

ARTICLE

Human Rights Conditions and the Human Rights Movement in the Asian Region

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I. Introduction

Human rights abuses of all sorts have been reported in the Asian region.¹ Asia, representing about fifty-five percent of the world population, does not compare well in the human rights area with other regions in the world. Even though efforts have been made on the national, regional and international levels to improve human rights conditions in the region, in many Asian countries there is no commitment to end gross violations of human rights. As a consequence, Asia remains a region in the world where no regional human rights machinery exists.

The purpose of this article is to offer basic information on the human rights environment and the human rights movements and to encourage regional approaches for the promotion and protection of human rights in the Asian region.

Part II describes the human rights conditions with respect to various patterns of human rights abuses.

Part III examines constitutional provisions concerning human rights and restrictions on those rights in Asian countries.

Part IV focuses on international activities including the efforts made by the United Nations and Non-Governmental Organizations (NGOs) to create a regional machinery of human rights in this region.

Finally, this article proposes a regional approach towards improv-

1. The paper will examine human rights issues in 24 Asian countries :

(1) East Asia (6): China, Japan, North and South Korea, Mongolia and Taiwan (Formosa).

(2) South East Asia (10): Myanma (Burma), Brunei, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand and Viet Nam.

(3) South Asia (8): Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

ing human rights conditions.

Many documents and materials concerning human rights in Asian countries are available.² Nonetheless, no comprehensive study concerning human rights in the region has been undertaken. This study provides a bird's-eye view of the human rights environment in the entire Asian region.

II. Human Rights Conditions in Asian Countries

There have been extensive violations of human rights in the Asian region.³ Several aspects of these violations are examined as follows.

A. Human rights violations arising from political factors

Many countries in this region are politically unstable. Afghanistan and Cambodia, for example, have been under civil war. Bangladesh, Brunei, Malaysia, Pakistan, Sri Lanka and Taiwan are under a state of emergency as of July, 1988.⁴ Myanma (Burma) has added to

2. For discussion of the human rights situations in Asia, see generally, Yamane, *Asia and Human Rights*, in 2 *The International Dimensions of Human Rights*, 651 (K. Vasak ed. 1982); Yamane, *Approaches to Human Rights in Asia*, in *International Enforcement of Human Rights*, 99 (R. Bernhardt & J. Jolowicz ed. 1987); Asian Coalition of Human Rights Organizations, *Human Rights in Asia: Some Perspectives, Problems and Approaches* (1984); *Access to Justice: The Struggle for Human Rights in South East Asia* (H. Scoble & L. Wiseberg, ed. 1985); Khushalani, *Human Rights in Asia and Africa*, 4 *Human Rights L. J.* 403 (1983); Saksena, *Human Rights in Asia: Assessing the Prospects for a Regional Approach*, 21 *International Studies* 1 (1982); *International Handbook of Human Rights* (J. Donnelly & R. Howard, ed. 1987).

3. Main sources are as follows: Amnesty International, *Amnesty International Report 1988* (1988) [hereinafter cited as *Amnesty Report*]; U. S. Department of State, *Country Reports on Human Rights Practices for 1987* (1988) [hereinafter cited as *Country Reports*]; Asia Watch, *Annual Report* (1987); *Human Rights in Developing Countries, 1987/88: A Yearbook on Human Rights in Countries Receiving Nordic Aid* (B. Andreassen & A. Eide, ed. 1988); Canada-Asia Working Group, *Human Rights in Asia* (1988).

4. U. N. Doc. E/CN. 4/Sub. 2/1988/18, para. 9.

this list in August, 1988.⁵ We cannot forget the bloodshed in Beijing on June 4, 1989. Bangladesh, Myanma and Indonesia are governed by military powers. South Korea, Taiwan, Singapore, Malaysia and Indonesia are each under a so-called “development dictatorship”⁶ where human rights abuses have become relatively prevalent in the course of economic development. These countries, especially Afghanistan, Myanma, Cambodia, Indonesia (including East Timor) and South Asian countries have committed numerous human rights violations including arbitrary arrests and detention, torture, extrajudicial executions and ‘disappearances’.⁷ In socialist states such as China, Laos and Viet Nam, many political dissidents are detained in “Re-Education Camps” or “Labor Camps” and denied their personal liberties for a long time without enjoying any judicial review.⁸

Moreover, political dissidents has often been denied their right to

5. N. Y. Times, August 12, 1988, at A2, col. 5.

6. Sumiya, *Development and Human Rights*, in *Towards International Cooperation for Human Rights in Asia*, 4 CCRAI (Centre for Christian Response to Asian Issues) Documentation Series, (No. 2) 10, 11 (1985).

7. Helsinki Watch Committee and Asia Watch Committee, *By All Parties to the Conflict: Violations of the Laws of War in Afghanistan* (1988); Lawyers Committee for Human Rights, *Zia's Law: Human Rights under Military Rule in Pakistan* (1985); G. Petren, H. Cull, J. McBride and D. Ravindran, *Pakistan: Human Rights After Martial Law: Report of a Mission sent by the International Commission of Jurists* (1987); Amnesty International, *Burma: Extrajudicial Execution and Torture of Members of Ethnic Minorities* (1988); Amnesty International, *Kampuchea: Political Imprisonment and Torture* (1987); Amnesty International, *Bangladesh: Unlawful Killing and torture in the Chittagong Hill Tracts* (1986); Amnesty International, *Sri Lanka: 'Disappearances'* (1986); Amnesty International, *East Timor, Violations of Human Rights: Extrajudicial Executions, 'Disappearances', Torture and Political Imprisonment, 1975-1984* (1985).

8. Amnesty International, *China: Violation of Human Rights* (1984); Amnesty International, *China: Torture and Ill-Treatment of Prisoners* (1987); Asia Watch Committee and Committee to Protect Journalists, *Still Confined: Journalists in "Re-Education" Camps and Prison in Vietnam* (1987).

freedom of assembly and of association.⁹ At the same time, the governments of many Asian countries control the news media to suppress or manipulate information. Such control is essential to maintaining their power.¹⁰ Thus, those who live in these countries have been prevented from access to the news media, and denied crucial information concerning their own country and the rest of the world. Under such conditions the public has no way to form opinions freely, and effectively participate in the political process. For the foregoing reasons, the peoples in Asia have been outsiders in their own countries.

B. Human rights violations arising from poverty and economic underdevelopment

Asia represents about fifty-five percent of the world population.¹¹ In most Asian countries, especially in South Asia, people have been constantly suffering from hunger and malnutrition.¹² Nearly 700 million people in Asia live a marginal existence, enduring hunger,

9. See Amnesty Report 1988, *supra* note 3.

10. Lent, *Cultural, Political and Economic Consequences of Asian Mass Media: A Contemporary and Futuristic Overview*, 15 Asian Profile 581 (1987).

11. There will be an estimated 2,888 million people, or 54.9% of the world's total population, living in the region in 1990. My T. Vu, *World Population Projections 1985* (1985). But Asia holds only about 19.8% in the world in terms of the gross domestic product. Asia comprises a variety of countries in economic development, from Bangladesh with 1985 GNP per capita of US \$150 to Japan of US \$ 11,300. *see* International Bank for Reconstruction and Development, *World Development Report 1987*, at 202-203, 206-207 (1987).

12. The Hunger Project (a project established in 1977 to generate a global context of individual will, commitment, and responsibility for ending world hunger in this century) specifies Asian countries except China, North and South Korea, Japan, Taiwan, Malaysia and Sri Lanka as the nations in which hunger persists as a basic, society-wide issue. The Hunger Project, *Ending Hunger: An Idea Whose Time Has Come*, at 8 (1985). On the poverty and living standard in Asian countries, *see* International Bank for Reconstruction and Development, *Poverty and Living Standards in Asia* (1980).

sickness, homelessness and unemployment.¹³ There are many countries in Asia in which the average life expectancy is below fifty years, and the percentage of elementary school attendance and of adult literacy remains very low.¹⁴ Thus, people living in Asia, especially in South Asia, have long been denied sufficient food, adequate health care and educational opportunities.¹⁵

The practice of “debt bondage” or “bonded labor”¹⁶ and “dowry”¹⁷ still exist in South Asia. The sale of children, exploitation of child labor and exploitation of prostitutes¹⁸ still exist in Asia; economic underdevelopment, poverty, illiteracy and lack of education are responsible.

