NGOs as norm-constructors:
The human rights activism of Asian NGOs and their role in shaping the regional human rights discourse

By
Dorotrya Atol

Thesis submitted in fulfilment of the requirements of Doctor of Philosophy

School of Humanities and Languages
University of Western Sydney, 2010
The writing of this thesis has been a long and winding road for me, which has taught me to work and think independently, and lead me to meet people whose knowledge and dedication has made significant contributions to the human rights cause in Asia and in Australia. All research work is a quest to find and provide knowledge and inspiration, and I was fortunate to receive both from the people who assisted me through this learning process, and for this I would like to express my gratitude:

- Firstly to my supervisory panel: Professor Edmund Fung, my principal supervisor, who provided me with constant stimulation to keep me working, and also allowed sufficient space for independent research. I particularly thank him for his assistance in the final stages of the work. I am especially grateful to Dr. James Arvanitakis, who only became one of my co-supervisors a bit more than a year ago, but since then has assisted me persistently with his comments, his gentle but very constructive criticism, and gave important assistance in editing. However, more than anything, his positive attitude gave me inspiration to press on during the more difficult periods. I would also like to thank Dr. David Walton, my second co-supervisor.

- To the fantastic human rights activists, lawyers, journalists who – as the staff of Asian NGOs – constitute the heart and soul of a regional human rights movement, which is the major subject of this research. Their relentless struggle for the improvement of human rights in Asia, sometimes even at the risk of their own wellbeing, has been an enormous inspiration for my work. It was an honour to be able to observe their daily work, even for a short period of time. I owe special gratitude to Mr. Basil Fernando, the Executive Director of the Asian Human Rights Commission (AHRC), firstly, for his hospitality and for providing me with the unique opportunity to gain an insight into the operations of the AHRC; and additionally for the knowledge and dedication he conveyed through the two illuminating interviews I conducted with him. I would also like to thank Mr. Bijo Francis and Mr. Michael Anthony for giving me a detailed account of their amazing work. Also, I
would like to thank the extended crew of the AHRC, Dr. Baseer Naveed, Philip Setunga, Nicholas Cheesman, Dr. Lenin Raghuvanshi and all the others for their support and their kindness. Additionally, I would like to express my appreciation to Ravi Nair, the Executive Director of the South Asian Human Rights Documentation Centre, and to Ram Narayan Kumar from the South Asian Forum for Human Rights, for the insight and information they provided in the interviews.

- To my parents, my extended family and all my friends, who provided me with unwavering support from close and afar. I am very grateful for everything they have done for me.

- And to Daniel Thompson, a very special friend who has dedicated enormous efforts to help me with writing and editing up to the last minutes, and provided me not only with inspiring ideas and academic assistance, but also picked me up whenever I felt the weight of the task. Without his support I would not have been able to walk to the end of this road.

Generally, I would like to convey my gratitude to everyone else that helped me and stood by me along the way.
Statement of Authentication

The work presented in this thesis is my own work and to the best of my knowledge it contains no materials previously published or written by another person, except where due acknowledgement is made in the thesis. Any contribution made to the research by others is acknowledged in the thesis. I hereby declare that I have not submitted this material, either in full or in part, for a degree at this or any other institution.

Signed ......................................
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   – Source: United Nations, Treaty Collections, Human Rights,
List of Acronyms

ADB    Asian Development Bank

AFTAs  Association of Southeast Asian Nations Free Trade Areas

AHRC   Asian Human Rights Commission

AICHR  Association of Southeast Asian Nations Intergovernmental Commission on Human Rights

AIHK   Amnesty International Hong Kong

ALRC   Asian Legal Resource Centre

ASEAN  Association of Southeast Asian Nations

ASK    Ain O Salish Kendra

CARAM  Coordination of Action Research on AIDS and Mobility

CCDS   Centre for Communication and Development Studies in India

CEDAW  Convention on the Elimination of All Forms of Discrimination against Women

CEHURDES Center for Human Rights and Democratic Studies

CHRD   Centre for Human Rights and Development

FORUM-ASIA Asian Forum for Human Rights and Development
<table>
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<tr>
<th>Abbreviation</th>
<th>Full Name</th>
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<tbody>
<tr>
<td>GAATW</td>
<td>Global Alliance against Traffic in Women</td>
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<td>GONGO</td>
<td>Government-operated non-governmental organisation</td>
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<tr>
<td>HURIGHTS</td>
<td>Human Rights Osaka, Asia-Pacific Human Rights Information Center</td>
</tr>
<tr>
<td>ICT</td>
<td>Information and communication technology</td>
</tr>
<tr>
<td>INGO</td>
<td>International non-governmental organisation</td>
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<tr>
<td>IHRO</td>
<td>International Human Rights Observer</td>
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<tr>
<td>KONTRAS</td>
<td>Kornisi Untuk Orang Hilang dan Korban Tindak Kekerasan, The Commission for the Disappeared and Victims of Violence</td>
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<tr>
<td>LAC</td>
<td>Legal Aid of Cambodia</td>
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<tr>
<td>LACC</td>
<td>Legal Aid and Consultancy Centre</td>
</tr>
<tr>
<td>LICADHO</td>
<td>Cambodian League for the Promotion and Defence of Human Rights</td>
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<td>LST</td>
<td>Law and Society Trust</td>
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<td>LTTE</td>
<td>Liberation Tigers of Tamil Eelam</td>
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<td>MASUM</td>
<td>Manabadhikar Suraksha Mancha</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<td>OHK</td>
<td>Oxfam Hong Kong</td>
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<tr>
<td>PAHRA</td>
<td>Philippine Alliance of Human Rights Advocates</td>
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<tr>
<td>QUANGO</td>
<td>Quasi non-governmental organisation</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>SAARC</td>
<td>South Asian Association for Regional Cooperation</td>
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<td>SAFHR</td>
<td>South Asian Forum for Human Rights</td>
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<tr>
<td>SAHRDC</td>
<td>South Asian Human Rights Documentation Centre</td>
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<tr>
<td>SAPA</td>
<td>Solidarity for Asian People’s Advocacy</td>
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<td>SEACA</td>
<td>Southeast Asian Committee for Advocacy</td>
</tr>
<tr>
<td>SIDA</td>
<td>Swedish International Development Cooperation Agency</td>
</tr>
<tr>
<td>ASEAN SLOM</td>
<td>Association of Southeast Asian Nations Senior Labour Officials Meeting</td>
</tr>
<tr>
<td>SUARAM</td>
<td>Suara Rakyat Malaysia, Voice of the Malaysian People</td>
</tr>
<tr>
<td>TF-AHR</td>
<td>Task Force on ASEAN and Human Rights</td>
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<td>TFDP</td>
<td>Task Force Detainees of the Philippines</td>
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<td>UAP</td>
<td>Urgent Appeals Program</td>
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<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<td>UNTAC</td>
<td>United Nations Transitional Authority in Cambodia</td>
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<tr>
<td>UPR</td>
<td>Universal Periodic Review</td>
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<tr>
<td>UTHR</td>
<td>Sri Lankan University Teacher’s for Human Rights</td>
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<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
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Abstract

This thesis focuses on the human rights activism of Asian NGOs, especially with regard to their regional operations and contribution to the human rights discourse within the Asian region. Despite being the world’s most populous region, Asia is the only continent without a regional human rights mechanism, whereas Europe, the Americas, and Africa have their own human rights systems with established institutional and normative frameworks. Nevertheless, the subject of human rights has a growing appeal in the Asian context, and efforts are ongoing to establish a regional human rights instrument, which is partly due to the campaigning activities of NGOs.

This thesis seeks to contribute to the analysis of the regional activism of NGOs, their involvement in norm construction and in the shaping of an Asian human rights system. Building on the general discussion of Asian human rights NGOs operating on the national level, I explore the construction, operations and impact of Asian human rights NGOs’ regional activism. I employ theories of human rights regionalisation, norm construction, and transnational advocacy networking. Two case studies of regionally operating Asian human rights NGOs are used to support my argument about NGOs’ constitutive role in the regionalisation of human rights in Asia. Although the Asian Human Rights Commission (AHRC) and the Asian Forum for Human Rights and Development (FORUM-ASIA) pursue different regional advocacy strategies, they equally have effect on the regional development of human rights. Whereas the AHRC facilitates collective civil society initiatives to address regional human rights problems with the construction of normative frameworks, FORUM-ASIA seeks to influence the policies of the Association of Southeast Asian Nations (ASEAN), the only Asian intergovernmental body that has so far shown commitment toward creating a human rights instrument.

This thesis demonstrates that both NGOs contribute to the shaping of Asian conceptions of human rights and to the creation of a regional human rights mechanism. Such regional activism of NGOs has significance, on the one hand, for the improvement of the human rights situation at the grassroots, and on the other hand, in constructing new norms, policies and institutional frames that can become integral part of a future human rights system in Asia. It is
argued that NGO activism gives rise to new norms or re-interprets existing norms that become part of a distinctive Asian human rights discourse.
Introduction

Human rights are more than legal concepts: they are the essence of man. They are what makes man human. That is why they are called human rights: deny them and you deny man's humanity.¹

At the time of writing (end of 2009), the news has just emerged that Liu Xiaobo, former university teacher and participant of the 1989 Tiananmen square protests, was sentenced to eleven years in prison for subversion of the state.² He was among the founders of the Charter ‘08 (December 2008) campaign that called on the Chinese government to carry out constitutional reforms and implement complete freedom of expression.³ In other parts of Asia, Cambodia has forcibly deported and returned twenty Uighur refugees to China (19 December 2009), which, according to Human Rights Watch Asia, puts them at risk of persecution by the Chinese government that identified them earlier as terrorists.⁴ Cambodia’s move – which was carried out in defiance of the letter written by the United Nations High Commissioner for Refugees identifying the Uighur group as “persons of concern”⁵ – constitutes a breach of the country’s


⁵ Ibid.
international obligation of not returning asylum-seekers to states where their wellbeing can be endangered.\(^6\)

Another disturbing report has emerged from Indonesia about the illegal arrest and physical assault (including the application of electroshocks) of a young woman by local police in an investigation whose main subject was her husband.\(^7\) These reports about the curtailment of the freedom of expression, violations of the rights of asylum-seekers, illegal arrests and custodial torture are not about single and isolated incidents, since these human rights abuses are widespread not only across the region but also within each state.

Asian countries are an active part of the international human rights system, as eight of them are members of the United Nations Human rights Council at the time of writing.\(^8\) Asian nations are also part of the United Nations treaty system; however, only the Convention on the Elimination of All Forms of Discrimination against Women\(^9\) and the Convention on the Rights of the Child\(^10\) have been ratified by all states in the region (see Table 1 below). In fact, the level of ratifications of international human rights instruments is among the lowest in Asia.\(^11\) Also, regardless of the ratification, many Asian governments fail to implement in their domestic practices the human rights standards they have committed to. For instance, Sri Lanka is party to

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both international human rights covenants,\(^\text{12}\) and to the Convention against Torture,\(^\text{13}\) nonetheless reports about cases of torture and restrictions of civil and political rights continue to surface from the island-state.\(^\text{14}\) In addition to the low level of ratifications, and the inadequate enforcement of human rights standards, the national human rights protection suffers from further weaknesses in several Asian states. Only nine countries in the region (India, Indonesia, Malaysia, Mongolia, Nepal, Philippines, Republic of Korea, Thailand, and Timor Leste)\(^\text{15}\) have established a national human rights institution; and even in these instances, the institutions have questionable independence.\(^\text{16}\)


Table 1. Status of ratifications of selected international documents in Asian states (numbers indicate the date of accession)\textsuperscript{17}

<table>
<thead>
<tr>
<th>COUNTRIES</th>
<th>ICCPR</th>
<th>ICESCR</th>
<th>CAT</th>
<th>CEDAW</th>
<th>CCR</th>
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</thead>
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<tr>
<td>BRUNEI DARUSSALAM</td>
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<tr>
<td>INDIA</td>
<td>1979</td>
<td>1979</td>
<td></td>
<td>1993</td>
<td>1992</td>
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<td>MALAYSIA</td>
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<td>1995</td>
<td>1995</td>
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<tr>
<td>MYANMAR</td>
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<td></td>
<td></td>
<td>1997</td>
<td>1991</td>
</tr>
<tr>
<td>PAKISTAN</td>
<td>2008 (s)</td>
<td>2008</td>
<td></td>
<td>1996</td>
<td>1990</td>
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</tbody>
</table>

(s) = the treaty is only signed, but not ratified yet

The focus and aims of the thesis

Similarly to Asian nations, countries in Europe, Africa and the Americas have a varying level of human rights observance, but what they all have in common is a regional human rights system built on an institutional structure created for the advancement of human rights promotion and protection. By contrast, Asia has no collective human rights instrument - not even on the sub-regional level. The topic of human rights has hardly been at the forefront of Asian inter-governmental politics. Nonetheless, the questions of whether an Asian system of human rights is needed and how it should be set up have started to attract some attention in the last two decades. Competing conceptions of human rights have emerged recently fuelled by inputs from a diversity of state and non-state actors shaping the Asian human rights discourse.

This thesis contends that human rights NGOs are among the most dedicated advocates of the idea of a regional level instrument for human rights promotion and protection in Asia. In particular, the activism of regionally operating NGOs from South, Southeast and East Asia have helped incorporate the issue of human rights into official inter-state discourse on regional affairs. This is the first time in the formulation of a regional human rights system that non-state actors, and especially NGOs, have played such an active part in the process. Whilst Asian states have become more open toward civil society, NGOs have gained the power to influence the actions of states and inter-state politics by shaping the regional human rights discourse.

Looking beyond the traditional roles of human rights defenders – such as providing relief and welfare work, monitoring and collecting information – this thesis aims to cast light upon a more innovative and reformative dimension of the operations of Asian human rights NGOs by analysing their pioneering efforts in shaping the distinctive Asian conceptions of human rights. I consider the achievements of these NGOs innovative for advancing their activism to a level where they engage in collective norm creation. In this way, such NGOs develop their own concepts about the many institutional, structural and normative aspects of the regional promotion and protection of human rights. Their efforts to construct human rights norms and their proposals
regarding institutional questions have the potential to serve as a promising starting point for the establishment of a credible and region-wide Asian human rights instrument. States and intergovernmental organisations acting toward the creation of a regional human rights instrument of some sort cannot afford to ignore this type of NGO activism.

Furthermore, the regional advocacy of these Asian NGOs also brings about positive changes in the human rights situation at the grassroots and at the national level by including local civil society and the broader public in their human rights activism. These NGOs strengthen the knowledge and skills of grassroots communities that are vulnerable to human rights abuses. They draw information from their relations with an expansive network of local partners, which helps the NGOs to conceptualise human rights problems on a regional level and gives international credence to their opinions. Accordingly this NGO activism engenders a distinctively bottom-up and participatory regionalism that acts to complement governmental efforts.

Such NGO activism is constructed on the basis of the promotion of international human rights standards, and also their experiences and knowledge about the human rights situation gained through national and local activism. Building on the combination of these two elements the NGOs construct a distinctive ‘alternative regionalism’ that has come to influence the state-dominated discourse on human rights development in Asia (theories of regionalism discussed in Chapter 1).

This thesis seeks to uncover the distinctive features and the construction of the alternative regionalism of these NGOs and to assess the outcomes that they have produced. In particular, the NGOs’ contribution to normative and structural aspects of human rights regionalisation will be analysed. To this end I examine the specific motivations and goals, and the activities and methods of the NGOs, and also how they relate to other actors like governments, inter-governmental organisations, the international community, and grassroots communities. The mode and the contents of Asian human rights NGOs’ advocacy is explored to seek answers regarding how they can contribute to the regional human rights development and to what degree they are able to influence the human rights discourse.

The main subjects of the research are the Asian Human Rights Commission (AHRC) and the Asian Forum for Human Rights and Development (FORUM-ASIA), two Asian human rights
NGOs operating on a region-wide basis. Both of them engage in a form of alternative regionalism that bears characteristics described above, and has an impact on the developments of human rights regionalisation in Asia. Although their general operations have much in common, the construction and execution of their regional activism reveal differences that will be highlighted through two case studies (see Chapters 4, 5, and 6). This thesis seeks to explore their contributions to the regional human rights discourse by analysing innovations in their approach, methods and norm construction. The AHRC is the primary subject of my research, since its Asian Human Rights Charter represents the first significant Asian NGO attempt to influence the human rights discourse in Asia. The regional activism of FORUM-ASIA (and SAPA) is analysed in relation to the case study on the AHRC, often by comparing and contrasting its activism with the conduct of the AHRC.

Literature review and background

The “Asian values debate”

The topic of the transnational activism Asian human rights NGOs is embedded in a complex structure of cross-cutting themes, which warrants a multidisciplinary analysis. In the following section I will review the most important literature of each topic and touch upon different research areas concerning the Asian human rights discourse, the activism of NGOs and the theories applied in this thesis. This allows me to reveal gaps in the scholarship as well as identify opportunities for further examination and analysis.

An appropriate place to begin the analysis of the Asian human rights discourse is the year of 1993, when the Asian values model was first officially expressed in the Bangkok Declaration. The main elements of the Asian values discourse include a culturally relativistic interpretation of human rights, the prioritisation of economic development, the idea of good governance, and a cultural and philosophical reliance on Confucianism. Although the universality

of human rights was never directly questioned by the official Asian stance – Bilahari Kausikan acknowledged the existence of a “hard core of rights that are truly universal”\(^\text{19}\) – the discourse is nonetheless built on a relativist argument. The Bangkok Declaration claims that “while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities”.\(^\text{20}\)

The Asian values discourse is examined firstly by looking at the broader political and social context. Kausikan argues that the roots of the distinctive Asian human rights policies have to be sought in the specific post–Cold War setting when human rights have grown to be a legitimate and significant topic in international politics.\(^\text{21}\) The 1990s witnessed the miraculous economic rise of many Asian states (particularly Singapore, Malaysia, South Korea, and Taiwan), which lent an increasing sense of self-confidence to their leaders in conducting international relations. Kausikan goes on to claim that with the end of the Cold War, the Asian government officials and politicians standing behind the Asian values discourse aimed to overcome the shadows of the colonial past, to reach parity with more powerful nations on the international plane, and to re-discover their nations’ distinctive Asian identities respectively.\(^\text{22}\)

The initial path of self-determination of the Asian countries was shaped by a strong anti-Western tone, as their identity was mostly defined in contrast to its Western counterpart.\(^\text{23}\) Kishore Mahbubani contends that human rights related concepts (such as individual freedoms and liberties) are alien to and inapplicable for Asian societies, since they have evolved in a Western cultural, philosophical and social context.\(^\text{24}\) He further argues that Western states are ignorant of the particularities of local cultures in Asia, and use human rights to impose their ideas

\(^{19}\) Bilahari Kausikan, “Asia’s Different Standard,” *Foreign Policy*, 92, no. 24 (1993), 34.


\(^{22}\) Ibid.


\(^{24}\) Kishore Mahbubani, “The Dangers of Decadence: What the Rest Can Teach the West?” *Foreign Affairs*, 72, no. 4 (September-October 1993).
and interests beyond their borders. Kausikan condemns “the starkly individualistic ethos of the West in which…rights are an individual’s “trump” over the state”.  

A number of human rights norms are based on concepts and ideas that have evolved in Western culture and tradition. However, this does not necessarily entail that human rights would be completely inapplicable in other cultures. Inoue Tatsuo argues that it is too simplistic to pitch an individualistic West against a communitarian Asia. Yash Ghai demonstrates that Western societies also have plenty of communal tendencies, and Xia Yong points out that individualism is not at all alien for instance from the traditional Chinese mentality. The argument of Asian politicians is misleading because it forces false antagonism between the West and the rest with respect to human rights. It is not to suggest that there is no diversity in the interpretation of human rights, but to warn against exaggerating the differences between East and West, and assert that the reality of Asian human rights norms is more complicated than the poles of the Asian values debate would have. Notably, the anti-Western arguments of Asian politicians appear to be more political than legal or philosophical.

The primacy of economic development ahead of civil and political liberties is also an important tenet of the Asian values discourse, which is corroborated by Kausikan who argues that Asian countries cannot afford to focus only on improving civil liberties when “poverty, insecurity, and instability breed human rights abuses”. There is a false dichotomy, however, between economic advancement and civil liberties. This point is raised by Jack Donnelly, who points out the fallacy in trading off human rights for economic growth, which usually happens at the expense of the marginalised and poor people in most Asian societies. To contrast economic development with civil rights and liberties can (wrongly) suggest that one would exclude the

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other. For instance, Amartya Sen interprets the notion of development to entail more than simple economic growth, and to include not only economic and social but also civil and political rights.  

A further major pillar of the Asian values discourse considers good governance. This is a position reflected by Lee Kuan Yew, who was quoted as saying that “whilst democracy and human rights are worthwhile ideas, we should be clear that the real objective is good government”. His argument is that economic development (understood as the ultimate goal of most Asian states) requires political and social stability, which is only achievable through good government. On the basis of this, Kausikan went as far as justifying human rights abuses when he asserted that “good government may well require, among other things, detention without trial...[and]...curbs on press freedoms”. 

Interpreting good governance in this light, social stability and order appears to takes precedence over the implementation of human rights and the rule of law. Countering this view of good governance, Sen contends that countries with democratic political systems have equally demonstrated above-average economic performance, and that democratic practices are indeed more favourable, or even necessary for ensuring consistent economic progress; post-World War II Japan, and more recently, India serve as good examples. Malaysian statesman Anwar Ibrahim also rejects arguments for the precedence of good governance, warning against exploiting the notion of Asian values as an excuse for autocratic practices.

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32 See for instance, Bilahari Kausikan, “Governance that works,” Journal of Democracy, 8, no. 2 (April 1997), 24-34.
The Asian values discourse is further discredited for its exclusiveness and elitism, and its lack of credibility and legitimacy. The discourse is defined narrowly and in a top-down matter, and is not supported by opinions within civil society or bolstered by public participation, which causes concerns. For instance, the 1993 Bangkok Declaration was created by Asian government officials and politicians exclusively. Ghai asserts that what Asian governments express as state opinion is often not a true reflection of the ideas and demands of the broader community. Accordingly, doubts emerge as to whether Asia’s political elite, even those that are democratically elected, are justified in crafting an Asian values model in the name of a diverse and complex population. The NGO’s Bangkok Declaration (created simultaneously with the Declaration of the states) reveals a standpoint that is decisively different from that of the states, and is positioned closer to the international discourse. Some have argued, including Philip J. Eldridge and Edward Friedman, that Asian leaders use the Asian values discourse to cloak their own rights abuses and to justify domestic oppression. Although I do not altogether share their cynical approach, it is nevertheless clear that the Asian values discourse is overly politicised, and that politicians use human rights as a means for realpolitik in diplomacy and international relations. Kausikan identifies “human rights as a tool”, which degrades their value and it is often more damaging for the human rights situation than the complete neglect for human rights, since politicians are able to foster an image of their concern for and observance of human rights through the rhetoric attached to the Asian values debate. Many in civil society, however, contend that such rhetoric comprise mere hollow promises.

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Aside from the two extremes of the stance of Asian governments and its Western and non-Western critics, little scholarship focuses on alternative viewpoints regarding the Asian values debate. Joseph Chan writes about the necessity to recognise those “bona fide” Asian views that are aware of the real human rights situation in their countries and refute Asian values arguments. However they neither unconditionally embrace the mainstream international human rights discourse. Individual activists (lawyers, journalists, academics, or other professions), epistemic communities, and various civil society actors belong usually in this category.

The weakness of the literature on the Asian human rights discourse is the neglect toward these genuine voices, and especially toward the activism of NGOs. Most authors focusing on the development of human rights in Asia concentrate primarily on the input of governments. While Nikhil Aziz and Daniel A. Bell both highlight the need for bottom-up approaches in human rights work and the significance of local knowledge and local justifications, they fail to consider more thoroughly the role NGOs can play. Before proceeding to consider the human rights activism of NGOs, a background and assessment of the literature on the further developments of intergovernmental human rights policies within Asia, with a special focus on the Association for Southeast Asian Nations (ASEAN), is warranted.

**ASEAN and human rights**

The intergovernmental organisations in Asia have not progressed far in addressing human rights questions in a regionally coordinated manner. At the time of writing, ASEAN has demonstrated the most willingness and initiatives toward setting up a regional human rights

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instrument. Serious commitment to human rights was first officially expressed by the ASEAN Foreign Ministers in 1993 at the 26th ASEAN Ministerial Meeting when they pledged for “the establishment of an appropriate regional mechanism on human rights”. Despite the occasional setbacks and long years of tense negotiations, the ASEAN Intergovernmental Commission on Human Rights was set up finally in October 2009.

Since the main driving forces in the cooperation of ASEAN states are economic, trade and security interests, a large proportion of the literature on ASEAN examines the work of the Association from these aspects. ASEAN regards itself primarily as an economic space and aims to establish a single market. The writings of Nandan Gita, Jenny D. Balboa and associates, and Linda Low examine the economic and trade trends in the cooperation of ASEAN states, while others, such as Dionisius A. Narjoko and Delima Amri assess the economic situation in each ASEAN member state. The other traditional focus of ASEAN considers the development

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46 The other major Asian inter-state conglomerate, the South Asian Association for Regional Cooperation (SAARC) has proposed some initiatives in the human rights field, but fell short in developing any comprehensive human rights structure.


51 Nandan Gita, ASEAN: Building an Economic Community (Barton, A.C.T: Dept. of Foreign Affairs and Trade, Economic Analytical Unit, 2006).


53 Linda Low, ASEAN Economic Co-operation and Challenges (Singapore: Institute of Southeast Asian Studies, 2004).

of security policies and the evolution of a security community within ASEAN, like the publication of Ralf Emmers on security cooperation among the member states.\textsuperscript{55} These works occasionally touch upon human rights related issues, but not as a major focus.

Several authors have appreciated the changes made by the deepening integration in ASEAN and the consequent reforms in its policies.\textsuperscript{56} Paul J. Davidson, for instance, argues that the ASEAN Charter (2007)\textsuperscript{57} has set in motion a shift from “relation-based governance” to “rules-based” regionalism that is not complete yet, but has already facilitated a more formal and stronger form of regional cooperation among ASEAN member states.\textsuperscript{58} However, Davidson failed to recognise that the construction of such a rules-based structure carries the possibility of further norm creation, and opens opportunities for NGOs to influence the shaping of human rights norms within ASEAN.

Only a smaller range of the literature on ASEAN has human rights in its focal point, and they usually concentrate on a narrow angle of human rights issues. For instance, reflecting on the interest of ASEAN states in women’s and children’s issues, Suzannah Linton examines the reservations ASEAN states have made when signing the major human rights documents in connection with the protection of the rights of women and children.\textsuperscript{59} Other works seek to explore the human rights situation within ASEAN by focusing on specific crises, most often on the ongoing human rights violations in Myanmar.\textsuperscript{60}


\textsuperscript{57} “ASEAN Charter,” (Singapore. 20 November 2007), \url{http://www.aseansec.org/21085.htm} (accessed 12 April 2009).


Only a few studies give comprehensive consideration to the recent human rights developments in ASEAN. One of them is Simon Sheldon, who explores the evolution of the human rights policies of ASEAN with respect to principles of sovereignty and non-interference, which are highly regarded by member states. This aspect of human rights regionalisation is especially important since this thesis contends that questions of sovereignty and non-interference cause the most striking disagreements between ASEAN and the NGO community. The alternative position of NGOs seeks to counterbalance the non-interventionist approach promoted by governments, and has had some effects on the policies of ASEAN. Studies highlighting ASEAN states’ strong adherence to national sovereignty have mostly failed to take into account this potential transformative influence that NGO activism has on ASEAN’s rigid stance.

Sheldon notes that ASEAN was initially set up with the goals of protecting member the sovereignty and territorial integrity of states, and that this initial purpose has greatly determined the general approach of the Association in its operations. In fact notions of sovereignty and non-interference have appeared alongside human rights since human rights were first officially declared as a common commitment by ASEAN Foreign Ministers in 1993 up to the creation of its human rights mechanism. The Terms of Reference of the new ASEAN human rights body prioritises national sovereignty over human rights in the listing of its core principles. Additionally, intergovernmentalism is a major principle that shapes the structure of ASEAN, since most ASEAN organs are composed exclusively of government officials, and all decision-making regarding human rights is performed by ASEAN politicians (mostly by the Foreign Ministers of the member states). The exception in this regard is the ASEAN Secretary-General who serves in personal capacity, but has no significant powers within the Association.

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62 Ibid.


64 Intergovernmentalism is understood here as a type of decision- and policy-making that involves only states and their officials. The term is mostly used in association with the European Union, see, Andre Kaiser, “Alternation, Inclusion and the European Union,” European Union Politics, 3 (December 2002), 445-458; Liesbet Hooghe, “Supranational Activists or Intergovernmental Agents? Explaining the Orientation of Senior Commission Officials Toward European Integration,” Comparative Political Studies, 32 (June 1999), 435-463.
Another topic that is of great relevance to this thesis, and also the focus of numerous academic works,\textsuperscript{65} is the changing relationship between ASEAN and civil society. Being a traditionally state-dominated cooperation, ASEAN’s relationship toward civil society is rather complicated and often strained. Among the few works which look at this aspect of the policies and activities of ASEAN, are Alan Collins\textsuperscript{66} and Mely Caballero-Anthony.\textsuperscript{67} Both of them observe that civil society actors became galvanised once ASEAN showed some willingness toward engaging them into its work. Whilst acknowledging the truth in this observation, this thesis contends that the dynamic between ASEAN and civil society, and in particular NGOs, is much more complex, notably, the two mutually influence each other. Accordingly, the increasing activism of NGOs toward influencing ASEAN has affected the intergovernmental organisation, and has slowly pressured it toward allowing a little more transparency and access for non-state actors to its decision and policy-making. These changes, however, should not be over-emphasised, since the Association still has a long road ahead in becoming more cooperative with civil society.

Caballero-Anthony acknowledges the establishment of the Solidarity of Asian People’s Advocacy (SAPA)\textsuperscript{68} – an umbrella organisation that has brought Asian human rights NGOs together in order to collectively influence regional policies – and observes that this seemed to have enhanced civil society activism toward ASEAN (a point I expand on in Chapter 6).\textsuperscript{69} Collins describes SAPA’s People’s ASEAN Charter,\textsuperscript{70} an initiative that was born out of the NGOs’ disappointment in the ASEAN Charter, and which puts forward a concept of people-


\textsuperscript{66} Alan Collins, “A People-Oriented ASEAN: A Door Ajar or Closed for Civil Society Organizations?” \textit{Contemporary Southeast Asia}, 30, no. 2 (August 2008), 313-331.

\textsuperscript{67} Mely Caballero-Anthony, “The ASEAN Charter: An Opportunity to be Missed or One that \textit{Cannot} be Missed?” \textit{Southeast Asian Affairs} (2008), 71-85.

\textsuperscript{68} SAPA is one of the main subjects of this research since the regional advocacy of FORUM-ASIA is conducted through their involvement in SAPA, as it will be discussed in Chapter 6.

\textsuperscript{69} Caballero-Anthony, “The ASEAN Charter” 73.

\textsuperscript{70} Collins, “A People-Oriented ASEAN” 323.
centred policies that differs considerably from ASEAN’s approach. However, neither of the articles delves deeper into analysing the regional activism of SAPA. This thesis examines regional activism of SAPA and its engagement with ASEAN in order to explore the alternative regionalism pursued by FORUM-ASIA (a leading member of SAPA) and by other member NGOs, and to reveal the implications of their advocacy for regionalisation, especially with regard to human rights regionalisation.

Caballero-Anthony also mentions that NGOs were anticipating the transformation of ASEAN toward adapting a more normative and participatory form of regionalism with the creation of the ASEAN Charter. However, the author failed to elaborate on the idea of participatory regionalism, on what it would mean for civil society actors and how it could be achieved within ASEAN. This thesis will introduce the concept of alternative regionalism taken on by NGOs – applying the ideas of Chandra described in Chapter 1, and will explore its normative content and its aims of achieving greater civil society and public participation in the regionalisation process (in Chapters 1, 4, 5 and 6).

**Non-governmental organisations (NGOs)**

Considering the literature on NGOs, there is a disproportionate focus on NGOs from the Western (or Northern) hemisphere. It is hardly surprising since, according to Margaret P. Karns and Karen A. Mingst, most NGOs originate there. Also, there is possibly more available information regarding their operations than about the work of NGOs in the South. There are still

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71 Ibid, 326-327.

72 Caballero-Anthony, “The ASEAN Charter” 72.


only a number of authors, such as Dieter Neubert, who stress the need to focus on NGO developments in Africa and Asia.\textsuperscript{76}

Additionally, much of the works about the operations of NGOs consider mostly international NGOs (INGOs) that have abundant resources, outreach and leverage compared with smaller NGOs.\textsuperscript{77} Among a series of others, Kerstin Martens’s article praises the decades-long performance of Amnesty International,\textsuperscript{78} and Norman Alvey assesses the history of Oxfam.\textsuperscript{79} In other respects, scholarship is equally directed toward the exploration of national and local NGO operations at the grassroots. For instance, Marit Haug focuses on the role of NGOs in addressing the humanitarian conflict in Sri Lanka,\textsuperscript{80} Yi-Wha Chu and James T. H. Tang write about environmental and labour groups in Hong Kong,\textsuperscript{81} and Kavita Misra discusses the participation of Indian NGOs in AIDS-relief work.\textsuperscript{82} However, there is not much scholarly attention devoted specifically to NGOs operating on the regional level.

In addition, due to the propensity of NGOs and civil society actors involved in development or welfare projects across Asia, a great part of the literature on Asian NGOs is devoted to their operations. Consequently there has not been much written on Asian NGOs that are primarily engaged in human rights activism. The considerably narrow literature on Asian human rights NGOs usually focuses on the organisations’ activism within a particular country


\textsuperscript{79} Norman Alvey, \textit{From Charity to Oxfam: A Short History of Charity and Charity Legislation} (Chichester: Phillimore for the British Association for Local History, 1995).


like Gerard Clarke’s work on the NGO community in the Philippines\textsuperscript{83} or Bob Hadiwinata’s research on NGOs’ input into the political and development transformations in Indonesia.\textsuperscript{84} Other researchers of Asian NGOs often discuss only a specific angle of their operations, like Noeleen Heyzer, James V. Riker and Antonio B. Quizon,\textsuperscript{85} who provide a thorough analysis of the complex relations between governments and NGOs. Also, considerable attention has been devoted to NGOs’ issue-specific missions that target particular human rights problems in Asia, such as Bob Clifford’s article on the Dalit movement in India.\textsuperscript{86} Accordingly, there is a scarcity of studies devoted to the comprehensive exploration of Asian human rights NGOs’ activism, and especially to the examination of their transnational advocacy.

Furthermore, most of the existing literature about regional NGOs concentrates on their activism in Europe\textsuperscript{87} or in Latin America.\textsuperscript{88} However, there are a number of works that explore the contribution of Asian NGOs to the regional discourse during the escalation of the Asian values debate. Michael G. Schechter noted that Asian NGOs participated in almost all activities and managed to exert some influence on the proceedings of the World Conference on Human Rights at Vienna (1993).\textsuperscript{89} Nonetheless, Asian human rights NGO activism after 1993 has not been analysed extensively in the literature.

Some academics give consideration to the role of national human rights institutions in the construction of Asian regional human rights instruments, but do not pay attention to the contributions of NGOs (See Andrew Byrnes, Andrea Durnbach and Catherine Renshaw’s

\begin{itemize}
\item \textsuperscript{83} Gerard Clarke, \textit{The Politics of NGOs in South-East Asia: Participation and Protest in the Philippines} (London, New York: Routledge, 1998).
\item \textsuperscript{84} Bob S. Hadiwinata, \textit{The Politics of NGOs in Indonesia: Developing Democracy and Managing a Movement} (London: Routledge Curzon, 2003).
\item \textsuperscript{88} Susan Eva Eckstein and Timothy P. Wickham-Crowley, eds., \textit{Struggles for Social Rights in South America} (New York: Routledge, 2003).
\item \textsuperscript{89} Michael G. Schechter, \textit{United Nations Global Conferences} (New York, NY: Routledge, 2005), 129.
\end{itemize}
There are certain studies focusing partly on NGOs’ relation toward ASEAN, such as Linton’s piece on the proposed ASEAN Commission on Women and Children, and the writing of Sheldon about ASEAN’s internal and international relations. Additionally, Harris R. Seth devoted an article to the discussion of the Asian Human Rights Commission’s (AHRC) Asian Peoples’ Charter on Human Rights, but did not go into the details of the regional advocacy of the AHRC (this will be analysed in Chapters 4 and 5). Also, Chandra provides an analysis of the alternative regionalism of Asian NGOs (a concept that is applied in Chapter 1), and in particular, describes the activism of SAPA. All in all, the regional human rights activism of Asian NGOs has been largely neglected. Chandra’s writing provides a good theoretical concept but fails to explore comprehensively the construction of the regional advocacy of NGOs.

Theories of interest to this thesis

Generally, most studies on regionalism concentrate on the regional cooperation of states, such as the works discussing traditional regional concerns of security or economic cooperation. Similarly, scholarship that focuses on human rights regionalism most often

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examines the role of states and inter-state organisations, discusses the operations of current regional systems and their institutional framework – such as Robert K. Goldman,96 Makau Mutua97 or Ahmad Naim98 – but generally falls short of exploring the ways NGOs can add to the regional protection of human rights. There is thus a necessity to examine human rights regionalisation from the point of view of NGOs, which have growing significance in the human rights field,99 especially in Asia, where they have been active promoters of the creation of a regional system for human rights.

Social constructivism is the major theoretical tool to analyse normative activism (see Chapter 1). Most studies on normative activism seek to explore the way norms (such as human rights norms) influence the behaviour and identity of states. For instance, Thomas Risse, Stephen C. Ropp and Kathryn Sikkink present a five stage spiral model to demonstrate how human rights norms become gradually internalised in the domestic policies of states and ultimately shape their behaviour and identity.100 Jeffrey T. Checkel describes the effect norms have on European identity, and explores why actors are influenced only by certain norms.101 However, less scholarly attention has been paid to the process of norm construction, especially when non-state actors are the creators of norms. Mutua’s work provides a thorough overview about the activism of NGOs in standard setting,102 together with Anne Peters and associates.103 These writings

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outline the general idea of norm or standard construction by NGOs, but not in relation to NGOs’ norm creation on the regional level, and not with respect to the regional normative activism of NGOs vis-à-vis the activities of states and intergovernmental organisations – which this thesis seeks to consider.

The concept of transnational advocacy networks will also be employed to examine the transnational activism of Asian NGOs on the regional level (see Chapter 1). Margaret E. Keck and Kathryn Sikkink introduced the concept, but mainly to explain the impact civil activism exerts in issue-specific areas such as regarding environmental questions or in the campaign countering violence against women.\(^\text{104}\) The notion of transnational advocacy networks has become widely applied in human rights and NGO literature; however, researchers primarily concentrate on the successful activism in South America\(^\text{105}\) and in environmental issues,\(^\text{106}\) or on theoretical questions (such as issue adoption in transnational networks\(^\text{107}\)), or on a particular example of issue-specific transnational advocacy.\(^\text{108}\) Transnational advocacy networks have not been discussed with respect to regional normative activism, especially not in the case of Asian human rights regionalism, which this thesis attempts.

This literature review reveals areas of scholarship that have not received sufficient attention. Assessing the literature on the Asian human rights discourse, the human rights policies of ASEAN, regionalism and human rights regionalisation, it can be concluded that the contributions of NGOs have been largely neglected. With regard to the scholarship on NGOs, however, it is exactly the regional dimension of their activism which remains under-researched. This is especially true for Asia, since literature focuses either on bigger INGOs, or on local or


national activism, and there is not much consideration given to the regional normative activism of Asian NGOs. Also, a larger proportion of studies has been dedicated to the effects norms have, than to the process of norm construction. Accordingly, these gaps in the literature underline the importance of my research focus on the transnational normative activism of Asian NGOs toward the creation of a regional human rights system in Asia.

The significance of the thesis

Human rights issues have attracted increased interest in Asia, not only on account of the pressing human rights problems, but also due to the growing potential of constructing a region-wide human rights mechanism. This is the case so much so that the Asian human rights discourse has drawn the attention of significant external actors such as the United Nations, and also notably, Australia.

The UN organised various workshops, seminars and meetings with the general aim of encouraging regional actors to create an Asian human rights system (Colombo, Sri Lanka 1982; Bangkok, Thailand 1993; Seoul, Republic of Korea, 1994). More recently, Navi Pillay, the High Commissioner for Human Rights has given account about her efforts in assisting ASEAN in the construction of its human rights system.


with multiple public hearings.\textsuperscript{112} The inquiry accepted written submissions from a diversity of NGOs (such as Amnesty International Australia, World Vision Australia, and FORUM-ASIA), from academic and policy centres (like the Sydney Centre for Global and International Law), and also from individuals (Professor Andrew Byrnes, and Dr. Clinton Fernandes).\textsuperscript{113} The submissions gave assessment of the human rights situation and proposed strategies for the development of a regional human rights instrument. The resulting parliamentary report is in the process of creation at the time of writing. Another inquiry by the Joint Committee produced a report, part of which concentrates on the ongoing human rights development within ASEAN.\textsuperscript{114}

Furthermore, Australian academic interest is also on the rise regarding human rights development in Asia. A conference was organised jointly by Sydney University and the Australian Human Rights Centre titled “International Conference on Human Rights in the Asia-Pacific Region” (27-28 November 2009),\textsuperscript{115} where participants discussed both the institutional and the normative elements of human rights regionalisation in the Asia-Pacific. Altogether, this demonstrates the growing significance of the question of the regional protection of human rights in Asia and the Pacific for Australia and for other external actors as well. NGO activism regarding this issue can also be important for Australia since plenty of Australian NGOs are involved in the discourse on the regionalisation process.


The Research Methodology

The chosen path for this research is qualitative research methodology. As discussed, one of the primary research tools applied is social constructivism (see Chapter 1). According to Kirsty Williamson, the constructivist approach most commonly attracts the application of qualitative research techniques.\textsuperscript{116} Katherine Marshall and Gretchen B. Rossman also contend that qualitative methods deal with multiple and socially constructed realities, and support the deeper understanding of a particular social situation, interaction, event, role or group.\textsuperscript{117} Additionally, qualitative methods have the specific features of flexibility and responsiveness, and involve greater openness for change, thus allowing for more latitude and also encourage the exploration of new trends, phenomena and aspects in the course of the research – such as the NGOs’ contribution to the regionalisation of human rights in Asia.

Since qualitative methods place considerable emphasis on the exploration of the context the data stems from,\textsuperscript{118} they are of great support in uncovering the details of the organisational values, goals, policies and practices of NGOs. Qualitative methodology is also flexible in accommodating multidisciplinarity,\textsuperscript{119} making it more suitable for the research project of this thesis, which examines the Asian human rights discourse by combining theoretical aspects of regionalism, international relations (that is, social constructivism), and transnational human rights advocacy.

A general cross-section analysis of the nationally operating Asian human rights NGOs was applied in order to create a background for the discussion of regional NGOs. I selected the examined NGOs on the basis of their relationship to the regional NGOs. Both the AHRC and

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\textsuperscript{119} Emilie M. Hafner-Burton and James Ron, “Human Rights Impact through Qualitative and Quantitative Eyes,” \textit{World Politics}, 61, no. 2 (April 2009), 360-401.
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FORUM-ASIA maintain close relationships with these smaller NGOs, cooperate with them on a daily basis, and use the information they provide to build up their regional campaigns. In fact FORUM-ASIA is a network organisation in itself, and it is composed of several of the examined national human rights NGOs. The selection was made based on the examination of the publications, campaign material and online communications of the NGOs. I employed mostly documentary analysis and internet related research to examine their activism (methods that will be described below).

Furthermore, I made a trip to the offices of the South Asian Human Rights Documentation Centre (SAHRDC) in Delhi, and the South Asian Forum for Human Rights (SAFHR) in Kathmandu, where interviews were conducted with senior staff of both NGOs. While there, I also examined campaigning documents and other NGO publications, including primary resources which are otherwise unattainable through libraries or from the internet. Both the SAHRDC and the SAFHR carry out activism and human rights advocacy that overlaps to a great extent with the work of the AHRC and FORUM-ASIA, yet they do not maintain close relations. The SAHRDC and SAFHR occasionally carry out regional projects (like training programs), but most of their operations are restricted to South Asia. The assessment of their activism also contributed to the analysis of smaller Asian human rights NGOs in Chapter 3.

The case studies and the more in-depth analysis of regionally operating NGOs, the AHRC and FORUM-ASIA constitute the core study of this thesis. The sample is small, because in this research data is not analysed based on quantitative comparisons, but it is gained from the thorough examination of the most suitable research subjects. Michael Q. Patton pointed out, that the “power of purposeful sampling lies in selecting information-rich cases for study in-depth.”\(^{120}\) Marylin D. White and Emily E. Marsh similarly assert that in qualitative research the sample is not necessarily big, but more importantly it serves the purposes of the research, and qualifies as a purposeful sample.\(^{121}\)


One of the favoured and most important tools of qualitative research is interviewing.\textsuperscript{122} This thesis relies on a small number of in-depth interviews. In accordance with qualitative methodology, the intention is not to have a large number of interviewees, but to talk to those persons that can provide the most relevant information regarding the research subjects. As Roger Gomm describes,\textsuperscript{123} in-depth interviews are almost like everyday conversations, and accordingly the relation between the researcher and the interviewed person becomes important. This allows for trust and a certain degree of friendliness to develop between the two, which makes it easier for the interviewer to explore the personal narrative of the interviewed person. However, a too close relationship can risk the validity of the data.\textsuperscript{124}

At the AHRC, I conducted interviews with the Executive Director on two occasions,\textsuperscript{125} and with other senior staff such as the Program Officer of the South Asia Desk,\textsuperscript{126} and the Head Consultant of the Asia-Europe Program.\textsuperscript{127} Also, at the SAHRDC\textsuperscript{128} and SAFHR,\textsuperscript{129} my interviewees were among the most senior NGO staff. The interviews were semi-structured without pre-defined wording,\textsuperscript{130} which allowed for flexibility and the introduction of new questions, and left room for the interviewed to bring up new topics as the interview proceeded. The open-ended questions were structured along the main themes of the organisational values, ideology, goals, campaigns, activism methods of the NGOs, their relations with other NGOs and

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\textsuperscript{124} \textit{Ibid}, 175.

\textsuperscript{125} Interview with Basil W. J. Fernando, the Executive Director of the Asian Human Rights Commission (Hong Kong, 22 May 2007 and 29 May 2007).

\textsuperscript{126} Interview with Bijo Francis, the Program Officer of the South Asia Desk Asian Human Rights Commission (Hong Kong, 30 May 2007).

\textsuperscript{127} Interview with Michael Anthony, Head Consultant of the Asia-Europe Program at the Asian Human Rights Commission (Hong Kong, 14 May 2007).

\textsuperscript{128} Interview with Ravi Nair, Director of the South Asian Human Rights Documentation Centre (Delhi, 22 August 2008).

\textsuperscript{129} Interview with Tapan Kumar Bose, Secretary General of the South Asian Forum for Human Rights (Kathmandu, 29 August 2008).

\textsuperscript{130} Gomm, \textit{Social Research Methodology}, 174.
authorities, and their transnational activism. These interviews gave me the opportunity to comprehensively explore the most important aspects of the operations of NGOs and their future plans through the personal narrative of those who are managing the organisations and crafting the campaign strategies.

In addition to the interviews, personal observations allowed me to examine the daily activism of the NGOs. Instead of taking on the role of participatory observation – which carries the risk of having a biased position in data gathering and analysis\(^{131}\) – I acted as a peripheral observer by following the NGO operations but without directly participating in them. This allowed an insight into the planning and construction of the NGOs’ activism in its context. An especially advantageous opportunity was to be able to attend the AHRC’s Second Regional Consultation on the Asian Charter of the Rule of Law\(^{132}\) as an outside observer. This provided me with the chance to follow one of the most important elements in the regional advocacy of the AHRC, the bottom-up construction of its regional discourse and the development of a collective human rights narrative (discussed in Chapter 5).

