

LST REVIEW

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DISCUSSIONS ON NATIONAL HUMAN RIGHTS INSTITUTIONS OF THE ASIA-PACIFIC

'GRAMA NILADHARIS' AND THE LAW

UNDERSTANDING HUMAN RIGHTS EDUCATION

LAW & SOCIETY TRUST

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Editor's Note

The July Review commences by highlighting this year's discussions at the 11th Annual Meeting of the Asia Pacific Forum (APF) of National Human Rights Institutions hosted by the Fiji Human Rights Commission in Suva, Fiji, July-August 2006.

This Issue publishes the Concluding Statement of the APF as well as two documents issued by a regional coalition of non-governmental organisations relating to the broader theme of protection of human rights defenders and the role of National Human Rights Institutions (NHRI's).

It is relevant that the APF recognised this concern in item 18 of the Concluding Statement. This item notes as follows;

"The Forum Council affirmed the complementary roles of national institutions and non-governmental organisations as defenders of human rights and as human rights defenders themselves. It recognised the particular responsibilities of national institutions towards human rights defenders and visa versa. It requested the secretariat to explore how the members of the Forum can protect and promote the rights of human rights defenders more effectively at regional and national levels. "

The fourth paper published in the segment of the Review on the deliberations of this year's APF sessions, focuses on Sri Lanka's National Human Rights Commission and pinpoints the imperative issue of safeguarding the independence of the body as well as remedying several defects in its functioning that have become apparent over the years.

Complementary to these discussions, we publish a paper by the Civil and Political Unit of the Law and Society Trust that sums up close to two years work that the Trust had engaged in, with local level administrative officers in Sri Lanka. The paper which summarises the main Report relevant to the Project makes interesting reading in respect of its substantive findings as well as its component detailing the Statutory Powers and Duties of 'Grama Niladharis.'

Certain observations are of special interest. There is no doubt that particular attention has to be given by the Ministry of Public Administration to these administrative officers who are often than not, ignored by the higher levels of the administration as well as much maligned by the public for inefficiency at the best or

corruption at the worst. These are the officers with whom a citizen has the first point of contact in the town or in the village in relation to matters that are very much a part of mundane ordinary life. Frustration of this relationship breeds individual and collective anger towards what is perceived to an ineffective or corrupt government. This, in turn, leads to loss of public faith in the processes of governance, which we are witnessing now in an aggravated form in Sri Lanka. Consequently, there needs to be more vigorous efforts initiated towards instilling a sense of their own responsibilities and powers as well as the limits of those powers in these local level administrative officers

This was the primary objective of the Trust's work in that regard. It is hoped that the wealth of information gathered during this period and the detailed recording of the perspectives of Sri Lanka's 'grama niladharis' would be useful for the Ministry of Public Administration as well as other activists working in these areas.

The concluding paper in this Issue presents a somewhat refreshing contrast to the previous topics focussed upon, written as it is with some eminently apposite philosophical reflections for these times of almost universal distrust, mistrust and anger among all communities and races.

Contained therein is the reminder that the "good arts" in every form (ie; peaceful and emotionally sensitive and subtle modes of communication) provide the best entry point for rights education. We can do no better than quote from the final paragraphs to this paper

"If people in this country are negative about rights there are two possible reasons for this. Either the concept is flawed or it has been packaged and presented wrongly. I would incline to the latter view. Rights have not been properly and skilfully communicated to people. Knowing the truth is one thing; the ability to convey it, quite another."

Kishali Pinto-Jayawardena

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ELEVENTH ANNUAL MEETING OF THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

Suva, Fiji, July –August 2006

- CONCLUDING STATEMENT -

The 11th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions was hosted by the Fiji Human Rights Commission in Suva, Fiji, July-August 2006. The meeting brought together more than 150 representatives of national human rights institutions, governments, non-government organisations and United Nations and other international organisations. Published below is the Concluding Statement of the sessions.

Introduction

1. The Asia Pacific Forum of National Human Rights Institutions (the Forum), consisting of the National Human Rights Institutions of Fiji, Afghanistan, Australia, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Palestine, Philippines, Qatar, Republic of Korea, Sri Lanka, Thailand and Timor-Leste, held this Eleventh Annual Meeting in Suva, Fiji from 31 July to 3 August 2006.
2. The Forum Councillors expressed their gratitude to the Fiji Human Rights Commission for hosting the meeting, to the Office of the High Commissioner for Human Rights (OHCHR) for its co-sponsorship and to all the Forum's donors for their financial support. The Forum Councillors expressed their appreciation for the efforts of the Commissioners and staff of the Fiji Human Rights Commission and the secretariat of the Forum for their work in the organisation of the meeting.
3. The Forum particularly welcomed the participation of the Advisory Council of Jurists and thanked them for their important work. The Forum also welcomed representatives, as observers, from the institutions of the Maldives and Saudi Arabia, fifty seven international, regional and national non-governmental organizations, the representatives of the governments of Australia, Fiji, India, Indonesia, Malaysia, New Zealand, Pakistan, Philippines, South Africa, Tuvalu, United Kingdom, the representatives of the European Union, Pacific Islands Forum, Republic of China and the OHCHR, ILO, UNDP, UNICEF, UNESCO and WHO.
4. H.E. Ratu Joni Madraiwiwi, Vice-President of the Republic of the Fiji Islands and Roko Tui Bau, Mr Walter Rigamoto, immediate past Chairperson, Fiji Human Rights Commission and Mr Richard Dictus, United Nations Resident Coordinator, addressed the inaugural session and formally opened the annual meeting. The speakers stressed the importance of human rights and the role of national human rights institutions and called upon States in the Asia Pacific region, and in particular the Pacific, to establish and strengthen national human rights institutions and ensure their full compliance with the Paris Principles.
5. The Forum noted with appreciation the attendance, participation and support of a number of senior members of the government, judiciary, parliament and other dignitaries from the Republic of Fiji and other States in the region and encouraged their continued engagement and support of the Forum.

6. The Forum noted with appreciation the attendance of members of the media and welcomed their participation and advocacy in the promotion and protection of human rights.
7. The Forum conveyed their special thanks to the elders of the villages of Suva and Tamavua who offered a warm traditional welcome to the Forum Councillors.

Conclusions

The Forum, during its annual business meeting:

8. Noted the annual activity report of the Forum and expressed their appreciation for the work of the secretariat. Forum Councillors also reviewed the Forum's finances and administration and approved the Director's Financial and Audit report of the Forum for the period ending 31 March 2006. Forum Councillors highly appreciated the financial contributions made by (i) member institutions; (ii) the governments of Australia, India, New Zealand, Republic of Korea, Thailand, Sweden and the United States; (iii) donor institutions, including the Brookings Institution, MacArthur Foundation and the National Endowment for Democracy; and (iv) international agencies, including United Nations agencies.
9. Considered the Forum's draft strategic plan for the period 2007 to 2009 and agreed to submit comments and/or additional proposals on the draft with a view to finalising the plan by 1 November 2006. The Forum Councillors also welcomed input from other key stakeholders and invited representatives of governments, civil society and international agencies to submit comments and/or proposals.
10. Agreed to form a new working group on United Nations treaty body reform and requested that the existing working groups on (i) the United Nations Human Rights Council and (ii) Disability, continue their important work and submit proposals for the consideration and decision by Forum Councillors. Forum Councillors expressed their appreciation for the efforts of the members of these working groups and expressed their strong support for the advocacy on behalf of all members of the Forum.
11. Welcomed the report of the Fiji Human Rights Commission, the Forum's representative to the accreditation sub-committee of the International Coordinating Committee of National Institutions (ICC), and thanked the Forum's representative for her work. The Forum Councillors requested that the Fiji representative continue to serve on the ICC accreditation sub-committee until the finalisation of the ICC re-accreditation criteria which is scheduled to occur in October 2006. The national institution of the Republic of Korea will then assume the role as the Forum's representative on the ICC accreditation sub-committee.
12. Forum Councillors nominated the national human rights institutions of Australia, India, New Zealand and the Republic of Korea to be the Forum's representatives to the ICC. The national human rights institution of New Zealand will assume its role after the completion of the Fiji Human Rights Commission's term. Forum Councillors also proposed amendments to the rules of procedure of the ICC with regard to the election of the ICC's Chairperson and Deputy Chairperson.

13. Reaffirmed that the structure and responsibilities of national institutions should be consistent with the Paris Principles. Forum Councillors welcomed proposals to strengthen the accreditation guidelines of the ICC and recommended that, following the finalisation of the ICC accreditation guidelines, the Forum's own membership procedures be reviewed. Forum Councillors therefore resolved that the application for membership from the National Society for Human Rights of Saudi Arabia be deferred until these processes are finalised. In doing so, Forum Councillors requested that the secretariat offer technical cooperation and assistance to the Society regarding compliance with the 'Paris Principles.'
14. Decided to make a reference to the Advisory Council of Jurists on exploring the human rights dimension to the right to environment and requested that the secretariat develop draft terms of reference for the consideration and approval of Forum Councillors.
15. Commended the efforts of the Senior Executive Officers to assist in the effective and efficient functioning of national institutions. The Forum requested that the Senior Executive Officers continue to increase their cooperation and requested that they provide a report to the 12th Annual Meeting of the Forum on their activities and cooperation projects.
16. Unanimously elected the Fiji Human Rights Commission (as the current host institution of the annual meeting) to the position of Chairperson of the Forum. The National Human Rights Commission of Mongolia (as the host institution for the last annual meeting) and the Australian Human Rights and Equal Opportunity Commission (as the host institution for the next annual meeting) were also elected unanimously to the two positions of Deputy Chairpersons.
17. Expressed their deep concern that the representatives of the Palestinian Independent Commission for Citizens Rights could not attend the meeting due to the conflict in the Middle East and supported the UN Secretary General's call for an immediate and unconditional ceasefire for all actors to end the human rights violations.

The Forum, during its open plenary sessions:

18. Expressed appreciation for the commitment of the OHCHR to strengthen sustainable partnerships with the Forum and welcomed the OHCHR's proposal to meet with the Forum prior to the end of 2006 to jointly explore how this may be realised in the context of the strategic plans of both organisations. The Forum also welcomed the proposal of the OHCHR to hold a meeting of Asian States in 2006 to encourage the establishment and strengthening of national human rights institutions in compliance with the Paris Principles. Forum Councillors requested that a similar meeting also be held for the Pacific in association with the Forum and the Pacific Islands Forum. Forum Councillors called upon the OHCHR to work closely with the Forum secretariat in the planning and implementation of these meetings so as to ensure the active participation of Forum national institutions.
19. Welcomed the reports of Forum members and relevant institutions on their operations over the preceding year. Forum Councillors welcomed the participation of the representatives from the Maldives and Saudi Arabia and particularly welcomed initiatives to strengthen the institution in the Maldives towards compliance with the Paris Principles.