13. Saksena, An Introductory Note to the Seminar on Human Rights in Asia : Problems and Perspectives (Dec. 1983), at 7. For the pertinent statistical data, see World Development Report 1987, *supra* note 11, at 212-213, 260-261.

14. World Development Report 1987, *supra* note 11, at 258-259, 262-263.

15. See International Commission of Jurists and Human Rights Institute, Lucknow, Rural Development and Human Rights in South Asia : Report of a Seminar held in Lucknow, India, 4-9 December 1982 (1984); Human Rights in South and Southeast Asia : Papers Presented at the State University of New York at Buffalo, May 25-27, 1988 (1988).

16. The Bonded Labour System (Abolition) Act of 1976 of India defines the bonded labourer as “a person who is pledged to work for his creditor (or the creditor of a member of his family) against nominal wages in cash or kind till the creditor declares that the loan is repaid.” S. Agnivesh, *Bonded Labour in India*, in Rural Development and Human Rights in South Asia, *supra* note 15, at 146, 147.

In India, estimates of the number of bonded laborers, partly depending on the definition, range from 500,000 to 6 million. Bondage most commonly arises when laborers borrow money at usurious rates and, lacking collateral, agree to work for the creditor in lieu of repayment. Such bondage can last a lifetime and even be inherited. Bonded laborers are found in agriculture, quarries, carpet-weaving, and other small industries. Some of them are children (Rubin, *India*, in International Handbook of Human Rights, *supra* note 2, at 151). 86.6 percent of the bonded laborers belong to scheduled casts and scheduled tribes. And 28 percent of the ‘masters’ belong to SC/ST (Saksena, *supra* note 13, at 9.).

C. Human rights violations arising from multi-ethnic, linguistic, religious and cultural conflicts

Asia in a conglomeration of countries, which contain radically different social structures, and diverse religious, philosophical and cultural traditions.¹⁹ “Asia” was named by Europeans specifying the region in contrast to Europe. Accordingly the term “Asia” does not carry a commonly shared historical background among the nations in Asia. Asia has great ethnic, linguistic, religious and cultural diversity. Such diversity is in part due to the fact that there are nation-states delimited by borders artificially drawn in the process of the colonization by European countries without regard to the community linkage among the peoples concerned.

States have often disregarded this plurality in the formulation of

17. A dowry, once a way a father could endow a Hindu daughter with material goods when she could not inherit property, has evolved into a reward paid to a man and his family to take a woman off her parents hands. The dowry system, which has also degenerated into extortion that goes on long after marriage, is officially outlawed in India, but it still thrives. There have often occurred “dowry deaths” where a husband kills a wife for failing to deliver on a request, or she kills herself to spare her father further hardship. Formerly, it was a phenomenon of the Hindu middle class families in north India. But now it had gone to different casts, and crossed the educational and religious barriers. Muslims and Christians, among whom it was never observed, have started demanding dowry. Crossette, *India Studying ‘Accidental’ Death of Hindu Wives*, N. Y. Times, Jan. 15, 1989, at 10, col. 1.

18. See Updating of the Report on Slavery Submitted to the Sub-Commission in 1966 : Report by Mr. Benjamin Whitaker, Special Rapporteur, U. N. Doc. E/CN. 4/ Sub. 2/1982/20 (1982); Report of the Working Group on Slavery on its Twelfth Session : Chairman - Rapporteur : Mr. Justice J. Deschenes, U. N. Doc. E/CN. 4/ Sub. 2/1987/25 (1987).

19. Yamane, *Development of Human Rights Teaching and Research in Asia : Toward a De-ideologization through Information*, in *Frontiers of Human Rights Education* 45, (A. Eide & M. Thee, ed. 1983). There exists four main religions in the Asian region : Islam, Hinduism, Buddhism and an extremely influential social philosophy, Confucianism.

their policies, which has increased social tension and resulted in violence. This also contributes to the brutalization and militarization of society resulting in an increase in repression and erosion of the rule of law.²⁰ Furthermore, many disputes exist among different ethnics and religions in Asia. For instance, the anti-government movements of Karens and Kachins in Myanmar, the ethnic violence between Sinhalese and Tamils in Sri Lanka, and the anti-Chinese uprisings in Buddhist Tibet are the latest examples of such conflicts.

D. Other patterns of human rights violations

There are other patterns of human rights violations in Asia which do not fit within the classification above. First, discrimination against women. Women are a disadvantaged group in Asia. This is true of women in urban areas and even more so of women in rural areas. In rural areas in Asia, especially, where poverty and economic underdevelopment prevail, women often have been forced to be subordinated to men. This phenomenon derives from cultural-religious conditions which dominate the areas concerned.

Second, there is the problem of refugees. Asia is a region where we can find many refugees, including 3.16 million Afghans in Pakistan, and 113,000 Cambodians, Laotians and Vietnamese in Thailand.²¹ During the first six months of 1988, 39,000 Vietnamese boat people arrived in the first asylum countries in Asia.²² More than 6,300 refugees from Indo-china had settled in Japan by the end of August, 1989.²³

20. 35 ICJ Newsletter 25 (1987).

21. *UNHCR cares for 12 million refugees*, Refugees, Special Issue 23-26 (1988). See, Lawyers Committee for Human Rights, *Seeking Shelters: Cambodians in Thailand* (1987).

22. Kumin, *The end of consensus*, 56 Refugees 8 (1988).

The refugee problem in Asia is further compounded by the fact that governments in Asia have rarely given any thought to refugees problem until they were forced with massive inflow from neighboring countries.²⁴

Third, there is the problem of environmental pollution and vandalism created by transnational corporations (TNCs). In many Asian countries, foreign-owned TNCs dominate their business, wield great power, and reap large profits at the expense of the Asian people. As a result, Asian people face air and/or water pollution which is created by industries managed by TNCs. Furthermore, Asian people are obliged to abandon their traditional way of life because of drastic change in their socio-economic environments produced by the appearance of TNCs.²⁵

III. Human Rights Conditions and the Legal Systems in Asian countries

A. Legal framework of rights and freedoms in Asian countries

The following is a survey of legal provisions for the protection of human rights in Asian countries. The contents of constitutional provisions²⁶ concerning fundamental rights and freedoms are examined including provisions which legitimize the restriction or even the denial of the fundamental rights and freedoms proclaimed by constitutions

23. *Regional Focus : JAPAN*, 20 Refugees (Japanese Edition) 11 (1989).

24. Saksena, *supra* note 13, at 14.

25. See, e. g., Perpinam, *Women and Transnational Corporations : The Philippines Experience*, 159 in *Access to Justice*, *supra* note 2.

26. Texts of constitutions of the Asian countries are found in *Constitutions of the Countries of the World* (A. Blaustein & G. Flanz, ed.). The description of this chapter owes much to Yasuda N., *Asia No Hō To Shakai* (Contemporary Asian Legal System) (1987).

(limitation clauses, preventive detention laws, and derogation clauses in case of emergency).

This survey divides the Asian region for the convenience of explanation into: 1. East Asian countries; 2. ASEAN²⁷ countries; 3. South Asian countries; and 4. Socialist countries.

1. East Asian countries

Constitutional provisions

Japan, South Korea (Republic of Korea) and Taiwan (Republic of China) have constitutions providing fundamental rights and freedoms without making any distinctions between civil and political rights on the one hand and economic, social and cultural rights on the other.

There are, in common in these three constitutions, provisions concerning civil and political rights such as equality before the law,²⁸ freedom of religion,²⁹ freedom of expression,³⁰ privacy of correspondence,³¹ right to property,³² freedom of residence and movement,³³ and the guarantee to legal procedure.³⁴ There exist, however, no provisions in the Constitution of Taiwan concerning free-

27. Association of South East Asian Nations. The Regional Inter-governmental organization consists of Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand and established in 1967 to accelerate economic progress and to increase the stability of the South-East Asian region.