Another instrument of qualitative research employed in this thesis is documentary analysis, which involved the examination of various NGO publications, campaign materials, statements, press releases, urgent appeal documents (see Chapter 5), draft reports, and internal plans and memos. Content\(^{133}\) or thematic analysis\(^{134}\) was applied to identify those features and patterns in these documents that have relevance to the activism of NGOs and especially pertain to their regional advocacy and their campaigns for regional level human rights protection. The scrutinisation of a wide range of documents, especially the ones which were part of the internal communication and that were never or not yet published, has revealed exclusive details not only about the operations of these NGOs, but also about the future direction of their activism.

\(^{131}\) *Ibid*, 227.


\(^{133}\) White and Marsh, “Content Analysis,” 24-27.

\(^{134}\) Gomm, *Social Research Methodology*, 247.
Part of my data gathering involved internet-related research. I acknowledge that the application of internet resources is still being debated; however, in many forms it can serve as important primary and secondary source of material. Sharin G. Almquist contends, for instance, that internet research is more acknowledged these days, and Chris Mann and Fiona Stewart claim that web-tools make the execution of a great part of the research easier. Also, Jaber F. Gubrium and James A. Holstein note that the internet is turning out to be an increasingly popular tool in qualitative research. Besides, various forms of web-communications are becoming the first choice of interaction and communication for most NGOs, especially due to its cost-effectiveness and its ability to overcome time and space limits.

Some of the primary information on NGO campaigns and communications are only available on their websites or in their online publications. In particular I examine web-resources about the operations of FORUM-ASIA, which maintains a well updated website, and also developed web-pages containing details about its campaign and communications toward ASEAN, especially with regard to influencing the establishment of the Association’s human rights system. The data collection about the regional advocacy of FORUM-ASIA would have been very complicated had it been carried out in any other way, since the research focuses on the NGO’s interaction with ASEAN regarding the creation of a human rights mechanism that stretches over a period of years but it is still unfolding at the time of writing, with significant developments—such as the establishment of the ASEAN Intergovernmental Commission on Human Rights—occurring in the last stages of the writing of this thesis. Web-publications were also examined in relation to the work of the AHRC. These online resources are analysed in a similar way as the interviews, or as the printed documents of NGOs. Accordingly they are not treated as facts, but rather viewed as narratives which were designed to convey the campaign message of the NGOs.

“Triangulation” of the gathered information was carried out by cross-checking it with the application of multiple sources in order to ensure validity. I tried to uncover and examine all

136 Mann and Stewart, Internet Communication and Qualitative Research, 5.
138 Ibid., 38.
possible information sources about specific aspects of the work of NGOs, and also to use the combination of diverse data gathering methods while focusing on the same theme. The topics brought up in the interviews were cross-checked by looking at related NGO publications and communications, and campaigning activities.

Data analysis can be almost simultaneous with data gathering in qualitative research methodology. Following the advice of Matthew B. Miles and Michael A. Huberman, I applied “coding” of the collected data by categorising it in order to identify decisive features and patterns in the operations and advocacy of the NGOs. Some of these categories regarding general NGO activities included: NGO value structure, mission, NGOs’ human rights understanding, goals, strategies and methods, campaign and program features…etc. I also created memos and notes during, and as a reflection, after the data collection as well. These methods further helped me in identifying those elements and trends that outline the distinctiveness in the NGOs’ activism. The texts of the interviews were transcribed, which gave me an opportunity to study the interviews and to complement the transcription with my additional comments.

**Clarification of certain concepts applied in the thesis**

Certain phrases and concepts I use in the research call for further clarification. I am aware that I apply the term “Asia” and “Asian” throughout this thesis in a rather broad and general manner that might give rise to conceptual misunderstandings regarding the actual meaning of the expression.

Asia is a vast region of great diversity, which makes it almost impossible to define it with certainty. Most studies in the fields of politics, economics and social studies focus only on a subregion of the large continent, like Tim Huxley’s assessment of the political situation in

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Southeast Asia, Terence Chong’s focus on the effects of globalisation in Southeast Asia, or the work of Deepa M. Ollapally on extremism in South Asia.

This thesis, however, looks at regional cooperation primarily with respect to human rights development. The emphasis is on the development of a human rights system that could serve as transnational (or supranational) level of human rights protection for all Asian countries above the domestic human rights systems. Accordingly, in this case there is no need to stress the actual delineation of the region. Although I consider various human rights initiatives in South and Southeast Asia (and to a degree in East Asia), a generalisation of the term “Asia” is justified on the basis that I examine developments toward the creation of a regional human rights mechanism that would encompass the whole of Asia.

This kind of generalised usage of the term Asia appears in several academic works that focus on particular issues and trends affecting the whole continent, or in comprehensive studies of the whole region, such as the analysis of non-traditional security issues by Mely Caballero-Anthony, Ralf Emmers and Amitav Acharya. With respect to human rights studies there are also examples when authors look at the whole of Asia, see for example, the book of Randall Peerenboom, Carol J. Petersen and Albert H. J. Chen.

This thesis also talks in general terms about Asian NGOs. However, I focus on the organisations that operate mostly in South, Southeast and East Asia. The reason for this is that Asian NGOs in these areas have been the most active in contributing to the shaping of an Asia-wide human rights instrument. The intention of the research is to assess the activism of NGOs that were founded in and are operated from an Asian country by mostly Asian experts, as

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opposed to international NGOs which have their organisational centre and additional branches elsewhere (mostly in Europe, North America, Australia and New-Zealand). This differentiation between INGOs and local or native NGOs justifies the application of the term Asian (further discussed in Chapter 3).

The use of the expression “discourse” in relation to the unfolding human rights discourse in Asia also warrants a brief explanation. This thesis applies ‘discourse’ in two ways. Firstly, as Gomm described it, as the “evidence of ways individuals or groups interpret the world”,\(^\text{148}\) that is, to refer to the stance and approach actors have toward human rights regionalism in Asia. Secondly, the human rights discourse is understood as the collective of actions, activism, writings, communications, policies and institutions created with respect to human rights issues in Asia. It is an open concept that allows for flexibility in interpretation, and implies the contribution of a diversity of state and non-state actors.

**Limitations of the thesis**

There is an obvious limitation regarding the research focus, since this thesis cannot assess all of the vast Asian NGO community. Chapter 3, 4 and 6 lay down the criteria delineating the circle of the examined Asian human rights NGOs that are active nationally and regionally and have influence on the Asian human rights discourse. Although this thesis explores various aspects of the research subject, due to space and time limitations only those angles of human rights regionalisation, Asian regionalism, the operations of national human rights NGOs, normative activism are considered which I deemed significant regarding the research focus. There is also an abundance of information on human rights in Asia, out of which this thesis seeks to concentrate mostly on the regional aspects of human rights promotion and protection. I will only detail those human rights issues that have relation to the activism of the examined human rights NGOs.

Structure of the thesis

Finally, a brief outline of the structure of this thesis is warranted. Chapter 1 provides a theoretical framework which considers the concepts of regionalism and regionalisation with a particular emphasis on analysing the aspects of human rights protection and promotion on the regional level. Here, the thesis invokes the new regionalism theories of Friderik Soderbaum\footnote{Friderik Soderbaum, “Introduction: Theories of New Regionalism,” in \emph{Theories of New Regionalism: A Palgrave Reader}, eds., Friderik Soderbaum and Timothy M. Shaw (Houndmills, Basingstoke: Palgrave Macmillan, 2003), 1-21.} and Bjorn Hettne.\footnote{Bjorn Hettne, “The New Regionalism Revisited,” in \emph{Theories of New Regionalism}, eds., Soderbaum and Shaw, 23-24.} Certain elements of social constructivism that can be applied to non-governmental activism will be used to explain the process and the impact of norm construction. Additionally, the ideas and concepts of transnational advocacy as presented by Keck and Sikkink\footnote{Keck and Sikkink, \emph{Activists beyond Borders}.} and the alternative regionalism of Alexander C. Chandra\footnote{Alexander C. Chandra, “Civil Society in Search of an Alternative Regionalism in ASEAN,” (Winnipeg, Canada: International Institute for Sustainable Development, 2009), \url{http://www.tradeknowledgenetwork.net/pdf/civil_society_alt_regionalism_asean.pdf} (accessed 21 December 2009).} are employed to interpret the transnational activism of the Asian human rights NGOs.

Chapters 2 and 3 introduce the main research topic of this thesis, namely Asian human rights NGOs. Here I examine the general features of their activism, and explore those aspects of the operations of nationally functioning human rights NGOs which have relevance to the work of regional NGOs. The regional advocacy of the examined NGOs is built largely on the special elements of human rights activism at the grassroots.

Chapters 4 and 5 provide the case study on the Asian Human Rights Commission (AHRC). I firstly examine the distinctive elements of its general advocacy, then explore the way these special advocacy elements together construct the regional activism of the AHRC. The concepts of participatory and alternative regionalism (see Chapter 1) will be employed here to analyse the regional work of the AHRC and its contributions to the Asian human rights discourse.
Chapter 6 will scrutinise the activism of FORUM-ASIA whose basic activism and features show many commonalities with the AHRC. However, the chapter will highlight that despite the similarities in their general and regional activism, there are also significant differences between the AHRC and FORUM-ASIA. Chapter 6 seeks to analyse the ways in which the regional advocacy of FORUM-ASIA diverges from that of the AHRC, and also attempts to assess its different impact and outcomes.

Finally the Conclusion discusses the future direction of human rights debates in the region and reflects on how the NGOs (in particular the AHRC and FORUM-ASIA) can contribute to the further evolution of a regional human rights system in Asia.
Chapter 1 – Theoretical framework

Introduction

This chapter provides a theoretical framework for the arguments I present in this thesis, upon which the practical findings and the ensuing analytical conclusions are built. In order to analyse how regional human rights NGOs contribute to shaping the Asian human rights discourse and to the construction of the proposed regional human rights mechanism several important theoretical frames need to be introduced that concern the regional dimension of human rights protection, the distinctiveness of human rights norms, the transnational advocacy human rights NGOs pursue and its normative outcomes.

These theories and concepts are based on a diversity of backgrounds and sources, but as Kirsty Williamson noted it, “there is no reason why researchers cannot draw on more than one body of research theory to underpin their own research”. These include, firstly, the concepts and theories of regionalism and the regional protection and promotion of human rights. Subsequently, scholarship on norms, and specifically human rights norms, the construction of norms, and the role that ‘norm entrepreneurs’ play will also be discussed. This thesis applies primarily the ideas of Margaret E. Keck and Kathryn Sikkink about the operations of transnational advocacy networks to analyse the important transnational activism of the Asian human rights NGOs.

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2 Keck and Sikkink, Activists beyond Borders.
Regionalism: A growing trend

As Barry Buzan and Ole Waever pointed it out, regionalism and even supranational regional cooperation has become more widespread in recent years, a trend to which Asia is no exception. In particular, the end of the Cold War has brought about an increase in state cooperation, in regional organisations. This upsurge in regionalism is attributable to the altered international climate, as well as to the accompanying post-Westphalian erosion of the monopoly of nation-states and the resulting diversification of the international scene. Regionalism has come to be viewed as a mitigating factor which can give protection against harsh consequences of global economic or political trends, and also provides opportunity to overcome state boundaries through forging cross-border operations. Advocates of regionalism argue that through regional cooperation national interests are furthered, and also the advantages of globalisation can be better exploited.

Regionalism and regionalisation are important concepts applied in the research, especially with regard to human rights, and thus warrant further explanation. Regionalism is generally defined in a positive sense as a type of cooperation among states that have a certain connection (most commonly geographical proximity) with each other. However, Dent and Nair identify

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4 Deepak Nair, “Regionalism in the Asia-Pacific / East Asia: A Frustrated Regionalism?” Contemporary Southeast Asia, 31, no. 1 (2008), 111.


9 Nair, “Regionalism in the Asia-Pacific / East Asia,” 110-111.
regionalism as more of a top-down, government-directed cooperation, whereas regionalisation is interpreted as a society and civil driven, more bottom-up process and development. This thesis will interpret and apply the terms accordingly. However, sometimes the terms are used interchangeably, as both notions can describe a process of regional cooperation.

**Human rights regionalism**

The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and subregional arrangements for the promotion and protection of human rights where they do not already exists.

(Vienna Declaration and Programme of Action)\(^\text{10}\)

While economic and security priorities are often the focus of regionalism, regional aspects of human rights are consequently neglected. As it was highlighted in the literature review (see Introduction), human rights questions are generally examined from a global or international viewpoint, or in their local context. Nonetheless, regionalism has been a significant factor in shaping the field of human rights; for instance in Europe, the Americas and Africa, where states have agreed to create common human rights instruments.

Despite the evident pluralism among nations, there is willingness among states in the above mentioned regions to address regionally widespread and interconnected human rights problems in a coordinated manner. The need for regional mechanisms stems largely from the deficiencies of the international system, which can be too slow to realise the severity of certain problems, sometimes lacks sufficient insights into human rights situations, and is often under-resourced.\(^\text{11}\) Regional cooperation has the potential to influence human rights problems that stem from the actions of a member state, and is also a matter of mutual interest in so far as human

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rights problems and their effects often transcend state borders. Regional human rights systems
definitely do not substitute for any state-led or global models, but complement and contribute to
both the national and international level of human rights protection.\textsuperscript{12}

The diversity of ethnicities, languages, cultures, religions, and social and political
structures are likely to cause difficulties in reaching consensus on human rights matters. Such
diversity is often referred to by those opposing regional human rights initiatives. However,
differences \textit{per se} should not hamper cooperation. Regionalism by definition entails a degree of
shared interests among its members, yet it does not imply uniform consensus on matters – indeed,
to the contrary. As Sorabjee argues, the pursuit of rigid uniformity is in fact more likely to
destroy and hinder the functioning of a regional entity rather than further its causes.\textsuperscript{13}

Regional cooperation does not need to be based on constant consensus-searching, but
rather on shared understandings that can even grow out of disagreements. Pluralism and
heterogeneity are inclined to nurture and enrich the outcomes of collective action, through
drawing a diversity of ideas and values together into a common initiative. In fact this is a notion
that is endorsed by Asian human rights NGOs in their advocacy (see Chapter 3). Upendra Baxi
uses the term “pluriverse” to explain this concept implying that the universalism of human rights
is inherently reconciled with pluralism.\textsuperscript{14} Bikhu Parekh also argues that divergent moralities and
social values can be accommodated under a universally agreed normative framework.\textsuperscript{15} Diversity
is compatible with cooperation, but it can also create certain obstructions for the construction of a
regionally accepted and endorsed human rights framework. It would nevertheless be unfounded
to dismiss the possibility of developing long-term regional cooperation on certain human rights
issues in Asia on the pretext of the great diversity of peoples and cultures in the region. Regional


\textsuperscript{14} Upendra Baxi, \textit{The Future of Human Rights} (New Delhi: Oxford University Press, 2002), 78.

\textsuperscript{15} Bikhu Parekh, \textit{Rethinking Multiculturalism: Cultural Diversity and Political Theory} (Basingstoke: Macmillan, 2000).
entities such as ASEAN must accommodate the differences of its members in order to function without major conflicts.

Whereas regional human rights mechanisms exist in Europe,\textsuperscript{16} the Americas,\textsuperscript{17} and in Africa,\textsuperscript{18} Asia is the most significant among the regions that lags behind in adopting some sort of region-wide human rights instrument.\textsuperscript{19} The regional human rights systems in Europe, the Americas, and Africa share certain similarities despite the significant disparity in their level of development, working methods, and case load. Such regional systems draw heavily from international human rights law, yet do not operate directly under the auspices of the international system, the United Nations, but independently. Notably, they were born out of crisis or major political transformation; World War II in Europe, democratisation in South America, and post-colonialism in Africa. The collective will to uphold human rights was expressed in regional declarations and conventions,\textsuperscript{20} which constituted the first steps toward the creation of regional human rights mechanisms.


\textsuperscript{19}Other notable regions or sub-regions that have not yet developed their own transnational human rights systems include the Pacific and Oceania, the Middle-East.

Furthermore, these regional mechanisms share commonalities in their institutional frameworks. For instance, they have a Commission made up of independent experts, which receives and investigates individual complaints of violations, monitors compliance with human rights standards, conducts on-site investigations, and publishes reports and studies (the European system is an exception). In addition, all three regional mechanisms include a Court that adjudicates cases, builds a body of human rights jurisprudence, and also plays an advisory role. In terms of developing common human rights institutional frames and policies, Asia can look to these regions for inspiration, and can view them to a certain extent as models.

Based on the experience of existing mechanisms, regional human rights systems ought to have at least three functions in order to operate effectively, which are emergency intervention, monitoring the human rights situation, and facilitating norm implementation. Firstly, a regional human rights system performs an emergency service role. Such a system is situated closer to national and local communities than global actors are, and also has a transnational overview of the countries. Due to this vantage point the regional body can assess the human rights situation with more insights than global or extra-regional actors, and can thus react to crises more swiftly and efficiently. This was the case when the African Union intervened in Darfur in an attempt to alleviate the humanitarian crisis. The African Union Protection Force was the only foreign contingent deployed in the Sudanese crisis area, and in fact it was the only force with the proclaimed intention to protect civilians. Although Reeves noted that this contingent was not sufficient to adequately handle the conflict, in the absence of intervention by the United Nations on Human and People’s Rights,” (Nairobi, Kenya, June 1981), http://www.achpr.org/english/_info/charter_en.html (accessed 11 January 2010).


or as a matter of fact by any other external actor, the actions of the African regional body became more significant.

Secondly, provided it has adequate resources and capacities, one of the major tasks of a regional human rights body is to monitor the human rights situation, identify and analyse human rights problems, report about them, and seek to address all aspects of the violations. States that are usually reluctant to expose their human rights record to scrutiny, are probably more likely to subject to the monitoring performed by a regional body they are member of, than to one executed by an external actor. For instance, as Robert K. Goldman claims, one of the most important achievements of the Inter-American Commission on Human Rights was the publication of country reports, in which the negative human rights practices of authoritarian state leaderships were scrutinised and condemned.\(^{26}\) He further invokes that the reporting activities of the Inter-American Commission were also accompanied by peacekeeping efforts which contributed significantly to the alleviation of political and military conflicts, for instance, in the Dominican Republic.\(^{27}\) In addition to holding states accountable, Andrew Moravcsik argues\(^ {28}\) that an important achievement of regional human rights regimes is that they empower individuals by giving them the opportunity to file cases at regional courts against their own governments.\(^ {29}\)

Thirdly, regional human rights instruments also further the promotion and implementation of international human rights standards by making international norms more accessible to people than it is through the UN system by conducting activities that raise awareness about human rights, and educate the wider population. In Africa for example, the Plan of Action of the African Commission on Human and Peoples’ Rights (for 1996-2001) proposed various workshops and seminars to be held focusing on human rights problems that are the most prevalent in the region, such as the implementation of the freedom of expression or economic, social and cultural

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\(^{27}\) Ibid, 870.


\(^{29}\) All three major regional human rights systems allow for individuals to file cases and complaints, see, Steiner, Alston and Goodman, International Human Rights in Context, 938, 1025, 1067.
It is additionally significant that regional human rights systems with their normative frameworks influence domestic laws, and the policies and practices of their member parties. All three regional human rights systems are built on a normative framework appearing in the form of a convention, declaration or a charter – which lay down the norms, values and procedural rules of the regional body. More importantly these normative frameworks are incorporated into or at least shape the domestic legal and policy structures of the member states. In this way the regional mechanism influences the identity, behaviour and actions of the countries. Moreover, the court proceedings and litigation also have effects on the domestic legal practice of member states. This is evident in the European system, where decisions of the European Court of Human Rights pressed countries like Belgium, Italy and Greece to alter their detention practices so that those would comply with international and regional human rights standards.  

The establishment of the regional human rights system had also stimulated comprehensive changes in policy and attitude in inter-state relations in Africa. According to David Forsythe, the construction of a regional human rights mechanism has contributed to the transformation of the main regional intergovernmental cooperation and lead to the 2002 creation of the African Union (AU). Notably the constitutive document of AU pledges that member states are “determined to promote and protect human and people’s rights” and gave human rights a central role. The AU even endorsed the idea of humanitarian intervention despite the fact that


earlier the principle of non-interference into states’ internal affairs was just as highly regarded among African governments as it is in Asia today. A regional system in Asia could likely exert a similar influence, and would help to transform the normative structure underlying regional cooperation and domestic affairs.

However, a regional mechanism is not without its weaknesses. Every region has to struggle to create a somewhat unified platform from its internal diversity. Sometimes it is too difficult to overcome the conflicting interests and aims of members, and that hinders the operation of a regional system. It is always a challenge to reach a collective decision without conceding to compromises that are shallow in substance. This difficulty emerges especially in Asia where states are usually strong-minded in advancing their self-interests and willing to veto decision-making. Controversial human rights issues face diplomatic stalemate within the current consensus-seeking normative system of Asian inter-state cooperation, which characterises almost all of the decision-making processes in Asian regional organisations (such as ASEAN and SAARC).

The other practical problem concerns the large workload that can debilitate regional mechanisms and undermine their goal of improving the human rights situation. One of the most developed such mechanisms, the Council of Europe, and its European Court of Human Rights often groans under the burden of the overwhelming case load that stems from its 47 member countries, which deducts the effectiveness of its functioning, and according to Steven Greer, even threatens its survival.\(^{34}\) Also, the less developed African system faces the problems of inefficiently implementing and enforcing the pledges made by member states in the Banjul Charter and as part of the organs of the African human rights mechanism.\(^{35}\)

Nevertheless, all difficulties considered regional human rights mechanisms are likely to bring about improvement in the human rights conditions of the citizens of member countries, and give rise to shared understandings of human rights between their members and other transnational actors. The regional cooperation of state and non-state actors in the field of human rights would


have the potential to create long-term normative frameworks. For these reasons, there is a need to establish a human rights system in Asia as well. As Michael Kirby argued, the time has come for Asian jurisdictions to cooperate with one another in a regional context.\(^\text{36}\)

Asia is by far the most populous region of the world, and continues to struggle with large scale and systematic human rights problems. Also, international human rights standards have not been well entrenched in the domestic setting in Asian countries, especially considering the low level of ratification of international human rights documents.\(^\text{37}\) For instance, Eldridge notes the unsatisfying degree of ratifications among the ASEAN member states (see Introduction).\(^\text{38}\) The absence of an instrument to address human rights questions appears to be a notable deficiency. Accordingly, regional level human rights mechanisms are needed to compensate for the shortcomings of the international system and the human rights activities of the individual countries. It would not negate the role of the international human rights system, or the countries' own legal mechanisms, but could instead strengthen both.

The current regional human rights instruments are all built around pre-existing inter-governmental organisations. This raises the question as to whether a future Asian human rights system should be embedded in the structure of one of the inter-state regional organisations such as ASEAN or SAARC or can it be established separately from them. As states still bear the primary responsibility for guaranteeing human rights, and are better positioned than civil society to implement human rights obligations, governmental involvement is important for the regionalisation of human rights. Thus it seems to be a substantiated argument that human rights mechanism can only be effective when built into a framework of governmental cooperation. Although this has served as the model presented by other regional mechanisms, the disregard that many Asian governments evince toward human rights commitments brings into question the viability of a truly effective Asian human rights mechanism if it is only operated by states. There


are currently ongoing attempts to lay down the basics of a human rights system within ASEAN (see Chapter 6), but it is still far from realisation.

Nevertheless, this thesis argues that Asian human rights NGOs have shown more commitment toward constructing a regional human rights system and have contributed to the forming of its normative framework more actively than governments and inter-state regional organisations. Moreover, human rights NGOs are well placed to fill an essential role in the creation of a regional mechanism by monitoring and criticising state practice, without which any such mechanism would be ineffective. In a regional system premised on facilitating state cooperation and based on respect for national sovereignty, the introduction of a human rights instrument will be restricted by the political sensitivities of member states, and limited by diplomatic exigencies in its ability to criticise state violations. One way to counterbalance state-domination and to compensate those aforementioned weaknesses that can hamper human rights development is to have regional NGOs mediate the regionalism of human rights. Human rights NGOs can provide independent information on human rights violations committed by states, and serve as a powerful sounding board for human rights problems that would otherwise be silenced by political taboo.

**Theories of regionalism**

*Old theories and new regionalism*

Neo-realism, neo-liberal institutionalism and functionalism have dominated scholarship on regionalism throughout the twentieth century and are still relevant today.\(^{39}\) In general terms, these theories explain regional cooperation by focusing mostly on how states interlinked by geographical proximity and by common economic and security interests interact with each other, and such cooperation and interaction is seen to be motivated by material factors, self-interest and

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power-struggles. They view regional cooperation as primarily state-driven, and consequently pay little attention to non-state actors and generally neglect ideas, norms, and normative agents. For instance, Michael Leifer analyses Asian regionalism focusing mainly on the roles power and states’ self-interest play, and concentrates on the security dimension of regional cooperation.

Although followers of neo-liberalism or neo-liberal institutionalism take on a different approach and emphasise more the importance of cooperation (in comparison to neo-realists), their outlook is limited in terms of examining only states and inter-state interaction. However, most scholars in fact employ a combination of theories to analyse regional or international relations, like Katzenstein, who takes a complex approach and uses elements of realism, neoliberalism, rationalism and constructivism to discuss the concept of security in the Asia-Pacific.

As its advocates claim, the more recent theory known as New Regionalism Approach (new regionalism) – which has developed in the multilateral post-Cold War era – is better adapted to the diversity, multiplicity and complexity of the new international and regional environments. New regionalism provides an analytical tool that is less restricted by territorialism, and more able to consider the pluralism inherent in current-day cross-border interactions and regional cooperation. It understands regions as multi-dimensional and complex.

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entities that are contingent on a variety of state and non-state actors, and thus involve a constellation of interests and agenda. This approach suggests, on the one hand, that regions are not static but rather undergo change, and on the other hand, that regionalism is a multidisciplinary concept aggregating social, cultural, political and economic activities and interactions of transnational actors who are linked together by a similar or shared historical, socio-political background, problems and geographical proximity.

This thesis traces the transformations in Asia as it moves toward deeper integration and cooperation, and in particular, outlines the growing importance of human rights in this transformation. Influences on this process are multifarious, stemming from state economic and security interests, international and regional human rights norms, and also from the NGOs that communicate human rights concerns from the grassroots both to the mainstream public discourse and the regional political decision-making bodies. Regional change, and the formation of cooperative institutions, norms, and practices, is consequently better explained under a theoretical framework espoused by new regionalism than those of traditional international relations theories. It is especially relevant to this thesis that new regionalism takes into account non-state actors and also considers the importance of norms, ideas and values. Accordingly this proves to be the most suitable theory to analyse NGOs’ normative work.

The normative aspects of regionalism

Although the role that subjective elements such as norms, ideas and values play in the construction of a region is often neglected in theories of regionalism, it is indispensible to any consideration of the regionalisation of human rights. Norms are generally understood as standards

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48 Acharya, The Quest for Identity.
of proper and legitimate behaviour associated with a particular identity.\textsuperscript{49} The concept of norms is broader than just codified laws, as it involves any kind of rules or practices that govern the behaviour and action of various actors. Norms also reflect commonly held social ideas and values which define certain roles and identities, and thus shape the behaviour of actors.\textsuperscript{50} As Jeffrey W. Legro asserted, beyond regulating, norms also enable and construct actors and their context.\textsuperscript{51} Specific kinds of norms that are central to this thesis are human rights norms.

Human rights reflect the above described multi-fold functions norms perform. Human rights norms are prescriptive, in the sense that they seek to regulate state behaviour, yet they are steeped in philosophical ideas and cultural values concerning what constitutes a dignified human life, along with notions of liberty and fairness. Human rights determine the relationship between the state and its citizens, and also among individuals themselves. They provide guidance to societies, and have the propensity to give the same kind of moral and ideational support to states and individuals on a regional level. Human rights norms have a certain constitutive power, since states abiding by them acquire a particular identity that in theory shapes their behaviour in international affairs as well as in their domestic operations.\textsuperscript{52}

Norms have been an integral part of the cooperation of Asian countries (especially in intergovernmental organisations like ASEAN),\textsuperscript{53} particularly the norms guiding inter-state relations such as peaceful settlements of conflicts and the principle of non-interference in the


\textsuperscript{52} Moravcsik, “The Origins of Human Rights Regimes,” 622-652.

internal affairs of another state. Accordingly, besides a materialistic and instrumental element (the motive of states’ self-interests and the dynamic of power struggles) there is a definite normative content to Asian regionalism. This content is a reflection of state practice (for instance sovereign non-interference), but also has been defined by political human rights discourse, which was influenced by input from NGO activism.

Such developments unsurprisingly reflect trends elsewhere. In Andres R. Puntigliano’s analysis of Latin America, he finds that norms are contributing considerably to the construction of the regional identity, and non-state actors are increasingly the sources of these regional norms. Anne Peters, Lucy Koechlin and Greta F. Zinkernagel also argue that norm creation is not left only to states anymore. These observations can be equally applied to Asian regionalism, where subjective elements like human rights norms have been established as a basis of regional cooperation largely as a result of the activism of human rights NGOs. A diversity of actors (state and non-state) has engendered competing notions of human rights, thus expanding the normative basis of Asian regionalism. This is best analysed through the theory of social constructivism.

**Social constructivism and the construction of regionalism**

This thesis applies social constructivism because – in contrast to the aforementioned realism and neo-liberalism that restrict their focus to the role of power in regionalism – in the words of Shibashis Chatterjee, this theory speaks “the language of norms”. Social constructivism contends that ideational elements – that is, ideas, values and norms – play an

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equally important role beside material forces in moulding inter-state relations. Alexander Wendt, reflecting the general position of social constructivists, argues that the identity, interests and behaviour of countries, their inter-state relations and transnational affairs are not pre-determined and exogenously given, but continuously shaped, constructed through the social interactions of various actors. Norms, ideas and values play a decisive part in this process of social construction.

The implication of this theoretical framework for regionalism is that regional cooperation is not static, and it can be influenced and transformed by ideological change not only at the level of states, but also through the activism of non-state actors on political processes. Also, the earlier introduced new regionalism approach builds on social constructivism, since it views regional developments as evolved from the combination of multi-level construction of ideas and norms, and the articulation of states’ interest. New regionalism approach concentrates on how a regional community can be formed based on the exchange of ideas and the emergence of norms.

Although social constructivism, as a theory of international relations, has primarily concerned states, certain concepts advanced by this theory are relevant to the normative activism of NGOs as well. Wendt, who otherwise examines primarily state actors, has nevertheless asserted that the constructivist view of international relations does not necessarily have to be state-centrist. The notion of a “world society” – which had developed in other theoretical traditions, but was later applied by social constructivists as well – refers to the interaction of


60 Sridharan, *Regional Cooperation in South Asia and Southeast Asia*, 19.

61 Wendt, “Anarchy is What States Make of it,” 424.

62 The concept of world society was originally introduced by the English School, a theory focusing similarly on the role ideas and norms play in international relations. The English School can be viewed as a theoretical precursor to social constructivism, see, Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, 2nd edition,
states, international organisations and various non-state actors. Although the original social constructivist theories were strictly state-focused, recent constructivist scholars such as Barry Buzan, Martha Finnemore and Kathryn Sikkink pay more attention to the activities of non-state actors. Moreover, a growing part of social constructivist scholarship is devoted to the topic of the trans-boundary normative activism of NGOs, like Keck and Sikkink’s work on the achievements of issue-specific transnational advocacy networks that will be used in this thesis also.

As mentioned in the literature review, the general direction of research interest within social constructivism focuses on how norms influence the identity, behaviour, and interests of actors, both state and non-state. This is also defined as the structuralist approach, since the emphasis is on the role of normative structures and their impact, not on the normative agents. This thesis, however, focuses primarily on how NGOs contribute to the construction of new normative meanings in the field of human rights. Only after examining the process of the creation of human rights norms turns this thesis to the assessment of the normative impact on the behaviour of states, inter-state relations, on civil society and the public – which is gauged mainly to gain proof for NGOs’ normative activism.

Accordingly, it is argued that social constructivism should not be perceived as a one-way process. As Wendt asserted, agents and structures (norms, values and ideas) are in a mutually constitutive relationship and cannot exist independent of one another. Thus this thesis considers...
the question of how agents construct norms, which is often neglected in the literature.\textsuperscript{67} A number of works follows the agentic approach and ask this question but with respect to the normative activities of epistemic communities and international organisations. For instance, the article of Steven R. Ratner about the High Commissioner for Minorities at the Organisation for Security and Cooperation in Europe discusses how the work of the High Commissioner gave rise to new definitions for minority protection in the regional context.\textsuperscript{68} The normative activism of Asian NGOs is examined with the application of a concept that captures specifically the essence of norm construction.

In the words of Finnemore and Sikkink, “norms do not appear out of thin air”:\textsuperscript{69} The functioning of norms cannot be understood properly without examining their origins. The notion of “norm entrepreneurs”\textsuperscript{70} or “transnational moral entrepreneurs”\textsuperscript{71} can be utilised to analyse how NGO activism creates new normative concepts in the regional human rights discourse in Asia. Norm entrepreneurs are agents stimulating changes (ideational, social, political and legal),\textsuperscript{72} the catalyst of norm emergence, and the transformers of normative structure.\textsuperscript{73} States have traditionally been recognised as the pre-eminent norm entrepreneurs, alongside inter-state organisations (especially in Asia). NGOs, however, are increasingly acknowledged by


\textsuperscript{69} Finnemore and Sikkink, “International Norm Dynamics and Political Change,” 887-917.


researchers for their normative input into international and regional affairs, especially in the field of human rights.

The outcome of norm creation in the case of NGOs is not necessarily a legally binding norm, but could be a broader standard that is interpreted by Peters, Koechlin and Zinkernagel with the help of the Oxford English Dictionary as “a rule, a principle, or means of judgement or estimation, a criterion, a measure.” These standards and norms then can become part of a domestic, regional or international document, legislations, but can also exert influence in other ways by shaping policies or state activities.

Norm construction is not alien to the world of NGOs, as they have been involved in standard-setting from the outset of the international human rights system, particularly through the machinery of the United Nations. They were active as early as at the Conferences of Dumbarton Oaks and San Francisco carrying out unprecedented lobbying efforts to press for human rights issues to be incorporated in the Charter of the United Nations (26 June 1945). Subsequently, civil society’s involvement in the work of the United Nations has grown significantly. As Philip Alston (the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions) states, the cognitive contribution of NGOs has become an indispensable part of the international human rights system.

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Amnesty International, the foremost international human rights NGO, has set a precedent of global norm creation in creating a world-wide anti-torture campaign. This began in 1972 in response to abuses in Greece, and a subsequent report delineated interpretations of torture that went beyond the definitions extant at that time in human rights documents.\(^\text{80}\) This movement eventually led to the formulation of the Convention against Torture in 1984,\(^\text{81}\) and to the ensuing creation of the position of the Special Rapporteur on Torture. A further example of norm creation derived from the efforts of non-state actors is demonstrated by Michael J. Struett, who analyses how the discursive practices of NGOs have been significant in shaping the normative structure of the International Criminal Court.\(^\text{82}\) Alison Brysk also demonstrates that owing to NGOs’ lobbying, rape was recognised in the Rome Statute (1999)\(^\text{83}\) as a crime against humanity and a war crime.\(^\text{84}\)

Similarly, NGOs have made an impact at the regional level. Civil society actors advocating for European integration following the Second World War had human rights high on their agenda, and contributed significantly to the establishment of the Council of Europe, which constitutes the backbone of the European human rights system today.\(^\text{85}\) The International Commission of Jurists (ICJ) engaged in a lengthy transnational advocacy with the aim of promoting regional human rights protection in Africa. The ICJ organised a pan-African conference in 1961 in Lagos to promote the idea of a regional human rights system among African states, which was then followed by numerous other discussions, and concluded in the

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\(^{84}\) Brysk, *Human Rights and Private Wrongs*.

founding of the regional system. Such precedents show the potential for non-state actors to exert influence, and give credibility to the aspirations of Asian NGOs’ to construct a regional human rights framework from the grassroots.

**Transnational advocacy networks and their normative activism**

Karns and Mingst note that “NGOs seldom work alone for very long”, which is true for most Asian human rights NGOs as well. The particular NGOs this thesis focuses on act as norm entrepreneurs as they engage in transnational activism which will be analysed by using primarily the theories of Keck and Sikkink and Risse, Ropp and Sikkink on transnational advocacy networks. Transnational advocacy networks are defined as voluntary networks of diverse actors working across borders that are bound together by shared values, common discourse, and continuous exchange of information. They are usually composed of “voluntary, reciprocal, and horizontal patterns of communications and exchange”. Keck and Sikkink identify them as networks, yet emphasise that these are not formal structures but rather flexible forms of cooperation linked together by open relationship. Additionally, transnational advocacy networks pursue high value-content moral issues such as human rights, sustainable development and environmental policies on multiple levels, ranging from local to international. They

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88 Keck and Sikkink, *Activists beyond Borders*.


92 *Ibid*.

advocate moral causes with new or altered normative meanings, motivated beyond their own self-interest.

All of the above detailed features are also typical of the work of NGOs and especially characterises the transnational activism of Asian human rights NGOs (see the following chapters). This thesis accordingly applies the concept of transnational advocacy network to analyse their regional activism. Keck and Sikkink establish that transnational advocacy networks are composed of a diversity of actors (varying from churches, the media to epistemic communities). However they add that NGOs generally take up prominent roles in them.94 A number of studies on transnational advocacy especially concentrate on the transformative role of NGOs, like the article of Susan D. Burgerman about their transnational achievements in the field of human rights.95 Karns and Mingst also emphasise the important role NGOs play in transnational networks.96 Thus the transnational advocacy network concept of Keck and Sikkink is well applicable to assess NGOs’ regional operation.

The recent rise of transnational advocacy and its mounting significance in international politics is due largely to the growing interconnectedness, and to the expansion of global communications that have enabled non-governmental organisations to become “information brokers”,97 and managers of knowledge among different arenas of action.98 Information exchange and the sharing of experiences are at the core of the operation of transnational advocacy networks.99 NGO networks not only contribute to the horizontal experience and skill exchange among organisations, but also facilitate the flow of information and assistance between the

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94 Keck and Sikkink, Activists beyond Borders, 6-9.
95 Burgerman, Moral Victories, 907.
96 Karns and Mingst, International Organizations, 211.
99 Keck and Sikkink, Activists beyond Borders, 2.
international community and local or national level actors. Keck and Sikkink observe that by way of assisting this multi-level information exchange, “advocacy networks are helping to transform the practice of national sovereignty.”\textsuperscript{100} This holds significance in Asia, where it is exactly the insistence of states on sovereignty that affects mostly their human rights policies and their relationship with NGOs (see Introduction).

The goal of transnational advocacy networks is not only to participate in international and regional affairs, but also to shape them. Their foremost aim is to engender policy and behavioural changes primarily in states and intergovernmental organisations.\textsuperscript{101} However this thesis argues that – beyond seeking to influence individual states – Asian human rights NGOs also aim to introduce changes on the regional level and ultimately to contribute to the improvement of human rights conditions across Asia by promoting the creation of a regional human rights framework.

The motivation for the NGOs to change regional trends and to create norms stems from their daily experiences of violations and the deficiencies of rights implementation. On the one hand, NGOs use the international human rights framework as a fundamental basis for their human rights advocacy in Asia. They do not simply transplant international norms into the Asian setting, but re-interpret and re-construct them by linking them to human rights problems at the local level, and by focusing on their effective enforcement. On the other hand, NGOs rely on their own knowledge and understanding of the local human rights issues to gain impetus and to justify their normative activism.

Asian human rights NGOs seek to comprehensively address both the moral implications and the practical aspects of human rights norms through their transnational advocacy. In the course of their work at the grassroots, NGOs uncover human rights problems that hinder people’s dignified way of life as well as confront moral issues of justice, fairness and equality. NGOs identify human rights problems, and beyond seeking solutions and remedies in the short-term, they also aim to address the issues in the long-term by inducing legal, institutional, or policy changes, and by constructing new norms.\textsuperscript{102} This problem-focused norm creation is termed by

\textsuperscript{100} \textit{Ibid}, 2.

\textsuperscript{101} Keck and Sikkink, \textit{Activists beyond Borders}, 2; Burgerman, \textit{Moral Victories}, 907.

\textsuperscript{102} Carpenter, “Setting the Advocacy Agenda,” 101.
Brysk as “moral induction”, since it gains incentive from the moral outrage over the recorded human rights abuses, and tries to redress the moral wrongs by fundamental normative changes.

As Finnemore and Sikkink contend, NGOs apply framing and localisation in their normative activism, by which they create “collective meanings” in order to legitimise the goals of their activism and also to maximise popular support for their cause. By framing, NGOs re-interpret and re-conceptualise issues with the use of language, symbols, campaign actions, to make a certain human rights topic more attractive and comprehensible for their target audience, and to stimulate collective action with respect to that topic. Framing can be diverse depending on the attributes of the human rights issue and the NGOs’ target audience (detailed further in Chapter 2).

A specific kind of framing is “localisation” which means that emerging norms are re-constructed to fit into the local context. I do not interpret localisation as the counterforce of globalisation, as it is employed in broader international relations studies; rather use the term to denote a specific NGO strategy as it is applied in normative scholarship. New norms are usually linked to already existing ones, or re-framed in a way that they are more acceptable to the target audience and their local environment. Acharya suggests that this process can only be successful provided that agents who re-construct the emerging norms through discursive activities are credible actors in the local environment. The next chapters will demonstrate that Asian regional NGOs have credibility at the local level because of their close relations with human rights defenders at the grassroots, and as a result of their actions assisting victims of


human rights violations. Their strong connection to the local environment is one important aspect of the distinctiveness of Asian human rights NGOs transnational advocacy, which will be further analysed with the help of the notion of alternative regionalism.

**The alternative regionalism of human rights NGOs**

The transnational advocacy theories assist in illuminating the motivation, sources, methods and tools of NGOs’ regional norm creation. Now the content of the NGOs’ normative activism will be discussed, and their distinctive approach highlighted by applying Alexander C. Chandra’s ideas and observations about alternative regionalism. It is argued that Asian human rights NGOs pursue an alternative regionalism that differs in several ways from the state-led regional politics, but also complements and enhances it. The NGOs’ work contributes innovatively to the Asian regionalism particularly with regard to the human rights discourse. The three main pillars in the NGOs’ alternative regionalism considered here are: the people-centered approach of NGOs, their goal to construct human rights regionalisation from the bottom-up, and their usage of data, knowledge and information tactics as the centerpiece of their advocacy.

A people-centered approach literally entails that people’s needs, ideas and values are at the core of the NGOs’ activism. NGOs strive to fulfill this ambition both on the individual level by assisting those who are denied justice or victims of human rights violations, as well as on the collective level by seeking to improve the human rights situation within communities, nations and the region. This often stands in contrast with the typically pragmatic attitude of governments, which usually prioritises state interest above the needs of individuals. There are two further layers pertaining to NGOs’ people-centered attitude. First, people-centered activism means that NGOs advocate a regional cooperation in which human rights play a core part. Second, NGOs are opposed to the primacy of the principles of national sovereignty and non-intervention. The contrast between the people-centered attitude of NGOs and the “people-oriented” approach of

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ASEAN is evident, since the latter only appears in the rhetoric of the Association but is not manifest in the actual activities of ASEAN member states (see Chapter 6).

As the example of ASEAN suggests, the approach of states to human rights regionalisation – in particular in Asia – is distinguishable from the alternative people-centered regionalism Asian human rights NGOs represent. States are more likely to view human rights not as an end in itself, but rather as means that can be used to further their national interest (see Introduction). The language of human rights is at times used only as a diplomatic tool in the external relations of governments, and human rights activities are thus exhausted in futile verbal commitments devoid of ensuing deeds. Katsumata refers to the “mimetic adoption of external norms for the sake of legitimacy” with regard to ASEAN’s plans to address certain human rights-related issues. By contrast, the NGOs view human rights regionalism as an end in itself, and maintain that human rights should be at the centre of regional cooperation. Human rights are considered not as a simple instrument to further the goals of NGOs, but as respect for human rights and their proper enforcement becomes the fundamental goal of their regional activism.

A basic difference between Asian states and NGOs concerns national sovereignty and non-intervention into domestic affairs which has been discussed in the Introduction with respect to the human rights policies of ASEAN. The unwillingness to openly criticise one another’s domestic politics is still strong among most Asian states. An obvious example is about ASEAN states’ approach to the ongoing crisis in Burma. There is no space for details here; however, it can be noted that ASEAN states have mostly shown reluctance to seriously intervene into the internal affairs of Myanmar and failed to suggest any sanctions against the fellow ASEAN member state even at the time when the organisation was constructing its own human rights mechanism. Mely-Caballero Anthony observed that “Myanmar’s presence at the [ASEAN] Summit has cast a long shadow on ASEAN’s fortieth anniversary celebrations,” where the ASEAN Charter was signed. Asian states insistence on safeguarding their sovereignty runs counter to the NGOs’ idea about people-centered regionalisation. The people-centered stance of

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110 Mely Caballero-Anthony, “The ASEAN Charter,” 75.
NGOs suggests that the primacy of non-intervention is an obstruction to effective human rights monitoring and protection, and thus it cannot be a guiding principle in regionalisation.

The second pillar of the alternative approach of NGOs is the bottom-up orientation of their activism, indicating a regionalism that is constructed from the grassroots and from within local communities. In contrast to the state-led top-down regionalism – which generally excludes the participation of civil society members or independent experts – NGOs seek to connect to wider segments of the population, introduce them to human rights issues, involve them in human rights activism and thus widen participation in shaping the normative basis of human rights regionalisation. In this way NGOs facilitate the earlier described bottom-up norm construction. Employing the term introduced by Rosalba Izaca and also Acharya, this thesis argues that NGOs promote “empowered participatory regionalism” which is manifest in their efforts of involving people affected by human rights problems in the regionalisation of human rights, and also legally empowering them through this process. As a result of this bottom-up development, a broader range of ideas are brought into the regional discourse on human rights, including normative elements which can only be developed from the ‘inside’ of societies, and from the contribution of people at the grassroots. Oren Perez contends that this contributes to the “democratisation” of norm creation.

The third pillar in NGOs’ alternative regionalism is the importance they attach to valid information (preferably first-hand information from victims or from their environment), and the consequent emphasis various information tactics and the usage of information and communication technologies gain in NGO activism. This was already emphasised when Keck and Sikkink’s concept of transnational advocacy was introduced, and will also be further discussed in Chapter 3. Data about the human rights situation and violations is the integral


113 Acharya, “How Ideas Spread.”

building block of NGO activism, appearing both as tools of campaigning, and as the basis of normative activism. It will be demonstrated in the following chapters how the three basic components of people-centeredness, bottom-up orientation and information politics appear in the activism of national and especially in the transnational advocacy of the regional Asian human rights NGOs.

**Gauging the impact of NGOs’ regional activism**

This leads to the final question of trying to gauge the effectiveness and outcomes of the NGOs’ alternative regionalism with the appropriate theoretical tools. I agree with Nadelmann\(^\text{115}\) that it is very difficult to accurately assess the impact norms have, and I would add that it is even more challenging to elucidate the role the constructor of norms play in achieving that impact. Charnovitz asserts that it is complicated to measure the effectiveness of NGOs’.\(^\text{116}\) The activism of transnational advocacy networks and especially their norm creating activity is a complex process the outcomes of which are influenced by a multitude of factors. Since social constructivism concentrates on how norms shape the identity and behaviour of actors, it seems a legitimate starting point to look at the attitude, behaviour and actions of the targeted actors. The normative activism of NGOs aims not only to influence governments, their intergovernmental organisations, but also civil society and the wider public. These different actors are likely to show dissimilarities in their receptiveness and openness toward the normative work of NGOs. It is obviously easier for NGOs to win over fellow civil actors (at least part of them) than it is to persuade governments to comply.

Obviously, NGOs are not in possession of the power that states have, therefore they have to resort to alternative methods. Besides not having the legal armed forces states do, NGOs also have less material resources, infrastructure and international leverage. However, they can make


up for these disadvantages with distinctive strengths such as their close connection with local communities and their excellent information gathering techniques. Karns and Mingst talks about the “soft power” of NGOs,\textsuperscript{117} which – according to Bob Reinalda\textsuperscript{118} – stems from their expertise on special issues (human rights knowledge and skills), their good relations with policy-makers and with local communities, their media skills, and their far-reaching connections within civil society and the public. With the combination of these alternative skills and resources, NGOs can achieve considerable effect, especially if they cooperate with one another.

