

Asia: Human rights defenders and their protection

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In a region where the realization of human rights is low, and where governments and public institutions are responsible for many rights abuses, human rights defenders are viciously targeted for exposing such abuse and helping victims to obtain redress. It is in societies where all manner of rights are routinely denied—be they the right to food, land or due process—and where the law is used to protect those in power, that groups and individuals working to promote human rights are particularly vital. Not only do they identify rights violations, but they also work to address them. Their work serves not only as immediate intervention for victims of abuse, but also as a beacon for others, whether victims, social activists or fellow defenders. It opens up a little more space for the discussion and practice of rule of law and good governance. Their protection is therefore particularly important.

Human rights defenders should be protected not least of all for themselves; they have every right to work towards the realization of norms and principles set forth some 60 years ago, which have since become part of international law.

This article will therefore discuss obstacles faced by human rights defenders, the international norms that exist regarding their protection, and share some experiences of local protection.

Problems faced by human rights defenders

A Joint Oral Statement to the 7th Session of the UN Human Rights Council from the Asian Forum for Human Rights and Development (FORUM-ASIA), Asian Legal Resource Centre (ALRC), Centre for Organization Research & Education (CORE), International NGO Forum on Indonesian Development (INFID), Lawyers' Rights Watch Canada (LRWC), Non-Violence International and Pax Romana-ICMICA/MIIC in association with Dutch Lawyers for Lawyers Foundation (L4L), Law & Society Trust (LST) and Task Force Detainees of the Philippines (TFDP), 12 March 2008.

ASIA: Protection for human rights defenders lacking across the region

The Asian Forum for Human Rights and Development (FORUM-ASIA), on behalf of its 40 member organizations in Asia and other human rights organizations co-signing this statement, welcomes the assessment of the situation on human rights defenders and recommendations provided by the Special Representative (A/HRC/7/28, A/HRC/7/28/Add.2) as well as the report of the Secretary-General on the studies relevant to cooperation with representatives of UN human rights bodies (A/HRC/7/45).

The reports of the Special Representative clearly point out that the biggest flaw in the protection of human rights defenders in Asia lies in the deficiency of concrete measures by governments to implement the 1998 UN Declaration on Human Rights Defenders.

At this time, we are most concerned about the situation of human rights defenders in Bangladesh, Burma, Indonesia, Malaysia, Pakistan, Philippines, Sri Lanka and Thailand, as well as the risks faced by those who seek to cooperate with the United Nations and the Council's special procedures, who continue to face intimidation, physical and psychological assault and retaliation. For example, Pakistani human rights defender, Peter Jacob, and his colleagues of the National Commission for Justice and Peace have been accused of serious crimes based on the false allegations that they distributed a banned publication, which was a shadow report submitted by others to the Committee on the Elimination of Racial Discrimination (CERD) concerning Pakistan.

We are gravely disturbed that the police or the military, who are entrusted with the duty to protect, often fail to protect defenders and are instead perpetrating violence against them. In Pakistan, twelve months after the Pakistan Chief Justice was forcibly removed from office and arrested for demonstrating judicial independence, police tear gassed lawyers trying to visit his house where he has been detained since the beginning of November 2007. In India and Bangladesh, human rights defenders belonging to ethnic minorities, tribal communities, and indigenous peoples have been especially targeted for defending land rights and protesting injustices perpetrated by state actors. Irom Sharmila, a Nobel Peace Prize nominee from Manipur in India has been in judicial custody for the last seven years for peacefully protesting against the provisions of the Armed Forces (Special Powers) Act of 1958.

The danger to defenders often extends to their families and friends. We recall the torture to death, by the military, of Pakistani defender Baseer Naweed's son in reprisal for his father's work on housing rights.

We are alarmed that the discourses of counter-terrorism, nationalism and separatism are often used by States to criminalize defenders and justify attacks on them. Many defenders in Indonesia, the Philippines, Singapore, and Thailand who have spoken out for the rights of others have been accused of supporting terrorists. We are seriously concerned with the trend of expansion of special laws and criminal suits against defenders. In Bangladesh, India, Indonesia, Malaysia, the Philippines, Singapore and Thailand, security laws have been enacted to restrain defenders from conducting their work.

We condemn the alleged role of the state in the disappearance of Thai lawyer Somchai Neelanpaijit, the murder of Indonesian activist Munir bin Thalib, and the murder of Cambodian union leader Chea Vichea. Mme. Representative and Mr. President, today, March 12, 2008, marks the fourth year anniversary of Somchai's disappearance.

