

# Establishing a Robust Regional Human Rights Mechanism in South Asia

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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. The growing dominance of neo-liberal global economies has limited the role of states in fulfilling its obligations to respect, protect and promote human rights. 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 IC-ESCR 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 organisation (NGOs) have. Here, once again, for Europe NGO access was the most significant.

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-



(From left to right) Rafendi Djamin, of the Indonesian representative to the ASEAN Inter-Governmental Commission on Human Rights (AICHR), Lenin Raghuvanshi, of the People's Vigilance Committee on Human Rights (PVCHR) in India and Mr. Rory Mungen, of the Office of the UN High Commissioner on Human Rights (OHCHR) field office in Nepal, speak during a workshop session of the First Sub-regional Workshop on South Asian Human Rights mechanism.,

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 ju-

risdictions 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.



Participants of the First Sub-regional Workshop on South Asian Human Rights mechanism.,



“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. 