28. Constitution of Japan of 1946 [hereinafter cited as Japan], art. 14, para. 1.; Constitution of the Republic of Korea of 1988 (amended) [hereinafter cited as S. Korea], art. 11, para. 1.; Constitution of the Republic of China (Taiwan) of 1946 [hereinafter cited as Taiwan], art. 7.

29. Japan, art. 20, para. 1.; S. Korea, art. 20, para. 1.; Taiwan, art. 13.

30. Japan, art. 21, para. 1.; S. Korea, art. 21, para. 1.; Taiwan, art. 11.

31. Japan, art. 21, para. 2.; S. Korea, art. 18, Taiwan, art. 12.

32. Japan, art. 29, para. 1.; S. Korea, art. 23, para. 1.; Taiwan, art. 15.

33. Japan, art. 22, paras. 1 and 2.; S. Korea, art. 14.; Taiwan, art. 10.

34. Japan, art. 31.; S. Korea, art. 13, para. 1.; Taiwan, art. 8.

dom of thought and conscience. Provisions guaranteeing freedom from bondage and involuntary servitude,³⁵ and banning both torture by public officers and cruel punishment³⁶ are found only in the Constitution of Japan. The constitutions of these countries provide in common the right to work,³⁷ and the right to education.³⁸ Only the Constitution of Taiwan fails to protect the right to form and to join trade unions.³⁹

Limitation clauses

These constitutions also contain some restrictions and limitation clauses. For example, restrictions for the “public welfare” (in Japanese, South Korean and Taiwanese Constitution), “national security”, “the maintenance of law and order” (in South Korean constitution), and “prevention of infringement upon the freedom of other persons, aversion of imminent crises, maintenance of social order” (in Taiwanese constitution).⁴⁰

35. Japan, art. 18.

36. Japan, art. 36.

37. Japan, art. 27, para. 1.; S. Korea, art. 32, para. 1.; Taiwan, art. 15.

38. Japan, art. 26, para. 1.; S. Korea, art. 31, para. 1.; Taiwan, art. 21.

39. Japan, art. 28.; S. Korea, art. 33, para. 1.

40. “All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with *public welfare*, be the supreme consideration in legislation and in other governmental affairs.” (Japan, art. 13., emphasis added)

“The freedoms and rights of citizens may be restricted by law only when necessary for *national security, the maintenance of law and order* or for *public welfare*. Even when such restrictions is imposed, no essential aspect of the freedom or right shall be violated.” (S. Korea, art. 37, para. 2., emphasis added)

“All the freedoms and rights enumerated in the preceding Articles shall not be restricted by law except by such as may be *necessary to prevent infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain social order, or to advance public welfare.*” (Taiwan, art. 23., emphasis added)

Preventive detention

Preventive detention does not exist in Japan. Although there are no definite constitutional provisions authorizing the preventive detention in South Korea and Taiwan, there have been reported cases of preventive detention in both countries.⁴¹ In South Korea, the Act for the Protection of Society authorizes a preventive detention for the term of seven years with a parole board review two years after initial detention.⁴² The Social Safety Act, the preventive custody statute used against political prisoners, states that a prison sentence may be extended every two years for persons who have completed sentences for violating specified articles of the National Security Law, the Criminal Code, or the Military Penal Code.⁴³

Derogation clauses

With respect to the derogation clauses, the South Korean Constitution authorizes the President, in time of internal turmoil, external menace and so on, to take minimum necessary actions or to issue orders having the effect of law when urgent measures for the maintenance of national security or public peace and order are required and there is no time to convene the National Assembly.⁴⁴ The President may proclaim martial law (extraordinary martial law and precaution-

41. See, for example, Asia Watch, *A Stern, Steady Crackdown: Legal Process and Human Rights in South Korea* (1987).

42. *Id.* at 24. From 1981 to 1986 more than 6,000 persons were sentenced under the Act to serve an "additional term" for their repetitive crimes (*Id.*).

43. *Id.* at 24.

44. S. Korea, art. 76, para. 1. In case of major hostilities affecting national security, the President may issue the same kind of orders prescribed in the paragraph 1 (*Id.*, para. 2). The President shall promptly notify the National Assembly and obtain its approval, in case actions are taken or orders are issued under paragraphs 1 and 2 (*Id.*, para. 3.).

ary martial law) as prescribed by law, when it is required by a military necessity or to maintain the public safety and order by mobilization of military forces in time of war, armed conflict or similar national emergency.⁴⁵ Under extraordinary martial law, special measures may be taken to curtail the need for warrants, freedom of speech, the press, assembly and association, and the powers of the Executive and Judiciary.⁴⁶

In Taiwan, the President may declare martial law subject to approval by the Yuan (the highest legislative body).⁴⁷ In case of a natural calamity, an epidemic, or a national financial or economic crisis that calls for emergency measures, the President may issue emergency orders, proclaiming such measures as may be necessary to cope with the situation.⁴⁸ In addition, the “Temporary Provisions effective during the Period of Communist Rebellion” of 1948 constitutes part of the Constitution. Under these provisions, the President, during the period of national crisis, may take emergency measures to avert an imminent danger to the security of the State or the people or to cope with any serious financial or economic crises, without being subject to the procedural restrictions prescribed in Article 39 or Article 43 of the Constitution.⁴⁹

The Japanese Constitution contains no provisions concerning national security.

45. S. Korea, art. 77, paras. 1 and 2.

46. S. Korea, art 77, para. 3.

47. Taiwan, art. 39.

48. Taiwan, art. 43.

49. Paragraph 2 of the Temporary Provisions.

2. ASEAN Countries

Constitutional provisions

The Constitutions of Malaysia and Singapore provide civil and political rights as fundamental rights, but contain no provisions concerning economic and social rights.⁵⁰ The Constitutions of the Philippines and Thailand also provide only civil and political rights as fundamental rights, prescribing aspects of economic and social rights as “Directive Principles of State Policies”.⁵¹

The Indonesian Constitution has no provision concerning fundamental rights; however, it contains provisions concerning social rights, such as the right to education and to social welfare.⁵² Brunei has no provision concerning fundamental rights and freedoms in its Constitution.⁵³

There are in the Constitutions of all ASEAN countries, except Brunei, civil and political rights provisions such as freedom of speech, expression, assembly, and religion and the freedom to form unions. Provisions for freedom of movement, right to properties, freedom from bondage and forced labor, due process of law, and ban on retro-

50. Yasuda, *supra* note 26, at 177.

51. Constitution of the Republic of the Philippines of 1987 [hereinafter cited as Phil.] have extensive provisions on economic, social and cultural rights under Art. 12 (National Economy and Patrimony), Art. 13 (Social Justice and Human Rights), Art. 14 (Education, Science and Technology, Arts, Culture, and Sports) and Art. 15 (The Family). Constitution of the Kingdom of Thailand of 1978 [hereinafter cited as Thai.] also have extensive provisions of “Directive Principles of State Policies under Chapter 5 (Arts. 53-73). As the Art. 53 of the Thailand constitution stipulates, the provisions on the Principles is intended to be used as directive principles for legislation and determination of the policies, and shall not give any cause of action against the State.

52. Chapters 13 and 14 of the Constitution of the Republic of Indonesia of 1945 [hereinafter cited as Indon.].

53. Brunei follows the strict tradition of English law which has no provisions on fundamental rights and freedoms in the constitutional law.

active punishment and double jeopardy are also found in the Constitutions of Malaysia, Singapore, Philippines and Thailand. In the Constitutions of all the ASEAN countries except the Philippines, however, we can hardly find any provisions on the ban of torture and cruel punishment, and rights concerning trials, including the right to a speedy trial and the right to be assisted by competent counsel.

Limitation clauses

The Malaysian Constitution provides that Parliament may restrict freedom of speech, assembly and association as it deems necessary or expedient for the interest of the *security* of the Federation or any part thereof, *friendly relations* with other countries, *public order* or *moral-ity* and to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence.⁵⁴ Singapore has almost an identical constitutional provision.⁵⁵

According to the Indonesian Constitution, “freedom of assembly and the right to form unions, freedom of speech and of the press and similar freedoms *shall be provided by law*”.⁵⁶

54. Malaysia Federal Constitution of 1957 (amended in 1988) [hereinafter cited as Malay.] art. 10, para. (2), (a) (emphasis added). In addition, Parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III (Citizenship), Article 152 (National language), 153 (Reservation of quotas in respect of services, etc. for Malays and etc.) or 181 (Saving for Rulers' sovereignty, etc.) otherwise than in relation to the implementation thereof as may be specified in such law (*Id.* para. (4)).

