

Ethics in action: Defending the right to life & article 2 of the ICCPR

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I. Normative frameworks and successes

A matter of ethics

The Asian Human Rights Commission (AHRC) and its sister organization the Asian Legal Resource Centre (ALRC), are primarily concerned with premature and preventable deaths caused by human rights violations. Protecting life is a central matter for ethics and morality. Human rights related actions - whether regarding civil and political rights, or economic, social and cultural rights - must deal with this ethical and moral issue on an urgent basis.

In most Asian countries the lives of thousands remain trivial and cheap, and there exists a certain acceptance of this situation. A short survey of contemporary Asian history reveals millions of deaths due to brutality and human rights abuse: whether caused by the Japanese military in World War II, or the partition of India, Pakistan and Bangladesh, or during the 1965 Suharto takeover in Indonesia, by American bombing and the Pol Pot regime in Cambodia, deaths during the Chinese Cultural Revolution, by military and authoritarian regimes in countries such as Burma, Pakistan, the Philippines, Nepal and Sri Lanka, or deaths caused by civil wars - with and without involvement of foreign powers - in virtually every country in the region. A large number of deaths have also occurred in the wake of poverty, natural disasters and discrimination. Caste discrimination in India for instance, involves the abuse of economic, social and cultural rights as well as civil and political rights, and affects over 25 per cent of the country's one billion-strong population.

Promoting the right to life and associated moral issues are the focus around which a moral discourse can take place. It is important that such a discourse actively recognize the duties of various parties: the duty of the people to participate in social discourse, the duties of the state towards its citizens, and the duties of the state and civil society together to prevent outside influence that may bring death and destruction, while cooperating with those promoting the right to life.

Division and conflict however, exists amongst those participating in such discourse, because there are those with amoral approaches to life; to community organization, social organization, political organization and economic development. Such amoral approaches create obstacles to

the incorporation of a moral basis for community life and organization. Sadly, these approaches have been at the heart of Asian deliberations on social, political and moral philosophy.

They have found expression in recent years through the Asian Values debate, and most recently in the terrorism and anti-terrorism discussions. It is in this tense atmosphere of moral conflict that a human rights organization has reason to rearticulate its aims and reshape its strategies.

Shaping the vision

The Asian Human Rights Commission (AHRC) was started in 1985, at a time when Asia was governed almost exclusively by various forms of dictatorships or authoritarian regimes. In fact, authoritarianism was seen in Southeast Asia as a requirement of economic progress. Authoritarianism came together with harsh national security laws, the widespread practice of torture, extrajudicial killings, illegal arrest and detention. Under this harsh political climate, a small group of prominent persons—mainly jurists—including senior judges, lawyers and academics, came together and formed a regional base from which to offer support for local struggles to protect human rights that were going on at the time. This was the beginning of the AHRC. Its aims are:

- Protect and promote human rights by monitoring, investigation, advocacy, and solidarity actions;
- Work towards social equality, with particular emphasis on social groups who have suffered discrimination in the past, such as women, children and minorities, including Dalits;
- Develop a speedy communication system using modern technology to encourage quicker actions to protect human rights, redress wrongs and prevent future violations;
- Develop appropriate modes of human rights education, and in particular, promote the 'folk school' approach;
- Promote appropriate legal and administrative reforms, particularly judicial and police reforms;
- Develop close links with victims of human rights violations in order to promote solidarity with victims, to preserve the memory of the victims and to organize significant commemorations linking large groups of people;
- Participate in peace making, reconciliation, conflict resolution, truth commissions and international tribunals;
- Develop cultural and religious programmes for the promotion of human rights;

- Encourage ratification of international treaties, and the development of local legislation, law enforcement and judicial practices in keeping with such treaties, and assist the formation and functioning of national human rights commissions;
- Promote the United Nations, particularly its human rights agencies, and assist organizations and persons in Asia to utilize these agencies for better promotion and protection of human rights within the region;
- Work towards the development of regional human rights mechanisms and encourage people's participation in this process by promoting the Asian Human Rights Charter.

In keeping with the above aims, the AHRC's programmes were guided by the following approaches:

- A victim centered approach combined with structural reforms in promoting and protecting human rights;
- Protest work combined with a community based approach; priority is to be given to the building of a support base in church and religious groups;
- A UN-directed approach combined with regional and country based human rights promotional activities;
- Human rights promotion must be combined with the promotion of democracy and rule of law;
- Issues of poverty eradication, gender equality and minority rights (including indigenous peoples and Dalits) must be incorporated into all programmes.

By 1993–4 the AHRC had done a considerable amount of work and gained valuable experience. The 1993 Vienna Conference on Human Rights brought a new global vision for human rights. In light of this new vision, the AHRC began to redefine its perspectives and deepen its interventions. Changes in global communication were also opening new avenues for overcoming old obstacles facing the human rights movement. Work towards this end began with extensive efforts to write the Asian Human Rights Charter - A People's Charter. It took four years of intense effort, with numerous consultations in different countries. The Charter was declared on 17 May 1998, at Kwangju, South Korea.