20. Welcomed the reports of governments and parliamentarians on the activities undertaken by States to protect and promote human rights including support for national human rights institutions. Forum Councillors welcomed the proposal of the Government of Pakistan to establish a national human rights institution and reinforced the need for it to be established in full conformity with the Paris Principles. The Forum offered its technical support for this to occur.
21. Welcomed the reports of non-governmental organisations. Forum Councillors appreciated the constructive and coordinated contribution of non-governmental organisations to the work of the Forum. Forum Councillors thanked non-governmental organisations for their submissions, collective participation and advocacy at the meeting and stressed their commitment to furthering practical cooperation.
22. Discussed initiatives for the establishment of both domestic and regional human rights mechanisms in the Pacific, especially national human rights institutions. Forum Councillors welcomed the initiatives of the Fiji and New Zealand national institutions in this area undertaken in association with the Pacific Islands Forum.
23. Discussed initiatives of the Fiji Human Rights Commission to work in the Pacific on the right to environment and was encouraged by the Government of Tuvalu statement to enter into further dialogue on the right to environment in the Pacific Islands States.
24. Discussed and welcomed the progress of the national human rights institutions of Indonesia, Malaysia, Philippines and Thailand to strengthen their cooperation towards the establishment of an ASEAN mechanism on human rights.
25. Considered the relevance of role of the International Labour Organization (ILO), and in particular specific ILO Conventions and Declarations, to the protection and promotion functions of national human rights institutions. Forum Councillors requested that the secretariat explore with the ILO the development of practical cooperation programs.
26. Heard presentations from representatives of international, regional and national non-governmental organisations on the rights of human rights defenders. The Forum Council affirmed the complementary roles of national institutions and non-governmental organisations as defenders of human rights and as human rights defenders themselves. It recognised the particular responsibilities of national institutions towards human rights defenders and visa versa. It requested the secretariat to explore how the members of the Forum can protect and promote the rights of human rights defenders more effectively at regional and national levels.
27. Considered the issue of the right to education, including the views of international agencies, experts and non-governmental organisations, and the interim report of the Advisory Council of Jurists. The Forum warmly thanked the jurists of the Advisory Council for their expertise and the comprehensive scope of their report. Forum member institutions would carefully consider their recommendations and report on their implementation to the next meeting of the Forum. Forum Councillors also invited proposals from the jurists concerning both thematic issues for possible future references and administrative issues to ensure the effective and efficient functioning of the Council.

28. Heard presentations underlining the important role of national human rights institutions to assist the work of their governments in defining, promoting and monitoring the right to education. Forum Councillors welcomed the substantive participation of representatives of UNESCO both in the activities of the Advisory Council of Jurists and the annual meeting and requested that the secretariat explore with UNESOC the development of practical projects to assist Forum members protect and promote the right to education and the implementation of the recommendations of the jurists.
29. Reported on their implementation of the recommendations of the Advisory Council of Jurists' reports on the death penalty, child pornography, trafficking, terrorism and torture. A number of Forum Councillors specifically cited the successful implementation of the Advisory Council's recommendations.
30. Gratefully accepted the kind offer of the Australian Human Rights and Equal Opportunity Commission to host the Twelfth Annual Meeting in 2007.

Defending the Defenders:

Role of National Human Rights Institutions in protecting and supporting human rights defenders in Asia

Asian NGO proposal to the 11th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Suva, Fiji, July-August 2006^{*}

"Protection of human rights defenders must be explicitly included in the mandate of these (NHRIs) institution" Ms. Hina Jilani, UN Special Representative of the Secretary General on situation of human rights defenders.

Executive Summary:

As human rights defenders (HRDs) continue to be at the forefront in promoting and protecting human rights in Asia, repression against them by state and non state actors is on the rise. The range and intensity of repression is increasing, including extrajudicial killings, enforced and involuntary disappearances, arbitrary arrest and detention, torture, restrictions on freedom of assembly, expression and movement. There is also increasing restriction on freedom of association, through NGO laws. Women human right defenders as well as lesbian, gay, bisexual and transgender defenders face greater and different risks than their male defenders because of their gender and the fact they work against social stereotypes challenging social structures, vested economic interests, traditional practices and interpretations of religion precepts. Members and staff of National Human Rights Institutions (NHRIs) too have been attacked, threatened and obstructed from engaging in human rights defence.

Although the UN Declaration on HRDs and other human rights instruments clearly lay out the rights of defenders, above realities show that these are not respected and implemented in Asia. While there are many domestic legislatures that contradict the letter and spirit of the UN Declaration on HRDs, there is no positive experience yet of explicit incorporation of the declaration into domestic legislature.

The mandate of the UN Special Representative of the Secretary General on the situation of HRDs was a key landmark at international level, towards the better protection of HRDs. Despite limited financial and human resources and lukewarm cooperation from governments in Asia, the present mandate holder has been proactively attempting to protect defenders and create a positive environment for the work on defenders, particularly by taking up urgent cases of defenders needing protection. While the Americas, Africa and European Union have come with their own inter governmental mechanisms on HRDs, there is no such mechanism in Asia at regional level, neither is there any effective mechanism for protection of HRDs at national level. Hence, there exists a huge protection gap for defenders in Asia.

^{*} Joint Submission by: Asian Forum for Human Rights and Development (FORUM-ASIA) and Asia Pacific Forum on Women, Law and Development (APWLD)

It is in this light that we recognize the potential and capacity of NHRIs as the “Defenders of the Defenders” to protect defenders at national level, supported by a regional framework spearheaded by APF.

Based on our experience of working on HRDs issues and engaging with NHRIs and the APF, we make the following recommendations:

National level - Strengthening of HRDs protection work by NHRIs

- A. Create a Special Desk / Task Force on HRDs with the NHRIs
- B. Fast Action for Protection of HRDs
- C. Contribute towards incorporation of HRDs Declaration into domestic legislature:
- D. Investigation of all violations against defenders and end to impunity
- E. Consistent and proactive cooperation with the UN Special Representative on HRDs:

Regional level - Strengthening of HRDs protection work by APF

- A. Permanent agenda item on HRDs at the Annual meeting of the APF:
- B. Focal point on HRDs within the APF Secretariat:
- C. Advocate and support the development of guidelines on HRDs by the ICC of NHRIs:
- D. Issuing of a Reference on HRDs by the APF's Advisory Council of Jurists

I. INTRODUCTION

1. NGOs in Asia have been concerned about deteriorating situation for the protection of HRDs and have been seeking a proactive role by NHRIs at national, regional and international levels.
2. At the 7th International Conference for NHRIs held Seoul, Republic of Korea in August 2004, FORUM-ASIA highlighted the importance of APF addressing human rights defenders issues and in particular, called to explore the possibilities of creating a HRD Unit within its framework.¹ Since then, there have been several discussions on this idea with the APF Secretariat, as well as a high profile panel discussion on role of NHRIs in protecting human rights defenders on the sidelines of the UN Commission on Human Rights, in April 2005, in Geneva, Switzerland, organized by the International Service for Human Rights (ISHR) and FORUM-ASIA, in collaboration with the APF secretariat. In the lead up to this meeting, ISHR, in consultation with

¹ FORUM-ASIA statement to the 7th International Conference for NHRIs held Seoul, Republic of Korea in August 2004

FORUM-ASIA and Asian Pacific Forum in Women, Law and Development (APWLD) submitted a paper on human rights defenders to the 11th Annual meeting of the APF, requesting a reference from the APF's advisory council of jurists.

II. SITUATION OF HRDs IN ASIA

3. As human rights defenders continue to be at the forefront of promoting and protecting human rights, repression against them by state as well as non state actors are on the rise. Defenders continue to be victims of serious human rights violations such as extrajudicial killings, enforced and involuntary disappearances, arbitrary arrest and detention, torture etc. Restrictions on freedoms of assembly, association, expression and freedom of movement continue to be obstacles for sustaining an environment conducive for the work of defenders. Laws and operations related to anti-terrorism, national security and emergency measures by many Asian governments severely affect the work of defenders. "NGO laws" continue to hamper activities of defenders, including their legal status, activities, management and access to funding.
4. Women human right defenders as well as lesbian, gay, bisexual and transgender defenders face greater and different risks than their male defenders because of their gender and the fact they work against social stereotypes challenging social structures, vested economic interests, traditional practices and interpretations of religion precepts. They are targeted by religious groups, tribal elders, community members, family members and even the HR community itself who uphold these patriarchal institutions. Defenders working on issues related to economic, social and cultural rights also face increasing challenges at the hands of states as well as business enterprises, transnational corporations and international financial institutions. Women activists are particularly vulnerable to prejudices, social ostracism and public repudiation from both state and non-state actors and the use of sexual and sexuality-based attacks. Further, the risks and vulnerabilities which women human rights defenders face take gender-specific forms ranging from verbal abuse directed exclusively at them because of their gender, to sexual harassment and rape.
5. We have noted with alarm that even National Human Rights Institutions, including their members, staff and offices in Asia have come under threats and attacks.
6. Impunity for violations against defenders also continues unabated. Perpetrators responsible high profile cases such as the disappearance of Thai human rights lawyer Somchai Neelaphaijit and the murder of Indonesian defender Munir Said Thalib are yet to be brought to justice. Those responsible for a series of extrajudicial killing of defenders in Philippines have also not been held accountable and those responsible for attacks on headquarters of the National Human Rights Commission and offices of NGOs in Sri Lanka in 2005-2006 have also not been brought to justice. Impunity for such serious and well known cases sends a chilling message that those who threaten and commit serious atrocities against defenders can get off without being held accountable and hence, are given a license to continue their atrocities.

III. STANDARDS AND MECHANISMS ON HRDs

A. Standards on HRDs

7. Article 1 of the UN declaration on Human Rights Defenders² recognizes the right of everyone “individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms”.
8. The declaration stands as the key international standard on rights of human rights defenders, gathering rights contained in various other UN covenants, conventions and declarations.
9. However, at national level, particularly in the 10 countries considered in this paper, there are no specific norms and standards on the rights of human rights defenders. Although these 10 countries had been part of unanimously adopting the above declaration, to date, none of them have explicitly incorporated elements of the declaration into domestic legislatures.
10. At the same time, realities on the ground as highlighted above and indicated by numerous cases documented and taken up with authorities by UN human rights experts including the Special Representative on HRDs³ (161 cases from 2000 – 2005, concerning 560 defenders and 5 organizations in ten countries with NHRIs – India, Sri Lanka, Maldives, Thailand, Philippines, Indonesia, Malaysia, Mongolia and Republic of Korea) show that there is no implementation of the declaration at national level.

B. Mechanisms on HRDs

11. *At the international level*, the creation of the mandate of the UN Special Representative of the Secretary General on Human Rights Defenders in 2000⁴ was a landmark event for the protection of defenders. The Special Representative takes up individual cases of defenders facing repression with the governments concerned. She also makes high level interventions to promote the role of defenders and undertakes country visits to assess the situation of defenders, makes reports to the UN General Assembly and Human Rights Council (formerly the Commission on Human Rights) and makes general and specific recommendations to improve the situation of defenders.
12. *At national level*, there is no specific institutional mechanism for the protection of human rights defenders in the ten countries being considered in this report.

² UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted by the UN General Assembly on 9th December 1998

³ FORUM-ASIA figures based on summaries of individual cases submitted to governments and other reports of the Special Representative available at <http://www.ohchr.org/english/issues/defenders/annual.htm>

⁴ For details of the mandate, see <http://www.ohchr.org/english/issues/defenders/index.htm>

13. *At regional level*, several mechanisms on human rights defenders have been established in the Americas, Africa and Europe.⁵ However, to date, there is no regional mechanism in the Asian region, neither is there any initiative towards this.