55. The Constitution of the Republic of Singapore of 1980 [hereinafter cited as Sin.] art. 14, para. (2), (a).

56. Indon., art. 28 (emphasis added). Freedom of speech and expression remains precarious in present day Indonesia. There are severe limitations on freedom of the press both under the press laws and under various restrictions and

The Thai Constitution permits some restrictions upon religious liberty, personal liberty, property right, the liberty of speech, writing, printing and publication, and the liberty to assemble peacefully and without arms by virtue of law in the name of *the security of State or safeguarding the liberties, dignity or reputation of other persons*, etc.⁵⁷ It also provides in general terms that “no person shall exercise the rights and liberties under the Constitution against the Nation, religion, the King and Constitution.”⁵⁸

In the Philippines, however, “no law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.”⁵⁹

Preventive detention

In Malaysia and Singapore, the Internal Security Act (ISA) authorizes preventive detention.⁶⁰ In Malaysia, the ISA empowers the police and security forces to search, arrest and detain persons for 60 days for investigation without warrant. This may be followed by a confirmed two-year detention, without trial, based on allegations

pressures imposed on journals and their editors and staffs. The right to organize labor unions is almost exclusively reserved for government-controlled trade unions, while the right to strike is subject to the dictates of a compulsory arbitration system (Indonesia and the Rule of Law : Twenty Years of ‘New Order’ Government, at 155-156 (H. Thoolen, ed. 1987)).

57. Thai., chap. 3, sec. 25, 28, 33, 34 and 36.

58. Thai., chap. 3, sec. 45.

59. Phil., art. 3, sec. 4.

60. See, Lin, *Some Aspects of Executive Detention in Malaysia and Singapore*, 29 Malaya L. R. 237 (1987).; Lent, *Human Rights in Malaysia*, 14 Journal of Contemporary Asia, 442, 443-444 (1984). For discussion of the preventive detention in the ASEAN region, see, The Regional Council on Human Rights in Asia, *The Law and Practice of Preventive Detention in the ASEAN Region* (1988).

extracted from investigations; detention may be extended every two years at the discretion of the Minister of Home Affairs.⁶¹ In Singapore, the ISA permits the Minister of Home Affairs to order the detention of persons who the Minister determines pose a threat to national security. Under the ISA an individual may be held for an initial 30-day period. The Minister may authorize detention for up to two years.⁶² The Constitutions of both countries empower the legislature and the executive to order detention.⁶³

The Constitutions of the Philippines, Indonesia and Thailand have no specific provisions on preventive detentions. But this fact does not necessarily mean that there have been no detentions in those states. Although the Aquino Government repealed authority for preventive detention and restored the writ of *habeas corpus* soon after assuming power, there have been reported cases of arbitrary arrest and detention in the Philippines.⁶⁴

In Indonesia, the Operational Command for the Restoration of Security and Order (KOPKAMTIB),⁶⁵ the military agency which has the responsibility for implementing the anti-subversion law established in 1965, has virtually unlimited powers to arrest, interrogate and indefinitely detain persons thought to jeopardize "national security", a

61. Lent, *supra* note 60, at 443.

62. Country Reports, *supra* note 3, at 799. See, Rawlings, *Habeas Corpus and Preventive Detention in Singapore and Malaysia*, 25 Malaya L. R. 324, 325 (1983).

63. Article 149 of both constitutions confers on the legislature extraordinary lawmaking powers to deal with subversion while article 150 of both constitutions confers on the executive in certain circumstances and on the legislature generally extraordinary lawmaking powers to deal with emergencies (Lin, *supra* note 59, at 239.).

64. Country Reports, *supra* note 3, at 787.

65. See, Indonesia and the Rule of Law, *supra* note 56, at 67-72.

term which is broadly defined.⁶⁶

In Thailand, the Anti-Communist Activities Act authorizes the police to arrest or detain a suspect without specific charges for up to 480 days.⁶⁷

Derogation clauses

The Constitution of Singapore confers on the Executive, in a grave emergency where “the security or economic life of Singapore is threatened”, the power to proclaim emergency and to suspend parliamentary rule.⁶⁸ Malaysia has almost the same constitutional provision as Singapore.⁶⁹ No ordinance or Act of Parliament passed under the article empowering the executive to proclaim emergency shall be invalid on the ground of inconsistency with any provision of the Constitution.⁷⁰

The Internal Security Act (ISA) mentioned above has been enacted to implement the executive emergency powers to deal with crisis situations.

The Thai Constitution vests the King with the power to issue an emergency decree which shall have the force of legislation when there is an urgent necessity to maintain *national or public safety* or *national economic security* or to avert *public calamity*.⁷¹ The King also has the

66. King, *Human Rights, Social Structure and Indonesia's New Order*, 16 *Journal of Contemporary Asia* 342, 346 (1986).

67. Amnesty Report, *supra* note 3, at 186-187; Country Reports, *supra* note 3, at 812.

68. Sin., art. 150.

69. Malay., art. 150.

70. Malay., art. 150, para. (6); Sin., art. 150, para. (5). See, Lin, *supra* note 60, at 238-240.; Lent, *supra* note 60, at 442-443.

71. Thai., chap. 7, sec. 157.

prerogative of declaring and lifting martial law in accordance with the conditions and manner under martial law.⁷²

The Indonesian Constitution empowers the President, in times of emergency, to proclaim martial law. Legislation shall be provided to decide what conditions will make the imposition of martial law imperative, and what action shall be taken after the proclamation of martial law.⁷³ The New Order Government is not explicitly based on this Article to deal with the 1965 coup and post-coup developments.⁷⁴ The government exercises under the Constitution executive (emergency) decrees without resort to formal legislation.⁷⁵

The Brunei Constitution empowers the Sultan and Yang Di-Per-

72. Thai., Chap. 7, sec. 160.

73. Indon., art. 12.

74. Indonesia and the Rule of Law, *supra* note 56, at 54-55. Sukarno's rule grew more and more repressive in the latter half of the 1950's. At the same time the economic situation worsened. On the night of September 30, 1965 the communists staged a coup and killed six top generals. A relatively unknown general, Suharto, who had escaped the attack, found himself in a position of leadership and mobilized the army not only against the conspirators or the leadership of the Communist Party (PKI) but against all Communist organizations, their members, followers and sympathizers. On March 11, 1966 the PKI was officially declared illegal. The purge, however, continued for many more months, and at the end of 1966 Indonesia suffered one of the largest massacres in recent world history: 750,000 to a million people were killed, often in the most atrocious manner, arrested or disappeared. (*Id.* at 6-7).

75. *Id.* at 55. Article 22 stipulates as follows:

Sec. 1. In times of emergency, the President shall have the right to enact ordinances taking the place of law;

Sec. 2. Ordinances passed by the Government shall be ratified by the House of Representatives during the next session; and

Sec. 3. If no ratification is obtained, such ordinances shall be revoked.

Sukarno used Article 22 in an extensive way, and the new government continues to use it from time to time. No reference to this constitutional provision was or is made, while the procedural safeguards in the second and third sections are equally disregarded. This tendency, of course, reinforced by the legislators habit of using broad, vague wording, gives the Executive wide discretion in implementing regulations (*Id.*).

tuan (Head of State) to declare by Proclamation a state of emergency either in the whole of Brunei or part of Brunei, in the event of *public danger* whereby the *security or economic life* of Brunei, or any part thereof, is threatened either by war, external aggression or internal disturbance, actual or threatened.⁷⁶

The Philippine Constitution of 1987 stipulates that the President may, “for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law.”⁷⁷ “The President shall submit a report in person or in writing to the Congress within forty-eight hours from the proclamation of martial law or the suspension of the privileges of the writ of *habeas corpus*.”⁷⁸ “The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension.”⁷⁹ “The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.”⁸⁰ Moreover, the Constitution provides that “a state of martial law does not suspend the operation of the Constitution, nor suspend the functioning of the civil courts or legislative assemblies, nor authorize the conferment of juris-

76. Constitution of Brunei Darussalam, art. 83, para. (1). No Proclamation of Emergency shall be in force for more than 2 years, without prejudice, however, to the issue of the next proclamation at or before the end of that period (*Id.*, para. (2)).