Finally, while extending our appreciation to the Special Representative for her identification of indicators to monitor the situation of human rights defenders, we would like to echo the statement made by the Special Representative early this afternoon, "the situation of human rights defenders is a fundamental component of the overall human rights situation in any country." In this regard, we would like to ask one question: How does the Special Representative believe that those indicators on human rights defenders can best be included in the Universal Periodic Review (UPR) process which will have its first working group session in coming April? We believe, without such an assessment, the UPR process will be greatly weakened.

The above statement is a good summary of the situation facing human rights defenders throughout the region. When human rights are not respected, when they are in fact threatened by the state, it is no surprise that individuals and groups fighting for the protection and realization of those rights will face difficulties. These difficulties range from harassment, intimidation, the denial of basic rights, to being charged with various offences and having their lives threatened.

The case of senior Sri Lankan lawyer JC Weliamuna is indicative of the threats to life received by those working for the protection of human rights in the country. At 11:40pm on 27 September 2008, two grenades were thrown at Mr Weliamuna's house. One grenade exploded on the balcony of Mr Weliamuna's bedroom, while he, his wife and two sons, aged four months and two years, were asleep. Although the explosion caused extensive damage to their home, they were fortunately unharmed. The police found a second, unexploded grenade in the compound of the house, which they managed to defuse.

Mr Weliamuna is the executive director of the Sri Lankan branch of Transparency International, an international NGO which campaigns against government corruption. On September 23, the NGO

published a report naming Sri Lanka as 92nd out of the list of 184 corrupt governments around the world. Mr Weliamuna is also the best known anti-graft lawyer in the country, pursuing many sensitive cases. He has a long track record of making legal representation relating to human rights abuses such as torture, extrajudicial killings and forced disappearances. Mr Weliamuna and other lawyers believe the attack was a result of the cases he has been representing, most of which involve the government and state agencies.

The Bar Association of Sri Lanka condemned the attack and called on the Inspector General of Police to conduct inquiries and provide protection to Mr Weliamuna. The Bar Association also resolved to meet the authorities and the Chief Justice of the Supreme Court to discuss the protection of lawyers.

Despite this, on September 30, an unknown person tried to enter the premises of Transparency International at 1:30pm. Staff closed the gates, preventing him from entering. Then, someone on a motorcycle arrived and whisked away this person from the premises. Following this incident, Mr Weliamuna vacated his residence and was forced to take alternative shelter.

The grave attack on a senior lawyer served as a focal point for domestic and international concern regarding the increasing attacks on lawyers, journalists and other human rights defenders, as well as the climate of fear blanketing the country.

More than six months after these incidents, and in spite of all the public opinion and pressure on the police and government officials to investigate these threats, there has been no effective outcome. Mr Weliamuna has been forced to make his own security arrangements.

Human rights defenders will also face intimidation and harassment in their work. On 29 March 2009, a group of soldiers from Special Taskforce Unit 23 came to the office of the Working Group on Justice for Peace in Pattani province, southern Thailand and interrogated staff about their work. The group comprised of four uniformed and armed men under the command of 1st Lt Benja Manochai, deputy chief. They came at 11am and stayed until 1pm. According to the soldiers, they had been asked to collect data on NGOs working in the province of Pattani. The soldiers returned the next day at 9am, saying that they had forgotten to take down the names of the staff.

Previously, on February 8, about 20 army and police personnel led by Lt Col Pravej Sudhiprapha arrived at the Working Group on Justice for Peace office at 5am in three pick-up trucks. They searched the office for three hours, going through data in the computers and files, and interrogated the two volunteers present.

This raid was conducted two days after the Internal Security Operations Command warned of militant plots. The commander of Region 4, stationed in the south of Thailand, granted an interview to the Bangkok Post newspaper on February 7. In effect he stated that “southern militants may take the opportunity to disguise themselves as rights activists in order to incite hatred against officials or to distort information to create misunderstanding about security among locals”.

This amounts to an open invitation to the security forces in southern Thailand to target human rights defenders as suspected terrorists. In short, it announces a policy for army, police and other personnel, already operating under conditions of almost total impunity, to target human rights organizations, their staff and volunteers.

In fact, according to 'Thailand's Unarmed Heroes: An Overview of the Situation of Human Rights Defenders', a report by the Working Group on Justice for Peace (November 2008),

Probably the most common direct threat faced by human rights defenders in Thailand is intimidation. Most often, this intimidation is verbal, although it can be psychological or even physical. Uniformed soldiers have been stationed in newsrooms or driven around factories to intimidate the media and unions. Human rights defenders working in the south are often intimidated at road blocks, when they try to enter villages, or when the military is escorting them into villages, sometimes including taking their pictures and threatening to torture someone into identifying them as an insurgent. Sometimes, the human rights defenders in the south will even be asked to the military camp so that higher level officers can talk to them and try and dissuade them from their work.