IV. NHRIs – “DEFENDERS OF THE DEFENDERS”

14. While NHRIs by the nature of their activities are themselves human rights defenders and are also being subjected to threats and harassments, their status as statutory bodies with legal mandates to promote and protect human rights, places them in a unique position of being “Defenders of the Defenders”. NHRIs are important independent national institutions for the promotion and protection of human rights with which defenders can work in collaboration and partnership for the protection and promotion of human rights.
15. However, although defenders have been consistently engaging with NHRIs, and NHRIs have taken up cases regarding defenders, there is no systematic and institutionalized mechanism or focus on human rights defenders within any NHRI.

V. RECOMMENDATIONS:

16. Based on challenges and difficulties faced by defenders and lack of standards and mechanisms related to defenders at national and regional level, we see the need for NHRIs to play a proactive role in protecting and supporting the work of human rights defenders in close partnership and consultation with civil society and NGOs. We emphasise the need to focus and address the specific risks, vulnerabilities and needs of women human rights defenders as well as lesbian, gay, bi-sexual, trans-gender and intersect activists at all levels in which NHRI work on human rights defender issues and through the following recommendations to ensure NHRIs can effectively protect and support the work and rights of women human rights defenders.

National level - Strengthening of HRDs protection work by NHRIs

17. Human Rights protection and promotion starts at national level – and it is in this context that NHRIs can play a major role with regard to protection and support to human rights defenders.

A. Create a Special Desk / Task Force on HRDs with the NHRIs

18. We call on all NHRIs in Asia to set up special desks / task forces within NHRIs as recommended by defenders gathered at the 1st Human Rights Defenders Forum – South Asia in June 2006.⁶ Such a desk could be the focal point in communicating with defenders, national authorities and the UN Special Representative on HRDs. They could also spearhead key initiatives on defenders,

⁵ Special Rapporteur on Human Rights Defenders of the African Commission on Human and Peoples' Rights, the Human Rights Defenders Unit of the Inter-American Commission on Human Rights and the European Union Guidelines on Human Rights Defenders

⁶ Recommendations to NHRIs in the “Dhulikhel Declaration” – the final declaration of the 1st Human Rights Defenders Forum – South Asia, Dhulikhel, Nepal. Available at http://www.forum-asia.org/news/in_the_news/pdfs/Dhulikhel_Declaration_of_HRDF-SA.pdf

including those outlined below, as well as popularizing the Declaration on HRDs through translation, awareness programs etc. We emphasise the need for this desk to be aware of the specific risks and vulnerabilities faced by women human rights defenders as well as lesbian, gay, bi-sexual, transgender and intersect activists (and other marginalized and discriminated groups) to ensure NHRIs can respond to their special needs regarding protection.

19. The experiences of NHRIs in addressing other key thematic and sectoral issues, such as IDPs, Torture etc. could be drawn on in developing such an institutional focus on defenders.

B. Fast Action for Protection of HRDs

20. Protection is the most urgent need for defenders in the region and unfortunately, defenders have been at the receiving end of the overall tendency of NHRIs in the region to focus more on promotion work than protection.
21. However, the efforts of individual members and staff of NHRIs, who have been intervening on behalf of defenders, could be made more effective by institutionalizing such interventions. There is an urgent need for the establishment of a fast track mechanism to intervene with relevant state authorities to ensure physical integrity and safety of defenders in danger, and operationalize the recommendation of the UN Special Representative that "*protection of human rights defenders must be explicitly included in the mandate of these (NHRIs) institutions.*"⁷ (Para 123, ref.:E/CN.4/2002/106)
22. Such a mechanism should have fast access to relevant authorities, officers of which could be immediately contacted by phone or other appropriate fast methods when defenders are faced with repressions and in situations where such repression is imminent. They could also adopt working methods that includes frequent visits to and accompaniment of defenders facing dangers and obstructions. We emphasise the need for NHRIs implementing this mechanism to be aware of the specific risks and vulnerabilities as well as specific needs for protection of women human rights defenders, lesbian, gay, bi-sexual, transgender and intersect activists as well as other marginalized and discriminated groups.
23. At present, although most NHRIs have the mandate of investigating into individual cases, such investigations often take months and even years – and hence, do not serve the purpose of immediate protection that is needed and expected by defenders.
24. While such urgent interventions may not be explicitly stated in the present mandates of the NHRIs, creative, innovative and progressive interpretation of the mandates will certainly facilitate such interventions.

⁷ Report of the UN Special Representative of the Secretary General on the situation of HRDs to the 58th session of the UN Commission on Human Rights, para 123, ref.:E/CN.4/2002/106. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/G02/111/22/PDF/G0211122.pdf?OpenElement>

C. Contribute towards incorporation of HRDs Declaration into domestic legislature:

25. Another key area that NHRIs could play a leading role is standard setting related to defenders at national level. NHRIs should actively advise and support the governments in the incorporation of HRDs Declaration into domestic legislature. They could also bring to the notice of governments and take appropriate actions to ensure that domestic legislature does not contradict the spirit and letter of the HRDs Declaration.
26. **NGO laws:** NHRIs should take the lead role in addressing disturbing issue of “NGO laws”, particularly in ensuring the implementation of the recommendation of the Special Representative to the UN General Assembly that NGOs have a right to register as a legal entity and that such registration should not be compulsory whilst enabling NGOs to exist and carry on collective activities without having to register if they wish so.⁸ (para 82 (a). ref:A/59.401)
27. This is crucial to ensure the effective operations of defenders and their organization, and NHRIs could play a proactive role to intervene with authorities to implement the above and other relevant recommendations of the Special Representative as noted below:⁹ (Para 82 [b-t]. ref:A/59.401)
 - a. Regime of “declaration” instead of “registration.”
 - b. NGOs must be presumed to be operating legally until proven otherwise, including in regard to a process of registration.
 - c. When a registration system is in place:
 - i) It should allow an expeditious process for registration;
 - ii) Clear and publicly accessible criteria and procedures for registration must be in force;
 - iii) Documentation required must not overly burden NGOs and must not be used for any purpose other than registration;
 - iv) Registering bodies should be independent from the government and should include representatives of civil society;
 - v) NGOs should have access to funding, including foreign funding;
 - vi) Decisions to deny registration must be fully explained and those NGOs denied registration should be have the opportunity to appeal such a decision in an independent court
 - d. Only independent courts, not governments should have powers to review an organization’s purposes and activities and determine whether they are in breach of any existing laws.
 - e. States should be legally barred from interfering with the management structures and activities of NGOs.

⁸ Report of the UN Special Representative of the Secretary General on the situation of HRDs to the 59th UN General Assembly, para 82 (a). ref:A/59.401 Available at <http://daccessdds.un.org/doc/UNDOC/GEN/N04/533/18/PDF/N0453318.pdf?OpenElement>

⁹ Report of the UN Special Representative of the Secretary General on the situation of HRDs to the 59th UN General Assembly, para 82 (b-t). ref:A/59.401 Available at <http://daccessdds.un.org/doc/UNDOC/GEN/N04/533/18/PDF/N0453318.pdf?OpenElement>

- f. Suspension and close down of activities and human rights groups should be only in situations where they may result in clear and imminent dangers and not due to administrative irregularities. Such suspensions should be done only by courts and not governments

D. Investigation of all violations against defenders and end to impunity

28. The prevailing impunity for perpetrators of violations against defenders serves as a license for state and non state actors to freely subject defenders to extra judicial killings, involuntary disappearances, arbitrary detention, torture, threats, intimations and various other forms of harassments.
29. In her report to the 56th session of the UN General Assembly, the UN Special Representative noted that despite reporting and filing of complaints on cases of threats, attacks and acts of intimidation against defenders, there is a “lack of action in a majority of cases” and that “governments have, in general, either failed or neglected to investigate complaints of attacks and threats against defenders and to punish the perpetrators”¹⁰ (Para 37. ref:A/56./341). Three years later, in her report to the 59th UN General Assembly, she again observed that “complaints by defenders are ignored or not properly investigated” (Para 37. ref:A/56./341).¹¹ This situation is very much relevant to Asia as indicated in the context of HRDs in Asia.
30. The specific risks and vulnerabilities which women human rights defenders face as a result of their gender and the issues that work on, is intensified by the lack of documentation of gender-based and gender-intensified abuses against women human rights defenders, and the lack of legitimacy (and thus visibility) accorded to women activists, including sexual rights activists, as defenders in their own right.
31. In the absence of the will or ability of authorities to investigate such violations, and in view of the investigating and inquiring mandates given to NHRIs, NHRIs should conduct comprehensive and speedy investigations into ALL violations against defenders and ensure that those responsible are identified. Based on the specificity of their mandates, they could pursue further actions such as prosecution and recommendations to state authorities, and publicize findings and actions pursued.
32. A vigorous, comprehensive, speedy and consistent course of actions as outlined above will serve as a deterrent and help reduce violations against defenders in the long run.

E. Consistent and proactive cooperation with the UN Special Representative on HRDs:

33. A study by FORUM-ASIA shows that the cooperation of Asian states with the UN Special Representative remains dismal, with India, Malaysia and Indonesia being amongst the countries

¹⁰ Report of the UN Special Representative of the Secretary General on the situation of HRDs to the 56th UN General Assembly, para 37. ref:A/56./341 Available at

<http://daccessdds.un.org/doc/UNDOC/GEN/N01/532/17/PDF/N0153217.pdf?OpenElement>

¹¹ Report of the UN Special Representative of the Secretary General on the situation of HRDs to the 59th UN General Assembly, para 37. ref:A/59.401 Available at

<http://daccessdds.un.org/doc/UNDOC/GEN/N04/533/18/PDF/N0453318.pdf?OpenElement>

that have not extended an invitation to the Special Representative. Responses to communications to governments have been sporadic, delayed and often have not resulted in an adequate response.

34. In this context, NHRIs should support the work of the Special Representative, including advocating with states to extend invitations for the Special Representative to visit their respective countries and speedily act on communications. In the absence of formal invitations, NHRIs could invite the Special Representative on their own initiative and facilitate contact with defenders community.
35. Contextualizing recommendations made by the Special Representative to their own countries and working with governments to implement them is also a key area that NHRIs could collaborate with the Special Representative. NHRIs could include an assessment of implementation of such recommendations by governments in their annual report.
36. As per the recommendation made by South Asian defenders at the 1st Human Rights Defenders Forum in South Asia, NHRIs should also take the initiative to communicate to the Special Representative all cases regarding defenders that are reported to them.¹²

Regional level - Strengthening of HRDs protection work by APF:

37. The role of NHRIs at national level can be further strengthened by using the regional and international framework of NHRIs, particularly the Asia Pacific Forum of NHRIs and the International Coordination Committee of the NHRIs.
38. This could be a positive contribution in the context of Asia being the only region where no intergovernmental framework and mechanism exists on human rights defenders, and such an initiative by APF in particular, with the support of its Advisory Council of Jurists, could lead up to a quasi inter governmental regional framework on HRDs.

A. Permanent agenda item on HRDs at the Annual meeting of the APF:

39. While welcoming the initiative of APF to include a session on human rights defenders at this year's annual meeting, we believe that it is important to maintain this agenda item in all future meetings of APF, in order to ensure follow up on the deliberations of this positive initiative.
40. This will, in particular, facilitate the opportunity for member institutions to share their experiences of working on defenders issues and learn from good practices. APF could also consider inviting the UN Special Representative to such sessions and thereby create a space for regular dialogue between the Special Representative and NHRIs in the region.

