



## **Submission No 37**

### **Inquiry into Human Rights and Good Governance Education in the Asia Pacific Region**

**Organisation:** Human Rights and Equal Opportunity  
Commission

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**Human Rights and  
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**Executive Director**

Mr Adam Cunningham  
Secretary  
Joint Standing Committee on Foreign Affairs, Defence and Trade  
Human Rights Sub-Committee

25 June 2003

Dear Mr Cunningham

**Re: Inquiry into Human Rights and Good Governance  
Education in the Asia Pacific**

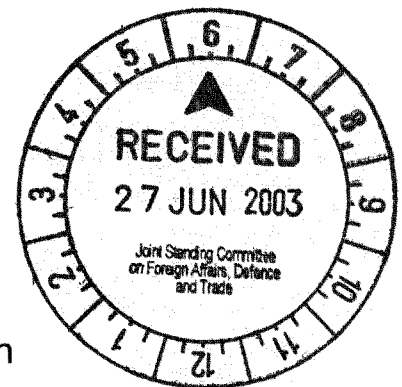
Thank you for your letter dated 29<sup>th</sup> May 2003 outlining  
supplementary questions relating to the above Inquiry.

Please find attached the Commission responses to those  
questions.

Please feel free to contact me if you require further information.

Yours sincerely

Diana Temby  
Executive Director  
Human Rights and Equal Opportunity Commission



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## Joint Standing Committee on Foreign Affairs and Trade (Human Rights Sub Committee)

### Human Rights and Good Governance Education in the Asia Pacific Region

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#### SUPPLEMENTARY QUESTIONS AND ANSWERS HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

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**Q1.** Where is Australia up to in the development of a national action plan for human rights education as outlined in the UN Decade of Human Rights education objectives?

**A1.** This question was referred to the Attorney-General's Department. The Civil Justice Division of the Department has supplied the following information about the status of Australia's National Plan of Action for human rights education.

*"The Australian Government is strongly committed to human rights education.*

*At present, the Government is developing a new National Action Plan (NAP) which will better reflect the Government's human rights priorities. A Working Group, comprised of government departments and agencies, has been meeting since 1999. During this time the Working Group has considered a number of drafts and has incorporated changes suggested by relevant departments and agencies. The latest drafts of the NAP were circulated amongst the Working Group for comment in late 2002. The Attorney-General's department is currently finalising the draft NAP. Once a draft NAP is finalised, it will be provided to the Minister for Foreign Affairs and the Attorney-General for their consideration. Upon clearance by the Ministers, the draft NAP will be circulated to State and Territory governments and non-governmental organisations for comment.*

*The Government also takes the view that a national human rights education strategy can also be developed by those organisations primarily involved in human rights education, namely the Human Rights and Equal Opportunity Commission and the National Committee on Human Rights Education.*

*In 1998 the Government provided seed funding for the establishment of the National Committee on Human Rights Education (the Committee) to develop strategies for the effective and coordinated delivery of human rights education throughout Australia, in line with the objectives of the UN Decade of Human Rights Education. The Committee operates as a cooperative venture between relevant government and non-government agencies, business and the community sector. Since its establishment, the Government has provided additional funding to support the Committee's activities. However, the Government considers that funding should not be solely from the Commonwealth, and the Committee is seeking to source funds from a range of private and public sector areas.*

*In August 2002, the Committee organised a National Strategic Conference on Human Rights Education. Recommendations for follow-up action were released in December 2002 and it is expected that they will provide a framework for developing a coordinated national human rights education strategy.*

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*Further, the Human Rights and Equal Opportunity Commission devotes considerable resources to education. Its programs are designed to respond to perceived gaps in human rights education in Australia. The Commission has developed a structured human rights education program for teachers of upper primary and secondary students. It also undertakes a range of activities raising awareness of human rights issues amongst specific groups such as business or regional Australians."*

**Q2(i).** Is there any room for HREOC to play a more substantial regional role in promoting human rights both domestically and regionally. Would this require legislative change?

**A2(i).** HREOC has statutory obligations under its legislation to promote human rights domestically and these are adequate. HREOC would require additional funding to play a more substantial role in promoting human rights.

