

LAW AND SOCIETY TRUST

Fortnightly Review

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OBJECTIVES

The Law and Society Trust Fortnightly Review keeps the wider Law and Society community informed about the activities of the Trust, and about important events of legal interest and personalities associated with the Trust.

The first UN convened World Conference on Human Rights was held in Teheran in 1968. Preparations for the second, due to be held in Vienna, Austria from 14 - 25 June 1993 are already underway. In this issue we publish papers tabled at the Asian inter governmental meeting held in Bangkok from 29 March to 2 April.

The World Conference on Human Rights

The Asian Regional Meeting

Bangkok

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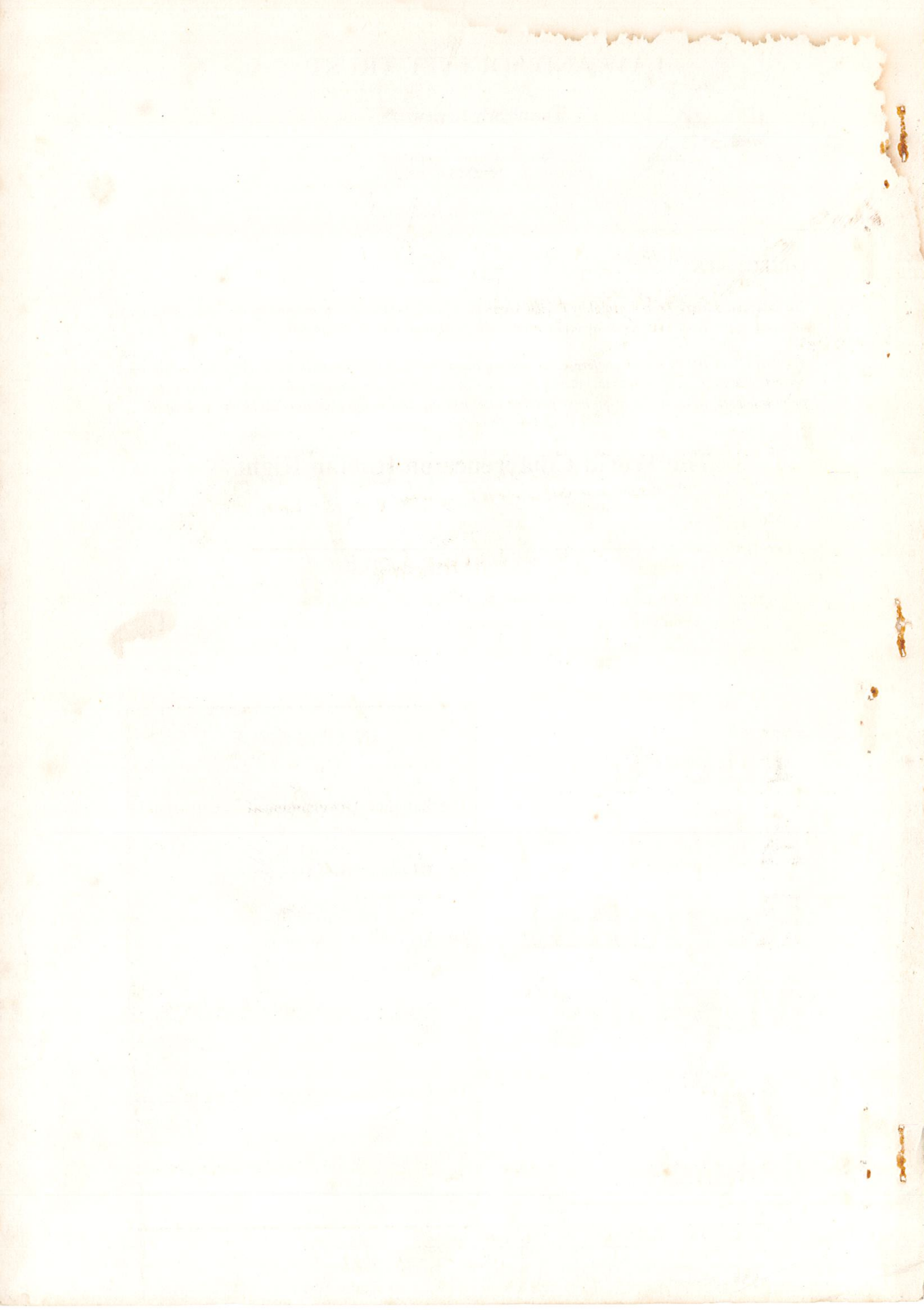
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THE BANGKOK GOVERNMENTAL DECLARATION

Emphasizing the significance of the World Conference on Human Rights, which provides an invaluable opportunity to review all aspects of human rights and ensure a just and balanced approach thereto,

Recognizing the contribution that can be made to the World Conference by Asian countries with their diverse and rich cultures and traditions,

Welcoming the increased attention being paid to human rights in the international community,

Reaffirming their commitment to principles contained in the Charter of the United Nations and the Universal Declaration on Human Rights,

Recalling that in the Charter of the United Nations the question of universal observance and promotion of human rights and fundamental freedoms has been rightly placed within the context of international cooperation,

Noting the progress made in the codification of human rights instruments, and in the establishment of international human rights mechanisms, while expressing concern that these mechanisms relate mainly to one category of rights,

Emphasizing that ratification of international human rights instruments, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, by all States should be further encouraged,

Reaffirming the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of States,

Stressing the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization,

Recognising that the promotion of human rights should be encouraged by cooperation and consensus, and not through confrontation and the imposition of incompatible values,

Reiterating the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the inherent interrelationship between development, democracy, universal enjoyment of all human rights, and social justice which must be addressed in an integrated and balanced manner,

Recalling that the Declaration on the Right to Development has recognized the right to development as a universal and inalienable right and an integral part of fundamental human rights,

Emphasizing that endeavours to move towards the creation of uniform international human rights norms must go hand in hand with endeavours to work towards a just and fair world economic order,

Convinced that economic and social progress facilitates the growing trend towards democracy and the promotion

and protection of human rights,

Stressing the importance of education and training in human rights at the national, regional and international levels and the need for international cooperation aimed at overcoming the lack of public awareness of human rights,

1. Reaffirm their commitment to the principles contained in the Charter of the United Nations and the Universal Declaration on Human Rights as well as the full realization of all human rights throughout the world;
2. Underline the essential need to create favourable conditions for effective enjoyment of human rights at both the national and international levels;
3. Stress the urgent need to democratize the United Nations system, eliminate selectivity and improve procedures and mechanisms in order to strengthen international cooperation, based on principles of equality and mutual respect, and ensure a positive, balanced and non-confrontational approach in addressing and realizing all aspects of human rights;
4. Discourage any attempt to use human rights as a conditionality for extending development assistance;
5. Emphasize the principles of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure;
6. Reiterate that all countries, large and small, have the right to determine their political systems, control and freely utilize their resources, and freely pursue their economic, social and cultural development;
7. Stress the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization, and that no violation of human rights can be justified;
8. Recognize 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 and various historical, cultural and religious backgrounds;
9. Recognize further that States have the primary responsibility for the promotion and protection of human rights through appropriate infrastructure and mechanisms, and also recognize that remedies must be sought and provided primarily through such mechanisms and procedures;
10. Reaffirm the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the need to give equal emphasis to all categories of human rights;
11. Emphasize the importance of guaranteeing the human rights and fundamental freedoms of vulnerable groups such as ethnic, national, racial, religious and linguistic minorities, migrant workers, disabled persons, indigenous peoples, refugees and displaced persons;

12. Reiterate that self-determination is a principle of international law and a universal right recognized by the United Nations for peoples under alien or colonial domination or foreign occupation, by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural development, and that its denial constitutes a grave violation of human rights;
13. Stress that the right to self-determination is applicable to peoples under alien or colonial domination or foreign occupation, and should not be used to undermine the territorial integrity, national sovereignty and political independence of States;
14. Express concern over all forms of violation of human rights, including manifestations of racial discrimination, racism, apartheid, colonialism, foreign aggression and occupation, and the establishment of illegal settlements in occupied territories, as well as the recent resurgence of neo-nazism, xenophobia and ethnic cleansing;
15. Underline the need for taking effective international measures in order to guarantee and monitor the implementation of human rights standards and effective and legal protection of people under foreign occupation;
16. Strongly affirm their support for the legitimate struggle of the Palestinian people to restore their national and inalienable rights to self-determination and independence, and demand an immediate end to the grave violations of human rights in the Palestinian, Syrian Golan and other occupied Arab territories including Jerusalem;
17. Reaffirm the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights, which must be realized through international cooperation, respect for fundamental human rights, the establishment of a monitoring mechanism and the creation of essential international conditions for the realization of such right;
18. Recognize that the main obstacle to the realization of the right to development lie at the international macroeconomic level, as reflected in the widening gap between the North and the South, the rich and the poor;
19. Affirm that poverty is one of the major obstacles hindering the full enjoyment of human rights;
20. Affirm also the need to develop the right of humankind regarding a clean, safe and healthy environment;
21. Note that terrorism, in all its form and manifestations, as distinguished from the legitimate struggle of peoples under colonial or alien domination or foreign occupation, has emerged as one of the most dangerous threats to the enjoyment of human rights and democracy, threatening the territorial integrity and security of States and destabilizing legitimately constituted governments, and that it must be unequivocally condemned by the international community;
22. Reaffirm their strong commitment to the promotion and protection of the rights of women through the guarantee of equal participation in the political, social, economic and cultural concerns of society, and

the eradication of all forms of discrimination and of gender-based violence against women;