That a 'thousand flowers may bloom', is the spirit in which the ASIAN HUMAN RIGHTS CHARTER—A People's Charter is offered. That there should be a state-sponsored human rights charter and that this would come about only through the efforts of the Asian people themselves

are two premises that have been discussed by many persons and groups for over a long period of time. The reluctance and even the resistance of the Asian governments to discuss and agree on a human rights charter is well-known. In fact, Asia is the only region in the world where several governments have raised an objection to human rights on an ideological level. The 'Asian Values' debate is quite well-known.

In this context the resistance to the ideological stance of the Asian governments against human rights has been led mainly by the Asian people's organizations, NGOs and intellectuals. For people to express their views no authority need to be taken from the state. People's autonomy and the autonomy of the civil society are fundamental ideas and do not depend on any need for an authority. Moral conviction is the only authority on which the people's expression of opinions is based [<http://material.ahrchk.net/charter/mainfile.php/declaration/86/>].

The purpose of the draft declaration of human rights is to initiate a discussion throughout Asia, regarding some of the most fundamental issues relating to the concept of human rights, as well as problems relating to the enforcement of human rights. On an initial consultation held at the beginning of 1994, the participants from several countries reflected on the basic issues that should be reflected in an Asian charter of human rights. It was felt that the draft need to reflect closely, the aspect of violations of human rights that are taking place in almost all countries of Asia and that it should concentrate on the aspect of the enforcement of human rights. On the basis of recommendations made at this consultation, a questionnaire was drafted and distributed to many Asian NGOs calling for their contributions to be included in the draft declaration. Over 100 NGOs responded to this call and sent in many documents relating to various problems of human rights, that they faced in their countries. After making a summary of the documents sent by the NGOs, the drafting committee consisting of 6 persons met for the purpose of making the first draft. After 3 consultations, the draft was finalized. After further consultations it was adopted [http://material.ahrchk.net/charter/mainfile.php/draft_charter/29/].

The basic theme of the Asian Charter is the right to life.

3.2 Foremost among rights is the right to life, from which flow other rights and freedoms. The right to life is not confined to mere physical or animal existence but includes the right to every limb or faculty through which life is enjoyed. It signifies the right to live with basic human dignity, the right to livelihood, the right to a habitat or home, the right to education and the right to a clean and healthy environment for without these there can be no real and effective exercise or enjoyment of the right to life. The state must also take all possible measures to prevent infant mortality, eliminate malnutrition and epidemics, and increase life expectancy through a clean and healthy

environment and adequate preventative as well as curative medical facilities. It must make primary education free and compulsory.

Besides producing the Charter, the various Asia-wide consultations generated several activities, campaigns and a large network. Through these, the AHRC developed the following programmes:

- Urgent Appeals
- Legal and Judicial Reform
- Human Rights School
- Specific country programmes for China, Cambodia, Sri Lanka and other country-based programmes
- Lobby programme in United Nations human rights agencies (ALRC has General Consultative Status with Ecosoc)
- Publications
- Religious Groups for Human Rights
- Internships
- World-wide web communication network

The AHRC is involved in the following major campaigns:

- Against disappearances
- Against torture
- Against caste discrimination (Dalits)
- Against food scarcity in Burma
- Against national security laws in several Asian countries
- For judicial reforms
- For development of both civil and political rights as well as economic, social and cultural rights throughout the Asian region

All of the above campaigns and programmes involve working together with many other civil society and non-governmental organizations. Working with different groups and reaching a large audience has become easier with modern communication systems. The Urgent Appeals

programme, for instance, has the widest network in Asia, reaching over 200,000 contacts through email. In this way, monitoring and lobbying work has been refined to a sophisticated level, taking into account recent changes in international lobbying.

Broadly speaking, there are three kinds of changes. Firstly, in the past lobbying at international forums was limited to a few persons due to travel costs. These persons were seen as representatives or at least voices of larger groups, and even with relatively little contact with people directly working on or affected by these issues, this group had an extraordinarily dominant role in lobbying. Advances in communication technology have made such lobbying unimportant and often counter-productive; it is now possible to lobby without traveling long distances, and it is also possible for larger groups of affected persons to make themselves heard directly, with limited help from intermediaries.

Secondly, the direct targets of past lobbying were foreign diplomats from various countries, together with other foreign officials; these persons were met once or twice a year at international meetings. Modern communication however, offers the possibility of corresponding with all such persons more regularly, even weekly. Direct physical lobbying is now supplementary to regular information sharing. Frequent communication and monitoring also makes it easier to challenge government positions based on moral and other principles commonly accepted by the international community.

Thirdly, and perhaps more importantly, the diplomatic community is no longer the main target of lobbying; it is civil society whose help is sought. The strength of civil society action was seen in the struggle against apartheid and landmines, as well as the fight for the protection of women's and children's rights, even before critical changes in communication systems. Educating civil society in all countries regarding issues that they have no direct experience of, is therefore a sine qua non of effective lobbying. Civil society must be encouraged to express solidarity with movements in other countries, as well as to hold their own governments and diplomats accountable for their actions at home and abroad. In particular, government representatives at international meetings must be held accountable.

Another effective way to reach a large audience is more symbolic, such as the building of public monuments, or other forms of art. In Sri Lanka for instance, the AHRC sponsored a well-known monument commemorating disappearances.