¹² Recommendations to NHRIs in the "Dhulikhel Declaration" – the final declaration of the 1st Human Rights Defenders Forum – South Asia, Dhulikhel, Nepal. Available at;
http://www.forum-asia.org/news/in_the_news/pdfs/Dhulikhel_Declaration_of_HRDF-SA.pdf
Ed Note; please see accompanying publication of the Dhulikel Declaration in this Issue of the Review

B. Focal point on HRDs within the APF Secretariat:

41. Based on experiences gained on working on specific projects such as IDPs, APF could also designate a focal point within the APF Secretariat on defenders issues, who would maintain close links with the member institutions, UN Special Representative on HRDs and regional and international NGOs working on defenders issues and closely monitor the situation of defenders in the region.

C. Advocate and support the development of guidelines on HRDs by the ICC of NHRIs:

42. We urge the APF meeting to endorse and support the recommendation of the UN Special Representative that the ICC adopt guidelines with regard to closer working relations between defenders and NHRIs, as a measure of facilitating the human rights work and protection of defenders (Para 123, ref.:E/CN.4/2006/95)¹³ Such guidelines would support and guide the efforts of NHRIs at national level on defenders issues.
43. The European Union Guidelines on HRDs, particularly provisions related to protection, could serve as a minimum model. However, considering the human rights expertise and statutory authority, NHRIs would be in better positioned to serve defenders.

D. Issuing of a Reference on HRDs by the APF's Advisory Council of Jurists

44. We believe that an reference on human rights defenders by the APF's Advisory Council of Jurists, a senior authoritative and credible body in Asia on human rights issues, would greatly enhance the protection and support to defenders by governments in the region. Such a reference could make references to the applicability of HRDs Declaration in Asia and legal obligations of states to protect defenders from any actions by state or non-state parties.¹⁴

VI. CONCLUSION

We hope that the positive initiatives taken by the APF and NHRIs in Asia on human rights defenders can be further enhanced based on the above recommendations and deliberations at this meeting. As a community of Asian human rights defenders representing various national and regional NGOs, we remain committed to continue our engagement with APF and its member NHRIs, in their efforts to better protect and support.

¹³ Report of the UN Special Representative of the Secretary General on the situation of HRDs to the 58th session of the UN Commission on Human Rights, para 123, ref.:E/CN.4/2006/95. Available at; <http://daccessdds.un.org/doc/UNDOC/GEN/G06/103/68/PDF/G0610368.pdf?OpenElement>

¹⁴ Refer to the concept paper submitted by the International Service for Human Rights (ISHR) in consultation with the Asia Pacific Forum on Women, Law and Development (APWLD) and Asian Forum for Human Rights and Development. (FORUM-ASIA).

Dhulikhel Declaration 2006¹

**First Human Rights Defenders Forum in South Asia (HRDF-SA),
6-8 June 2006, Dhulikhel, Nepal**

*"Promoting Asian Solidarity for Peace and Democracy:
Strengthening the Role of Human Rights Defenders in South Asia"*

Introduction

1. We, more than 50 participants from Bangladesh, Bhutan, Cambodia, India, Kashmir, Maldives, Nepal, Pakistan, Sri Lanka and Tibet, at the first Human Rights Defenders' Forum in South Asia (HRDF-SA), gathered together in Dhulikhel, Nepal from 6 to 8 June 2006, to critically reflect on the role of human rights defenders and people's movement under the theme "Promoting Asian Solidarity for Peace and Democracy: Strengthening the Role of Human Rights Defenders in South Asia".
2. The HRDF-SA, which was jointly organised by FORUM-ASIA² and INSEC³ in Nepal provided a timely opportunity for HRDs in South Asia to share their experiences, struggles and to strengthen their solidarity with victims as well as people's movements in the region in the context of rapidly unfolding political transformation for democracy and peace in Nepal and in the face of various challenges in other countries in South Asia.

Celebrating People's Power in Nepal

3. We convened in Nepal during this critical juncture marked by an ongoing historical process – from democratic transformation of an illegitimate absolute monarchy under King Gyanendra to a people-centred government. The experience of people's power in Nepal reminds us once again of the historical lesson that human rights were first fought for and won on the streets. Human rights are the most powerful and effective instruments in bringing about social and political changes.
4. We honour fellow HRDs and advocates of democracy and peace who have fought at the forefront of people's struggles and have sacrificed their lives for the cause of human rights and democracy. We, as part of international solidarity on restoration of democracy in Nepal, deeply share the euphoria and achievement of the people of Nepal. International community, in particular, HRDs in Asia was inspired by the people's courage and determination demonstrated during their struggle against an authoritarian regime that denied people's fundamental freedoms and democratic rights in Nepal.

¹ The full name of the Declaration is South Asian Human Rights Defenders' Declaration 2006

² Asian Forum for Human Rights and Development, Bangkok, www.forum-asia.org

³ Informal Sector Service Centre, Kathmandu, www.inseconline.org

Mainstreaming Human Rights in Democratisation and Peace Building in Nepal

5. We assert that human rights should be at the center in democratisation and peace-building process in Nepal. No political compromise should be allowed to be made at the expense of human rights. In this regard, ending impunity should be prioritised in dealing with human rights violations committed by state and non-state actors, in particular crimes against humanity.
6. We believe that rule of law can never be established as long as perpetrators are provided impunity. As the experiences in other countries such as Cambodia show, failure to address impunity leads to perpetuation of injustice and denial of people's rights to remedy. Impunity denies victims to be citizens equal before law in a newly emerging democratic society. We urge the government of Nepal not to repeat this mistake and seize this opportunity to foster a sustainable environment for the rule of law and accountability against a culture of impunity.
7. Human rights violations are not only symptoms of conflicts. Rather, human rights violations are causes of the very conflicts. In this regard, prevention of human rights violations is vital for transforming conflicts and building peace which in return contribute to the advancement of human rights. HRDs have an important role to play as they are watch dogs of conflict transformation and facilitators of peace building in the current context in Nepal. HRDs should address the urgent needs of HR victims during conflicts such as refugees, in particular Bhutanese and Tibetan refugees living in Nepal and internally displaced persons (IDPs) in the transitional process.
8. There is no genuine peace and reconciliation without truth and justice. Rights of the people to truth and justice should be respected in identifying perpetrators and bringing justice to all victims. Truth and justice are pre-condition for sustainable peace and path to reconciliation between people. International human rights standards and principles should be observed as basic guideline for eventual attainment of peace and reconciliation based on truth and justice.
9. Democratisation and peace building process must be inclusive by integrating the marginalised, vulnerable and excluded sectors in society such as Dalits, indigenous peoples, refugees, internally displaced persons as well as women. Women's participation should be viewed as essential component of peace negotiations and building process.

Strengthening the Role of Human Rights Defenders

10. A one-day training workshop and consultation on the United Nations Declaration on HRDs (the Declaration)⁴ and the specific mandate of the UN Special Representative of Secretary General on the situation of the HRDs (SRSG) helped us to learn that the Declaration and special mechanism can be a profound tool to advance democratisation and peace in the region if it is fully understood and utilised.

⁴ The United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (popularly known as UN Declaration on Human Rights Defenders) adopted by the UN General Assembly in 1998.

11. However, a survey and analysis conducted on the level of awareness during the Workshop revealed there is very little awareness about the Declaration and mandate of SRSG on HRDs. We also discovered that no legislative or administrative measures have been taken to incorporate the Declaration of participants' countries under domestic law as States are obliged to do under Art. 3.
12. Furthermore, we are concerned that governments are introducing more laws that restrict and obstruct the work of HRDs and their organisations which contradict the spirit and letter of the Declaration.
13. We note there is much room for improvement in UN Country Teams and National Human Rights Institutions (NHRIs) to better engage with HRDs for the effective promotion and protection of human rights.
14. We note with alarm that no South Asian government has extended an invitation to the SRSG to visit its country, despite her requests for invitations to visit Bhutan, India, Nepal and Pakistan. We were also concerned with the delay or lack of timely response of South Asian governments to communications sent by the SRSG.
15. The sharing of diverse experiences of HRDs shows that in all countries in South Asia, HRDs have been working at very great risks to their personal safety and security. Attacks on them ranged from arbitrary detention to even extrajudicial killing in some parts of the region by both state and non-state actors such as para-military groups, armed opposition groups and religious fundamentalists.
16. Various forms of violence against women increasing in the region such as rape, sexual exploitations, trafficking and '(dis) honour killing' is an alarming phenomenon to be addressed urgently. Women human rights defenders (WHRD) including lesbian, gay, bi sexual and transgender defenders deserve special attention in terms of protection and empowerment as they have suffered severe multiple exclusions and discriminations under oppressive cultures of patriarchy in the region. Women's rights and inter-sectionality of women's human rights violations should be given due concerns in dealing with issues of impunity as painfully witnessed during the communal conflicts in the region.
17. The harsh reality experienced by HRDs led us to confront the emerging multiple challenges relating to democracy and peace building in our collective efforts to foster people's solidarity for human rights in the region. In this regard, capacity building for HRDs for their empowerment should be placed as top priority for all human rights organisations in the region.

Challenges to Democracy and Peace in South Asia

18. Ongoing structural poverty and growing inequality in the region under economic globalisation policies led by neo-liberal ideology have become an alarming challenge to HRDs. The adverse impact of globalisation in particular free trade agreements and financial investment as well as the role of transnational corporations in the region need to be addressed in a more assertive manner in terms of the realisation of economic, social and cultural rights and the right to development.

19. Fundamental human rights and freedoms such as freedom of expression, association and assembly have been undermined in the pretext of protecting national security in almost all countries in the region, in particular, Bangladesh, India, Pakistan and Sri Lanka. The legitimate exercise of people's rights to self-determination in territories such as Kashmir, Balochistan, Northeast part of India and Sri Lanka have been suppressed by State violence. The denial of people's right to self-determination leads to heightening of conflicts resulting in gross human rights violations.
20. The state of human security in the region has deteriorated since the September 11 attacks in 2001, as the number of gross human rights violations such as extra-judiciary killing, disappearance, torture and arbitrary detention have recently increased in the name of "war on terrorism". Upholding international human rights principles while implementing counter-terrorism measures should be guaranteed by both the state and non-state actors, and monitored vigilantly by HRDs.
21. Caste-based discriminations prevailing in most parts of the region remain a key challenge to all HRDs. Dalits who have suffered multiple discriminations and exclusions under the "hidden apartheid" over centuries are becoming victims-turned HRDs. Instead of addressing the issue of Dalits as a mere legal question, a holistic approach encompassing all human rights - civil, cultural, economic, political and social rights must be adopted.
22. We are concerned at the rise of violence based on religion and ethnicity in the region and urge governments to take all necessary measures to ensure tragic incidents such as Gujarat in India will not occur again. We also demand perpetrators responsible for such violence be punished as a way to combat a culture of impunity.
23. Many NHRIs in the region such as Afghanistan, India, Maldives, Nepal and Sri Lanka are functioning neither effectively nor independently enough from the government. They are challenged to reduce a protection gap by providing better remedy for victims and by playing the role of 'defending HRDs'. In turn, HRDs should monitor their performance to ensure their adherence to the 1993 "*Paris Principles*" on NHRIs.
24. The weak mechanism of inter-governmental cooperation in the region only exacerbates the human rights violations resulting from various types of conflicts. Institution building for effective human rights governance remains a matter of serious concern for civil society groups. People-to-people solidarity must be strengthened to create a platform for necessary inter-governmental cooperation and to overcome the weaknesses of existing mechanisms such as the South Asian Association for Regional Cooperation (SAARC).
25. The newly established Human Rights Council (HRC) has posed challenges and opportunities for HRDs in the region, in particular Bangladesh, India, Pakistan and Sri Lanka. Those governments have a collective obligation to create an effective regional human rights mechanism in accordance with international human rights standards together with other Asian members of HRC. In order to make them accountable to their pledges and this obligation, HRDs must engage critically with them through vigilant monitoring and advocacy at home and at the international arena.