77. Phil., art. 7, sec 18, para. 1.

78. *Id.*

79. *Id.* Upon the initiative of the President, the Congress may, in the same manner, extend or suspend such proclamation for a period to be determined by the Congress, if the invasion or rebellion persists and the public safety requires it.

80. *Id.* para. 3.

diction to military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.”⁸¹ “The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.”⁸² “During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.”⁸³ Thus, the 1987 Constitution strictly imposes restrictions on the Executive to avoid the misuse of the emergency powers.

3. South Asian Countries

Constitutional provisions

The Constitutions of South Asian countries, except that of the Maldives, are similar in that they provide only civil and political rights in the catalogue of fundamental rights, while they place economic and social rights in the list of “Directive Principles of State Policy.”⁸⁴ Such categorization is designed so that no cause of action is brought

81. *Id.* para. 4.

82. *Id.* para. 5.

83. *Id.* para. 6.

84. Constitution of India of 1949 [hereinafter cited as India] stipulates in Part IV (Art. 36-51). Constitution of the Islamic Republic of Pakistan of 1973 (amended in 1981) [hereinafter cited as Pak.] in Part II, Chapter 2 (Principles of Policy, Art. 29-40.). Constitution of the People’s Republic of Bangladesh of 1972 (Seventh Amendment, 1986) [hereinafter cited as Bangla.] in Part II (Fundamental Principles of State Policy, Art. 8-25). Constitution of the Democratic Socialist Republic of Sri Lanka of 1978 [hereinafter cited as Sri Lanka] in Chapter VI (Directive Principles of State Policy and Fundamental Duties, Art. 27-29.). Constitution of Nepal of 1962 (Third Amendment, 1980) [hereinafter cited as Nepal] in Part 4 (Directive Principles of Panchayat System, Art. 18-19.). Bhutan has no written constitution. Constitution of the Republic of Maldives of 1968 has provisions on the rights of citizens (articles 5-19), but it has no provision about “Directive Principles”.

against the State.⁸⁵ These countries have a comprehensive catalogue of civil and political rights in their constitutions.⁸⁶

These fundamental rights provisions provide equality in law, in public employment, and protection against discrimination of all kinds. They are general in principle and yet specific enough to provide that nothing shall prevent the State from making any special legislation for “women and children”⁸⁷ or “the advancement of any socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled Tribes”.⁸⁸

The abolition of untouchability,⁸⁹ prohibition on the traffic of human beings, forced labor,⁹⁰ and the employment of children below the age of fourteen in factories, mines or in any other hazardous employment⁹¹ are other distinctive fundamental rights provisions in these constitutions.

The “Directive Principles” in South Asian constitutions do refer to

85. These do not have the status of legal rights. “The [Directive Principles] shall not be enforceable by any court, but [they] are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws” (India, art. 37). The Directive Principles thus confer duties on the state without granting rights to citizens. See, Rubin, *India*, in *International Handbook of Human Rights*, *supra* note 2, at 135.

86. India, in Part III Fundamental Rights, Art. 12-35.). Pak., in Part II, Chapter 1 (Fundamental Rights, Art. 8-28.). Bangla., in Part III (Fundamental Rights, Art. 26-47A.). Sri Lanka, in Chapter III (Fundamental Rights, Art. 10-17.). Nepal, in Part 3 (Fundamental Duties and Rights, Art. 10-17).

87. India, art. 15, para. 3.; Pak., art. 25, para. 3.; Bangla., art. 28, para. 4.; Sri Lanka, art. 12, para. 4.

88. India, art. 15, para. 4., art. 16, para. 4.; Bangla. art. 28, para. 4, art. 29, para. 3 (a).

89. India, art. 17.

90. India, art. 23.; Pak., art. 11, para. 2.; Bangla., art. 34, para. 1 (only on prohibition of forced labour).; Nepal, art. 13.

91. India, art. 24.; Pak., art. 11, para. 3.

the promotion of social justice,⁹² equality,⁹³ and welfare.⁹⁴

Limitation clauses

The Indian Constitution contains provisions restricting the freedom of speech and expression, the freedom to assemble, and to form associations or unions, and so forth on the ground of the *security of State, friendly relations with foreign State, public order, decency or morality*, and so on.⁹⁵ The Constitutions of Pakistan and Bangladesh have similar provisions.⁹⁶

Preventive detention

The Constitutions of some South Asian countries have provisions allowing preventive detention. The Indian Constitution, for example, stipulates that “no law providing for preventive detention shall authorize the detention of a person for a longer period than three months.”⁹⁷ India currently has two laws providing for preventive detention. They are the National Security Act (NSA) and the Terrorist and Destructive Activities (Prevention) Act of 1987. Under these laws detainees may be held for as long as two years without trial.⁹⁸

92. India, art. 39, Pak., art. 37.

93. India, art. 39-A.

94. India, art. 38.; Pak., art. 38.

95. India, art. 19.

96. Pak., art. 19.; Bangla., art. 39.

97. India, art. 22, para. 4. The Bangladesh Constitution allows preventive detention up to six months. But this period can be prolonged when an Advisory Board of three jurists determines that there is sufficient reason to continue the detention (Bangla., art. 33, para. 4). The Constitution of Pakistan also has a similar provision on preventive detention up to three months, which can be extended by the appropriate Review Board (Pak., art. 10, para. 4).

98. Country Reports, *supra* note 3, at 1152.

Derogation clauses

The Indian Constitution has emergency provisions typical of South Asian constitutions. It empowers the President to issue a Proclamation of Emergency under circumstances where he determines that a grave emergency exists where the *security* of India or any part of that territory is threatened, either by *war, external aggression* or *armed rebellion*.⁹⁹ Thus, the President may issue this Proclamation before the actual occurrence of war or of any aggression or rebellion. From June, 1975 to March, 1977, Prime Minister Indira Gandhi suspended fundamental rights by declaring a state of emergency.¹⁰⁰

Pakistan and Bangladesh have similar emergency provisions in their constitutions.¹⁰¹ However, these countries have a tendency not to employ the emergency provisions in their constitutions but to proclaim martial law when they encounter a state of emergency. Pakistan had been under martial law from July, 1977 to the end of 1985. Bangladesh also had been under martial law, from March, 1982 to November, 1986, during which the Constitution had been suspended and no judicial review had taken place.

4. Socialist Countries

Socialist countries in Asia¹⁰² have similar fundamental rights provisions in their constitutions. Some do not contain even a single provision on socio-economic liberties; others may have some provisions but in a very restrictive manner. They also do not have compre-

99. India, art. 352 (emphasis added).

100. Rubin, *supra* note 85, at 142.

101. Pak., Part XI (art. 232-237.); Bangla., Part IXA (art. 141A-141C).

102. China, Mongolia, North Korea, Laos, Cambodia, Viet Nam, Myanma (Burma) and Afghanistan. We deal with Sri Lanka under South Asia.

hensive provisions concerning arrest, self-incrimination and confessions made under duress.

On the other hand, they have substantive provisions concerning the right to asylum, and freedom of scientific, cultural and artistic activities. The constitutions provide that the existence of such fundamental rights and freedoms will not infringe upon the interests of the State, of society and of the collective, nor upon the lawful freedoms and rights of their citizens.¹⁰³

B. Independence of the Judiciary and Lawyers in Asian Countries

Needless to say rights and freedoms should not simply be declared in national constitutions but should also be enforceable before the courts. It is a precondition for the full realization of the rights and freedoms set out in national constitutions that the judiciary and the legal profession must be independent. A genuine commitment to the rule of law is essential for the existence of an independent judiciary and legal profession.¹⁰⁴

Although we can find in the constitutions of the Asian countries provisions for the independence of the judiciary, judicial independence has been often infringed in many Asian countries.

In Malaysia, for example, the Constitution was amended, on May 15, 1988, to deprive the courts of their jurisdiction and to make them subordinate to the executive.¹⁰⁵ With this amendment, the principle of

103. For example, Constitution of the People's Republic of China of 1982, art. 51.

104. *See generally*, International Commission of Jurists, *The Independence of Judges and Lawyers in South Asia: Report of a Seminar held in Kathmandu from 1 to 5 September 1987* (1988).