Keck and Sikkink introduced a five-step scale to measure the influence advocacy networks have, which concerns their influence: “in issue-creation and agenda-setting”; “on the discursive position of states and international organizations”; “on institutional procedures”; “on policy change in target actors”; and “on state behaviour”.\textsuperscript{119} Burgerman also contends that the impact of transnational activism can be measured on the “level of agenda setting, framing and spread of norms, and change in government discourse”.\textsuperscript{120} Using these suggestions about evaluation as a starting point, this thesis seeks to assess the effectiveness of the normative activism of NGOs with regard to their influence on the regional discourse. However, I would also note that the scale introduced by Keck and Sikkink focuses too much on the changes transnational networks can achieve with respect to states, but there are additional factors that need to be considered, such as effect NGO activism has on other civil society actors, the broader community, and the human rights developments in general.

It is always more difficult for NGOs to win over states in their normative activism, but they also have a decisive influence on civil society and the broader public. The effectiveness of contribution of NGOs to the regional human rights discourse will be examined in a comprehensive frame, focusing not only on the behaviour of states and intergovernmental bodies, but also on the possible changes in the work of civil society and the public mindset. Additionally,

\textsuperscript{117} Karns and Mingst, \textit{International Organizations}.

\textsuperscript{118} Bob Reinalda and Bertjan Verbeek. “Theorising Power Relations between NGOs, Inter-Governmental Organisations and States,” in \textit{Non-State Actors in International Relations}, eds., Arts, Noortmann and Reinalda, 150-151.

\textsuperscript{119} Keck and Sikkink, \textit{Activists beyond Borders}, 25.

\textsuperscript{120} Burgerman, “Mobilizing Principles,” 913.
the developments in the regional human rights policies and the evolution of a regional human rights mechanism can demonstrate certain NGO influence. There might not be decisive reforms in the short-term, but the activism of NGOs can ultimately contribute to the shaping of region-wide normative human rights framework and to the creation of human rights mechanism in the longer-term.

In particular I will examine the possible changes in the agenda, the discursive stance, the policies and actions of states, inter-state organisations (in this case the ASEAN), and also with respect to civil society and the public. The Asian human rights discourse is very complex, it is shaped by a diversity of internal and external actors, and thus even the minor alterations the actors make in congruence with emerging norms or with the campaign-demands of NGOs indicate certain normative effect. In the case of governments and their regional organisations changes are usually slower and more cautious, but are nevertheless detectable in the tone and wording of official statements and press releases, in their new policies, altered preferences and agendas. That can already be an indicator of reform if human rights at all appear in the rhetoric of states and on the official agenda. Additionally, Karns and Mingst contend that the ultimate measure of NGOs’ success depends on whether they can help resolve the problems they sought to address.\(^{121}\) This thesis thus assesses the specific measures the NGOs have undertaken to improve concrete human rights problems, and also looks at the changes in the human rights situation.

In more fruitful efforts norms can take on the life of their own and develop into international human rights law, as it was the case in the campaign against torture originally initiated by Amnesty International (mentioned earlier in the chapter). As mentioned, the campaign has contributed to the creation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984),\(^{122}\) a landmark document that has determined the battle against torture. This NGO movement still has its effect up to this day in the light of the recent events in Iraq and Guantanamo, which triggered intensive international

\(^{121}\) Karns and Mingst, *International Organizations*, 243.

The construction of norms however rarely leads to such evident results. Sometimes even the change of the tone or the attitude, or making informal promises reveal a certain normative impact.

Conclusion

This Chapter introduced concepts and approaches that combined together compose the theoretical framework for this thesis. The focus of this thesis – on the contribution of NGOs to the regional human rights discourse – necessitates the assessment of multiple factors and aspects of the theory. The normative activism and norm creation of NGOs together with its impact on the regional human rights discourse is analysed by social constructivism. This thesis examines Asian NGOs that operate on a regional level, engage in regional networking and cross-boundary cooperation with other NGOs, which is best analysed by using the concept of transnational advocacy networks.

The central focus of this thesis is the influence the normative activism of NGOs has on the regional human rights discourse. Thus the regionalisation of human rights and the regional advocacy of NGOs need to be discussed with the most suitable theoretical tools. The new regionalism approach – introduced at the beginning of the chapter as an alternative to the mainstream regionalism theories – can be applied as an overarching theoretical frame because it is more flexible and accommodating toward the complexity of factors that affects Asian regionalism, and notably it espouses social constructivism, transnational normative activism and participatory regionalism (approaches which this thesis already chose to take). Hettne asserts that new regionalism interprets regions as socially constructed entities that are constantly re-created and shaped by diversity of state and non-state actors in interactions and activities that are often:

informal. Accordingly it is a suitable theoretical instrument to examine the normative activism of Asian NGOs.

The distinctiveness of the regional advocacy of Asian NGOs is demonstrated with employing the concept of alternative regionalism, which highlights elements such as people-centered and bottom-up oriented approach, the key importance of human rights in regionalisation, the objection to the primacy of national sovereignty, and the centrality of information and information tactics – which are all core features in the advocacy of Asian NGOs this thesis concentrates on. These elements appear in the activism of the analysed NGOs, but in slightly dissimilar ways that results in different kind of regional advocacy with diverse outcomes and future prospects that will be discussed in the following chapters.

However, before diving straight into the analysis of the human rights advocacy of regionally operating Asian NGOs, the next two chapters will provide an introduction into the world of human rights NGOs, by exploring their functioning and the distinctiveness of their situation. Chapter 3 narrows the focus and examines Asian human rights NGOs that operate primarily nationally and carry out activities in the local communities. The analysis of their operation, goals and methods will be a pre-cursor to the subsequent examination of the regionally operating NGOs’ advocacy.

Chapter 2 – Human Rights NGOs

NGOs operate alongside governments, ensuring that issues that would otherwise be ignored are put on the agenda, adding more diversity to the policymaking process, and monitoring the gap between governmental rhetoric and governmental practice in policy implementation.

Introduction

NGOs are hailed as the new “third force”, whose independence and distinctive characteristics allow them to complement governmental activities, to help hold government activity accountable, and to assist in diagnosing problems of public concern and proscribing the policy and institutional reforms they determine a necessary governmental response. This is especially valid for the field of human rights, where NGOs have grown to be significant actors alongside states, intergovernmental organisations, and national institutions. This chapter provides an introduction to the world of NGOs and a general overview of human rights NGOs and their activism. Since this topic is vast and complex, I seek only to outline those characteristics and activities which have the most relevance to the work of Asian human rights NGOs and to the kind of regional human rights advocacy I will analyse in Chapters 4, 5, and 6.

Firstly, I will provide a working definition for NGOs and also for human rights NGOs, and categorise the latter in order to delineate the type of human rights NGOs this thesis examines. The following consideration will serve as the basis for understanding the main focus of the research, namely, the transnational advocacy of regionally operating human rights NGOs. Then the background of the main areas of human rights NGO operations will be described as

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NGO advocacy tactics, networking and activism at the UN, relation to governments, and problems and weaknesses. These areas foreshadow the factors and elements that have played an important part in the formulation and outcomes of the transnational advocacy considered by this thesis.

How could NGOs be defined?

Owing to the great diversity within the world of NGOs, it is difficult to give an unambiguous answer to this question and to find a clear description that could aptly capture the most important commonalities these actors share. There is neither a single accepted definition of an NGO in international law, nor has one been agreed upon by the international community. Admittedly, even the United Nations is confused about the precise interpretation of the term “NGO”. A UN resolution in 1950 gives the vague definition: “any international organisation which is not created by intergovernmental agreement shall be considered as a nongovernmental organisation”. This lack of precise definition is in some respects advantageous, as it allows for flexibility and reflects the growing diversity of NGOs. However, the downside is that they are often not granted the standing in international law that their actual contribution appears to require.

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Some scholars use a broader definition for NGOs, only by using the criteria of privately initiated group of people that pursue matters not for profit. This thesis employs a narrower definition, borrowed in part from Lester M. Salamon and Helmut K. Anheier, which highlights the most fundamental characteristics and motives central to NGO conduct. Salamon and Anheier define NGOs as organisations that are formal (or, “institutionalised to some extent”), “institutionally separate from government”, non-profit (although they are still allowed to make profits, these are re-invested into the NGO’s operations), self-governing (having “their own internal procedures for governance and are not controlled by outside entities”), “involving some meaningful degree of voluntary participation”, “not primarily involved in the promotion of religious worship or religious education”, and non-political in the sense that they are “not primarily involved in promoting candidates for elected office” (excluding political parties).

Salamon and Anheier’s definition provides a general and basic understanding of NGOs, but also leaves room for variations and wider interpretations of their features and functioning. It is used here as a frame to which additional defining criteria can be attached. This definition identifies the core features of NGOs by differentiating them from governments, the business sector, religious institutions, political parties and ad hoc formulations – yet it omits any reference to aims, focus-areas, or activities. It may also be added that NGOs are predominantly concerned with matters of public interest, and even, as Vakil observes, a commitment to promoting the cause of the vulnerable in societies. Certainly, this is true of human rights NGOs, and it is the most suitable definition for the purposes of this thesis.

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8 See for instance Charnovitz, “Nongovernmental Organizations and International Law,” 118.


10 Ibid, 14.

**The growing significance of NGO activism**

Although states remain the main actors on the global stage, their traditional monopoly is challenged on many fronts. If nation states are not themselves obsolete – as it is suggested in the title of Omae’s book, “The end of the nation state”\(^\text{12}\) – the classical notion of Westphalian national sovereignty has been under challenge.\(^\text{13}\) Commentators such as Maha Abdelrahman express significant disillusionment with the global model of state-led problem-solving.\(^\text{14}\) In the face of the emerging perils of environmental degradation, climate change, global epidemics, refugee crises and appalling poverty, the capability of traditional methods of inter-state cooperation to provide effective solutions to transnational problems appears diminished without the help of non-state actors. The principle of national sovereignty, on which inter-state cooperation is based, often obstructs effective transnational state cooperation. David Chandler, among others, observes that state boundaries have proved less meaningful with the gradual erosion of the principle of national sovereignty.\(^\text{15}\) This is attributable partly to the growing prominence of human rights which have reshaped the meaning of sovereignty,\(^\text{16}\) and partly to the trans-boundary activism of NGOs and their networks.\(^\text{17}\)

The emergence of multiple sources of power, authority and legitimacy in the global arena has caused many theorists to reformulate international relations in line with a multi-centred structure.\(^\text{18}\) Robert O’Brien and associates speak of the emergence of a “new multilateralism”

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\(^\text{15}\) Chandler, *Constructing Global Civil Society*, 1.


that is manifest in the gradually occurring shift from the old state-dominated model, in which non-state actors and especially NGOs play an increasingly significant role in influencing global, regional and national affairs.\textsuperscript{19} Their increased activism has shaped development policies by making them bottom-up oriented, and focused on the grassroots.\textsuperscript{20} This bottom-up multilateralism co-exists with the traditional state-led model of international relations; as each system influences and shapes the other. In other words, governments determine the activism of non-state actors, but NGOs also affect state policies. As a consequence, rules and norms are no longer only the products of state interactions, but also stem from the authority and legitimacy that non-state actors now command on the world stage.

The spectacular growth in the number of NGOs in recent decades reflects their new influential standing in the international sphere.\textsuperscript{21} Salamon terms this global escalation of civil activism the “associational revolution”, and compares the importance of this phenomenon to the emergence of nation-states.\textsuperscript{22} This expansion is evinced by the sheer number of NGOs (the figures doubled between 1978 and 1998),\textsuperscript{23} but is also perceptible from the plethora of issues and problems taken on in their agendas. Although the spread of NGO activism is not uniform around the worldwide, their activities and achievements in developing countries have observably increased, including in most Asian states.\textsuperscript{24} Human rights NGOs have not been an exception,

\begin{itemize}
\item \textsuperscript{19} Robert O’Brien, Anne Marie Goetz, Jan Aart Scholte and Marc Williams, \textit{Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements} (Cambridge, UK: Cambridge University Press, 2000), 1-23.
\item \textsuperscript{20} Salamon and Anheier, \textit{The Emerging Non-Profit Sector}, 2.
\item \textsuperscript{21} Karns and Mingst, \textit{International Organizations}, 224.
\item \textsuperscript{22} Salamon and Anheier, \textit{The Emerging Non-Profit Sector}.
\item \textsuperscript{23} Shamima Ahmed and David Potter, \textit{NGOs in International Politics} (Bloomfield, Conn.: Kumarian Press. Inc, 2006), 19.
\end{itemize}
with five times more NGOs actively involved in the field than fifty years ago, when the international human rights system was established.  

The reasons for the escalation of NGO activism are numerous and complex, yet three of them stand out. Firstly, the fundamental political and economic changes caused by the end of the Cold War have led to the retreat of state influence in certain public spheres. As Salamon has noted, the multiple crises of the ‘welfare state’, socialism, the environment, and the development model in the 1990s have set off new forces and brought about the emergence of new actors that loosened the grip of national sovereignty “from below” (with the intensification of grassroots movements), “from outside” (through the activities of private organisations, institutions and market enterprises), and “from above” (due to the escalation of globalisation, supra- and sub-nationalism in governance, and trade liberalisation). Kerstin Martens and Rory Sullivan argue that this has simultaneously created more space for civil society and generally improved the opportunities of NGO activism.

Secondly, the revolutionary innovations of information and communication technologies (ICTs) have decisively contributed to an upsurge in NGO operations, and especially to the improvement of their advocacy. Karns and Mingst contend that ICTs and their appropriate usage have great significance and benefit for the work of NGOs. Collecting and disseminating credible data and ensuring the unrestricted flow of information are central to the effectiveness of

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30 Karns and Mingst, *International Organizations*.

Thirdly, this thesis shares the view held by Risse and Sikkink that the spread of norms, the solidification of the universal human rights system, and the significance of human rights issues in foreign policies have all advanced the appeal of NGOs,\footnote{Thomas Risse-Kappen and Kathryn Sikkink, “The Socialisation of International Human Rights Norms into Domestic Practices: Introduction,” in \textit{The Power of Human Rights}, eds., Risse-Kappen, Ropp and Sikkink, 31.} a great proportion of which is engaged in campaigning for human rights and social justice. However, I would add that the reverse is also true, that is, that NGO activism has promoted the culture of human rights both internationally and nationally.\footnote{Adama Dieng, “The Contribution of NGOs to the Prevention of Human Rights Violations,” in \textit{The Prevention of Human Rights Violations: Contribution on the Occasion of the Twentieth Anniversary of the Marangopoulos Foundation for Human Rights (MFHR)}, ed., Linos-Alexander Sicilianos (Athens: Ant. N. Sakkoulas; The Hague; New York: Martinus Nijhoff, 2001), 259-260.} This complex interplay means that even those who may not directly appreciate NGO activity acknowledge their influence and valuable contribution.\footnote{James Arvanitakis, \textit{Contemporary Society} (South Melbourne, Vic.: Oxford University Press, 2009).}
Human rights NGOs: The “curious grapevine” of human rights

“A curious grapevine may seep in even when governments are not so anxious for it”

The issue-areas NGOs focus on globally vary immensely. However, this thesis examines human rights NGOs, which comprise one of the most dynamically developing sub-groups in the broader NGO movement. The activism of these NGOs has great significance for the current and future development of the human rights field. Rachel Brett observes that NGOs with a specific focus on human rights are at the core of international and national systems of human rights promotion and protection – even if this latter part is not always openly acknowledged by states. Also, according to Martens, the biggest proportion of NGO activity through the UN mechanism is carried out in the field of human rights. This thesis argues that human rights NGOs are also central players in human rights activism on the regional level.

While the earlier discussed definition of NGOs can be used as a starting point of analysis, human rights NGOs constitute a special sub-group within the much broader collective of NGOs. Thus certain specifications and additional concepts need to be introduced to illuminate their distinctive features. Firstly, this thesis draws on the definition of the European Union describing human rights defenders as “those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms.” Although the EU text refers to human rights defenders in individual terms, nevertheless the criteria it lays out can be

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37 The verbal statement of Eleanor Roosevelt quoted in Korey, NGOs and the Universal Declaration of Human Rights, 48.


39 Martens, “NGOs and International Relations, UN,” 1041.

combined with the general definition of NGOs used above to create a suitable description of human rights NGOs.

This definition is suitable for this thesis because it emphasises the most important element in the functioning of these NGO, which is their core mandate of protecting and promoting universal human rights norms. I would also include in this characterisation that human rights NGOs determine their set of goals based on high moral standards and values such as pursuing justice (whether legal or social justice), equality, fairness and respect for individual liberties. They conduct their campaign activities concentrating on people’s rights and approaching every problem from a rights-centred point of view.

**Categorisation of human rights NGOs**

There is a wide variety of organisations within the realm of human rights NGOs, which are classified under three categories using the terminology introduced by Christine Bell and Johanna Keenan.\(^{41}\) This typology highlights the differences in the degree in which the NGOs focus on human rights. Numerous NGOs place human rights-related commitments high up on their agendas, yet their overall advocacy strategies are not primarily based on pursuing universal human rights values.

Firstly, “sub-issue” human rights groups are identified as NGOs, whose activities are indirectly associated with human rights promotion and protection, but whose main mission concentrates on issues such as development, debt-relief, or the banning of cluster bombs. This sub-group of NGOs is made up of organisations like the International Campaign to Ban Landmines. Also development-oriented NGOs can be classified as single-issue groups, because they are primarily engaged in activities concerning economic, social and cultural rights and the welfare of people.

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The second category introduced by Bell and Keenan includes “equality NGOs” that strive for the emancipation of a particular segment of a society which can be distinguished by their gender, ethnicity, religion, or sexual orientation. These NGOs invoke the language of human rights, resort to tools normally applied in human rights advocacy, and have human rights-related goals (mostly demands for equality concerning civil and political rights). However, they usually have a narrower focus and concentrate only on a particular group of individuals who are subjected to some kind of discrimination. Thus their aims and activism do not encompass the whole spectrum of human rights.

Taking these distinctions into account, this thesis focuses on the third category involving “core mandate human rights NGOs”, which, in contrast with the other two categories, embrace the complete array of human rights in their activism and advocate the universality and indivisibility of human rights. Hereafter, the term human rights NGOs used in this thesis refers to “core mandate” human rights NGOs, unless otherwise suggested. All of the goals and methods, advocacy, and expertise of these NGOs concentrate on the promotion and protection of the complete range of internationally accepted human rights standards. They do not limit themselves to a single human rights-related issue, but seek to uncover and address all kinds of human rights problems that occur in communities. Within this focus area there can certainly be variations among the NGOs depending on which part of endangered rights they take on their advocacy. Nevertheless, slight differences in their approach and methods cannot detract from their overall commitment to campaigning for universal human rights norms. They are the main non-state contributors to norm creation in the field of human rights, and thus have a significant input into the regional human rights discourse.

**Contrasting but not controversial: Distinctive features of human rights NGO activism**

The definition of human rights NGOs just described gives rise to ambiguities (such as the notion of independence from governments), and leaves questions open regarding the operations of NGOs. It is beyond the scope of this chapter and this thesis to delve deeply into details of the
work of NGOs in general. Instead, I seek to elaborate on those distinctive notions that have important effects on the human rights activism of NGOs. I partly employ the ideas of John Boli and George M. Thomas,\textsuperscript{42} which were originally intended to describe NGOs in general, but are also applicable to highlight the fundamentals in human rights NGOs’ activism. Boli and Thomas list five concepts (universalism, particularism, individualism, rationalism and voluntarism) which are closely associated with the ‘NGO phenomenon’. I found that the most suitable way to use these notions in an attempt to capture the essence of human rights NGOs’ work is to match them up in seemingly contrasting pairs – that is, by pairing up universalism with particularism, rationalism with voluntarism, and adding collectivism to individualism (which was originally not mentioned by Boli and Thomas). These dichotomies are all constitutive elements of the advocacy and operations of human rights NGO, and will have special significance for human rights NGOs in Asia.

The notion of universalism weaves through the activism and campaigning of human rights NGOs. To start with the most obvious, human rights NGOs promote a universal respect for human rights, and also base their advocacy on universally accepted human rights norms. They seek to advocate equal rights to all people without discrimination, and are thus at the forefront of fighting against all forms of discrimination, exclusion and repression. Standing up for universal human values is seemingly in contrast with human rights NGOs’ support for particularism.

Human rights NGOs indeed promote respect and tolerance for diversity and particularity, and seek to empower individuals and marginalised groups by giving voice to their dissent and demands. According to Boli and Thomas, the two motives are in fact reconcilable, and are moulded together in human rights NGOs’ activism as “universalism of particularism”.\textsuperscript{43} Generally, human rights NGOs build their activism on the premise that the universalism of human rights can only be upheld provided the particularism of people is respected on the basis of human solidarity and tolerance for diversity. These ideas are also expressed in the NGOs’ Bangkok Declaration, which proclaims that “universal human rights standards are rooted in many

\textsuperscript{42} Boli and Thomas, \textit{Constructing World Culture: International Nongovermental Organisations since 1875}, 35-40.

\textsuperscript{43} \textit{Ibid}, 35.
cultures”; and in the Asian Charter of Human Rights, which states that “cultural traditions...do not detract from the universalism of rights.” (See Chapter 5)

The second pair of contrasting concepts that is generally discernible in the activism of human rights NGOs is individualism and collectivism. NGOs champion rights of individuals, and seek to empower the most vulnerable. However, I would add that human rights NGOs also represent a certain kind of collectivism, in the sense that they bring people and communities together. They aim to make the wider public aware of the injustices committed against victims of human rights violations, and to unite people under the umbrella of shared beliefs in human rights values. Human rights NGO activism creates opportunities for collective representation of grassroots and national groups at regional and global forums. Even if they concentrate on an individual’s case, human rights NGOs use the case to advocate the public good simultaneously.

Thirdly, Boli and Thomas attribute NGO operations with a ‘rational voluntarism’. Voluntarism is a feature that makes the NGO movement unique in comparison with profit-driven businesses and with authorities functioning in a structure of hierarchical power relations and coercion. Making voluntary sacrifices and contributing out of a belief in higher values and principles lends an important moral authority to human rights NGOs, and adds to their credibility, which are both essential for the success of human rights advocacy. The absence of coercion in the functioning of human rights NGO endows them with autonomy, and allows them to formulate their own rules, follow their own methods and dictate their own goals and pace. However, one could also argue that human rights NGOs are bound by circumstances, and sometimes have to act under specific political or economic pressures (including the burden to ensure funding and resources, discussed later in this chapter).

Beyond their voluntarism and autonomy, human rights NGOs also have to manage their operations effectively in order to achieve the desired results, and thus must reach a sufficient

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46 Boli and Thomas, Constructing World Culture, 36.
level of professionalism in their conduct. Their activities need to be shaped along carefully thought-out and strategically calculated lines. To this end, NGOs seek to formulate a well structured set of aims, consciously develop tactics and apply appropriate tools to reach their ambitious goals. Therefore ideas and values are counterbalanced with rational choice in the operations of most human rights NGOs.

To explore and to expose: Roles and functions of human rights NGOs

Beyond the vital relief work that several organisations perform, human rights NGOs contribute significantly to the protection and promotion of human rights by documenting human rights violations and by gathering data about the human rights problems. They gain first-hand information about human rights matters by conducting field research and maintaining good relationship with victims and their families. Human rights NGOs investigate incidents, interview victims, verify and analyse the acquired data, and disseminate the information to the wider public, to responsible authorities and to international organisations. Their aim is not only to demonstrate symptoms, but more importantly to uncover the root causes of the most pressing human rights problems, as well as to offer solutions in the form of various human rights instruments.

An important function performed by human rights NGOs in connection with information gathering is the monitoring of governments and national authorities. According to Susan Dicklitch and Doreen Lwanga, many human rights NGOs act as “watchdogs”, and seek to hold public institutions accountable by documenting and reporting human rights violations committed by police, the army, the judiciary or other state agencies. The information is then passed on to the

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international community in order to expose and raise alarm about human rights violations. In this way, human rights NGOs have become invaluable information sources for United Nations organs and other international actors. Additionally, they also perform an important domestic role by seeking to hold governments accountable, which is especially vital in countries where institutional checks and balances are absent. In such cases when governments overstep their legitimate authority civil society must intervene.

Additionally human rights the contributions of NGOs to the implementation of human rights are significant. This is closely related to the “watchdog” function, as human rights NGOs seek to ensure the implementation of human rights norms indirectly by monitoring the compliance of governments with their international obligations and domestic laws. They add to the enforcement of rights also by more direct means, through their own campaign activities. Human rights NGOs obviously lack the coercive powers or legal tools that states possess, and thus they resort to alternative ways to facilitate rights implementation. These include awareness raising and educational activities that directly affect the communities.

Human rights NGOs become agents of change as they pressure and lobby governments, authorities, politicians, and legislators to achieve the inclusion of human rights concerns into laws and policies. Moreover, as Peter van Tuijl points out, they lobby inter-governmental organisations (including UN bodies, the World Bank, and WTO) to transform their policies and drive them toward being more conducive to human rights goals. This transformative role of human rights NGOs is not exhausted in pressuring states or intergovernmental organisations only, as they also try to bring about changes through indirect advocacy methods and public


53 Tuijl, “NGOs and Human rights,” 496.
mobilisation and by introducing new norms and practices. These include public awareness raising and human rights education, and also community building and legal and judicial activism (to be discussed further in Chapter 3).

The various community-building and educational programs of human rights NGOs are two-fold, namely, raising public awareness about human rights problems, and instigating people to become part of the process of problem-solving. The benefits of this bottom-up approach are that the representation of people in public affairs is increased, and that NGOs improve their ability to reach out to the most vulnerable and marginalised parts of communities whose rights would otherwise remain mostly ignored.\(^{54}\) As a result, human rights NGOs contribute to the promotion of human rights in local communities, among national authorities, the business sector and the broader civil society.\(^{55}\)

**Shaming, framing and persuasion: The advocacy tactics of human rights NGOs**

The described advocacy role of human rights NGOs is facilitated by numerous tactics and methods which are distinctive to these organisations. One of the major tools applied by human rights groups – as suggested by Kenneth Roth, the director of Human Rights Watch – is “shaming”.\(^{56}\) NGOs shame governments by exposing their poor human rights record to a wider international environment, other governments, international organisations, the global media, and also to their domestic public. As a result, human rights abuses publicly surface, and the international community has the possibility to confront violator governments and to consider appropriate responses. Shaming is directed mostly at external actors, with an aim of debunking

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abuser governments in front of their “peers”, and accordingly building up international pressure on violator states. However, occasionally shaming can also be aimed at internal actors, when governments, authorities, politicians are shamed in front of their own constituency and community.

When employed with credible information, shaming often works surprisingly well even if states are reluctant to admit it. Even the most reclusive countries try to avoid being shamed in front of the UN, and do everything behind the scenes to keep up the façade of legality and the observance of human rights. When NGOs apply the tactic of shaming effectively when they use the limelight of an event which attracts global attention for other reasons. For instance, the NGO community with the leadership of Amnesty International took advantage of the publicity of the 2008 Olympics in Beijing to raise awareness about human rights problems in China. This campaign is also a good example of “symbolic politics”, which involves the use of symbolism (the Olympics interpreted as a symbol for world peace and collaboration) to underline the message of their advocacy. In this particular case the aim of Amnesty International’s campaign was to highlight the discrepancy between the symbolism of the world games and the severe human rights violations perpetrated by the Chinese authorities.

“Framing”, another major tactic of human rights NGOs, is directed toward domestic audiences. “Framing” refers to a method of re-interpreting and re-constructing human rights issues with the help of symbols and special rhetoric in order to make human rights more acceptable for their target audiences (see also Chapter 1). Framing is in fact the art of “packaging” human rights problems so that campaigns effectively address the target audience and institutions, persuade them about the need to resolve human rights problems, and successfully arouse momentum toward the desired reforms. Framing has a bearing on NGOs’ potential engagement in norm creation, because it determines how they interpret certain human rights values, and how they adopt those ideas and values in their practical activism. An example of

57 Interview with Basil W. J. Fernando, (Hong Kong, 29 May 2007).
58 Keck and Sikkink, Activists beyond Borders, 22-23.
successful framing of an issue is the story of the International Campaign to Ban Landmines, in which NGOs alternatively framed the usage of landmines as a humanitarian and human security matter instead of the mainstream approach that focused on landmines in terms of national security.  

The third essential advocacy method is persuasion and lobbying. Here human rights NGOs use their social influence and moral authority to sway the minds of decision-makers, in order to make their policies and actions more congruent with the emerging norms. This advocacy takes direct forms when NGOs put pressure on authorities either in writing (via mail, email, by submitting reports or publishing other materials) or verbally (informal, personal encounters or formal presentations and meetings). This kind of direct lobbying focuses on authorities, national institutions and politicians, and proves to be the most effective toward international organisations.

Persuasion can also be carried out indirectly through building up pressure on politicians and law-makers by orchestrating communication and media-campaigns (such as postcard, poster campaign or newspaper advertisement), and also by mobilising people to express their views collectively and to take part in a public demonstration. Special kinds of indirect advocacy include various public consciousness-raising and community engaging programs, and human rights education aimed at members of the community that can influence decision-makers and law enforcers.


Additionally, NGOs utilise legal avenues in their activism. Judicial and legal lobbying is pursued through litigation in cases that align with their campaign messages. Judicial lobbying, especially in the distinctive form of public interest litigation has special significance in the work of Asian human rights NGOs, to be discussed in details in the next chapter.

**Networking and international activism of human rights NGOs**

Human rights NGOs extend the impact of their activism, improve their results, and amplify their voices by engaging in constructive and well-balanced cooperation with each other. Networking is the building block of the transnational activism of human rights NGOs.\(^{66}\) It has various aspects, in particular vertical and horizontal networking.

Vertical networking is manifest in the joint activities and consultations linking international and regional human rights NGOs with their national and grassroots partners. It engenders a crucial flow of information and knowledge between local, national, regional and international levels of human rights activism. Several INGOs rely on the assistance of local human rights defenders to carry out their campaigns in local communities, and local NGOs also often resort to the assistance provided by their international counterparts.

Horizontal networking also has special significance for the transnational advocacy of human rights NGOs.\(^{67}\) In addition to sharing knowledge and information, and engaging in dialogue on various human rights issues at conferences, workshops and seminars,\(^{68}\) NGOs also have the opportunity to exchange and complement each others’ equipment and resources – which is especially important in the light of a growing insecurity about their funding. There is also a certain degree of ad hoc horizontal networking among grassroots groups, which has the potential


\(^{67}\) As was explained in Chapter 1, especially, by reference to Keck and Sikkink, *Activists beyond Borders*, 36.

to congregate into nation-wide projects – such as the initiative of the “Right to Freedom of Information Act” which grew into a national movement in India.  

A specific dimension of horizontal networking is when human rights NGOs group together at significant international forums (mostly at various UN bodies). They often form impromptu coalitions for instance, at the sessions of the Human Rights Council – in order to present common goals more effectively and to lever influence over the inter-governmental assemblies. In the absence of more formal channels of participation, they play an active part in the work of the UN on an ad hoc basis, and still manage to exert growing influence over the human rights policies of this world organisation.

Human rights NGOs are of great assistance to UN bodies and other international organisations in providing reliable information about human rights conditions at the grassroots. UN organs frequently suffer from the inability to obtain credible facts about the human rights situation on the ground, and thus greatly value human rights NGOs’ efforts to uncover hidden details of rights abuses through field research. For instance, Human Rights Watch supplied a large proportion of the information used at the UN’s International Criminal Tribunal for Former Yugoslavia on the human rights abuses and crimes committed during the war. In return, human rights NGOs exert certain influence on the agenda-setting and have more opportunities to voice their demands at international forums. Despite the lack of adequate institutionalisation of NGOs’ work in the UN (with certain exceptions such as their consultative status which will be detailed later), their participation takes nevertheless many forms and has a considerable bearing on UN proceedings, especially with respect to human rights-related matters.

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73 Martens, “NGOs and International Relations, UN,” 1057.
The primary formal path for NGOs to participate in UN proceedings is to acquire consultative status at the Economic and Social Council of the UN (hereafter, the Council), a possibility which has been available for NGOs since the creation of the UN system.\textsuperscript{74} The way for NGOs to obtain consultative status is strictly regulated in the Council’s 1996 Resolution 1296/31,\textsuperscript{75} which, according to Peter Willetts,\textsuperscript{76} has in essence become the part of customary international law. NGO access to the UN was very limited at the outset of the UN, nonetheless today there are as many as 3050 NGOs with consultative status from all over the world (16\% of which comes from Asia).\textsuperscript{77} Among the three categories set up by the Resolution 1296/31 (general and special consultative status, and being on the Roster), the most advantageous is the general consultative status which allows NGOs to request the Economic and Social Council to put certain items on its agenda, to take part on public meetings as observers, and to enjoy the right to make verbal presentations in front of the Council (other categories of consultative status only permits NGOs to speak in front of UN subsidiary bodies).

One of the most significant and perhaps most effective forms of influencing UN proceedings is to issue shadow-reports, which are usually submitted to different UN Treaty Bodies, through the Universal Periodic Review or the Special Procedures program.\textsuperscript{78} The most important international human rights documents prescribe an obligation for state parties to report regularly on their progress in implementation and compliance with regard to their treaty


\textsuperscript{76} Willetts, “From ‘Consultative Arrangement’ to ‘Partnership’,” 191-213.


\textsuperscript{78} The NGOs submit reports to Special Rapporteurs, Special Representatives or UN Working Groups, see, Gaer, “Implementing International Human Rights Norms,” 344; Gianluca Rubagotti, “Non-Governmental Organisations and the Reporting Obligation under the International Covenant on Civil and Political Rights” \textit{Non-State Actors and International Law}, 5 (2005), 66.
responsibilities. This is usually an undesired duty for governments, yet it creates a great opportunity for NGOs. As they lack official standing at the UN, NGOs are under no formal obligation to submit such reports, but they do so to present a counter position on specific human rights issues.

Human rights NGOs’ shadow reports reflect data and views that often differ from official communications. Shadow reports can be among the most effective instruments of transnational advocacy as they draw the attention of external actors to the anomalies of the local, national or regional human rights situation and urge them to act. If well prepared and accurately timed (with official country reports, and when the targeted country is on the Human Rights Council’s agenda), shadow reports can become influential instruments in the hands of NGOs, and enable them to shape the human rights agenda.

“Verbal shadow-reports” presented in front of the country delegates of the UN Human Rights Council (Council) are also significant. The Council is one of the most important human rights bodies within the UN system, where NGOs with consultative status are allowed to make written or oral presentations. NGOs from developing states increasingly take advantage of this opportunity to give account of the realities of the human rights situation to foreign governments. They often create ad hoc coalitions with each other to lobby delegates informally in between sessions, or to make joint verbal statements that are delivered by one of their representatives in front of the whole assembly.

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80 The United Nations Human Rights Council is composed of country delegates unlike several other important bodies of the UN, where members take part on the basis of their expertise. However the Human Rights Council has a Subsidiary Advisory Committee that is made up of 18 human rights experts; see information at Office of the High Commissioner for Human Rights, The Human Rights Council, http://www2.ohchr.org/english/bodies/hrcouncil/ (accessed 12 September 2009).

81 NGOs in general consultative status can submit statements up to 2000 words, and NGOs with special consultative status up to 1500 words, Ibid.
A further way for human rights NGOs to have their say at the UN – especially for those without a consultative status – is to participate in the various UN conferences. In fact, these events usually offer more opportunities for non-governmental actors to get involved in the work of the global organisation than the other UN channels. As a consequence, the number of attending NGOs has been on the rise in recent years. NGOs enthusiastic participation was first evident at the 1972 Stockholm Environment Conference and subsequently has become more apparent, most notably during the 1992 Rio Earth Summit.

NGOs also organise their own parallel conferences, which run simultaneously and usually at the same location as the official UN proceedings. William Korey highlights that the parallel NGO event at the World Conference for Human Rights in Vienna in 1993 hosted more than 3000 delegates from NGOs of various sizes and backgrounds. The Asian NGOs’ conference preceding the official Bangkok regional meeting in 1993 concluded with the NGO Bangkok Declaration, which represented an important alternative to the official stance on human rights in the midst of the escalating Asian values debate. These occasions provide NGOs with opportunities to engage in meaningful networking with each other, share and coordinate their views and tactics, and also to exert common pressure on the discourse of Asian politicians. These conferences aspire to have a similar significance and standing to the official inter-state meetings. In order to accomplish this, NGO contributors must come up with ideas that reflect an alternative vision that can complement or constructively criticise the standpoint of governments.

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82 NGOs without a consultative status at the United Nations Economic and Social Council are also allowed to attend the conferences held by the United Nations.

83 Willetts, "From ‘Consultative Arrangement’ to ‘Partnership’,” 191-213.


86 Korey, “Human rights NGOs,” 165.

87 Bangkok NGO Declaration on Human Rights (27 March 1993), (Manila, Philippines: Philippine Alliance of Human Rights Advocates, 1993).

The international community has increasingly come to acknowledge the important role NGOs play. The UN officially recognised NGOs as being in “social partnership” with the UN, indicating a stronger cooperation. Furthermore, NGOs have also gained growing recognition from the UN General Assembly and Security Council (which occasionally hears briefings from NGOs). However, there is significant room to improve and alter the approach of the international community toward NGOs. NGOs with consultative status are allowed to participate at several important UN meetings and forums, but they are not granted the right to negotiate. Alston argues that it would be in the interest of the UN community to show more openness toward NGOs, as they admittedly rely on their contributions in the field of human rights and development. A greater inclusion of NGOs would not only enrich and diversify the outlooks shaping the UN’s work, but also help NGOs to perform their activism more effectively and thus contribute more to the development of the international human rights system.

**Human rights NGOs’ relations with governments: A delicate tightrope**

Notwithstanding their international activism, most human rights NGO activities are performed in the domestic sphere, where state authorities have great influence on their work. The outcomes of human rights NGO activism are dependent on the ways they are able to cooperate with authorities and determined by the degree of autonomy and latitude they are allowed by governments. This relationship between human rights NGOs and governments has always been a very sensitive and complex issue, and is greatly determined by the political regime in a particular country.

It is necessary for human rights NGOs seeking to instigate law and policy reforms to establish certain contact and even cooperation with authorities. Governments are still the primary

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90 Alston, *The United Nations and Human Rights*.


actors in the field of human rights, thus NGOs cannot afford to seal off their activism from them. This is especially the case in authoritarian regimes, such as China, where complete isolation from the government would raise serious suspicions about an NGO and could attract severe control of their operations and retaliations.\(^{93}\) Cooperation rather than conflict between civil society actors and authorities can be beneficial for both sides and for the general public. Governments gain by taking advantage of the NGO assistance in rights implementation (especially at the grassroots), while NGOs achieve further legitimacy by assisting governments and decision-makers. In return for their support, NGOs try to secure greater acknowledgment for their activities, and gain more leverage to influence domestic policy and law making.

Cooperation with governments carries the risk of co-optation, which occurs when NGOs get dangerously close to the political establishment. Governments sometimes apply the means of direct co-optation to gain control over civil society, one form of which is establishing quasi-NGOs (QUANGOs), which pose to be independent NGOs but are in fact founded and influenced by state authorities.\(^{94}\) Occasionally, governments set up their own NGOs (Government-Operated NGOs, or, GONGOs), which are related to and directed by the political leadership.\(^{95}\) The operations of GONGOs can be misleading and even dangerous, because they exploit the notion of independence associated with non-state actors when in fact they serve only government interests. A less obvious form of political co-optation is when governments and authorities seek to involve NGOs and other civil society actors into the political process by offering NGO staff a position in the political machinery, and in this way blurring the boundaries between the state and civil society.\(^{96}\)

Co-optation carries the risk that governments force their own agendas and policies on NGOs. They drive NGOs into trade-offs by silencing them about sensitive human rights issues in

\(^{93}\) Bell and Carens, “The Ethical Dilemmas of International Human Rights and Humanitarian NGOs,” 320.


exchange for NGO inclusion into the decision-making machinery. As a result, the credibility of NGOs is tarnished and their independence weakens. This can have damaging effects on the way people perceive NGOs, and the consequent distrust of the communities hampers the work of human rights NGOs. As independent entities, it is the key to the legitimacy of human rights NGOs to avoid compromising their goals and values simply for the sake of gaining insider status. Co-optation risks nullifying NGO struggles against injustices because their involvement in the official system can lend credibility to governments that are responsible for rights violations. It further makes it impossible for NGOs to authentically monitor government actions. Indeed, it is for this reason that INGOs like Amnesty International or Human Rights Watch are so adamant in refusing financial support from governments. Some smaller organisations also operate with absolute independence and decline offers of funding from states and state agencies.

Human rights NGOs inevitably come into confrontation with governments when they seek to hold them accountable. They often expose the false rhetoric and shallow steps politicians make in the name of human rights, and contrast them to what they perceive as the real commitment to human rights. As Kevin Boyle asserts, the role of human rights NGOs as a counterweight to state oppression is crucial to improving human rights standards in the local environment. Additionally, human rights the activities of NGOs sometimes complement or even substitute for government tasks and services, especially in the case of incompetent or weak states. According to Karns and Mingst, this is the case in Bangladesh where large numbers of NGOs can be explained by the inability of the corrupt and failing state to carry out its basic duties to its citizens.

A potential menace for human rights NGOs exists where they openly criticise corrupt and right-abusing authorities. The accused politicians and officials often try to question, ridicule, neglect, and unfortunately in numerous cases, even to violently suppress critical voices.

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97 Bell and Carens, “The Ethical Dilemmas of International Human Rights and Humanitarian NGOs,” 322; Ahmed and Potter, NGOs in International Politics, 64.

98 Bell and Carens, “The Ethical Dilemmas of International Human Rights and Humanitarian NGOs,” 326.


forms of oppressing civil society range from undisguised brutal crackdowns to more subtle restrictions on their activism with various legal or administrative tools, such as the limitations on registration of organisations or the introduction of tax regulations that disfavour NGOs.\(^\text{101}\) When the state is the alleged perpetrator of a violation, abuses and illegalities tend to be covered up, investigations become more difficult, and usually more impediments are put in the way of NGO operations.

In response to government intimidation, human rights NGOs strive to alleviate state repression by alarming the global community about their dire plight, and seek support and intervention from outside. This is the logic behind Keck and Sikkink’s “boomerang effect”,\(^\text{102}\) when repressed local NGOs turn to foreign organisations asking them to put external pressure on the oppressive governments. Smaller local NGOs often seek the help of their international partners who intervene in crises, providing personal protection and relief to threatened human rights defenders. Additionally, networking of NGOs is another way of fending off official restrictions. In this case greater numbers result in enhanced safety, because the more multilateral the networking of NGOs is, the easier it becomes for organisations to protect each other and to circumvent the repressive measures of government.\(^\text{103}\) That is why regionally operating human rights NGOs can take advantage of their transnational links, and step up more effectively against oppressive measures.

**Threats and problems facing human rights NGOs**

Additional factors influencing the work of human rights NGOs are the threats and difficulties they face. The worst possible scenario for human rights activists is when their physical well-being is at risk, which is unfortunately rather frequent occurrence in several Asian countries. Activists commonly fall victim to kidnappings, and even to torture, extrajudicial


\(^\text{102}\) Keck and Sikkink, *Activists beyond Borders*.

\(^\text{103}\) Gershman and Allen, “The Assault on Democracy Assistance,” 47.
executions and murder, especially in countries where the rule of law is not respected and human rights violations are prevalent. Boyle contends that one of the most widespread violation affecting human rights defenders is illegal arrest, which is often justified by authorities on the basis of fabricated charges. Autocratic regimes widely employ imprisonment to silence political dissenters whose only “sin” is that they uncover human rights abuses. According to Landman, most crimes committed against human rights NGO staff are carried out by police (in the form of illegal detentions and custodial torture), and judicial officials (unfair hearings and procedural mistakes) along with the misconducts of various state authorities.

Although the UN Declaration on Human Rights Defenders was adopted in 1998, and a UN Special Representative on Human Rights Defenders was appointed, the practical implementation of a global protection system for human rights activists remains to be fulfilled. It is mainly left to NGOs to defend themselves and their colleagues. Some INGOs—like Frontline—operate their own protection-systems, by monitoring and reporting the threats against activists and providing immediate protection to those who are threatened. There are also NGOs that have been specifically created to offer protection for human rights defenders, such as Human Rights First, but they have limited capabilities and can only provide assistance to a small number of activists. Smaller NGOs with fewer resources cannot afford to have their own protection mechanisms, and have to find alternative ways to defend themselves and to ensure unimpeded functioning. It is thus increasingly important for transnational human rights NGOs— who have the means and networking connections—to provide protection for human rights defenders at the grassroots.


An equally prevalent but less menacing problem for human rights NGOs is the question of funding. Jackie Smith and associates claim that around two third of the NGOs are constantly suffering from financial problems.\(^\text{109}\) As a consequence, most NGOs devote more energy to their self-sustainability than they could dedicate to their actual campaign goals. Financial insecurity engenders donor-dependency, which is detrimental for the long-term effectiveness of NGOs, because donors (mainly foreign governments, government-related aid agencies or other funds) generally prefer shorter-term projects that are easier to plan and quicker to implement.\(^\text{110}\) They force their vision of short-run projects on many human rights NGOs that are desperate to receive funds. This donor-dilemma is primarily present in developing countries where the expanding NGO population is increasingly dependent on finances from foreign sources (mostly from Western or Northern governments and agencies), because of a shortage of local resources and a lower level of public or private contributions.

In connection with the problem of donor-dependency, Baxi warns that the expansion of human rights NGOs’ activism yields not only positive results, but also gives rise to destructive competitive pressures among the organisations.\(^\text{111}\) Intensifying competition is expected to improve performance in business matters, but as far as human rights activism is concerned “marketisation”\(^\text{112}\) creates growing insecurity among NGOs, forcing them to become rivals for the limited funding, equipment and human resources available. This inevitably weakens the overall efficiency of the human rights NGO movement. Donors are more likely to support campaigns and issues that attract wider public attention. Similarly, the material contribution of private actors tends to grow with larger popular support for the NGOs’ cause. Sperling asserts


that the resulting commercialisation of human rights advocacy prompts NGOs to act as entrepreneurs vying for public attention by marketising human rights violations and “commodifying” human suffering.\(^\text{113}\)

In order to maximise public attention, human rights NGOs have started to “brand” their campaigns and to apply public relations and marketing techniques that were previously only used in business activities. Those NGOs that rely on contributions from their members and on private donations entirely – such as Amnesty International – are more likely to slip toward commercialisation and marketisation, because they need to attract sufficient public attention among people who live in the more affluent parts of the world. On the contrary, NGOs that receive funding through agencies might be dependent on donors, but at least they are not under constant pressure to loudly publicise human rights abuses in order to attract more donations.

An additional issue regularly emerging as an uncertainty about NGOs concerns their legitimacy, representativeness and accountability. The staffs of NGOs are obviously not elected by the communities and the people they claim to stand up and advocate for. Doubts emerge regarding their accountability and their representativeness.\(^\text{114}\) A frequently brought up criticism against NGOs – particularly in developing countries – is that they are operated by the educated elite who claims to represent the demands of the poorest segments. However, in my opinion the fact that NGO staff are often more educated and come from a better background than the average people does not exclude them from dedicating their work to the service of the oppressed, the marginalised, the exploited and to victims of rights abuses.