All current work within the region is self-funding, through AusAID, and in cooperation with the Department of Foreign Affairs and Trade. The basis of this work is the sharing by HREOC of its expertise and experience to assist in the strengthening of good governance in institutions in the region.

**Q2(ii).** How can the Asia Pacific Forum of National Human Rights Institutions be better utilised to promote human rights and good governance education?

**A2(ii).** As a member of the Asia Pacific Forum of Human Rights Institutions HREOC is involved with other member institutions in the promotion of human rights and good governance education in the region, and works with those institutions in the promotion of these issues.

HREOC is the founding member of the Forum and provided financial support to the Forum from 1996 to 2002 when the Forum became an incorporated public company limited by guarantee. The Australian government through the Minister for Foreign Affairs and AusAID have consistently provided financial support for the Forum. Additional funding has been provided by a range of donors including the UN Office of the High Commission for Human Rights on a project-by-project basis.

Securing sustainable multi-year funding for the Forum would enhance its effectiveness and allow for it to be better utilised in the promotion of human rights and good governance education.

**Q3(i).** How effective is Commonwealth/State cooperation in delivering human rights and good governance education projects to schools? Could cooperation be improved in any way?

**A3(i).** It is always possible to improve cooperation in the delivery of human rights and good governance education projects to schools. The Commonwealth has developed the *Discovering Democracy* program which is a valuable resource, and which could be used by States in the delivery of appropriate programs.

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HREOC is not formally involved with Commonwealth/State Education Departments so cannot comment on their effectiveness.

A new set of National Goals for Schooling in the Twenty First Century was endorsed at a meeting in 1999 of State, Territory and Commonwealth Ministers of Education who met as the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA).

The Commonwealth needs to rely on such cooperative ventures to incorporate such topics as human rights into the curriculum.

HREOC had this restriction in mind in the development of its online human rights education program for secondary school teachers and students which delivers the program directly to teachers and students.

In this way human rights and good governance education projects can be delivered by teachers to students within the existing curriculum areas and without necessarily relying on Commonwealth /State cooperation.

**Q3(ii).** Should human rights and good governance be given a higher profile in the primary and secondary schools?

**A3(ii).** HREOC would welcome the allocation of a higher profile to human rights and good governance education in primary and secondary schools.

**Q3(iii).** To what extent do you support the Citizenship for Humanity project?

**A3(iii).** HREOC supports the aim of this project which is to distribute to final year primary school children a certificate which will contain the Universal Declaration of Human Rights (UNDHR). The Human Rights Commissioner, Dr. Sev Ozdowski is on the National Committee for Human Rights Education and has been involved in the development of this project.

**Q4.** The National Committee on Human Rights Education cites the lack of human rights education for Commonwealth public sector employees. Do you consider that there is a need for more extensive human rights training for the broader public service?

**A4.** HREOC agrees that it is important that public sector employees receive training on human rights issues. HREOC in conjunction with the Public Service and Merit Protection Commission (PSMPC) delivers training to public sector employees in conducting investigations. The objectives of the training include:

- To understand the Australian Public Services Values and Code of Conduct and what constitute a breach of these codes;
- To understand federal human rights and anti-discrimination law; and
- To understand legal principles relevant to the conduct of an investigation.

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The PSMPC provides a range of training programs that include human right issues. These include maintaining a harassment free workplace; Workplace and Diversity; and implementation of EEO practices and principles.

HREOC agrees that Departmental officers whose work is affected by obligations under international treaties on human rights should receive suitable and comprehensive training.

**Q5.** The National Committee on Human Rights Education argues that human rights education should be included as a specific agenda item in the human rights consultations with bilateral dialogue partners. Should human rights education be given more prominence in our bilateral human rights dialogues? To what extent are you consulted in regard to setting of the agenda for the human rights dialogues?

**A5.** In considering the best way to have an impact on the promotion and protection of human rights in the context of a human rights dialogue, it is useful to separate the dialogues themselves from human rights technical cooperation. Although they work together, and although both require a considerable amount of trust and confidence on the part of all parties to work effectively, it is possible to approach a technical activity in a way that may not be appropriate or practical for a political dialogue.