Human rights defenders trying to block or delay development projects may be approached and verbally intimidated by government officials or the businessmen who stand to gain when the project is completed. Intimidation by businessmen is a particular problem around the tourist resort island of Phuket, where national forest land and small villages are being overrun at an incredible rate in order to build hotel and condominium projects. Occasionally, this intimidation can even extend to family members, including stationing uniformed military personnel outside the houses of the families of human rights defenders.

Human rights defenders are also targeted through the misuse of the legal system. Whether they are activists, lawyers, academics, journalists or others, they are being illegally arrested and charged on flimsy or non-existent grounds. This is particularly true in Burma. The Asian Human Rights Commission (AHRC) has documented over 50 cases of individuals being illegally arrested, detained and prosecuted after the nationwide protests against the military dictatorship of September 2007. As noted in the AHRC's 2008 Human Rights Report on Burma,

The cases are, as in the manner of the crackdown itself, characterised by patent illegality and often are little more than an exercise in nonsense, where the courts are being forced to participate in their own debasement and caricature. The trials are being held behind closed doors, with charges brought under one section of law and changed to another, without investigating officers being able to bring any evidence or even say when or where an alleged offence occurred, police witnesses admitting that they know nothing about the cases that they are presenting other than that they have been ordered to come and present them, and judges sitting as spectators to the absurd charade.

On 20 March 2009, the AHRC documented the sentencing of Pyi Phyo Hlaing and eight others to prison terms of eight to 24 years for their alleged parts in the 2007 protests. According to the allegations, the nine young men were variously involved in having contact with banned groups based outside the country, with printing and distributing unregistered documents, and with upsetting public tranquillity.

However, as in other cases of their type, the cases against these nine too were full of errors in law and procedure. First, there was no substantial admissible evidence against the accused, in part because the supposed evidence was obtained from a military intelligence officer and after the accused had been detained and interrogated in army custody, which is against the law. Second, one of the charges did not match the allegations against the accused and was groundless. Third, virtually all the witnesses against the accused were police. Fourth, the trials were held in closed courts. Fifth, the charges against the accused under one law were separated and they were penalized twice when they should have been joined together and only one penalty should have been imposed.

During the trials, the accused withdrew power of attorney from their lawyers as they saw that the trials were a sham, and they were unrepresented in the final stages and for sentencing.

Like other persons convicted in cases like these, the defendants were sentenced to prisons far from their

relatives and homes. There are grave concerns for the health and wellbeing of these detainees and others like them being kept in prisons in Burma, especially given that for the last few years the International Committee of the Red Cross has been unable to access inmates there.

South Korea has also in recent months been misusing the legal system to prevent and punish human rights work. It has been denying basic rights to human rights defenders, including the right to assembly and freedom of opinion and expression. When South Korean citizens attempt to realize these rights, they are invariably charged with conducting criminal acts, either through the wilful misinterpretation of laws, or even through the enactment of draconian new laws. This was most clearly seen in the candlelight protests of May 2008, where the government took drastic measures to prevent people from attending the protests. Subsequently, many protesters were charged with illegal assembly. Others were charged for expressing their opinions online, and a new charge of 'cyber-insult' has now been introduced.

Restrictions on freedom of assembly

According to article 21(1) of South Korea's constitution, "All citizens shall enjoy freedom of speech and the press, and freedom of assembly and association." Furthermore, article 21(2) notes that "Licensing or censorship of speech and the press, and licensing of assembly and association shall not be recognized."

In contrast to the freedoms guaranteed by the constitution, the Act on Assembly and Demonstration requires police permission to be obtained before the holding of any assembly or demonstration. Without such permission, individuals exercising their constitutional rights are considered to be participating in illegal acts. Facilitators of the recent candlelight rallies were unable to obtain approval for their assembly; furthermore, the police issued the disapproval notice just a few hours prior to the scheduled assembly, rendering it impossible to appeal the decision...

The Act on Assembly and Demonstration has been arbitrarily interpreted by the Senior Superintendent of police or the Commissioner General. For instance, according to article 10, no one is allowed to hold any assembly or demonstration before sunrise and after dark unless they obtain permission from a nearby police station. The police interpretation of the article is that no assembly and demonstration is to be permitted before sunrise and after dark.

Unnecessary/excessive use of force

...According to the procedure for dispersing illegal assemblies, police must first notify demonstrators that they are holding an illegal assembly three times. If demonstrators do not voluntarily disperse after listening to the notice, the police can forcibly disperse them, in accordance with the regulations for using force...