23. Recognize the rights of the child to enjoy special protection and to be afforded the opportunities and facilities to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity;
24. Welcome the important role played by national institutions in the genuine and constructive promotion of human rights, and believe that the conceptualization and eventual establishment of such institutions are best left for the States to decide;
25. Acknowledge the importance of cooperation and dialogue between governments and non-governmental organizations on the basis of shared values as well as mutual respect and understanding in the promotion of human rights, and encourage the non-governmental organizations in consultative status with the Economic and Social Council to contribute positively to this process in accordance with Council Resolution 1296 (XLIV);
26. Reiterate the need to explore the possibilities of establishing regional arrangements for the promotion and protection of human rights in Asia;
27. Reiterate further the need to explore ways to generate international cooperation and financial support for education and training in the field of human rights at the national level and for the establishment of national infrastructures to promote and protect human rights if requested by States;
28. Emphasize the necessity to rationalize the United Nations human rights mechanism in order to enhance its effectiveness and efficiency and the need to ensure avoidance of the duplication of work that exists between the treaty bodies, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights, as well as the need to avoid the multiplicity of parallel mechanisms;
29. Stress the importance of strengthening the United Nations Centre for Human Rights with the necessary resources to enable it to provide a wide range of advisory services and technical assistance programmes in the promotion of human rights to requesting States in a timely and effective manner, as well as to enable it to finance adequately other activities in the field of human rights authorized by competent bodies;
30. Call for increased representation of the developing countries in the Centre for Human Rights.

THE BANGKOK NGO DECLARATION ON HUMAN RIGHTS

27 March 1993

Introduction

Some 240 participants from 110 non-governmental organisations (NGOs) concerned with issues of human rights and democratic development from the Asia-Pacific region - representing women, children, indigenous peoples, workers, community development and other concerns, met in Bangkok from 24-28 March 1993 to review the current human rights situation in the region and to formulate strategies for the future promotion and protection of human rights.

This gathering was motivated by the need to offer, in a spirit of international solidarity, ideas and suggestions in the lead-up to the Asian inter-governmental conference on human rights (Bangkok, 29 March - 2 April 1993), the World Conference on Human Rights (Vienna, June 1993), and beyond.

Challenges

The participants identified the following essential challenges:

1. **Universality.** We can learn from different cultures in a pluralistic perspective and draw lessons from the humanity of these cultures to deepen respect for human rights. There is emerging a new understanding of universalism encompassing the richness and wisdom of Asia-Pacific cultures.

Universal human rights standards are rooted in many cultures. We affirm the basis of universality of human rights which afford protection to all of humanity, including special groups such as women, children, minorities and indigenous peoples, workers, refugees and displaced persons, the disabled and the elderly. While advocating cultural pluralism, those cultural practices which derogate from universally accepted human rights, including women's rights, must not be tolerated.

As human rights are of universal concern and are universal in value, the advocacy of human rights cannot be considered to be an encroachment upon national sovereignty.

2. **Indivisibility.** We affirm our commitment to the principle of indivisibility and interdependence of human rights, be they civil, political, economic, social or cultural rights. The protection of human rights concerns both individuals and collectivities. The enjoyment of human rights implies a degree of social responsibility to the community.

Violations of civil and political rights are perpetrated every day. These include the stifling of self-determination, military occupation, killings, torture, political repression, and suppression of freedom of expression and other freedoms. By contrast, poverty and the lack of basic necessities constitute key violations of economic, social and cultural rights.

Violations of civil, political and economic rights frequently result from the emphasis on economic development at the expense of human rights. Violations of social and cultural rights are often the result of political systems

which treat human rights as being of secondary importance.

Economic rights involve a fair distribution of resources and income, the right to freedom from hunger and poverty. These can only be protected where people are able to exercise their civil and political rights, for example, the right of workers to organise and form unions to protect their economic rights. Poverty arises from maldevelopment in the face of systemic denial of human rights.

There must be a holistic and integrated approach to human rights. One set of rights cannot be used to bargain for another.

3. Women's Rights as Human Rights. The issue of women's rights has not been sufficiently visible in the human rights discourse, in human rights institutions and practices. Patriarchy which operates through gender, class, caste and ethnicity, is integral to the problems facing women. Patriarchy is a form of slavery and must be eradicated. Women's rights must be addressed in both the public and private spheres of society, in particular in the family.

To provide women a life with dignity and self-determination, it is important that women have inalienable, equal economic rights (e.g. right to agricultural land, housing and other resources, and property). It is imperative for governments and the United Nations (UN) to guarantee these rights.

Crimes against women, including rape, sexual slavery and trafficking, and domestic violence are rampant. **Crimes against women are crimes against humanity, and the failure of governments to prosecute those responsible for such crimes implies complicity.**

In the Asia-Pacific region, women's rights are violated by increasingly militant assertions of religious and ethnic identity; the fact that these violations often take place through private actors is used by states as a pretext for failing to counter them as transgressions of human rights. In crisis situations - ethnic violence, communal riots, armed conflicts, military occupation and displacement - women's rights are specifically violated.

In the case where countries have acceded to the relevant international instruments on women's rights, many countries have entered too many reservations to exempt themselves from responsibility. This illustrates the lack of political and social will to protect women's rights.

4. Solidarity. We are entitled to join hands to protect human rights worldwide. We commit ourselves to international solidarity and to voice the concerns of our brothers and sisters without boundaries and barriers. Discrimination based upon race, gender, political, economic, social, religious or ethnic origin must not be tolerated. **International solidarity transcends the national order to refute claims of state sovereignty and non-interference in the internal affairs of a state.**

5. Sustainable Development. No country can attain genuine development if it is not truly free, if it has not been able to successfully liberate itself from foreign domination and control. A major cause of maldevelopment and gross violations of human rights is the dominance and consequence of imperialism in the Asia-Pacific region. A pre-condition to genuine development is the attainment of national liberation and self-determination of the peoples in the region.

We re-emphasise the need for balanced development, bearing in mind maximisation of people's development; integrated approaches on civil, political, economic, social and cultural rights; equity and social justice; income distribution and fair resource allocation. Particular attention must be paid to the needs of different groups including women, children, rural people, the urban poor, minorities and indigenous peoples, refugees and displaced persons, workers, and others in disadvantaged positions. The natural environment must be protected as part and parcel of human rights.

Various top-down development models have led to maldevelopment. Action against national liberation and the people's right of self-determination against political/military repression are key constraints for the realisation of development. These are compounded by regional peculiarities whereby state boundaries are at times artificial when viewed from the commonalities between peoples across frontiers.

On the one hand, we must restructure the international development framework to respond more directly to the needs of people in our societies and communities - both men and women, including debt relief, reform of the international financial, economic and commercial systems, and greater democratisation of the decision-making process. The role of international aid agencies - multilateral and bilateral - and financial institutions has given rise to a number of human rights violations; they must be held accountable for the human rights violations caused by their policies and deeds.

International economic forces have great impact on human rights. The divide between North and South in terms of global equity and resource base, compounded by elitism, perpetuates social and economic disparities. The shift to a market economy has led to various human rights violations linked with development. Market rights do not mean human rights. "One dollar, one vote" does not mean democracy. Freedom to exploit does not deliver economic rights to the poor.

On the other hand, reform is also required at the national level. Maldevelopment leads to increasing poverty, income disparities, dispossession and deprivation, including land and resource holdings, environmental degradation, and over-emphasis on macro-economic development without sufficient enhancement of human development, freedoms and dignity, including dignity of men and women.

There is an urgent call to democratise the development process at both the national and international levels so as to ensure a harmonious relationship between humanity and the natural environment, and to create processes to enhance the empowerment of women and gender equality. The thrust is to promote human and humane development.

6. Democracy. Democracy is more than a legalistic or formal process. Democracy is more than the ritual casting of a ballot at one party or multi-party elections. True democracy involves participatory democracy by the people at all levels so that the people have a voice in the discussions by which they are governed.

It must be realised in the form of people's empowerment and participation at the grassroots and other levels with responsive and accountable processes and institutions at both the local and national levels. It demands good governance, freedom from corruption, and accountability of state and other authorities to the people. It involves the protection and participation of those groups which are not in the majority, namely minorities and disempowered groups. It is intertwined with the issue of land and social justice for rural people and other disadvantaged groups.

Democracy is a way of life; it pervades all aspects of human life -in the home, in the workplace, in the local community, and beyond. It must be fostered and guaranteed in all countries.