The purpose of all these activities has been to generate debate and discussion on contemporary problems facing the human rights movement in Asia. In generating such discussion, the AHRC has relied heavily on the ideas of the Danish Folk School movement, in particular, the work of

NFS Grundtvig, a Danish Bishop, writer, poet and founder of the folk school movement. Central to this movement is the primacy of ordinary folk—rather than the elite—in the democratization process. Following from this is the importance of social discourse on all issues, particularly on moral and ethical concerns. Though there is much to improve, a significant beginning has been made in creating such discussion locally, regionally and internationally. A new model for doing human rights work has been introduced and is now being used by several other groups.

II. Trade-offs and compromises

Potential conflict: Civil and political rights versus social and economic rights

In the AHRC's experience, this conflict between the two sets of rights is often exaggerated. Such exaggeration however, can be very dangerous, particularly in Asia's developing economies. As early as 1995 AHRC pointed out that

In Asia, the violations of civil and political rights are deeply linked with violations of economic, social and cultural rights. To illustrate, an expert trying to help tribal people may himself be tortured, imprisoned, or even assassinated due to his work. Someone who conducts an employment training course for women below the poverty line may face the same fate. A husband who protests against professional negligence or lack of medical facilities that led to his wife's death during childbirth may end up in a prison without a trial for a long time. One who works for basic wages and working conditions in free trade zones; one who helps a group of peasants to get a fair price for their vegetables and other products, or tries to highlight the suicides of peasants due to unfair loans; one whose work is related to environmental rights, women's rights, rights of dalits - so called low castes; a lawyer who promotes due process as against corrupt police officers or even the one who tries to spread literacy among the poor may be engaging in activities forbidden in their societies and therefore may lose their civil liberties. Once these two aspects of human rights are de-linked, we may be talking about any other place but Asia.

Protest, agitation, and teaching of human rights norms contained in the UN charters are not the only legitimate activities of the human rights movement. Achieving social changes on the basis of building consensus is an integral part of the work of the human rights movements. Here lies the real link between economic, social and cultural rights and civil and political rights [<http://www.hrsolidarity.net/mainfile.php/1995vol05no02/82/>].

The supposed conflict between these two sets of rights is therefore relative to the organizational approach. If your central concern is with structural reforms to enable the realization of rights, the area of conflict is very much less. My view is that this conflict may be relevant to old models of

human rights work. Some organizations have mandates that limit them to one particular set of rights. The AHRC's mandate encompasses all rights.

Potential conflict: Rights-oriented approach versus humanitarian care oriented approach

In discussing this question I want to focus on the language that surrounds these two different approaches. We should remember that discourses in different countries take place in different dialects, not only in English. Some difficulties that present themselves in English do not appear the same way in some other languages. AHRC has found that suitable ways to promote human rights can be found only when one consults local partners, who are sensitive to local threats and difficulties, and have appropriate forms of expression.

Conflicts between different approaches to human rights that apparently founder on language are not so much ones of expression but are rooted in the alternative approaches to fight causes of human rights violations in a particular country or a situation. When alternatives are worked out with a good grasp of human rights principles, exciting new paths open in which the strict use of the usual human rights jargon becomes irrelevant. AHRC's experience is that working out the details of a human strategy helps in resolving communication problems over alternative approaches. The more concrete the actual proposals become, the more easily the message gets communicated.

Sometimes symbols work more effectively than language. For example, in Sri Lanka AHRC took the initiative to build a monument in a busy public place. Three such monuments have now been put up in the course of two years and they have drawn much public attention. One is a monument to disappeared persons. Near a highway, on a wall known as 'The Wall of Tears', are pasted pictures of about 300 disappeared persons. In front of the wall is a sculpture made by a reputed artist, hollowed out to indicate the figure of a missing person. The recommendations of the UN Working Group on Disappearances to the Sri Lankan government are exhibited in front on a stone plaque. This monument has resulted in greater discussion on disappearances than any book or document could have provoked.

The second monument is for the well-known Catholic priest Michael Rodrigo, who was assassinated while working in a remote village in Sri Lanka, fighting for the issues concerning the rural people. His struggle emphasised economic, social and cultural rights, and so he came into conflict with some of the local elite who were collaborating with big companies to exploit resources in the area. It is suspected that among them some used their influence with the military to have him assassinated in November 1987, during a period of largescale disappearances.

The third monument is to remind the public of the Universal Declaration of Human Rights (UDHR). “Let us implement the rights declared in the UDHR” is the message. It is erected in a prominent place in Colombo, the capital. It exhibits a summary of the basic rights mentioned in the UDHR in the three languages used in the country. All these are attempts to go beyond the boundaries of language. Central also to AHRC’s work is the Folk School concept, which emphasizes the primacy of the spoken word over the written word:

The first tenet of [N.F.S.] Grundtvig’s new enlightenment can be summarized in the expression “the living word” (det levende ord). Down through all the ages of history, it was the words that men actually spoke, the words that came from their lips, that had revealed and constituted the essence of their being. Without this spoken word, there could be no life. He saw himself as having been a “book worshipper” in the past, as having lived too much of his life inside the yellowing and withered pages of a book. Yet books had to be regarded now as secondary. His new revelation demanded an emergence from the frozen darkness of print into the bright sun of the living word. This new doctrine for schooling and education would have profound implications [Stevan M. Borish, in Fernando, *Demoralization and Hope*, p. 49. 6].

