work plan, budget, reports, consideration of petitions on human rights violations and the provisional agenda of its sessions. (Article 8)
- The Commission may appoint a member to liaise with ASEAN sectoral bodies and convene an annual meeting of all ASEAN sectoral human rights bodies. (Article 71.2)

In conclusion, it is imperative that the above key points be adopted to ensure the independence, effectiveness and the credibility of the Commission. If the recommendations of civil society are adopted, this will be an important positive step taken by AICHR to show that it is truly independent and committed to the promotion and protection of human rights in the region. It will send a signal to the international community that the regional human rights mechanism set up by ASEAN will work progressively towards implementing international human rights standards, strengthening both the promotion and protection human rights as envisioned in the Cha Am - Hua Hin Declaration of the ASEAN Intergovernmental Commission on Human Rights. 

Capacity Building and Promotional Activities

The Commission shall organize and conduct promotional activities, such as workshops, trainings, seminars and produce publications on its own motion or in collaboration with other organizations in relation to executing the full scope and function of its mandate specified in the Terms of References. (Chapter IX)

Institution building

In accordance with the letter and spirit of the Cha Am - Hua Hin Declaration on AICHR that emphasizes ASEAN’s commitment to pursue forward looking strategies to strengthen regional cooperation on human rights and AICHR as a vehicle for progressive development and justice, the full realization of human dignity and the attainment of a higher quality of life for ASEAN peoples, the institutional building process of the AICHR shall be developed in a progressive manner with the following recommendations for the RoP:

- The Commission shall elect a Vice Chair among its members. (Article 14)
- The Commission shall establish an independent Executive Secretariat headed by an Executive Secretary and assisted by at least one Assistant Executive Secretary, as well as with the professional, technical and administrative staff. (Article 5)
- Members of the Commission’s Executive Secretariat shall enjoy such immunities and privileges as are necessary for the exercise of their duties in accordance with Article 19 of the ASEAN Charter. (Article 7)
- The Commission shall be able to establish sub-commissions and rapporteurships comprised of external human rights experts. There shall be two categories of rapporteurships, thematic and country rapporteurships, held by independent human rights experts with proven expertise. (Article 18)
- The drafting of the ASEAN Declaration of Human Rights and any other future human rights standard setting for the region shall be conducted via a sub-commission composing of independent human rights experts, with meaningful and genuine consultation with civil society and other stakeholders, and in accordance with international human rights standards. (Article 18)
- The Commission shall be able to establish from among its members, committees or working groups with specific tasks or mandates. (Article 19)
- The Commission shall be able to review its own Terms of Reference by setting up a working group and make recommendations in consultation with civil society. (Article 77)
Emerging regional human rights infrastructure welcomed

Below is the Bangkok Action Points, outcome document of of the 15th Workshop on Regional Cooperation on Promotion and Protection of Human Rights in Asia Pacific Region, which were adopted by UN member states in the region on 23 April 2010.

Expressing appreciation to the Government of the Kingdom of Thailand for hosting the 15th Workshop of the Framework on Regional Cooperation for the Protection of Human Rights in the Asia-Pacific Region in collaboration with the Office of the United Nations High Commissioner for Human Rights;

Welcoming the participation of representatives from 30 Member States and observers from across the Asia-Pacific region in this workshop;

Expressing appreciation to the representatives of national human rights institutions, international organizations, civil society and resource persons for their inputs to the workshop;

Welcoming the activities by national human rights institutions in support of regional cooperation, including those with the support of the Asia-Pacific Forum of National Human Rights Institutions and the Office of the High Commissioner for Human Rights;

Welcoming the evolutionary development of new regional mechanisms for the promotion and protection of human rights, particularly the establishment of the Arab Human Rights Committee under the Arab Charter on Human Rights, the ASEAN Intergovernmental Commission on Human Rights under the ASEAN Charter and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, as well as the Organization of the Islamic Conference’s deliberations on the establishment of an independent human rights commission and the initiatives in SAARC to further promote cooperation on the rights of women and children;

Noting the Human Rights Council’s continued support for the development of regional human rights arrangements, most recently in resolutions 6/25 and 12/15;