In reality, riot police used their shields and batons not to protect themselves, but to intimidate and assault the demonstrators during dispersal. They also used water cannons and fire extinguishers on the demonstrators. The police blatantly violated their code of conduct and directly targeted demonstrators. As a result, many demonstrators had over half of their ear drums destroyed...

The prosecutor has announced that those arrested for violations of the Act on Assembly and Demonstration and the Road Traffic Act, would be fined between 1,000,000 KRW to 3,000,000 KRW (USD 1000-3000). This is a relatively high figure; considering that there was no great threat to public order, a minimum levy should have been applied. In fact, the high penalty seems to be being used as a tool to suppress people's freedom of assembly, demonstration, opinion and expression...

Freedom of opinion and expression

During the three months of protest, spokespersons from the Blue House (presidential office), the ruling Grand National Party and a few newspapers with a high subscription raised allegations that the protests and rallies were being 'masterminded'. The newspapers fabricated stories regarding the motives and activities of the demonstrators. In response, angry demonstrators campaigned not to buy, read or recommend those newspapers to others. Some internet users also uploaded a list of companies advertising with those newspapers, asking for individuals to appeal to the companies to withdraw their advertisements.

For several days afterwards, the newspapers wrote that their advertisers had received threats and urged the government to conduct investigations. The prosecutor's office usually begins any investigation only upon receiving formal complaints from victims, but in this case it began an investigation without any complaint from the involved companies. Upon being criticized for its actions, the prosecutor's office encouraged several company owners to lodge complaints.

In the meantime, about 20 persons who posted the list of companies on the internet were forbidden to leave the country, due to being under investigation. One of these persons only found this out when he went to Incheon airport to attend a meeting and see the Pope in Rome. This case is still being investigated...

To control material being published on the internet--as well as those publishing it--the president of the Korea Communications Commission has announced its plan to amend the law and increase the number of websites where a person cannot write an article without verification of identification--internet users have to fill out a form with their name and national ID number...

In the same authoritarian vein, the Ministry of Justice is to create a new criminal offence called 'insult on cyberspace'. Any writing anywhere on the internet that defames someone's honour or reputation, can result in a criminal penalty for the author. While decriminalization of defamation is the international trend, the South Korean government is moving so far the other way as to create criminal offences in cyberspace [Jose Ney, 'Democracy in South Korea: Mature society versus immature system', *Ethics in Action* vol 2, no 4, August 2008, pp 4-8].

International norms

The Declaration on human rights defenders was adopted by the United Nations' General Assembly in 1998, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights. Its full name is the **Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**; it is addressed not just to states and human rights defenders, but to everyone. "It tells us that we all have a role to fulfil as human rights defenders and emphasizes that there is a global human rights movement that involves us all."

The Declaration is not a legally binding instrument, but it is based on the principles and rights enshrined in other international instruments that are legally binding, such as the International Covenant on Civil and Political Rights. Moreover, the Declaration was adopted by consensus by the General Assembly and therefore represents a strong commitment to its implementation by states.

While the Declaration does not create new rights, it articulates existing rights in a way that makes it easier to apply them to the role and situation of human rights defenders, providing support and protection for their work.

It must be emphasized that all the rights enshrined in the various international human rights covenants de facto apply to human rights defenders. The right not to be tortured, illegally or arbitrarily detained, the right to freedom of expression and assembly, to effective remedies for abuse are all relevant for the work and protection of human rights defenders. In particular, the Declaration provides for an individual's right to promote and protect human rights, to undertake her work free from restriction and intimidation, to submit complaints to official institutions and agencies, and for protection under national law. States are further held responsible under the Declaration to ensure the realization of human rights for all citizens, to provide protection from violence and intimidation to those exercising their rights, as well as to provide effective remedies for any human rights violations.

Who is a human rights defender?

As the full title of the Declaration indicates, it is the right and responsibility of *everyone* to protect and promote human rights; anyone who does so, is therefore a human rights defender. For this reason, the Declaration does not include a formal definition of who is a defender, but states in its annex (paras 4-5):

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind...

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals...

In keeping with the spirit of the Declaration, former Special Representative on human rights defenders Hina Jilani characterized defenders not on their professional background, status or skills, but on the human rights basis of their undertaken activities. In this manner, all those working to promote human rights, be they lawyers, journalists, NGO members, student activists, trade unionists, medical professionals, leaders of indigenous communities and social movements, members of national human rights bodies, witnesses of human rights violations, environmental activists, minority rights activists, humanitarian workers or staff of the United Nations, are all included as human rights defenders; this list is not exhaustive [See the special representative's January 2006 report to the Commission on Human Rights, p10, para 29].