Brysk argues that elections are not the only means to establish valid representation, since the goals and deeds of NGOs also reflect values and aims that can constitute a basis for their legitimacy.\(^\text{115}\) Chandhoke further asserts that “NGOs have become influential simply because they possess a property that happens to be the peculiar hallmark of ethical political intervention:

\[\text{113} \text{ Sperling, Ferree and Risman, “Constructing Global Feminism,” 1181.}\]
\[\text{115} \text{ Alison Brysk, “Democratizing Civil Society in Latin America,” Journal of Democracy, 11, no. 3 (July 2000), 156.}\]
moral authority and legitimacy.” 116 Human rights NGOs gain their moral authority and credibility through assisting victims in the first place, and by engaging with local communities in mutually supportive relations. Their activism is nurtured largely by people’s trust in them. If that trust was absent, the information sources of human rights NGOs would gradually dry up, their campaigning would fall on deaf ears, and their mobilisation abilities would disappear. Accordingly, trust is a key asset for the effective advocacy of human rights NGOs, which keeps them accountable and pressures them to uphold a high level of moral authority. The credibility of human rights NGOs (especially toward the international community) is furthermore dependent on the accuracy and objectivity of the data they provide on the human rights situation. There is still a need for human rights NGOs to improve their accountability and transparency, and to shore up their legitimacy and credibility by disclosing information about their operations and allowing for more public participation and access to their work.

Mismanagement, ineffectiveness and low self-sustainability are also often of concern with regard to the conduct of NGOs, especially for small and less resourceful organisations. The overall efficiency of NGOs depends on the appropriate combination of voluntarism and professionalism that characterises their activism. 117 This is another reason why larger-scale regional NGOs are needed (discussed in Chapters 4, 5, 6), since they generally have a more organised structure, and bigger capabilities and resources to propel them ahead in contrast to grassroots groups with more limited means. Besides maintaining professionalism and expertise, NGOs cannot lose sight of creativity and flexibility either, which helps them in problem-solving and in quickly adapting to changed situations.

Conclusion

NGOs have grown to be significant actors in the human rights field, despite the difficulties and dangers they have to face. They carry on with their activism by overcoming


117 Abdelrahman, Civil Society Exposed, 65.
government repression and the lack of resources, and flexibly adapt to changing situations. The effectiveness of their work however hinges on multiple factors like their ability to network with one another, their relationship with governments and authorities, the scope and leverage of their international activism, and their acceptance in local communities.

The community of human rights NGOs is very diverse and ever expanding. This thesis focuses primarily on core mandate NGOs, because their activism changes the human rights situation and shapes the human rights discourse the most in Asia as well as internationally. This chapter discusses human rights NGOs in general, describing their core activities (information gathering and dissemination, monitoring authorities, facilitating rights implementation, lobbying for reforms) and numerous advocacy techniques (such as shaming, framing, and judicial advocacy) that are shared by local and regional and international NGOs. Building on the main points and the structure of this general analysis of human rights NGOs, the specific aspects and features of national Asian human rights will be examined in the next chapter. Their activism is in direct connection with the regional NGOs, and reflect the core characteristics of their advocacy.
Chapter 3 – National Asian human rights NGOs

Introduction

International human rights NGOs (INGOs) gained a foothold and established branches in Asian countries, such as Human Rights Watch (and its subsidiary branch, Asia Watch) and Amnesty International. The presence of INGOs has galvanised the local and ‘native’ civil society. However, it would be simplistic and misleading to claim that Asian NGOs’ activism has been inspired and formulated only as a result of external incentives. Despite decades of colonialism (affecting most Asian countries) and a historical trend of autocratic leadership, seeds of civil activism have long taken root in Asian societies and started to flourish especially in the years following the end of the Cold War. Despite the high priority attributed to national sovereignty by political leaders the role of state has transformed in Asia as well, allowing more room for the activism of non-state actors. This and the developments in information and communication technologies have led to a widening of space for civil activism and the organic growth of civil society even in countries with notoriously repressive political systems and bad human rights record such as China and Bangladesh.¹

The general approach of and activities performed by national Asian NGOs serve as basis and starting point for the discussion of regional NGOs (see Chapters 4, 5, 6). In this chapter I will first define the group of human rights NGOs that are in focus and then explore those core elements of their activism (focus on vulnerable groups, close cooperation with grassroots activists, advanced usage of data and information technologies), which also have relevance to the work of regional human rights NGOs. I will analyse the main themes, motives and methods in the activism of nationally active human rights NGOs and seek to explore their distinctiveness. In this I rely on the concepts and ideas introduced in the previous chapter. I will examine Asian NGOs’

direct and indirect advocacy tactics, their networking and trans-boundary activities, and their complex relations to governments.

**Outlining the group of Asian human rights NGOs in focus**

Reflecting the trends of the region itself, the ‘Asian NGO community’ is very diverse.\(^2\) It is, thus, beyond the scope of this thesis to examine the whole gamut of NGOs with equal diligence. Asian human rights NGOs in general match the criteria outlined in the definition of human rights NGOs (introduced in Chapter 2) since they seek to promote and protect universally accepted human rights norms, function independently from governments and are driven by voluntary efforts and the spirit of altruism. There is, nonetheless, a need to distinguish the particular group of Asian human rights NGOs that will be discussed in the following sections. For the purpose of this chapter, I apply four criteria and characteristics to determine the group of NGOs I will examine. These NGOs belong to a group of: (1) native; (2) core mandate; (3) nationally operating NGOs; and (4) with a primary focus on justice-delivery and the operation of legal systems.

This chapter examines native Asian NGOs that have been established and operated locally. INGOs and their subsidiary branches operating in Asian states are not included. This is not to negate their important work, but INGOs receive guidelines from external offices, whereas the scope of my scrutiny is confined to NGOs that are mainly shaped by Asian influence.

Another criterion I apply in this chapter uses the categorisation of Bell and Keenan as introduced in the previous chapter. In the abundance of Asian NGOs, there are organisations that fit into the category of sub-issue human rights groups (for instance the Asian Crime Prevention Foundation)\(^3\) and also equality NGOs (such as the Human Rights Congress for Bangladesh


 Nonetheless, this thesis focuses on core mandate human rights NGOs, because they play a prominent role in shaping the regional human rights discourse and in creating a normative framework for human rights protection in Asia, beside states, intergovernmental organisations, and national human rights institutions.

An additional feature distinguishing the examined group of NGOs is the emphasis on civil and political rights in their activism and on exposing the failures of domestic legal and justice systems. They also take on issues concerning economic, social, cultural and developmental rights, however, devote more attention to exposing the curtailment of individual’s freedoms by national authorities or the military. Whereas developmental NGOs focus mostly on external actors by scrutinising and criticising transnational economic and trade policies, the core mandate human rights NGOs this thesis concentrates on build their campaigns mostly by condemning governments for restricting liberties and curbing fundamental rights.

Finally, the Asian human rights NGOs analysed here operate on the national level. The Asian human rights NGO community can be in a simple way visualised as a pyramid, given that a vast array of NGOs are only engaged in local affairs and are limited to grassroots – whereas the number of nationally operating NGOs is lower, and the trans-nationally active ones are even more exceptional. These Asian human rights NGOs function nationally, and reach out beyond the confines of smaller local communities. Yet they are also strongly connected with grassroots communities, targeting local and national authorities, the police, the military, and other national institutions in their campaigns. Thus the focus of this chapter are native Asian core mandate human rights NGOs that operate on the national level and have a special interest in legal and justice-related issues.

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The salient features of Asian human rights NGO activism

The distinctiveness of national Asian human rights NGOs’ activism does not stem from the special roles they perform; instead, it is manifest in the mode they carry out these activities and in the way they stress certain advocacy elements while putting less emphasis on others. Three main human rights NGO characteristics are predominant in their activism, namely:

1. The majority of their efforts is devoted to helping the most vulnerable and marginalised people in the society;
2. they maintain close relations with activists and communities at the grassroots; and
3. use information as a key tool in their advocacy and seek to take advantage of the opportunities of modern information and communication technologies.

Asian human rights NGOs devote most of their efforts to representing the cause of the vulnerable and marginalised. They seek to spread human rights not only geographically, but also in terms of demographics, by improving people’s access to justice and protecting their rights. The commitment of NGOs to equality and justice drives them to support vulnerable people in their struggles within a power structure dominated mostly by state authorities. Focusing on such populations is important in Asian countries, where – as several writings and NGO reports contend – most victims of human rights violations are considered to be vulnerable and

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marginalised owing to their distinctive ethnicity, religion, caste, gender, sexuality, or simply to their extreme poverty. Many people are discriminated against on multiple grounds, which is concomitant with the loss of opportunities and poverty. Victims rely on assistance provided by NGOs as they have limited means to stand up for their own rights, and to claim justice. In several Asian nations (like in the earlier mentioned Bangladesh) authorities simply lack the capacity to provide protection and services to the whole population and often the most vulnerable remain neglected. NGOs create alternative venues of assistance for victims and vulnerable groups not only in terms of welfare, but also regarding justice delivery and political participation.

Asian human rights NGOs maintain close relations to the grassroots, as they cooperate with local activists and communities, have their own staff and offices on the ground, seek to acquire an adequate knowledge of the local environment, and also give assistance to victims of human rights violations. In the interviews I conducted, both the leaders of SAFHR and SAHRDC expressed their preference for working in close connection with grassroots communities and local human rights organisations. This can potentially narrow the gap between local and national activism by helping the small local groups that often find it more difficult to cope with restraints of political oppression, and struggle to reach beyond their imminent communities. In return, national NGOs rely on the support of locals in data gathering and in the implementation of human rights projects.

An additional aspect of Asian human rights NGOs close connection with local communities is that they provide relief and assistance to victims (often in the form of physical, mental and legal aid). For instance, People’s Watch in India has set up a Rehabilitation Centre for Torture Victims, which offers shelter, food, counselling, medical and mental help for victims, whose stories of abuse is documented and publicised by the NGO. Another example is the

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8 Riddell and Robinson, eds., *Non-Governmental Organizations and Rural Poverty Alleviation*, 34.
9 Interview with Ram Narayan Kumar, (Kathmandu, Nepal, 29 August 2008).
10 Interview with Ravi Nair, (Delhi, India, 22 August 2008).
Cambodian League for the Promotion and Defense of Human Rights (LICADHO), which created the Adopt-a-Prison Project in order to encourage public involvement in giving assistance to detainees, who are often held in sub-standard conditions.\(^{13}\)

Assisting communities directly also allows NGOs to receive first-hand information about human rights problems. Information flow from the grassroots about the human rights situation is vital for the effective campaigning and activism of human rights NGOs. An example for the direct relation between victims and the work of human rights NGOs, is the recent article of the Sri Lankan University Teacher’s for Human Rights (UTHR) revealing the devastation caused by the shelling conducted by government forces in the alleged no-fire-zone in Vanni.\(^{14}\) The NGO created the article based on accounts of the victims of the conflict.

A further important element in the activism of Asian human rights NGOs is the use of information, which, according to Petrice R. Flowers, constitutes the building block of their advocacy.\(^{15}\) They record cases of human rights violations, analyse trends and patterns, raise alarm about the problems by disseminating the information to other NGOs, activists, international organisations, foreign governments and public authorities, and seek to prompt immediate response. Asian NGOs employ “information politics” (a term coined by Keck and Sikkink)\(^{16}\) to uncover grave injustices that are buried in the past and are covered-up by authorities. The tumultuous history of several Asian countries is burdened with hidden and suppressed incidents which include massacres and the complete denial of fundamental human rights, such as the genocidal killings by the Pol Pot regime\(^{17}\) or the lesser known and more recent but equally brutal


\(^{16}\) Keck and Sikkink, \textit{Activists beyond Borders}.

\(^{17}\) Jaya Ramji and Beth van Schaack, eds., \textit{Bringing the Khmer Rouge to Justice: Prosecuting Mass Violence before the Cambodian Courts} (Lewiston, N. Y.: E. Mellen Press, 2005).
events at Tak Bai in Southern Thailand in 2004 (where unarmed demonstrators were killed by the police).  

Asian NGOs have realised that the only way to achieve break-through in human rights improvement is to seek remedy for wide-scale human rights abuses and prevent them from being swept under the carpet by governments. NGOs try to ensure justice-delivery and that the public as well as authorities learn from these atrocities of the past. For instance a South Korean NGO, Minbyun has set up the “Correction of Past Wrongdoings Committee” to scrutinise human rights breaches allegedly committed by the Korean national army in Vietnam. Other NGOs focus on more recent violations, like the field-mission of the Philippine Alliance of Human Rights Advocates (PARHA) in the Philippines that documented details of the Mindanao conflict (where government forces fight against Muslim groups striving for autonomy).

Additionally, Asian human rights NGOs use information to facilitate long-term solutions to human rights problems through dialogue and cooperation. Information becomes a tool in the construction of bottom-up and inclusive human rights activism. Beyond exposing past human rights abuses, Asian human rights NGOs also aim to accumulate knowledge about the current human rights situation and make them available in research and information centres. This serves to enhance the significance of human rights in the eyes of authorities and the broader public, to

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encourage NGOs to collectively address the decline in respect for human rights, and to facilitate in-depth research and discussions about the topic. The Centre for Communications and Development for instance maintains a national database on human rights issues in India,\textsuperscript{22} and the Suara Rakyat Malaysia (SUARAM) similarly operates a resource centre.\textsuperscript{23} The Law and Society Trust (LST) of Sri Lanka has its own Information and Documentation Centre with 8000 volumes of rare national legal documents, legislations, Indian law reports, and academic journals.\textsuperscript{24}

As a result of the centrality of information in their activism, modern information and communication technologies (ICTs) have a continuously growing appeal for human rights NGOs’ work. They especially take advantage of the alternative communication channels provided by the internet.\textsuperscript{25} Although – as the writings of Josephine Ho\textsuperscript{26} and Lu Zhang\textsuperscript{27} demonstrate – Asian NGOs also use the traditional forms of popular media (like TV, radio or major newspapers), it is still more difficult for them to deliver their campaign message through these mainstream media channels. Consequently they turn to web-based communications, which enables them to reach out to a wider community and to communicate across boundaries without delay. Web-reporting and online publications have gradually become one of the most important forms of communications for Asian human rights NGOs.

Aliran (a Malaysian human rights NGO) takes advantage of the newest web-technologies by updating its website with fresh news, with requests of urgent actions regarding human rights violations, photos, blogs and with analysis of the human rights situation.\textsuperscript{28} They have created an

\textsuperscript{22} Centre for Communications and Development, Pune, India, \url{http://www.ccds.in} (accessed 11 January 2010).

\textsuperscript{23} Suara Rakyat Malaysia, Voice of the Malaysian People, \url{http://www.suaram.net/about} (accessed 11 January 2010).


\textsuperscript{25} Karns and Mingst, \textit{International Organizations}, 212.


\textsuperscript{28} Aliran, Malaysia, \url{http://www.aliran.com/} and \url{http://www.aliran.com/oldsite/index.html} (accessed 9 January 2010).
internet discussion group titled ‘Charter 2000’ \(^ {29}\) to promote a transnational online dialogue concerning the problem of curbed media freedom in Malaysia. These web-interactions galvanise dialogue within communities and among NGOs, direct attention to the most pressing human rights questions, and contribute to the overall development of the Asian human rights discourse. With the exception of China, authorities are also less able to control the flow of information online, by contrast, they censor the print media with less effort.

In order to stimulate research and activism, the NGOs accumulate information on Asian human rights issues and create internet portals to serve as online research centres, thus making data easily accessible and searchable for other human rights defenders. These websites play an important role in encouraging human rights-related research and activism in Asia. For instance Human Rights Osaka (HURIGHTS) maintains a database in support of the fight against child-trafficking in Southeast Asia, \(^ {30}\) which provides legal and policy material to anyone interested in the subject. The Information for Change \(^ {31}\) web-portal is operated by the Centre for Communication and Development Studies in India (CCDS), \(^ {32}\) and gives information about human rights-related news and events that are normally ignored by mainstream media. This online database of articles, reports, books and documentary films has an average of 2000 visitors per day, while their e-newsletter has 9000 subscribers. \(^ {33}\)

Nonetheless, the appropriate usage of ICTs remains a great challenge for Asian NGOs, especially for those with less resources and poor technological background. Although most NGOs have set up their own websites, they often fall short of fulfilling the potentials of e-activism, as they fail to update the online content and to engage in interactive campaigning. For instance, the Indian Manabadhikar Suraksha Mancha (MASUM) has a quite rudimentary website with few contents and insufficient information about their activities. Similarly, the website of the Center for Human Rights and Democratic Studies (CEHURDES, Nepal) shows little activity. The

\(^ {29}\) Ibid.


lack of web-usage is most likely linked to the scarcity of specific technical equipment and knowledge, which is a common problem for the NGOs that are struggling with a poor budget and shortages of staff.

It should also be noted, however, that many Asian human rights NGOs limit the usage of web-communications because the audience they aim to speak to lacks access to the World Wide Web (due to the absence of computers or web-infrastructure, as well as unaffordable pricing). Asian human rights NGOs must take into account the available technical resources and the general interaction and communications habits of the community they aim to address. Beyond the internet and email networks, some NGOs utilise other forms of communications that are probably more accessible to the poorer segments of the population, such as radio or telephone. For instance, One World South Asia operates the ‘People’s Radio for Development’ which broadcasts reports and discussions about human rights and social justice questions that pertain to the life of local communities. They also run telephone help-lines specifically focusing on topics related to farming and education.

The multi-fold advocacy tactics of Asian human rights NGOs

In order to make campaigns easier to follow and more acceptable to people, Asian human rights NGOs resort to a variety of advocacy tactics. They apply the method of framing by linking a regionally widespread problem (that was identified in the course of their activism) to a globally well-known human rights issue. Drawing parallels between well-recognised and successful global human rights campaigns lends potency to the message of the Asian human rights NGOs’ advocacy. For instance, Indian activists drew connections between their own struggle against caste discrimination with the American civil rights movement and also the global anti-Apartheid movement, in both cases associating the notion of caste with racial discrimination. In addition


35 Ibid.

to referring to widely recognised and successful human rights movements of the past, they also link their own human rights struggles to similar contemporary campaigns against racial exclusion in Africa and in the United States. These past movements also serve as examples of advocacy with positive outcomes, and mentioning them is aimed at stimulating people to join the current campaigns of the NGOs.

Asian human rights NGOs practise some direct advocacy when they face-to-face lobby politicians, public servants and other decision-makers. One form of this is when the International Human Rights Observer (IHRO) set up its own Parliamentary Assembly in Pakistan with the primary function of influencing members of the parliament and exerting impact on law-making. Apart from politicians, they also seek to sway other domestic actors and institutions that have significant standing in the human rights field. For instance, Kontras, the Commission for the Disappeared and Victims of Violence, constantly tries to put pressure on the National Human Rights Institution in Indonesia, and lobbies for the signing and ratification of the International Convention on Protection from Enforced and Involuntary Disappearances, as disappearances are prevalent in the country. Nonetheless, most nationally operating Asian human rights NGOs have limited access to politicians or to authorities and insufficient means to sway their decision-making.

These NGOs therefore dedicate more efforts to indirect advocacy than to direct methods. I identify these tactics as indirect because NGOs seek to achieve policy, legal and practical changes by influencing the broader public, so that people would put pressure on decision- and

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37 Ibid, 564.


law-makers. These tactics include written advocacy, community projects, and human rights education programs. The target audience in terms of indirect advocacy tactics (victims, people affected by human rights problems, communities, the public, or certain groups of professionals) is certainly more easily accessible for NGOs than high-profile politicians, state leaders or UN personnel, who are the pursued subjects in the direct lobbying efforts of NGOs. Moreover, the target audience is certainly wider and thus the message NGOs can be circulated more broadly. Reaching out to broad audiences is the cornerstone of bottom-up initiated changes.

Asian human rights NGOs seek to raise people’s awareness about human rights problems and involve them in their campaigns through community-building activities that explore various human rights issues. For instance, at the annual three-day long Human Rights Fair organised by MASUM (Malaysia) public speeches and workshops concentrate on specific human rights problems that affect the community.42 Such human rights-oriented activities are also often combined with other fields such as arts, like the human rights film festival organised by Sarangbang in the Republic of Korea.43 Similarly, the Ain O Salish Kendra (ASK) in Bangladesh seeks to reach out to the country’s populous youth community by cooperating with theatre groups in creating performances about the local human rights problems.44 The ASK also organises a Gender and Social Justice Program, where seminars and workshops highlight how the issues of gender and social inequalities can be effectively addressed through communal action.45

Another form of the indirect advocacy of Asian human rights NGOs is human rights education. It is a crucial NGO advocacy tool for instigating the involvement of people in human rights development, thus facilitating bottom-up contributions to the human rights discourse. Asian human rights NGOs run trainings for other human rights defenders. This serves as an opportunity to network with other NGOs. Also, it is important for the success of their activism if


NGOs are able to collaborate with well-trained and skilled partners at the grassroots, since the information they work with comes from local sources, and the majority of their activities are performed on the local level. For example, the Peace Studies Program of the South Asian Forum for Human Rights trains 20 to 25 fellow activists on regional issues of human rights, peace, democracy and development through a three-month long correspondence, which is concluded with 2-weeks of direct course.\textsuperscript{46}

Asian human rights NGOs further extend their educational activities to various professionals such as journalists, medical experts, and legal and judicial professionals. NGOs are key actors in bringing these diverse experts and specialists together, and empowering them to become involved in the human rights development. Democracy Watch in Bangladesh trains journalists about reporting on human rights issues.\textsuperscript{47} The Legal Aid and Consultancy Centre (LACC) in Nepal holds yearly trainings for lawyers specifically concentrating on women’s and children’s rights, which are otherwise often neglected in the country’s legal practice.\textsuperscript{48} In this way NGOs bring a certain multidisciplinarity in the Asian human rights field by encouraging people with various expertise and professional backgrounds to take part in the shaping of the discourse, beside politicians and NGOs.

In addition to targeting different expert groups, NGOs also devote efforts to educating victims and their families about human rights in order to empower them. The Task Force Detainees of the Philippines (TFDP) have created the Educational Assistance Program to support the schooling of the children of political prisoners.\textsuperscript{49} These activities are also motivated by the NGOs’ pledge not to leave victims alone, and their aim to prevent victims and their families from having to experience human rights violations again.\textsuperscript{50}


\textsuperscript{47} Democracy Watch, Bangladesh, \url{http://www.dwwatch-bd.org/} (accessed 6 January 2010).

\textsuperscript{48} Legal Aid and Consultancy Centre, Nepal, \url{http://www.laccnepal.com/activites.html} (accessed 10 January 2010).

\textsuperscript{49} Task Force Detainees of the Philippines, Educational Assistance Program, \url{http://tfdp.net/index.php?option=com_content&task=view&id=23&Itemid=40} (accessed 10 January 2010).

\textsuperscript{50} Interview with Basil W. J. Fernando, (Hong Kong, 22 May 2007).
The majority of the educational work of Asian human rights NGOs is directed toward communities at large, with the aim of swaying public expectations and mobilising people to stand up for their rights. The International Human Rights Observer of Pakistan (IHRO) established the Pakistan Institute of Human Rights Teaching and Research,\textsuperscript{51} and the Centre for Communications and Development in India founded the Open Space Public Education Centre in a bid to offer human rights and legal-focused studies to the broader public, and also to this way recruit new members to support the NGO’s cause.\textsuperscript{52} Hurights, a Japanese human rights NGO conducts so-called “Wai Wai seminars,”\textsuperscript{53} which explore human rights-related questions with the involvement of the public. Their intention with these seminars is to create awareness about the interconnectedness of human rights problems in Asia.

\textit{Legal advocacy and public interest litigation}

Finally, legal and judicial advocacy is a vital and distinctive tool of indirect advocacy in the hands of Asian human rights NGOs. Legal advocacy means that NGOs engage in legal proceedings to help victims of human rights violations through providing free legal assistance, and also by taking on litigations on their own. Although it has only become popular recently, especially compared with the more traditional forms of advocacy like community mobilisation or human rights education, judicial advocacy has gained prominence because it can exert influence on the development of human rights in Asian countries. For Asian human rights NGOs the legal and judicial system is the main channel for Asian human rights NGOs for addressing the structural problems they identify in their activism, and for legitimising and spreading their

\textsuperscript{51} International Human Rights Observer, Pakistan, \url{http://www.ihro.org.pk/pihrtr.htm} (accessed 6 January 2010).

\textsuperscript{52} Centre for Communication and Development, India, Open Space, \url{http://www.ccds.in/os.htm} (accessed 14 January 2010).

campaign messages.\footnote{Kavita Misra, “Pol
tico-Moral Transactions in Indian AIDS Service: Confidentiality, Rights and New Modalities of Governance,”47.} This is especially true for the NGOs with particular legal and justice orientation such as the Odhikar in Bangladesh or the People’s Union for Civil Liberties in India.

The weaknesses of the rule of law and the frequent judicial deficiencies are burdens on Asian legal systems and on the regional human rights situation.\footnote{Hans Dembowski, \textit{Taking the State to Court: Public Interest Litigation and the Public Sphere in Metropolitan India} (New Delhi, Oxford: Oxford University Press, 2001), 49-50.} The excessive judicial case load, the unclear procedural rules, the abused or neglected legislations, and the generally corrupt state of the police, prosecution and judiciary in many Asian countries hinders the proper functioning of justice systems. Thus the judicial advocacy of NGOs is essential for counterbalancing the legal system that is historically weighed against the vulnerable and marginalised. Certain parts of the population – particularly remote rural communities or groups of marginalised or discriminated people – have limited access to the official justice-delivery system for a number of reasons including the lack of education, financial means, infrastructure or their social exclusion.\footnote{\textit{Ibid}, 50.} The active involvement of NGOs in legal and judicial proceedings is aimed at improving these matters by facilitating the equal access of people to the legal system, and also seeking to expose and overcome the problems of justice delivery mechanism.

There are numerous NGO projects providing free legal assistance for those in need, such as the Street Law Program conducted by the Legal Aid of Cambodia (LAC) in cooperation with the International Bridges to Justice (a transnational NGO).\footnote{Legal Aid of Cambodia, “Cambodia and the International Bridges to Justice,” (31 March 2008), \url{www.globalgiving.org/pfil/2223/projdoc.doc} (accessed 11 November 2009).} Beyond immediate emergency intervention (physical, mental, infrastructural and financial support), Asian human rights NGOs usually offer continuous assistance to victims in the form of legal aid, by filing amicus curiae, monitoring and even participating in court proceedings.\footnote{Forsythe, \textit{Human Rights in International Relations}, 199.} Several NGOs have set up permanent legal aid clinics to create a permanent venue for legal aid and advocacy, like MASUM in India.\footnote{Manabadhikar Suraksha Mancha, India, \url{http://www.geocities.com/geesen/masum.htm} (accessed 23 November 2009).}
The legal helpline operated by the Legal Aid and Consultancy Centre of Nepal gives legal advice via telephone to women and children victims, who are among those most vulnerable to human rights abuses and discrimination. The Task Force Detainees of the Philippines\textsuperscript{60} and the Centre for Human Rights Development in Sri Lanka\textsuperscript{61} provide free legal assistance to detainees, especially to those who are suspected of being incarcerated illegally or for political reasons.

A specific type of judicial lobbying that is increasingly employed by human rights NGOs all over the world and in fact has its origins in Asia (in particular in India), is public interest litigation, or social action litigation.\textsuperscript{62} Litigation at national, regional and international courts is generally becoming a broadly employed choice for NGOs in their advocacy strategies worldwide.\textsuperscript{63} Modhurima Dasgupta defines public interest litigation as a specific form of litigation, in which an otherwise not directly affected individual or organisation is granted the right to bring the case in front of the court on behalf of the actual victim.\textsuperscript{64} Litigators are typically well-educated and elite activists, academics, journalists or volunteer lawyers, who generally seek justice on behalf of marginalised people who have far less chance to gain remedy for their grievances on their own. However, Hans Dembowski claims that the circle of petitioners has widened lately to include NGOs and other organisations, since rules have been eased allowing groups to launch public interest cases, like in India.\textsuperscript{65}

Public interest litigations (PIL) are vital tools in human rights advocacy, since each such litigation creates its legal precedent that has significance beyond the individual case. There are at least three aspects to public interest litigation that must also be discussed. Firstly, PIL provides an


\textsuperscript{64} Modhurima Dasgupta, “Public Interest Litigation for Labour: How the Indian Supreme Court Protects the Rights of India’s most Disadvantaged Workers,” \textit{Contemporary South Asia}, 16, no. 2 (2008), 160.

\textsuperscript{65} Dembowski, \textit{Taking the State to Court}, 58.
opportunity to fight injustices and helps victims to get remedy. Secondly, the human rights problems addressed in PIL cases not only have individual dimensions, but also concern the wider community, thus creating expectations based on a broader public interest. By taking on a case, Asian human rights NGOs go beyond the individual human rights incident, and reveal the related public grievance, highlight flaws and problems in domestic laws, legal institutions, policies and practices and the negligence or the misconduct of authorities.66

Thirdly, PIL cases are also beneficial for the NGOs themselves by providing them with an ongoing opportunity to monitor cases and to collect additional information while participating in the judicial proceedings. Accumulating and analysing data on these individual cases helps NGOs to uncover patterns of nationally or trans-nationally widespread human rights problems. The judicial process is also a platform for the NGOs to advocate their approach and to promote their solutions to human rights problems. Jeffrey L. Dunoff, Steve R. Rattner and David Wippman maintain that NGOs have been active participants of the judicial process in other parts of the world, such as Europe and Latin America, notably, in particular through the regional human rights system.67

Public interest litigations are also effective means for Asian NGOs to expose and to address the weaknesses of legal systems and failures of human rights implementation. Christine M. Forster and Vedna Jivan claim that in countries where the rule of law is the major guiding principle and the legal system functions well without major problems (bringing Australia as an example), public interest litigations are applied in significantly different ways, that is less pro-actively than in Asian countries.68 By contrast, in India and other parts of Asia, PIL is the main instrument for civil actors to challenge the executive, to draw attention to the flaws of the justice system and the deficiencies of rights implementation. In countries like Australia there are other venues and methods to address these problems. NGOs use PIL and court-cases as a type of advocacy tactic in Asia. The judicial pro-activism of NGOs is sometimes encouraged by the courts, especially in Asia. This is the case in India, where the Supreme Court has relaxed the

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67 Dunoff, Rattner and Wippman, International Law, 211.

rules of the *locus standi* in PIL cases, and has thus widened the circle of potential litigators. NGOs take advantage of these expanding possibilities, and the Court also relies on their increasing contributions. According to Dasgupta, the Indian Supreme Court often seeks the assistance of NGOs in data collection and asks for their involvement in the follow-up process of some judgements, even if they were not part of the litigators initially.  

The possible impact of public interest litigations is multi-fold. Beyond the obvious influence on the individual case, the judicial advocacy of NGOs can instigate legal, policy or institutional reforms by pointing out and addressing systemic problems through litigation. If successful, these cases set precedents, and are likely to influence the legal and judicial practice domestically, and even influence policy-making and public thinking. For instance, a series of legal actions initiated by civil actors concerning the alarming degree of segregation between roma and non-roma students in Hungarian schools pressured the government to embark on the road of crafting policies of integration. Judicial advocacy thus has the potential to affect human rights development and to instigate norm creation.

Structural problems are often ignored or suppressed by authorities in Asia – especially if that would bring blame on the state – thus it is important that human rights NGOs address them through their judicial advocacy. The Task Force Detainees of the Philippines (TFDP), for example, highlighted the problem of unreasonable delays in criminal justice proceedings when they took on the case of the murdered Japalali couple. In addition to demanding remedy in the couple’s case, the TFDP also looked for ways to improve the justice delivery system so that it can deal with cases within a reasonable timeframe and bring swift remedy to victims. Ain O Salish Kendra (ASK) in Bangladesh has set up a specific “Litigation unit” which acts on approximately

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69 The right to address the Court on a matter before it.

70 Dasgupta, “Public Interest Litigation for Labour,” 160-164.

71 Goldston, “Public Interest Litigation in Central and Eastern Europe,” 510.

200 cases of various complaints (torture, rape, murder and acid-attacks are the most common) in a year.\textsuperscript{73} For instance, in the case of Faustina Pereira vs. State,\textsuperscript{74} the ASK advocated on behalf of the 29 non-Bangladeshi citizens languishing in prison even five years after their due release date. Along with drawing attention to their case, the NGO stressed the responsibility of the state to respect the rights of non-citizens. In another case, Minbyun managed to convince the Constitutional Court of the Republic of Korea that the “Family Head System” (\textit{Hojuje}) introduced by the government was unconstitutional,\textsuperscript{75} and it was subsequently abolished (March 2005).\textsuperscript{76} The system was consequently abolished, which has lead to important policy and practical changes as well.

A further extra-judicial effect of these public interest litigations is that they raise public awareness and mobilise communities around certain human rights issues.\textsuperscript{77} Even if the PIL case fails at court, the human rights cause NGOs are fighting still benefits from the public attention the litigation attracts and from the ensuing public discussions. By mobilising people around the court case and setting judicial precedents, PIL cases legitimise the campaign goals of NGOs. Accordingly, public interest litigations are appropriate instruments for engendering bottom-up policy and legislative changes, and have the potential to improve the human rights situation by facilitating the implementation of rights, and sometimes even by stimulating domestic and international norm creation.\textsuperscript{78}

\textsuperscript{73} Ain O Salish Kendra, Bangladesh, About ASK, \url{http://www.askbd.org/web/?page_id=420} (accessed 15 July 2009).

\textsuperscript{74} Ain O Salish Kendra, “Judgments: Faustina Pereira vs State Case,” (22 May 2001), \url{http://www.askbd.org/web/?page_id=667} (accessed 15 July 2009).

\textsuperscript{75} Minbyun Lawyers for a Democratic Society, Korea, “About Minbyun: Public Interest Litigation,” \url{http://minbyun.jinbo.net/english/intro02.htm} (accessed 11 January 2010).


\textsuperscript{77} Zafarullah and Rahman, “Human Rights, Civil Society and Nongovernmental Organizations: The Nexus in Bangladesh,” 1027.

\textsuperscript{78} Forster and Jivan, “Public Interest Litigation and Human Rights Implementation,” 22-23.
Reaching out to the world: Networking and trans-boundary activism of national Asian human rights NGOs

The international activism of national Asian human rights NGOs is in many ways similar to that of regional NGOs; however, it is conducted on a much smaller scale. It is rather narrow and less of a priority in comparison with the transnational activism of regional human rights NGOs. It consists mostly of temporary and loose networks with civil society actors, irregular cooperation with international NGOs or inter-governmental organisations, issue-specific lobbying of foreign governments and ad hoc coalitions at UN forums.

National Asian human rights NGOs engage in networking mostly within the domestic sphere, as they rally national NGOs around a specific campaign cause to collectively influence state authorities or institutions. Kontras organised the “Human Rights Pledge”\(^\text{79}\) just ahead of the 2009 national election in Indonesia in order to create a platform where NGOs can commonly express their approach and preferences regarding pre-election politics. National NGOs often group together to give collective weight to their criticism of the conduct of governments at various UN forums. For instance, seventeen Bangladeshi NGOs established the “Human Rights Forum”\(^\text{80}\) and submitted a jointly authored shadow report through the UN’s Universal Periodic Review along with the state’s own report.

In today’s growing global interconnectedness, even the mostly nationally operating Asian human rights NGOs have to reach beyond the confines of their own community and make their messages heard outside their country. A number of national Asian NGOs work in oppressive domestic sphere and thus rely on the support of international NGOs (INGOs) to operate effectively. Establishing contact with them is usually fruitful for both parties, since INGOs have the means, connections and leverage to raise awareness about the issues and problems the


national NGOs have on their agenda, and INGOs take advantage of local NGOs’ knowledge about the context.

Although their trans-boundary networking is rather ad hoc and sporadic, national NGOs form issue-specific coalitions like the election-monitoring Asian Network for Free Elections, or the Asian NGOs’ Network on National Human Rights Institutions, which aims to harmonise NGOs’ activism with the work of the national human rights bodies, and it operates in parallel with the Asia-Pacific Forum of National Human Rights Institutions. Also, these national NGOs sometimes compose more permanent regional networks like FORUM-ASIA, which has NGO members in several Asian countries (see Chapter 6).

A big part of the international activism of Asian NGOs is manifest in less formalised and more impromptu activities such as the occasional lobbying of foreign governments and inter-governmental organisations, or appealing to the international public through publications, statements and press releases. From time to time they comment on the actions of foreign states, like when Sarangbang, a Korean NGO addressed a statement to the Congress of the United States warning that the bill they proposed is likely to aggravate the situation in North Korea. Sometimes they also campaign overseas to draw attention to Asian human rights problems. For instance, Mrs. Edit Burgos went on a tour that was organised by Karapatan (human rights NGO from the Philippines) speaking to American audiences about the abduction of her son by identified elements of the military. In this way she was raising awareness about the growing problem of enforced disappearances in the Philippines.

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The activism of national Asian human rights NGOs at the UN is also organised more on an ad hoc basis. Sporadically they address issues that are on the UN’s agenda and request UN officials to take appropriate steps regarding certain human rights problems. For instance, the University Teachers for Human Rights in Sri Lanka appealed to the UN Security Council in its online statement to appoint a Special Envoy focusing on the conflict and on the ongoing rights abuses in their country. Asian human rights NGOs can usually achieve more on those rare occasions when they are able to secure personal meetings with UN officials, for example, when the Task Force Detainees of the Philippines managed to hold talks with Philip Alston in 2007 (the UN Special Representative for Extrajudicial, Summary or Arbitrary Executions), and discussed with him the distressingly high numbers of extrajudicial killings that take place in the Philippines.

The most important tools Asian human rights NGOs employ on the international scene are shadow reports (see Chapter 2). Widespread manipulation of information by Asian authorities compel NGOs to give account about their own experiences from monitoring the human rights situation. In this way they seek to expose governments’ false rhetoric and façade measures, and to reveal the human rights abuses that were covered-up by the authorities. The Philippine Alliance of Human Rights Advocates (PAHRA) initiated a joint shadow report with the involvement of numerous Philippine human rights NGOs and INGOs. They drew up a firm criticism of the report submitted by the government to the UN Committee Against Torture, outlining point by point where the state breached its treaty obligations, and also included recommendations about remedying the identified problems.

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86 University Teachers for Human Rights, Sri Lanka, “LTTE is no Excuse for Killing Vanni Civilians.”


To cooperate or to confront? National Asian human rights NGOs’ relationship with governments

Heyzer stresses that governments establish the legal and political frameworks;\(^92\) and I would add that they also dominate the power structure within which Asian NGOs have to operate. Governments and state authorities determine the amount of space for activism, and thus

\(^89\)The Universal Periodic Review is four-yearly obligation for member states to report to the Human Rights Council. It was created by the UN General Assembly on 15 March 2006 by resolution 60/251; see for more information, Office for the High Commissioner for Human Rights, “Universal Periodic Review,” [http://www.ohchr.org/EN/HRBODIES/UPR/Pages/UPRMain.aspx](http://www.ohchr.org/EN/HRBODIES/UPR/Pages/UPRMain.aspx) (accessed 13 January 2010).


have the power to limit the work of NGOs within the domestic sphere. It is important to examine this aspect of Asian human rights NGO operations, since the effectiveness of their advocacy is largely influenced by the actions of governments.

The relationship between governments and human rights NGOs has always been sensitive (as suggested in Chapter 2), which is especially true for Asia where political regimes are often oppressive, and the overall civil society is at times weak and has limited space for its activism. It is therefore very difficult to strike an ideal balance within this complex and often one-sided relationship. In particular, in the more repressive Asian regimes NGOs have to make a choice between working in complete illegality and conceding to some kind of cooperation with authorities. On extreme occasions, functioning in illegality is the very last but only option remaining on the table. Operating “underground,” however, is not desirable for human rights NGOs in Asia, since the essence of their activism is to reach out to communities and to promote respect for human rights among the widest possible circle of people. According to Ho and Lu, human rights NGOs working under more oppressive political systems – like in China or Pakistan – are forced to make compromises and maintain certain connection with the authorities in order to secure their survival and a relatively undisturbed functioning.

The two main challenges for Asian human rights NGOs with regard to their relations with governments are cooptation and confrontation. Co-optation is a frequently employed instrument by Asian governments to control the burgeoning civil society in their country (discussed in Chapter 2). A widespread tool employed by governments to gain control over civil society is corporatism, which takes many forms among others in China, and also in Taiwan and South Korea. Several Asian governments tend to interpret the concept of the independence of NGOs

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94 Ho, “Is Global Governance Bad for East Asian Queers?” 911.


rather ‘freely’, thus speculating on blurring the boundaries between the official and civil sphere. Accordingly Asian human rights NGOs can be drawn too far into the machinery of states and their bureaucracies, when the initially independent NGOs get irreversibly entangled in the web of state power and become heavily influenced by the political sector. As Lu contends, this happened, for instance, in the case of the All China Women’s Federation when its staff became incorporated in the bureaucracy of the Chinese central government.  

The other major challenge for Asian human rights NGOs is to confront their governments. Asia human rights NGOs monitor the state, and stand up against the abuse of power by authorities through exposing corruption, the disregard for remedies and the suppression of people’s rights. As a result, the NGOs often get into trouble with governments, which can lead to the restriction or oppression of their activism, or – in the worst case scenario – to their personal liberty or physical wellbeing being put to risk. Sadly, abduction, extrajudicial murder, illegal arrest and often accompanying torture of human rights activists are quite common in numerous Asian countries. The perpetrators are usually members of the police or military or some other state-related agency. For instance, human rights defenders speaking out on behalf of Tibetans have been known to be silenced in China (see also Introduction), and activists and journalists are also regularly arrested by Bangladeshi authorities, mostly in illegal manner. State supervised propaganda commonly depicts human rights activists as extremists, secessionists or terrorists, in this way appealing to the deep-rooted public fears often with the help of the mainstream media. According to Haragopal and Balagopal this often occurs in India as well.  

It is less dangerous, but equally debilitating for their operations, when state authorities employ administrative tools or tax regulations to curb the rights or the space of activism for NGOs. One negative effect of the restrictions and oppression is when NGOs adapt self-regulating and self-censoring methods in order to pre-empt and circumvent official crackdowns. This distorts the activism of NGOs and has a devastating effect on their overall human rights

advocacy. Also, authorities sometimes restrict the resources of NGOs by limiting the channels through which they can legally receive funds. A number of smaller NGOs struggle with stretched financial situation, which often hinders their normal operation. Ravi Nair, the Executive Director of the South Asian Human Rights Documentation Centre told me that due to the regulations of the Indian government (Foreign Contribution Regulation Act 1976,\textsuperscript{102} amended to Foreign Contribution Regulation Amendment Rules in 2008),\textsuperscript{103} his NGO has difficulty in receiving funds from foreign sources which makes daily functioning extremely hard.\textsuperscript{104} They can only support themselves mostly through subscriptions and professional fees.

Nonetheless Asian NGOs have to maintain a certain degree of connection with authorities and must occasionally interact and even cooperate with governments, as it is their goal to sway the approach and policies of state leaders toward accommodating human rights priorities. According to the Executive Director, the SAHRDC regularly consults and advises governments.\textsuperscript{105} For instance, they held talks with the minister of Law, Justice and Parliamentary Affairs of Bangladesh, in an attempt to instil human rights values in his policies. It is always a delicate balance for these NGOs to be able to influence authorities and politicians without compromising their independence and identity. As Gerald Chan writes, “NGOs in China serve as a partner with the government and as a bridge between the government and the public”,\textsuperscript{106} yet at the same time they also try to challenge the politics of the leadership.

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\textsuperscript{104} Interview with Ravi Nair, (Delhi, India, 22 August 2008).
\textsuperscript{105} Ibid.
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Conclusion

In conclusion, nationally active Asian human rights have a growing significance in monitoring national authorities and in improving the local human rights situation. Their main strengths are reporting and documenting about human rights violations that would otherwise likely be suppressed by authorities (activities which are also the building blocks in the advocacy of regional NGOs), and also promoting awareness of human rights norms and popularising rights-conscious thinking within grassroots populations. However, they also started to pioneer in their activism by incorporating litigations and court procedures in their advocacy strategies. Occasionally NGOs manage to galvanise communities and whole nations based on a single court case.

Due to their fewer transnational relations and more sporadic international activism, the above examined NGOs are confined mainly to the national and local sphere, and thus focus less on influencing the regional and international discourse. They rely on their regional NGO colleagues to pursue such advocacy. It is argued that the activism of Asian national human rights NGOs serves as a background for the advocacy of regional NGOs. Some of these national NGOs are the ones composing the network of FORUM-ASIA (one of the regional human rights NGO in focus), and a number of them also works in close cooperation with the AHRC on constructing its regional activism (the other regional human rights NGO in focus). Their salient features and distinctive advocacy methods, networking and relations to governments will resonate in the analysis of regional human rights NGOs.
Chapter 4 – The Asian Human Rights Commission: A regional human rights NGO

All attempts to improve the lives of people, particularly those who live in wretched conditions, involve two elements: protection and participation.1

Introduction

As discussed in the previous chapter, the Asian human rights NGO community is heavily orientated toward the grassroots as the activities of most NGOs are confined to local communities. However, numerous national NGOs also operate in each country, along with international NGOs (INGOs) which have branches at several Asian locations. Within this community of predominantly grass-roots and national NGOs, a small number of them pursue regional and international advocacy alongside their local campaigning. Their activities reach beyond the grassroots, and even state boundaries, yet they are not considered to be an INGO. These regional NGOs operate in a ‘middle zone’, between the local and national levels and the broader international community. This positioning allows them to develop strategies for balancing their activities between local and transnational affairs. One such regional human rights NGO, the Asian Human Rights Commission (hereafter AHRC), makes an excellent case study of the distinctive transnational advocacy that is aimed at improving human rights conditions and creating a regional human rights framework.

The Asian Human Rights Commission

The AHRC is a classic core mandate human rights NGO in the sense that its primary values and norms derive from international human rights standards, and its major activities are directed toward the promotion and protection of human rights in the region. The AHRC is also an authentic Asian NGO in the sense that it was founded and is operated by human rights experts and activists from all over Asia, and that it concentrates on improving human rights conditions in Asian countries. Significantly, the activities of the AHRC go well beyond the traditional NGO tasks of relief and service provisions and information gathering, and seek also to engender normative regional change. Its routine activities include emergency relief and protection to victims of human rights violations, and also documentation, yet these activities have a meaning beyond that of humanitarian service and data recording. Individual cases where the AHRC intervenes or provides relief play a vital role within the broader framework of the AHRC’s normative activism. In addition to assisting victims of abuses, the AHRC engages in a complex human rights advocacy that addresses broader structural problems associated with, *inter alia*, the denial of justice, the lack of remedies and the flaws of Asian legal systems.

The AHRC thus fits the description of Asian human rights NGO as defined in the previous chapter; namely, that it is natively Asian, a core mandate human rights NGO, and focused on legal institutions and justice-delivery. However, the AHRC cannot be classified as a national NGO; rather, it must be considered as a regional NGO. Its activities span across almost all the states of the region, and its fundamental aim is to address human rights problems from a regional standpoint.

The general characteristics, fundamental values and approach, and activities of the AHRC can be closely associated with those of the national Asian human rights NGOs (see Chapter 3). The AHRC also conducts its activism in close cooperation with local communities, focuses its campaign efforts on uplifting the conditions of the poor, marginalised and discriminated, and utilises information tactics and information technologies in its advocacy. Furthermore, the AHRC aims to bring about normative changes in the regional human rights discourse and its institutions.
Its advocacy strategy embraces the theory of alternative regionalism – as outlined in Chapter 1 – with the central aims of bottom-up oriented and people-centred regional human rights activism. This chapter seeks to analyse the basis of the regional advocacy of the AHRC by first discussing the evolution of the activism of the NGO and then assessing those factors that have contributed significantly to its development. Here, I examine the most important elements in the AHRC’s advocacy in order to explore its distinctive activism in comparison with other NGOs that are also active in the region.

The story of the AHRC

The initiative to establish the AHRC had grown out of a regional conference of lawyers, judges, journalists and human rights activists in 1983. Participants of a conference titled “Asian Lawyers for Justice and Human Rights”\(^2\) came to the realisation that they encountered similar human rights problems in the course of their professional practice, and thus recognised the need to address these difficulties in a regionally coordinated form. As a result, the AHRC and its sister organisation, the Asian Legal Resource Centre (hereafter ALRC), was founded in Hong Kong in 1986.\(^3\) The reason for setting up a “twin-NGO”, the ALRC, was legal. Under Hong Kong law charity organisations are not permitted to pursue advocacy, and consequently the AHRC was designated as the advocacy branch, whereas the ALRC was created to deal with less confrontational campaigns to qualify as a charity organisation. The AHRC and the ALRC are formally independent, but in practice their staff, activities, and projects are largely interlinked.\(^4\) For the purposes of this thesis I will mostly refer to the AHRC, however, most activities are in fact joint-products of the AHRC and the ALRC.