105. The amended Article 121 states that "the high courts and inferior courts shall have jurisdiction and powers as may be conferred by or under federal law."

separation of powers embodied in the Constitution was totally destroyed.¹⁰⁶ Later in the same year, the Malaysian King decided to suspend and then to dismiss the Lord President (the head of the Judicial Service). Although no official reasons were given, it is believed that the suspension is politically motivated.¹⁰⁷

C. Human Rights Treaties and Asian countries

Asian countries so far have not had a good record in ratification of human rights treaties. Only eight countries¹⁰⁸ have ratified the International Covenant on Economic, Social and Cultural Rights, as of November 1, 1989. The International Covenant on Civil and political Rights has the same contracting states. There is no country which ratified the Optional Protocol to the latter Covenant. Only two countries, Sri Lanka and Philippines, have accepted the jurisdiction of the Human Rights Committee under Article 41 of the latter Covenant.

Asia has the worst record of any region in the world for ratification of the Economic, Social and Cultural Rights Covenant, with only 33 percent of states ratifying the Covenant. This compares with 90 percent of Eastern Europe, 65 percent of Western Europe, 60 percent of the Americas, and 39 percent of Africa.

As to the individual human rights treaties, the International Con-

Originally this Article had vested judicial power in the high courts. This change effectively removed judicial authority as a Constitutional Right, subjecting judicial power to laws passed by Parliament (Constitutions of the Countries of the World, *supra* note 26, Vol. IX., Malaysia, 1988 ed., at xii.).

106. Muzaffar, *Malaysia: A Frontal Attack on the Independence of the Judiciary*, 12 Human Rights Internet Reporter, (No. 3) 7, 8 (1988).

107. *Id.*, at 7.

108. Afghanistan, Democratic People's Republic of Korea, India, Japan, Mongolia, Philippines, Sri Lanka and Viet Nam.

vention on the Elimination of All Forms of Racial Discrimination has 14 Asian contracting states.¹⁰⁹ However, there is no contracting state in Asia that has accepted the jurisdiction of the Committee on the Elimination of Racial Discrimination to receive communications from individuals under the article 14 of the Convention. The International Convention on the Suppression and Punishment of the Crime of Apartheid has 13 Asian contracting states,¹¹⁰ as does Convention on the Prevention and Punishment of the Crime of Genocide 14.¹¹¹

The average of Asian countries' ratifications to the ILO treaties remain 18, while 60 in Europe and Americas, 25 in Africa and 19 in Middle East.

IV. The Movement for Promotion and Protection of Human Rights in Asia

A. Efforts made by the United Nations

Efforts to create a regional human rights machinery in Asia by the United Nations may be traced back to the United Nations Seminar on Human Rights in Developing Countries held at Kabul, Afghanistan in May, 1964, where the possibility of establishing such a machinery had been discussed.¹¹² The Commission on Human Rights adopted Resolu-

109. Afghanistan, Bangladesh, China, Democratic Kampuchea, India, Lao People's Democratic Republic, Maldives, Mongolia, Nepal, Pakistan, Philippines, Republic of Korea, Sri Lanka and Viet Nam.

110. Afghanistan, Bangladesh, China, Democratic Kampuchea, India, Lao People's Democratic Republic, Maldives, Mongolia, Nepal, Pakistan, Philippines, Sri Lanka and Viet Nam.

111. Afghanistan, Burma, China, Democratic Kampuchea, India, Lao People's Democratic Republic, Maldives, Mongolia, Nepal, Pakistan, Philippines, Republic of Korea, Sri Lanka and Viet Nam.

112. *Report of the Seminar on Human Rights in Developing Countries, Kabul, Afghanistan, 12-25 May 1964*, U. N. Doc. ST/TAO/HR/21., para. 28.

tion 6(XXIII) in March, 1967 which set up an *ad hoc* Study Group by eleven of its members to study all aspects of the proposal which would establish regional commissions on human rights within United Nations family.¹¹³

The report by the *ad hoc* Study Group represented a variety of views, but there emerged a consensus on one point, that regional human rights commissions could only be established on the direct and exclusive initiative of the states comprising a given region.¹¹⁴ This report was considered by the Commission on Human Rights at its twenty-fourth session in March, 1968.¹¹⁵

Some representatives stated their conviction that universal promotion and protection of human rights would benefit from actions taken at regional levels. Such actions would be of considerable value even if it merely supplemented or sustained the world wide efforts of the United Nations. Reference was made to the valuable experience with regional machinery in Western Europe and Latin America which pointed to the advantages of decentralization.¹¹⁶

113. Adopted by 28 (including Pakistan and the Philippines) votes to none, with 3 abstentions (including India). In March 1967, the Chairman appointed eleven members to the *ad hoc* Study Group including a member from the Philippines. The Study Group was requested to pay particular attention to: (a) the basis on which regional commissions on human rights might be established in those areas where such bodies do not exist; (b) the terms of reference of such Commission and method of appointment of their members; and (c) the relationship between the Commission on Human Rights, on the one hand, and the existing regional commissions and those that may subsequently be established, on the other. *Report of the Commission on Human Rights on Its Twenty-third Session*, 42 U. N. ESCOR, Supp. (No. 6) (1967), paras. 351-369.

114. *Report of the Ad Hoc Study Group Established under Resolution 6(XXIII) of the Commission on Human Rights*, U. N. Doc. E/CN. 4/966 (1968), para. 41.

115. *Report of the Commission on Human Rights on Its Twenty-fourth Session*, 44 U. N. ESCOR, Supp. (No. 4) (1968), paras. 211-250.

116. *Id.* para. 232.

Certain other representatives felt that regional action might be premature. It was pointed out in this regard that regional political evolution toward concerned action could not be artificially accelerated.¹¹⁷

Other representatives, however, asserted that regional action, including the establishment of new regional commissions on human rights, was unnecessary and even undesirable. In their view, the primary responsibility for the promotion and implementation of human rights lay within sovereign States. The most fruitful and productive method available to the Commission on Human Rights, and for that matter to the United Nations, was not to pursue further proposals to establish regional commissions, but to urge States to become legally bound by the numerous international instruments. Furthermore, progress in the enforcement of human rights could best be achieved by more effective utilization of existing international machinery, not by countenancing, or contributing to, the proliferation of new organs.¹¹⁸

Although no agreement could be reached on the desirability of the regional approach for the promotion and protection of human rights, many representatives endorsed the statement—on which there had been a general agreement in the Study Group—that regional human rights commissions could be established only on the direct and exclusive initiative of the States comprising a given region, and that there could be no question of any such body being created from outside the region or by the United Nations imposing its establishment on the States concerned.¹¹⁹

117. *Id.* para. 233.

118. *Id.* para. 234.

119. *Id.* para. 235.

The Commission on Human Rights, after deliberating on the report of the *ad hoc* Study Group, adopted resolution 7 (XXIV) of March, 1968 which requested comments on the report by member governments and regional organizations, and also requested that the Secretary-General consider the possibility of arranging a suitable regional seminar in the regions where no regional commission on human rights presently exists.¹²⁰

Different views were expressed by Asian countries. China considered that “the existing United Nations machinery is adequate to deal with the question of human rights, and there seems to be no urgent need for the establishment of regional commissions on human rights (1968).”¹²¹ Japan admitted that “regional commissions on human rights may work effectively, if the states comprising the given region share similar historical and cultural backgrounds and also similar economic and social conditions, in addition to the same degree of development of legal systems, as in the case of the European Commission on Human Rights.” But it considered that “in most regions of the world, and particularly in Asia, necessary prerequisites to the establishment of such commissions do not seem to exist.”¹²² Singapore supported the idea of establishing regional human rights commissions as “practical and realistic”.¹²³ Afghanistan and Pakistan also took the same position.¹²⁴

120. *Id.* paras. 244-245. The latter request was reiterated by the Commission in its Resolution 24 (XXXIV) of March 1978.