The dialogue agendas are negotiated by foreign policy experts in DFAT (we assume in consultation with the Minister) and the Commission trusts that their judgment and knowledge ensures that the agenda represents the best way forward. HREOC is not formally consulted about the agenda but, in the case of China where there is a mature program of cooperation, we believe that the views of the dialogue partners on both sides as to appropriate agenda items are influenced by the success (or otherwise) of the various HRTC activities.

In an academic sense there may be some advantage in making human rights education an agenda item in that it could further sensitise the dialogue partners to the need to embed human rights principles in a systematic way. On the other hand, in a more practical sense, given that countries are nearly as sensitive about their educational curricula as they are about human rights, it could add a complication without leading to practical impact beyond what is already being achieved.

Moreover the lack of a formal agenda item does not prevent discussion of the issues, should either party be inclined. In this case it may be wisest to be guided by the professionals who conduct the dialogues.

In the case of China it seems clear that the technical cooperation program has no difficulty dealing with human rights education. As the National Committee for Human Rights Education has pointed out, the HRTC program with China has had a positive impact on human rights education in China even though there is no formal dialogue agenda item dealing with human rights education. Should the dialogues with Vietnam and Iran proceed on a similar path we expect that technical cooperation could deal with human rights education even in the absence of a dialogue agenda item at the political level.

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**Q6.** At the Commonwealth level human rights issues fall across the portfolio responsibility of a number of agencies. Are cross departmental initiatives effectively coordinated?

**A6.** HREOC agrees that cross departmental initiatives should be effectively coordinated but it is not in the position to be able to evaluate any such initiatives.

**Q7.** What is your view of the proposal for a planned, funded and implemented national human rights education awareness campaign along similar lines to other public safety awareness campaigns (i.e. seat belts, drink driving etc.)?

**A7.** HREOC would welcome such a campaign, however before any such campaign was undertaken a number of important factors would need to be taken into consideration including:

- The cost and potential effectiveness of such a campaign compared to other ways of raising awareness of human rights in the community;
- The need for research to be undertaken to evaluate the current level of awareness of human rights in the community;
- Agreement as to the message (e.g. what human rights means to the individual or rights v responsibilities); and
- Target groups (eg everyone: students, employers, politicians).

The campaigns given as examples of successful awareness campaigns were specifically targeted, that is, to drivers of cars and passengers. The message was if YOU don't use your seat belt you may be injured and WILL get fined and if YOU drive after drinking a certain amount of alcohol you can be found guilty of a criminal offence and go to jail. The effectiveness of the campaigns could therefore be evaluated.

An alternative to a general national human rights awareness campaign would be one which was focussed on the elimination of certain sorts of prejudices, for example campaigns such as the HREOC campaign funded by the federal government in the early nineties *Different Colours One People*. This campaign targeted young people between 12-16 years and had a series of well known personalities in the sporting and pop culture fields who were advocates for the need to eliminate racist behaviour. T-shirts, caps and youth-oriented events and publications were produced by a professional firm with expertise in the youth marketing field.

There was an evaluation of the project which showed the campaign did raise awareness of issues of race and tolerance in the target group.

A general campaign which talks about the universality of human rights for example, could be an expensive way of increasing awareness of human rights.

The danger is that the campaign could be a "feel good" one, without changing attitudes, and could prove difficult to evaluate.

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**Q8(i).** Do you think it is necessary to establish a national coordination council for human rights institutions with the aim of fostering increased collective programs to advance the shared objectives of Australian human rights institutions?

**A8(i).** HREOC as Australia's national statutory Human Rights Institution does work cooperatively wherever possible with state government anti-discrimination and equal opportunity bodies as well as non-government human rights groups to advance human rights in Australia.

HREOC is also a member of the Asia Pacific Forum of Human Rights Institutions and works with all member Institution and non-government organisations in Australia and in the region to promote and protect human rights.

Before HREOC could comment further on this issue we would need more information as to who would form the membership of the national coordination council and what its role would be.

**Q8(ii).** To what extent do human rights institutions in Australia cooperate in regard to human rights and good governance education? Should they be conducting cooperative ventures such as joint public information campaigns?