At the beginning, the AHRC’s strategy was comprised mostly of irregular field trips to conflict stricken areas by highly educated experts in order to produce reports on the human rights

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\(^3\) *Ibid*.

\(^4\) *Ibid*, 26; Interview with Basil W. J. Fernando, (Hong Kong, 22 May 2007).
situation. Because of the sporadic nature of these field-visits the early activism of the NGO lacked continuity. There were no constant access points between the AHRC staff and the people affected by human rights problems, which lead to the shortage of credible information for the AHRC and consequently hindered effective activism. The difficulties of the early years were overcome under the leadership of Basil Fernando, who became the executive director of the AHRC in 1994.  

Fernando brought about fundamental changes in the AHRC’s approach, methods and strategies. The gradual shift occurred alongside the AHRC’s growing understanding of the importance of maintaining close connections with the grassroots. Fernando and his colleagues recognised the necessity of knowing the local context thoroughly in order to develop strategies to improve human rights conditions. They realised that the only way to acquire the necessary legitimacy and moral authority for the AHRC’s work was to engage and cooperate with local communities.

Basil Fernando is a lawyer, human rights activist and poet from Sri Lanka, who has devoted his life to seeking justice for his compatriots and for what he terms his “extended family”, that is, the peoples of Asia. After an early career in legal activism and public advocacy, Fernando was forced to leave his troubled homeland for his own security. He went on to pursue an international career first as an appeals counsel for Vietnamese refugees for the UN Refugee Agency (UNHCR) until 1992 in Hong Kong, and then as a Senior Human Rights Officer at the Investigation Unit in Cambodia under the UN Transitional Authority in Cambodia (UNTAC). It was not, however, primarily his work at the UN, but his upbringing in a poor rural area of Sri Lanka and his subsequent experience as a defence lawyer battling the flaws of the criminal justice system that gave him inspiration to pursue a life-long mission against discrimination, violence

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5 Ibid.


7 Interview with Basil W. J. Fernando, (Hong Kong, 22 May 2007).

8 In 1989 Fernando’s name appeared on the so-called “death lists”, at times, when as much as 80 000 people disappeared, Interview with Basil W. J. Fernando, the Executive Director of the Asian Human Rights Commission (Hong Kong, 22 May 2007).

9 Ibid.
According to Fernando, his experience working for the UNTAC encouraged his view that a different approach was needed in dealing with the human rights problems of the region. Despite his initial high hopes in the UN’s presence in Cambodia, Fernando came to believe that the mission achieved little improvement in the human rights situation. These disappointing experiences urged him to reform the advocacy strategy of the AHRC, most notably, by directing the focus of its activism toward the inadequacy of justice-delivery systems and by working in close cooperation with grassroots communities.

The personnel of the AHRC constitute the backbone of its advocacy machinery. The majority of the staffs is legal practitioner, academic or journalist, whose legal experience have significantly assisted in the formulation of the activism of the AHRC. Notably, most of the staff has a history of deep involvement in the human rights activism in their respective countries. Their knowledge of local environments, professional experiences, and local connections are vital for the AHRC’s strategy of working in close cooperation with local activists. The AHRC also places emphasis on recruiting its staff from the local communities where its activism is pursued. In this way it reinforces its ties to the grassroots and ensures that their staffs have knowledge of local circumstances. The staffs’ familiarity with native Asian languages is equally important. Although English is the most common language in transnational interactions in Asia, a large number of the communities targeted by the AHRC’s activism only speak their own mother tongues.

The distinctive standing of the AHRC: Comparisons with other NGOs in the region

To appreciate the distinctiveness of the AHRC’s role, some consideration of how it compares with other categories of human rights NGOs is warranted. The middle position the AHRC occupies – closely linked to grassroots activism, whilst active on regional and international stages – is the primary feature separating it from the activities of the majority of


\[^{11}\] Interview with Basil W. J. Fernando, (Hong Kong, 22 May 2007).
Asian human rights NGOs, which generally have a local focus; but also, from the operations of larger-scale INGOs, which do not possess the same connection with the grassroots.

**Comparison with sub-issue human rights NGOs**

Of those NGOs that share a similar position to the AHRC, the vast majority can be distinguished on the basis that they focus on a specific human rights theme, such as labour rights, feminism, environmental conservation, or fair trade. These, utilising the typology of Bell and Keenan\(^{12}\) (see Chapter 2), can be classified ‘sub-issue’ human rights NGOs, because they dedicate their activities to advancing a single cause, and usually only cooperate with other groups who pursue the same goals. By contrast, the AHRC takes up a comprehensive human rights advocacy that encompasses the complete realm of human rights issues.

A distinctive form of single-issue activism is performed by the rather large group of developmental NGOs, whose activism is prevalent in Asia. NGOs like Oxfam (based in Hong Kong), the Southeast Asian Committee for Advocacy (SEACA), the Third World Network, or the Focus on the Global South (Focus) concentrate on alleviating poverty and debt burden, improving underdevelopment and halting the exploitation of natural resources.\(^{13}\) The activities of these NGOs include various developmental and welfare projects, providing relief in emergency situations, the training of poor farmers and lobbying of governments and international organisations for trade policy reforms. Some of these methods are shared by the AHRC as well, but they are usually applied by the NGO in different focus-areas.

The advocacy of the developmental NGOs is primarily directed at denouncing the contemporary economic order, neo-liberal economic trends and promoting more fair and equitable trade, financial and developmental policies in the region. The AHRC is concerned with

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similar issues, as it advocates for social justice and the elimination of social and economic disparities. However, the AHRC pursues these questions within the framework of human rights, and approaches welfare concerns mostly from a legal point of view. Contrary to the developmental NGOs anti-globalisation rhetoric, the AHRC views social and economic disparities as breaches of economic, social and cultural rights, and as consequences of denied legal remedies and distorted civil equality.

**Comparison with international NGOs in Asia**

Larger-scale international NGOs (INGOs) maintain a strong presence in Asia, especially in Hong Kong, where Oxfam Hong Kong (OHK) and Amnesty International Hong Kong (AIHK) are located. OHK and AIHK serve as good comparative examples in considering how the activism of the AHRC differs from that of INGOs. However, in essence, their operations share many similarities with the AHRC. In particular, itself being a core mandate human rights NGO, the values, approach and activities of AIHK closely resemble those of the AHRC. Nonetheless, there are certain basic differences in the strategies and tactics of these INGOs and the AHRC that stem from a dissimilar structure and background.

Firstly, OHK and AIHK have a truly international background. Not only do their staff and resources derive from a diverse international environment, but more importantly OHK and AIHK are constituents of broader global establishments. These NGO sections act as subsidiary branches of global human rights NGOs, which in certain ways resemble the structure and functioning of multi-national corporations. Undoubtedly, both OHK and AIHK conduct their activism with a large degree of independence from their respective head offices. However, they apply the same campaign tools that are uniformly employed by other branches of the global NGOs they are part of and take part in world-wide campaigns that are planned and shaped from their global headquarters. By comparison, the AHRC is more independent in its conduct, since it is not part of any other organisation or overarching entity that would prescribe the framework of its advocacy. However, this also entails that the AHRC has less means to advocate for its aims on the international stage. Being part of a strong global organisation with a household name allows OHK and AIHK the advantage of a more influential position on the international platform.
The second significant difference resides in the nature of the basic strategies of the NGOs. Both OHK and AIHK direct most of their advocacy toward the population of Hong Kong. This involves generating communal solidarity in Hong Kong, and encouraging them to get involved in the OHK and AIHK campaigns condemning human rights violations. In this way the INGOs can build up and exert pressure from the more influential sectors of society on foreign authorities involved in human rights abuses. OHK, for instance, regularly organises field trips abroad, not to carry out investigations into human rights problems in the first place, but rather to expose the more privileged people of Hong Kong to the severe human rights problems of other areas in Asia. In contrast, the AHRC places far less emphasis on involving the Hong Kong public in its activism. Although they also seek to educate the community and encourage their involvement in human rights activism, a critical difference lies in the fact that the efforts of the AHRC are mostly directed at the people who are actually affected by human rights violations rather than at the populations of areas with better human rights records.

The methods employed for sustaining their respective operations are likewise dissimilar. Since OHK and AIHK invest a great deal of energy in mobilising the Hong Kong public, it is unsurprising that they seek to secure their future operations by building on human resources locally in Hong Kong. OHK created various activities specifically for young people, such as the Oxfam Youth Campaign and the Oxfam Club, which gives an opportunity for young adults to create their own campaigns within OHK.

Naturally the AHRC also focuses on self-sustainment, but in rather different ways. Besides occasionally taking on volunteers and interns from Hong Kong, the majority of their training efforts are directed at young activists from areas with significant human rights problems and where the AHRC conducts its activities. It is central to the special strategies of the AHRC to ensure that their partners at the grassroots are thoroughly trained activists, so that they may effectively cooperate with the AHRC, and also to recruit people from, and with knowledge of, the


troubled regions to which the AHRC directs its activities. In the light of these differences between campaign activities and training and recruitment, it can be concluded that AIHK and OHK seem to focus their activism more on the local community (Hong Kong), whereas the AHRC conducts a truly region-wide operation and puts more effort into its activities in the surrounding countries of the region.

A final matter that distinguishes the AHRC from INGOs such as OHK and AIHK is funding. Oxfam International and Amnesty International are both well-known for their vast membership base all over the world. This provides significant public support and resources. A great proportion of the financial funding of these global NGOs derives from members and from minor private contributions. Fundraising events organised in conjunction with their campaigns also contribute to their budget, and have the added advantage of encouraging public participation. Their strong financial background puts OHK and AIHK in the fortunate position of having independence from government related financial support. However, OHK and AIHK are largely dependent on broad public support in terms of funding and conducting effective activism. They are under constant pressure to keep up this public support, which requires that a significant part of their activities are devoted to raising public awareness and creating highly publicised projects. In order to ensure sufficient media and public attention to their work, the INGOs employ a high-level of popular advocacy tactics and self-promotion. One consequent danger, discussed earlier in this thesis (see Chapter 2), is that human rights issues become marketised and commercialised.

In contrast, the AHRC is far less dependent on broad popular attention and public funding. It is not a membership-based organisation, and thus cannot rely on a constant flow of membership fees and donations. The AHRC works only with a small number of dedicated staff in Hong Kong in close cooperation with its grassroots partners in various Asian countries. Its operations are funded by bigger international donors (usually government related agencies like SIDA), and it is thus not dependent on constant popular fundraising. Although raising public awareness is equally vital part of the AHRC’s work, this is done primarily to educate and empower local communities, and for the purpose of disseminating information about human rights problems to the international organisations and foreign governments that are most capable of exerting pressure on authorities that disrespect people’s rights. The downside of this source of

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financing is the risk of donor-dependency, and the often unproductive vying against other Asian NGOs for limited funding.

**Comparison with other human rights NGOs with a transnational reach**

A final comparison requires consideration between the AHRC and Asian human rights NGOs, which have a similar focus and approach, and also conduct transnational activism, but which lack the regional outreach of the AHRC. NGOs like South Asian Forum for Human Rights (SAFHR) and the Asia-Pacific Human Rights Network (APHRN) focus on the same issues and follow similar advocacy tactics as the AHRC, but nonetheless, differences still exists between them, mostly with respect to the particular areas and methods of activism (such as research, education or lobbying) that gain more emphasis in their respective operations. The other similar Asian regional human rights NGOs, the Asian Forum for Development and Human Rights, will be analysed separately in Chapter 6.

Certain NGOs, such as the Asia-Pacific Research Network (APRN) or the South Asian Human Rights Documentation Centre (SAHRDC), devote the majority of their activism to research, publication, and education. Accordingly, they spend less time on what could be described as field work, such as community building or campaigning in communities. They seek to stimulate and coordinate research on human rights. The Asia-Pacific Research Network acts as a region-wide research coordinator by compiling “Policy Papers” based on various regional research projects, and also by organising regional conferences discussing reform initiatives (such as the Conference on Agrarian Reform in 2005 and the subsequent regional consultations on rural development). These NGOs then seek to use the outcomes of their research to

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influence governments or intergovernmental bodies. In-depth research of the human rights situation, publishing analysis, reports, books, and human rights education are similarly vital components of the work of the AHRC, but these are not its only dominant activities. The advocacy of the AHRC is built on the documentation and research of human rights problems gathered from their activities in and connection with grassroots communities. Conclusions made in the course of such research are applied directly in the activities carried out at the grassroots. In this sense, the research conducted by the AHRC reflects their local activism and draws from the experiences of victims of human rights violations.

Human rights education and training constitute a crucial part of the activism of the AHRC and of similar Asian human rights NGOs; but again, the activism of the AHRC can be distinguished by its education and training that focuses on grassroots communities rather than on the affluent. NGOs like the SAHRDC develop various human rights education curricula and training schemes, which can be used for training at national authorities, universities, and international organisations. While they aim to provide policy-makers and influential institutions with a better understanding of the local human rights realities (a goal also shared with the AHRC), the AHRC devotes a considerable amount of its training programs to engaging local people, victims of human rights abuses and grassroots activists in an effort to find solutions to their human rights problems.

An additional factor distinguishing the activism of the AHRC from similar NGOs is the manner in which it makes use of information and communications technologies, and the internet in particular. Rapid advances in communications technology has provided the civil sector with the power to reach larger numbers of people with greater ease, and the ability to convey their campaign messages even to high profile actors on the international plane. The AHRC maintains several websites, and makes use of email and the web to publish statements several times a day (further detailed later in the chapter). Other similar human rights organisations in the region utilise only a fragment of the intensive web-communication of the AHRC.

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20 Interview with Ravi Nair, (Delhi, India, 22 August 2008).

21 Ibid.
Although most NGOs operate websites containing basic information about their goals, activities, programs and campaigns, keeping information up-to-date is a problem that prevents such websites becoming useful resources on human rights issues. The SAHRDC releases an online fortnightly newsletter titled “Human Rights Features”\(^{22}\) which comments on current human rights issues, but its quarterly publication (containing deeper analyses and reports) is only available in print (its latest online version is from 2005). The SAFHR also operates a website that is hardly updated.\(^{23}\) The most recent accessible annual report on the SAFHR’s website is from 2002,\(^{24}\) and the “Upcoming Events” refer only to projects in 2006.\(^{25}\)

The advocacy strategy of the AHRC: A unique combination of activist tools and methods

After this broad discussion of how the advocacy of the AHRC differs from that of other NGOs, the theory, ideology, and implementation of this advocacy deserves closer examination. The AHRC shapes and combines a variety of values, motives, advocacy elements and tactics that are drawn from diverse sources, such as nineteenth-century Danish socio-pedagogical theories, ideas of alternative regionalism, mainstream human rights NGO tactics and particular Asian concepts. Most of these advocacy components might also be observable in the activism of other NGOs. However, the AHRC alters and combines the components in a way that gives rise to an innovative perspective on human right activism in Asia, and creates a specific form of alternative regionalism.

As discussed in Chapter 1, the alternative regionalism of human rights NGOs is driven by a people-centred and bottom-up oriented approach, and the important role of information tactics.


The following section will examine how alternative regionalism appears in the various advocacy components that together constitute the AHRC’s activism. The most important factors in their advocacy are the ‘Folk School’ method, close cooperation with local communities and victims, information management, and a normative activism directed at the implementation of human rights.

The Folk School Method from the nineteenth-century Denmark

One of the AHRC’s major advocacy tools that facilitates its bottom-up and people-centred norm creation is the Folk School method, which emerged as a pedagogical theory of a nineteenth-century Danish teacher, writer and philosopher Nikolaj Frederik Severin Grundtvig (1783-1872). Initially proposed as an educational reform, the concept of the Folk School soon broke through the confines of schoolrooms, and developed into a groundbreaking sociological model premised on equality and inclusiveness. Grundtvig originally proposed the introduction of more inclusive classes with the active participation of all pupils on equal standing with their teachers. This translated into a broader concept about reforming the Danish society, which in Grundtvig’s perception was far too elitist and hierarchical. He thus proposed a social development model that is based on the argument that sufficient social progress is impossible without the equal participation of people in decision-making and without an open dialogue involving the whole society.

The Folk School theory of Grundtvig was re-employed long after his death by two pioneers of social justice (among others): Myles Horton in the southern states of the United States of America in the early twentieth century, and Paulo Freire in Brazil later in that century. Although Grundtvig, Horton and Freire were active in remote time periods and distant lands, they

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shared a struggle for social justice in a similar social context burdened with underdevelopment and inequalities. While they applied somewhat different methods, their common goal was to eliminate elitism and the deep social cleavages in their respective societies. Myles Horton set up the Highlander Folk School in Mounteagle in 1932,\(^{29}\) which sought to transplant the methods of Grundtvig into the coal-mining regions of the south, where rampant exploitation created miserable working and living conditions for miners. Grundtvig emphasises not simply the need to bring people together for collective action, but rather stresses the process of recognising and learning about each other’s problems in the spirit of finding common solutions. Following these ideas, Horton encouraged miners to come together and hold discussions about their problems, and to stand up as a group for their rights and demands.

The activities of Horton and his peers became intertwined with the fight against racial discrimination, and eventually contributed to the Civil Rights Movement of the 1950s and 1960s. At the Highlander Folk School among others Rosa Parks attended a workshop on racial desegregation in schools, just a couple of months before refusing to give up her seat for a white man, which triggered the Montgomery bus boycott (in the summer of 1955).\(^{30}\) Myles Horton and his movement also established “citizenship schools” with a variety of trainings focusing on literacy, voting and voters’ registration, basic knowledge of politics and citizens’ rights.\(^{31}\)

Paulo Freire equally applied the basic ideas of Grundtvig in his fight for social equality.\(^{32}\) However, he placed more emphasis on the power of education than on public mobilisation. He is often regarded as one of the leading educators of recent times.\(^{33}\) Like Grundtvig, Freire


\(^{33}\) David Archer, “Education for Liberation,” _Adults Learning_, 18, no. 9 (May 2007), 28-29.
denounced the exclusionary approach of the traditional teaching systems and sought to change the plight of the exploited through broad educational and literacy programs. Both Horton’s Highlander Folk School and Freire’s “Pedagogy of the Oppressed”34 carried on the Grundtvigian ideas of liberation through participation and bringing enlightenment to all people, most importantly by means of education. The shared goals of their struggles brought Horton and Freire together in the twilight of their lives, resulting in a publication of their discussions. 35 The work of these two great figures of social activism illuminates how the nineteenth century pedagogical and social ideas of Grundtvig can still be employed effectively in a fight against injustice and discrimination, also in the activism of the AHRC.

The AHRC staff and their activist partners face similar challenges in equally poverty-stricken and crisis afflicted areas, just like Grundtvig’s Denmark, Horton’s Southern mining areas and Freire’s Brazilian communities. Entrenched discrimination, elitist exclusionism and autocratic policies generate patterns of human rights violations in many Asian countries. Accordingly the AHRC also resorts to the Folk School methods in its local advocacy. The AHRC employs Grundtvig’s notion of people’s enlightenment”, to transform communities by arousing their self-consciousness and motivating them to act together. 36 This educational concept is suitable for their work, since the NGO interprets human rights improvement as a certain learning process, in which people at the grassroots come together to collectively confront their problems, learn about human rights, and to develop their own ideas about how improvement in their human rights situation could be achieved. The role of the AHRC is to facilitate this process by gathering together people affected by human rights violations and activists, so that they can identify and address their problems.

The Folk School method brings all major elements of the alternative regionalism of the AHRC together; it is people-centred and instigates bottom-up changes with the help of the AHRC providing information about human rights to the local communities. This method is thus an essential element in the activism for the identification of human rights problems at grassroots, but

35 Bell, Gaventa and Peters, eds., We Make the Road by Walking.
36 Henningsen, “The Danish Folk High School,” 283; Fernando, Demoralization and Hope, 49-53.
also an integral part of their regional advocacy. People brought together by Folk School methods address their own problems and facilitate changes that can serve as the basis for a regional norm-creation, in this way facilitating changes from the bottom-up.

**The AHRC’s close ties to the grassroots and to victims**

The second major factor shaping the advocacy of the AHRC is their victims-centred approach and close ties to the grassroots. To implement the Folk School method in their activism, knowledge of the local environment is crucial. The AHRC relies on the accounts of victims and on first-hand information of human rights situations, gained through their close cooperation with human rights defenders in local communities.

Such partnerships are mutually beneficial, as the AHRC provides their local partners with various forms of capacity building and training opportunities. They conduct “exposure-programs” for local Asian activists so that they can participate in the AHRC’s work in Hong Kong. Additionally internship-programs introduce the operations of the AHRC to Asian activists, who are provided an insight into the NGO’s work and given training in activism techniques and human rights advocacy. In this way the AHRC ensures the presence of well-trained activists at the grassroots who are reliable in collecting information and who assist the NGO in making its campaigns easily acceptable in the local communities. Moreover, activists are often recruited as permanent staff through the internship program, a process ensuring that new employees possess thorough knowledge of the local environment.

**The information tactics of the AHRC and the advanced application of web-communications**

A third vital element in the AHRC’s activism is its use of information technology to disseminate human rights information. In order to overcome manipulation of information by

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37 Interview with Basil W. J. Fernando, (Hong Kong, 22 May 2007).
authorities, which keeps grave injustices hidden in several countries in Asia,\textsuperscript{38} the AHRC utilises modern information and communication technologies. They uncover and publicise cases of human rights violations based on the account provided by victims, thus giving rise to the people’s discourse – or the “living word” in the terminology of Grundtvig’s Folk School theory.\textsuperscript{39}

Lisa Jordan and Peter van Tuijl argue that information management is vital for effective transnational activism,\textsuperscript{40} and as such it also gains significance in the AHRC’s work. After the documentation of human rights violations in the local environment, which is then verified for accuracy and authenticity, the AHRC analyses the information to produce a clear and purposeful message in order to achieve the desired impact and to reach the most relevant actors in the field. A significant part of the AHRC’s work in this respect concerns the reduction of “noise”, that is, the reduction of unnecessary detail and unnecessary information.\textsuperscript{41}

Unequal access to information on human rights matters is a significant problem in Asia. It is a problem not only for smaller NGOs with limited communication technology, but also for global actors who struggle to gain accurate data about the human rights situation on the ground. The scarcity of information in this regard has heightened the importance of effective information exchange, which is indispensable for transnational advocacy networks (see Chapter 1).\textsuperscript{42} Although the AHRC is not a network organisation, its international activism and close relationship with grassroots partners endows it with similar features to transnational advocacy networks. In order to enhance the flow of information, the AHRC constantly seeks to improve the capabilities of its smaller local and national NGO partners. It conducts various training programs to advance communicative skills, provides technical assistance, organises learning forums such as

\textsuperscript{38}Fernando, Demoralization and Hope, 46.

\textsuperscript{39}Lindhardt, Grundtvig: An Introduction, 90-91.; Thaning, N. F. S. Grundtvig, 71.


the Human Rights Correspondence School. In addition, the activism of the AHRC also improves the chronic lack of credible information available to global actors. They compile local knowledge of human rights problems based on grassroots experiences.

The strategy of the AHRC relies heavily on the unprecedented speed, cost-effectiveness and interactivity of the internet, or as Metzl has termed, the “technology of freedom”. Web-communications are the main instruments for the AHRC to connect to local, regional and international partners, to publicise information received from the grassroots, to disseminate the organisation’s own publications and its analyses of the human rights situation, and to mobilise the organisation’s various campaigns.

The AHRC spreads news of human rights problems through email-networks, and also publicise their campaigns on the internet through 39 thematic or country-specific websites, which are all maintained and regularly updated by the AHRC. These campaign web-pages contain the relevant human rights cases, statements, press releases, reports, publications, international documents and information on the ongoing programs and campaign activities of the AHRC. Some of the major campaign websites of the AHRC are the ones dedicated to the struggle against torture, the fight against enforced disappearances, massacres in Asia, and the right to food. The latest campaign-pages have been developed in response to recent Asian events and crisis

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44 Interview with Basil W. J. Fernando, (Hong Kong, 29 May 2007); Interview with Michael Anthony, (Hong Kong, 30 May 2007); Keck and Sikkink, *Activists beyond Borders*, 1; Hudson, “NGOs’ Transnational Advocacy Networks: From ‘Legitimacy’ to ‘Political Responsibility’?” 338-339.


situations, such as the websites dedicated to support the protests in Myanmar,\(^{51}\) the movement of lawyers in Pakistan,\(^{52}\) the campaign against illegal land grabbing in Cambodia,\(^{53}\) bringing rights violations and impunity to an end in Manipur, India,\(^{54}\) and to demand justice for the victims of the Maguindanao massacre in the Philippines (23 November 2009).\(^{55}\) The contents of these country-specific websites are translated into local languages, which helps to improve domestic awareness about critical human rights matters.

**A focus on human rights implementation, the rule of law and legal empowerment**

The elements of the advocacy of the AHRC discussed above are aimed at the implementation of rights, the strengthening of the rule of law, and the improvement of legal systems. The close cooperation fostered with victims of rights violations, often in local communities, and bolstered by the empowering Folk School method, serves as an information-web that allows the AHRC not only to learn of the nature and frequency of violations across distant and disparate Asian communities, but also to diagnose root problems that lead to violations. Fernando asserts that as a result of this activism, the AHRC realises that the approach taken by the majority of governmental and non-governmental actors seeking human rights improvement, which concentrates on pressuring states to ratify and abide by international human rights standards, is ineffective and flawed.\(^{56}\)


\(^{56}\) Interview with Basil W. J. Fernando, (Hong Kong, 22 May 2007).
The distinctive activism of the AHRC is based on the recognition that simply imposing international norms on states and pushing for compliance does not produce sufficient human rights improvement, due to the failure of realising the absence of minimal standards in domestic legal systems to properly implement human rights norms. Accordingly, the AHRC seeks to shift the discourse from focusing on the codification of norms to concentrating on their adequate implementation in the local context. The AHRC’s focus on implementation predates the landmark human rights report of Former UN Secretary-General Kofi Annan declaring the “era of implementation”.

This new approach of the AHRC has emerged as a result of a “problem-focused activism” that seeks to uncover hindrances to the implementation of human rights in the local context, and relies on the technique of moral induction introduced in Chapter 1. The AHRC identifies the most prevalent forms of human rights abuses in Asian countries and explores the root causes, which in many cases, the AHRC attributes to flaws in legislation, the failures of the justice delivery system, and absence of the rule of law. As a consequence, their advocacy is centred on the proper enforcement of human rights through a functional legal system that can provide adequate and enforceable remedies for rights violations.

The importance placed on the rule of law and on the proper functioning of legal systems in the advocacy of the AHRC risks it being confused with “rule of law orthodoxy”, which is the term applied (mainly by its critics) for a legal-developmental approach advocated by international developmental and financial institutions such as the United States Agency for International Development, the World Bank Group and the European Bank for Reconstruction and

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Development. The only parallel between this and the approach taken on by the AHRC is that they both aim to strengthen the rule of law in certain countries, which is understood to mean that:

(i) the government itself is bound by the law, (ii) every person in society is treated equally under the law, (iii) the human dignity of each individual is recognized and protected by law, and (iv) justice-delivery is accessible to all.

Otherwise, their approaches differ in their goals, priorities and methods.

Stephen Golub defines the rule of law orthodoxy as the “set of ideas, activities, and strategies geared toward bringing about the rule of law, often as a means toward ends such as economic growth, good governance, and poverty alleviation.” Many critics of the rule of law orthodoxy allege that external imposition of ideas is an insufficient and often ineffective approach, and should not be viewed as a panacea for all the ailments of developing countries. Crucially, such an approach more often than not neglects the specificities of the national context, and has an even poorer understanding of the situation in local communities. A top-down orientation that seeks reform through state authorities without the involvement of civil society or public, according to several critical studies, has failed to bring improvement to the most desperate poverty or alleviate the human rights violations of the marginalised sections of societies. This rule of law orthodoxy approach adopts a narrow interpretation of what constitutes a legal system, focusing primarily on the role of the judiciary by reference to factors that contribute toward security for foreign investment.


The approach held by the AHRC is exactly the opposite. Its activism could be linked to what Golub calls “legal empowerment”, an alternative to the rule of law orthodoxy defined as “the use of legal services and related development activities to increase disadvantaged populations’ control over their lives.”67 This approach helps victims and communities at the grassroots to gain legal means to overcome their vulnerability and human rights problems. The primary agents of legal empowerment are civil society actors, and it is generally less elitist and more community-driven than the rule of law orthodoxy. Although legal empowerment is constructed from the grassroots, it can exert impact on national, regional and even international developments.68 The AHRC is active in providing legal assistance to victims of human rights violations and takes on the kind of legal advocacy that was discussed in Chapter 3 in order to give legal means in the hands of people whose human rights are not respected by the state or authorities. Conclusions drawn from these cases also add to the regional and international advocacy of the AHRC as it will be demonstrated in the next Chapter.

Instead of a restrictive interpretation of justice-delivery, the AHRC (similar to the proponents of legal empowerment) examines human rights problems in a complex structure within a political, social, economical and cultural context. In addition to pressing for legal reforms and normative transformation, the AHRC also stresses the importance of structural and institutional changes (such as the reform of domestic justice delivery system and the setting up of a regional institutional structure for the protection of human rights). The individual cases the AHRC documents with the help of local partners expose the prevalence of custodial torture (for instance, the case of Abhijnan Basu from India69), illegal arrest and detention (the case of Tissa Kumara from Sri Lanka70), and the denial of fair court hearings (the case of Bandung activists71).

68 Ibid, 5.
and the enormous court delays (the case of Udayanga Perera\textsuperscript{72}). With these cases the AHRC reveals not only the severe malfunctioning of the police, prosecution and the judiciary, and the absence of the rule of law, but also the related problems of corruption, lack of disciplinary control, information manipulation and impunity.

The AHRC further seeks to improve the rule of law through the empowerment of local communities by providing them with human rights education and encouraging them to discuss and address their problems collectively (as per the Folk School method). Improving the rule of law in grassroots communities requires more than reforming laws and training judges; deeper institutional and policy changes are needed to root out corruption and impunity, which are proposed and promoted in the regional advocacy of the AHRC (see Chapter 5).\textsuperscript{73}

\textit{The symbolic politics of the AHRC}

The AHRC employs symbolism as an important part of its advocacy. Theorists such as Keck and Sikkink have recognised that symbols play an important role in the practice of transnational advocacy as discussed in Chapter 1.\textsuperscript{74} The AHRC uses a symbolic language focusing on the difficulties of implementing human rights standards and on the proper operation of legal systems. Irony is often used in the vocabulary of this discourse - used to twist expressions to emphasis problems. The “un-rule of law”\textsuperscript{75} or the “rule of lords”\textsuperscript{76} is pitted against

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\textsuperscript{73} Interview with Basil W. J. Fernando, (Hong Kong, 29 May 2007).

\textsuperscript{74} Keck and Sikkink, \textit{Activists beyond Borders}, 22.

the rule of law, and the expressions of “lawless law enforcement”\textsuperscript{77} or “order enforcement”\textsuperscript{78} are used to accentuate the flaws of the law enforcing institutions (police above all).

Another symbol used by the AHRC is “Article 2”, in reference to the second article of the International Covenant on Civil and Political Rights, which provides that state parties must “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy”,\textsuperscript{79} that the relevant authorities should enforce such remedies, and that access to such remedies should not be subject to improper discrimination. By using “Article 2” as its leading campaign theme, and as the title of its most important monthly online journal,\textsuperscript{80} the AHRC is able to emphasise the importance of rights enforcement and securing remedies for victims of human rights violations in their activism.

\textbf{Conclusion}

This chapter has demonstrated the unique path of the AHRC, which has developed from an almost single-man initiative into a rather influential human rights NGO that is active on a regional level. The comparisons with other NGOs in Asia reveal that the AHRC takes on a broader agenda and more diverse activism than single issue organisations. It can also be concluded that the AHRC has a dissimilar structure and operation compared with INGOs, and it employs different campaign tactics and uses other methods to ensure its funding. Finally, in comparison with other similarly transnationally active NGOs, the AHRC focuses more on the


\textsuperscript{80} Asian Legal Resource Centre, Article 2, \texttt{http://www.article2.org/} (accessed 22 September 2009).
grassroots, and takes better advantage of the internet and online communication techniques. This indicates that the AHRC has a relatively unique position within the Asian NGO community, which is further underlined by its distinctive advocacy.

The advocacy of the AHRC is constructed with a fusion of the Folk School method, partnership with local human rights activists, advanced information management and communication methods, and a focus on legal empowerment and the rule of law. These tactics are employed in pursuit of the larger strategy, namely, to give rise to a people-centred and bottom-up process of norm creation, which in turn helps to engender normative, institutional and policy changes. Although the AHRC works at the grassroots, it also lobbies national authorities and regional powers. Indeed, its foremost aim is for a coordinated regional effort to address human rights problems. The next chapter will focus on the analysis of this regional activism and explore its possible influence on the Asian human rights discourse.
Chapter 5 – The alternative regional advocacy of the Asian Human Rights Commission

Introduction

This chapter explores how the distinctive elements of alternative regionalism appear in the regional advocacy of the AHRC. It explores whether the activism of AHRC is alternative due to its difference from inter-state activism, or because of its innovative motives and tactics. An analysis of its Urgent Appeals Program will demonstrate how the AHRC builds up this regional advocacy from its everyday activism, and how it combines short-term aims with long-term campaign objectives.

The central elements in the regional advocacy of the AHRC are projects – first the Asian Charter of Human Rights, then the Asian Charter on the Rule of Law – which bring Asian civil society actors together to discuss and work collectively toward human rights development in Asia. This chapter examines these regional projects in terms of the construction of new approaches, polices and concepts, normative innovations, and their recommendations for institutional and procedural reforms. My aim is to assess whether the regional advocacy of the AHRC contributed innovatively to the Asian human rights discourse, and to explore the way it shaped the regionalisation of human rights.

Alternative regionalism in the advocacy of the AHRC

The advocacy of the AHRC is built on activism at the grassroots which has a region-wide effect. The bottom-up approach is further manifest in how the AHRC acts as a transnational advocacy network by facilitating region-wide consultations with the involvement of local, national and regional human rights NGOs, activists and various professionals (lawyers, judges,
academics, journalists, and doctors who are in some way engaged in human rights activism at the grassroots). The regular regional consultations “serve as a platform to air, discuss and document the real problems”,¹ to incite dialogue among participants, and also to create a “well informed consensus”² on addressing these problems. Participants combine the information on individual human rights cases with the structural analysis of the region-wide human rights problems to construct a bottom-up regional discourse and to collectively work toward norm creation.

The regional activism of the AHRC is also people-centered for multiple reasons. The main message of its activism is that human rights have to become integral part of regional cooperation in order to improve the human rights situation in Asian countries. It interprets and formulates human rights norms and principles by having people’s priorities in the focal point and taking into account how it affects people’s lives in the local environment. This is best demonstrated with the functioning of the Urgent Appeals Program of the AHRC.

The Urgent Appeals Program: Building campaigns on individual cases

The Urgent Appeals Program (UAP) is a primarily email-based alert-network that allows instantaneous chain-reactions to individual cases of human rights violations from all over Asia.³ Partner organisations of the AHRC alert the Hong Kong-based office about a human rights related incident via email or phone, and the news of the human rights violation is then edited and forwarded by the AHRC staff to a network of close to 200,000 recipients with the aim of raising

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public awareness of the human rights violations. Numerous Asian and international NGOs, international organisations and individual human rights activists are part of the email alert network. When an urgent appeal is sent through this network, recipients are urged to send a letter of concern to the target actors, which are identified by the AHRC as those authorities and persons in charge (locally, nationally and internationally) that are capable of intervening and improving the victim’s situation.

Metzl argues that owing to the advantages of online networking, regarding its speed, outreach and low costs, a new type of mass activism can be initiated, which incites participation and stimulates people to act. Guobin Yang similarly describes the mobilising effects online activism has even in China, where the internet is controlled by authorities. Considering this, the UAP can contribute to the activism of the AHRC not just as a tool of communication and information dissemination, but also as the facilitator of collective bottom-up action.

As discussed earlier (see Chapter 4), information technologies are vital for the effectiveness of the AHRC’s advocacy. The UAP uses a certain in-built multiplicator, which makes it easy for recipients of an urgent appeal to express their concerns about human rights violations. Simply by clicking on a button in the received message, a pre-drafted email is sent to the authorities involved in the particular case. In this way significant trans-boundary pressure can be built up in a short time, which often has a positive effect in regard to a particular case and also increases public awareness about the human rights problems. For those recipients who are unable to use the internet, the AHRC sends urgent appeals via fax or post.

There are, however, concerns about the effectiveness of the Urgent Appeal system that need to be addressed. Letter campaigns and urgent action activism was first introduced by

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6 Guobin Yang, “China since Tiananmen: Online Activism,” *Journal of Democracy*, 20, no. 3 (July 2009), 33-36.

7 This technology has been in use by the AHRC since 2003.
Amnesty International. Today, 48 years after its founding, it is still one of the primary methods of the global NGO. Like the AHRC, Amnesty used to apply automatically generated emails in its urgent action network. However, John N. Lannon has observed a change in the tactics of Amnesty whereby people are urged to write their own personal emails using the information provided by Amnesty International. This change was made in the belief that a great number of identical emails could be more easily dismissed by the targeted authorities. This assertion probably has some validity; yet the flip side of this approach is that people are also generally less willing to spend time on creating their own urgent appeals rather than merely forwarding a prepared one. Even if the emails and faxes of concern are identical and automatically generated, their large numbers can be overwhelming for the targeted actors, and consequently exert pressure on them to resolve the human rights problem, especially in the case of smaller local authorities.

Additionally, Ravi Nair (from the SAHRDC) argued that the concept of urgent appeals is outdated and ineffective, since the emails are mostly set aside as spam emails by the receivers. Lannon also suggests that emails are more easily ignored than letters or faxes due to a lack of material presence. Even if this is the case sometimes, the majority of urgent appeals have a certain effect, and they can be especially effective when combined with other forms of campaigning (media, lobbying politicians), as has been demonstrated by success stories both from Amnesty International and the AHRC (see Rajapakse’s case described below). Obviously,

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10 Interview with Ravi Nair, (Delhi, India, 22 August 2008).

11 Lannon, *Activism Made Easy*.

it is very difficult to determine with any certainty to what extent the positive developments in a certain case are the result of urgent appeals or other factors. However, based on the experiences of NGOs operating such networks, it can be concluded that urgent appeals have likely played an important role in the resolution of the cases. Additionally, the international acceptance of urgent appeals as a method is substantiated by the fact that the UN Special Procedures also employs such an instrument to assist the various Special Rapporteurs and Special Envoys in their work. 13

**The case of Lalith Rajapakse: The functioning of the Urgent Appeals Program**

One of the emblematic and longest running cases of the AHRC’s UAP is the story of Lalith Rajapakse, a young man from a village in Sri Lanka. At the time when his case reached the AHRC in Hong Kong in 2002, Sri Lanka had been through decades of violence and had a tragic history of mass disappearances. The AHRC was already familiar with the grave local situation owing to its years-long operations in the area. The narrative dominating the international perceptions about the human rights abuses in Sri Lanka focused mostly on the ethnic conflicts between the Sinhalese majority and the secessionist Tamil populations. 14 However, the activism of the AHRC in the area has revealed other aspects of the crisis – such as the widespread phenomenon of custodial torture, 15 and other severe violations committed by state authorities –

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15 Custodial torture is torture committed by state security forces (usually police) against a person in custody, which is in violation of fundamental human rights standards, see, Rod Morgan and Malcolm D. Evans, eds., *Protecting Prisoners: The Standards of the European Committee for the Prevention of Torture in Context* (Oxford: Oxford University Press, 1999).
which carry further significance to shaping the regional human rights discourse. The analysis of Rajapakse’s UA case holds relevance to the AHRC’s handling of other cases in the program, and his story is similar to many human rights violations in the area.

Rajapakse was arrested as a suspected thief and was taken to Kandana police station (18 April 2002), where he was repeatedly brutally assaulted. He was already lying unconscious on the cell floor when his grandfather at last found him three days after his arrest. Rajapakse only received medical help after his relatives raised concerns with a local politician about the situation. He remained in a coma for fifteen days having sustained traumatic head injuries as a result of the police brutality (as confirmed by medical reports). Although the police officers fabricated charges against him, Rajapakse was later released on bail by the local Magistrate (17 May 2002), and was acquitted in the following year (29 September 2003). Despite the court ruling, and the illegalities of his arrest and torture in custody, authorities failed to conduct a proper investigation, or to take any disciplinary action against the policemen involved. Rajapakse was given no remedy or compensation, not even a formal apology.

Rajapakse’s story could have easily come to an end at the time of his assault at the police station had it not been for his concerned grandfather, the help of local activists and the intervention of the AHRC. Due to the quick reaction of these actors and their excellence in gathering accurate details about the incident, the news of Rajapakse’s detention and torture was circulated internationally through the UA network within a short period of time. Owing to this,


20 Fernando, The Right to Speak Loudly, 48.
reports of the case were disseminated among the widest possible circle of actors (both domestic and international), and ultimately put pressure on the relevant authorities.

A significant feature of the AHRC’s method is that in contrast to most other urgent alert programs the AHRC places as much emphasis on the follow-up process as on the initial urgent appeal. Even after dispatching the first urgent appeal, the AHRC remains involved in the case by following the unfolding events, and by issuing new UAs at every important turning point in order to address all developments in the particular case. Other NGOs also conduct follow-up, but only in those more significant cases, around which they build their campaigns, whereas the AHRC tries to keep to this practice regarding every case if possible.

In the case of Rajapakse the first updated appeal was issued by the AHRC five days after the initial report, giving account of the Magistrate’s order to release Rajapakse.\(^21\) This follow-up process has stretched out for years after the original incident, and it is in fact still in progress today. Ongoing web coverage of the developments of the case, including a close scrutiny of the responses of authorities, serves to bring attention to the victim’s case and to inform the broader national and international community about the human rights situation.

The aims and effects of the UAP are multi-fold. Firstly it has an impact on the plight of victims by facilitating emergency intervention, providing them with various forms of support. The AHRC assisted Rajapakse with legal advice and legal representation, with some material support and personal protection by relocating him to another part of the country following his release.\(^22\) By helping a victim, it is also important for the AHRC to gain the trust of other victims, in order to ensure that they continue to come forward with their grievances rather than stay silent about the human rights problems.

Secondly, the UAP affects local communities through educating and empowering them. The AHRC teaches local populations about the importance of identifying injustices and pushing for their redress. Through their involvement in the program people learn about human rights in practice, ways to seek remedy for their grievances, and tactics to have their voices heard despite government suppression. In this way the AHRC aims to stimulate a gradual “mindset change” in

\(^{21}\) Asian Human Rights Commission, “Court Orders Release of Lalith Rajapakse.”

\(^{22}\) Interview with Basil W. J. Fernando, (Hong Kong, 22 May 2007).
the wider community so that people become more sensitive about human rights breaches and also show more solidarity toward victims. As Bijo Francis (Program Officer of the South Asia Desk at the AHRC) put it, “by acting as a loudspeaker for people’s otherwise suppressed grievances, [the AHRC] hands the chance to the people actually affected by the problems to change their own situation.”

Thirdly, by drawing conclusions from the individual UA cases the AHRC exposes and seeks solutions for structural problems. The shocking story of Rajapakse has sadly been the fate of many others in his country. By demonstrating similarities among the particular case and others from within Sri Lanka which were equally reported through the UAP, the AHRC shows that the individual case is not an isolated incident, but rather part of a pattern of problems in the policing and justice system of Sri Lanka. They have revealed that torture is broadly used as the “cheapest method of criminal investigation” by the often un-trained, resourceless and corrupt Sri Lankan police. Every single case taken on by the AHRC is an “alarm bell that signals a grave national problem”, such as the prevalence of illegal police conduct, incapacitation of justice delivery, corruption, lack of disciplinary control, and the consequent impunity of perpetrators. These symptoms expose the flawed functioning of law enforcement and criminal justice systems in many Asian countries.

The growing local awareness of the injustices and the mounting pressure on authorities usually leads to improvement in the actual case, and – provided that the campaigns of the AHRC and its UAP work well – also engenders structural reforms. In the case of Rajapakse, the first

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23 Ibid.

24 Interview with Bijo Francis, (Hong Kong, 30 May 2007).


26 Fernando, The Right to Speak Loudly, 50.

27 Asian Human Rights Commission, “Torture Victim, Lalith Rajapakse, was Acquitted of Fabricated Charges”.

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signs of such further reaching effects were the order of the Sri Lankan Attorney General about an official inquiry into the case by the Criminal Investigations Department,28 and his initiative to create the Prosecution of Torture Perpetrators Unit.29 Another result of the mounting pressure was the establishment of a National Police Commission to act as an independent supervisory body above the police force.30 These developments signal that torture has become a recognised offence even within official circles in Sri Lanka, and authorities started to take the importance of human rights standards slightly more seriously.

While bringing improvement in the local and national human rights situation, the AHRC also aims to transmit information to the international community in the hope that external actors intervene to improve the situation, especially in case of emergencies or large-scale injustices. However, the probability of external interventions hinges on a complexity of factors including the political climate, the approach of other external actors to the situation, the scale of the human rights crisis, and the publicity of the problem. It is difficult for Asian NGOs to persuade UN personnel to directly intervene and to halt unfolding human rights violations, but even attracting UN attention can lend weight to the NGO’s actions and contributes to alleviating the problem as it happened in the case of Rajapakse.

Due to the web-communications of the AHRC and the efficiency of the UAP, the news of Rajapakse’s torture reached the UN Special Rapporteur within days after the first Urgent Appeal was issued. Theo van Boven, the UN Special Rapporteur on Torture, sent his own Urgent Appeal on behalf of Rajapakse already on 16 May 2002.31 Taking advantage of this increased international awareness, the AHRC brought up the problem of custodial torture in Sri Lanka in front of the UN Commission of Human Rights (currently known as the UN Human Rights


29 Fernando, The Right to Speak Loudly, 11.


Council. Additionally, the AHRC submitted the case and other communications to the UN Human Rights Committee (Committee) exposing the lack of independence of the judiciary, and the denial of fair trial in Sri Lanka.

Despite the Sri Lankan government’s claim of inadmissibility, the UN Committee considered all domestic legal avenues to be exhausted due to “unreasonable prolonged delay” and thus, decided to hear the case. The deliberations of the Committee confirmed the AHRC’s criticisms, and condemned the Sri Lankan government for breaching the right to liberty and security (International Covenant on Civil and Political Rights (ICCPR), Article 9), not to be subjected to torture (ICCPR Article 7), and to have appropriate remedies for violations of such rights (ICCPR Article 2(3)).

The UAP is a key advocacy tool for the operations of the AHRC. It facilitates their information politics, firstly by bringing private matters to the public sphere (by publicising news of human rights violations), and secondly by channeling information from the domestic to the international community. The combination of the advocacy elements and information tactics of the UAP construct the AHRC’s reform policy and facilitates changes with respect to the domestic sphere, and also shapes the international human rights discourse with a collation of grassroots experiences.


36 Interview with Basil W. J. Fernando, (Hong Kong, 22 May 2007).

37 Ibid.
The Asian Charter of Human Rights

The first major initiative demonstrating the role of the AHRC as the catalyst of bottom-up regional changes is the creation of the “Asian Charter of Human Rights” (hereafter Charter)\(^\text{38}\) (17 May 1998).\(^\text{39}\) The alternative regionalism of the AHRC is manifest in the bottom-up norm creation of the Charter, its difference from the stance governments have on human rights, and in the innovative approach and normative content.

The drafting of the Charter involved a consultative process of four years with the participation of thousands of civil organisations and individuals from all over the region.\(^\text{40}\) The AHRC encouraged substantial contributions to the drafting by distributing several surveys among human rights NGOs, holding five rounds of sub-regional and national consultations, and rewriting the initial draft three times until all participants accepted the last version.\(^\text{41}\) In this way the AHRC achieved a high-level of participation, at least with regard to civil society (not with respect to authorities and governments). The drafters and participants of the consultations were composed of a wide range of civil society actors such as human rights research centres,\(^\text{42}\) church-related humanitarian organisations,\(^\text{43}\) various issue-specific NGOs (focusing on the plight of

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\(^{38}\) Asian Human Rights Commission, “Asian Human Rights Charter.” (see Appendix A)

\(^{39}\) The Asian Charter of Human Rights was declared on 17 May 1998 in Kwangju, the Republic of Korea.