Member States:
Reaffirm their commitment to developing and strengthening national capacities for the promotion and protection of human rights, in accordance with the Tehran Framework for Regional Technical Cooperation in the Asia-Pacific region;

Welcome the emerging regional human rights infrastructure in the Asia-Pacific region and the development of new regional human rights mechanisms, as well as the Asia-Pacific countries’ active engagement in the UPR process, encourage more regular exchange of experiences which could be undertaken through the workshop and possible inter-sessional activities, and request OHCHR and other relevant UN agencies to provide technical assistance in this regard upon request;

Note that the on-going evolution of the human rights system within Southeast Asia, particularly the establishment of the ASEAN Intergovernmental Commission on Human Rights, highlights the opportunities for initiatives by countries to work toward the development of sub-regional human rights mechanisms which are an essential building block for broader human rights arrangements for the Asia-Pacific region;

Recognize that regional arrangements play a fundamental role in promoting and protecting human rights. While evolving in different forms in different regional contexts, they should reinforce universal human rights standards, such as those contained in international human rights instruments and international humanitarian law;

Underline the importance of partnerships between Governments, national human rights institutions and civil society at the national and regional levels in developing regional mechanisms;

Encourage strengthened cooperation between the United Nations and regional arrangements in the field of human rights and the identification of strategies to overcome obstacles to the promotion and protection of human rights at the regional and international level;
NGOs raise regional priorities on human rights

Below is a joint statement of non-governmental organizations on the implementation of the four pillars of the Tehran Framework, at the 15th Annual Workshop on the Framework of Regional Cooperation for Human Rights Promotion and Protection.

We, the civil society organizations present on the occasion of this 15th Workshop, would like to take this opportunity to share our views and recommendations related to the progress of implementation of the four pillars of the Tehran Framework.

National Human Rights Action Plans

We welcome the initiative of countries that have adopted national human rights action plans and the commitment of others to do the same. We believe that these NHRAPs should be in accordance with international human rights norms, standards and principles. Moreover, we recommend consultations with civil society organizations and National Human Rights Institutions (NHRIs) to ensure their meaningful inputs into and participation in the implementation of these plans.

Governments have in place various national development and sectoral or issue specific plans, and we recognize the challenges especially in coordination that this poses among the different state bodies concerned which can hamper implementation and furtherance of the NHRAPs. We urge governments to adopt such measures to enhance the coherence and complementation among different bodies involved, for instance through the creation of consultative and coordination mechanisms.

We urge governments and National Human Rights Institutions to ensure that the NHRAPs address the Human Rights of all peoples within their territory regardless of status and other factors.

National Human Rights Institutions

As more NHRIs are being set up in the region, we would like to call for the strict observance of the Paris Principles in this regard. The appointment of commissioners to these institutions should be based on the competence of the candidate in the field of human rights and done in an accountable and transparent manner. We moreover would like to see efforts to promote gender balance in particular among the commissioners and personnel at all levels within these institutions. We especially would like to underline the importance of full participation of independent civil society organizations in the work of NHRIs in order to ensure effective promotion and protection of human rights.

We call upon governments and NHRIs in the protection and promotion of human rights to recognize, respect and protect the individual and collective rights of all peoples within their territory regardless of status and other factors.

Human Rights Education

We urge that the governments to maintain Human Rights education as a priority, with emphasis on broadening the scope to include Human Rights education as part of the school curriculum and Human Rights education for state organs (executive, legislative and judicial) and other state institutions at all levels. We believe that the proper and effective human rights education of all those involved in the administration of justice is key to combating impunity and establishing the rule of law.

Human Rights education programs should include among others the rights of

continued on page 39
The need is for protection not regulation


The Vienna Declaration and Programme of Action (VDPA) emphasizes the important work of human rights defenders and underlines the need for States and international organizations, in cooperation with non-governmental organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights (Para.13).

We are thus particularly alarmed at the tone of negotiations on the draft resolution on protection of human rights defenders (A/HRC/13/L.24) taking place during this session of the Human Rights Council, with some governments showing themselves to be more concerned with regulating NGOs than protecting human rights defenders.

The objective of the resolution is to address the protection needs of human rights defenders. States should act vigorously to protect all human rights defenders from threats, violence, harassment and abuse as is their duty under international human rights law.