26. Human rights situations in small countries in the region such as Bhutan and the Maldives should not go unnoticed. HRDs of these countries deserve support of international solidarity networks in terms of advocacy, capacity-building and campaigning.
27. The non-violent struggle of the Tibetan people to be able to exercise their fundamental rights, namely civil, cultural, economic, political and social, in particular their right to freedom of religion in Tibet should be acknowledged until such time we call on South Asian governments to offer protection to Tibetan asylum seekers.

Recommendations:

28. In view of the above reflections and findings, we recommend the following:

To Human Rights Defenders:

- HRDs in South Asia should advocate for the universality of all human rights for all persons without discrimination in a peaceful way;
- HRDs in South Asia should demand their legitimate space to ensure a vibrant civil society movement which is essential for democratisation and peace building;
- HRDs should ensure their independence, impartiality, objectivity and accountability in their organisational and individual operations;
- HRDs should make more efforts to raise public awareness on the UN Declaration on HRDs and the mandate of SRSG on HRDs;
- HRDs should collectively address the issue of impunity both by state and non-state actors;
- HRDs should conduct studies on human rights violations of HRDs in the last few years with a view to ensure effective implementation of the UN Declaration on HRDs at the national level;
- HRDs should undertake capacity building programmes for victims as well as themselves;
- HRDs should develop mechanisms for cooperation with the Asia-Pacific Forum of National Human Rights Institutions (APF) and its members to strengthen protection mechanisms for victims and promote the role of HRDs;
- HRDs should proactively monitor the performance of four South Asian member states of the Human Rights Council - Bangladesh, India, Pakistan and Sri Lanka;
- HRDs should cooperate more effectively among human rights NGOs to protect victims by using the HRDs mechanism at the national and international level;
- HRDs should take up human rights issues which are not adequately addressed by the government, NHRIs and the wider community such as human rights violations based on perceived sexual orientation and gender identity;
- HRDs, both men and women, should be educated about women's rights and their intersectionality as well as gender-sensitivity;
- HRDs, in particular WHRD should be more empowered to protect women victims and other vulnerable groups.

To National Human Rights Institutions:

- NHRIs should undertake awareness-raising and education programmes on the UN Declaration on HRDs, nationally and internationally in the region;
- NHRIs should recognise the role of HRDs by institutionalising a mechanism which will facilitate regular consultations with HRDs on NHRIs programmes, as well as promote the Declaration regional and international platforms;
- NHRIs should set up special desks or task forces for the protection of HRDs and the implementation of the UN Declaration on HRDs at the national level; this could be raised at the forthcoming Annual Meeting of the Asia-Pacific Forum of National Human Rights Institutions (APF) in Fiji (31 July to 4 August 2006);
- NHRIs should develop mechanisms for greater cooperation with SRSG on HRDs including automatic referrals of complaint cases from HRDs to the Special Representative;
- NHRIs should monitor and support state authorities to implement the recommendations made by the SRSG on HRDs, and other special procedures and UN Treaty monitoring bodies;
- NHRIs should encourage governments to ensure that national laws relating to NGOs comply with the UN Declaration on HRDs.

To Governments in South Asia:

- Governments in South Asia should undertake public awareness and education programmes on the UN Declaration on HRDs including publication of the Declaration in local, regional and national languages;
- Governments should undertake necessary measures to ensure conformity of the national laws/decrees/rules/orders pursuant to Article 3 and other relevant articles of the Declaration at national level;
- Governments should ensure respect for the opinions/directions/orders/advises of the NHRIs for the protection of HRDs;
- Governments should promptly respond to the communications of the SRSG on HRDs;
- Governments should extend standing invitations to facilitate country visits by the SRSG on HRDs and other thematic mandate holders. In particular, Bhutan, India, Nepal and Pakistan governments should respond positively to the outstanding requests for a visit of the SRSG on HRD;
- Governments should initiate the drafting of a sub-regional human rights instrument for SAARC in consultation with civil society organisations;
- Governments should work closely with NHRIs and HRDs in combating impunity and cultivating a culture of rule of law;
- Governments of Bangladesh, Bhutan and Pakistan should establish NHRIs in accordance with the "*Paris Principles*" on NHRIs;
- Governments should ensure independence of NHRIs and judiciary, in particular the appointment of office bearers.

To United Nations:

- The HRC should extend the mandate of SRSG on HRDs and provide all necessary political support and material assistance for the full implementation of the UN Declaration on HRDs;
- The HRC should put in place mechanisms to maximise the participation of HRDs in its work in line with the recommendations by the SRSG on HRDs;
- The special procedures should be able to inform victims and HRDs representing them, on the progress made with regard to communications sent on their behalf once States have been given a reasonable time to respond;
- The HRC should urge Member States to provide a detailed response to the pending recommendations and communications submitted by the special procedures and the steps taken to give them effect during their “universal periodic review”;
- The Office of the High Commissioner on Human Rights (OHCHR) should provide statistical information on the trends of each mandate, number and analyses of communications sent and government replies received, collected by the Quick Response Desk of the Special Procedures Branch publicly available. Such information should also be used as a basis for reviewing the Member States’ cooperation with the UN human rights system in the new “universal periodic review” mechanism of the HRC;
- OHCHR should develop comprehensive programmes to strengthen the protection mechanisms for HRDs;
- OHCHR should improve its capacity to respond to the communications on the cases of human rights violations of HRDs. The current website should also be improved, in particular the “essential information” section for submission of communications to the SRSG on HRDs and include interventions made with the NHRIs under the heading “action by authorities”;
- OHCHR should undertake public awareness and education programmes as well as capacity-building programmes for HRDs more actively to promote the UN Declaration on HRDs in the region;
- OHCHR should strengthen its institutional presence by creating more country offices or programmes and High Commissioner’s regional representatives based in the region;
- OHCHR should undertake more High Commissioner’s country missions in countries where massive human rights violations are taking place such as Sri Lanka and Pakistan.

One Step Forward and Two Steps Backwards: The Problematic Functioning of Sri Lanka's National Human Rights Commission (NHRC)

*Kishali Pinto Jayawardena**

Key Issues Confronting the Independence of the National Human Rights Commission of Sri Lanka (NHRC)

Unconstitutional Appointments

Independence of human rights institutions is of the essence as emphasized in the Paris Principles. At present, the most urgent issue confronting Sri Lanka's National Human Rights Commission (NHRC) is the unconstitutional appointment of its current members by the Executive President bypassing the prior approval of the Constitutional Council (CC) in making the said appointments. These appointments were made along with other like appointments to a number of other 'independent commissions' on the police, the public service and the judiciary.

This disregarding of a specific constitutional condition was all the more heinous given that the approval of the CC had been mandated by a vital amendment to the Constitution in 2001, (the 17th Amendment). This amendment was passed without dissent in the country's parliament following an increased public demand for the non-politicisation of appointments to key monitoring bodies and the public service. Whereas earlier there had been unrestrained presidential fiat in the appointment process, the 17th Amendment brought in the intervening approval of an apolitical, 10-member Constitutional Council (CC) constituted through a process of consensual decision making by the constituent political parties in parliament. Five members of high integrity and standing were nominated (taking into account minority concerns) jointly to the CC by the Prime Minister and the Leader of the Opposition. One member was nominated by the smaller parties in the House, which did not belong to either the party of the Prime Minister or the Leader of the Opposition. All these appointed members held office for three years. They could be removed only on strictly mandated grounds and any individual appointed to vacancies created held office for the un-expired portion of that term. In addition, the President had the authority to appoint a person of his or her own choice. The rest of the CC comprised of the leader of the opposition, the prime minister and the Speaker of the House *ex officio*.

The 17th Amendment was implemented to some extent only during two and a half years; namely 2002 to the early part of 2005. What Sri Lanka witnessed thereafter was its systematic downgrading and devaluing. The terms of the six appointed members to the first CC expired in March 2005. But the vacancies arising therein were not filled which culminated in the lapsing of the CC itself. Though

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names of five nominated members were agreed upon by the Prime Minister and the Leader of the Opposition and communicated to the president for appointment as constitutionally required in late 2005, these appointments were not made. The deliberate delay on the part of the smaller political parties in parliament to agree by majority vote on the one remaining member to the CC was cited as the ostensible reason for the CC not being brought into being.

The many representations made to the President by civil society groups that the one vacancy in the CC should not prevent the appointment of the members nominated already and that the consequent functioning of the body was essential to the good administration of the country, were to no avail.

Shortly thereafter, President Rajapakse proceeded to make his own appointments to the commissions, including the NHRC. The appointees predominated with his supporters and personal friends with only some exceptions to the rule. Public uproar resulted on the basis that this was precisely the mischief that the 17th Amendment had set out to remedy.

Insofar as the NHRC was concerned, two former Commissioners, both senior law academics, declined re-appointment with one academic specifically stating in public that the unconstitutionality of the appointments precluded acceptance. In addition, another supposed appointee, (reputed for his work as a human rights activist), declined appointment. None of the persons ultimately appointed to the NHRC had a previous record of sensitivity to rights protection and some were virtually unknown to the human rights community in Sri Lanka. Though court actions against these Presidential appointments were filed immediately thereafter, the application of the constitutional rule of immunity for actions such as these militates against the possibility of the court actions being visited with any success.

There were other disturbing repercussions from these appointments specifically where the NHRC was concerned. Prior to its members going out of office in March 2006, they had delegated their powers of investigation to a committee. But no official recommendations or reports could be released as a result of the non-constitution of the primary body. During that period, this had a serious impact in the North-East where the NHRC had been engaged in safeguarding citizens caught in the cross fire between government forces and the Liberation Tigers of Tamil Eelam (LTTE).

Then again, the recent decision of the new Commissioners to stop inquiring into the complaints of over 2000 disappearances of persons in the past (into which cases their predecessor Commissioners had already expressed agreement to investigate), was extremely unfortunate. The reason advanced by the Commissioners for stopping its inquiries; viz, "for the time being, unless special directions are received from the government" was justifiably worrying. As taken verbatim from the note of the Secretary to the Human Rights Council (HRC), dated 29 June 2006, this was due to the fact that "the findings will result in payment of compensation, etc."

The decision proved all the worst fears of human rights activists in the country that the current Commissioners could not be regarded as functioning independently from the Government. Consequent to widespread outrage, which indeed compelled the Minister of Human Rights to issue a statement that the Commission should independently to inquire into the recorded cases of disappearances and that it had the mandate to do so, the Commission appears to have withdrawn from

its earlier position. However, the incident did not augur very well for the genuine commitment of the Commissioners towards affording relief to the victims and their family members.