All these approaches have helped the AHRC to address the issue of language in a different way, and hence adopt a different approach to human rights advocacy work.

Potential conflict: Familiar and reliable personnel versus local personnel

I am personally aware that this problem exists for those working in UN agencies, however AHRC does not have this problem as we work intimately with local personnel of our choice and training. Thus AHRC does not distinguish between US and THEM.

Potential conflict: Catering to funding agency interests versus catering to local needs

Once again AHRC is for the most part free from this problem, due primarily to our emphasis on finding solutions to local problems by evolving locally relevant approaches. The Asian Charter project, which took several years, brought home to funding agencies AHRC’s basic direction. Though some Western human rights organizations misunderstood the project and did not support it, happily funding agencies did understand what AHRC was trying to do and provided their assistance.

The problem of funding comes only when the stage is prepared for greater expansion and when there is sufficient basis with local groups on which such an expansion can be anchored. Expansion then requires support from new funders, which requires an explanation of the unique approaches the organization has developed.

However as will be explained below, real funding difficulties arise not from funders directly but rather from some of the established ways of the global human rights movement, which has been slow to respond to the changing global environment.

Potential conflict: Promoting human rights and humanitarian care versus challenging local norms

AHRC's work has always involved challenging local cultural norms. Our approach to the problem is set out on the in the back cover of the Asian Charter: "While drawing from the cultural wells of the region, [the Charter] also points to the need for cleaning these wells that have been polluted by millenniums of prejudice, discrimination, inequality and violence."

Critiquing local cultural norms requires a very deep knowledge of the same. Such knowledge is hard to acquire if one is not part of that cultural ethos. AHRC is very much a local organization, with a deep understanding of Asian cultures. AHRC is also aware of the history of debates within these cultures, and so is able to join the debate competently and legitimately.

In this region the major traditional philosophies on cultural attitudes to rights are three: first, the Indian model of absolute power known as Arthasastra model, second, the Buddhist-Asokan model and third, the Confucian model. These are referred to as 'models' for convenience, pointing to some central feature of each which may be relevant for present day discussion. (It must however be noted that there had been other approaches, such as that of Adivasi—Ancient peoples, also called tribal peoples - which are very different to the three dominant models mentioned here.) The Arthasastra was written by Chanakya or Kautilya around the fourth century BC. One of the eminent historians of Indian History, D. D. Kosambi, has written that

The title Arthasastra means 'The science of material gain' - for a very special type of state, not for the individual. The end was always crystal clear. Means used to attain it needed no justification. There is not the least pretence of morality or altruism. [In the Arthasastra] the only difficulties ever discussed, no matter how gruesome and treacherous the methods, are practical, with due consideration to costs and possible effects...

Espionage and the constant use of agent-provocateurs is recommended on a massive and universal scale by the Arthasastra. The sole purpose of every action was safety and profit of the state. Abstract questions of ethics are never raised or discussed in the whole book.

Murder, poison, subversion were used at need by the king's secret agents, methodically and without a qualm... Strife for the throne is treated as a minor occupational hazard by Chanakya. No

regard to morality or filial piety is ever in questioned. He quotes a predecessor's axiom; 'Princes, like crabs, are father eaters...

The eleventh book (probably shortened in transmission) of the Arthashastra is devoted to the methods of systematically breaking up free, powerful, armed tribes of food producers that had not yet degenerated into absolute kingdoms. The main technique was to soften them up for disintegration from within, to convert the tribesmen into members of class society based upon individual private property [DD Kosambi, *The Culture and Civilization of Ancient India*, Vikas Publishing House, New Delhi, 1977, pp. 141–67].

The use of absolute power grew even worse under the caste system, which classified people into separate categories on the basis of birth. The caste system became even more draconian by the about the eighth century AD, with the introduction of the Law of Manu: one of the worst forms of repressive governance ever known to humanity. Though this form of governance was replaced by a democratic form under the new Indian constitution (adopted in 1950), the influence of the Law of Manu not only remains but has eaten up much of the influence of the new constitution.

The heart and soul of India is split by the divisions of caste. The historical beneficiaries of this model of governance were the Indian upper castes, led by the Brahmin caste. The system that they developed over thousands of years is known as Brahminism: a collection of social regulations that amounted to the world's most comprehensive system of repression. Through a small percentage of the population being able to gain total control of a vast majority, Brahminism was able to create extreme self-contempt among the larger part of the population and extreme self-confidence among the smaller group, the Brahmins. The millions of tricks they put together to achieve this system were called 'religious rituals'. No religious ritual was as mundane and hypocritical as the Brahmins' prescriptions about eating, sitting, drinking water, use of toilets, marriage, love making, reading, dress and everything that is possible for a human being to do. Without a place for morality, ideas of transparency and accountability were alien to this system of governance.