121. *Question of Establishment of Regional Commission on Human Rights, Comments received from Member States and Regional Intergovernmental Organizations Pursuant to Resolution 7 (XXIV) of the Commission on Human Rights, Report of the Secretary-General*, U. N. Doc. E/CN. 4/975 (1968), at 6.

122. U. N. Doc. E/CN. 4/975, Add. 1 (1968), at 2.

123. U. N. Doc. E/CN. 4/975, *supra* note 121, at 16.

124. *Id.* at 4, 14.

The idea of establishing regional human rights commissions was mostly supported at the Third Committee of the General Assembly in November 1975, when the report of the Secretary-General on “Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms” was discussed.¹²⁵

In addition, the General Assembly by its resolution 32/127 of December, 1977, 33/167 of December, 1978 and 34/171 of December, 1979 endorsed resolution 7(XXIV) of the Commission on Human Rights requesting the Secretary-General to consider the possibility of arranging suitable regional seminars in those regions where no regional commissions on human rights existed.¹²⁶ It also requested the Secretary-General, by its resolution 36/154 of December, 1981, to organize the above-mentioned seminar at Colombo, Sri Lanka in 1982, and to report to the General Assembly at its thirty-seventh session on the deliberations of the seminar.

The seminar on national, local and regional arrangements for the promotion and protection of human rights in the Asian region (Colombo Seminar) was convened by the United Nations in co-operation with the Government of Sri Lanka from June 21 to July 2, 1982 in Colombo, Sri Lanka.¹²⁷ All States which were members of the Economic and Social

125. 30 U. N. GAOR C. 3 (2168-69 mtg.), U. N. Doc A/C. 3/SR. 2168-2169 (1975).

126. African Charter on Human Rights and Peoples' Rights (Banjul Charter) adopted in 1981 after the discussions at the Monrovia Seminar and the Dakar Seminar in 1979 which had organized in accordance with these resolutions.

127. *Report of the Seminar on National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asian Region*, U. N. Doc. ST/HR/SER. A/12 (1982).

The agenda of the seminar was as follows: I. Exchange of experience and information on national and local institutions for the promotion and protection of human rights; II. Discussion of existing or proposed regional arrangements in other

Commission for Asia and the Pacific¹²⁸ (ESCAP) were invited to attend the Seminar. Fifteen ESCAP member states, and France, the United Kingdom, the United States and the Soviet Union attended the Seminar.¹²⁹

The desirability, feasibility and timeliness of establishing regional arrangements for the promotion and protection of human rights in Asia and the Pacific was discussed at the seminar.

Many participants recognized the potential value of a regional commission. Some participants considered that regional arrangements in other parts of the world had been useful and could prove equally useful in this region.¹³⁰ The view was expressed that the reasons¹³¹ which had led to the institution of regional arrangements in other regions of the world were equally valid for this region.¹³²

Others, however, valued the contributions of existing regional commissions less highly and felt that political, economic and social

regions of the world ; and III. Consideration of further regional co-operation for the promotion and protection of human rights in the Asian region (*Id.*, para. 12.).

128. Consisting of 37 countries in the region and France, the Netherlands, USSR and USA.

129. Participant states from ESCAP region were Afghanistan, Australia, Bangladesh, China, Democratic Kampuchea, India, Maldives, Mongolia, Nepal, New Zealand, Pakistan, Republic of Korea, Sri Lanka, Thailand and Viet Nam. Governments of the Netherlands and the Philippines sent their observers. Representatives of U. N. bodies, including ESCAP, UNHCR and UNDP, and specialized agencies, including ILO, UNESCO and WHO, and the League of Arab States also attended the Seminar. Various NGOs sent their observers (*Id.* paras. 3-8.).

130. *Id.* para. 52.

— 131. These include: a provision for assistance to the individual against the
八 states; the creation of a right atmosphere for the promotion of human rights;
— increased awareness amongst governments and peoples in need of respect to human rights; the facilitation of United Nations programs in the human rights field; and increased awareness by the United Nations of problems peculiar to this region (*Id.* para. 54.).

132. *Id.*

conditions in this region, as well as ethnic and cultural diversity, made it inopportune to consider the establishment of a commission on human rights for this region at the present time.¹³³ They said that the necessary political will, a prerequisite for evolving intergovernmental collaboration for the promotion of human rights, does not at present exist in the region.¹³⁴ It was also said that regionalism should be discouraged in favor of a global approach. The exercise of moral pressure and persuasion on governments and the building-up of general awareness and vigilance among peoples and NGOs for the promotion and protection of human rights was the ultimate instrument with which the international community could continue its crusade against gross violations of human rights, such as arbitrary arrests and political killings.¹³⁵

Further regional co-operation for the promotion and protection of human rights in the region was also considered at the Colombo Seminar. There was a consensus on the need for international co-operation for the promotion and protection of human rights in the region.¹³⁶ Some participants held the view that some form of regional arrangement is desirable even though their opinions differed as to when it should be established. Other participants, however, did not agree with this view.¹³⁷ All participants agreed, however, that consultative arrangements could be established in various areas such as education, teaching, training, research, documentation, dissemination of information and exchange of experience.¹³⁸

133. *Id.* para. 52.

134. *Id.* para. 55.

135. *Id.* para. 56.

136. *Id.* para. 87(a).

137. *Id.* para. 87(b).

138. *Id.* para. 87(d).

The General Assembly considered the report of the seminar at its thirty-seventh session in 1982, and adopted resolution 37/171 by which the Secretary-General was to request that the report be submitted to all ESCAP states and ask the member states to comment on it. The ESCAP states in turn were to report their evaluations to the Commission on Human Rights. The Secretary-General, upon this resolution, requested that all ESCAP states comment on the report in March 1983. Only six countries, including Australia,¹³⁹ Nepal,¹⁴⁰ India,¹⁴¹ and ESCAP¹⁴² had submitted their comments. This fact implies the unwillingness of countries in the region to establish regional arrangements for the promotion and protection of human rights.

The Commission on Human Rights, having dealt with the question of the promotion and protection of human rights in the Asian region since 1977, adopted resolution 1985/48 at its forty-first session in 1984, requesting the Secretary-General, in co-operation with the ESCAP and Governments of the region, to consider the establishment of a regional

139. U. N. Doc. E/CN. 4/1984/22 (1983), at 2-5. Australia welcomed the Colombo Seminar as a positive and concrete step towards the development of effective co-operation in the Asian region in the field of human rights (*Id.* at 2).

140. U. N. Doc. E/CN. 4/1984/22/Add. 1. (1983), at 2-4.

141. E/CN. 4/1986/19 (1985). India noted that existing regional arrangements to consider of human rights questions have arrived at outside the United Nations system under the auspices of regional group like the Council of Europe, the Organization of American States, the Organization of African Unity and the League of Arab States. The Government of India feels that the regional arrangements for the protection and promotion of human rights can be established only with the initiative and with the concurrence of the States comprising a given region (*Id.* at 3-4).

142. ESCAP submitted its comments as follows: "... any move aimed at establishing an intergovernmental body, such as a regional commission on human rights, is likely to be unproductive at this stage. We feel, on the other hand, that a research and information oriented regional institute could serve a useful purpose" (*Id.* at 5, para. 1.).

depository center for the distribution of human rights materials for Asia and the Pacific (Paragraph 4).¹⁴³

In a letter addressed to the Executive Secretary of the ESCAP, dated May 2, 1985, the Secretary-General, referring to paragraph 4 of the resolution, requested his views on how a depository center for human rights materials could be established in the ESCAP region.¹⁴⁴

In his response, dated October 29, 1985, and addressed to the Secretary-General, the Executive Secretary of the ESCAP proposed that “[t]he function of the depository should include actively collecting, processing and disseminating information on human rights in the region. Otherwise the depository would be merely duplicating the function of the ESCAP library which in effect has been a regional depository for the center for human rights materials.”¹⁴⁵

By its resolution 1986/57¹⁴⁶ and 1987/41,¹⁴⁷ the Commission on Human Rights requested the Secretary-General to encourage the Executive Secretary of the ESCAP to pursue the establishment of a depository center for United Nations human rights materials within ESCAP in Bangkok, Thailand. The function of this depository would include the collection, processing and dissemination of such materials in the region. The Secretary-General, in co-operation with ESCAP, was invited to hold a training course on the teaching of human rights in the Asian-Pacific region.