7. Militarisation. We express deep concern over the increasing militarisation throughout the region and the diversion of resources for this purpose. Militarisation has led to the destruction of civil society, undermined the right of self-determination, and denied the people the right to liberate themselves and their freedom from fear. At times, militarisation has taken the guise of civilian groups, such as vigilantes.

It has particularly harmed indigenous peoples and has resulted in forced migration. It is interrelated with violence against women, such as sexual slavery, rape and other crimes committed in armed conflicts. It has particularly harmed the children. They suffer from physical health problems, emotional disorders, and social maladjustments due to traumatic events such as arrest and torture, evacuation, massacre, disappearance, and other forms of human rights violations.

Militarisation is closely linked with religious fundamentalism and ethnic discord, including ethnic cleansing fanned by certain governments.

Militarisation of smaller, less militaristic states is often abetted by superpowers and regional powers. Profiteering from the sale of weapons of mass destruction has been a prime cause of economic growth in developed countries and maldevelopment in developing countries. It is aggravated by the proliferation of nuclear weapons and energy, and environmental damage due to toxic wastes.

The quest for peace and human rights is intertwined with the need to demilitarise.

8. Self-determination. The right of self-determination of peoples is well-established in international human rights instruments and international law. The root cause of most internal conflicts can be traced back to this fundamental human right.

We affirm that all peoples have the right to self-determination. By virtue of that right, they freely determine their political status, and freely pursue their economic, social and cultural development. The right of peoples to self-determination must, therefore, be observed by all governments.

It is understood also that self-determination does not necessarily imply secession or independence. Self-determination can mean independence, free association, integration with an independent state or other constitutional arrangement arrived at through popular consultation and consent.

9. Torture. The existence of torture and inhuman degrading treatment in the Asia-Pacific region gives rise to increasing concern. These practices must be eradicated.

In many countries, suspects are tortured by law enforcement personnel for extracting "confessions". This inhuman practice is officially encouraged by some authorities as a cheap and convenient method of crime control. These so-called "confessions" are used as "evidence" in court cases.

The action needed to counter such practices needs to be both preventive and curative. The latter implies prosecution of those responsible, as well as rehabilitation assistance for torture victims.

10. Freedom of expression. This freedom is constrained in many Asia-Pacific countries. It is necessarily interrelated with the call for civil and political rights, and democracy.

In several countries, there are no independent media. People cannot express themselves without fear. Many people are persecuted, jailed and even killed because they speak out their thoughts. The pretext for constraining these channels of expression is often national security and law and order; this is a facade for authoritarianism and for the suppression of democratic aspirations.

11. Human rights education and training. Human rights education and training have so far not been incorporated sufficiently into both formal and non-formal education. Illiteracy remains widespread.

School curriculum tends to favour the ruling elites. Not only are millions of people unaware of their rights, but also receive no encouragement or assistance in asserting their rights. Human rights education and training have both preventive and curative impact - they can empower people to prevent problems from arising by nurturing respect for other people's rights, and vice versa, as well as to inform people of the possibilities of redress.

If we wish to promote democracy and respect for human rights, we must develop comprehensive human rights education and training in both governmental and non-governmental programmes, in and out-of-school.

12. Indigenous Peoples. The Asia-Pacific region is home to many indigenous peoples. A basic issue among these indigenous peoples is the fact that many are not recognised as indigenous by governments and as such are denied the right to self-determination.

They are denied their specific cultural identity and entitlement to protection under relevant international human rights instruments. They are victims of ethnocide and genocide perpetrated by certain governments - whether from the North, the South or together, international financial institutions and transnational corporations. International legal instruments presently available are weak in ensuring collective human rights protection.

In many parts of the region, their right to land and other rights are not respected. Among the consequences are the expropriation and despoilation of their lands, armed conflicts and displacement and refugees. This has been accompanied by persecution and suppression by force. On another front, tourism has at times led to the degradation of indigenous lifestyles through commercial exploitation.

13. Children. A variety of abuses and exploitation of children arise in the region. These include child labour, children in bondage and sexual slavery, child prostitution, sale and trafficking of children, children in armed conflict situations, children in prison, children in poverty situations and other deprivations, and children abused in families compounded by family break-up and breakdown. Basic needs, such as physical and mental health, nutrition, education, shelter, and participation are often unsatisfied. The advent of AIDS has increased the plight of children; discrimination is increasing both against children with AIDS and orphans of AIDS affected families.

Children's rights are endangered in a wide variety of situations. At a very early age, they are exposed to violence in many forms by governments - poverty, malnutrition, disease, and lack of education which stultify their growth and deprive them of their childhood.

The scenario is much linked with discrimination against the girl child, militarisation, and the distorted development process. Although many countries have now acceded to the International Convention on the Rights of the Child, implementation remains weak, with much lip-service rather than effective action to protect children and to assist their families.

Implementation of the rights of children to survival, protection, development and participation as embodied in the International Convention on the Rights of the Child must be a paramount concern of every state regardless of considerations of national capacity and security.

14. Workers. Workers of the Asia-Pacific region do not enjoy acceptable standards of human rights. Too often it is workers and trade union leaders who endure the worst cases of human rights abuses in the region. The right of freedom of association and the right to organise trade unions are very restricted in several countries.

In this setting, human rights that are taken for granted in the civil society are ignored within the factory and the workplace. The human rights of workers such as women, migrants, bonded labourers, children and youths, and those in the informal/unorganised sector are in an even more critical situation.

The economic rights of workers, especially their access to an adequate standard of living, is often neglected in the region. Transnational corporations and agencies such as the International Monetary Fund and the World Bank at times work to undermine this right in the name of economic freedom. Many abuses of worker rights in this region come from the same countries of the North which preach human rights to the South.

15. Refugees and Displaced Persons. The problem of refugees and displaced persons is widespread and growing in the region; it is becoming a permanent phenomenon. It is intermingled with political repression, armed conflicts, ethnic discord, and other factors. Economic factors also push people to move in search of a livelihood elsewhere.

Inadequate attention is paid to their plight. Their position is compounded by the lack of effective national and international machinery to ensure their protection and assistance.

The safety of refugees and displaced persons is often jeopardised by restrictive state policies and discrimination. The basic right of refugees not to be pushed back to the frontiers of danger is violated on many occasions. The procedures established to determine refugee status are often defective, and voluntary repatriation to the country of origin is not always guaranteed. The human rights of refugees and displaced persons, including freedom of expression, are violated in the name of restrictive national policies.

Few countries have acceded to the relevant refugee instruments. This displays a reticence to recognise international human rights standards and to render the situation more transparent internationally.

16. Derogations. Several countries seek to constrain the enjoyment of human rights by means of derogations. In cases of increasing militarisation, military occupation and rule - at times in the guise of civilian governments, the space for civil society is becoming narrowed with negative impact for human rights.

We re-emphasise that states must not derogate from human rights standards for reasons of national security, law and order, or the equivalent. We reiterate that states are bound to respect human rights in their totality in all circumstances.

17. Human Rights Activists/Defenders. Increasing restrictions are being imposed on the work of human rights activists/defenders - peoples from all walks of life involved with human rights - and social movements in the region, including the operations of NGOs. Often they are intimidated, harassed, and even murdered. In some countries, NGOs are not even allowed to exist.

As these groups voice the interests of the people and work for their advancement, it is imperative that they be permitted to work freely; their right to participate in community life and to enjoy the totality of human rights must be respected.

18. Judicial Independence and responsibility. In many societies, the independence of the judiciary and the administration of justice are being jeopardised by authoritarian elements. This is compounded by various national laws that conflict with human rights standards, particularly discrimination and inequality, and the complicity of certain judges in perpetuating authoritarian regimes.

The legal structure is also distant from many communities. There is a key question concerning access by people to the courts system. This is intertwined with the issue of legal aid, assistance and dissemination of legal knowledge.

We re-affirm the need for judicial independence and call for judicial responsibility to render justice more accessible to the people.

Issues

The participants highlighted the following concerns as issues requiring urgent and effective action, both in terms of prevention and remedies:

- * Increasing lawlessness on the part of governmental authorities;
- * governmental action undermining the universality and indivisibility of human rights;
- * failure to enhance human freedoms and dignity, including the dignity of men and women;
- * threats to the right to self-determination;
- * non-recognition of and continuing violations of women's rights due to patriarchy, including economic rights, and inadequacy of processes to enhance the empowerment of women and gender equality;
- * breaches of children's rights due to economic needs, socio-

- * cultural constraints, criminality, consumerism, discrimination and militarisation;
- * increasing environmental degradation and depletion of natural resources;
- * proliferation of armed conflicts, enmeshed in ethnic discord, with threats to civilians;
- * political repression by means of killings, disappearances, and torture, and political prisoners, and suppression of civil and political rights, including self-determination, freedom of expression and assembly;
- * violation of the right to health, and underdeveloped health care systems characterised by maldistribution and inaccessibility of resources to the poor majority;
- * denial of health services to survivors of human rights violations;
- * attacks on the rights of workers;
- * insecurity of migrant workers;
- * threats to agrarian and rural communities;
- * harassment of persons, including health and church workers, carrying out their humanitarian functions;
- * widespread sexual exploitation;
- * religious intolerance mixed with extremism, and other forms of discrimination on the basis of religion;
- * lack of legal and other redress from human rights violations;
- * impunity of those who commit human rights violations;
- * numerous constraints imposed upon the mass media;
- * lack of access to information to empower people to protect their human rights;
- * discrimination and national oppression of minorities and indigenous peoples, and inadequate protection of tribal peoples;
- * discrimination and violence perpetrated against the "untouchables" and the process of untouchability;
- * increasing number of and threats to refugees and displaced persons, particularly through lack of fair and effective refugee screening procedures, violations of their human rights, and menace to their right to seek asylum and safety;
- * insufficient protection of the disabled, including both physical and mental dimensions;
- * lack of services and assistance for the elderly;
- * escalation of AIDS and related discrimination;
- * spread of drugs and related exploitation;
- * low levels of education, in particular unavailability of essential human rights information, lack of awareness and skills;
- * paucity of accession to international human rights instruments (as well as too many "reservations" upon accession) and failure to implement them at the national and local levels;
- * restricted access by individuals and NGOs to the international human rights system;
- * lack of regional and national inter-governmental mechanisms to protect human rights in an independent and accessible manner.