Primarily, it is imperative that the credibility of the NHRC is restored by the re-constitution of the body pursuant to due approval of its members by the CC. From a long-term perspective, changes should follow to Act, No 21 of 1996 (hereafter the Act) establishing the NHRC. Section 3 (1) of the Act should be amended to stipulate rigorous standards that require the appointment of only those persons possessing a high level of integrity and commitment to human rights. There should also be appointment of full time members, an increase in the number of members from five to at least nine and amendment of section 3 (3) of the Act to require not only an adequate ethnic representation on the NHRC, but also an adequate gender balance of its membership.

Deficiencies in the operational independence of the NHRC

It is problematic that section 31 of the Act confers powers on “the Minister” to make regulations regarding the implementation of the Act, including conduct of investigations. This provision violates the principle stipulated by the Paris Principles that “[a]n effective national institution will have drafted its own rules of procedure and these rules should not be subject to external modification”. Hence, this section should be repealed and the Act amended to ensure the NHRC is authorised to select and appoint its own staff

Financial Independence of the NHRC

According to the Paris Principles, an important aspect of independence is the financial autonomy of a national human rights institution and that “financial autonomy must be accompanied by adequate, continuing funding”. The State has to provide adequate resources to enable the NHRC to function effectively. The possibility of manipulating financial allocations to undermine the independence of national human rights institutions is very real. Adequacy of financial resources is also linked to the issue of public accessibility to the NHRC. It must have sufficient resources to have an adequate number of regional offices in order to facilitate greater public accessibility.

The Act must be amended to ensure the NHRC has its own budget and enjoys autonomy, manages its own finances subject to accountability by parliament as well as the ensuring that financial allocations to the NHRC are prioritized and not diminished.

Expansion of the Mandate of the NHRC

Though past Commissioners of the NHRC have attempted to transform the NHRC into an effective human rights monitor, their efforts had been hampered by the following specific defects.

Under the present Act, the NHRC can investigate and inquire into violations of fundamental rights recognised by the Constitution of Sri Lanka, which recognises a limited category of rights and does not include, *inter alia*, the right to life. This is a basic drawback that has inhibited the vigorous growth of constitutional jurisprudence and insofar as the NHRC is concerned, impacted negatively on its

mandate of good rights protection. Efforts by activists to expand the constitutional rights chapter over the years have been faltering. This remains a fundamental problem.

From another perspective, the functions of the NHRC are limited to human rights education, making recommendations on human rights treaty ratification and on bringing national laws and administrative practices in line with international human rights norms (section 10 (d), (e) & (f)). However, the interpretation clause of the Act (section 33) defines "human rights" as only those rights that are recognised by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Universally-recognized human rights under treaty law and customary international law is not encompassed within this definition despite Sri Lanka having ratified almost all of the key international human rights treaties. Norms of customary principles of international law relating to human rights protection are also not explicitly recognised in this definition. It is necessary therefore that the definition section be expanded.

Section 10 should be further amended to reflect the necessity for the NHRC to advise the government to ensure that executive policy-making (and not only legislation and administrative practices as currently stipulated) is in line with international human rights obligations. NHRC should also be able to investigate abuses by non state actors, taking into account that Sri Lanka has seen decades of conflict between the Liberation Tigers of Tamil Eelam (LTTE) and the government, where ordinary people have been subjected to the most extreme violations of life and liberty by government forces as well as the LTTE.

Standing to Petition the NHRC

Section 15(3) (b) of the NHRC Act states that, in selected cases where *inter alia*, conciliation or mediation has not been successful, the NHRC may refer the matter "to any court having jurisdiction to hear and determine such matter in accordance with such rules of court as may be prescribed". Such Rules of Court have not been prescribed despite the Act being in operation since 1996. It is imperative that the Supreme Court prescribe the necessary rules to ensure that the NHRC is not to be scoffed at for its lack of substantive power in cases where individuals or bodies cited before the NHRC fail to pay heed to its directions.

In addition, standing to petition should be further broadened by permitting any person to bring to the attention of the NHRC, an infringement or an imminent infringement of human rights.

Insufficient Investigative Powers of the NHRC

One of the central functions of the NHRC is to investigate human rights violations. Monitoring bodies under international treaties which Sri Lanka is subject to have throughout, (in their Concluding Observations to the periodic reports of the Sri Lankan State submitted under the reporting procedure), affirmed the need to strengthen "*the capacity of the National Human Rights Commission to investigate and prosecute alleged human rights violations.*"

A good example of this deficiency is displayed in the way NHRC addresses torture, even though it had adopted a specific policy against torture in its National Strategic Plan of Action (2003-2006). In

the past NHRC had failed to develop proper procedures for the conduct of investigations into cases of torture and NHRC district co-ordinators had the practice of settling torture cases for minimal amounts of money. Responding to significant public concern expressed, a policy decision was taken in 2004 that the NHRC would not mediate/conciliate complaints regarding Article 11, (freedom from torture). However, a prevailing problem is the limited capacity of the NHRC to conduct detailed investigations of a criminal nature into complaints of torture.

Another problem identified in respect of the investigative functions of the NHRC was that even in cases where the NHRC investigates an allegation of torture and sends the matter to the Attorney General (AG), the AG again relies on police investigations. This duplicates and prolongs the investigative process and lends credence to the criticism that serious and thorough investigations are not undertaken by the NHRC.

Recent decisions taken by the police hierarchy have resulted in officers of the NHRC being inhibited in their statutory task of monitoring places of detention to ensure that abuse of detainees do not take place. It is important that the NHRC is allowed to inspect not only the cells of police stations themselves but also the entire precincts of the station including the toilets and the kitchen, which are often the very places where detainees are taken and tortured. The NHRC should also develop closer links in the processes of torture investigations and prosecution, handled by the Special Investigations Unit (SIU) of the police and the Department of the Attorney General (AG's Department, the state law officer). Preliminary investigations conducted by the NHRC can greatly help in instituting criminal inquiries into gross human rights abuses. This would require institutional capacity on the part of the NHRC to collaborate in such an effort and on the other to skilfully monitor the process to ensure the proper functioning of such a system.

The NHRC should rectify other faults in its functioning such as the failure to keep complainants informed of the progress of their cases, the fact that case files are sometimes missing from the NHRC's Head Office and complaints by victims that its 24-hour hotline is not accessible at all times.

Enforcement of Recommendations

Under the Act, if a party does not comply with a recommendation made by the NHRC, all that it can do is report to the President who shall then cause such report to be placed before Parliament (section 15 (8)). The success of this procedure inevitably depends on political will. A more streamlined procedure ought to be adopted if recommendations are to be enforced and the public is to have confidence in the efficacy of the NHRC as a redress mechanism.

Conclusion

The functioning of Sri Lanka's NHRC has been a melancholy story of some positives and many negatives. Its Commissioners need to be appointed properly following the mandated constitutional procedures and after its members are approved by the Constitutional Council. Equally, basic gaps in the law under which it is established needs to be redressed. In the alternative, the NHRC will be relegated to yet another example of Sri Lanka's dysfunctional institutional process. Undoubtedly it is the fervent hope of Sri Lanka's human rights community that this will not be the future reality.

Report of the Law and Society Trust on Addressing Dilemmas of Empowerment at Local Government Level; The Manifold Problems that Citizens face in “Going to the Grama Niladhari”

Introduction

Undoubtedly the ordinary citizen's first point of contact in regard to his or her day to day administrative concerns takes place with the administrative officers functioning at the local level of government. Therefore, it is imperative that these officers (known in common parlance as 'grama niladharis'), are enabled to carry out their functions conscientiously and efficaciously in order to ensure that the citizens have confidence in the system of governance as a whole.

The work engaged in by the Law and Society Trust over a period of time on law reform, access to justice and human rights has revealed a fundamental problem that administrative officers at the local level face: namely, lack of information of the basic legal framework. Indeed, the tragedy is twofold; at the level of central government, there seems to be no attention paid to village level governance and at another, most administrators at the local level make the most basic mistakes about their powers, existing laws and administrative procedures. The whole makes it virtually impossible for local administrative officers to render a service worth acknowledging as admirable by the public.

While at times, victims are unaware of their rights, others are aware of their rights but are unable to seek redress because the relevant officers in authority who are supposed to ensure that their rights are protected, fail to do so due to ignorance, prejudice or outright corruption. Thus, peoples' access to justice becomes fundamentally flawed.

Given this current state of deterioration and corruption prevalent at the lower levels of the administrative ladder in Sri Lanka, comprehensive efforts were initiated by the Law and Society Trust to enhance the skill and knowledge of the 'grama niladharis.'¹ These efforts were also looked upon as a means of putting the popular theory of subsidiarity into practice. The vesting of powers or tasks in the grass roots level sub-units of the governing order can be easily defeated if the officers responsible for executing such powers are incompetent in the carrying out of their functions or are unaware of the limits of their powers. This has been the uncontested reality in Sri Lanka where public criticism of officers such as 'grama niladharis' has been many and varied, ranging from allegations of corruption to fundamental incompetence.

Consequently, our efforts were aimed at ensuring access to justice at a village level by enhancing the information base of the 'gramaniladharis' on law and their statutory powers as well as in ensuring that they have a proper understanding of their role in advancing good governance. This short paper outlines the manner of the work done by us and highlights significant perspectives that indicate the

¹ The programme was conducted by attorney-at-law and project co-ordinator Malkanthi de Silva under the Civil and Political Rights Unit of the Law and Society Trust (LST). The advice and guidance of Dr J de Almeida Guneratne, P.C. in regard to the overall implementation of the project activities and in the preparing of the booklet on *The Statutory Rights and Duties of Grama Niladharis* is much appreciated. In addition, the ready encouragement and assistance rendered by Mr A. Norbert, Former Divisional Head of Gramaseva Niladhari and Senior Assistant Secretary, Ministry of Public Administration & Home Affairs is noted with gratitude.

enormity of the problems impacting on the proper functioning of the local administration in the country.

Contents of the Trainings

The conducting of the training programmes was preceded by the finalising of a training module for the participants as well as an exhaustive analysis of the relevant laws and regulations pertaining to the powers and duties of the 'grama niladharis' including examination of the relevant case law in this regard.

The trainings were varied geographically, covering six provinces.²

The topics covered in the workshops included; Administration & Administrative Law, Official Diary of Grama Niladaris, the Bribery and Corruption Commission Act, the Bribery Act, Tsunami (Special Provisions) Act, No. 16 of 2005, Bail Act, Fundamental rights, Divorce & Maintenance, Elders Act, Consumer Affairs Authority Act, Land Law & Section 66 Litigation, Legal Systems, Law of Evidence, Criminal Procedure Code & Legal Systems, Fundamental Rights, Law of Divorce and Maintenance, Civil and Criminal Laws of the Country, Consumer Affairs Authority Act No 9 of 2003, Elder's Rights Act No 9 of 2000, Government circulars relevant to disasters and Legal Systems and Judicial Structures of Sri Lanka.³

Copies of all the relevant Acts, Amendments & important Circulars in printed form were distributed. In addition, videos, & overhead slides were used in lectures. Some of the printed material which was distributed included Hand Books on Bail Act, Administrative Law, Consumer Affairs Authority,

² The programme consisted of two-day workshops for each participant group during the years 2004-2005 and 2005-2006 in three districts during one year. The districts covered during this period included Kandy, Kurunegala, Puttalam, Colombo, Kalutara and Nuwara Eliya. In total, thirty workshops (in both Sinhala and Tamil languages and varying according to the targeted participation) were held. A special effort was made to ensure gender equity in the selection of the participants. One additional programme was conducted in the South in 2005 with particular emphasis on post tsunami laws, regulations and circulars. The 2004/5 programme was supported by AusAID while the 2005/6 programme was supported by SIDA (Swedish International Development Agency).