\(^{41}\) Liyanage, *Asian Human Rights Charter*.

\(^{42}\) Such as the Centre for Socio-Legal Research and Documentation Service, Madras, India or the Research/Action Institute for Koreans in Japan (RAIK), Tokyo, Japan, see, Asian Human Rights Commission, “Appendix A: Groups and Individuals who were Involved with Shaping this Charter, Planning Committee,” (1998), [http://material.ahrchk.net/charter/mainfile.php/eng_charter/77/](http://material.ahrchk.net/charter/mainfile.php/eng_charter/77/) (accessed 21 May 2007).

\(^{43}\) Such as the Justice & Peace Commission of the Hong Kong Catholic Diocese, or the Christian Conference of Asia, Hong Kong, *Ibid*. 
women, children, migrants, students, fishermen), academics, and even national human rights institutions.

The alternative regionalism of the Asian Charter with respect to the stance of Asian states

The alternative regionalism of the AHRC permeates the Charter, as it provides a criticism of Asian governments’ domestic policies, and calls for reforms and changes in the regional human rights policies of states. The major differences regarding human rights regionalisation between Asian states and the NGO drafters concern sovereignty, development, people’s participation and the universality of human rights. The Charter rejects the strong adherence to the non-interference principle by Asian states, and asserts that “state sovereignty cannot be used as an excuse to evade international norms or ignore international institutions.”

Moreover, the drafters are outspoken about state-induced human rights violations by explicitly mentioning “state or private terrorism” and “circumstances in which a person may be deprived of his or her life by state authorities or officials.” They demand “open, humane and accountable” conduct from their governments, and ask for the increased participation of people in public affairs. With respect to developmental issues the Charter refutes the Asian values policy of only concentrating on economic growth, and interprets development instead as the “realization of the full potential of the human person.”

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44 Among others, Professor Yash Gai from the University of Hong Kong and Professor Byung-Sun Oh from Sogang University, Seoul, *Ibid.*


Distinctive standard-setting by the drafters

The approach the AHRC and its partners have taken in the creation of the Charter is different from the usual standard-setting process, and has brought new normative elements into the Asian human rights discourse. It refutes the official Asian values rhetoric, but also differs from the mainstream NGO stance which merely promotes the replication of international human rights in the local environment. Although the Charter applies international human rights standards as the basis, it is also shaped by the alternative regionalism of the AHRC, and as such it aims to re-construct international discourse within a framework created from the bottom-up.47

The AHRC and its civil society partners identify the lack of proper human rights implementation in the local context as the main underlying flaw in the Asian human right situation. They seek to remedy this by applying holistic and complex approach, and instead of concentrating on human rights norms in isolation, they focus on the context human rights need to be implemented in. Rather than merely codifying or declaring human rights based on the international human rights system, the Charter formulates them in a complex manner to denote what they indeed stand for, which aspect of the right is important and how they interpreted in the particular setting, what threatens them, and most importantly how they can be effectively enforced in the Asian environment.

While the right to life, for instance, is simply proclaimed in most international human rights documents,48 the Asian Charter re-constructs this fundamental right in the context of the Asian reality, drawing on the AHRC’s empirical evidence about the human rights situation at the grassroots. It is interpreted as the right to life “with basic human dignity”, denoting “the right to livelihood”, “to a habitat”, “to education”, and “to a clean and healthy environment”, which are


often neglected necessities in Asia.⁴⁹ The drafters have extended the fundamental concept of the right to life by taking into consideration economic and social wellbeing concerns such as adequate housing, education, health care or environment. As part of the contextual interpretation, the Charter highlights all menaces threatening the enjoyment of the right to life in the Asian practice, drawing attention to the problems of wars, conflicts, the failure of justice systems, and even to the state-supervised violence.⁵⁰

The drafters concentrate on the proper enforcement of human rights in the local and national environment, and accentuate the “gap between rights enshrined in these documents and the abject reality that denies people their rights”.⁵¹ They go beyond considering only the single dimension of the responsibility of states for guaranteeing human rights, and view implementation as a complex process which depends equally on the contributions of governments, civil society and the business sector, the proper functioning of legal and judicial institutions, constitutions and legal frameworks, and on sufficient public awareness about human rights. This indicates a holistic approach to implementation. The Charter not merely concentrates on the codification of rights in the domestic laws and on institutional implementation, but also draws attention to the importance of additional factors such as the perception of the public about rights and the role corporations could play in human rights protection.

**Normative innovations of the Charter: The right to peace**

The normative significance of the Charter is not necessarily the creation of new norms, rather the formulation of standards and normative proposals that have the potential to grow into legally binding norms. The drafters have introduced innovative forms of human rights standards on the basis that they are vital for the improvement of the human rights situation in Asia. The Charter declares “that all persons have the right to peace so that they can fully develop all their

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⁵⁰ *Ibid.*, Articles 3.4 – 3.5.

capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence.”

The preservation of peace has been an underlying principle for the international community. The firstly declared purpose of the United Nations (in the UN Charter) is to “maintain peace and security”; and the Universal Declaration of Human Rights affirms that human rights are the “foundation of freedom, justice and peace in the world”. However, the right to peace and the notion of human security have emerged in the international discourse only recently.

The UN General Assembly has accepted a Declaration in 1984, which proclaims peoples’ right to peace and assigns ensuing responsibilities to states. However, this document has to be considered with caution. As Dimitrijevic demonstrates, the Declaration has several problems, in that it lacks a clear definition of the right itself, the accompanying responsibilities, and the circle of beneficiaries. Moreover, the right is claimed on a collective basis, and thus the Declaration fails to focus on human security in terms of protecting the individual. Dimitrijevic also claims that the document does not reflect a global consensus, as it was initiated in the Cold War era and it was accepted only with a large number of abstentions. The Declaration was constructed more on the basis of political and propaganda motives than on genuine incentives. It is thus not necessarily the most adequate legal document to reinforce international commitment to the right

52 Ibid, Art. 4. 1.


to peace. The African Banjul Charter also declared the right to peace, but similarly failed to provide a clear definition.\textsuperscript{57}

Furthermore, the right to peace or human security has been almost completely absent from the Asian discourse. The official Bangkok Declaration (1993) only mentions security in relation to the territorial integrity of states, and fails to link it to human rights or to the protection of individuals. Thus, there is a further need to conceptualise the right to peace and notion of human security both internationally and regionally.

The Charter is in line with the global shift from traditional national security to focusing on human security.\textsuperscript{58} As opposed to the mainstream standpoint suggesting that the right to peace mostly concerns the territorial integrity of states, the drafters implied that peace is also abused when states commit violations against their own citizens. The Charter interprets the notion of security by focusing on individual wellbeing. The drafters direct the request at states that “the demands of national integrity or protection against the threats of foreign domination cannot now be used as a pretext for refusing to the people their right to personal security and peaceful existence”, which is a justified demand in Asia, where the adherence to national sovereignty is a favoured trump card of governments arguing against supranational human rights protection. Ramesh Thakur writes about the potential power of the human security concept to shape policies by promoting the “primacy of human rights,…bottom-up approach, regional focus, use of legal instruments”,\textsuperscript{59} all of which are also reflected in the stance of the AHRC.

In addition to being in accordance with the international trends, the proclamation of the right to peace in the Charter is innovative and contributes normatively to the regional and international discourse. The drafters re-interpret and contextualise the notion of human security by showing what its implications ought to be for the local communities in Asia. As opposed to earlier UN documents, the Charter stresses the implementation of the right to peace, and asserts


\textsuperscript{59} \textit{Ibid}, 90.
that “the duty of the state to maintain law and order should be conducted under strict restraint on
the use of force in accordance with standards established by the international community,
including humanitarian law”. 60 The demand serves to provide “protection against all forms of
state violence, including violence perpetrated by its police and military forces”. 61 This is justified
on the grounds that a great number of the AHRC’s urgent appeals have reported about human
rights abuses that could be directly linked to the operations of state police or military. The AHRC
also stresses other factors that are considered to be the greatest impediments on the fulfilment of
the right to peace (drawing on their experiences on the ground) such as the menaces of “wars and
civil conflicts which have caused many deaths, mutilation of bodies, external and internal
displacement of persons, break up of families”. 62

On the whole, proposing the right to peace is part of the AHRC-led collective NGO effort
to influence regional cooperation and to set a normative agenda that centres on human rights.
Taking the approach which is also espoused by the UN – that “peace is not only the absence of
conflict”, 63 the drafters consider the right to peace from multiple aspects (including threat to
physical wellbeing, and to welfare and liberties), and define it in terms of the multifaceted
challenges of protecting individuals in the Asian setting. It is a detailed conceptualisation of the
right to peace intended for the Asian context, and thus resonating with Rizal Sukma’s assertions
that human security can be applied as a basis and as a facilitator of regional cooperation in East
Asia. 64

61 Ibid.
62 Ibid.
63 United Nations, Resolution Adopted by the United Nations General Assembly, A/RES/52/243, “Declaration and
(accessed 19 December 2009).
64 Rizal Sukma, “Human Security Cooperation as a Building Block for East Asia Community,” in East Asia at
Crossroads, eds., Jusuf Wanandi and Tadashi Yamamoto (Tokyo; New York: Japan Centre for International
Exchange, 2008), 105-117.
Implications of the Asian Charter of Human Rights

The Asian Charter seems to have accomplished a bottom-up norm construction that entrenches international human rights but in the form of a framework that can be effectively implemented in the local context. Questions arise concerning the possible long-term implications of this Charter in relation to the regional conduct of states, the transnational activism of civil society, and human rights regionalisation in Asia. Seth\textsuperscript{65} and Wilde\textsuperscript{66} regard the Charter as a significant intermediary step in the gradual development toward an official regional agreement on human rights in Asia.

The Charter includes the goal of a comprehensive normative framework in the form of an “inter-state Convention of Human Rights, formulated in regional forums with the collaboration of national and regional NGOs,”\textsuperscript{67} to which this Charter can serve as a pre-cursor.\textsuperscript{68} The drafters suggested some pointers for a future convention by stressing the importance of the implementation of rights, consistency with international norms, the interrelated responsibilities of states, civil society and the business sector regarding the enforcement of rights. They also constructed concepts and standards that can form the basis for new norms in the region (like the right to peace or to social justice). This is thus a significant normative contribution that can affect the future development of human rights in Asia.

The implications of the Charter with respect to governments are more ambiguous. The aim of the drafters was to create a normative framework that serves as a starting point for an official regional human rights agreement with the involvement of governments beside civil society.\textsuperscript{69} The AHRC has made no particular efforts to liaise with Asian officials and politicians about the Charter or about any other collective regional human rights instrument, whereas other

\textsuperscript{65} Seth, “Asian Human Rights,” 22.

\textsuperscript{66} Wilde, “NGO Proposals for an Asia-Pacific Human Rights System,” 142.


\textsuperscript{68} Interview with Basil W. J. Fernando, (Hong Kong, 29 May 2007).

\textsuperscript{69} Interview with Basil W. J. Fernando, (Hong Kong, 22 May 2007).
Asian NGOs, such as FORUM-ASIA, have been taking part in talks about human rights regionalisation with ASEAN for several years.

The absence of interaction with governments is due partly to the failure of politicians to pay attention to the AHRC, and partly to the reluctance of the AHRC to spend time on lobbying decision-makers whose stance is generally opposed to the their own mission. Instead, the AHRC vows to build up a grassroots and civil-society based activist movement first, and also to involve professionals – such as lawyers, judges, academics, journalists and doctors – in its activism to bring about changes in the local communities, in the professional field and in the legal system. Interaction and cooperation with governments is to be initiated once bottom-up reforms and normative movements have achieved certain changes in the local and domestic conduct and the AHRC managed to build up leverage to have a strong transnational presence.

Although the AHRC keeps on pressuring states through its regional advocacy (through the Urgent Appeals Program, at international forums, and by way of community mobilisation), there is a lack of initiative to jolt the public sector and governments into interaction about the Charter and its implications. Since the AHRC acknowledges the necessity of integrating governments into a proposed regional human rights instrument to make it viable for the long-term, the NGO needs to find ways to forge meaningful cooperation with states. Also, through a more direct form of collaboration with authorities and public officials, the AHRC could probably exert increased influence on the human rights policies of states.

The creation of the Charter and the general regional activism of the AHRC do not involve interactions with governments, but has a much more intensive effect on civil society. The drafting process was regarded by the AHRC as a “mass education exercise” through which drafters raised awareness of the human rights problems, and also popularised the idea of forming a regional human rights instrument. In a sense it has also been a folk school-style exercise for the AHRC and its partners (see Chapter 4). The drafting has stimulated other NGOs and human rights defenders to engage in a common exercise of norm-creation, and also motivated civil

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70 *Ibid*; Interview with Bijo Francis, (Hong Kong, 30 May 2007).

society to embark on new campaigns and actions on the basis of these new norms. The Charter has provided a common regional basis for the improvement of human rights from the bottom-up, and thus the AHRC has contributed to the re-vitalisation of the regional human rights regime in Asia.

The creators of the Charter nevertheless emphasised that it is not a final product, but a significant stage on the way to reaching an Asia-wide consensus on human rights with the inclusion of civil society, the broader public and also states. The consultation process (still ongoing at the time of writing) is similar to the drafting of the Asian Charter owing to its inclusiveness, but more prolonged in time with a long-term vision of stimulating reforms. The changes in the approach of

Asian Charter on the Rule of Law: The new regional project of the AHRC

Together, we are building a common understanding. This understanding now needs to be expressed more fully to become the prevailing discourse the rule of law and human rights in Asia.73

Following the Charter, the main theme of the AHRC-led consultations of Asian NGOs and activists have shifted to focus primarily on the rule of law and the functioning of legal systems, in an effort to work toward the creation of the Asian Charter on the Rule of Law (hereafter the Rule of Law Charter). The consultation process (still ongoing at the time of writing) is similar to the drafting of the Asian Charter owing to its inclusiveness, but more prolonged in time with a long-term vision of stimulating reforms. The changes in the approach of

72 Ibid.

73 Fernando, The Right to Speak Loudly, 2.

the AHRC to the drafting of this second Charter are due to the differences in the main theme of
the consultations. The role of the rule of law and the proper functioning of justice systems are
part of a more specific but also rather complex topic. This issue-area is also mostly uncharted in
terms of the Asian regional context, and thus warrants a slower and gradual process of
discussions from the NGOs.

This new regional project of the AHRC is a follow-up to the Asian Charter in the sense
that it builds on the deliberations of the previous regional conferences, and also seeks to develop
the discourse further. The implementation of human rights was already an important element in
the Charter, but it only became a central organising principle of discussions about the Rule of
Law Charter. The focus of the consultations looks beyond the individual dimension of human
rights violations and concentrates primarily on the structural causes of human rights problems.
The AHRC and its partners seek to explore the underlying causes of the regionally widespread
cases of torture, enforced disappearances, extrajudicial killings, and illegal detention which are
regularly documented by their activists. In particular they focus on the reasons for the failure of
the enforcement of rights and for the lack of remedies for victims of injustices.

_A protectionist approach to human rights_

The new approach taken by the participants of the consultations on the Rule of Law
Charter suggests a break from the traditional human rights NGO stance that concentrates mainly
on human rights promotion and education. The AHRC and its partners seek to develop a

75 Asian Human Rights Commission, _The Rule of Law and Human Rights in Asia_ (Hong Kong, China: Human Rights
Correspondence School and the Asian Human Rights Commission, 2006),

76 Some of the cases include: Asian Human Rights Commission, Statement, AS-STM-220-2009, “Burma: Use of
Torture in Ordinary Criminal Cases,” (29 October 2009),
http://www.ahrchk.net/statements/mainfile.php/2009statements/2275 (accessed 22 January 2010); Asian Human
Rights Commission, Urgent Appeal, AHRC-UA C-014-2009, “Indonesia: Torture and Maltreatment of Political
Torture, Violence against Women, Media Freedoms and the Lack of an Independent Judiciary,” (1 June 2009),
protectionist regime by concentrating above all on the adequate enforcement and protection of human rights. This of course does not mean that they would neglect human right promotion. However, their regional advocacy places more emphasis on the importance of human rights protection. While the mainstream attitude to human rights improvement stresses the codification and ratification of human rights treaties, and has the actual rights in its focal point, the approach of the AHRC focuses on the structural conditions of securing the implementation of rights. It aims to develop new human rights related standards, which are not necessarily fundamental rights, but concepts, codes of conduct and rules that are preconditions for human rights implementation. In a sense, this is also a certain type of normative activism that contributes to the advancement of the regional human rights discourse.

A further innovation of the AHRC is the expansion of the traditional interpretation of human rights protection by focusing on the rule of law and its institutional requirements. They base this approach on the argument that “[H]uman rights are implemented via institutions of justice: the police, prosecutors and judiciary. If these are not functioning according to the rule of law, human rights cannot be realized.”\(^\text{77}\) There seem to be two main pillars of this rule of law-focused approach: one concerns legal and normative problems, and the other focuses on the institutional framework.

With regard to legal problems, the AHRC exposes cases in which governments abuse domestic legislations to serve their own interests, especially when they silence their internal opponents. For instance, they have brought up cases alleging the abuse of the Internal Security Act in Malaysia, which led to series of arrests and unfair court proceedings.\(^\text{78}\) The AHRC


demonstrates the existence of a gap between the codified laws and constitution of countries, and the reality of the human rights situation on the ground. 79

The question of institutional malfunctioning gains special importance in the regional advocacy of the AHRC, since most of its documented rights violations are the direct consequences of the unlawful or negligent conduct of the police, or the prosecution or the judiciary, and in many cases all three combined. The AHRC and the participants of the regional consultations examine both the legal framework and the institutional structure in a comprehensive manner, by taking into account the complex interplay of different actors (governments, civil society, and business sector), the legal institutional framework, political culture and social life.

The drafting of the Rule of Law Charter has involved so far five regional consultations with the supervision of the AHRC (always held at its office in Hong Kong). The consultations have hosted around 20-30 participants 80 from countries from South, Southeast, East and Northeast Asia. 81 The individual participants vary from consultation to consultation, but come from similar background, and are all devoted to human rights activism, either as a representative of other local human rights NGOs, or as human rights lawyers, ex-judges, legal academics, and journalists.

Each of the regional discussions seeks to highlight one particular feature of the decline of the rule of law in Asian countries, and to analyse it also from the aspect of human rights implementation. In this way they illuminate problems, such as the impunity of rights violator public servants, bribery, corruption, lack of adequate training, which are not unequivocally human rights-related, but they certainly add to the deterioration of human rights conditions in


80 There were 24 participants at the first consultation; 23 at the second; 27 at the third; 16 at the fourth with 6 guest speakers; and 27 at the fifth consultation.

81 The participants came from the following countries: Bangladesh, Burma (Myanmar), Cambodia, China, Hong Kong / China, India, Indonesia, Japan, Mongolia, Nepal, Pakistan, Philippines, South Korea, Sri Lanka, Thailand, and also from Canada, and the United Kingdom.
Asian countries. Besides demonstrating that contextualism in human rights implementation warrants the examination of a diversity of factors (pertaining among others to bureaucracy, economics, social and cultural habits), the AHRC and the participants also reveal that these diverse factors are interlinked, and that they collectively shape local and regional human rights developments.

The first\textsuperscript{82} and second\textsuperscript{83} consultations opened the drafting process with discussing the problem of the control the executive has over the judiciary, and in connection with that discussed the corrupt conduct of courts. Based on the experiences of the NGOs in Asian countries, numerous aspects and causes of the judicial corruption were identified such as the inadequate separation of powers, lack of clear regulations for judicial appointments, the absence of disciplinary control, and insufficient training and funds.\textsuperscript{84} In addition to that, the consultations have also revealed the malfunctioning of the police and the prosecution, whose operations are interlinked with the judiciary.

The third consultation focused specifically on the often neglected but regionally widespread problem of long delays in court procedures, and its consequences for victims’ plight and for the overall human rights situation.\textsuperscript{85} The role the prosecution plays in the justice system and particularly in the implementation of human rights was discussed at the fourth regional consultation.\textsuperscript{86} While the fifth consultation analysed the situation of lawyers in Asia, and brainstormed about the possible ways for attorneys of law to further human rights implementation

\textsuperscript{82} The First Consultation on the Asian Charter on the Rule of Law, 16-21 February 2006, Hong Kong, see, \textit{Towards the Elimination of Corruption and Executive Control of the Judiciary}.

\textsuperscript{83} The Second Consultation on the Asian Charter on the Rule of Law, 13-19 May 2007, Hong Kong, see, Peiris, ed., \textit{The Asian Charter on the Rule of Law}.

\textsuperscript{84} \textit{Towards the Elimination of Corruption and Executive Control of the Judiciary}; Peiris, \textit{The Asian Charter on the Rule of Law}.


\textsuperscript{86} The Fourth Consultation on the Asian Charter on the Rule of Law, 17-21 November 2008, Hong Kong, see, Cheesman, \textit{The Inability to Prosecute and Failure to Protect Human Rights in Asia}.
in the local environment.\textsuperscript{87} The participant NGOs have also demonstrated that the malfunctioning of parts of justice-delivery cause impunity and the loss of remedy for victims, and thus give rise to human rights violations (like the violation of the right to fair hearing\textsuperscript{88} or the right of criminally charged to be presumed innocent until proved guilty according to law\textsuperscript{89}).

The consultations also considered questions of constitutionalism and legal reforms with respect to creating regulations in accordance with accountability, transparency and participation. These principles are considered to be the main antidote against corruption and impunity which are among the underlying causes of human rights problems in Asian countries.\textsuperscript{90} Beyond urging institutional changes, the NGOs call for legal reforms with human rights in the central focus and demand the appropriate implementation of laws.

The AHRC-led consultations and their deliberations have constructed a regional NGO discourse on human rights development with a specific emphasis on rights implementation, the rule of law and the proper operation of the legal system, with the intention of influencing Asian human rights developments. In distinction to the mainstream regional human rights discourse that concentrates only on certain transnational problems (such as refugee flows, migrant workers and human trafficking), the consultations conducted by the AHRC have revealed that human rights problems originate in the flawed functioning of domestic legal systems and the abuse of laws by national authorities. The point of their regional consultations is to highlight the need to address these problems in a regionally coordinated manner with the involvement of civil society and the broader public. The advocacy of the NGOs thus suggest that Asian states cannot hope to resolve the transnational problems they singled out, if they continue to avoid addressing the weaknesses in their domestic human rights implementation.


\textsuperscript{89}“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.” “International Covenant on Civil and Political Rights,” Art. 14. \textit{Ibid}.

\textsuperscript{90}Peiris, \textit{The Asian Charter on the Rule of Law}. 

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The impact of the AHRC’s regional advocacy

The implications of the regional advocacy of the AHRC are analysed by considering the aims and impact of its activism along the lines of the suggestions of Keck and Sikkink about measuring the impact of transnational networks (see Chapter 1). It is difficult to ascertain the effects of its operations with certainty, but this thesis looks at changes in attitude and policies and human rights developments that reflect the intentions and mission of the AHRC. With regard to the first point of Keck and Sikkink, the AHRC has influenced agenda-setting, since the idea of a regional human rights instrument has gained a growing appeal among states and civil society in Asia.

In terms of civil society and other Asian human rights NGOs, the AHRC seeks to influence their operation through enhancing their participation in a regionally coordinated effort to improve the human rights situation. These regional consultations revitalise civil society in the sense that participants from diverse background share and exchange experiences and methods, then take fresh ideas and new knowledge and skills with them to apply it in their respective countries. The impact of the regional advocacy of the AHRC is mainly palpable in terms of the agenda, general approach, discursive positions and campaign themes of other NGOs and human rights activists. The AHRC’s drive toward the regionalisation of human rights motivates other NGOs to address transnational human rights problems in a regionally coordinated manner. For instance, the SAFHR stressed the need for creating a regional legal framework for the protection of refugees in Asia.  

Moreover, most nationally operating human rights NGOs view the creation of a regional human rights system as an essential part of human rights development in Asia, and have it among their goals to contribute to its creation, as confirmed by senior staff of the SAHRDC and the SAFHR.


92 Interview with Ravi Nair, (Delhi, India, 22 August 2008).

93 Interview with Ram Narayan Kumar, (Kathmandu, Nepal, 29 August 2008).
The domestic human rights situation is still disappointing in many parts of Asia. Nevertheless, the AHRC has recorded encouraging political and legal developments even in states with notoriously poor human rights records. The 2009 human rights country reports issued by the AHRC reveal signs of a positively changing approach, for instance, in Bangladeshi politics. After series of human rights violations under the state of emergency, the Bangladesh government formed by the Awami League has made pledges about the implementation of a “Charter for Change” ("Din Badaler Sanad") with human rights, rule of law and anti-corruption measures at its core. Despite that these promises have not been realised so far, the adjustments by the political leadership in their attitude and rhetoric are hopeful signs.

Actual changes have taken place in Indonesia where the police has reformed its internal regulations with special regard to human rights. However, there is a problem with implementation, as the regulatory reforms have not taken root in practice yet. Pakistan has ratified the two major international human rights covenants and also the Convention against

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Torture in 2008,\textsuperscript{100} which is a promising development in a country that has attracted the attention of the AHRC due to its frequent rights violations. Further positive legal changes in the region were documented by the AHRC with respect to the Philippines where an anti-torture law was introduced,\textsuperscript{101} along with the new “Republic Act 9710” which intends to eliminate discrimination against women.\textsuperscript{102} Bangladesh similarly enacted a bill making torture a criminally punishable offence in accordance with international law and the demands of the AHRC.\textsuperscript{103} These state measures, however, often not properly enforced in practise, nonetheless indicate that the behaviour and approach of Asian states are inevitably shaped by the growing NGO and international pressure toward human rights improvement. All the above outlined changes reflect the demands the AHRC and its partners accentuate in their regional advocacy.

With regard to the international community, the AHRC aims to maintain a continuous communication channel toward international actors by circulating its publications and addressing statements and open letters to various bodies and agencies of the UN and to other organisations. The AHRC sends its delegate to each session of the UN Human Rights Council, where their written or verbal statements seek to expose the human rights realities in Asian countries. For instance, using the occasion that Bangladesh was a member of the UN Human Rights Council (until 2012),\textsuperscript{104} the AHRC submitted a written statement highlighting the damaging consequences of the prolonged state of emergency in the country in 2008.\textsuperscript{105} The AHRC also compiles and


\textsuperscript{102}Ibid, 20.


publishes comprehensive annual reports of Asian countries each year, and sends them to the governments that they scrutinised, to national authorities, international actors, UN bodies, foreign politicians, the international and local media, and also makes it accessible on its main website. They additionally contribute to the Universal Periodic Reviews with submitting their own reports.

The AHRC achieves considerable results internationally when some of its Urgent Appeals attract the attention of global actors and create awareness about its campaigns. Owing to the efforts of the AHRC, two members of the European Parliament issued a written question to the Council of Ministers and to the European Commission concerning the failure of the Thai government in investigating the case of Somchai Neelaphaijit, the still unresolved disappearance of the Thai human rights lawyer whose case was taken on the agenda of the AHRC. The news of this case also resonated both in international and local media, and was included in the annual human rights report of the European Union. Although this development failed to bring about results in the concrete case, at least the AHRC managed to draw international attention to the intertwined problems of torture, disappearances and impunity afflicting Thailand.

As far as their normative achievements are concerned, the activism of the AHRC is in line with the international trends, and contributes to the global discourse on the rule of law with an Asia-specific viewpoint. Some elements of the international trends show emerging signs which

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106 The AHRC publishes reports about the following countries: Bangladesh, Burma, Cambodia, India, Indonesia, Nepal, Pakistan, the Philippines, the Republic of Korea, Sri Lanka and Thailand.


108 Interview with Michael Anthony, (Hong Kong, 30 May 2007).


are similar to the specific theme that the AHRC focuses on. Among others, the Office of the High Commissioner for Human Rights issued a report on the rule of law in 2006 with a particular emphasis on the proper functioning of the legal institutional framework, which is a main element in the analyses of the AHRC as well. Also, the publication of the Regional Partnerships for the Millennium Developmental Goals in Asia and the Pacific interprets good governance in terms of “participation; the rule of law; transparency; responsiveness to public will and needs; consensus orientation; equity and inclusiveness;” which is also a reflection of the main concerns highlighted in the regional advocacy of the AHRC.

However, most international documents focusing on the rule of law framework are specifically directed at post-conflict situations and discuss the issue in the context of peacekeeping, or some, with regard to international investments. By contrast, the AHRC demonstrates that concentrating on the implementation of human rights and the rule of law is also an effective approach to the overall human rights protection in the domestic sphere, and also regionally and internationally.

As the outcome of a series of regional consultations the AHRC has developed a specific human rights discourse concentrating mainly on national legal structures with the aim of achieving better results in human rights implementation. They have created a framework for implementing international human rights standards in a regionally specific manner by expanding the traditional interpretation of human rights norms so as to address the regionally prevalent


political, social and legal problems, which impede people’s equal entitlement to their rights. Although the rule of law of the AHRC discourse seems to concentrate mainly on domestic structures, it has the potential to grow into a regional framework that could be applicable in all Asian states. Such regional framework can be completed once the Rule of Law Charter is finalised at the end of the still ongoing drafting process.

Conclusion

The alternative regionalism of the AHRC is alternative in the sense that it is different from the standpoint of governments, as well as innovative in its approach and in its normative activism. This chapter has demonstrated that the AHRC maintains a regional approach that is people-centred and concentrates on human rights improvement, and it is thus opposed to governmental policies that are primarily shaped by states’ self-interests and the principles of national sovereignty and non-interference into domestic affairs. However, the AHRC does not formulate its regional activism specifically with relation to the stance of governments; instead, it concentrates almost entirely on civil society actors. By using the unique combination of advocacy elements, the AHRC created an instrument, the Urgent Appeals Program, through which its regional activism is constructed based on individual cases from all over Asia.

The assessment of the drafting of the Asian Charter has demonstrated and the ongoing regional consultations in preparation for the Rule of Law Charter also indicate that the AHRC actively seeks to contribute to regional human rights developments. These regional consultations have brought up and addressed human rights problems and aspects of the human rights situation that had been mostly ignored before in the regional context.

The drafters of the Asian Charter have created a comprehensive normative framework that interprets human rights in the local context, and it can serve as the basis for future development of an Asian human rights system. The current regional advocacy of the AHRC seeks to influence the regional human rights discourse by putting human rights enforcement and protection to the forefront, and setting standards and norms for the adequate operation of justice systems. The reformative approach and the normative innovation of this advocacy have a great
significance in terms of the development of human rights in Asia. The next chapter will examine the regional operations of similar NGOs, which however, pay more attention to the inter-state policies on human rights.
Chapter 6 – The regional activism of FORUM-ASIA and the Solidarity for Asian People’s Advocacy

The Asian region is lagging behind other regions in promoting and protecting human rights. It must catch up with others on this front if it is going to ensure human dignity, long lasting peace and sustainable development in the region, says Asian Forum for Human Rights and Development (FORUM-ASIA), in conjunction with the International Human Rights Day on 10 December.”¹

Introduction

The aim of this chapter is to examine other regionally operating human rights NGOs, with a particular focus on the Asian Forum for Human Rights and Development (FORUM-ASIA). It will be established that, despite a difference in their structure (FORUM-ASIA is a membership based organisation), FORUM-ASIA and the AHRC have similar focus-areas and approach, pursue similar methods and activities, and are both the representatives of the narrow group of Asian human rights NGOs operating on a regional-scale. Owing to the parallels between FORUM-ASIA and the AHRC, the general activism of FORUM-ASIA will only be outlined briefly with references to the human rights activities of the AHRC (see Chapters 4 and 5).

The second part of this chapter discusses the regional activism of FORUM-ASIA, and highlights its major dissimilarities in comparison with the regional advocacy of the AHRC. The regional advocacies of these NGOs are both interpreted as the manifestations of alternative regionalism (see Chapter 1). Their regional advocacy is nevertheless different due to dissimilar approaches that will be analysed by looking at the rationales and methods of developing their respective regional activism.

FORUM-ASIA conducts a large part of its regional activities through the Solidarity for Asian People’s Advocacy (SAPA), a network organisation – in which FORUM-ASIA has been a leading member since its 2006 founding.\(^2\) FORUM-ASIA’s participation in the SAPA network is geared toward influencing the development of the human rights agenda of ASEAN and to contribute to a regional human rights mechanism. Therefore the majority of FORUM-ASIA’s regional work is discussed by scrutinising the activities of SAPA.

**FORUM-ASIA: Human rights activism in parallel with the work of the AHRC**

FORUM-ASIA shares the characteristics outlined at the beginning of Chapter 4 which delineate the features of the AHRC. FORUM-ASIA is similarly a core mandate human rights NGO with a commitment to promote and protect the whole spectrum of human rights. Like the AHRC, FORUM-ASIA is a native Asian NGO. Despite having an office in Geneva,\(^3\) it conducts the majority of its activities in Asia, their staffs is mostly from Asian backgrounds, and it is not supervised by a centre outside of the region. FORUM-ASIA also has a regional outreach, and concentrates mostly on countries in South and Southeast Asia, since most of its member NGOs are located in these areas, in addition to a few NGOs from Mongolia, South Korea, Taiwan and Japan.

Like the AHRC, FORUM-ASIA pursues a complex activism that goes beyond emergency relief and information gathering, and concentrates mainly on civil and political rights and legal issues. Thus the basic features of FORUM-ASIA are similar to those of the AHRC in many respects. Structurally, however, there are differences between them, because FORUM-ASIA is a membership-based network organisation composed of several national human rights NGOs. It was founded in 1991 as a result of a regional consultation of Asian human rights and


\(^3\) The office in Geneva has the advantage of being in proximity of the main international human rights forums, such as the Human Rights Council.
developmental NGOs, which decided to fuse and form an organisation to achieve a more close-knit and effective collaboration in the region. FORUM-ASIA currently has 46 member organisations from 16 countries of the region (mostly from South and Southeast Asia). All of its member organisations are nationally operating human rights NGOs, some of which are analysed and mentioned in Chapter 3, such as Odhikar, Ain O Salish Kendra (Bangladesh), People’s Watch (India), KONTRAS (Indonesia), SUARAM (Malaysia) and the TFDP (Philippines).

A well-organised structure ensures the effective coordination of FORUM-ASIA’s work. It is built on a loose but steady network of NGOs from across Asia, yet it is directed by a core group of pan-Asian human rights experts. An Executive Committee, elected by a General Assembly of all of its NGO members, heads the Secretariat and manages everyday operations. There is a considerable diversity among its members, including NGOs with only legal orientation (Madaripur Legal Aid Association), with human rights education as their main profile (Human Rights Education Institute of Burma), NGOs that are gender-specific (Women’s Welfare Society), or rural-development focused (Rural-Development Society) among others. Thus it is a challenge for them to maintain a sense of cohesion and bringing them together on a unified platform.

By contrast, the AHRC is not a membership-based network, but a single organisation with close partners at the grassroots. The AHRC acts as a hub, to which the independent local organisations are linked separately, but together they do not form a single entity. The AHRC frequently implements its own human rights education or community building programs in the

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8 Swedish International Development Cooperation Agency and Office of Human Rights Studies and Social Development, Mahidol University, Thailand, Evaluation report AHRC/ALRC, 22.
local environment.\textsuperscript{9} FORUM-ASIA uses similar tools in its activism as the AHRC, but it does not pursue activities at the grassroots such as human rights education, local community projects, and litigation. Instead, its member NGOs carry out those activities, whereas the central management of FORUM-ASIA devises the major campaign strategies and plans international activism.

Notwithstanding their different structure and the minor dissimilarities in their activities, the AHRC and FORUM-ASIA share the goal of assisting those who are the most vulnerable to human rights violations. A large proportion of human rights abuses in Asia affect marginalised and vulnerable groups that are often discriminated against due to their ethnicity, religion, caste, gender, language or sexuality. In addition to acknowledging the economic and social difficulties these people have to face (poverty, inadequate health care, housing and schooling, and environmental hazards among others), FORUM-ASIA draws attention to the array of restrictions on the civil and political rights of these groups. Their activism addresses discrimination that is based on caste (in Nepal, India and Bangladesh\textsuperscript{10}), gender and age (especially, women and children, in Bhutan and Nepal\textsuperscript{11}), religion (in India and Nepal\textsuperscript{12}), and ethnicity (against the minority Tamil in Sri Lanka\textsuperscript{13}).

\textsuperscript{9} For instance, the Folk School method was applied in the AHRC’s work with Dalit communities near Varanasi. Interview with Bijo Francis, (Hong Kong, 30 May 2007).


Owing to the parallels in their activism strategies, FORUM-ASIA and the AHRC have arrived at similar viewpoints regarding the root causes of the most widespread human rights problems in Asian countries. Although they deal with different cases, FORUM-ASIA shares the assessment of the AHRC that corruption, abuse of laws by authorities, lack of independence of the key legal institutions and prevalent impunity are the underlying reasons for the deterioration of the human rights conditions in most Asian states. In order to demonstrate “a perpetuation of the cycle of impunity”, 14 FORUM-ASIA calls attention to the situation in Indonesia where “since the fall of Suharto in 1998, no Indonesian general has yet been successfully prosecuted for human rights abuses”. 15 In order to demonstrate the abuse of laws – that was also exposed by the AHRC – FORUM-ASIA brought up the case of Wong Chin Huat at the 11th session of the UN Human Rights Council, who is a journalist arrested under the 1848 Sedition Act in Malaysia for his articles on a national campaign protesting against undemocratic political manoeuvres. 16 There is thus a palpable discursive and rhetorical parallel between the activism of the AHRC and FORUM-ASIA, which also appears to a degree in their regional advocacy, as will now be considered.

With respect to facilitating regional consultations among Asian human rights NGOs and activists, FORUM-ASIA shows further similarities with the AHRC. Like the AHRC, “FORUM-ASIA seeks to facilitate dialogue, capacity-building and networking among human rights defenders, civil society actors and organisations in Asia to achieve a full realisation of human


rights and human development in the region. They conduct an “Annual Training and Study Session for Asian Human Rights Defenders” with the aim of empowering their members and partners with adequate human rights knowledge, providing them with an understanding of their various advocacy plans and of the role of human rights defenders in the region. These regional consultations organised both by FORUM-ASIA and the AHRC serve as to facilitate the development of a common civil society stance and thus to contribute to the regional or even to the international human rights discourse. For instance, FORUM-ASIA convened a “Writeshop on Asian Civil Society Submission to the Outcome Document of the Durban Review Conference” (held in Bangkok, Thailand, 8-9 January 2009), where a compilation was put together by the participants that was used as a “lobby material” at the UN Durban World Conference on Racism.

Regional activism, where differences become apparent: The activities of the Solidarity for Asian People’s Advocacy (SAPA)

FORUM-ASIA as part of the regional activism of SAPA

Clearly, there are many parallels between the advocacy of the AHRC and that of FORUM-ASIA. Yet they are different considering the fundamentals of their regional advocacy. While the AHRC develops its own course of human rights regionalism, concentrating only on the involvement of civil society partners, FORUM-ASIA pursues its regional advocacy in the context of an ongoing interaction with an intergovernmental organisation, the Association of Southeast Asian Nations (ASEAN). A relevant question arises as to how similar regional approaches to human rights activism that stem from a similar basis (values, outlook, and equally utilising


information derived from grassroots) can have divergent implications and outcomes when applied through different regional strategies.

SAPA was founded in 2006, growing out of the region-wide consultations of human rights defenders in Asia.\(^{20}\) It acts as a pan-Asian civil society hub by aggregating a variety of civil society actors such as NGOs, people’s organisations, trade unions and other civil society organisations. Currently SAPA has more than 100 members.\(^{21}\) Some of the other NGOs involved in SAPA have already been mentioned, such as Focus on the Global South, South East Asian Committee for Advocacy (SEACA), Thinkcentre, and Migrant Forum Asia.

Without shedding its independence and autonomous functioning, FORUM-ASIA conducts the majority of its regional advocacy through its involvement in the Solidarity of Asian People’s Advocacy (SAPA). FORUM-ASIA is the convener of SAPA’s Regional Steering Committee,\(^{22}\) and thus participates and takes a central role in most regional SAPA advocacy initiatives and activities. The campaign messages of SAPA resonate with the discursive stance of FORUM-ASIA, especially regarding ASEAN and human rights regionalism. Moreover, a significant part of SAPA’s publications and communications are collectively authored with FORUM-ASIA.\(^ {23}\) On describing the regionalism of SAPA it is implied that FORUM-ASIA represents the same stance, because the NGO has been part of all advocacy initiatives and activities of SAPA.


Nonetheless FORUM-ASIA also pursues regional activism that is not linked to SAPA’s work. These activities include mostly thematic campaigns, targeting regionally prevalent and significant human rights issues that are ignored by states, such as the plight of indigenous people and the protection of human rights defenders. These topics, however, also appear in FORUM-ASIA’s communications about human rights regionalism, since elements of its general regional activism become incorporated into its demands and advocacy directed at ASEAN.

The regional advocacy of SAPA

SAPA facilitates ongoing dialogue and intercommunication among diverse non-state actors, and seeks to serve as “an open platform for consultation, cooperation and coordination among Asian social movements and civil society organisations…who are engaged in action, advocacy and lobbying at the level of intergovernmental processes and organisations”. This activism is in a sense similar to the regular regional consultations conducted by the AHRC. However, in contrast to the primarily civil society focused regional activism of the AHRC, SAPA facilitates NGOs’ region-wide cooperation mostly with the aim of engaging in interaction with inter-governmental organisations. This occasionally involves interactions with the South Asian Association for Regional Cooperation (SAARC), the Asian Development Bank (ADB), the Asia-Pacific Economic Forum (APEC), and the Asia-Europe Meeting (ASEM) among others. The main purpose of their regional advocacy is to influence the policies and activities of ASEAN.


27 Chandra, “The Role of Non-State Actors in ASEAN,” 77.
The reason why SAPA concentrates its regional activism mostly on ASEAN is that none of the other prominent Asian regional inter-governmental bodies (such as SAARC or APEC) have advanced their efforts toward setting up a regional human rights system. Although human rights have surfaced briefly as a professed value or principle in the political narratives of other regional inter-governmental bodies, the idea of human rights promotion and protection has never progressed far enough to give rise to a separate mechanism. SAARC has taken some initiatives in this direction, but has not yet formulated concrete plans and made commitments to establish its own system.

Therefore SAPA, whose goal is to improve the human rights conditions through participating in the creation of a regional human rights system, started to focus its advocacy on the intergovernmental body which has made serious pledges and plans in this area. The member states of ASEAN have demonstrated willingness to deepen the integration of the organisation, to expand the circle of considered issues and to accommodate structural reforms which can be conducive to the development of common human rights policies. Thus this organisation has demonstrated the most potential to adapt to the human rights policies SAPA advocates for. As suggested earlier (see Introduction), ASEAN has recently been more open toward civil society initiatives, which is encouraging for SAPA, notwithstanding that so far no concrete actions have followed this rhetoric.

**Reactionary regionalism: Reflecting on and reacting to the human rights policies of ASEAN**

The majority of SAPA’s activism is directed at monitoring the activities and operations of ASEAN and responding to it in order to facilitate the development of human rights promotion.

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and protection within the Association. This approach may be described as SAPA’s reactionary regionalism. The term “reactionary regionalism”\textsuperscript{29} has been used by Mark Beeson to describe East Asian regionalism “in which regional initiatives have frequently been both a response to external events and designed to mediate and moderate their impact.”\textsuperscript{30} The term is relevant in the context of this consideration to illuminate how the regional activism of SAPA is formed mostly in response to the policies and actions of ASEAN. The regionalism of SAPA is not considered as a reaction to external influences, rather it seeks to reform regional processes by shaping the behaviour and policies of one of the major regional actors, ASEAN. Instead of mediation and moderation (as Beeson has interpreted), SAPA seeks to engage in an ongoing dialogue with ASEAN, and criticise it to transform its approach and policies regarding human rights by projecting its own alternative regionalism on the Association.

Despite acknowledging the ideological or political connotations of the expression “reactionary”,\textsuperscript{31} this thesis nevertheless chooses to employ the term to explain the motivations shaping the regional work of SAPA. SAPA seeks to mirror the regional human rights concerns of ASEAN by focusing on the same issues, problems and projects that the intergovernmental organisation pursues in the hope of exerting influence on ASEAN’s approach. In addition to mirroring the ideas and actions of ASEAN, SAPA aims to shape and add to the human rights policies of ASEAN, utilising its own experiences and research on human rights issues in the manner of an expert advisor. SAPA’s approach is reactionary in the sense that it is based on responding to the steps made by ASEAN toward regionalising human rights.

Beyond criticising the work of ASEAN, SAPA contributes to the regional human rights discourse with its own input, which is analysed by using the concept of alternative regionalism. SAPA advocates universal human rights norms as the bedrock of human rights protection in


\textsuperscript{30} Ibid.

\textsuperscript{31} I refer here to the interpretation of “reactionary” as a political and ideological movement, see, for instance, Charles Ferral, \textit{Modernist Writing and Reactionary Politics} (Cambridge, UK; New York: Cambridge University Press, 2001).
Southeast Asia, but also encourages the incorporation of ASEAN’s own human rights-related policies and norms into the construction of ASEAN’s new human rights body.\textsuperscript{32}

SAPA advances an approach to human rights protection which differs from the policies of ASEAN, primarily in that it is \textit{not} built on the monopoly of states, and it aims to bring about changes in the region by proposing legal and policy reforms based on bottom-up initiatives and broader public participation. These initiatives are also people-centred as they encourage “people-to-people interaction”\textsuperscript{33} on the regional level, and seek to bring people’s issues (their main human rights concerns) to the regional negotiating table with ASEAN. The cause of human rights is at the centre of the alternative regionalism of SAPA, and it constantly calls for the “regional recognition of human rights and human dignity as a foundation of community”\textsuperscript{34} in ASEAN. These are characteristics shared by the alternative regionalism of AHRC as well.

SAPA promotes a participatory and responsive regionalism, and accordingly urges ASEAN to regularly consult with the widest possible set of stakeholders, that is, not only with those the Association finds relevant.\textsuperscript{35} In particular, they call on ASEAN to extend its willingness to cooperate beyond a narrow circle of policy and epistemic groups, and to be more accommodating toward NGOs and local civil society actors.

Additionally, SAPA builds its regional advocacy on bottom-up activism. Chandra observes that SAPA’s alternative regionalism facilitates “a spontaneous, bottom-up process that recognises the importance of wide range of stakeholders in the making of regional systems and


\textsuperscript{33} Statement of the ASEAN People’s Forum and 4th ASEAN Civil Society Conference to the 14th ASEAN Summit at Dusit Resort, Hua Hin (28 February 2009), \url{http://www.apf2008.org/node/131} (accessed 12 November 2009).


\textsuperscript{35} \textit{Ibid.}
SAPA’s Task Force on ASEAN and Human Rights – which was created to focus on the human rights policies of ASEAN – held ten national consultations in 2008 in seven different ASEAN member countries, and hosted workshops in six of them between May and June of 2008. SAPA also organised regional level discussions, such as the Second ASEAN Civil Society Conference with the participation of more than 300 civil society delegates, and the Second Regional Consultation on ASEAN and Human Rights that was held in Jakarta (5-7 August 2008) with 75 participants from ten ASEAN countries. The outcomes of these civil society consultations were then submitted to the 41st ASEAN Ministerial Meeting and to the High Level Panel (the body assigned to draft the Terms of Reference for the ASEAN Human Rights Mechanism), in an attempt to inform and to influence ASEAN decision-makers.

The most significant SAPA initiative for bringing civil society actors together in order “to exchange experiences, raising issues of common concern, and deliberate on common recommendations to the ASEAN” is the ASEAN People’s Forum (APF) which was first convened at the end of 2008. The aim was to develop collective NGO proposals (with the participation of more than 200 civil society organisations) in order to give more weight to their demands from ASEAN. The APF is intended to become a regular forum to interact with ASEAN, and to create a constant control and influence on the developments of ASEAN’s policies regarding human rights and other issues that are of concern to civil society in ASEAN.