According to the Office of the High Commissioner of Human Rights, all that is required to be a human rights defender—a 'minimum standard' if you will—is a genuine belief in the universality of rights, genuine intention to protect and promote human rights and the practice of peaceful action in doing so [<http://www2.ohchr.org/english/issues/defenders/who.htm>].

Local experiences of protection

Philippines: Death threats and extrajudicial killings

In 2005 and 2006, extrajudicial killings, abduction and enforced disappearances of human rights and political activists were taking place almost daily in the Philippines. Persons were receiving death threats, after which they would be abducted or killed. Given the complete lack of protection for all citizens, including human rights defenders, adequate documentation of these human rights abuses in a safe and secure manner was an enormous challenge.

Under these circumstances, the following steps were developed with the purpose of either reducing the level of threats or preventing persons from being targeted.

Alert system

By closely coordinating with local organizations, individuals, personal contacts and other sources, details of activists experiencing threats were collected in Hong Kong. It was necessary to directly communicate with victims, their families and persons in contact with victims, to ensure the information was credible, as there was considerable government propaganda to dismiss and trivialize activist murders as part of a 'communist purge'.

Information collected in this way was reported daily through the AHRC's Urgent Appeals system. The effectiveness of this approach was noted by several activists, for whom the level of threats reduced. It also

resulted in authorities taking proactive measures to ensure their safety, as they became aware of the case being monitored outside the country.

These cases were also reported to various UN agencies. In fact, the UN Special Rapporteur on extrajudicial killings Philip Alston, quoted most of the cases documented through the Urgent Appeals system at the conclusion of his 2006 visit to the Philippines.

Additionally, those cases were also compiled into a special report, The criminal justice system of the Philippines is rotten, *article 2* vol 6 no 1, February 2007.

Campaigns outside the Philippines

Given the limitations of movement and actions faced by activists inside the country, strategies were developed together with other organizations and persons in Hong Kong in order to respond to the security of local activists, as well as to articulate a clear understanding of the issue. This was additionally important in keeping the public better informed.

Numerous meetings were held outside the Philippines, where local activists and victims were invited to speak in public forums about their struggles. This helped persons from outside the country to understand the issue better; as well as developing solidarity for the human rights defenders and a more proactive approach in addressing their plight. In particular, the following three steps were taken:

Convening a coalition

The Hong Kong Campaign for the Advancement of Human Rights and Peace in the Philippines (HKCAHRPP) was convened in April 2005. The coalition was able to conduct two fact finding missions in 2006 and a follow up in 2007. It was the only mission with a follow up component. The mission was widely reported in the Philippines and in Hong Kong.

Posters, post cards and signature campaigns

A website was constructed, where all reported extrajudicial killings were documented. This was a tremendous help in overcoming the fragmented nature of available information. The website also hosted an online petition urging for an end to extrajudicial killings. A poster about the killings was widely circulated and a postcard signature campaign was initiated, with signatures collected in Hong Kong from various meetings, which were then sent to the Office of the President. Signatures from Filipino workers in Hong Kong were also collected.

Lobbying with the UN

Consistent intervention with the UN agencies, through written and oral submissions, was also maximized at this time. By working together with numerous international, regional and local NGOs, a greater amount of information was made widely available for the better understanding of the issue. This also allowed for concerned persons to make a more effective response to the cases of extrajudicial killings and threats to activists. It also added value and credibility to the work of local organizations that were being targeted by government propaganda in order to discredit them.

Other methods of protection

Direct intervention with authorities

Following complaints in certain cases, interventions have been made directly with the immediate police authorities and their superiors, and urgent appeals have been sent, averting further immediate danger. During the 2005 coup in Nepal, there were also several occasions when higher military officers were contacted directly by phone, in order to get persons released from army custody, or avert arrests.

Court observers

When court cases are heard in Sri Lanka, a large group of supporters attend the court together with the victim. In both Sri Lanka and Thailand, court observers from abroad have attended cases where there are serious security concerns, to improve morale and send a message that the local persons are not isolated.

Relocation

The Home for Victims of Torture in Sri Lanka houses many individuals who are facing threats for pursuing complaints against rights violations.

Symbolic actions

Following the disappearance of Somchai Neelaphaijit in Thailand, his wife Angkhana, was threatened for taking a strong stand. Advocacy contributed to local and international intervention to protect her, including by the European Union. She was also proposed for a number of human rights awards, with a view to improving her stature and ensuring greater protection.

This article consists of edited extracts from the Human Rights Correspondence School Lesson Series 59: The protection of human rights defenders. Please see the full lesson at www.hrschool.org.