**A8(ii).** Cooperation between organisations interested in the promotion and protection of human rights in Australia is a worthwhile goal. HREOC has worked cooperatively with State Equal Opportunity Commissions on a number of projects. For example, in the delivery of human rights education programs for schools called *Youth Challenge*, HREOC worked in partnership with the South and Western Australian Equal Opportunity Commissions and the Queensland, Northern Territory and ACT Anti-Discrimination Commissions.

The Race Discrimination Commissioner has conducted consultations within the Muslim communities in a number of states in company with State Equal Opportunity Commissioners. All Commissioners and the President have worked on a number of projects and campaigns cooperatively.

**Q9.** A number of submissions called for Australia to support a 2<sup>nd</sup> Decade for Human Rights education. What, in your view could be achieved with the additional 10 years devoted to human rights education?

**A9.** HREOC's position is similar to that reported as being the view of the Australian delegate to the 59<sup>th</sup> session of the UN Commission on Human Rights. The delegate said that the Australian government remains very committed to the promotion of human rights education, but believes that a final evaluation of the accomplishments and shortcomings of the current decade is needed before a decision is made to commit to a 2<sup>nd</sup> decade.

The major problem identified at the 59<sup>th</sup> session and in Australia is with financial commitment of governments and the United Nations Office of the High Commissioner for Human Rights (UNHCHR) to the process. The mid term global evaluation issued by the UNHCHR in 2000 said there were very few responses from government and the



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UNHCHR has neither the function nor the mandate to confirm the reliability of the information provided and to make further recommendations.

A report on the issue just released on the UNHCHR website said that although some governments did make efforts to promote human rights education through national socio-legal infrastructure and cooperated with NGOs that proactively took steps to implement the Plan of Action for National Human Rights education at national and regional levels, the fact remained that due to the lack of a proper monitoring mechanism within the UN system the Decade is coming to an end without sufficient achievement of its objects.

The objects included among other things the exchange of information and good practice for all through the UN system and regional networks as well as ensuring the necessary human and financial resources for human rights education at national, regional and international level.

Voluntary financial commitment from member states was one suggestion to overcome these problems. So unless this was forthcoming, as well as funding at a national level, it is difficult to assess what could be achieved with an additional 10 years devoted to human rights education.

**Q10.** Do you cooperate with UN agencies such as UNESCO or UNHCHR?

**A10.** HREOC has a close working relationship with the UNHCHR, particularly with regard to the setting up and further development of the Asia Pacific Forum of Human Rights Institutions. UNHCHR has funded many individual projects undertaken by the Forum and the Special Advisor on Human Rights Institutions has worked with the secretariat of the forum which is hosted by HREOC to further advance the inclusion of many Human Rights Institutions in the region into the Forum. There has not been an occasion to work in cooperation with UNESCO.

**Q11.** Do you consider the lack of regional human rights mechanisms a significant obstacle to effective and sustainable human rights and good governance education in the region?

**A11.** A paper (Attachment A) which discussed this issue in detail was presented by Professor Vitit Muntarbhorn to the 10<sup>th</sup> Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia and Pacific Region, Beirut, 4-6 March 2002. This Conference was attended by a representative of HREOC and HREOC considers the paper to be a good analysis of the current situation.

Effective regional human rights mechanisms would be welcomed but other measures such as those outlined by Professor Muntarbhorn at pages 7 and 8 of the paper could also be considered.

**Q12.** Can you provide the Committee with copies of the poster on the Universal Declaration of Human Rights as discussed at the hearing?

**A12.** This poster together with education materials which accompanied the poster has already been supplied to the Committee Chair, Senator Payne.

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Another copy is enclosed.

HREOC has already undertaken the dissemination of the UNDHR poster to schools. In 1998 HREOC supplied it direct to all secondary schools in Australia, with a booklet containing teaching notes and student activities which discussed the UNDHR and what it means today.

Following the dissemination of the poster and teaching materials, HREOC ran a National Seminar for secondary school students from all over Australia titled *Human Rights Human Values* to celebrate the 50<sup>th</sup> Anniversary of the UNDHR. The poster continues to be sent out to schools upon request.

Vitit Muntarbhorn

**Current Initiatives for the Development of Regional and Sub-regional Arrangements for the Promotion and Protection of Human Rights in the Asia-Pacific Region**

The term "arrangements" is used in this paper in a flexible manner. It may open the door to formal treaty-making to establish a system for human rights' promotion and protection, or it may comprise a loose framework or network of activities conducive to guaranteeing human rights; this can be informal and without treaty-making.