RECOMMENDATIONS FOR ACTIONS BY GOVERNMENTS OF THE ASIA-PACIFIC REGION

GENERAL RECOMMENDATIONS

We, representatives of Asian-Pacific NGOs, call on Asia-Pacific governments:

- i] to promote and protect the **universality and indivisibility** of human rights by:
 - recognising and guaranteeing the interrelationship between human rights, development and democracy as propounded by this NGO Declaration;
 - guaranteeing the rights of collectivities, such as minorities, indigenous peoples and the unorganised sectors of labour as well as individual rights;
 - eliminating the root causes of human rights violations - civil, political, economic, social and cultural;
- ii] to review and reform laws, policies and practices which are detrimental to the full realisation of the civil, political, economic, social and cultural rights of their people;
- iii] to ensure that development strategies are sustainable, equitable, people-based and in a balance with the natural environment, with the aim of assuring equity and enhancing the freedoms and the dignity of all women and men;
- iv] to counter socio-cultural practices and extremism which constrain human rights, particular women's rights, and in particular to reform laws, policies and religious and cultural practices that tend to deny women's independent existence and to take measures, such as community mobilisation, mass education and long-term development, to initiate and enhance the process of empowerment and equality;
- v] to lift constraints on political rights imposed by national security and law and order, by repealing repressive laws, ending arbitrary arrests, and releasing all political prisoners before the UN World Conference on Human Rights, and liberalising the political system so as to democratize the decision-making process, guarantee people's participation at all levels of government, and abide by good governance;
- vi] to address the root causes of armed conflicts which are foreign domination, widespread landlessness and powerlessness among the people, and the collaboration of ruling elites with foreign powers and their instrumentalities;
- vii] to reduce arms purchases and re-allocate arms expenditure to development needs, the improvement of preventive mechanisms and the promotion of human rights promotion and protection, and to initiate and pursue consultative processes, social services and peaceful settlement of disputes, bearing in mind the special concerns of women, children, minorities, indigenous peoples, workers in the organised and unorganised sectors, refugees and displaced persons, peasants, and other disadvantaged groups;
- viii] to respect the work of human rights activists/defenders and social and legal movements, including non-government organisations, to cease harassment, intimidation and other malpractices against this sector and to facilitate, rather than obstruct, the operations of these catalysts of social change;

- ix] to guarantee the independence of the judiciary, while nurturing commitment to responsibility to the people, providing adequate remedies for human rights violations through judicial and other channels, including the availability of legal aid and assistance, and to counter the impunity of violators by effective legal and other measures;
- x] to ensure that human rights have the first call on state resources, by reducing arms purchases and diverting the funds from militarisation to human rights promotion and protection, and by reallocating from other sources;
- xi] to promote comprehensive human rights education and training, including an increase in the provision of information, the development of awareness and of skills. Participatory learning methods will enrich the process and contribute to the promotion and protection of universal human rights standards by utilizing the cultural wealth of the region;

SPECIFIC RECOMMENDATIONS

1. We call on governments in the Asia-Pacific region:

- i] to accede to and effectively implement international human rights instruments, and to protect international human rights standards contained in the:
 - International Covenant on Civil and Political Rights (ICCPR);
 - International Covenant on Economic, Cultural and Social Rights;
 - Optional Protocols I and II to the ICCPR;
 - Convention against Torture;
 - Convention Against the Elimination of All Discrimination Against Women (CEDAW);
 - Convention on the Elimination of all forms of Racial Discrimination;
 - Convention on the Rights of the Child;
 - Convention on the Status of Refugees;
 - Convention on the Non Applicability of Statutory Limitations to War Crimes and Crimes against Humanity;
 - ILO Conventions;
 - UN Declaration on the Rights of Minorities;

and as a matter of priority to protect the rights of women by ratifying CEDAW, of indigenous people by ratifying ILO Convention 169 and of workers by ratifying all other ILO Conventions;

- ii] to guarantee the totality of human rights by withdrawing reservations, in particular those applying to CEDAW and the Convention on the Rights of the Child, removing reservations determined to be incompatible, and establishing an expeditious procedure for reviewing the compatibility of reservations;

- iii] to support the adoption of the proposed Optional Protocol to the Convention Against Torture, the Draft Declaration on Violence against Women and an Optional Protocol to the Covenant for Economic, Cultural and Social Rights (ICESR) and subsequently to ratify the protocol to the ICESR;
- iv] to introduce or amend domestic legislation
 - to ensure compliance with these international obligations, in particular with the standards of equality and non-discrimination, and to resolve conflicts between the customary laws of a group or people and those of the state, in conformity with the universality of human rights according priority to those which conform to the spirit of the Universal Declaration on Human Rights;
 - to ensure the protection of the rights of women, children, indigenous peoples, peasants and workers and all marginalised groups;
 - to guarantee the freedom of religious organisation and expression;
 - to abolish the death penalty;
- v] to cease immediately all forms of political repression, including organised sexual violence, torture, enforced or involuntary disappearances, extrajudicial executions and arbitrary detention;
- vi] to ensure protection of the rights of all victims of human rights violations, particularly torture victims and prisoners;
- vii] to provide the basic needs of political prisoners, torture victims, refugees and displaced persons;
- viii] to provide compensation, indemnification and total health services, including rehabilitation to survivors and families of victims of organised violence sponsored and sanctioned by the State, including torture, sexual slavery (including victims of the devadasi {slaves of god} system), forced labour, involuntary disappearances, summary execution, police and military oppression, political repression, unjust detention and internal displacement;
- ix] while welcoming any initiative by governments to set up a regional mechanism for the protection and promotion of human rights in the Asia-Pacific region, such measures must be subject to the following conditions:
 - if a regional commission is set up, it should be mandated to apply without reservations the International Bill of Human Rights, CEDAW, the Convention against Torture, the Declaration of the Right to Development and other relevant human rights instruments;
 - member states of this regional Commission must ratify or accede to the above international instruments prior to their membership;
 - the right of individuals and NGOs to petition the regional Commission must be guaranteed;
 - such petitions or appeals should not preclude concurrent appeals to the various UN

mechanisms for the protection of human rights;

- no member of this regional Commission should hold an official position in Government concurrently, and members should be appointed in consultation with NGOs;
 - there should be a regular reporting system by states on their implementation of human rights standards domestically with NGO participation in the drafting of the reports;
 - meetings of this regional Commission and its deliberations should be generally open to the public;
 - no aspect of government operation and no official should be immune from scrutiny or investigation, including the military and security forces;
 - the regional commission should have full investigative powers;
 - a separate body should be set up to adjudicate complaints;
 - member governments must be required to disseminate information on the regional commission and how it operates;
- x] to adopt, following public consultation, a gender-sensitive national policy on human rights education and training which provides, among other things, for specific programs designed for government officers and employees, law enforcement officials. There should be programs, both formal and informal, on human rights in the curricula of all education institutions, for which governments should be held primarily responsible, and effective use of the mass media. Particular emphasis should be given to programmes designed specifically for marginalised members of the community. NGOs should be assisted and encouraged to conduct Human Rights Education and training;
- xi] to translate and disseminate materials relating to human rights instruments and mechanisms into the vernacular languages of the Asia Pacific;

ACTION BY THE UNITED NATIONS

INTERNATIONAL MECHANISMS

- i] We call upon the United Nations to undertake a gender analysis of all human rights instruments to remove gender bias and to address gender specific abuses, and to ensure that such issues are addressed in all reports, documents etc. produced by UN treaty bodies, thematic and country rapporteurs and working groups, independent experts and all bodies entrusted with protecting human rights in all areas that fall within their mandate;
- ii] Welcoming the Draft Declaration on Violence Against Women and urging its adoption by the General Assembly, we recommend that the World Conference recognise women's rights as human rights and develop more effective implementation procedures to eliminate violence against women in both the public and private spheres, which constitutes the gravest form of sexual discrimination, (for example

by adding a supplementary article to CEDAW to outlaw the use of biological engineering to determine the sex of the foetus), and urge consideration of the initiative by the Coalition Against the Trafficking of Women in introducing a Draft Convention Against Sexual Exploitation;