The Buddhist –Asokan model fundamentally differs from the Arthashastra model in that it accepts and treasures the equality of everyone. Asoka's acceptance of Buddhist ideals is described by another eminent Indian historian, Romila Thapar, thus:

Buddhism of [Emperor Ashoka's] age was not merely a religious belief; it was in addition a social and intellectual movement at many levels, influencing many aspects of society. Obviously, any statesman worth their name would have had to come to terms with it [Romila Thapar, *History of India*, Volume 1, Penguin Books, 1966, p. 85].

Kosambi has also written:

The fundamental change was not religious so much as in the attitude shown for the first time by an Indian monarch towards his subjects: "Whatever exertion I make, I strive only to discharge the debt that I owe to all living creatures." This was a startlingly new and inspiring ideal of kingship, completely strange to earlier Magadhan statecraft, where the king symbolised the state's absolute power. The Arthashastra king owed nothing to anyone; his sole business was to rule for the profit of the state, with efficiency as the one ultimate criterion. With Asoka, the social philosophy expressed in the sixth-century Magadhan religions had at last penetrated the state mechanism... The king himself would now make a complete tour of inspection throughout his domains every five years. Such a tour must have taken up a good part of the five years, which implies constant travelling except in the rains. All previous royal journeys of the sort had been for personal pleasure such as hunting, or on military campaigns. Every high administrative official was likewise ordered to make a similar quinquennial tour through the entire territory under his own jurisdiction. In addition, there was created a new class of plenipotentiary supervisors with control over officials and special funds. The title was Dharma-mahamatra, which can be translated 'minister of morality', and would later be 'senior regulator of charity and religious affairs'. The correct translation at the Asokan stage is 'High Commissioner of Equity'. Equity is the principle beyond formal codified law and common law upon which both law and justice are supposedly based [Kosambi, *The Culture and Civilization of Ancient India*, pp. 147–8].

During this period Buddhism spread to all parts of India and many other parts of Asia. Though Buddhism was wiped out brutally from India, in a genocide that is yet to be fully studied, Buddhist influence and Asoka's ruling style have remained in the psyche of the Indian. In fact, Gandhi's non-violence was based on Buddhist ideas. In other lands where Buddhism spread—like Sri Lanka, Nepal, Burma, Cambodia and Thailand—its influence later waned when the Brahmin influence and that of the Law of Manu followed. Even in countries that later became Islamic—such as Pakistan, Afghanistan and Bangladesh - the underlying influence of these two models remains. Countries such as China, Vietnam and Japan came under the sway of both Buddhism and Confucianism and thus a blend of the two is found to varying degrees in the traditions of these countries.

Confucius had a strong belief in a natural order that was also a moral order reflecting ancient virtues. The task of government was to rectify society and restore it to ancient virtues. Under this approach, good governance is a matter of setting a moral example for people to follow. People have to be properly instructed in how to practice ancient virtues. To accomplish this task, the government must be run by persons of morality. Confucius said, "If a ruler himself is upright, all

will go well without orders. But if he himself is not upright, even though he gives orders they will not be obeyed.”(Analects XII:17) In this sense, the Confucian tradition favors the rule of men rather than the rule of law. What matters to good governance is the moral character of the officials.

The traditional Chinese government was composed of a single bureaucracy headed by the Emperor, with all officials sharing a common ideological orientation based on the Confucian tradition. The legitimacy of the Emperor was built upon a mandate from heaven. The government stressed the importance of authority and order. It was very difficult for normal people to exert political influence; they were obliged to obey officials. But the mandate of heaven also required the emperor to look after the interests of the people. If the emperor turned to oppressive rule, the officials had a responsibility to persuade him to go back on the right track. However, this internal check often did not work, because it needed the officials to have great courage and to risk their lives. Without external checks and the rule of law, absolute power finally led to the corruption of the government, as persons of virtue left it. In this situation, the Confucian tradition allowed for a revolt against the government by the people, as the emperor was seen as having violated the mandate of heaven. However, in Chinese history, the success of such revolts only brought a new emperor and left the system unchanged, starting another cycle of rule and chaos.

Hence, some cultural trends help the human rights movement while others oppose the very idea of human rights itself. An organization seeking to influence the masses, as AHRC does, has to find a way to root itself on positive aspects of Asian cultures. It has also to learn how to undermine those cultural trends that affect human rights negatively.

Potential conflict: Time constraints and the need to monitor one’s work

The problems of monitoring are very complex. AHRC is quite aware that much of its work is directed towards long term goals and that it is difficult to measure impact in the short run. Even then AHRC has set up some criteria for assessment of its work, as outlined in its 2000 Annual Report:

Indicators/Considerations for Assessment of Immediate Campaigns

1. How soon after the event did the Campaign start?
2. How reliable is the information that has been disseminated?
3. How extensive is the support group that has been reached?
4. Has the information given been sufficient for a person or a group to make their intervention?
5. Has the type of intervention needed been indicated in the Appeal?
6. Has appropriate follow-up been carried out (to the extent possible) to see to what extent people have responded to the call?