In this light, there is an inevitable truth that the Asia-Pacific region is a vast and heterogeneous region which does not lend itself easily to "arrangements" for the promotion and protection of human rights. Added to this is the complex fact that while the situation concerning human rights has improved in some parts of the region, other areas have been faced with a very volatile situation. A key test case in the 2001-2002 period has been the tumultuous armed conflict in Afghanistan which has affected millions of innocent lives, and the pervasive threat of terrorism and its interface with human rights.

In this elusive setting, how feasible is the possibility of building regional or sub-regional arrangements in the pursuit of human rights? At the outset, while not neglecting the role played by civil society in setting up its own arrangements or networks on this issue, the arrangements inviting particular reflection in this paper would tend to be of the governmental type - an inter-governmental framework, network or system, so as to ensure broad governmental commitment, participation and accountability. It is well-known that while an inter-governmental system for the protection of human rights in the form of treaties, coupled with regional courts and related mechanisms, exists at the regional level in Europe, the Americas and Africa, the Asia and Pacific region does not have such a system.

**Developments:**

The idea of establishing some kind of regional or sub-regional arrangements for the Asia-Pacific is nothing new. For instance, in the 1980s a group of advocates put forward the suggestion that there should be an inter-governmental Charter for the Pacific region. However, governments did not think that it was timely to establish such a Charter. There have been a number of efforts since then to propose a treaty or Charter for the Asian or Asia-Pacific region, but none has yet borne fruit. Yet, the fact that no such system exists should not obscure the fact that in recent years, several initiatives have emerged with a series of options for the region. They include those discussed below; the range varies from the macroscopic, large-scale level - the Asia-Pacific level - to the medium-scale level of sub-regional activities, such as in the western, southern and southeastern parts of Asia:

1. **An inter-governmental framework of activities for the Asia-Pacific region.**

A large-scale, macroscopic initiative of this kind has existed for the past few years. It is based primarily upon the framework evolved with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR). For the past decade, Asia-Pacific countries have been meeting at annual workshops to converge on actions which they consider to be jointly acceptable. The approach adopted has been a step-by-step approach based upon various "building blocks" acceptable to them all. In particular, in 1998 these countries adopted, in Tehran, four building blocks known as the Tehran Framework which are operationally being implemented, to a lesser or greater extent, today. They comprise:

- the adoption of national human rights plans;
- the promotion of human rights education at the national level;
- the establishment of national human rights institutions;
- the realisation of economic, social and cultural rights and the right to development.

The annual workshops were bolstered in 2000 by the Beijing Plan of Action adopted at the workshop held in Beijing. A variety of activities were agreed upon as a programme for implementation in the 24 months subsequent to the workshop. The activities range from the regional level to the sub-regional level to the national level. They cover the four elements of the Tehran Framework noted above. For example, activities in the two-year period include, at the regional level, the dissemination of a handbook on national human rights plans, support for the Asia-Pacific Forum of National Institutions (see below, for the activities of this Forum), and a regional workshop on globalisation and economic, social and cultural rights. Examples of projected activities at the sub-regional level include a sub-regional workshop on national human rights planning, a sub-regional workshop on training in the administration of justice, a sub-regional workshop on media and human rights education, and a sub-regional workshop on ratification of international treaties. Various opportunities for technical support to the national level are provided for.

This framework has been complemented by smaller-scale inter-sessional workshops related to the four elements mentioned. Three such "intersessionals" were organised in coordination with the OHCHR in 2001: a workshop on the impact of globalisation on the full enjoyment of economic, social and cultural rights and the right to development (Kuala Lumpur, Malaysia, May 2001); a workshop on the role of national human rights institutions and other mechanisms in promoting and protecting economic, social and cultural rights (Hong Kong, People's Republic Of China (PRC), July 2001); and a workshop on the justiciability of economic, social and cultural rights in South Asia (Delhi, India, November 2001).