- iii] We reiterate the importance of the Secretary General in monitoring state compliance with Article 4 of the International Covenant on Civil and Political Rights which requires that he be notified of derogations during times of national emergencies;
- iv] We urge that the UN Rapporteur on States of Emergency be given adequate powers to play a more active role in effectively monitoring derogations of human rights by governments during states of emergency;
- v] We urge the United Nations World Conference on Human Rights, to adopt a Convention on the Right to Development embodying the existing Declaration, and to move towards the adoption of Declaration on the Rights of Human Rights Defenders;
- vi] We recommend a rethinking and review of the existing definitions of human rights, including the definition of torture, the inclusion of rape, forced migration and the destruction of habitats as war crimes and a recognition of the right to be free from sexual exploitation, including sexual harassment, incest, trafficking and prostitution;
- vii] We call on the UN to take appropriate steps to eradicate the practice of untouchability, which is a crime against humanity, and discrimination on the basis of caste, religion and other factors by the year 2000, failing which sanctions will be imposed, keeping in view that development projects financed by UNDP and IFIs of the poor are not effected;
- viii] We call on the UN to take appropriate steps for the speedy realisation of the decolonisation of indigenous peoples;

EFFECTIVENESS

We call for specific improvements in the United Nations' capacity and to establish new mechanisms to effectively promote and protect human rights:

- i] A special UN office, perhaps under the Under-Secretary General, should be set up to consider the issue of self-determination;
- ii] by applying sanctions against governments engaged in gross human rights violations;
- iii] by ensuring individual access to UN bodies and providing for individual complaints procedures - to this end, a working group should be established in the Commission on the Status of Women to outline procedures for drafting an Optional Protocol establishing individual complaints procedure under CEDAW;
- iv] by expanding the impact of the treaty monitoring bodies including in the following ways: requiring a clear report on the extent to which a country has fulfilled its obligations and the extent to which it has failed; insisting on the submission of state reports and submission on time; encouraging consultation

- by states with NGOs and inclusion of NGO reports in State reports (with the NGO's consent); officially allowing for NGOs to submit parallel reports; full public disclosure of the proceedings of each session;
- v] by reinforcing the work of existing country and thematic Rapporteurs and Working Groups and by establishing new mandates as required, and enhancing the effectiveness of such mechanisms by: providing for greater investigatorial powers; setting up a system to follow-up on recommendations for implementation by governments; regularisation of on-site visits; more accessibility for victims and their families; improving security for UN delegations, rapporteurs, working group members;
 - vi] by requiring that serving members of the Sub-Commission on Human Rights not be drawn from government ranks (such as politicians or diplomats) but should be sought from academia, NGOs, the media or other appropriate sectors and allowing for candidates to be nominated by countries other than own;
 - vii] by establishing a UN Special Commissioner for Human Rights as a new high-level political authority to bring a more effective and rapid response, coherence and coordination in the protection of human rights;
 - viii] by the formation of a UN Commission on Indigenous Peoples' with a permanent status and with the functions of monitoring, raising consciousness of the public on the situation of indigenous peoples and others;
 - ix] by improving the operation of the UN Commission on Human Rights through the inclusion of discrimination against indigenous peoples as a permanent item on the agenda; and, by not precluding as a result of using the 1503 procedure, the raising of an issue in other fora;
 - x] by improving emergency mechanisms through: an "early warning device" enabling the UN to respond more effectively before a situation deteriorates into crisis; maximising the use of special envoys by the Secretary General; expanding the powers of the Under-Secretary for Human Rights to enable a response to emergency situations; strengthening Urgent Action procedures;
 - xi] by establishing a Permanent International Court on Human Rights with compulsory jurisdiction over all cases of human rights violations;
 - xii] by establishing a Permanent International Criminal Court, to which individuals have direct access, to provide both criminal sanctions and civil remedies against war crimes, crimes against peace and crimes against humanity including gender-specific abuses - in international, internal and armed conflicts;
 - xiii] by establishing a war crimes tribunal in Asia to adjudicate on military atrocities, including sexual slavery;
 - xiv] by establishing Special Rapporteurs on the rights of indigenous peoples, on gender discrimination and violence, and on children's rights, on the trafficking in women, authorized to receive and report on information from governments, NGOs and inter-governmental institutions, to respond effectively to allegations of violations of human rights and to recommend measures for their prevention. The rapporteur on gender violence should also report to the Commission on the Status of Women;

- xv] by sending fact-finding missions to countries in our region where gross violations of indigenous peoples' rights are reported;
- xvi] by providing mandatory gender training for UN personnel and independent experts;
- xvii] by the integration of a gender perspective programme in all UN advisory services on human rights;
- xviii] by allocating at least 5% of the UN budget to human rights work;
- xix] by increasing resources available to UN human rights bodies, such as CEDAW - by extending meeting sessions and providing more support staff - and the UN Voluntary Fund for the Victims of Torture;
- xx] ensuring periodic evaluations of the effectiveness of UN monitoring, reporting and complaints procedures and its advisory services and training programs in addressing violations of the rights of women, children and indigenous peoples;

HUMAN RIGHTS EDUCATION AND TRAINING

We call upon the UN to

- i] declare a "Peoples' Decade for Human Rights Education and Training";
- ii] implement mechanisms for the review of Human Rights Education and Training, possibly by the relevant treaty monitoring bodies;
- iii] establish an International Fund for Human Rights education and Training activities for states and NGOs;
- iv] instruct each UN body to prepare a report on the effectiveness of their initiatives to address women's human rights for the 1995 World Conference on Women;
- v] ensure that the rights of indigenous peoples finally gain a place on the formal agenda of the UN Commission on Human Rights.

DEMOCRATISATION

We recommend the democratisation of relevant UN processes in the following ways:

- i] by democratization of the Security Council, in particular by abolition of the veto and permanent membership and the transfer of additional responsibilities to the General Assembly; moreover, membership of the Security Council should be denied to any State responsible for war crimes against humanity, such as military sexual slavery, before it accepts its state responsibility;
- ii] by establishing mechanisms to ensure that the concerns, experiences and struggles of hitherto marginalised groups, including women, children, indigenous peoples and workers, can be represented

in all UN structures and its ongoing activities; in particular by the granting of consultative status, the inclusion of such concerns in the agenda of the regional meeting and the World Conference; and by recognising their representatives to speak at the meetings;

- iii) taking into account the absence of an inter-governmental human rights mechanism in the Asia-Pacific region, we call on the UN Commission on Human Rights to develop procedures and provide the means to enable NGOs to access the UN system both within Asia and beyond; specifically, we call for the sittings of the Sub-Commission on Human Rights in August every year to be held in rotation in the Latin American, African and Asian-Pacific regions; ECOSOC rules and procedures limiting NGO participation should be waived; the accreditation decisions should always be by majority and may be by secret ballot;
- iv) by recognising, promoting and supporting NGO activities on human rights by making available technical, human and financial resources from the UN;

SPECIALISED AGENCIES

With regard to UN institutions and their specialised agencies we call upon the UN, governments of the North and the South to actively monitor, regulate and ensure:

- i) the policies of the IMF, World Bank, GATT and other multilateral agencies - and bilateral agencies - to ensure their conformity with UN/ILO standards;
- ii) the protection of all workers, trade unions and labour rights groups not officially recognized by their governments, by: strengthening ILO policies relating to workers in the unorganized/informal sector and to the trade union rights of government employees; and addressing the practice of the expulsion or forced migration of workers, especially women, in occupied territories;
- iii) the activities of TNCs operating in the Asia-Pacific region so as to ensure compliance with international labour standards;
- iv) procedures for the accountability of the UN delegates, personnel and agents for human rights violations, including gender specific abuses;

MILITARISATION

We call on governments:

- i) to adopt measures to bring an immediate end the production, sale, exhibition and advertising of weapons of mass destruction and nuclear weapons, and military exercises of all kinds;
- ii) to dismantle all existing weapons of mass destruction and to end the military training of Asia-Pacific defence, military and security personnel by Western countries for combat against their own people;
- iii) to re-allocate military budgets to development needs, improved preventive mechanisms, consultative processes, social services and peaceful settlement of disputes;

- iv] to disband all paramilitary forces;
- v] to take immediate steps to ensure that Asia and the Pacific are not host to foreign bases and are free of nuclear weaponry and power;
- vi] to make publicly available information on military expenditure;
- vii] with specific reference to the operation of UN peace-keeping forces, emergency response mechanisms and humanitarian assistance, to ensure an effective response to the particular vulnerabilities of women as a group in situations of armed or ethnic conflict; to address the impact on women and children of all measures taken and the effect on the local female population of the discipline and behaviour of male military personnel;
- viii] to release all Prisoners of War and civilians detained in contravention of international humanitarian law;
- ix] to ensure all citizens have the right to conscientious objection.