Instead, many States seem intent on using the resolution to selectively quote from, rewrite, or restrict the clear provisions of the UN Declaration on Human Rights Defenders, which was adopted by consensus after being carefully negotiated over a 13-year period. We are alarmed, for example, at proposals to narrow the scope of protection to only those defenders working on issues that are “universally recognised”.

This proposal would wholly undermine the Declaration, which explicitly affirms the right of defenders to promote the protection and realisation of human rights without qualification and advocate for the acceptance of “new human rights ideas and principles” (art. 7).

We ask States to recognise the protection needs of all human rights defenders, who often face increased risks of violence, threats and harassment because of their peaceful activities. Limiting protection to persons working on rights which are “universally recognised” turns the VDPA’s affirmation of universality on its head: “universality” means all human beings are entitled to all human rights.

“Universally recognised” signals a desire to deny human rights to those working on issues that a government
women, children, persons with disabilities, migrants, refugees, persons with different sexual orientation and gender identities, indigenous people, as guaranteed in the UDHR. The programs should be compliant with international human rights standards, international humanitarian law and core labour standards.

We urge governments to provide adequate financial resources to the National Human Rights education in their annual budgets.

Realization of ESC Rights and the Right to Development

While there have been claims of widespread economic growth, we are concerned by the growing economic disparity and increasing poverty in many of the countries in the region. We believe that Economic, Social and Cultural (ESC) rights cannot be realized only through economic development. Governments should adopt human rights-based approach in all areas such as economic and social development planning, and trade and finance policy. Further, we urge governments to enhance transparency and accountability and public participation in economic policy decisions, including on bilateral and multilateral trade agreements.

We urge states parties to the ICESCR to strengthen implementation of the same and for governments to ratify the Optional Protocol to the Covenant. Noting that rights stipulated in the ICESCR are detailed out in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), we urge Governments that have voted in favor of the UNDRIP to also ensure the full implementation of this international instrument. Finally, we recommend inclusion of ESC rights and the right to development as constitutional rights at par with civil and political rights and take all appropriate measures to ensure that these rights are justiciable.

Endorsed by: Asia Pacific Refugee Rights Network • Asian Forum for Human Rights and Development • Asian Indigenous Peoples’ Pact • Asylum Access • Disabled Persons International Asia Pacific • Informal Sector Service Center • Oxfam International • Working Group for an ASEAN Human Rights Mechanism • US Committee for Refugees and Immigrants
Sri Lanka:

Violations by all parties need redress

This oral statement was delivered by Ms. Pooja Patel on behalf of Asian Forum for Human Rights and Development (FORUM-ASIA) at the 13th Session of the UN Human Rights Council during the General Debate on 15 March 2010.

FORUM-ASIA would like to highlight a range of grave human rights concerns in Sri Lanka, which have persisted despite the conclusion of the offensive between the State armed forces and the Liberation Tigers of Tamil Eelam (LTTE).

We are concerned over the allegations of election-related violence and abuse of power surrounding the Presidential Elections held in January 2010. We urge the government of Sri Lanka to establish a multi-party mechanism to carry out an unbiased investigation into such incidents.

We are also deeply troubled that there has been an increase in media suppression in the post-election period resulting from persistent attacks, threats and restrictions on media personnel and institutions.

We condemn the closure of the Lanka Newspaper office for its work on the elections, and the disappearance of Lanka-E-News editor, Mr. Prageeth Eknaligoda, who went missing on 24 January 2010.

We regret that there remains a lack of independent and reliable information regarding the conditions of detainees who are on suspicion of being LTTE cadres. Many of such detainees have been denied access to legal counsel to challenge their detention before a court of law.

Additionally, the International Committee of the Red Cross (ICRC) has not been granted adequate access to visit the detainees. The National Human Rights Commission of Sri Lanka has also been obstructed by the state authorities despite its statutory right and obligation. Meanwhile, families and inmates have revealed information about torture and disappearances within detention centers.

In this respect, we urge the government of Sri Lanka to provide a centralized list of such detainees and enable access to lawyers, ICRC and other statutory bodies and individuals.