7. Have other organizations also taken up the appeal?
8. Has there been media attention drawn to the issue as result of the Campaign?
9. What is the final outcome? (Positive result / Partially positive result / Positive result accompanied by some changes to prevent similar occurrences in future / Negative result)
10. If the result is partially successful or negative, what new methods have been developed to make the campaigns more comprehensive?
11. Has new educational material been developed as a result of this Campaign?
12. Has the Campaign instilled greater enthusiasm among at least a few people to work on similar issues?
13. Have new insights into the particular country, culture or situation been gained due to the campaign?
14. Has the campaign helped to improve networks and working methods?

Indicators/Considerations for Assessment of Long Term Campaigns

1. Was the Campaign initiated on the basis of a felt need? (In a country or several countries / In a locality or several localities / Amongst a particular group or groups of persons)
2. Has there been an appreciation of some of the problems associated with achieving the objectives of the Campaign and has some attempt been made to address these problems?
3. What is the quality of the Campaign materials? (Accuracy, relevance, specificity, guidance for action, comprehensibility)
4. What is the extent of the network of participants by electronic as well as normal mail?
5. How appropriate were the contact means used – were they the best means possible to engender an effective response?
6. What information sources have been created by way of websites, books or pamphlets?
7. What kind of promotional materials have been produced, for example, posters and pictures?
8. What promotion for the Campaign and the issue was gained from major TV networks?
9. What kind of attention has been drawn to the Campaign and to the issue in the international press?
10. What kind of attention has been drawn to the Campaign and to the issue in the local press?
11. What interventions have been made to United Nations agencies such as the UN Human Rights Commission and the Special Rapporteurs?
12. What impact has been made on the approach of UN agencies to the problems raised by the Campaign?
13. Over a period of time, has the Campaign helped create new impressions about the problem to which it sought to draw public attention?
14. Have there been changes in the actions of various agencies, which directly or indirectly

reflect the concerns raised by the Campaign?

15. Have the materials and other inputs created by the Campaign enriched debate on the issue?

16. Has there been a response from the agencies and/or state/s against whom the Campaign has directed its demands? Was the response positive or negative?

17. Where a direct response is difficult to obtain in a short period of time, has the Campaign strengthened the forces that fight against those who create such human rights problems?

18. As result of this Campaign, have new insights been gained by the organization about the problem, as well as ways of dealing with it?

19. What is the extent and the quality of the educational material developed as a result of the Campaign?

20. What has been the response of the human rights community to the Campaign, both globally and locally?

21. Has the cooperation of the Campaign staff increased as a result of the campaign?

In particular:

- Improvement in morale
- Appreciation of the colleagues' dedication to the task
- Improvements in quality of work and speed of work
- Technical improvements
- Frank discussion of problems
- Appreciation of limitations that may be difficult to overcome in the short term

22. Has the organisation won new friends as result of the Campaign?

23. Have the resources been used in a responsible and accountable manner?

24. Has the work been conducted within the limitations of the resources available?

25. Have attempts been made to obtain the resources needed to expand the Campaign?

26. Have the contributions of local partners been appreciated?

27. Have security considerations been the top priority at all stages of the Campaign and no adventuresome actions encouraged?

28. Has the secrecy of the sources of information been guarded with utmost care?

Naturally such assessment requires time and resources, which are very scarce.

III. Setbacks and problems

Constraints arising from the global movement on human rights

Conflicting assumptions

In regional and international dialogues the AHRC has raised problems relating to assumptions about the existence or non-existence of an institutional framework necessary for the implementation of rights. Human rights advocacy has experienced many setbacks due to assumptions relating to the availability of adequate remedies for violations, as set out by article 2 of the ICCPR. People in traditional democracies find it extremely difficult to understand what occurs in the name of the rule of law and policing in countries outside of their own domain. The difficulties in understanding suggest experiential differences of people coming from these different categories of countries. As the experiences are fundamentally different, serious difficulties in understanding are inevitable. A worthwhile discourse between people from these different backgrounds can take place only with an appreciation of these difficulties. The classification of North and South suggests a territorial division. The classification of traditional democracies and others suggests historical, social and political differences, pointing to different stages in the development of institutions for the rule of law and policing in particular.

The setbacks arising from these conflicting assumptions are outlined in detail later in this article.

Difficulties due to incomprehension of the nature of human rights violations in the region

This aspect is perhaps easier to explain. Given the tremendous economic development in Western countries, it seems impossible for people there to understand problems like caste discrimination in India and South Asia. Such discrimination not only affects vast numbers of persons (Dalits in India number 160 million), but it also permeates the whole society, influencing every aspect of culture, including political culture. The conflict between the Arthasatran and Buddhist-Asokan models outlined above is a matter of daily experience for South Asians. Thus, what matters most to vast numbers of South Asians is incomprehensible to the West. However, it is the West that leads the global human rights debate. The recent Durban Conference on Racism saw great difficulties in gaining Western support on the issue. While NGO's and CSO's came forward in support, most Western governments acceded to the Indian Government's pressure.