It may be noted that the implementation of the Tehran Framework was evaluated in 2000 and the results of the evaluation were presented to the OHCHR in 2000 and to participants at the (annual) workshop for the Asia-Pacific region which was held in Bangkok in 2001. The evaluation made a

variety of recommendations, some of which are now being implemented. For instance, the evaluation called for more access by non-governmental organisations (NGOs) to the Tehran Framework and the annual workshops mentioned. An NGO workshop was thus convened for the first time preceding the workshop held in Bangkok in 2001.

Another key recommendation from the evaluation was for the OHCHR to have a physical presence in the Asia-Pacific region, using the facilities of the Economic Commission for Asia and the Pacific (ESCAP). This has now been implemented through a memorandum between the OHCHR and ESCAP. A special representative on human rights for the Asia-Pacific region appointed by the OHCHR is now stationed in Bangkok at ESCAP with much potential for interlinking directly with the region and helping to follow-up the various recommendations of the annual Asia-Pacific workshops, as well as to support capacity-building on human rights at the regional, sub-regional and national levels.

## **2. A network of national human rights institutions in the Asia-Pacific region.**

For the past few years, there has been a network operating in the region as a forum for national human rights commissions under the umbrella of The Asia-Pacific Forum of National Human Rights Institutions. It now encompasses nine human rights commissions, the latest member being Mongolia, and the Forum promotes a number of joint activities between its members, such as workshops on topical issues. It abides by the UN-backed "Paris Principles" on the work of national human rights institutions, emphasising the independence and pluralism of such institutions. Its latest annual meeting was held in Colombo in 2001. At this meeting, the Forum adopted its Constitution and outlined a variety of future activities interlinking between the members, including a regional meeting on the issue of trafficking and HIV/AIDS, internally displaced persons and women's rights, the Rome Statute of the International Criminal Court, and human rights education.

This Forum is represented at the annual OHCHR-backed Asia-Pacific workshops above, and provides a direct input for the growing number of national human rights commissions in the Asia-Pacific region. The OHCHR also offers some technical support to the Forum. Interestingly, the Forum has set up an Advisory Council of Jurists, drawn from candidates - eminent jurists - proposed by the member national commissions. The mandate of this Council is primarily to advise on various issues referred to it by the members. So far, it has given advice on the issue of the death penalty, on the one hand, and child pornography on the Internet, on the other hand. It was recently asked to advise on the issue of human trafficking.

## **3. An inter-parliamentary association for the Asian region.**

An interesting innovation in the past couple years has been the birth and functioning of the Association of Asian Parliamentarians for Peace (AAPP). At its meeting in Phnom Penh in 2001, it considered its draft Charter of

Human Rights for Asian Nations. Intriguingly, while this draft embodies many of the internationally guaranteed human rights in the civil, political, economic, social and cultural fields, such as the right to life, freedom from torture, and the right to an adequate standard of living, it has been criticised for lowering the standards for human rights protection in some areas. These include the following:

- the position that it is lawful to detain persons for preventing infectious diseases;
- broad discretion to the courts to prevent the media from covering trials;
- the proposal for the establishment of an Asian Commission of Human Rights elected by the AAPP, without genuine guarantees for the independence of the members of the Commission.

An equally intriguing question relates to the status of the would-be Charter if it is adopted by Asian parliamentarians. Usually in setting up an inter-governmental human rights protection system, a treaty is required - initiated by the executive branch and ratified by the legislature. The initiative of the AAPP seems to bypass the role of the executive branch. In 2001 the AAPP set up a drafting group to refine the current draft Charter and it will be interesting to see related developments at the next AAPP meeting chaired by the PRC.

#### **4. Networks of civil society actors in the Asia-Pacific region.**

Several of these networks exist, and they encompass a broad array of NGOs and other members of civil society. One entity known as the Asian Human Rights Commission based in Hong Kong, PRC, propelled the adoption of the Asian Human Rights Charter by NGOs in 1997. The Charter is, of course, not an inter-governmental treaty but an expression of civil society aspirations. It highlights the universality and indivisibility of human rights, while rejecting some negative particularities in the Asian region, such as authoritarianism. It calls for a variety of activities from a civil society perspective with a key message to governments including the following:

- reinforce human rights guarantees in national Constitutions;
- ratify international human rights instruments;
- review domestic legislation and administrative practices for consistency with international standards;
- maximise the role of the judiciary in human rights' enforcement;
- enable social organisations to take action on behalf of the victims;
- set up national human rights commissions;
- recognise people's tribunals, not as courts but as moral instruments of pressure.