FORUM-ASIA welcomes the recent initiative of the UN Secretary-General to establish a Panel of Experts to advice him on issues related to accountability in Sri Lanka, which we see as merely an initial step.

We urge the member States of this Council to fully support this endeavor of the Secretary-General.

We further call on the Council, as a follow up to its 11th Special Session on the human rights situation in Sri Lanka, to explore additional, concrete and practical measures with a view to ensuring that the government of Sri Lanka comply with the Joint Communiqué issued in the names of the President of Sri Lanka and the UN Secretary General on May 25 2009 which provides for the establishment of an accountability process to address violations of international humanitarian and human rights law committed by all parties to the conflict.
Domestic laws contradict international human rights standards

This joint oral statement was delivered by Ms. Emerlynne Gil on behalf of Asian Forum for Human Rights and Development (FORUM-ASIA), Asian Legal Resource Centre (ALRC) and International NGO Forum on Indonesian Development (INFID) at the 13th Session of the UN Human Rights Council on 11 March 2010.

FORUM-ASIA, ALRC and INFID appreciate the reports of both Special Rapporteurs and their insightful analysis on the need for preventive measures.

The Special Rapporteur on freedom of religion or belief highlighted early warning signals of discrimination and violence on the grounds or in the name of religion or belief, and the Special Rapporteur on the situation of human rights defenders made an analogous discussion of long-term and short-term triggers compromising the security and protection of human rights defenders.

We note with concern that one of the early warning signs of such discrimination and violence, specifically with regard to State actors, is manifest in domestic legislation which are in contradiction to international human rights norms and standards, even to their own constitutions in many cases.

In this regard, we welcome the intervention made by the Indonesian government this morning that the constitutionality of the Blasphemy Law of 1965 is being challenged at the Constitutional Court, which is discriminatory and often used as a tool to target religious minorities. We urge other States to follow the commitment of Indonesia to address these issues in the most democratic and inclusive manner, and to seriously consider all the recommendations presented by the Special Rapporteur to serve as a guide in their review of domestic legislation.

The Special Rapporteur on the situation of human rights defenders identified speaking overseas on the human rights situation in their respective countries, as one of the short-term triggers leading to attacks against defenders, including women human rights defenders.

We are very much disturbed to see a news item regarding a list of Sri Lankan human rights defenders and journalists, with each name having a corresponding ‘crime’ of being involved in activism or journalism along with a ‘numerical rank’. Some persons included in the list have publicly addressed their concerns over Sri Lanka’s human rights records at this Council and other international and national forums.

As a result, they have had to remain outside of the country for fear of reprisals. To date, we have not heard of a response from the Sri Lankan government to this news item, despite two prominent defenders addressing a letter to the President of Sri Lanka in this regard. Is the Special Rapporteur aware of this list? We would like to hear how she could address this and other threats, intimidation and attacks on human rights defenders in Sri Lanka. In particular, is the Special Rapporteur aware of serious current threats of arbitrary arrest of prominent defender J.C. Weliamuna, the Chairperson of Transparency International Sri Lanka?

The Special Rapporteur also identified the election period as a time when defenders face heightened risks. Concepcion Brizuela and Cynthia Oquendo, two lawyers and women human rights defenders, two were among the 57 people brutally murdered on 23 November 2009 in Maguindanao, Philippines.

We believe that this massacre is another clear evidence of the culture of impunity that has been pervading in the country for many years. Considering that certain countries in Asia will be having elections in the coming months, we would appreciate if the Special Rapporteur could further elaborate her views on how States should ensure the security and protection of defenders including women human rights defenders during this very critical time.

Lastly, we urge those States which have yet to respond to the requests of country visits by the Special Rapporteur - Sri Lanka and Philippines as well as China, India, Malaysia, Nepal, Singapore, among other countries, to cooperate with the Special Rapporteur and allow her to effectively discharge her mandate.
Burma:

International pressure must remain to address human rights violations

This joint oral statement was delivered by Mr. Thaung Htun on behalf of Asian Forum for Human Rights and Development (FORUM-ASIA), CONECTAS Direitos Humanos and Worldview International at the 13th Session of the UN Human Rights Council during the Interactive Dialogue with the Special Rapporteur on the Situation of Human Rights in Burma/Myanmar on 15 March 2010.