(such as peace and conflict, environment and the commons, debt and development among others). 42

By the time of the writing, two APF consultations have been held almost simultaneously with the ASEAN Summits. 43 Without going into details, these APF consultations have generally conveyed the same alternative regionalism that is represented by FORUM-ASIA and SAPA. Unfortunately ASEAN chose to pay attention to the ASEAN People’s Assembly (APP) supervised by ASEAN-ISIS, but not to the APF, which has proportionately greater NGO participation than the APP has.

**Reactionary and alternative regionalism 1: Focusing on the rights of migrant workers**

FORUM-ASIA, SAPA and the ASEAN People’s Forum have taken on a wide variety of issues, not all of which can be assessed here. This thesis examines the development and the practical implementation of their alternative regionalism, and their bottom-up reform-initiatives by discussing first their work on migrant policies and then their contribution to the creation of the ASEAN human rights mechanism. Struett discusses how the discursive practices of NGOs manage to shape policy and institution-making with respect to the creation of the International Criminal Court (see Chapter 1). 44 Their advocacy on the plight of migrants and on the human rights policies of ASEAN demonstrate how SAPA and FORUM-ASIA seek to influence the narrative, the policies and procedures of ASEAN by promoting their own discourse about human rights regionalisation which is based on an approach and value system that differs from the stance of ASEAN member states. An evaluation of these two themes shows that the ongoing attempts of SAPA and FORUM-ASIA yield some results in terms of swaying ASEAN’s approach to human rights.


43 First ASEAN People’s Forum, Chualongkorn University, Bangkok, Thailand, 20-22 February 2009; Second ASEAN People’s Forum/ Fifth ASEAN Civil Society Conference, Cha-am, Thailand, 18-20 October 2009.

44 Struett, *The Politics of Constructing the International Criminal Court*. 
The Task Force on ASEAN Migrant Workers was set up within SAPA in 2006 to develop SAPA’s (and as part of that FORUM-ASIA’s) human rights-centred and bottom-up approach to the human rights issues concerning migrant workers. By focusing on the plight of migrant workers, SAPA addresses a phenomenon (labour migration) that is prevalent in ASEAN as it affects most member states (either as receiver or as sender of migrants), and that is also present on the official ASEAN agenda, which obviously makes interaction with ASEAN on the topic easier. They also take advantage of the fact that ASEAN’s Vientiane Action Program of 2004 already contains a pledge about the “Elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers”. This provided a basis for SAPA to initiate discourse with ASEAN. SAPA monitored the development of the migrant policies and activities of ASEAN, and after giving a critical assessment, took steps to influence and alter the policies of the Association by promoting its own ideas based on their alternative regionalism.

The Task Force advocates the construction of regional migrant regulations and policies based, on the one hand, on international standards (mainly the regulations of the International Labour Organisation and the UN), and on the other hand on ASEAN’s own documents about the protection of migrants. From its outset the Task Force sought to persuade ASEAN to view migrants not as the causes of problems, but as victims and as a vulnerable group who are exposed to abuses and exploitation. In this way SAPA tried to influence ASEAN discursively by promoting a narrative that views the main subjects (migrant workers) in a completely different manner, and which is in accordance with a human rights-focused standpoint.

The difficulty of assessing the impact of the activism of the NGOs was already discussed in Chapter 1, and it is also complicated to explore the motivations behind the changes made by ASEAN. Nevertheless, it is reasonable to assume that partly the lobbying of SAPA has pressured the ASEAN to create its own Declaration on the Protection and Promotion of the Rights of

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Migrant Workers (13 January 2007). The Declaration is a sign of advancement in ASEAN’s migrant policies, as it acknowledges the economic contributions of migrant workers, indicating that ASEAN does not view migrant labour as a negative phenomenon. Moreover, in line with the arguments of the SAPA Task Force, ASEAN identifies migrant workers as a group of people who are especially vulnerable to human rights abuses, and prescribe responsibilities for the protection of their rights to both sending and receiving states and also collective duties to ASEAN. By acknowledging their vulnerability, ASEAN indeed linked the situation of migrants to human rights violations, in accordance with the campaign messages of SAPA.

While the reaction of the SAPA Task Force to the ASEAN Declaration was obviously positive, they renewed their calls for the ratification and implementation of international documents pertaining to the protection of migrant workers. Jenina Joy Chavez (senior staff of Focus on the Global South, which is a member of SAPA) also expressed her disappointment at the Declaration, pointing out that it is not legally binding, and thus its implementation would be more difficult. With her writing, Chavez has managed to expand the discourse, as she has brought the situation of undocumented or unskilled and lower skilled migrant workers to the attention of ASEAN, whose plight are otherwise neglected in the Declaration created by ASEAN. Furthermore, she highlighted another aspect of the subject by contending that migrant workers are especially vulnerable to HIV/AIDS and to other pandemic diseases, which is aggravated by the fact that migrants often have problems accessing the same level of healthcare as the residents can.

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48 Ibid, Preamble, Art. 5 – 22.


50 Jenina Joy Chavez is a Senior Associate and Head of the Philippines Program at Focus on the Global South, a SAPA member NGO.

ASEAN took additional steps in its migrant policies when the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) was set up on 30 July 2007 with the main objective of facilitating the implementation of the Declaration and ultimately the establishment of an ASEAN instrument for the protection of the rights of migrant workers.\(^{52}\) Notably, the Work Plan for the ACMW also expressed the aim of enhancing the protection of migrant workers by improving information services and education, and also by creating a “policy repository to promote best practices in migrant worker management policies”.\(^{53}\) These proposed changes point to the direction of strengthening regional cooperation on the plight of migrants, and demonstrate the willingness of ASEAN to construct a comprehensive regional framework and institutional structure on the subject. The SAPA Task Force was encouraged by this development, and pressed ASEAN to continue to develop its migrant worker instrument and to take international labour and human rights standards into consideration in its migrant policies.\(^{54}\)

The first consultation of the ASEAN People’s Forum in February 2009 provided another opportunity for the Task Force to discuss its strategies on the protection of migrant workers in ASEAN and to gather more bottom-up input into their activism. At the end of the workshop the Task Force gave a statement that reflected on the policies and plans of ASEAN, and also sought to contribute to the discourse.\(^{55}\) In addition to reiterating their requests for extending regulations to involve undocumented and unskilled workers, to incorporate international standards, and to


strengthen regional cooperation on the subject, the Task Force introduced gender-sensitivity in crafting migrant policies, claiming that “ASEAN must recognize that an increasing number of migrant workers are women”.  

The campaign message emphasising gender-sensitivity with respect to the until then gender-neutral migration policies was reinforced by SAPA-related NGO activism at the first APF meeting. The Global Alliance against Traffic in Women (GAATW) organised two workshops in cooperation with other gender-focused civil society groups to draw attention to the increasing proportion of women migrant workers and to the specific problems they have to face (e.g. lack of family or social life, risk of violence and sexual violence, isolated and difficult working conditions). Their contribution to the discourse is a good example of a bottom-up norm-creation and influence on policy. The participants of GAATW workshop built on individual case studies and heard the presentation of a victim, and also discussed international standards and how specific provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) could help to improve the situation of women migrant workers in ASEAN countries. The two workshops had a certain impact on ASEAN. Abhisit Vejjajiva, the Thai Prime Minister and the host of the subsequent ASEAN Summit, acknowledged – after a meeting with civil society groups at the APF – the need to establish a separate institution under the ASEAN Human Rights Body that focuses entirely on the protection of women and children. 

The lobbying of the Task Force and other civil society actors convinced ASEAN of the connections between HIV/AIDS and migration, arguing that migrant workers are exposed to a heightened risk of infectious diseases such as HIV. As a result, ASEAN participated in a joint study with the UN Developmental Program focusing on the interconnections between mobility and HIV/AIDS (2008), which was the “first such publication to include information on current migration patterns along with the HIV situation across the region”. Surin Pitsuwan – the

56 Ibid.
58 Ibid.
Secretary-General of ASEAN – noted in the foreword to the study that “focus of ASEAN’s efforts has been on migrant and mobile populations, who are by far among the groups most-at-risk.”

The subject gained further significance when the ASEAN Secretariat organised in collaboration with the UN and CARAM Asia (an NGO focusing on AIDS and mobility) a “High Level Multi-Stakeholder Dialogue on HIV Prevention, Treatment, Care and Support for Migrants in the ASEAN Region” (on 12-13 February 2009). This gathering drew together ASEAN labour, health and foreign ministers to discuss the topic with UN and civil society representatives as well. The consultation made recommendations about expanding education and information services for migrants about HIV, the improvement of migrant workers’ access to health care, and about the implementation of laws focusing on the prevention of the spreading of the disease between migrants. A further positive development with relation to ASEAN’s stance on migrant workers is that in their joint statement with the UNDP they officially recognised the enhanced vulnerability of migrant workers due to the global financial crisis. Furthermore, ASEAN officials acknowledged the problem of undocumented migrant workers, and “unsafe migration” that puts migrant workers at risk of health problems (primarily focusing on the problem of HIV/AIDS), exploitation, unemployment and poverty.

These developments indicate an altered ASEAN stance that has began to take a comprehensive human rights approach, that is, to consider all relevant factors affecting the plight of migrant workers. It is a considerable advancement compared with earlier policies when ASEAN only viewed migration in light of economic integration and human resource


62 Ibid.

development. Thus, these developments reveal a shift from the ASEAN’s merely economic point of view toward a more rights oriented and people-focused attitude, which could be partly attributed to the UN (which has worked together with ASEAN among others on the question of migration), and also to the advocacy of NGOs, above all SAPA.

SAPA represents a constant advocacy force that keeps ASEAN on track toward a more institutionalised, better regulated and more rights- and people-focused policy on migrant workers. In pursuing their bottom-up and alternative regional advocacy, the SAPA Task Force created its own “Framework Instrument for the Protection and Promotion of the Rights of Migrant Workers” after two-years of national and regional consultations with civil society participants, and presented the draft to the Chairman of the ASEAN Senior Labour Officials Meeting (ASEAN SLOM) (12 May 2009). This is part of SAPA’s efforts to apply discursive and communication tools to influence the policies of ASEAN, and also a manifestation of their normative contribution to the discourse.

The Framework Instrument reiterates the demands of SAPA about the incorporation of international standards, and proposes a comprehensive approach which does not draw divisions between documented and undocumented workers, and between the migrant workers and their family members. The Framework Instrument prescribes shared responsibilities and clear regulations for receiving and sending states and also for ASEAN – a provision that is also shared by ASEAN. Additionally, SAPA introduces new elements to the discourse by emphasising the principles of non-discrimination and “national treatment” regarding migrant workers and to their families, which implies the same standard of service and care for migrants as to nationals, as well as equal treatment with regard to fundamental rights (especially with respect to the freedom of movement and association, and the right to security and to family life). They also stress that all regulations and actions regarding migrant workers have to be transparent and accountable, and migrants should be

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66 Association of Southeast Asian Nations, “ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.”

well informed about their situation and their possibilities. SAPA has thus presented ASEAN with a comprehensive policy framework that seeks to address all significant aspects of the problems affecting migrant workers.

*Reactionary regionalism 2: Advocacy focusing on the creation of an ASEAN human rights mechanism*

As in the case of ASEAN’s policies on migrant workers, the same features of reactionary and alternative regionalism can be observed in the activism of SAPA to influence the formulation of an ASEAN human rights mechanism. SAPA and FORUM-ASIA have taken advantage of the fact that ASEAN has already moved toward setting up its human rights system, and accordingly focused their advocacy on shaping these ASEAN policies and activities. ASEAN officially talked about the possibility of creating a regional human rights system for the first time in 1993, and since then FORUM-ASIA has been pushing for the realisation of that promise together with other civil society actors from the region. FORUM-ASIA and (since its 2006 creation) SAPA have been closely monitoring the developments of the human rights policies of ASEAN. Equally as in its advocacy on the rights of migrant workers, they go beyond scrutinising and critically reflecting on the policies and actions of ASEAN, and seek to shape the discourse on the human rights mechanism by proposing to the Association their own alternative regional solutions.

The cornerstones of the alternative regionalism of SAPA – like those of the AHRC – are bottom-up, people-centred and human rights-focused concepts. SAPA’s advocacy on human rights in ASEAN is two-fold. Firstly, they have been pushing for the establishment of an ASEAN human rights mechanism, and secondly, they have sought to shape this human rights body by promoting their alternative regionalism. To this end, SAPA created the Task Force on ASEAN and Human Rights (TF-AHR) at the conclusion of the First Regional Consultation on ASEAN

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and Human Rights (August 2007)\textsuperscript{70} with the involvement of around 70 NGOs.\textsuperscript{71} FORUM-ASIA has played a central role in this Task Force, as it is part of the Regional Steering Committee of TF-AHR together with Migrant Forum Asia and the International Women’s Right Action Watch Asia-Pacific. The TF-AHR aims firstly “to hold ASEAN member states accountable to their international and domestic human rights obligations”,\textsuperscript{72} and secondly “to make the ASEAN human rights mechanisms more accountable and effective”.\textsuperscript{73} This thesis focuses mostly on this latter function, which is the main direction of TF-AHR’s activism, demonstrating the reactionary and alternative regionalism of SAPA in action.

The previously outlined features that significantly differentiate the stance of ASEAN from those of the NGOs (high priority to national sovereignty, intergovernmentalist structure, relativism and selectivity in human rights interpretation) also have a bearing on ASEAN’s ideas and actions about human rights regionalisation, and constitute a source of dispute and criticism for SAPA. The main cause of confrontation between the alternative regionalism of SAPA and the human rights policies of ASEAN is the strong adherence to sovereignty and non-intervention held by member states (see Introduction). SAPA maintains that the regular reiteration of the importance of national sovereignty and non-interference in the rhetoric of ASEAN officials and politicians – and the prioritisation of these principles in the Terms of Reference ahead of the rule


\textsuperscript{73} Ibid, 31. 2.
of law and human rights\textsuperscript{74} – are incompatible with the effective functioning of a serious human rights protection system.\textsuperscript{75}

ASEAN insists that intervention in the domestic affairs of member states is not justified. In this way ASEAN politicises human rights, since rights are employed as tools serving the self-interest of member countries. By trying to isolate the question of non-intervention and the notion of national sovereignty from the human rights discourse, SAPA attempts to de-politicise the human rights discourse. SAPA instead applies a moral framework by interpreting human rights values as an end goal with which justice, equality, tolerance and fairness are inextricably linked. This difference between the human rights approach of ASEAN states and SAPA (and other NGOs) is substantial, which leads to a series of disagreements between them.

The first problem ensuing from ASEAN’s prioritisation of the principle of national sovereignty and from its resulting intergovernmentalist elitism is that the Association is reluctant to pay attention to the suggestions of non-state actors, to share information with them or to allow their participation in its discussions and decision-making process. SAPA TF-AHR and FORUM-ASIA have been adamant in trying to establish a continuous discourse with ASEAN regarding its human rights policies, but these efforts were often cut short when the Association refused to interact with representatives of civil society. Regardless of its pledges about “enhancing people’s participation in the ASEAN Community building process”,\textsuperscript{76} and to “engaging with…civil society associated with ASEAN”,\textsuperscript{77} the Association remains reluctant to become more accessible to civil society, and especially to broader communities.

\textsuperscript{74} Association of Southeast Asian Nations. “Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights,” 73. Art. 2. 1 (a, b, c), (20 July 2009), \url{http://www.aseansec.org/Doc-TOR-AHRB.pdf} (accessed 16 August 2009).


\textsuperscript{76} Association of Southeast Asian Nations, “Chairman’s Statement of the 14\textsuperscript{th} ASEAN Summit: ASEAN Charter for ASEAN Peoples,” Art. 40 (Cha-am Hua Hin, Thailand, 28 February – 1 March 2009), \url{http://www.aseansec.org/22328.htm} (accessed 15 August 2009).

\textsuperscript{77} Association of Southeast Asian Nations, “Press Release: Outcome of the ASEAN Foreign Ministers Meeting with the High-Level Panel (HLP) on Human Rights Body and the ASEAN Foreign Ministers Meeting with the High Level Legal Experts’ Group on Follow-up to the ASEAN Charter (HLEG),” S-4/2552, 42\textsuperscript{nd} ASEAN Ministerial Meeting (Phuket, Thailand, 17-23 July 2009), \url{http://www.42ammpmec.org/pdf-AMM/19PRAS_HLP_HLEG.pdf} (accessed 15 August 2009).
Despite the continuing efforts of NGOs to interact with ASEAN and the High Level Panel, the process of the creation of the ASEAN human rights mechanism remains largely closed off for civil society actors. The High Level Panel held only two consultations with members of civil society (September 2008 and March 2009), and even then the main subject of the planned discussions, the draft of the Terms of Reference for the ASEAN human rights body was not disclosed to the NGOs, rendering the meeting unproductive. Nonetheless, the representatives of SAPA were resourceful enough to secure a copy of the draft from unofficial sources.

Another factor in ASEAN’s human rights policies that has been criticised by NGOs and results from ASEAN’s prioritisation of national sovereignty and its intergovernmentalist structure is the lack of independence of the proposed human rights body. One of the major demands of SAPA from the beginning of the drafting of the Terms of Reference has been about the necessity for the human rights body to be free from political interference and government intervention. The NGOs invoke international standards, referring to the Paris Principles, to underline their claims about the importance of independent functioning.

This lack of independence is evident from many aspects. Already the creation of the human rights body was completely intergovernmental, since civil society was excluded from most discussions and the decision-making process and all steps of the drafting had to be approved by the ASEAN Foreign Ministers (including the Terms of Reference). Moreover – despite SAPA TF-AHR’s continuous demands about the commissioners to serve in their personal,

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80 SAPA Task Force on ASEAN and Human Rights, “Submission to the High Level Panel on the Establishment of an ASEAN Human Rights (HLP) during the HLP-Civil Society Dialogue Session during 9th HLP Meeting.”


independent capacity\textsuperscript{83} – the High Level Panel has determined that the human rights body would be composed of state delegates who are only accountable to their own governments and not to ASEAN, the ASEAN community or to civil society. Accordingly, the “ASEAN-way” of dealing with issues has been implanted into the new ASEAN human rights body as well. Even the name of the new body, ASEAN Intergovernmental Commission on Human Rights, indicates that it is governed mainly on an inter-state basis. This further suggests the politicisation of human rights by ASEAN states, which are reluctant to let go of the control over their national human rights policies. If independent experts served on the Commission, they would scrutinise and even criticise the human rights record of member states, whereas this is less likely in the case of national delegates.

A third aspect of ASEAN’s strong insistence on non-intervention in the internal affairs of other states is the absence of a protection mandate of the human rights body. Beside the lack of independence just discussed, this is the other major feature of the new mechanism that is criticised by SAPA. The Terms of Reference only endow the human rights body with an array of promotional and advisory functions but falls short of giving it the powers to actually prevent, explore or bring an end to human rights violations. NGOs – led by FORUM-ASIA and SAPA – are quick to label the body the “toothless tiger”\textsuperscript{84}. They launch campaigns and petitions under this motto and question the point of such a human rights instrument if it lacks the ability to prevent or to remedy human rights violations, which would be the most needed function of a regional human rights mechanism in Asia.

The sharp disagreement about human rights protection also stems from a completely different interpretation of implementation and enforceability. SAPA is guided by its alternative regionalism that has people’s needs and human rights at its core, and beyond the promotion of rights it emphasises the actual implementation and protection of rights in local communities. Like the AHRC, SAPA takes a comprehensive approach and defines all the major aspects of human


rights protection and how it should affect the set-up of a human rights mechanism. They propose special measures for the ASEAN human rights body to be able to conduct effective work in human rights protection, such as the creation of a complaint mechanism, having an investigative role, carrying out country-visits, setting up an early-warning system, and giving sanctions for non-compliance. Furthermore, the NGOs would expand the sphere of action for the human rights body by introducing early warning systems and urgent actions to serve as a preventive mechanism.

By contrast, ASEAN takes a politicised stance, and views enforcement from the standpoint of national sovereignty and non-interference. ASEAN politicians equate enforcement with applicability, implying that a consensus has to be reached among member states on all questions, which gives them an excuse for accepting shallow compromises. Accordingly they achieve the implementation of policies and rules by eschewing the most sensitive questions (like condemnation of a poor human rights record) that would lead to the objections of some member states. They approach the question of enforcement from the aspect of the national interest of members and not from human rights point of view. This is obviously a state-focused and not a people-centred standpoint.

**The impact of SAPA’s regional advocacy**

The reluctance of ASEAN toward the ideas and campaigning of NGOs does not mean that its standpoint has not been affected by such. Indeed, it has shifted toward the view of civil society on certain questions. In the light of the distance between the stance of SAPA and ASEAN, even minor adjustments in the rhetoric and policies of ASEAN signify the impact of NGO campaigning.

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In spite of the scarcity of opportunities for direct interaction with the High Level Panel, SAPA still managed to have some influence over the drafting body, since members of the High Level Panel recognised the importance of incorporating international human rights standards, conducted meetings with UN officials in Geneva, and sought also to adopt a people-centred attitude in the drafting of the Terms of Reference. Notably, Vitit Muntharborn – a member of the High Level Panel – stressed that “ASEAN must realise that it was the human rights of the peoples, not the states that are the focus.”

Sometimes the policies and actions altered by ASEAN are not the results of direct campaigning, but are the consequences of the distinctive approach of SAPA. For instance, SAPA views all human rights questions comprehensively, and interprets human rights in their social, political, cultural and economic context. This outlook has been taken up in part by ASEAN. Termsak Chalermpalanupap states that “it is now commonly accepted in ASEAN that human rights are comprehensive, indivisible and cross-cutting in nature….and they should be addressed holistically, but not selectively”.

A further reinforcement of ASEAN’s view of human rights as cross-cutting concepts is that human rights policies are incorporated into all three ASEAN Communities. This ideally means that human rights priorities ought to be taken into account always when ASEAN crafts its policies and procedures. These developments reveal discursive, policy and procedural changes in ASEAN in accordance with the campaign demands of SAPA.

Another indication of slight changes in the attitude of ASEAN concerns the highly contentious issue of independence. SAPA’s push for a higher degree of independence in the operations and the composition of the AICHR was plainly rebuffed by the Association. Chalermpalanupap asserted that “the AHRB [ASEAN Human Rights Body] is never intended to be any independent watchdog”. However, the latest developments (at the time of writing) in the


88 Keck and Sikkink, Activists beyond Borders.

establishment of the AICHR indicate minor alterations in this persistent official ASEAN stance, at least with regard to the attitude of certain countries.

Although they were not obliged to do so, both Thailand and Indonesia held a considerably transparent selection process of Commissioners with the involvement of civil society and the public.\(^{90}\) As a result, the representatives of both countries in the Commission are widely acclaimed human rights experts with independent credentials. Notably, the Commissioner of Indonesia is Rafendi Djamin,\(^{91}\) who is not only a well-known human rights activist but also the convener of the SAPA TF-AHR. Accordingly SAPA has managed to become part of the AICHR, at least through one of the delegates. The Commissioner of Thailand, Sriprapha Petcharamesree, is an academic and activist with a long history of involvement in the human rights movement of her country.\(^{92}\) Furthermore, the Malaysian Commissioner, Sri Muhammad Shafee Abdullah, is a well-known lawyer who also serves as a Commissioner for the Human Rights Commission of Malaysia.\(^{93}\) These delegates are from the ASEAN states that have represented the most progressive stance at regional discussions, and especially in the drafting process of the Terms of Reference. Unfortunately, the member states taking a conservative standpoint have appointed government trusted politicians or public officials to be Commissioners.

Ensuing from the nature of their reactionary regionalism, SAPA and FORUM-ASIA are pushing ASEAN for further human rights advancement and are also trying to influence the still developing human rights body. Obviously, it is the hope of NGOs to impress their views upon ASEAN or at least to achieve changes in the most criticised areas of the human rights policies of ASEAN. These reforms can only be accomplished if the NGOs stay engaged in the process and keep lobbying and swaying ASEAN officials even after the AICHR is completely set up.


\(^{91}\) Rafendi Djamin, Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights: Curriculum Vitae, [www.aseansec.org/documents/AICHR/cv03.pdf](http://www.aseansec.org/documents/AICHR/cv03.pdf) (accessed on 12 December 2009).


\(^{93}\) Sri Muhammad Shafee Abdullah, Representative of Malaysia to the ASEAN Intergovernmental Commission on Human Rights: Curriculum Vitae, [www.aseansec.org/documents/AICHR/cv05.pdf](http://www.aseansec.org/documents/AICHR/cv05.pdf) (accessed on 12 December 2009).
The most recent, 15th ASEAN Summit (October 2009) expressed “confidence that ASEAN cooperation on human rights will continue to evolve and develop”. The commitment demonstrated by ASEAN to the further development of its human rights mechanism is a promising sign, but it can also be a double-edged sword. On the one hand, if there is in fact a serious commitment and political will to follow up this pledge, that is encouraging for human rights improvement in ASEAN. On the other hand, this promise of future advancement can be used as an excuse to prolong and delay decision-making and action that would otherwise require sacrifice or commitment from the member states.

With regard to the road ahead, the Terms of Reference mentions the long-term aim: “To develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation.” According to Michelle S. Kelsall, this is just a political statement that is not binding, and thus has no real significance. Although this clause in the Terms of Reference alone is not a sufficient assurance for the creation of an actual declaration, at least it can be considered as an encouraging sign regarding the future of human rights development in ASEAN. This promise in itself provides an opportunity and a springboard for NGOs to lobby and pressure ASEAN to advance its human rights system toward a more institutionalised structure with a firm normative basis. The official mention of a potential ASEAN human rights document gives NGOs the justification for proposing their own suggestions and ideas for a regional normative framework. This also gives NGOs a chance to keep up pressure on ASEAN to reform its plans for a human rights body by incorporating functions necessary for effective human rights protection, such as the earlier mentioned investigative role and the ability to examine complaints.

Besides focusing on institutional questions and trying to influence the setting up of the ASEAN human rights body, the human rights activism of SAPA also concentrates on normative

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questions that are not necessarily linked to the step-by-step development of the ASEAN human rights system. Although this is not a direct part of their discourse with ASEAN on its human rights mechanism, it is nonetheless a part of the reactionary regionalism developed by SAPA. SAPA seeks to construct normative elements that are built on international standards but which also resonate with values of ASEAN, and have the potential to become part of a future ASEAN human rights document. In their advocacy campaign toward the Eminent Persons Group, SAPA introduces its notion of human security in an attempt to inject human rights values in the traditionally state-focused ASEAN discourse on security.  

By relating to the concerns of ASEAN about the traditional transnational security risks, SAPA stresses the need to interpret security in relation to individuals and not only in terms of states, and highlights the importance of addressing non-conventional threats such as “hunger, poverty, disease, marginalization and exclusion”. This initiative has resonance with the ideas the AHRC promoted on the right to peace and human security as outlined in the Asian Charter of Human Rights (see Chapter 5). This advocacy of SAPA might also exert some impact on ASEAN, especially considering that the Association started to apply the notion of human security in its own rhetoric, and according to Caballero-Anthony, have been focusing on non-conventional security threats following the financial crisis.

Another normative element introduced by SAPA – that has also been taken on by the AHRC – is the protection of certain vulnerable groups. Based on their activist experiences, SAPA identifies groups that are specifically vulnerable in ASEAN societies such as “indigenous peoples, women, migrants and migrant workers, LGBT communities, stateless, refugees, children, the aged, disabled persons and persons deprived of their liberty”, and call on ASEAN

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97 Solidarity for Asian People’s Advocacy, “Letter to the Eminent Persons Group on the ASEAN Charter Reiterating the Key Points of its Submissions.”


100 Solidarity for Asian People’s Advocacy, “Submission from the Second Regional Consultation on ASEAN and Human Rights to the High Level Panel on the Establishment of the ASEAN Human Rights Body.”.
to consult with these groups and to take measures for their protection. Although official ASEAN communications often mention the problems of vulnerable people and regard particularly women, children, migrant populations and the poor,\textsuperscript{101} and the unemployed\textsuperscript{102} as such, they have not recognised all those groups specified in the recommendations of SAPA.

**Conclusion**

The general activism of FORUM-ASIA is very similar to that of the AHRC. However, this chapter has shown that the different strategies of their regional activism take the NGOs into diverse directions. Whereas the AHRC have so far concentrated more on the normative transformation of the regional discourse, SAPA has placed more emphasis on influencing state and inter-state policies and the formulation of the regional institutional framework. A large part of their regional advocacy is a reaction to the operations of ASEAN. SAPA has closely monitored the policies and activities ASEAN on human rights, and criticised the development of ASEAN’s human rights mechanism from their human rights-centered approach whenever the measures introduced by ASEAN seemed to have deviated from the international human rights norms and principles.

In addition to critical reflection, FORUM-ASIA and SAPA have added to the regional discourse by putting forward ideas and suggestions shaped by alternative regionalism. They have interacted with ASEAN on human rights issues already addressed by the Association, and have sought to expand the discourse by highlighting new aspects and introducing new policy directions. In their activism on migrants the NGOs have brought into the discourse the problem of HIV/AIDS in unskilled and undocumented workers and migrants’, and lobbied ASEAN to address these complex issues with a policy frame based on non-discriminations and fundamental human rights values.

\textsuperscript{101} Association of Southeast Asian Nations, ASEAN Secretariat, Press Release, “ASEAN+3 Officials Discuss Steps to Mitigate Social Impacts of Crisis,” (21 February 2009), \textsuperscript{102} http://www.aseansec.org/PR-ASEAN+3-HLF.pdf (accessed 22 November 2009).

FORUM-ASIA and SAPA have co-constructed their own version of Terms of Reference for the ASEAN human rights body in an attempt to shape the official version that had not been revealed at that time.103 This NGO blueprint for the human rights mechanism provides ideas and suggestions mostly about structural questions and the institutional frame of the human rights mechanism. The NGOs stressed the importance of creating a body of independent experts, which can impartially monitor the human rights situation. They have proposed a complaint mechanism and investigative tasks to endow the mechanism with an effective human rights protection mandate. Besides the institutional details, the NGOs have contributed normatively as well by stressing the importance of international human rights standards and by injecting human rights-related principles into the discourse and policy-making of ASEAN, such as non-discrimination, transparency, inclusiveness, rule of law and good governance.

Moreover, the regional advocacy of FORUM-ASIA and SAPA has touched upon areas that had been not addressed in the human rights discourse of ASEAN. These include counter-terrorism activities, human security crises, and the protection of certain neglected vulnerable groups such as refugees, indigenous people, and trafficked persons and human rights defenders. These normative suggestions bring human rights problems to the attention of the Association and the public that are otherwise eschewed by politicians and the mainstream media.

FORUM-ASIA and SAPA have pursued their reactionary regionalism even after the official acceptance of the Terms of Reference. They have further opportunities to shape the ASEAN Intergovernmental Commission on Human Rights as it is still evolving. Following the establishment of the AICHR, NGOs now have the chance to lobby for the realisation of ASEAN’s promise about a human rights declaration, and especially to campaign for the inclusion of their own ideas and concepts in that document.


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Conclusion

The Introduction to this thesis started with references to the human rights violations reported from China (Liu Xiaobo’s incarceration), Cambodia (the deportation of Uighurs) and Indonesia (the torture of police suspect’s wife). These alleged human rights violations have so far not been addressed by their respective national authorities or any international actors, despite the international popular protests regarding some of the incidents. Notably, all of these cases can be linked to the conduct of states or state agencies in one way or another, such as police, military, customs control or the judiciary.

As the work of the examined NGOs suggest, a significant part of human rights violations is committed by national authorities. These can arise from neglect or incompetence (such as the failure of the legal system to ensure proper witness protection or to guarantee the independence of the judiciary), or in other cases, as the consequence of calculated actions. At the same time, the primary responsibility of upholding human rights also rests with states. Accordingly, human rights improvement in Asia is impossible without the involvement of governments. However, it is difficult to see how progress can be made, particularly where states are at fault, without the input of non-governmental actors that have greater freedom to expose and criticise abuses of human rights by the state.

The expanding activism of NGOs has growing appeal in the Asian human rights field. The prospect of a regional human rights mechanism in Asia was raised by states during the preparation for the World Conference on Human Rights in Vienna (1993). However, NGOs have also become active supporters of that idea. This thesis has argued that states and NGOs have formed an interrelationship in which they mutually influence each other’s activities directed at the regionalisation of human rights. On the one hand, the budding commitment of Asian politicians to the development of common regional human rights policies has encouraged and galvanised NGO activism toward regional human rights improvement. On the other hand, the incessant campaigning of NGOs has affected Asian states and pressured them to address human rights problems in a regionally coordinated matter. Assessing the activism of two regionally
operating NGOs along with a couple of nationally active NGOs has revealed that their advocacy is among the most important forces driving the development of a regional human rights instrument, compelling coordinated state and non-state efforts to tackle human rights issues.

The aim of the research was to demonstrate the importance of such Asian human rights NGOs and their contribution to the development of human rights promotion and protection at the regional level. The two central NGO subjects in this thesis were the Asian Human Rights Commission (AHRC) and the Asian Forum for Human Rights and Development (FORUM-ASIA), both of which were identified as an Asian core mandate human rights NGO with regional operations. As discussed in Chapters 4, 5 and 6, the general characteristics and features of the activism of the two NGOs are similar. They have shared values, similar focus and a common approach to human rights concerns, and they apply similar campaign methods and tactics. Their activism is both built on the activities of nationally operating human rights NGOs (examined in Chapters 3 and 4), since they utilise information gathered by activists at the grassroots, and collaborate with them in implementing campaigns in local communities.

The advocacy elements employed by the AHRC and FORUM-ASIA to construct their transnational activism – such as cooperating closely with local groups, initiating bottom-up norm creation, using information tactics, and symbolic and discursive politics – cannot be considered innovative in themselves. These values, goals and methods are certainly applied elsewhere by other human rights defenders. Yet, what I have found to be most distinctive is the way the two NGOs combine these elements together in their regional advocacy. The NGOs innovate with their advocacy strategies by combining such diverse tactics and methods with the objective of influencing human rights development by addressing human rights problems regionally.

Despite the numerous similarities in their activism and their regional advocacy, certain underlying differences exist between the operations of the two NGOs. Whereas the AHRC primarily involves and mobilises other NGOs and human rights activists in its regional activism, FORUM-ASIA places more emphasis on interactions with and influence on state and inter-state policies, especially those of ASEAN. They have chosen the traditional channels of shaping regional affairs by altering state policies. Furthermore, the AHRC concentrates on normative questions and the construction of a new approach to human rights protection, whilst FORUM-ASIA, bound by the direction of the human rights policies of ASEAN, focuses on affecting
structural, institutional and procedural aspects of a regional human rights mechanism. Both advocacy directions have their own merits; together, they add to the regional human rights discourse significantly.

As a result of these differences the NGOs are able to exert influence on different actors. Owing to its civil society-focused regional activism, the AHRC has prompted human rights defenders and NGOs to contribute actively to the creation of a regional human rights system in Asia. By facilitating the creation of the Asian Charter and developing its distinctive discourse on the rule of law, the AHRC has shaped the agenda, approach and methods of the NGOs and activists that took part in their activism. FORUM-ASIA has successfully kept up pressure on ASEAN to build a regional human rights mechanism, and has gradually influenced its interpretation of human rights. Although only minor changes can be observed in the conduct of ASEAN, these alterations nonetheless reflect a shift toward the human rights stance of FORUM-ASIA. The campaigning of NGOs has led ASEAN to take human rights issues into consideration in all sectors of its new institutional and policy structure.

Mutua has predicted that standard-setting and especially treaty-making would become an increasingly difficult and drawn-out process for states due to the diversity of their conflicting interests. He argues that NGOs and other non-state actors are becoming more accepted as part of standard-setting, especially in the field of human rights. \(^1\) Sasha Courville and Nicola Piper also identify NGOs and other civil society actors as agents of hope that facilitate social change. \(^2\)

While traditionally the majority of their human rights activism revolves around investigating and reporting human rights problems (also in the case of the AHRC and FORUM-ASIA), this thesis has demonstrated that human rights NGOs play other significant roles and that the Asian NGOs have taken on more than conventional NGO functions in terms of norm construction. They have adopted alternative regionalism as a basis for their regional advocacy. This alternative regionalism of Asian NGOs (particularly that of the AHRC and FORUM-ASIA) engenders organic trends within Asia that advances the cause of human rights on the regional

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\(^1\) Mutua, “Standard Setting in Human Rights,” 547-630.

level. The NGOs induce normative and policy-changes and shape human rights issues in Asia, as they introduce innovative approaches, aspects and norms that become entrenched in the Asian human rights development.

The approach of the considered NGOs to regional human rights issues differs markedly from the official views of governmental and inter-governmental Asian decision makers, as well as from the mainstream international human rights trend. The NGOs seek to develop a system tailored to the Asian region, in what Joseph Chan described as the “alternative perspective”\(^3\) of Asian regional activism. Crucially, this approach is people-centred and bottom-up; being based on individual cases of rights violations in grassroots societies across the Asian region, and demanding broad public participation in the construction of regional solutions.

Asian states and ASEAN have learned to “speak” the language of human rights and use it as a means to further their national interests. They have not yet espoused human rights values as an unconditional and an inherent part of their norm system. By contrast, the AHRC and FORUM-ASIA view human rights advancement as a goal in itself, and do not use human rights as tools to achieve other aims. The ultimate goal of their activism is the development of regional human rights. Accordingly, they are unsympathetic to the claims of sovereign non-interference to slow down or derail the development of regional human rights instruments. They seek the depoliticisation of the topic and the detachment of the national sovereignty narrative from the regional human rights discourse. The alternative regionalism of the NGOs presents the potential to influence and alter the political barriers imposed by states inhibiting regionalisation of human rights in the name of sovereignty.

Another important factor distinguishing the alternative regionalism of the NGOs is their bottom-up stance. Their activism is conducted in an inclusive manner, encouraging the participation of other activists. FORUM-ASIA also urges ASEAN to be more opened toward the initiatives and requests of civil society and the public, and to allow more NGO participation in the creation of its regional human rights system.

The outlook and methods of the NGOs distinguishes them also from the international human rights discourse. Although they work to promote international human rights standards and

are explicit about the universality and indivisibility of human rights, they employ strategies which differ from the mainstream approach. While using international human rights norms as the basis of their advocacy, they contextualise these norms, and interpret them for implementation adapted to local Asian settings. In this way the NGOs build on their experiences and knowledge gained from the grassroots to construct an alternative regional approach to human rights protection and promotion. This is manifest in how rights are constructed in the AHRC’s Asian Charter, and also in FORUM-ASIA’s criticism toward ASEAN’s human rights policies.

The NGOs have constructed an advocacy that focuses distinctively on the protection of human rights, which indicates another divergence from the general international approach, especially from the mainstream NGO discourse. Although both NGOs acknowledge the equal importance of the protection and promotion of rights, they put more emphasis on the need to improve the protection of rights through legal reforms, policy initiatives and institutional changes that could ensure adequate human rights enforcement. They hold the adequate implementation of rights to be the focal point of a future regional human rights system.

This thesis has further argued that the NGOs contribute to the Asian human rights discourse with their structural and institutional ideas. In its activism focusing on the rule of law, the AHRC addresses structural questions mainly on the national level as it seeks to resolve human rights problems by calling for legal systems to function according to human rights standards and the rule of law, in particular focusing on the operations of the police, the prosecution and the judiciary. Thus the AHRC facilitates the construction of a code of conduct for states prescribing and advising about the appropriate implementation of human rights and the proper functioning of the legal and justice delivery systems. While these demands concern mainly the domestic sphere, the AHRC in fact constructs a regional framework that provides guidelines for national human rights implementation and protection all over Asia.

FORUM-ASIA similarly presses for improved human rights implementation and addresses related structural issues, yet mostly with regard to the regionalisation of human rights, not the domestic sphere. The NGO has sought to shape institutional questions by influencing ASEAN’s construction of its human rights mechanism. FORUM-ASIA has stressed the importance of the independent and transparent functioning of the proposed human rights body, and has raised the issue of participatory regionalism by urging ASEAN to be more
accommodating toward civil society contributions. Another criticism regarding the human rights instrument concerns the lack of protection mandate. They have urged ASEAN to endow its new human rights body with monitoring and investigative roles, which exist in other regional human rights systems, but have never otherwise been brought up in the Asian discourse.

In addition, the AHRC and FORUM-ASIA have contributed to the Asian human rights discourse on a normative level. They have re-interpreted certain notions that had been present in mainstream discourse internationally, and have applied them in a manner conducive to human rights development in Asia. For instance, the AHRC re-constructs the right to development in the Asian Charter by invoking social justice, and expands the meaning of development beyond economic growth. Besides the usual demands of health care, food security, housing, education and environment, the AHRC adds new aspects in its interpretation of “the right to development and social justice”, such as the freedom of expression, freedom from exploitation, and notably, “the right to participate in the affairs of the state and the community”. These elements have not been included in the right to development before, but each has its own significance regarding the human rights situation in Asia.

Similarly, the NGOs re-construct the meaning of human security by taking into account the specific threats that exist in local Asian communities. Both the AHRC in its Asian Charter and FORUM-ASIA in its advocacy toward ASEAN emphasise that security means more than the protection of national sovereignty, and that it should also involve safeguarding the wellbeing of people. Contrary to mainstream interpretations of the right to peace, which mainly concentrates on preventing violence among states, both NGOs focus on reducing state induced violence against its own citizens, which are in the background of numerous human rights violations in Asia. They link the notion with human rights concepts, when they interpret security as not simply the protection but also as the empowerment of people.

A further normative contribution of the AHRC is the creation of the Asian Charter, which was intended as an initial step in the development of a regional human rights document for Asia. The Charter provides a general human rights framework, including fundamental rights (such as the right to life), re-constructed international standards (for instance, the right to development and

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social justice, right to cultural identity and freedom of conscience), and innovative normative concepts (such as the right to peace, right to democracy, rights of vulnerable groups). Beyond addressing transnational human rights problems that are prevalent in Asia, the drafters sought to lay down a value system instilling basic moral principles such as justice, tolerance, non-discrimination and fairness into the regional human rights discourse. Although incomplete in its conceptualisation of rights, this Charter can be viewed as a credible attempt to create a comprehensive human rights framework, and it has the potential to develop further into a region-wide Asian human rights document.

This document has been instrumental in influencing civil society actors, and in stimulating cross-border dialogue and debate about the need for and features of a future human rights convention in Asia. The Charter has also attracted acknowledgment from academic circles and the public sector. The university textbook of Rhona K. M. Smith describes the Asian Charter as one of the only Asian documents which seeks to comprehensively address human rights on a regional level. Additionally, the already mentioned “Inquiry into Human Rights Mechanism in the Asia-Pacific” conducted by a committee of the Parliament of Australia entertained submissions from various civil society organisations, policy centres and academics acknowledging the Asian Charter as an important step in the creation of a region-wide human rights instrument in Asia.

It is important to contemplate the possible future trajectory of the NGOs and the Asian human rights discourse. The AHRC is still in the midst of a series of regional consultations carrying forward their discourse on the importance of the rule of law in Asian states. The NGO and its consultative partners have already addressed several aspects of institutional failings regarding domestic justice delivery systems. However, there are further opportunities for the development of new standards and norms in the context of improving legal systems and the rule of law. The AHRC needs to conclude its series of regional consultations to create the Asian Charter on the Rule of Law following the model of the Asian Charter. With the completion of

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such a Charter, the AHRC’s discourse on the rule of law would gain more influence over the overall Asian human rights discourse.

Additionally, the AHRC has the potential to enhance the effect of its regional advocacy by putting more effort into directly influencing governments and intergovernmental organisations, as does FORUM-ASIA. The AHRC could increase its influence on the agenda-setting and discursive positions of states through various forms of targeted campaigns and lobbying activities, and even by engaging in direct interactions with governments and public officials. For instance, the ASEAN Senior Law Officials’ Meeting would be an appropriate target for such NGO activism. This ASEAN forum focuses on questions pertaining to the AHRC’s rule of law discourse, such as the development of legal infrastructure, the strengthening of legal frames within member states, and the provision of judicial assistance programs at the regional and national levels.7

With respect to the future activism of FORUM-ASIA, the NGO will probably keep to its campaign directed at the human rights policies of ASEAN. Although the ASEAN Human Rights Commission was set up with its commissioners delegated in October 2009, there is still a window of opportunity to influence the evolution of the new mechanism. FORUM-ASIA seeks to take advantage of ASEAN’s pledges espousing an “evolutionary approach that would contribute to the development of human rights norms and standards in ASEAN”.8 FORUM-ASIA continues to push for a more independent human rights structure (preferably with less governmental control), and also for the strengthening of human rights protection.

Also, ASEAN’s declared goal to “develop an ASEAN Human Rights Declaration” should give FORUM-ASIA and its partners further grounds to put pressure on ASEAN regarding normative issues. The Asian Charter created by the AHRC and its subsequent work on the Rule

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8 Association of Southeast Asian Nations, “Terms of Reference of ASEAN Intergovernmental Commission on Human Rights.” (See Appendix B)
of Law Charter could provide useful ideas and concepts for FORUM-ASIA to try to influence the work of ASEAN on the content of its proposed human rights document.

Several questions hang over the future of the Asian human rights discourse. Despite organising several workshops and seminars on the creation of a human rights system in Asia, the United Nations has not achieved any considerable breakthroughs. This thesis has argued that significant advancement in facilitating human rights regionalisation in Asia is hardly likely without internal development.

Notably, most Asian states have by now acknowledged the existence of transnational human rights problems – such as refugee flows, migrant workers, human trafficking, gender and caste discrimination – and recognised that they affect not only people’s wellbeing, but can also damage the overall regional developments and intra-regional relations. Asian intergovernmental organisations have shown signs of advancement in their human rights policies, as they have publicly discussed, and in the case of ASEAN, addressed these human rights issues. SAARC has also constructed certain human rights initiatives, but these lag behind the developments achieved by ASEAN. SAARC should follow in the footsteps of the Southeast Asian organisation, and go ahead with the formulation of a full-scale human rights mechanism. Moreover, since SAARC has a shared interest in human rights topics as ASEAN (focusing on the plight of migrants, refugees, indigenous people, and the problem of human trafficking), the two organisations should consider the creation of joint initiatives on transnational human rights matters. This could serve as a starting point toward the establishment of an Asia-wide human rights system.

At the same time, national human rights institutions (NHRIs) are equally important actors in shaping regional perceptions of human rights in Asia. The Asia Pacific Forum they created in 1996 has shown serious commitment to the regionalisation of human rights in Asia. On the basis of their shared aims, NGOs have engaged in joint initiatives with NHRIs and pledged to

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cooperate on human rights (the Kandy Declaration on Cooperation between NGOs and NHRIs, 1999). Yet, NGOs are still wary of accepting NHRIs as their partners, due to the latter’s often questionable independence from national authorities or governments. Also, there is an insufficient number of NHRIs in the region (nine at the time of writing).

Considering the diversity of actors in human rights regionalisation it is no wonder that the creation of a regional human rights system in Asia has an uncertain path ahead. There are still many challenges remaining, especially in terms of finding a way to overcome the claims of sovereign non-interference. Although the wheels are already moving toward the creation of a human rights mechanism (for now, only on the sub-regional level), with both civil society and governments supporting the coordination of regional human rights policies, the creation of an effective regional human rights system is a prospect far from certain. Much could depend on the will and commitment of states, and on the ability of NGOs to influence official human rights policies.

Thus far ASEAN has progressed furthest among Asian intergovernmental organisations in human rights development. However, this has occurred mostly with respect to the construction of structural and institutional bases for the human rights mechanism. An important question with respect to the future of Asian human rights development is whether the institutionalisation will progress further, or whether more emphasis will be placed on normative development.

While acknowledging the importance of constructing regional human rights mechanisms, I would argue that a human rights structure cannot be developed further without the creation of a normative human rights framework. The Sydney Centre for International Law contended that the formulation of a charter or declaration including the human rights standards that are most vital for Asia can be advantageous for the regional human rights situation, since it would have greater

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appeal and acceptance among Asian states than similar international documents.¹⁴ ASEAN acknowledges the necessity of a declaration of rights, yet it has so far left the questions about its contents wide open. This officially promoted idea of an ASEAN-wide or a regional human rights document provides opportunity for states and NGOs to embark on normative activism and to construct new, or at least re-interpreted norms to facilitate the improvement of the human rights situation in the region. However, the prospect of creating such a normative framework would possibly attract more conflicts and debates among member states and other stakeholders over contentious issues, than the construction of an institutional framework which carries less risk of that.