The West also fails to understand the situation in countries that have faced brutal civil wars and other catastrophes. Cambodia and Afghanistan are examples of this. At the end of deadly conflicts, terms like 'state', 'political stability', 'institutional framework', 'civil society', 'governance', 'accountability', 'transparency' and 'participation' do not carry the connotations they have in Western discourse. Naturally, the basic frame of reference needed to understand the global human rights discourse is missing and will remain so for some time to come. To a different degree

this also applies to Pakistan—which is now under a military dictatorship—and Sri Lanka, which has faced internal conflicts for a long time. Vietnam, China and Laos—all of which have gone through periods of revolution—also have had similar problems as they have tried to enter into democratic and human rights discourses. In fact most Asian countries have had similar difficulties, though the scale of the problems may be different. The lack of proper appreciation of these problems has resulted in a very confused situation in the global human rights movement. For its part, the AHRC has tried to find its path through these difficulties by constantly urging dialogue on these matters and often going it all alone to create such a discourse.

The West seeing itself as liberator and refusing to see itself as a violator

An area of extreme sensitivity that creates difficulties for local and regional NGOs arises from the West seeing itself as liberator while refusing to see itself as a violator. Most Asian countries are former colonies and the bitterness about past violations is very deep. The West has also contributed to many recent catastrophes, such as in all the massacres mentioned earlier in this article. Western economic policies have also contributed to many political upheavals that have produced grave human rights violations.

Open discussion on these matters is a very important aspect in establishing the credibility of the human rights movement. The scope of human rights work will expand greatly if such a discussion can take place. THE AHRC has tried to promote this discussion and thereby enhance understanding between global partners in the human rights project. The progress, as to be expected, is relatively slow.

Other difficulties: Humanitarian work, governance and conflict resolution projects

The tension between humanitarian and human rights work is a long one. However it may be said that in the Asian context there is greater realization among humanitarian agencies that unless there are long term solutions to human rights and democratization issues, there will be no end to the humanitarian issues they are presently dealing with. While this understanding exists, there are other problems that often push humanitarian organizations to be limited in their work. For example, humanitarian agencies work on refugees has been narrowed to keeping people for long periods in camps. Such policies are driven by external factors, such as limiting transmigration to more developed countries.

However, what affects human rights work more are projects on governance and conflict resolution, which have become fashionable in recent times. The conceptual framework of these is derived from the more developed countries. The partners in these projects are often governments or

parties to the conflicts. The basic defect of these projects is that they do not address the deeper problems of regional political systems and the related conflicts.

The AHRC has tried to deal with these difficulties by stressing the need for reforms over the long term. We have also tried to highlight the root causes of problems relating to governance and conflict resolution. Often, our concerns have been heard.

Constraints arising from local circumstances

The elitist origins of the human rights movement in Asia In the period following independence, the political and social leadership in many Asian countries passed to the local elites. It was also some persons from these groups who played a significant role in introducing human rights discourse into these countries. One of the results has been that the discourse has remained largely confined to elite circles. Elite discourse on human rights is limited, as the direct victims of human rights abuses are not normally the elite. Furthermore, members of the elite are often those perpetrating abuses against the general population. In some cases this conflict between the elite and people can take extreme forms, such as in caste-based societies.

However, all over Asia many educational and social reforms have resulted in educated and articulate persons from social groups suffering victimization have begun to emerge in significant numbers. Thus, victims now have their own spokespersons. This is having a tremendous influence on human rights and democratic movements in Asia. It is towards these new groups that AHRC has been directing its efforts. In fact, one of the strengths of AHRC is its constant enrichment due to input by these persons. Recruits to human rights activities from non-elite groups have brought new vigor and vision to AHRC.

Problems in the relationship between a regional organization and local partners

Till recently the links between regional groups and local groups were rather random and loose. Before widespread computer usage communication difficulties were significant. Most contacts also used to be made at meetings of a select few. The situation is now changing due to use of email and internet facilities. Preparations for some new international events, such as the Durban Conference on Racism, have seen much wider networks develop. Use of e-groups have enabled many persons to be in contact with each other on various issues and share ideas with a wider group on a regular basis. This also has helped us to build a very extensive urgent appeals network.

The possibility of contact changes the relationship with local partners. There is greater possibility for reacting to the distress calls of victims, to get feedback on activities and continue a lively a lively debate on various issues. The AHRC has made very extensive use of such communications

systems to build closer links with its local partners. The problems outlined below must be seen in the light of these international and regional realities.

A detailed explanation of one setback: assumptions regarding an institutional framework for implementation of human rights principles

The AHRC has raised the problems relating to assumptions of an institutional framework for implementation of rights in both regional and international discussions. One paper presented to an international conference put the problem in the following manner:

Article 2 [of the ICCPR] makes it obligatory for all state parties to provide an effective remedy for the violation of rights. The absence of a functioning police system indicates a failure to provide an effective remedy as required by article 2. The question becomes how to address this problem. The human rights model that exists today is not capable of dealing with it because it presumes the existence of a functioning police system—at least to a minimum standard. International bodies established to monitor states' compliance with article 2—such as the UN Human Rights Committee and UN Human Rights Commission—examine the violations of rights and make recommendations where violations have occurred. When these recommendations are made, it is presumed that the state party to which they are addressed possesses the legal mechanisms, including a functioning policing system, to put them into effect. As outlined above, for most Asian countries such a presumption is baseless.