FORUM-ASIA, CONECTAS and Worldview International appreciate the report (A/HRC/13/48) of the Special Rapporteur, Mr. Quintana, in which he reconfirmed a pattern of gross, widespread and systematic violation of human rights in the country.

In this vein, we strongly support the extension of his mandate and urge the Council to provide a necessary resolution with a view to fully acting upon the conclusions and recommendations made by the Special Rapporteur, in particular the establishment of a UN commission of inquiry with a specific fact-finding mandate to address the question of crimes against humanity and war crimes.

At the 10th session of this Council, we put on record our serious doubts that the SPDC’s road map to democracy is only to legitimize its military rule through the election scheduled to take place this year. The election laws announced by the SPDC on 8 March 2010 regarding an election commission, political parties registration and the rules for the members of parliament and local legislatures, only sustain our doubts as legitimate. These election laws are designed to exclude Daw Aung San Suu Kyi and other prisoners of conscience from any political process ahead.

Furthermore, the Election Commission has a discretion to determine whether the election should be held in the districts affected by “natural catastrophe or security concerns”.

This implicates that there would be no polling in certain areas, including those controlled by armed ethnic organizations that have signed ceasefire agreements but failed to join the Border Guard Force under the control of the SPDC’s army.

It is of our grave concern that in the run up to the election, there are increasing tensions and risk of resumption of conflict between the SPDC’s army and ethnic ceasefire groups, and thereby the sufferings of civilians have drastically intensified.

While we echo the call of the Special Rapporteur that the SPDC shall abide by international humanitarian law, especially article 3 of the Geneva Conventions regarding the protection of civilians, we would appreciate to hear from the Special Rapporteur further on what measures should be taken at the regional, international or UN levels in order to deter the SPDC’s perpetration of human rights abuses against ethnic civilians at this critical time.

Lastly, the Special Rapporteur envisaged in his report that the newly established ASEAN Intergovernmental Commission on Human Rights (AICHR) may present another forum to address human rights concerns of the country. Given the fact that the AICHR lacks independence and effective protection mandate at the moment, we would like to hear the Special Rapporteur’s view on how he intends to work with the AICHR and the ASEAN member States in bringing the improvement of human rights in the country.
Cambodia:

Government must act beyond ‘acceptance’ of UPR recommendations

This oral statement was delivered by Ms. Angkana Krabuansaeng on behalf of Asian Forum for Human Rights and Development (FORUM-ASIA) at the 13th Session of the UN Human Rights Council during the Universal Periodic Review (UPR) Plenary on Cambodia on 17 March 2010.

FORUM-ASIA regrets that Cambodian government did not provide any written response in advance regarding its position on each recommendation by the Universal Periodic Review (UPR) Working Group of last December.

We believe that the practice of submitting a written response for circulation prior to the adoption of the UPR outcome report has been developed in the Council thus making this one-hour plenary meeting a more substantive exercise.

While we welcome the earlier statement by the delegation that the Cambodian government accepts most of the recommendations, we still would like to get clarifications on what are the areas of its reservations.

We also urge the Cambodian government to make proactive efforts to publicize and widely disseminate this UPR report and to take genuine steps to engage with civil society organizations in the country following up on its first UPR outcome.

During the UPR Working Group, the Cambodian delegation rhetorically stated that freedom of expression is enshrined in the Constitution as one of the fundamental rights while asserting that the government would not tolerate social disorder or endangering national unity and security.

We do not see how human rights defenders who are protecting fundamental rights such as land and housing rights with peaceful means, can be perceived as a threat to social order or national security.

This form of discretionary approach by the government to the right to freedom of assembly and expression is also shown in the recent crackdown against the demonstrators in Dangkor District, Phnom Penh City, on 1 March 2010, who protested alleged seizure of their farmland.

Legitimate activities of human rights defenders were also obstructed in the incident when the monitors from human rights groups had their cameras confiscated and all photo evidence was deleted.

The concerns of the international community regarding the gravity of forced evictions and land grabbing in Cambodia are unequivocal. We strongly echo the recommendations made during the UPR Working Group to fully implement the 2001 Land Law and institute a moratorium on evictions until safeguards such as prior consultation, full compensation and access to basic services and infrastructure in relocation areas can be guaranteed.