#### **5. Sub-regional inter-governmental treaties on human rights.**

These are emerging in various sub-regions, and they vary from the adoption of a general human rights treaty to the formulation of a treaty with focus on a specific human rights issue.

The only example of the former - a general human rights treaty - in a sub-region of Asia and the Pacific is the Arab Charter of Human Rights, which pertains most directly to west Asia. Although adopted in 1994, it has not yet received the requisite number of ratifications to enter into force. It guarantees many internationally recognised human rights such as the right to life and equality before the law. Yet, there is an open question concerning whether it guarantees the right to change one's religion. It has also been questioned for differentiating between the rights of citizens and non-citizens in some areas, whereas international human rights standards would advocate the rights of all persons irrespective of citizenship. Under the Charter, there will also be a monitoring body in the form of a human rights committee, and an essential test will be to ensure its independence.

A key example of the more focused approach - directed at a specific issue - is the advent of two recent treaties in South Asia, initiated by the South Asian Association for Regional Cooperation (SAARC), an inter-governmental regional organisation. One treaty is directed against the scourge of human trafficking in the South Asian region. The other treaty relates to regional arrangements to protect and assist children in that region.

The first SAARC treaty above takes the form of the SAARC Convention on Preventing and Combating Trafficking in Women and Children in Prostitution 2002 ; it has been adopted by all seven countries of SAARC, although subject to ratification. Basically, the Convention attacks trafficking in relation to prostitution; it calls for criminalisation of the practice, for the provision of gender-sensitive and child-sensitive judicial procedures, mutual legal assistance and extradition, prevention measures such as through training and education on the issue, and care and repatriation of the victims. It proposes to set up a Regional Task Force to help implement the Convention and undertake periodic reviews. Bilateral mechanisms may also be explored, e.g. to cooperate to interdict trafficking in women and children for prostitution.

The other SAARC treaty is the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia 2002. This Convention reinforces the implementation process of the global Convention on the Rights of the Child to which all Asia-Pacific countries have acceded. The SAARC Convention proposes to set up "appropriate regional arrangements to assist the Member States in facilitating, fulfilling and protecting the rights of the child". It calls for the development of national plans of action to protect children , as well as multi-pronged strategies. The regional arrangements referred to in this SAARC Convention include:

- bilateral and multilateral information sharing;
- annual SAARC Advanced Training Programmes on Child Rights and Development;
- special arrangements for judicial inquiries and transfers of children from one SAARC country to another;
- regional strategies to prevent inter-country abuse and exploitation of children.

With respect to South-east Asia, the primary regional inter-governmental organisation existing since 1967 is the 10-member Association of South-east Asian Nations (ASEAN). In 1993, partly influenced by the World Conference on Human Rights, ASEAN foreign ministers mentioned in their joint communique the possibility of establishing an appropriate regional mechanism on human rights. However, since then ASEAN has never proposed what the mechanism should be. A number of civil society actors have thus formed the Working Group for an ASEAN Human Rights Mechanism which, in 2000, submitted to the governments of ASEAN a draft agreement - a potential government-backed treaty - to establish an ASEAN Human Rights Commission. Its composition and function would be as follows: (as summarised by the Working Group's Secretariat)

- “ 2. The draft Agreement proposes the establishment of a sub-regional inter-governmental mechanism in the form of a seven-member ASEAN Human Rights Commission. Commission members have a single non-renewable five-year mandate.
3. The draft Agreement adheres to the universality of human rights and is inspired by the international law on human rights, and regional/national laws, policies and practices consistent with international law.
4. The proposed Commission is to act independently and is to be elected by the Foreign Ministers of the ASEAN countries which have ratified the Agreement. The Ministers must consult civil society in the choice of the candidates for the Commission and gender balance must be borne in mind.
5. The ratification of the Agreement by at least three ASEAN countries is needed to bring the Agreement into force, and the mandate of the Commission only pertains to these countries.
6. The function of the Commission is to promote and protect human rights in the region with powers, including the following:
  - to recommend to the governments concerned the adoption of measures in favour of human rights;
  - to investigate on its own initiative violations of human rights;
  - to take petitions and communications concerning human rights violations;
7. The competence of the Commission covers petitions and communications from individuals, NGOs, and countries which have ratified the Agreement.
8. The Commission proceeds on the basis of amicable settlement first.
9. Failing that, the Commission can make findings on whether human rights violations have taken place. These findings are persuasive recommendations and not judgements as the Commission is not a court of law.
10. The Commission can cross-refer the findings to the Foreign Ministers for additional pressure for compliance. There can then be another cross-referral to the heads of Government if needed.”