This presumption is inappropriate for most Asian countries as it is based on the structures and practices of traditional democracies, upon which the existing human rights model was founded. While violations of rights occur in these democracies, a basic structure exists for dealing with these violations, in contrast to most societies in Asia. Thus, the existing human rights model is inadequate to deal with the problems examined above, and therefore needs to be expanded [Monitoring the Right for An Effective Remedy for Human Rights Violations, AHRC, prepared for the 57th session of the UN Commission on Human Rights, p. 19].

Another AHRC paper explains the problem thus:

It is necessary to recognize some of the inherent problems that people from Western countries who represent the United Nations have in dealing with this issue. One such basic problem is the fact that a person from the West will find it almost impossible to understand what it means to have a justice system which is fundamentally flawed. It is much easier to understand a famine or a massive humanitarian problem. Such catastrophes are physical and therefore visible, but a flawed justice system is not so visible. Moreover, it is easy to attribute a collapsed legal system to cultural factors, which are more imagined than real.

This difficulty comes from the fact that a basically functioning justice system is part of the heritage of the developed Western countries. (Of course, there are several former Soviet countries in which the health of the justice system is similar to their Asian counterparts.) This is not to say that Western systems are perfect. In fact, in this age of high-speed and pervasive communication, the defects of these justice systems in Western countries are quite well-known. The only point made here is a very obvious one that people from the West take a reasonably functioning justice system as a given. Thus, a person from the West is likely to think of national institutions as a means to further reinforce what the justice system already guarantees. It is this assumption that makes it difficult for them to see the actual state of justice in the countries of Asia [Basil Fernando, 'The Need to Review the Performance of National Human Rights Commissions in the Asia-Pacific', Human Rights Solidarity, September 2001].

Article 15.1 of the Asian Charter puts the matter this way:

Many Asian states have guarantees of human rights in their constitutions, and many of them have ratified international instruments on human rights. However, there continues to be a wide gap between rights enshrined in these documents and the abject reality that denies people their rights. Asian states must take urgent action to implement the human rights of their citizens and residents.

The impact of this problem on implementation of human rights is demonstrated by an illustration of the situation for the police, prosecution system and judiciary in several countries:

The frustration about policing is quite common. In some countries, policing has broken down to such an extent that people prefer summary killings instead of seeking remedies through criminal investigations. Sadly, it is a common criticism that the police themselves are involved in crime. Many people who seek assistance from the police often find that they have even more difficult problems by doing so. Torture is endemic, and harassment is normal. A common cause of harassment is bribery in a variety of forms. The allegation that the police help rig elections by commissions and omissions is also prevalent in several countries. The police, in turn, state that the only way for them to survive is by assisting the politicians. The result of this link between the politicians and the police is that the command system within the police institution becomes fundamentally flawed.

As for prosecutions, several countries in Asia do not have independent public prosecutors. The public prosecutor's function is sometimes performed by the attorney general's office. This system though is overburdened with many activities other than prosecutions, such as providing legal advice to the government and legally representing the government. Prosecutions suffer from subordination to the government, a lack of resources and a lack of staff. The net result is that

many serious crimes and also serious human rights violations are not brought before the country's courts for adjudication. Thus, the faith of the people in the prosecution system is very low.

The faith in the judiciary is very low as well. The reasons are many. Interference with the judiciary by the executive is one major factor. This often results in internal subordination of the judiciary itself to the powers-that-be. Often the higher judiciary has been deprived of the power of judicial review, or the possibilities for such review have been limited. The curbing of the powers of higher courts, such as the Supreme Court and appellate courts, can highly limit the operation of the doctrine of the separation of powers. When the higher courts do not effectively intervene to supervise the lower courts, the quality of justice can become rather low. In addition to all of these problems, there are extraordinary delays in justice. The delays in the courts are such that it a nightmare for those seeking recourse in the courts [Fernando, 'The Need to Review the Performance of National Human Rights Commissions in the Asia-Pacific'].

Finding a path to resolve this issue

The AHRC has made the following suggestions to resolve this issue:

1. The jurisprudence relating to Article 2 needs to be explored and developed;
2. UN bodies for human rights monitoring must scrutinise states' performance regarding Article 2;
3. Human rights educational institutes must change their curricula to include more comprehensive expositions of the implications of Article 2;
4. It is more important to encourage the reform of law-enforcement agencies than to provide them with human rights education;
5. Human rights NGOs and civil society organizations must play an active role in exposing the limitations of the existing human rights model and exploring ways to initiate change. NGOs in traditional democracies must work in partnership with NGOs outside of their countries to achieve this objective;
6. International agencies should make financial resources available for the achievement of this objective; and
7. The UN Human Rights High Commissioner's office should initiate activities and studies to promote this aim.

These suggestions have been followed up on with various activities in international and regional forums, and in country programmes. The most significant programmes in this direction have to date been in Cambodia and Sri Lanka, where very detailed work has been done to suggest ways

towards adequate remedies in compliance with article 2 of the ICCPR. Meanwhile The AHRC continues to promote discussion with the human rights movement in the West, towards an understanding of the conflict arising from assumptions explained above.