We note the outstanding country visit requests to Cambodia by the Special Rapporteur on the Independence of Judges and Lawyers, and urge the Cambodian government to accommodate these requests at its earliest.

All allegations of corruption within the judiciary should be immediately investigated by an independent mechanism, if the government seriously hopes the Extraordinary Chambers in the Courts of Cambodia (ECCC) becomes a model court for future judicial systems not only in Cambodia but also for the world as stated by the Cambodian delegation during the UPR Working Group.
Nepal activist wins 2010 Gwangju Prize for Human Rights

The May 18 Memorial Foundation in Gwangju, Korea proclaimed Sushil Pyakurel as the winner for the 2010 Gwangju Prize for Human Rights.

For over two decades Sushil Pyakurel has been actively involved in the promotion and protection of human rights and democracy in Nepal. He is the founder of various human rights bodies and organizations, including the human rights organization INSEC and the Forum for the Protection of Human Rights, the first human rights organization in the country.

He is also a former Commissioner of Nepal’s National Human Rights Commission (NHRC).

In the course of his long and impressive career in this field he has played a crucial role in encouraging international pressure against the royal regime and in the establishment of the Office of High Commissioner field office in Nepal. In addition he has represented his country at several international events in Japan, India and the USA.

Mr. Pyakurel is the current President of the Accountability Watch Committee (AWC) in Nepal, and a member of the Dialogue Group for the Constituent Assembly.

The award was conferred on 18 May 2010 in a ceremony to commemorate the May 18 Gwangju Democratic Uprising. The prize award includes a medal, a certificate of achievement and a cash award.

Human rights defender from India to receive human rights prize

The human rights prize of the city of Weimar for the year 2010 goes to Lenin Raghuvanshi.

Dr. Lenin Raghuvanshi has been working for the rights and interests of the Dalits for the past 15 years, primarily in the North Indian state of Uttar Pradesh. As the founder of the "People’s Vigilance Committee on Human Rights" (PVCHR), he has striven to maintain and enforce the fundamental rights of vulnerable groups such as children, women, Dalits and indigenous minorities.

He has also been involved in the documentation of information on many kinds of human rights violations such as starvation, police torture, child labor, etc., and tried through cooperation with local human rights groups to care for the victims individually.

Because of his commitment to human rights his family, associates and he continue to face hostility (including death threats) from adversaries.

The award will be made on December 10, proclaimed by the United Nations as the International Human Rights Day.

Lenin Raghuvanshi was proposed for this Award by the "Friedrich Naumann Foundation for Freedom".

The city of Weimar has the honour to remember its special historical responsibility and remember all the nameless victims of dictatorships and tyrannies in the world, a human rights award.
The Gwangju Prize for Human Rights is an award given to individuals, groups or institutions in Korea and abroad that have contributed in promoting and advancing human rights, democracy and peace in their work. The award is given by the Gwangju people in the spirit of solidarity and gratitude from those whom they have received help in their struggle for democratization and search for truth.

The Gwangju Prize is administered by The May 18 Memorial Foundation, a non-profit organization established on 30 August 1994. It was organized by survivors and relatives of victims of the 1980 Gwangju Democratic Uprising, and the citizens of Gwangju.

The Foundation aims to commemorate and continue the spirit of struggle and solidarity of the May 18 Uprising, contribute to the peaceful reunification of Korea, and work towards peace and human rights throughout the world.

Since its establishment, the Foundation has carried out numerous projects in varying fields, including organizing memorial events, establishing scholarships, fostering research, disseminating public information, publishing relevant materials, dispensing charity and welfare benefits, building international solidarity, and awarding the Gwangju Prize for Human Rights.

In congratulating Sushil, fellow human rights activists said the award was a “true recognition of non-violent and democratic peoples’ uprising for democracy and rule of law.”

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The Sri Lanka woman among 2010 International Women of Courage awardees

Jensila Majeed is the Managing Trustee of Community Trust Fund in Puttalam province, a FORUM-ASIA member in Sri Lanka. The Trust oversees a number of programs on minority and women’s issues, including women’s rights, peace building, relief work, working with young people, and mine-risk education in the North and East.