There is also a lingering question about whether the creation of an Asia-wide human rights mechanism is preferable, or whether smaller scale human rights instruments would be more advantageous. Considering Asian states’ limited advancement in human rights regionalisation, the development of sub-regional human rights mechanisms could initially be the easier and more effective way to move forward. The creation of smaller mechanism could pave the way toward the development of a broader scale human rights system. Sub-regional systems would establish supranationalism in human rights policies, and could help to transform states’ views of human rights as an exclusively domestic matter. However, sub-regional systems should always be created keeping in mind the plan of a broader regional human rights system.

The challenges facing Asian actors (both governmental and non-governmental) in formulating the institutional mechanisms and the normative framework for a regional human rights system in Asia are significant, yet offer the potential for significant reward. The models presented by other regions serve as examples of such a system, yet Asia is apparently on an NGO-guided path toward the creation of a system of distinctive instruments and concepts.

This thesis has focused primarily on the advocacy of regional NGOs; however, every member of the diverse community of Asian human rights NGOs takes part in shaping the regional human rights discourse in its own specific way. Whilst the majority of Asian human rights NGOs contribute to human rights improvement simply by teaching local communities

about their rights, or by giving support to human rights victims, the regional NGOs examined here have undertaken initiatives to influence the development of regional human rights concepts and policies through normative activism. Despite not having achieved many concrete results in terms of creating an effective regional human rights system, they have nonetheless created a movement of NGOs which does not let the issue of human rights fade from the regional agenda, and supports the evolution of the Asian human rights discourse with new normative and institutional ideas.

The key questions that surround the future of this movement are whether a region-wide human rights mechanism will eventually develop, and whether such a mechanism will take a distinctive institutional form and adopt some or all of the normative content propounded by Asian NGOs. For now, NGOs as norm-constructors have galvanised civil society across the region, influenced states, and created concepts and approaches that instil human rights values in national and transnational policy-making, and the everyday-lives of Asian people.
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Interview with Ravi Nair, the Executive Director of the South Asian Human Rights Documentation Centre, (Delhi, India, 22 August 2008).
Appendix A – Our common humanity – Asian Human Rights Charter: A People’s Charter

Declared in Kwangju, Republic of Korea, 17 May 1998.

Preamble

For long, especially during the colonial period, the peoples of Asia suffered from gross violations of their rights and freedoms. Today large sections of our people continue to be exploited and oppressed and many of our societies are torn apart by hatred and intolerance. Increasingly the people realize that peace and dignity are possible only when the equal and inalienable rights of all persons and groups are recognised and protected. They are determined to secure peace and justice for themselves and the coming generations through the struggle for human rights and freedoms. Towards that end they adopt this Charter as an affirmation of the desire and aspirations of the peoples of Asia to live in peace and dignity.

Background to the Charter

1.1 The Asian struggle for rights and freedoms has deep historical roots, in the fight against oppression in civil society and the political oppression of colonialism, and subsequently for the establishment or restoration of democracy. The reaffirmation of rights is necessary now more than ever before. Asia is passing through a period of rapid change, which affects social structures, political institutions and the economy. Traditional values are under threat from new forms of development and technologies, as well as political authorities and economic organizations that manage these changes.

1.2 In particular the marketization and globalization of economies are changing the balance between the private and the public, the state and the international community, and worsening the situation of the poor and the disadvantaged. These changes threaten many valued aspects of life, the result of the dehumanizing effects of technology, the material orientation of the market, and the destruction of the community. People have decreasing control over their lives and environment, and some communities do not have protection even against eviction from their traditional homes and grounds. There is a massive exploitation of workers, with wages that are frequently inadequate for even bare subsistence and low safety standards that put the lives of workers in constant danger. Even the most elementary of labour rights and laws are seldom enforced.

1.3 Asian development is full of contradictions. There is massive and deepening poverty in the midst of growing affluence of some sections of the people. Levels of health, nutrition and education of large numbers of our people are appalling, denying the dignity of human life. At the same time valuable resources are wasted on armaments, Asia being the largest purchaser of arms of all regions. Our governments claim to be pursuing development directed at increasing levels of production and welfare but our natural resources are being depleted most irresponsibly and the environment is so degraded that the quality of life has worsened immeasurably, even for the better off among us. Building of golf courses has a higher priority than the care of the poor and the disadvantaged.

1.4 Asians have in recent decades suffered from various forms of conflict and violence, arising from ultra-nationalism, perverted ideologies, ethnic differences, and fundamentalism of all religions. Violence emanates from both the state and sections of civil society. For large masses, there is little security of person, property or community. There is massive displacement of communities and there are an increasing number of refugees.

1.5 Governments have arrogated enormous powers to themselves. They have enacted legislation to suppress people’s rights and freedoms and colluded with foreign firms and groups in the plunder of national resources. Corruption and nepotism are rampant and there is little accountability of those holding public or private power. Authoritarianism has in many states been raised to the level of national ideology, with the deprivation of the rights and freedoms of their citizens, which are denounced as foreign ideas inappropriate to the religious and cultural traditions of Asia. Instead there is the exhortation of spurious theories of ‘Asian Values’ which are a thin disguise for their authoritarianism. Not surprisingly, Asia, of all the major regions of the world, is without a regional official charter or other regional arrangements for the protection of rights and freedoms.

1.6 In contrast to the official disregard or contempt of human rights in many Asian states, there is increasing awareness among their peoples of the importance of rights and freedoms. They realize the connections between their poverty and political powerlessness and the denial to them of these rights and freedoms. They believe that political and economic systems have to operate within a framework of human rights and freedoms to ensure economic justice, political participation and accountability, and social peace. There are many social movements that have taken up the fight to secure for the people their rights and freedoms.

1.7 Our commitment to rights is not due to any abstract ideological reasons. We believe that respect for human rights provides the basis for a just, humane and caring society. A regime of rights is premised on the belief that we are all inherently equal and have an equal right to live in dignity. It is based on our right to determine our destiny through participation in policy making and administration. It enables us to develop and enjoy our culture and to give expression to our artistic impulses. It respects diversity. It recognizes our obligations to
future generations and the environment they will inherit. It establishes standards for assessing the worth and legitimacy of our institutions and policies.

General Principles

2.1 It is possible from specific rights and the institutions and procedures for their protection to draw some general principles which underlie these rights and whose acceptance and implementation facilitates their full enjoyment. The principles, which are discussed below, should provide the broad framework for public policies within which we believe rights would be promoted.

Universality and Indivisibility of Rights

2.2 We endorse the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and other international instruments for the protection of rights and freedoms. We believe that rights are universal, every person being entitled to them by virtue of being a human being. Cultural traditions affect the way in which a society organizes relationships within itself, but they do not detract from the universalism of rights which are primarily concerned with the relationship of citizens with the state and the inherent dignity of persons and groups. We also believe that rights and freedoms are indivisible and it is a fallacy to suppose that some types of rights can be suppressed in the name of other rights. Human beings have social, cultural and economic needs and aspirations that cannot be fragmented or compartmentalised, but are mutually dependent. Civil, political and cultural rights have little meaning unless there are the economic resources to exercise and enjoy them. Equally, the pursuit and acquisition of material wealth is sterile and self-defeating without political freedoms, the opportunity to develop and express one’s personality and to engage in cultural and other discourses.

2.3 Notwithstanding their universality and indivisibility, the enjoyment and the salience of rights depend on social, economic and cultural contexts. Rights are not abstractions, but foundations for action and policy. Consequently we must move from abstract formulations of rights to their concretization in the Asian context by examining the circumstances of specific groups whose situation is defined by massive violations of their rights. It is only by relating rights and their implementation to the specificity of the Asian situation that the enjoyment of rights will be possible. Only in this way will Asia be able to contribute to the world-wide movement for the protection of rights.

2.4 Widespread poverty, even in states which have achieved a high rate of economic development, is a principal cause of the violation of rights. Poverty deprives individuals, families, and communities of their rights and promotes prostitution, child labour, slavery,
sale of human organs, and the mutilation of the body to enhance the capacity to beg. A life of
dignity is impossible in the midst of poverty. Asian states must direct their development
policies towards the elimination of poverty through more equitable forms of development.

The Responsibility for the Protection of Human Rights

2.5 The responsibility for the protection of rights is both international and domestic. The
international community has agreed upon norms and institutions that should govern the
practice of human rights. The peoples of Asia support international measures for the
protection of rights. State sovereignty cannot be used as an excuse to evade international
norms or ignore international institutions. The claim of state sovereignty is justified only
when a state fully protects the rights of its citizens.

2.6 On the other hand, international responsibility cannot be used for the selective chastisement
or punishment of particular states; or for the privileging of one set of rights over others.
Some fundamental causes of the violation of human rights lie in the inequities of the
international world economic and political order. The radical transformation and
democratization of the world order is a necessary condition for the global enjoyment of
human rights. The logic of the universalism and equality of rights is the responsibility of the
international community for the social and economic welfare of all people throughout the
world, and consequently the obligation to ensure a more equitable distribution of resources
and opportunities across the world.

2.7 The primary responsibility for the promotion of human rights rests with states. The rights of
states and peoples to just economic, social, political and cultural development must not be
negated by global processes. States must establish open political processes in which rights
and obligations of different groups are acknowledged and the balance between the interests
of individuals and the community is achieved. Democratic and accountable governments are
the key to the promotion and protection of rights.

2.8 The capacity of the international community and states to promote and protect rights has been
weakened by processes of globalization as more and more power over economic and social
policy and activities has moved from states to business corporations. States are increasingly
held hostage by financial and other corporations to implement narrow and short sighted
economic policies which cause so much misery to so many people, while increasing the
wealth of the few. Business corporations are responsible for numerous violations of rights,
particularly those of workers, women and indigenous peoples. It is necessary to strengthen
the regime of rights by making corporations liable for the violation of rights.
Sustainable Development and the Protection of the Environment

2.9 Economic development must be sustainable. We must protect the environment against the avarice and depredations of commercial enterprises to ensure that the quality of life does not decline just as the gross national product increases. Technology must liberate, not enslave human beings. Natural resources must be used in a manner consistent with our obligation to future generations. We must never forget that we are merely temporary custodians of the resources of nature. Nor should we forget that these resources are given to all human kind, and consequently we have a joint responsibility for their responsible, fair and equitable use.

Rights

3.1 We endorse all the rights that are contained in international instruments. It is unnecessary to restate them here. We believe that these rights need to be seen in a holistic manner and that individual rights are best pursued through a broader conceptualization which forms the basis of the following section.

The Right to Life

3.2 Foremost among rights is the right to life, from which flow other rights and freedoms. The right to life is not confined to mere physical or animal existence but includes the right to every limb or faculty through which life is enjoyed. It signifies the right to live with basic human dignity, the right to livelihood, the right to a habitat or home, the right to education and the right to a clean and healthy environment for without these there can be no real and effective exercise or enjoyment of the right to life. The state must also take all possible measures to prevent infant mortality, eliminate malnutrition and epidemics, and increase life expectancy through a clean and healthy environment and adequate preventative as well as curative medical facilities. It must make primary education free and compulsory.

3.3 Yet in many parts of Asia, wars, ethnic conflicts, cultural and religious oppression, corruption of politics, environmental pollution, disappearances, torture, state or private terrorism, violence against women, and other acts of mass violence continue to be a scourge to humanity resulting in the loss of thousands of innocent human lives.

3.4 To ensure the right to life, propagation of war or ethnic conflict or incitement to hatred and violence in all spheres of individual or societal or national or international life should be prohibited.

3.5 The state has the responsibility to thoroughly investigate cases of torture, disappearances and custodial deaths, rapes and sexual abuses and to bring culprits to justice.
3.6 There must be no arbitrary deprivation of life. States should take measures not only to prevent and mete out punish for the deprivation of life by criminal acts and terrorist acts but also prevent arbitrary disappearances and killings by their own security forces. The law must strictly control and limit the circumstances in which a person may be deprived of his or her life by state authorities or officials.

3.7 All states must abolish the death penalty. Where it exists, it may be imposed only rarely for the most serious crimes. Before a person can be deprived of life by the imposition of the death penalty, he or she must be ensured a fair trial before an independent and impartial tribunal with full opportunity of legal representation of his or her choice, adequate time for preparation of defence, presumption of innocence and the right to review by a higher tribunal. Execution should never be carried out in public or otherwise exhibited in public.

The Right to Peace

4.1 All persons have the right to live in peace so that they can fully develop all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence. The peoples of Asia have suffered great hardships and tragedies due to wars and civil conflicts which have caused many deaths, mutilation of bodies, external or internal displacement of persons, break up of families, and in general the denial of any prospects of a civilized or peaceful existence. Both the state and civil society have in many countries become heavily militarized in which all scores are settled by force and citizens have no protection against the intimidation and terror of state or private armies.

4.2 The duty of the state to maintain law and order should be conducted under strict restraint on the use of force in accordance with standards established by the international community, including humanitarian law. Every individual and group is entitled to protection against all forms of state violence, including violence perpetrated by its police and military forces.

4.3 The right to live in peace requires that political, economic or social activities of the state, the corporate sector and the civil society should respect the security of all peoples, especially of vulnerable groups. People must be ensured security in relation to the natural environment they live in, the political, economic and social conditions which permit them to satisfy their needs and aspirations without recourse to oppression, exploitation, violence, and without detracting from all that is of value in their society.

4.4 In fighting fascist invasion, colonialism, and neo-colonialism, Asian states played a crucial role in creating conditions for their peoples to live in peace. In this fight, they had justifiably stressed the importance of national integrity and non-intervention by hegemonic powers. However, the demands of national integrity or protection against the threats of foreign domination cannot now be used as a pretext for refusing to the people their right to personal security and peaceful existence any more than the suppression of people’s rights can be justified as an excuse to attract foreign investments. Neither can they justify any refusal to
inform the international community about the individual security of its people. The right of persons to live in peace can be guaranteed only if the states are accountable to the international community.

4.5 The international community of states has been deeply implicated in wars and civil conflicts in Asia. Foreign states have used Asian groups as surrogates to wage wars and have armed groups and governments engaged in internal conflicts. They have made huge profits out of the sale of armaments. The enormous expenditures on arms have diverted public revenues from programmes for the development of the country or the well-being of the people. Military bases and other establishments (often of foreign powers) have threatened the social and physical security of the people who live in their vicinity.

The Right to Democracy

5.1 Colonialism and other modern developments significantly changed the nature of Asian political societies. The traditional systems of accountability and public participation in affairs of state as well as the relationship of citizens to the government were altered fundamentally. Citizens became subjects, while the government became more pervasive and powerful. Colonial laws and authoritarian habits and style of administration persisted after independence. The state has become the source of corruption and the oppression of the people. The democratization and humanization of the state is a pre-condition for the respect for and the protection of rights.

5.2 The state, which claims to have the primary responsibility for the development and well-being of the people, should be humane, open and accountable. The corollary of the respect for human rights is a tolerant and pluralistic system, in which people are free to express their views and to seek to persuade others and in which the rights of minorities are respected. People must participate in public affairs, through the electoral and other decision-making and implementing processes, free from racial, religious or gender discriminations.

The Right to Cultural Identity and the Freedom of Conscience

6.1 The right to life involves not only material but also the moral conditions which permit a person to lead a meaningful existence. This meaning is not only individually determined but is also based on shared living with other human beings. The Asian traditions stress the importance of common cultural identities. Cultural identities help individuals and communities to cope with the pressures of economic and social change; they give meaning to life in a period of rapid transformation. They are the source of pride and security. There are many vulnerable communities in Asia as elsewhere whose cultures are threatened or derided. Asian peoples and governments must respect the cultures and traditions of its diverse communities.
6.2 The plurality of cultural identities in Asia is not contrary to the universality of human rights but rather as so many cultural manifestations of human dignity enriching universal norms. At the same time we Asian peoples must eliminate those features in our cultures which are contrary to the universal principles of human rights. We must transcend the traditional concept of the family based on patriarchal traditions so as to retrieve in each of our cultural traditions, the diversity of family norms which guarantee women’s human rights. We must be bold in reinterpreting our religious beliefs which support gender inequality. We must also eliminate discriminations based on caste, ethnic origins, occupation, place of origin and others, while enhancing in our respective cultures all values related to mutual tolerance and mutual support. We must stop practices which sacrifice the individual to the collectivity or to the powerful, and thus renew our communal and national solidarity.

6.3 The freedom of religion and conscience is particularly important in Asia where most people are deeply religious. Religion is a source of comfort and solace in the midst of poverty and oppression. Many find their primary identity in religion. However religious fundamentalism is also a cause of divisions and conflict. Religious tolerance is essential for the enjoyment of the right of conscience of others, which includes the right to change one’s belief.

The Right to Development and Social Justice

7.1 Every individual has the right to the basic necessities of life and to protection against abuse and exploitation. We all have the right to literacy and knowledge, to food and clean water, shelter and to medical facilities for a healthy existence. All individuals and human groups are entitled to share the benefits of the progress of technology and of the growth of the world economy.

7.2 Development, for individuals and states, does not mean merely economic development. It means the realization of the full potential of the human person. Consequently they have the right to artistic freedom, freedom of expression and the cultivation of their cultural and spiritual capacities. It means the right to participate in the affairs of the state and the community. It implies that states have the right to determine their own economic, social and cultural policies free from hegemonic pressures and influences.

Rights of Vulnerable Groups

8.1 Asian states should formulate and implement public policies within the above general framework of rights. We believe that in this way we will establish fair and humane conditions for our individual and corporate lives and ensure social justice. However, there are particular groups who for historical or other reasons are weak and vulnerable and consequently require special protection for the equal and effective enjoyment of their human rights. We discuss the situation of several such groups, but we recognize that there are also other groups who suffer from discrimination and oppression. They include people who through civil conflict, government policies or economic hardships are displaced from their
homes and seek refuge in other places internally or in foreign lands. Our states and societies have become less tolerant of minorities and indigenous people, whose most basic rights are frequently violated. Many of our societies still discriminate against gays and lesbians, denying them their identity and causing them great anguish and misery. Various economic groups, like peasants and fishing communities, suffer from great deprivation and live in constant fear of threats to their livelihood from landlords and capitalist enterprises. All these groups deserve special attention. We urge states and communities to give the highest priority to the amelioration of their social and economic conditions.

Women

9.1 In most Asian societies women suffer from discrimination and oppression. The cause of their oppression lies in both history and contemporary social and economic systems.

9.2 The roots of patriarchy are systemic and its structures dominate all institutions, attitudes, social norms and customary laws, religions and values in Asian societies, crossing the boundaries of class, culture, caste and ethnicity. Oppression takes many forms, but is most evident in sexual slavery, domestic violence, trafficking in women and rape. They suffer discrimination in both public and private spheres. The increasing militarization of many societies in Asia has led to the increase of violence against women in situations of armed conflict, including mass rape, forced labour, racism, kidnapping and displacement from their homes. As female victims of armed conflict are often denied justice, rehabilitation, compensation and reparation of the war crimes committed against them, it is important to emphasis that systematic rape is a war crime and a crime against humanity.

9.3 To end discrimination against women in the field of employment and the right to work, women should be given the right to employment opportunities, the free choice of profession, job security, equal remuneration, the right to compensation in respect of domestic work, the right to protection of health and safe working conditions, especially in safeguarding of the function of reproduction and special protection in times of pregnancy from work that may be harmful. Women should be given the full right to control their sexual and reproductive health, free from discrimination or coercion, and be given access to information about sexual and reproductive health care and safe reproductive technology.

9.4 There are few legal provisions to protect women against violations of their rights within the domestic and patriarchal realm. Their rights in public law are seldom observed. Affirmative measures should be taken to ensure full and equal participation of women in the political and public life of the society. A considerable increase in the presence of women in the various institutions of state power and in the fields of business, agriculture and land ownership must be provided for by way of affirmative action. The political, social and economic empowerment of women is essential for the defence of their legal rights.
Children

10.1 As with women, their oppression takes many forms, the most pervasive of which are child labour; sexual slavery; child pornography; the sale and trafficking of children; prostitution; sale of organs; conscription into drug trafficking; the physical, sexual and psychological abuse of children within families; discrimination against children with HIV/AIDS; forced religious conversion of children; the displacement of children with and without their families by armed conflicts; discrimination; and environmental degradation. An increasing number of children are forced to live on the streets of Asian cities and are deprived of the social and economic support of families and communities.

10.2 Widespread poverty, lack of access to education and social dislocation in rural areas are among the causes of the trends which increase the vulnerability of children. Long-established forms of exploitation and abuse, such as bonded labour or the use of children for begging or sexual gratification are rampant. Female infanticide due to patriarchal gender preference and female genital mutilation are widely practised in some Asian countries.

10.3 Asian states have failed dismally to look after children and provide them with even the bare means of subsistence or shelter. We call on Asian states to ratify and implement the Convention on the Rights of the Child. We also call on communities to take the responsibility for monitoring violations of children’s rights and to press for the implementation of the UN Convention in appropriate ways in their own social contexts.

Differently Abled Persons

11.1 Traditionally Asian societies cared for those who were physically or mentally handicapped. Increasingly our communal values and structures, under the pressure of new forms of economic organizations, have become less tolerant of such persons. They suffer enormous discrimination in access to education, employment and housing. They are unable to enjoy many of their human rights due to prejudice against them and the absence of provisions responding to their special demands. Their considerable abilities are not properly recognized and they are forced into jobs which offer low pay and little prospects of promotion. They have the right to provisions which enable them to live in dignity, with security and respect, and to have opportunities to realize their full potential.

11.2 The need to treat such persons with respect for their human rights is apparent in the dismal way Asian states treat those with HIV or AIDS. They are the victims of gross discrimination. A civilized society which respects human rights would recognize their right to live and die with dignity. It would secure to them the right to adequate medical care and to be protected from prejudice, discrimination or persecution.

Workers
12.1 The rapid industrialization of Asian societies has undermined traditional forms of the subsistence economy and has destroyed possibilities of the livelihood of large sections of the rural people. Increasingly they and other groups are forced into wage employment, often in industry, working under appalling conditions. For the majority of the workers there is little or no protection from unfair labour laws. The fundamental rights to form trade unions and bargain collectively are denied to many. Their wages are grossly inadequate and working conditions are frequently grim and dangerous. Globalization adds to the pressures on workers as many Asian states seek to reduce the costs of production, often in collusion with foreign corporations and international financial institutions.

12.2 A particularly vulnerable category of workers are migrant workers. Frequently separated from their families, they are exploited in foreign states whose laws they do not understand and are afraid to invoke. They are often denied rights and conditions which local workers enjoy. They slog without access to adequate accommodation, health care, or legal protection. In many cases migrants suffer racism and xenophobia, and domestic helpers are subjected to humiliation and sometimes, sexual abuse.

Students

13.1 Students in Asia struggled against colonialism and fought for democratization and social justice. As a result of their fearless commitment to social transformation they have often suffered from state violence and repression and remain as one of the key targets for counter-insurgency operations and internal security laws and operations. Students are frequently denied the right to academic freedom and to the freedoms of expression and association.

Prisoners and Political Detainees

14.1 In few areas is there such a massive violation of internationally recognized norms as in relation to prisoners and political detainees.

14.2 Arbitrary arrests, detention, imprisonment, ill-treatment, torture, cruel and inhuman punishment are common occurrences in many parts of Asia. Detainees and prisoners are often forced to live in unhygienic conditions, are denied adequate food and health care and are prevented from having communication with, and support from, their families. Different kinds of prisoners are frequently mixed in one cell, with men, women and children kept in proximity. Prison cells are normally overcrowded. Deaths in custody are common. Prisoners are frequently denied access to lawyers and the right to fair and speedy trials.

14.3 Asian governments often use executive powers of detention without trial. They use national security legislation to arrest and detain political opponents. It is notable that, in many countries in Asia, freedom of thought, belief and conscience have been restricted by administrative limits on freedom of speech and association.

The Enforcement of Rights
15.1 Many Asian states have guarantees of human rights in their constitutions, and many of them have ratified international instruments on human rights. However, there continues to be a wide gap between rights enshrined in these documents and the abject reality that denies people their rights. Asian states must take urgent action to implement the human rights of their citizens and residents.

Principles for Enforcement

15.2 We believe that systems for the protection of rights should be based on the following principles.

15.2 a Human rights are violated by the state, civil society and business corporations. The legal protection for rights has to be extended against violations by all these groups. It is also necessary to reform these groups by strengthening their ethical foundations and values and inculcating in them a sense of their responsibility towards the disadvantaged and the oppressed.

15.2 b The promotion and enforcement of rights is the responsibility of all groups in society, although the primary responsibility is that of the state. The enjoyment of many rights, especially social and economic, requires a positive and proactive role of governments. There is a clear and legitimate role for NGOs in raising consciousness of rights, formulating standards, and ensuring their protection by governments and other groups. Professional groups like lawyers and doctors have special responsibilities connected with the nature of their work to promote the enforcement of rights and prevent abuses of power.

15.2 c Since rights are seriously violated in situations of civil strife and are strengthened if there is peace, it is the duty of the state and other organizations to find peaceful ways to resolve social and ethnic conflicts and to promote tolerance and harmony. For the same reasons no state should seek to dominate other states and states should settle their differences peacefully.

15.2 d Rights are enhanced if democratic and consensual practices are followed and it is therefore the responsibility of all states and other organisations to promote these practices in their work and in their dealings with others.

15.2 e Many individuals and groups in Asia are unable to exercise their rights due to restrictive or oppressive social customs and practices, particularly those related to caste, gender, or religion. Therefore the immediate reform of these customs and practices is necessary for the protection of rights. The reforms must be enforced with vigour and determination.

15.2 f A humane and vigorous civil society is necessary for the promotion and protection of human rights and freedoms, for securing rights within civil society and to act as a check on state institutions. Freedoms of expression and association are necessary for the establishment and functioning of institutions of civil society.
15.2 It is necessary to curb the exploitative practices of business corporations and to ensure that they do not violate rights of workers, consumers and the public.

**Strengthening the Framework for Rights**

15.3 a It is essential to secure the legal framework for rights. All states should include guarantees of rights in their constitutions, which should be constitutionally protected against erosion by legislative amendments. They should also ratify international human rights instruments. They should review their legislation and administrative practices against national and international standards with the aim of repealing provisions which contravene these standards, particularly legislation carried over from the colonial period.

15.3 b Knowledge and consciousness of rights should be raised among the general public, and state and civil society institutions. Awareness of the national and international regime of rights should be promoted. Individuals and groups should be acquainted with legal and administrative procedures whereby they can secure their rights and prevent abuse of authority. NGOs should be encouraged to become familiar with and deploy mechanisms, both national and inter-national, for monitoring and review of rights. Judicial and administrative decisions on the protection of rights should be widely disseminated, nationally and in the Asian region. Governments, NGOs and educational institutions should co-operate in disseminating information about the importance and content of human rights.

15.3 c Numerous violations of rights occur while people are in custody and through other activities of security forces. Sometimes these violations take place because the security forces do not respect the permissible scope of their powers or do not realise that the orders under which they are acting are unlawful. Members of the police, prison services and the armed forces should be provided training in human rights norms.

**The Machinery for the Enforcement of Rights**

15.4 a The judiciary is a major means for the protection of rights. It has the power to receive complaints of the violation of rights, to hear evidence, and to provide redress for violations, including punishment for violators. The judiciary can only perform this function if the legal system is strong and well-organized. The members of the judiciary should be competent, experienced and have a commitment to human rights, dignity and justice. They should be independent of the legislature and the executive by vesting the power of their appointment in a judicial service commission and by constitutional safeguards of their tenure. Judicial institutions should fairly reflect the character of the different sections of the people by religion, region, gender and social class. This means that there must be a restructuring of the judiciary and the investigative machinery. More women, more under-privileged categories and more of the Pariahs of society must by deliberate State action be lifted out of the mire and instilled in judicial positions with necessary training. Only such a measure will
command the confidence of the weaker sector whose human rights are ordinarily ignored in the traditional societies of Asia.

15.4b The legal profession should be independent. Legal aid should be provided for those who are unable to afford the services of lawyers or have access to courts, for the protection of their rights. Rules which unduly restrict access to courts should be reformed to provide a broad access. Social and welfare organizations should be authorised to bring legal action on behalf of individuals and groups who are unable to utilize the courts.

15.4c All states should establish Human Rights Commissions and specialized institutions for the protection of rights, particularly of vulnerable members of society. They can provide easy, friendly and inexpensive access to justice for victims of human rights violations. These bodies can supplement the role of the judiciary. They enjoy special advantages: they can help establish standards for the implementation of human rights norms; they can disseminate information about human rights; they can investigate allegations of violation of rights; they can promote conciliation and mediation; and they can seek to enforce human rights through administrative or judicial means. They can act on their own initiative as well on complaints from members of the public.

15.4d Civil society institutions can help to enforce rights through the organization of People’s Tribunals, which can touch the conscience of the government and the public. The establishment of People’s Tribunals emphasizes that the responsibility for the protection of rights is wide, and not a preserve of the state. They are not confined to legal rules in their adjudication and can consequently help to uncover the moral and spiritual foundations of human rights.

Regional Institutions for the Protection of Rights

16.1 The protection of human rights should be pursued at all levels, local, national, regional and international. Institutions at each level have their special advantages and skills. The primary responsibility for the protection of rights is that of states, therefore priority should be given to the enhancement of state capacity to fulfill this obligation.

16.2 Asian states should adopt regional or sub-regional institutions for the promotion and protection of rights. There should be an inter-state Convention on Human Rights, formulated in regional forums with the collaboration of national and regional NGOs. The Convention must address the realities of Asia, particularly the obstacles that impede the enjoyment of rights. At the same time it must be fully consistent with international norms and standards. It should cover violations of rights by groups and corporations in addition to state institutions. An independent commission or a court must be established to enforce the Convention. Access to the commission or the court must be open to NGOs and other social organizations.
Appendix B: Terms of Reference of ASEAN Intergovernmental Commission on Human Rights

Pursuant to Article 14 of the ASEAN Charter, the ASEAN Intergovernmental Commission on Human Rights (AICHR) shall operate in accordance with the following Terms of Reference (TOR):

1. **Purposes**

The purposes of the AICHR are:

1.1 To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;

1.2 To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;

1.3 To contribute to the realisation of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Member States, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN Community building process;

1.4 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;

1.5 To enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and

1.6 To uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.

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16 Association for Southeast Asian Nations, “Terms of Reference for the ASEAN Human Rights Body.”
2. Principles

The AICHR shall be guided by the following principles:

2.1 Respect for principles of ASEAN as embodied in Article 2 of the ASEAN Charter, in particular:

a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;

b) non-interference in the internal affairs of ASEAN Member States;

c) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;

d) adherence to the rule of law, good governance, the principles of democracy and constitutional government;

e) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;

f) upholding the Charter of the United Nations and international law, including international humanitarian law, subscribed to by ASEAN Member States; and

g) respect for different cultures, languages and religions of the peoples of ASEAN, while emphasising their common values in the spirit of unity in diversity.

2.2 Respect for international human rights principles, including universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms, as well as impartiality, objectivity, non-selectivity, non-discrimination, and avoidance of double standards and politicisation;

2.3 Recognition that the primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State;

2.4 Pursuance of a constructive and non-confrontational approach and cooperation to enhance promotion and protection of human rights; and

2.5 Adoption of an evolutionary approach that would contribute to the development of human rights norms and standards in ASEAN.
3. **Consultative Intergovernmental Body**

The AICHR is an inter-governmental body and an integral part of the ASEAN organisational structure. It is a consultative body.

4. **Mandate and Functions**

4.1. To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community;

4.2. To develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights;

4.3. To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information;

4.4. To promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States;

4.5. To encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments;

4.6. To promote the full implementation of ASEAN instruments related to human rights;

4.7. To provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request;

4.8. To engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders, as provided for in Chapter V of the ASEAN Charter;

4.9. To consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights;

4.10. To obtain information from ASEAN Member States on the promotion and protection of human rights;

4.11. To develop common approaches and positions on human rights matters of interest to ASEAN;

4.12. To prepare studies on thematic issues of human rights in ASEAN;
4.13. To submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting; and

4.14. To perform any other tasks as may be assigned to it by the ASEAN Foreign Ministers Meeting.

5. Composition

Membership

5.1 The AICHR shall consist of the Member States of ASEAN.

5.2 Each ASEAN Member State shall appoint a Representative to the AICHR who shall be accountable to the appointing Government.

Qualifications

5.3 When appointing their Representatives to the AICHR, Member States shall give due consideration to gender equality, integrity and competence in the field of human rights.

5.4 Member States should consult, if required by their respective internal processes, with appropriate stakeholders in the appointment of their Representatives to the AICHR.

Term of Office

5.5 Each Representative serves a term of three years and may be consecutively re-appointed for only one more term.

5.6 Notwithstanding paragraph 5.5, the appointing Government may decide, at its discretion, to replace its Representative.

Responsibility

5.7 Each Representative, in the discharge of his or her duties, shall act impartially in accordance with the ASEAN Charter and this TOR.

5.8 Representatives shall have the obligation to attend AICHR meetings. If a Representative is unable to attend a meeting due to exceptional circumstances, the Government concerned shall formally notify the Chair of the AICHR of the appointment of a temporary representative with a full mandate to represent the Member State concerned.

Chair of the AICHR

5.9 The Chair of the AICHR shall be the Representative of the Member State holding the Chairmanship of ASEAN.
5.10 The Chair of the AICHR shall exercise his or her role in accordance with this TOR, which shall include:

a) leading in the preparation of reports of the AICHR and presenting such reports to the ASEAN Foreign Ministers Meeting;

b) coordinating with the AICHR’s Representatives in between meetings of the AICHR and with the relevant ASEAN bodies;

c) representing the AICHR at regional and international events pertaining to the promotion and protection of human rights as entrusted by the AICHR; and

d) undertaking other specific functions entrusted by the AICHR in accordance with this TOR.

**Immunities and Privileges**

5.11 In accordance with Article 19 of the ASEAN Charter, Representatives participating in official activities of the AICHR shall enjoy such immunities and privileges as are necessary for the exercise of their functions.

### 6. Modalities

**Decision-making**

6.1 Decision-making in the AICHR shall be based on consultation and consensus in accordance with Article 20 of the ASEAN Charter.

**Number of Meetings**

6.2 The AICHR shall convene two regular meetings per year. Each meeting shall normally be not more than five days.

6.3 Regular meetings of the AICHR shall be held alternately at the ASEAN Secretariat and the Member State holding the Chair of ASEAN.

6.4 As and when appropriate, the AICHR may hold additional meetings at the ASEAN Secretariat or at a venue to be agreed upon by the Representatives.

6.5 When necessary, the ASEAN Foreign Ministers may instruct the AICHR to meet.

**Line of Reporting**

6.6 The AICHR shall submit an annual report and other appropriate reports to the ASEAN Foreign Ministers Meeting for its consideration.
Public Information

6.7 The AICHR shall keep the public periodically informed of its work and activities through appropriate public information materials produced by the AICHR.

Relationship with Other Human Rights Bodies within ASEAN

6.8 The AICHR is the overarching human rights institution in ASEAN with overall responsibility for the promotion and protection of human rights in ASEAN.

6.9 The AICHR shall work with all ASEAN sectoral bodies dealing with human rights to expeditiously determine the modalities for their ultimate alignment with the AICHR. To this end, the AICHR shall closely consult, coordinate and collaborate with such bodies in order to promote synergy and coherence in ASEAN’s promotion and protection of human rights.

7. Role of the Secretary-General and the Secretariat

7.1 The Secretary-General of ASEAN may bring relevant issues to the attention of the AICHR in accordance with Article 11.2 (a) and (b) of the ASEAN Charter. In so doing, the Secretary-General of ASEAN shall concurrently inform the ASEAN Foreign Ministers of these issues.

7.2 The ASEAN Secretariat shall provide the necessary secretarial support to the AICHR to ensure its effective performance. To facilitate the Secretariat’s support to the AICHR, ASEAN Member States may, with the concurrence of the Secretary-General of ASEAN, second their officials to the ASEAN Secretariat.

8. Work Plan and Funding

8.1 The AICHR shall prepare and submit a Work Plan of programmes and activities with indicative budget for a cycle of five years to be approved by the ASEAN Foreign Ministers Meeting, upon the recommendation of the Committee of Permanent Representatives to ASEAN.

8.2 The AICHR shall also prepare and submit an annual budget to support high priority programmes and activities, which shall be approved by the ASEAN Foreign Ministers Meeting, upon the recommendation of the Committee of Permanent Representatives to ASEAN.

8.3 The annual budget shall be funded on equal sharing basis by ASEAN Member States.

8.4 The AHRB may also receive resources from any ASEAN Member States for specific extrabudgetary programmes from the Work Plan.
8.5 The AICHR shall also establish an endowment fund which consists of voluntary contributions from ASEAN Member States and other sources.

8.6 Funding and other resources from non-ASEAN Member States shall be solely for human rights promotion, capacity building and education.

8.7 All funds used by the AICHR shall be managed and disbursed in conformity with the general financial rules of ASEAN.

8.8 Secretarial support for the AICHR shall be funded by the ASEAN Secretariat’s annual operational budget.


9.1. This TOR shall come into force upon the approval of the ASEAN Foreign Ministers Meeting.

Amendments

9.2. Any Member State may submit a formal request for an amendment of this TOR.

9.3. The request for amendment shall be considered by the Committee of Permanent Representatives to ASEAN in consultation with the AICHR, and presented to the ASEAN Foreign Ministers Meeting for approval.

9.4. Such amendments shall enter into force upon the approval of the ASEAN Foreign Ministers Meeting.

9.5. Such amendments shall not prejudice the rights and obligations arising from or based on this TOR before or up to the date of such amendments.

Review

9.6. This TOR shall be initially reviewed five years after its entry into force. This review and subsequent reviews shall be undertaken by the ASEAN Foreign Ministers Meeting, with a view to further enhancing the promotion and protection of human rights within ASEAN.

9.7. In this connection, the AICHR shall assess its work and submit recommendations for the consideration of the ASEAN Foreign Ministers Meeting on future efforts that could be undertaken in the promotion and protection of human rights within ASEAN consistent with the principles and purposes of the ASEAN Charter and this TOR.

Interpretation

9.8. Any difference concerning the interpretation of this TOR which cannot be resolved shall be referred to the ASEAN Foreign Ministers Meeting for a decision.
Appendix C - SAPA Task Force on ASEAN and Human Rights’ Submission to the High Level Panel on the establishment of an ASEAN human rights (HLP)\textsuperscript{17}

During the High Level Panel-Civil Society Dialogue Session during 9th High Level Panel meeting (20 March 2009, JW Marriot Hotel, Kuala Lumpur, Malaysia)

Key Points of Concern on the Draft Terms of Reference (TOR) of the ASEAN human rights body (AHRB)

I. Introduction

1. The Solidarity of Asian Peoples’ Advocacy Task Force on ASEAN and Human Rights (SAPA TF-AHR), which is a network of more than 25 ASEAN-based human rights NGOs and peoples organisations that have been operating since August 2007 to advocate for a credible and effective ASEAN human rights mechanism, expresses its gratitude to the High Level Panel on the establishment of an ASEAN human rights body (HLP) for holding the second regional dialogue session with the SAPA TF-AHR to be taken place on 20 March 2009 as a part of the 9th meeting of the HLP.

2. On 18-19 March 2009, human rights organisations in ASEAN and beyond which are representing the country and thematic focal points of the SAPA TF-AHR gathered in Kuala Lumpur, Malaysia to discuss the key point of concerns regarding the TOR of the ASEAN human rights body (AHRB). The point of concerns are the result of series of national workshop and thematic regional workshops to comment on the draft TOR of the AHRB conducted in seven countries namely Burma border, Cambodia, Indonesia, Malaysia, Philippines, Thailand, Vietnam during January – February 2009.

3. Along with the key points of concern, SAPA TF-AHR also produce a submission based on the draft TOR of the AHRB dated 13 February 2009, which we believe would be helpful to the deliberation of the HLP to ensure that the AHRB will be credible and effective and reflect international human rights laws and standards.

\textsuperscript{17}SAPA Task Force on ASEAN and Human Rights, “Submission to the High Level Panel on the Establishment of an ASEAN Human Rights (HLP) during the HLP-Civil Society Dialogue Session.”
II. Our aspirations

4. We reiterate that the work of AHRB must be guided by international norms and standards embodied in the Universal Declaration of Human Rights and other international instruments, including international human rights treaties, international humanitarian law and the core labour standards. The AHRB must operate based on the principles that “all human rights are universal, indivisible, interdependent, and interrelated”, including civil, political, economic, social, and cultural rights.

5. Given the reality of human rights being cross sector and cross border issues, including issues such as the crime of trafficking of persons, migrants, refugees, we reiterate that in line with the principle of non-discrimination and equality the mandate of the AHRB on the promotion, protection and fulfillment of human rights should not be limited to only citizens in the ASEAN but to all peoples in the region.

6. We envisage an independent, effective and credible AHRB that will work to ensure that all member states in the ASEAN act upon its obligation to promote, protect, and fulfil all human rights in line with international human rights norms and standards. The setting up the AHRB should be seen as part of an evolutionary process which will lead toward the eventual setting up of the ASEAN human rights court to ensure full implementation of the protection of human rights.

III. Call for the official disclosure of draft TOR to the public

7. The SAPA TF-AHR is encouraged that the HLP has recognised the role of the civil society organisations in its work and consulted the civil society at national and regional level as put forward in the first submission of the TF-AHR since the setting up of the HLP in July 2008. We hope that this process will be further strengthened in the future. We however regret that the draft TOR of the AHRB has not been disclosed officially to the public and that civil society has had to secure the draft TOR from unofficial source. We are concerned that without the disclosure of the draft TOR to the general public, the process could be questioned as being not transparent. We once again call on the HLP to ensure that subsequent drafts of the TOR be made public for meaningful consultation and public participation.

IV. Key concerns

We would therefore like to make the following key concerns and recommendations on the draft TOR dated 13 February 2009:

a. Cultural relativism risks undermining international human rights norms and standards

8. The draft TOR stipulates that one of the purposes of the AHRB is the promotion and protection
of 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” [article 1.4]. We are concerned that this will open the door for the discourse of cultural relativism to undermine the principle of universality of human rights. While recognising the cultural and religious diversity and pluralism of ASEAN, AHRB must work to ensure that states uphold their legal obligation under international human rights law to eliminate cultural and religious norms that perpetuate human rights violations.

9. One of the planned mandates of the AHRB to “develop an ASEAN Declaration on Human Rights [article 4.2]”, remains a grave concern given the fact of the low ratification of international human rights treaties and the lack of political will to subscribe to international human rights norms and standards by ASEAN states. If the AHRB were to come up with such a declaration, it must be in line with international human rights norms and standards. The process of drafting must guarantee meaningful consultation, participation and the right to information for civil society organisations, people’s organisations and the general population.

b. Principle of non-interference

10. The guiding principle of AHRB to respect the principle of “non-interference in the internal affairs of ASEAN Member States [article 2.1]” is not consonant with principles of human rights. We strongly propose that the HLP delete this clause.

c. The right of individuals, civil society organizations and peoples organisations to access and participate in the AHRB

11. The draft TOR of AHRB must explicitly ensure that the body is accessible to victims of human rights violation and the general public.

12. The draft TOR must explicitly recognise and guarantee the involvement of civil society organisations, people’s organisations and the general public in AHRB processes, including the process of selection and removal of the commissioners, receiving complaints and the review of the TOR.

13. Civil Society’s involvement in the AHRB processes must be open to all and must not be limited to those groups referred in Chapter V of the ASEAN Charter. [article 4.7]

d. AHRB relations with ASEAN bodies

14. All ASEAN human rights bodies must be integrated in the AHRB. [article 6.7]

15. In the event that the AHRB is established before the proposed ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), we submit that there is no necessity to continue the establishment of the ACWC.
16. The AHRB must be equipped to deal with all human rights issues including the establishment of sub-commissions on women, children, migrant workers, Indigenous Peoples, peoples with disability and other vulnerable groups.

e. AHRB relations with the ASEAN National Human Rights Institutions (NHRIs)

17. The draft TOR must explicitly recognise the role of NHRIs in the promotion and protection of human rights as the NHRIs can play important an role in supporting the work of the AHRB.
18. The AHRB must encourage the establishment of NHRIs where they do not exist and ensure that the NHRIs in the region are compliant with the Paris Principles. Similarly, the AHRB must comply with the Paris Principles as well.

f. Unclear provisions on protection mandate and function

19. The draft TOR states the purpose of the AHRB is to “protect human rights and fundamental freedom” (article 1.1), however, there is no detailed and concrete provisions on the mandate and function to protect human rights.

20. We reiterate that the protection mandates of the AHRB, must explicitly include:

- **Assess and review the general human rights situation in the region** and publish reports on recommendations which shall be made public and widely circulated and will form the basis for collective action.
- **Carry out on-site visits** to investigate reports of human rights violations, including unrestricted and confidential access to victims and witnesses, and access to prisons and other places of detention.
- **Establishment of an individual complaint mechanism** for cases of human rights violations
- **Issue urgent letters including press statements and letters of inquiry** to request government action in response to the information received
- **Issue progress reports and recommendations** to member states to adopt measures to remedy violations committed including reparation for victims.
- **Develop an early warning system** to prevent gross violations of human rights
- **Establish independent and impartial coordination mechanisms** dealing with trans-boundary human rights issues and concerns.

g. Lack of enforcement mechanism

21. Every victim of human rights has the right to redress however we feel that the lack of a clear enforcement mechanism as outlined in the draft TOR to the AHRB could be detrimental to the exercise of this right. We therefore propose that the draft TOR explicitly ensure that the AHRB
will have the mandate not only to issue recommendations but also to monitor the implementation by member states of it recommendations.

22. We also propose that in the event that a member state is found guilty of committing widespread or systematic human rights violations the AHRB must also be **authorised to refer the matter to the ASEAN summit** as a serious breach of the charter in accordance with article 27(2) of the ASEAN Charter.

**h. Independence of AHRB from governments**

23. We reiterate that the commissioners appointed must serve in their personal capacity in order to ensure the independence and effectiveness of the AHRB.

24. The commissioners must be independent along the line of the criteria of the mandate holders under the UN Special Procedures and Treaty Bodies and be guided by the Paris Principles. The selection process must be transparent and involve extensive and meaningful consultations with civil society organizations, people’s organization and the general public.

**i. Fiscal Autonomy**

25. We see the role envisaged for the Committee of Permanent Representatives (CPR) [in article 8.1, 8.2, and 9.3] in reviewing the AHRB’s work plan and budget as unnecessary as this could jeopardise the fiscal autonomy of the AHRB. We propose that that the work plan and budget be submitted directly to the Foreign Ministers and the AHRB be provided with adequate financial resources.

**j. Secretariat support for the work of AHRB**

26. The draft TOR does not explicitly guarantee a separate secretariat for the AHRB. In order to ensure the effectiveness and efficiency of the AHRB, it must be equipped with its own secretariat with sufficient and competent staff the composition of which is reflective of equal gender and geographical representation.

**k. Decision-making process**

27. The decision-making process must be based on majority vote if the AHRB cannot come up with consensus. The decision-making process by consensus alone undermines the effectiveness and efficiency of the body. [article 6.1]

28. In line with the need to ensure independence of the AHRB, the decisions on interpretation of the TOR shall be made by the AHRB without the need to refer to the ASEAN Foreign Ministers (article 9.8)
1. Chairmanship of AHRB

29. The Chairmanship of AHRB must be elected among the members of the body rather than following the one-year rotation of ASEAN Chair. The Chair of AHRB must serve for a three year term to ensure continuity and effectiveness. [article 5.8]

m. Removal of members

30. The decisions to remove a member must not be taken place without the unanimous agreement by the other members of the AHRB.

31. The rules of procedures for removal of member of AHRB must be worked out in compliance with the principle of transparency, accountability and justice in line with the procedures of the UN Treaty Bodies.