**NATIONAL STATEMENT BY AMBASSADOR BERNARD A.B. GOONETILLEKE
LEADER OF THE SRI LANKA DELEGATION**

March 30, 1993

Mr. Chairman, almost two years since the preparatory process for the World Conference on Human Rights began in Geneva, it is with a sense of fulfillment that my delegation is present here today in Bangkok, under the chairmanship of our host country. Sri Lanka, indeed, finds it appropriate that this important Asian Regional Meeting should take place in Thailand, a country which, by its rich historical and cultural heritage and by its traditional respect for the dignity and integrity of human person, symbolizes both the diversity of the Asian Region as well as its commitment to the promotion and protection of human rights. Indeed, it is worthy of reiteration that the Asian region represents by far the greatest diversity and population and that our input to the Second World Conference on Human Rights is therefore a significant one. The NGO's have also played a vital role in this process and my delegation welcomes the presence of a number of NGO's from the Asian region at this meeting.

Mr. Chairman, the Second World Conference on Human Rights scheduled to be held in June this year comes at a unique moment in history, both in terms of international political events as well as in the evolution of thinking on human rights issues. Perhaps for the first time since the adoption of the Universal Declaration on Human Rights, there is a consensus, free of East-West ideological bias, that democracy, along with the promotion and protection of all categories of human rights, is an essential element for national and international peace and security. On the eve of the 50th anniversary of the United Nations, this is indeed an effective platform from which to set the human rights agenda for the 21st century through the Second World Conference on Human Rights.

Setting the future human rights agenda as embodied in the UNGA resolution 47/122, however, should be preceded by an evaluation from all perspectives, by countries of different geographical regions and levels of development, on progress made by the UN in the promotion and protection of human rights over the last 25 years. Given the well recognized linkage between development, democracy and the enjoyment of all human rights, the manner in which such a diversity of states have chosen to ensure human rights has evidently differed. For example, in developed and industrialized countries where a certain minimum standard of living has been attained, measures aimed at the protection of civil and political rights alone may suffice. In developing countries, like the majority of those in the Asian region, equal emphasis should be given and resources allocated not only towards strengthening of protection, but also towards promotion of economic development and social conditions which make democracy and the enjoyment of all rights meaningful.

The regional and satellite meetings of the World Conference which have been held so far, including the Tunis and St. Jose Declarations, have provided some valuable inputs in this regard. The input of the Asian Regional Meeting to this process will also be significant. Mr. Chairman, Sri Lanka has actively participated in the World Conference process since its inception and is a country which accords the highest priority to the promotion and protection of all human rights. In this context, my delegation finds the following observations pertinent to the conclusions of the Asian Regional Meeting, which will be an important input to the World Conference itself.

The human being cannot be compartmentalized. Human needs cannot be fragmented. The human personality requires to develop in all its complexity. Civil and political rights of the individual are one major aspect that must be addressed. It should not, however, be raised to such a sense of exclusivity as to ignore or minimise the human being's equally important rights to food, to education, to alleviation from poverty and to economic and social development.

Mr. Chairman, remarkable progress has been made in the field of human rights since the Universal Declaration. Through the adoption of universal standards and principles, states have provided protection to increasing categories of vulnerable groups and expanded individual freedoms. This has led to greater democracy and freedom for all, as well as enhanced awareness of the rights of vulnerable groups like children, indigenous peoples, the disabled, as well as religious, ethnic, social and linguistic minorities. Similarly, governments have become increasingly conscious of their duty to maintain the rule of law as well as of their accountability, both national and international, on human rights issues.

This process of international cooperation in the field of human rights has, however, been hampered by selective approaches both in terms of the emphasis placed on certain categories of rights over the others as well as in the political and selective use of human rights criteria in their application to states.

The Asian Regional Meeting should reiterate that **universality, objectivity and non-selectivity** should guide the considerations of human rights issues pertaining both to their **indivisible nature**, as well as in the use of human rights criteria vis-a-vis states.

Objectivity and non-selectivity in the context of emphasizing the **indivisible nature** of human rights would highlight that one category of rights should not enjoy emphasis over the other. Just as much as the denial of civil and political rights can violate the dignity and worth of the human being, it is the experience of many developing countries including those of the Asian Group that under-development and lack of social progress as manifest in illiteracy and abject poverty can render even the very right to life meaningless, and can be the

precursors of violence and repression.

A true understanding of this inter-relationship between economic, social and cultural as well as civil and political rights should pave the way for greater international cooperation in bringing about the right to development for states and individuals. While, indeed, the individual and the full realization of all his rights remain at the centre of "development", this cannot be realized without the development of the nation. It is in this context that any true promotion of human rights through the World Conference must call for concrete measures aimed at international economic cooperation for the realization of the right to development.

Another aspect of selectivity in dealing with the promotion and protection of all human rights is the tendency to emphasize on strengthening the protection of civil and political rights. While, indeed, it is of utmost priority that the treaty obligations of states in upholding these rights should be monitored by means of Working Groups, Special Rapporteurs and Representatives, it is regrettable that fewer mechanisms exist relating to equally binding obligations on the realization of economic, social and cultural rights. This imbalance discriminates against the significant progress made in many developing countries, including those of the Asian Region, in promoting economic, social and cultural rights frequently against significant economic constraints. This imbalance should be redressed through the World Conference and, in this regard, the Asian Regional Meeting could be the appropriate forum for initiating discussions on the consideration of establishing a monitoring mechanism for the realization of the right to development.

Further, my delegation is of the opinion that, given this one-sided proliferation of existing mechanisms, rationalization and balance is required. In the interest of enhancing the effectiveness of existing UN mechanisms, as mentioned in item 12(c) of the provisional agenda of the World Conference, my delegation welcomes the adoption, during the 49th session of the Commission on Human Rights, of the resolution relating to the "effective functioning of Human Rights Mechanisms".

The second aspect of selectivity in the international consideration of human rights is the politicization of its application in relation to states. The full realization of all human rights as embodied in the Charter, the two Covenants and other instruments provide tremendous scope for international cooperation based on a deep understanding of the political, economic and social realities existing within societies of various traditions. We feel that the selective use of human rights criteria against certain states for political purposes is a misuse of human rights as a legitimate concern of the world community. Politicization of human rights should, therefore, be condemned by the Asian Regional Meeting as well as the World Conference.

Mr. Chairman, one of the purposes of the United Nations, as embodied in the Charter, is to achieve international cooperation by promoting economic and social progress and development as well as the universal respect for human rights and fundamental freedoms. The Asian Regional Meeting should reiterate that this cooperation should be based on the principle of equality and mutual respect, and express concern over the use of human rights criteria as a conditionality. We feel that this linkage contributes to the politicization of human rights and constitutes an obstacle to international cooperation on the subject. Denying development assistance on human rights criteria is self-defeating, as human rights are inter-related and indivisible and such obstacles laid in the path of economic development have invariable repercussions on social stability and the enjoyment of all human rights.

Mr. Chairman, this Meeting brings together countries of one of the largest and most diverse regions. It is evident that in keeping with our different cultural traditions, certain national and regional specificities have emerged in the application and observance of universal human rights standards. Emphasizing national and

regional particularities does not detract from the universal nature of human rights; rather it is a reflection of varying historical, political, economic, social, religious and cultural realities within which governments ensure these rights. Based on the principles of equality and mutual respect therefore, no country should seek to impose on others its own standards or priorities.

An important aspect of the future orientation of the World Conference on Human Rights as mentioned in its agenda is the consideration of "contemporary trends and new challenges". Several areas which merit attention have already been highlighted in the Tunis and San Jose Declarations. New forms of racism, xenophobia, neonazism and practices of ethnic cleansing that have emerged in some parts of the world are grave violations of human rights and should be condemned by the Asian Regional Meeting.

Another contemporary trend with grave implications for the enjoyment of all human rights and fundamental freedoms is terrorism. The Universal Declaration on Human Rights, while embodying the respect for the fundamental rights and freedoms of the individual, also stipulates the obligations of the individuals towards society and the state. Activities of terrorists destroy this balance, deny the rights of the individual and the community and is aimed towards instability and the undermining of democratic institutions. The Asian Regional Meeting should condemn this menacing phenomenon.

Legitimate governments democratically elected by the people are threatened by secessionist terrorist movements and violent conflicts have ensued. In such conflicts, it is invariably civilians who are most adversely affected, forfeiting even their basic human rights including the right to life. In such situations, terrorist groups have often been immune from condemnation from human rights advocates. Terrorist groups, through mischief or misunderstanding, have been sometimes even romanticized and, indeed, thus encouraged. Legitimate governments faced with the national duty to protect all its citizens being victimized by terrorist violence and persecution have faced the brunt of criticism, ironically because of their very commitment to human rights covenants and norms for which terrorist groups assume no responsibility. This is a dilemma which needs to be addressed in the interests of civilians caught in such conflicts.

Emphasis on new challenges, however, should not detract from the validity of issues which have persisted on all human rights and political agendas for decades. The Asian region has consistently upheld the legitimate struggle of the Palestinian people to self determination and called for an end to foreign occupation in the occupied territories. It has also repeatedly condemned the persistence of policies of apartheid and racial discrimination. The Asian Regional Meeting should reiterate this message. The persistence of these grave violations will constitute an obstacle to global progress on human rights issues.