³ Primary Trainers in this programme included the following; Introduction to the Law of Fundamental Rights, Introduction to Administration and Administrative Law in Sri Lanka, Introduction to Environmental Laws, (relevant to GSNs such as the Forest Ordinance etc.), Public Interest Litigation: Dr. Mangala Wijesinghe AAL/MBBS, Legal systems and Procedures in Sri Lanka: Ms. Hemali Liyanarachchi AAL Code of Criminal Procedure Act, Bail Act, Evidence Law: Sarath Karawitta AAL, Electoral Systems and Practices: Assistant Commissioner of the Election Department, Mr. U. Amaradasa, Laws and Administrative practices on Land: Former Land Commissioner of Colombo. Mr. A. Guneratne, Persons Registration Act: Assistant Commissioner of Persons and Registration. Ms. A. Abeysirigunewardene, Laws on Social Affairs and Disaster Management: Director of the Disaster Management Division, Social Services Department, Mr. N. Hettiarachchi, Consumer Protection Act of 2003, Elders Law of 2000: Mrs. Jeeva Ranasinghe AAL, Laws on Divorce and Maintenance (Up country, Muslim and General Law), Section 66 litigation: Mr. E.M.D. Upali AAL, Violence against women and Children: MR. Thusara Manoj Samarasekera O.I.C. Admin (Children and Women Bureau): Official Diary of GSNs- instructions: Former Divisional Head of Gramaseva Niladari Ministry of Public Administration. Mr.A.Nobert, Labor Law-Sections relevant to GSNs: Mr. Adikari AAL, Establishment Code: Mr. Rupasinghe Director, Combined Service Ministry of Public Administration, Migrant Workers: Mr. Keerthi Muthukumarane, Legal Manager, Foreign Employment Bureau.

Divorce Law, Fundamental Rights, Evidence Law, Criminal Procedure, Land Law, On Sec. 66 Litigation, & The Legal System, LST publications on Migrant Workers (Sinhala language), Pamphlets on the Official Diary of the Grama Niladharis, Briefing Paper on Farmer's Rights, pamphlets on Elders Rights as well as a specific publication finalised by the Law and Society Trust on the Powers and Duties of Grama Niladharis in the context of applicable statute law and judicial decisions. The resource materials also included extracts from the Constitution, Criminal Procedure Code, Evidence and the Penal Code.

Impact of the Trainings

Considerable knowledge of the laws and acts, which are relevant to their duties (as opposed to a general training on law) was imparted to the participants. 'Grama niladharis' thereby identified their statutory powers, which had not been properly utilized earlier due to lack of awareness and gained a basic awareness of fundamental rights. Most importantly, they were made aware of their value in the process of establishing good governance practices, involving therein an understanding that they can be made accountable if the duties devolved upon them in law are not properly carried out. The dire consequences of indulging in bribery or corruption were dealt with in detail.

As stated above, the training module was designed to project a specific focus not only on the precise powers that the 'grama niladharis' possess in terms of the applicable laws (as interpreted in relevant judicial decisions) as well as the duties imposed upon them by the same but also the important social role they are required to perform.

While cases such as *Perera v Fernando*⁴ and *Punchinona v Padumasena*⁵ arising in the context of the Partition Act, 1977 and the Primary Courts Procedure Act of 1979 were respectively referred to in their powers *per se*, the case of *Samadasa v Wijeratne, Excise Commissioner*⁶ was highlighted to emphasize the nature of statutory power vested in the 'grama niladharis' as peace officers even to the exclusion of the District Secretary who ranks as their ultimate superior in the administrative hierarchy.

Apart from this, to illustrate the limits of their powers, the case of *Siriwardene et al v Lokuge et al*⁷ was focussed on. In this instance, a 'grama niladhari' had sought to produce the income tax returns of a party in support of that party's case despite the fact that he had no authority in law to do so, for which reason the Court rejected the same.

The case of *Saneepala v Bamunusinghe*⁸ is also relevant in the highlighting of the limits of the functions of 'grama niladharis.' Further illustrative of this principle are the cases of *Mudiyanse v Christie Silva*⁹ and *Siriwardene v Hewage*¹⁰ which arose in the context of a Batticaloa Tamil woman who was claiming maintenance from a man 'de facto' married under the custom of 'kalam' and in the context of a rent and ejection action based on an allegation of sub-letting.

⁴ [1999](3) SLR, 259

⁵ 1994(2) SLR 17

⁶ [1999] (2)SLR 85

⁷ [1995(2) SLR 115

⁸ [1995](2) SLR 208

⁹ [1985](2) SLR 55

¹⁰ [1997] (3) SLR 57

Particularly in regard to practices of bribery and corruption, the case of *Abdul Sameen v Bribery Commissioner*¹¹ was employed to impart awareness of the serious consequences of such actions. Here, the particular 'grama niladhari' was found guilty of bribery by the Magistrate and sentenced to a suspended term of imprisonment for one year and a fine.

Generally, the project envisaged an ongoing assessment of its practical impact in terms of the expected objectives of the programme, (ie; increased rights awareness/consciousness, increased knowledge regarding their powers, existing laws and administrative procedures), by administration of a questionnaire to the participants at regular intervals as well as administration of a post workshop questionnaire at the conclusion of the programme which combined elements of the first two questionnaires. The last questionnaire also incorporated new elements, including personal experiences of the participants where they shared their views and comments about the Programme as well their work and experiences with the public in the light of the training that they had undergone.

There is no doubt that these questionnaires which formed an essential aspect of the training were useful in evaluating not only the success of the programme but also in gathering information and perspectives that could be employed for a wider purpose rather than limited to training objectives only

An innovative element of the programme was the involvement of local level activists in each area where the trainings were conducted. These activists performed a "monitoring element" in evaluating the performance of the individual 'grama niladhari' and ascertaining as to whether the trainings had practical impact on the performance of his/her duties in that administrative area.

Structured discussions with selected community leaders before, during and after the training programme enabled the better identification of the practical problems that citizens face in trying to deal with the 'grama niladaries' with whom they interact on a daily level. The input from these discussions also informed the issues to be identified at the workshops for discussion and debate.¹²

These focus group discussions contributed enormously to the structuring of the programme and in the proposals made by the activists and village leaders for the better enhancement of the programme. A consistent complaint was that when 'grama niladharis' are appointed, they are not given a proper training, resulting in the officers lacking basic knowledge in regard to their duties. It was suggested that there should be a system set up within the Public Administration Ministry to evaluate the service of the 'grama niladharis' such as progress reporting or activity assessment on a regular basis. The importance of making an official uniform compulsory and the observance of strict rules re identification of the 'grama niladhari officers' was emphasized in the context of frequent impersonation of these officials by individuals engaged in nefarious activities.

¹¹ [1991] (1) SLR 76

¹² The activists were engaged in discussions according to a formulated List of Issues, which included. Objectives of the Project, Role of the Focus Groups, problematic areas concerning the functioning and the duties of the 'grama niladharis' and inconsistency in the receipt of and delay in receiving circulars relevant to their duties. At the end of the first focus group meeting in these districts, a questionnaire was distributed to obtain the feedback of the focus group and evaluated thereafter in order to inform the content of the training modules.

The Success of the Programme

Two independent indicators were used for this purpose. Firstly, the programme was specifically designed so that it would not be a mere lecture course that would have limited impact but rather, would be an interactive experience which would focus on drawing out the perspectives and ideas of the 'grama niladharis' themselves.

As the detailed reports pertaining to the programme indicates, this objective was achieved in an extremely satisfactory manner resulting in the programme generating a high level of interest among the target groups. This was manifested in their attendance being maintained at consistently high levels throughout the programme and also by the substantive content of the discussions being rich and varied.

Secondly, programme staff formulated a training module and material incorporating general law/public law principles and also wrote out an analysis of the relevant statutes that impact on the powers and duties of the 'grama niladharis' as well as particular decisions of the Court of Appeal and Supreme Court that impact on these statutory provisions.

It is no exaggeration to affirm that this is the first time that an exercise of this nature has been engaged in by a non governmental body (NGO) or a government body, for that matter. This analysis was not limited to paper but instead was explained practically through interactive sessions by experienced resource persons in the legal profession as well as in public administration.

One important aspect was the fact that 'grama niladharis' are not sent the most basic documents relevant to their duties, including relevant government circulars, acts and amendments in time. In addition, some of the circulars were not available in the Tamil language causing grave problems in areas which had a predominantly minority population. Ministry officials who attended the programme as resource persons were made explicitly aware of such lacunae and were called upon to remedy these shortcomings.

A forceful indication of the success of the programme activities was evidenced by the fact that all the participant 'grama niladharis' voluntarily purchased the booklet published by the Law and Society Trust on the legal powers and duties of the grama niladaries with an analysis of the relevant case decisions. This was judged to be a markedly successful part of the programme as this was the first time that such a publication had been attempted in the administrative history of the country.

The Trust proposes to further finetune its contents and publish the whole in English, Sinhala, and Tamil to be used as valuable resource materials by government ministries and NGOs' working in this area. It is heartening that we have already received many invitations from various Government institutes and the Ministry of Public Administration and Home Affairs itself to this effect.

Key Findings of the Project Activities

Not surprisingly, widespread political interference by local level politicians was identified as a primary obstacle to the proper performance of the duties of the 'grama niladaris'. The answers to the

comprehensive questionnaires distributed by us both to the 'grama niladharis' as well as to the targeted activists offer tremendous potential for a wider and more indepth study on the manner in which the context and the functioning of these officers could be streamlined and protected by the law to the maximum extent possible.

Another primary finding was that, despite the 'grama nailadaries' being educated on the nature and extent of their powers which were explicitly conferred by law or regulation, they were most often extremely reluctant to use such powers as the other relevant authorities (Police, Divisional Secretaries some Government Authorities etc) refrained from recognising such authority in practice.

In some cases, the 'grama niladharis' were actively intimidated or downtrodden by officers on the higher rungs of the administrative service. Consequently, it was determined that future programmes should specifically include the authorities and officers at the higher levels of the administrative service as targets for training, in order that the 'grama niladharies' would be further facilitated in the performance of their duties.

It is also somewhat comforting to note that some 'grama niladharis' who could not participate in the program made requests individually and through the Divisional Secretaries to conduct a similar program for them. Meanwhile, participants from the districts in which the programs were conducted requested for additional packages of documents for their colleagues who could not attend the trainings.

These requests confirmed the fact that the training program has successfully stirred some interest in the chosen 'target group' to perform their functions at an increased level of efficiency.

Conclusion

It is self evident that in a system in which corruption and misuse of power has become endemic, the imparting of theoretical knowledge of the laws and regulations accomplishes little. In these programmes, the Law and Society Trust attempted to venture somewhat beyond the mundane training on the law to foster a more conscientious grappling with the manifold problems that ordinary people face in Sri Lanka when 'going to the grama niladhari."

An important information base was thus formulated which could be used by the public administration authorities as well as by civic action groups working at this level, to further improve their training programmes in general as well as suggest policy reform to relevant legal aspects pertaining to 'grama niladharis'.