The reaction from the ASEAN governments to the proposed ASEAN Commission has been muted. In their latest communique (2001), ASEAN foreign ministers suggested that the proposal for a mechanism should be discussed with various security-related think tanks - Institutes for Security and International Studies (ISIS) - from the ASEAN region as part of an emerging People's Agenda. A meeting between members of the Working Group which proposed such Commission and ISIS will take place in Manila at the end of February 2002.

The optimistic scenario is that there may be a greater opening to the governments ("Track 1") via ISIS ("Track 2"). The less optimistic prognosis is that there will be procrastination in the process. However, on the constructive side, irrespective of the issue of whether to establish an ASEAN Commission, some governments are becoming more open to dialogue on human rights. For example, a team sent out by the Working Group to one ASEAN country in January 2002 to sound out opinions on the proposed Commission was informed by the Government of that country that it would explore the possibility of a national focal point on the issue. That Government also indicated that it would be interested to have more training on the reporting process under the International Covenant on Economic, Social and Cultural Rights, which it had signed not so long ago.

#### **6. Networks of activities on human rights in the Asia-Pacific region and sub-regions.**

Even without a formal treaty for the region and sub-regions, many activities can take place whether at the inter-governmental level or civil society level. For example, the ASEAN group has a network of desk-officers to deal with the issue of child assistance and protection. There is an ASEAN programme to offer training on early child care and education. On the non-governmental front, there is the example of LAWASIA, a non-governmental association many of whose members are government personnel; it has had a human rights committee for many years, and this was partly instrumental in proposing a human rights' Charter for the Pacific in the 1980s. There are also various active documentation centres on human rights, as well as NGO networks monitoring the human rights situation and organising various training programmes on human rights, especially in South Asia and South-east Asia.

#### **Retrospect/Prospect:**

In retrospect, while the idea of setting up a formal arrangement through a treaty between Asia-Pacific countries as an inter-governmental system for the promotion and protection of human rights seems somewhat elusive at present, there are other entry points which can be explored actually and prospectively, including the following:

- periodically, there should be a consultation among Asia-Pacific leaders - pitched high among policy makers and in terms of political will - about human rights;

- there should be more training programmes interlinking between the regional, sub-regional and national levels on key human rights issues with support, such as seed money, for the participants to undertake follow-up activities;
- at the sub-regional level, there should be more room for treaties and mechanisms, such as Commissions, on human rights either in a general sense and/or on specific issues such as trafficking, women's rights, and child rights;
- there should be more support for national capacity-building on human rights, such as through law and policy reform, with a pool of local/national/regional consultants to help guide the process;
- even without treaties, support for human rights-oriented activities, programmes and networks can be fostered at the regional, sub-regional and national levels, and they all need to be well planned, well implemented and well evaluated;
- accession to international human rights treaties can be pursued consistently with all countries, coupled with effective implementation in terms of follow-up through law, policy and other reforms;
- an approach based upon human rights can be fostered generally in programming and education, embodying a participatory process, reflective of international human rights standards, responsive to local wisdom, and sensitive to the concerns of marginalised groups and communities;
- a participatory process - at any level - in evolving arrangements for human rights promotion and protection requires broad representation from NGOs and other members of civil society;
- good governance and accountability in such arrangements call for access to and from the victims of human rights' transgressions, effective remedies, and measures to prevent such transgressions;
- all activities concerning the promotion and protection of human rights - formal and informal - need to be tested from the angle of sustainability, including through a sustained process of monitoring, review and reform to raise standards, with adequate resource allocations.

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