While unequivocally reiterating the validity of the principle of the right to self determination for people under foreign occupation or colonial rule, the Asian Regional Meeting should remain conscious of the dangers resulting from current misuse of this principle. In many developing countries including those of the Asian region, violent and opportunistic interpretations of this principle have resulted in attempts by armed groups and terrorists to break up existing states. Thus, principles of sovereignty and territorial integrity which constitute the very foundations of the international system are violated and the rights of minorities are jeopardised.

Finally, Mr. Chairman, it is indeed a pleasure for my country to witness the successful convening of the Asian Regional Meeting here in Bangkok. My delegation expresses its appreciation to you for the painstaking arrangements, both organizational and substantive, in hosting this meeting. Similarly, we extend our thanks to the Secretariat of the World Conference who have, over the past months, facilitated this task. We are confident

that the outcome of this meeting will be a successful one and an important input to the World Conference itself.

Thank you Mr. Chairman.

SOUTH ASIAN JUDICIARY TASK FORCE APPEAL

The South Asian Judiciary Task Force, which comprises of lawyers and judges from the region who have an abiding commitment to the protection and promotion of human rights, welcomes the decision of the General Assembly of the United Nations to convene at a "high level" a World Conference on Human Rights in 1993 and a regional Asia-Pacific preparatory meeting commencing in Bangkok today.

These meetings provide an opportunity to appraise the progress made in the field of human rights thus far, to identify obstacles to further progress in this area and mark out the ways in which such obstacles can be overcome. In these meetings, much of the focus will be placed on international and regional human rights systems. While this is much needed, the Task Force also deems it important to focus on the national level.

Reviewing country experiences, the Task Force recognises the progress that has been made in the region but notes that grave and continuing human rights violations still abound in the region. Accordingly, the Task Force calls upon the governments of SAARC countries to use the occasion of the present Bangkok Conference to publicly reaffirm their commitment to human rights.

We call upon the governments of the SAARC countries to:

Pledge that they will ensure that their national legal orders enshrine the basic international human rights principles contained in the Charter of the United Nations, the Universal Declaration of Human Rights, the Covenant on Economic Social and Cultural Rights and the Covenant on Civil and Political Rights. This would require that constitutions of the SAARC countries adopt the principle of non-derogability and also prohibit the grant of amnesty or impunity to violators of human rights. The constitutions must also make effective provision for the establishment of an independent judiciary with powers to review all legislative and administrative actions and to grant effective redress and provide remedies to those whose human rights are denied or violated.

Place this matter on the agenda of their meeting in Dhaka next month and to pledge to accomplish this task before their next meeting in 1994.

Sign and ratify all the existing international human rights Covenants and Conventions without reservations or derogatory clauses which have the effect of nullifying the very act of signature and ratification. We also call upon the SAARC governments to adopt in their constitutions the principle that such Covenants and Conventions shall be deemed to be automatically incorporated into domestic law by the very act of ratification.

UNIVERSALITY

So far as the SAARC region is concerned, we stress that human rights is not a western concept. Human rights have been invoked by the peoples in this region both historically and contemporaneously. Human rights formed the basis of the Non-cooperation Movement against the British in colonial India. Human rights in this region have also formed the basis of struggles against authoritarian regimes and military rule. Mass movements (e.g. for gender justice, for environmental protection) have gained strength and sustenance from human rights. Such movements have in turn empowered the peoples of the SAARC region and they will not tolerate any attempts at turning the clock back on human rights.

It is worth recalling that three countries in the region, India, Pakistan and Sri Lanka, subscribed to the Universal Declaration of Human Rights as independent states after achieving de-colonisation. Nepal has been quick to recognise international human rights instruments immediately after their mass-based movement brought democracy to the country by ousting an authoritarian regime. Bangladesh, Bhutan and the Maldives of course subscribed to the Universal Declaration on becoming member states of the United Nations.

Human rights are already universal for the peoples of Asia. It is they who press for more effective human rights mechanisms even while their governments demur and desist. So far as human rights are concerned, the peoples of South Asia are running - their governments are crawling. South Asian peoples are asserting and exercising their human rights. This is evident, to give just one example, in the electoral turnouts.

The concept of human rights has already proved itself to be vital to the peoples of the SAARC countries.

INDIVIDUAL AND COLLECTIVE RIGHTS

Criticisms of existing international human rights principles as over-emphasising the rights of the individual at the expense of the rights of the group or collective is hypocritical. There is nothing which stops governments from redressing such imbalance at the national level. If they have failed to do so at the national level, their criticism of the imbalance at the international level lacks credibility. The Task Force recognises the importance and the role of both individual and collective rights. There is, however, no hierarchy and no superiority between the two sets of rights. Both sets of rights are also susceptible of abuse in their exercise. In real life situations, serious complexities and difficulties arise in balancing individual and collective rights, in balancing the rights between collectives and rights within a collective. In all such cases it is vital that the conflict be resolved by the application of basic human rights principles of non-discrimination, non-oppression and fairness.

INDIVISIBILITY

Criticism of existing international human rights law as over-emphasising civil and political rights to the detriment of economic, social and cultural rights is also hypocritical. Once again there is nothing that stops governments from correcting such over-emphasis at the national level. Both sets of rights exist. Both sets of rights have validity. In the SAARC countries, there has been a woeful and wilful neglect on the part of the governments to recognise and implement each set of rights - to the detriment of both. The Task Force calls upon the governments of the region to remedy their continuing neglect in implementing and realising both economic, social and cultural rights and civil and political rights.

RELATIONS BETWEEN GOVERNMENTS AND NON-GOVERNMENTAL ORGANISATIONS

In the SAARC region, it has been clearly recognised that NGOs have played crucial roles in the promotion, protection and realisation of human rights, development and democracy. Any restriction of NGO activities in respect of such roles must, therefore, be viewed in itself as a human rights violation. At times, both governments and NGOs have adopted an excessively confrontational attitude towards one another. The Task Force calls for mutual respect and a constructive attitude in the relationship between governments and NGOs as they undertake their joint and separate efforts towards the realisation of all human rights of all the peoples of the SAARC region.

Bangkok

March 29, 1993

Sgd/- P.N. Bhagwati

Justice P.N. Bhagwati

(Former Chief Justice of the Supreme Court of India)

Chairperson of the Task Force

Sgd/- Dorab Patel

Justice Dorab Patel

(Former Justice of the Supreme Court of Pakistan)

Sgd/- K.M. Subhan

Justice K.M. Subhan

(Former Justice, Appellate Division of the Supreme Court of Bangladesh)

LAW & SOCIETY TRUST CALLS FOR THE INCORPORATION
OF INTERNATIONAL HUMAN RIGHTS STANDARDS IN DOMESTIC LAW

Thank you Mr. Chairman:

The Law & Society Trust is a non-governmental organisation based in Sri Lanka. It has been involved in the protection and promotion of human rights in the South Asian region for the past ten years.

The Law & Society Trust intervenes this afternoon to endorse the ideas contained in the NGO Bangkok Declaration (a summary of which was presented earlier this afternoon) and to call upon the Asian Meeting to recommend to the World Conference steps to strengthen mechanisms for the protection and promotion of human rights.

We would urge that this meeting recommend that all states make an unambiguous public commitment to all human rights - civil, political, social, economic and cultural. And we urge that states follow this up by ratifying all major international human rights instruments, but especially the International Covenant on Civil and Political Rights and its Optional Protocols, and the Covenant on Economic, Social and Cultural Rights.

We reiterate the principle that all these rights are universal and inter-dependent. They should be viewed as a 'common standard of achievement' for all states, and the protection and promotion of these rights is a responsibility which lies on the global community as a whole.

We consequently urge this meeting to recommend to the World Conference that all states incorporate all human rights contained in the international bill of human rights - civil, political, social, economic and cultural - as part of their constitutional and legal framework.

We would recommend very strongly that the laws of each state be modified so that they are consistent with these rights.

Mr. Chairman:

We would recommend that a specific date be set by the World Conference, before which all states would be required to incorporate international human rights standards as part of their domestic framework. We recommend that this date be not more than two years from the conclusion of the World Conference.

We would moreover suggest that Asian governments take the lead in incorporating international human rights norms as part of their domestic jurisdictions and meet in a year's time to review progress in this regard in the Asian region.

While recognizing that international mechanisms for the protection of human rights need to be strengthened, we call upon states to set up effective national mechanisms for the protection of these rights. This includes an independent and effective system of courts. Courts should have the capacity to review all administrative and

legislative action, to ascertain whether it conforms to human rights norms. States should also ensure that all citizens have access to the courts to protect their human rights.

We would urge specifically Mr. Chairman that:

- 1] This meeting recommend to the World Conference that an Optional Protocol to the Covenant on Economic, Social and Cultural Rights be adopted. This would permit citizens of states to petition the Committee on Economic, Social and Cultural Rights in cases of grave and widespread violations.
- 2] This meeting recommend to the World Conference that specific and urgent steps be taken to protect the human rights of internally displaced persons. We would also urge that Treaty Monitoring Bodies pay particular attention to the human rights of internally displaced persons.