The latter objective was vital given the fact that these are basic administrative officers whose role has been increasingly marginalised in the process whereby Sri Lanka's governance processes have become highly centralised over the years despite sundry attempts at devolution and decentralisation.

It is hoped that the information base collated thereby, would be put to good use by activists and academics committed to the objective of encouraging good local level governance.

A HOLISTIC APPROACH TO HUMAN RIGHTS EDUCATION

Sajeewa Samaranayake[♦]

Rights and Relationships; The Science and Art of Human Rights

The measure of justice that every individual is entitled to can only grow and flourish upon a foundation of warm and healthy relationships. In other words, legal justice is illusory unless based upon a framework of social justice. Relationships in turn depend upon enabling cultural traditions which are a part of every human society.

There is both a science and art of human rights. The approach to rights followed in Sri Lanka has been too scientific, rational and serious. We have forgotten the art of rights and therefore forgotten how to smile and how to be happy in the midst of negativity. Happiness requires perspective, a long term view and the confidence and vision to sit through difficult times.

Positive and negative attitudes are described in the Eastern tradition as the mentality of the Great Eastern Sun and the mentality of the Setting Sun respectively. Those who develop the former start with the freshness, hope and confidence of the day break and they also have the patience to sit through the day and all its ups and downs. The latter is the mentality of a person who wakes up late in the day with only a few hours of daylight left. He is desperate to make the best of what is left, is impatient and seeks to control his environment to suit this mentality of poverty and anxiety.¹

We are overly critical and judgmental in our communications related to rights and rights violations. The saying goes that coercion touches the skin but not the heart. As a result what we really mean does not get through. The more ineffective our communication is the more frustrated we become and more reliant on force, on sanctions and punishment. This becomes a vicious cycle.

This however is a clear mark of the world we live in.

As Acarya Buddharakkhita puts it:

It would appear that the mark of modernity is generally critical. Fault finding, in the guise of being critical, is very much in the air. Various modern democratic methods and practices unabashedly breed devaluation and distrust. The over competitiveness of a growing industrial society, the discontent born of unemployment and social dis-equilibrium, the youth unrest – all these glorified forms of hatred have become concomitants of sophistication and smart human relationship.

[♦] Attorney at Law

¹ This idea is expressed in *Shambhala – the Sacred path of the Warrior* written by Chogyam Trungpa.

The quality of being well-disposed is a *sine-qua-non* for the preservation of culture and higher values. Modernism with its fault finding mania negates this vital quality.²

In our desire to make others behave in conformity with moral standards we have forgotten that moral standards also need enabling social conditions – the chief of which is amity and compassion between man and man. There is very little amity shown by human rights advocates towards human rights violators in this country. The principal attitude is one of ‘holier than thou.’

Fostering Respect for Human Autonomy

The fact that all human change is gradual, that it is voluntary in line with the principle that all human beings are autonomous and that such a process is a long-term journey which must be supported, has been completely overlooked in this modern world. In the face of gross human rights violations, we are either passive and indifferent or unduly critical and aggressive. It is necessary today to call a spade a spade and to do so in a spirit of friendliness rather than hostility. This is the happy medium in which sensitivity and appropriateness are the keys to effective communication.

When we talk about the rights of children or women we should not give the impression to the listener that we think that everything is all right with adults. On the contrary, the protection of one set of human beings depends to a great extent on the security of another. The need for emotional sensitivity in situations that challenge our emotions was highlighted by Aristotle in the following classic statement:

Anyone can become angry – that is easy. But to be angry with the right person, to the right degree, at the right time, for the right purpose, and in the right way – this is not easy.³

Good Arts: The Peaceful Modes of Communication

This is why the good arts⁴ in every form – which are in essence, peaceful and emotionally sensitive and subtle modes of communication, provide the best entry point for rights education. It gives pride of place to the ‘lived in’ feelings and experiences of ordinary people by acknowledging and validating them, and by helping them to make better sense of these feelings and experiences. If the meaning of life is seen in freeing oneself from the yoke of animalism, then art that successfully transmits feelings that elevate the soul and humble the flesh will be good art, and all that transmits feelings strengthening the bodily passions will be bad art.

The artists of the middle ages, vitalized by the same source of feeling – religion – as the mass of the people, and transmitting, (in architecture, sculpture, painting, music, poetry or drama), the feelings and states of mind they experienced, were true artists; and their activity was founded on the highest conceptions accessible to their age and common to the entire people. Thus their art (though, for our times, looked on as a mean art), was nevertheless a true one, shared by the whole community.⁵

² ‘Mind overcoming its Cankers’ (2004) BPS, Kandy pp 82/83

³ The Nicomachean Ethics.

⁴ Leo Tolstoy, *What is art?*

⁵ *Ibid*

Tolstoy, in the same work, goes on to affirm the essence and foundation of human rights in the following words:

The religious perception of our time in its widest and most practical application is the consciousness that our well being both material and spiritual, individual and collective, temporal and eternal, lies in the growth of brotherhood among men – in their loving harmony with one another.

References to spirituality and brotherhood are found in Article 1 of the Universal Declaration of Human Rights (UDHR) 1948:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

What this means is that human rights rest upon the spiritual heritage of mankind in the same way that the mind of man depends on his heart. This connection goes beyond a mere political agreement between nations. When art is guided by compassion and brotherhood it enables that passage from base to noble and sublime emotions. This is always the function of *good art* which can be broadly defined as expressions of healthy human emotion.

Emotional Poverty and Disconnection

If the weak in this world are abused and exploited by the strong, we will essentially face a failure of *good art* – an expression that is synonymous with *good heart*. This is due to a distortion in the way feelings and emotions are communicated. The conditions that lead to children and women being abused in their own homes and communities have developed because the leadership in society and the country are not adept at reading the feelings and emotions of the people they are responsible for. According to the Chinese Chan Master Caotang

There is essentially nothing to leadership but to carefully observe people's conditions and know them all, in both upper and lower echelons.

When people's inner conditions are thoroughly understood, then inside and outside are in harmony. When above and below communicate, all affairs are set in order. This is how leadership is made secure.

If the leader cannot minutely discern people's psychological conditions, and the feeling of those below is not communicated above, then above and below oppose each other and matters are disordered. This is how leadership goes to ruin.

It may happen that a leader will presume upon intellectual brilliance and often hold to biased views, failing to comprehend people's feelings, rejecting community counsel and giving importance to his own authority, neglecting public consideration and practicing private favouritism – all of this causes the road of advance in goodness to become narrower and narrower, and causes the path of responsibility for the community to become fainter and fainter.⁶

⁶ Zen lessons: The art of leadership, Shambhala translated by William Cleary p 84.

The conversion of child abuse and domestic violence into technical subjects with medico-legal definitions and abstracted case bound approaches rely upon the same lop sided intellectual brilliance minus the good heart. This imbalanced approach provides clear, black and white depictions of child abuse with reference to particular acts. As such they target the rational and not emotional man. Secondly, infractions are threatened with criminality and punishment. The weapon used is fear but there is reliance again on rational thinking – that potential offenders will act rationally and avoid the sanction.

Within the actual reality of child abuse and domestic violence however reason has been thrown out of the window and emotions are out of control. In sexual abuse within families there are the syndromes of secrecy and addiction to contend with as well. In short neither the problem nor the solution is as simple as they have been made out to be.

Holistic Approach: The Open Way

Re-affirming norms and standards does not mean that we must shut our eyes to the overall context in which human rights violations take place. Nor does it mean that we must disable the freedom of thought and power of reasoning that people have to work out what is right and wrong – what is possible and what is not. To go back to Article 1 of the UDHR quoted above

...They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

This implies a first duty to communicate and understand before imposing our own ideas as to the problem and the solution. Modern communications on human rights however are loaded with conclusions and remarkably impoverished in reasons and a willingness to open out and understand. What this amounts to is a closed and not open discussion.

It is not disputed that informing people as to what *may* constitute abuse and neglect is of value. But how helpful is such information to people who are actually embroiled in abusive relationships and to those who want to help and support them? Letting in the shades of grey to the discussion is also to let in the idea that the responsibility for child well being is multi-dimensional; that there is a humane duty to relate to the problem and view the causes in a non – judgemental manner to provide the best solution for the victim.

Great sophistication is required in approaching the issue. This is the ground on which fools turn somersaults but angels may refuse to tread. The possibility of causing additional harm through insensitive interventions based on incomplete facts is high. Yet this is precisely a challenge for the heart and mind; an opportunity for us to demonstrate the depth of brotherhood within our society, its reserves of humility, humour and compassion.

For the moment it is necessary for us to observe the manifold manifestations of *bad art* that dominate our landscape and resist and reject their lure to either sensual indulgence or narrow judgementalism – the twin calls of greed and hatred.

“Art of our time,” says Tolstoy, “and of our circle has become a prostitute. And this comparison hold good even in minute details. Like her it is not limited to certain times, like her it is always adorned, like her it is always saleable and like her it is enticing and ruinous.”

What is called for therefore is a truly holistic approach to rights which accepts without any qualification that rights without relationships are as inhuman and bad as relationships without rights. There are no quick fixes to family dysfunction and children can rarely be 'rescued' from their environment without making a serious investment towards changing that environment itself.

Conclusion: The Dangers of 'Misunderstanding' Rights

Labouring under a misconception of rights (as narrow individualistic claims asserted against other human beings) we have simply replicated the political divisions of race, religion, caste and class in our own developmental fields. We have separated children from adults and women from men. Moving further we have separated the state from the people.

In the process we have reinforced alienation and added to the sum total of conflicts in our society. The same spirit that ignited a war is alive and well in our homes now where child abuse and domestic violence have become yet another call to arms against another set of human beings – the perpetrators of violence against children and women. Instead of re-building trust and relationships, instead of reposing faith in human goodness we have built structures of fear and mistrust and left in their wake a string of broken human relationships.

Can we wake up to this monumental mistake at least now?

If people in this country are negative about rights there are two possible reasons for this. Either the concept is flawed or it has been packaged and presented wrongly. I would incline to the latter view. Rights have not been properly and skillfully communicated to people. Knowing the truth is one thing; the ability to convey it, quite another.

In the words of Wicks – the Sinhala speaking young man speaking to his English speaking university friend Indira in the novel *Out of the Darkness*:

I thought of our political campaign, of the revolution and what a lie it all was, a campaign to deceive ourselves ... Indira, what we have done is self deception. Had we understood what you were trying to tell us we would never have been victims of such a deception. We are all to blame for this, we and you too, Indira. Indira, you did not know the language to say it. (Emphasis added)

We must stand up. We must not be crestfallen. That is the lesson we must learn from this. Your intellect and our hearts and your father's wisdom must join together. We must find an entirely new way.⁷

Human rights education, which like any other form of education is a mutual process of learning between human beings will be relatively easier with ordinary folk who think simply and in practical terms about real life situations and challenges. The shift that our academics, intellectuals and human rights educators need to make on the other hand is a shift from rights to relationships; from the public to the personal spheres and from reason to feelings and emotions.

Such a process requires the cultivation and acquisition of values of sensitivity as to what they know, and humility as to what they do not know, about the lives of people they interact with in the educational process.

⁷ Gunadasa Amarasekera (2003) Translated by Vijitha Fernando, *Visidunu Boralesgamuwa*, p 148, 149.

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