Majeed’s own particular focus is on uniting the Muslim and Tamil communities in her province. On 10 March 2010, she was awarded the 2010 International Women of Courage (IWOC) Award by Senator Hillary Clinton.

On 1 March 2010, Secretary Clinton announced the 10 winners of this year’s International Women of Courage (IWOC) award, which was presented at the Department of State.

The other awardees include Shukria Asil (Afghanistan), Col. Shaﬁqa Quraishi (Afghanistan), Androula Henriques (Cyprus), Shadi Sadr (Iran), Ann Njogu (Kenya), Dr. Lee Ae-ran (Republic of Korea), Sister Marie Claude Naddaf (Syria), and Jestina Mukoko (Zimbabwe).

The annual International Women of Courage Award was started in March 2007 to recognize women around the globe who have shown exceptional courage and leadership in advocating for women’s rights and advancement. This is the only award within the Department of State that pays tribute to outstanding women leaders worldwide. It recognizes the courage and leadership shown as they struggle for social justice and human rights.

“These ten women have overcome personal adversity, threats, arrest, and assault to dedicate themselves to activism for human rights,” said Melanne Verveer, the State Department’s first ever Ambassador-at-Large for Global Women’s Issues. “From striving to give more voice to politically underrepresented women in Afghanistan to documenting human rights abuses in Zimbabwe, these heroic individuals have made it their life’s work to increase freedom and equality in the world.”

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Features
2010 Gwangju Asian Forum

To commemorate 30th anniversary of May 18 Gwangju Uprising, the May 18 Foundation organised 2010 Gwangju Asian Forum on 17 to 23 May 2010 with theme, “Asia: Yesterday, Today and Tomorrow”. In her keynote speech during the opening ceremony Hee-ho Lee, president of Kim Dae-jung Peace Centre and also former first lady of South Korea, stressed the importance of keeping peace and democracy in Asia through solidarity.

With around 500 participants mainly from Asia, 2010 Gwangju Forum included the Annual Festival, the 30th anniversary commemorative ceremony, and awarding of the Gwangju Prize for Human Rights and a field trip. Also, participants organized several workshops on 19-20 May on different issues, including democracy in Asia, environment and climate change, peace resolution, and human rights and freedom of expression in Asia. (Text by Gayoon Baek)

On 18 May, participants visited the National Cemetery of the May 18 Democratic Uprising to attend an official ceremony and also pay tribute to the human rights defenders who died in defense of democracy in the country. This year’s commemoration was especially meaningful since it marks the 30th Anniversary of the May 18 democratic uprising. Despite the importance of the occasion, the official ceremony was tarnished with the government’s refusal to include the song *The March for Thou*, a symbolic song for May 18 democratic uprising, and prevention of members of the Civil Servants’ Union from visiting the cemetery. As a result, many human rights organizations including victims’ families refused to attend the official ceremony, which ended as a ceremony that does not fully incorporate the spirit of the May 18 democratic uprising.
Democracy in Asia: Progress or Crisis?

During 2010 Gwangju Asia Forum, FORUM-ASIA, together with People’s Solidarity for Participatory Democracy (PSPD), Solidarity for Democracy Movement in Asia (SDMA), Asian Regional Exchange for New Alternatives (ARENA) and Korean Institute of Southeast Asian Studies (KISEAS), organized a workshop with the title “Democracy in Asia: Progress or Crisis?”. The workshop identified emerging trends and challenges in protecting human rights and democracy in Asia with a view towards developing strategies and a common commitment among civil society groups in Asian in developing democracy and promoting human rights in the region. Around 60 participants from all over the Asia actively shared their experiences and discussed strategies on monitoring different government branches (executive, legislative and judicial branches), at the national level and how to enhance democratic governance at the regional level through regional mechanisms such as ASEAN and SAARC. Participants emphasised the importance of civil society participation in the decision making process as a means to strengthen democracy in the region.

Grand March

Participants held the Grand March on the last day of the 2010 Gwangju Asia Forum. As they marched from the Kim Dae-jung Convention Centre to the May 18 Foundation office, a band played The March for Thou, which is considered the anthem for the May 18 democratic uprising.