We also support the call that has been made to set up an International Penal Court to try cases of gross violations of human rights.

In conclusion Mr. Chairman, recognizing the crucial role played by non-governmental organisations in the promotion and protection of human rights, and with the hope of forging a new spirit of co-operation between governments and non-governmental bodies, we urge that all restrictions on non-governmental organisations be removed, and that NGOs be permitted to engage freely in all activities to protect and promote human rights.

Thank you Mr. Chairman.

THE WORLD CONFERENCE ON HUMAN RIGHTS

A COMMENT

The Universal Declaration of Human Rights makes its case for an international world order based on respect for human rights without any form of discrimination. However for more than four decades international efforts to promote and protect the broad spectrum of rights proclaimed in the declaration were blocked by a range of forces. For instance, the doctrine of national sovereignty was persistently invoked to prevent international scrutiny and exposure of governments human rights practices. Selectivity, "politicking" and hypocrisy poisoned international debate.

The politics and economics of underdevelopment led to increasingly gross disparities between the very rich and the very poor inside countries across the political divide. Whether the questions concern the status of women, the protection of minorities, the plight of indigenous peoples, the crippling burdens of extreme poverty and disease, the threat of environmental devastation, the ravages of war and political oppression, each reflects a central issue of human rights. Hence the question, what are our human rights and how best can they be protected?.

At its 44th session in 1989, the General Assembly of the United Nations passed resolution NO 44/156, requesting the "...Secretary General to....convene a World Conference on human rights for the purposes of dealing with the crucial questions facing the UN in connection with the promotion and protection of human rights."

In 1990, the General Assembly passed resolution no 45/155, which decided to convene a World Conference on Human Rights and determined six objectives.

1. to review and assess progress made in the human rights field, since the adoption of the Universal Declaration of Human Rights in 1948, and to identify obstacles and ways in which they can be overcome.
2. to examine the relation between development and the enjoyment of economic, social, cultural rights and civil and political rights.
3. to examine ways of improving the implementation of existing human rights standards and political rights:
4. to evaluate the effectiveness of UN methods and mechanisms.
5. to formulate recommendations for improving the effectiveness of UN human rights activities and mechanisms.
6. to recommend ways to ensure adequate financial and other resources for UN human rights activities.

Since then three meetings of the Preparatory Committee has been held - in September 1991, March/April 1992 and September 1992. The fourth and final meeting of the committee is scheduled in Geneva from 19 to 30 April. In addition a series of regional consultative meetings has taken place. The African Regional meeting took place in Tunis in November 1992, the Latin American and Caribbean meeting took place in San Jose, Costa Rica in January 1993. The Western and Other Countries Group of nations decided not to have a pre-conference meeting, objecting to a regionalised approach. However the Council of Europe organized a separate interregional meeting of human rights experts in Strasbourg in January 1993. Finally the Asia-Pacific meeting was held in Bangkok from 29th March to 2 April.

The Asian Regional Meeting

Some 40 Asia - Pacific countries met in Bangkok recently to discuss the state of human rights in the region. The meeting was part of the preparatory activities for the UN World Conference on Human Rights to be held in Vienna in June this year. The Latin American and African countries had met previously in Costa Rica and Tunisia respectively. The European region was the only region where such a meeting did not take place, though the Council of Europe organised a satellite meeting in Strasbourg in January 1993.

The Asian meeting was the last of the regional meetings to be held and there was initially some uncertainty as to whether it would take place at all. It finally did, but without the participation of Australia and New Zealand.

The governmental meeting was preceded by a meeting of over 100 non governmental organisations from the

Asia Pacific region. The product of the NGO meeting was the 'Bangkok NGO Declaration' which attempted to identify the human rights concerns of the non governmental community.

The NGO gathering was significant because it brought together about 240 participants from about 110 non governmental organisations in the Asia Pacific region.

Some key issues figured prominently at the governmental meeting. These related to questions such as the universality and indivisibility of human rights, the question of selectivity, the linking of development assistance to human rights, women's rights and the creation of a regional human rights mechanism.

While at a rhetorical level there was a meeting of minds between the governments and the NGOs, at the level of substance there were huge divergences of views.

Universality

Questions relating to universality and indivisibility were two concerns which figured prominently at the meeting. However the ideas tended to become mere labels without much discussion of its substance.

NGOs were keen to stress that the values reflected in the International Bill of Human Rights (comprising of the Universal Declaration of Human Rights and the two covenants on Civil and Political Rights and Economic, Social and Cultural Rights) should be viewed as a minimum universal standard. The values reflected in these documents should be seen as a common standard of achievement for all peoples and nations, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

While governments were reluctant to explicitly oppose the idea of universality, oral interventions by government representatives and the declaration which came out of the governmental meeting qualified the concept. While recognizing the universality of these rights, they also stressed the importance of national and regional particularities and cultural, religious and historical backgrounds.

Indivisibility

Both NGOs and governments also emphasized the question of indivisibility, but for different reasons. NGOs were keen on extracting an obligation from states in relation to civil and political rights in addition to a commitment to economic, social and cultural rights. One set of rights could not be used to bargain for the other.

States on the other hand used the idea of indivisibility to emphasize economic, social and cultural rights.

The interventions of governments reflected a desire to bring Economic, Social and Cultural Rights on par with Civil and Political Rights, at least at the theoretical level. They also stressed the need for international machinery in this area. One specific recommendation was one that came from the Sri Lankan government calling for implementation machinery with regard to the Right to Development.

Although governments of the South have for years emphasized socio economic rights at a rhetorical level, very

few states have taken effective measures to ensure implementation of these rights. Few countries of the South for example have explicitly recognized these rights in their constitutional documents, nor have they instituted other measures to enable citizens to challenge state action where these rights are threatened.

Development Assistance and Human Rights

Several non governmental organisations stressed that the protection and promotion of human rights was a responsibility which lies on the global community as a whole and thus cannot be considered to be a matter solely for the country concerned. States on the other hand rejected categorically in their declaration the idea that human rights could be used as a conditionality for extending development assistance.

Democratizing the Global Order

NGO and government concerns merged on this issue. Both sets of actors stressed the need for democratizing the global order and the United Nations system, especially the Security Council.

Regional Mechanisms

Asian governments have recently begun to talk increasingly about a regional mechanism. Unfortunately this view is now also being supported by certain sections of NGO community.

If the regional mechanism results in an advancement of standards and more effective machinery, then clearly the human rights movement should support it. However in the current context it is unlikely that any mechanism that emerges from governmental consultations would improve on existing standards and machinery. It would more likely dilute existing international standards. For the human rights movement then, at this point, it would be more productive to focus their energies on improving national and international mechanisms, rather than try to create a new (and effective) regional mechanism.

Some Conclusions

The World Conference does not raise much hope for the promotion and protection of human rights. A North South polarization is clearly evident and a clash of views can be expected. There is also the sense that the human rights movement is being forced into defending the gains made so far, rather than moving forward in developing new standards and new machinery. There is also a large gulf between the thinking of human rights groups and governments, especially the governments of the South.

One of the significant achievements of the human rights movement so far has been in relation to standard setting. There have emerged a large corpus of international standards which have provided criteria against which to evaluate both governmental and non governmental conduct in relation to human rights. It is imperative that the World Conference does not result in a dilution of these standards.

There also are several burning human rights issues. Unfortunately these issues are not being addressed in a serious manner by states. Issues relating to universality, indivisibility, the relationship between development

democracy and human rights and other related issues are not being dealt with at the level of ideas. Instead one is treated to reams of rhetoric by governments and even sometimes by non governmental human rights groups.

On 19 April begins the final Preparatory Committee meeting in Geneva. This meeting will lay the groundwork for the final declaration that will be formally adopted by states in Vienna in June.

While it is too idealistic to expect the World Conference to focus on improving standards or implementation machinery, hopefully the Conference would raise the level of public awareness in relation to human rights and result in greater resources being channelled for human rights work. The Geneva PreCom then will be critical.

One of the significant factors of the Bangkok meeting was the unified stance presented by NGOs. Over a hundred NGOs submerged their own particular areas of concern and spoke with one voice. It is imperative that this unified stance be maintained at the Geneva PreCom and also in Vienna.

The Asia Pacific Regional meeting was divided by the argument that the western definition of human rights emphasizing individual choice and civil liberties was not appropriate in an Asian context. However it was felt by activist NGO groups that concepts of democracy and human rights should be universal and that it would be absurd to draw a distinction between individual and community rights. The theory that economic development should precede democracy is flawed and so is the argument that human rights is a western concept. Clarence Dias of the International Centre for Law in development stressed that "the argument that people can have bread now and ballot later is a false dichotomy, there is a danger that the people will end up having neither bread nor ballot."

It is felt strongly that the Vienna meeting will not be anything more than a rubber stamping exercise, since it provides no room to discuss specific national issues and issues like East Timor, Bhutan and Burma pass unnoticed. The concept that human rights is a national internal affair can no longer hold water.

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