Pursuant to the latter request, the Training Course on Teaching Human Rights in the Asian and Pacific Region was held in Bangkok,

143. 1985 ESCOR, Supp. (No. 2), at 95-96.

144. U. N. Doc. E/CN. 4/1986/19 (1985), para. 5.

145. *Id.* para. 6.

146. 1986 ESCOR, Supp. (No. 2) (1986), at 131-132.

147. ESCOR, Supp. (No. 5), at 100-101.

Thailand between October 12 and October 23, 1987.¹⁴⁸ As to the former request, however, the Executive Secretary of the ESCAP stated in a letter on August 4, 1986 that the ESCAP's mandate did not provide the secretariat with the terms of reference to undertake activities specifically related to human rights.¹⁴⁹ Thus, the establishment of a depository center for human rights materials within the ESCAP is at a deadlock.

B. Efforts made by the Non-Governmental Organizations

As the governments of the Asian region had indicated at the Colombo seminar that they would not accept an integrated regional machinery for the enforcement of human rights, non-governmental organizations (NGOs) are expected to play an active role in improving human rights conditions in the Asian region.¹⁵⁰ Actually, various kinds of NGOs, international and regional, have already been playing a major role in the region in the promotion, monitoring and enforcement of human rights.

NGOs which extend their human rights activities throughout the Asian region include the International Commission of Jurists (ICJ), Amnesty International, the Law Association for Asia and the Western

148. *Report of the Secretary-General on the Training Course on Human Rights Teaching held in Bangkok from 12 to 23 October 1987*, U. N. Doc., E/CN.4/1988/39/Add.1 (1987). There was a general consensus among participants of the course that it would be both expedient and useful to establish a data-bank and/or a resource library for the region which will collect and distribute laws, documents and other publications throughout the region (*Id.* para. 34.).

149. U. N. Doc. E/CN.4/1987/18 (1986), para. 3.

150. There was a consensus at the Colombo Seminar in 1982 that the role of NGOs in advancing the promotion and protection of human rights in the region was of great importance and that NGOs should be assisted in this task (U. N. Doc. ST/HR/SER. A/12, *supra* note 127, para. 87(*t.*)).

Pacific (LAWASIA) and the Asian Human Rights Commission. Other NGOs are involved in human rights activities on a sub-regional basis. Prominent among them is the Regional Council on Human Rights in Asia which is at work in Southeast Asia.

International Commission of Jurists (ICJ)

The ICJ is a non-governmental organizations devoted to promoting throughout the world the understanding and observance of the Rule of Law and the legal protection of human rights. Its activities in Asia include: (a) organizing congresses, conferences and seminars; (b) issuing press statements; conducting studies or inquiries into particular situations or subjects concerning the Rule of Law and publishing reports upon them; and (c) intervening with governments concerning violations of the Rule of Law.

The ICJ has so far convened many conferences and seminars for promoting human rights in Asia, recent examples of which include the Bangkok Seminar on the Erosion of the Rule of Law in Asia in December, 1987¹⁵¹ and the Asian Seminar on the Role of Law and Social Science in June, 1988 in Bombay, India.¹⁵² In 1988 the ICJ issued press releases concerning violations of the Rule of Law in Malaysia and Singapore.¹⁵³

151. 35 ICJ Newsletter 24-37 (1987).

152. 38 ICJ Newsletter at 12-13 (1988).

153. On April 25, the ICJ issued a press release urging the government of Singapore to bring to trial or release the nine persons detained under the Internal Security Act without charge or trial on 19 April 1988. The ICJ also expressed its concern over the move to remove the head of Malaysia's judiciary in a press release on 7 June 1988. (*Id.*, at 8-10.)

Amnesty International (AI)

AI is an independent worldwide human rights NGO focusing its activities strictly on (a) securing the immediate and unconditional release of all prisoners of conscience, (b) ensuring fair and prompt trials for all political prisoners and (c) abolishing torture and executions. AI extends its activities to the whole Asian region where it locates violations of human rights within its mandate. It collects and analyses information on human rights abuses, sends fact-finding missions for on-the-spot investigations and to observe trials, and publishes reports thereof.¹⁵⁴

LAWASIA Human Rights Standing Committee

LAWASIA is a private, non-governmental, non-political association of lawyers from sixteen non-socialist countries in the ESCAP geographical area. The LAWASIA council approved the establishment of the LAWASIA Human Rights Standing Committee at its sixth conference held in Colombo in August/September 1979.

The duties and functions of the Committee is, *inter alia*, (a) to work toward the establishment of a center or centers for human rights in the LAWASIA region,¹⁵⁵ (b) to initiate as a matter of priority steps towards the ultimate establishment of an Asian commission and/or a court for human rights in the LAWASIA region and (c) to prepare and publish reports on matters affecting human rights within the LAWASIA region.¹⁵⁶

154. Publications by the AI are found in *supra* notes 3, 7, and 8.

155. The Committee acts as a liaison body and a document clearing-house for regional human rights groups. The Committee regularly receives, reproduces, and subsequently distributes documents from Asian human rights organizations (7 Human Rights Internet Reporter, (No. 2) 392 (1981)).

156. Khushalani, *supra* note 2, at 437.

At its first meeting in Hong Kong in March 1980, the Committee decided that it would receive and investigate complaints of human rights violations forwarded by lawyers, bar associations and “other responsible voices of opinion” within the region. The Committee examines facts, seeks comments from the parties concerned and “present[s] a report referring to both comments, together with its own conclusions”.¹⁵⁷ The Committee regularly sends representatives or observers to trials in the region that involve human rights issues.¹⁵⁸

Following the recommendation¹⁵⁹ of the Colombo seminar in 1982, the Committee invited approximately 200 national, local and international NGOs to discuss the establishment of a regional coordinating NGO. The meeting was held in New Delhi in October 1982, with representatives from 34 NGOs from 12 ESCAP countries in attendance, and unanimously resolved to establish a coalition of human rights organizations in the region.¹⁶⁰

Asian Coalition of Human Rights Organizations (ACHRO)

Under the auspices of LAWASIA, the Asian Coalition of Human Rights Organizations (ACHRO) was established as an independent organization, and held its first meeting in Manila, Philippines in Sep-

157. *Id.* at 438.

158. 7 Human Rights Internet Reporter, (No. 5) 1024 (1982). The Committee established a LAWASIA “Observer Programme” to send observer to human rights trials, in cooperation with Amnesty International and the ICJ, and adopted a set of guidelines that the observers will follow (9 Human Rights Internet Reporter, (No. 1/2) 109 (1983)).

159. The Colombo Seminar recommends that “the non-governmental organizations develop co-operative activities in the region with a view, *inter alia*, to enhancing the dissemination of information on human rights in the region”, U. N. Doc. ST/HR/SER. A/12 (1982), *supra* note 127, para. 100.

160. 8 Human Rights Internet Reporter, (No. 1) 55 (1982).

tember, 1983.¹⁶¹

The initial ACHRO program of work will comprise three components, each drawing on a specific category of its members: (a) members who are grassroots organizations of the poor will take the lead in implementing a program of victim-group-oriented-action research, including rural women, migrant rural labor, small fishermen and indigenous people; (b) members who belong to support groups working at the grassroots level will take the lead in implementing a program of research on violations of the rights of support groups working with grassroots-level communities of the rural poor; (c) members who belong to legal activist groups will take the lead in implementing studies involving critical areas of law which inhibit human rights activities.¹⁶²

Asian Human Rights Commission (AHRC) and Asian Legal Resource Centre (ALRC)

A consultation of Asian Lawyers for Justice and Human Rights sponsored by the Christian Conference of Asia drew 60 participants from 14 Asian countries in Hong Kong in October 1983. A proposal to establish an Asian Human Rights Commission (AHRC) and an Asian Legal Resource Center (ALRC) was made in response to the repeated

161. The structure of the ACHRO will take the form of an association of NGOs active to promote and/or protect human rights in the ESCAP region, and encourage greater participation of rural organizations in the region; and that membership will be open to all non-governmental groups, either social, legal or religious, or concerned with only one particular aspect of human rights (9 Human Rights Internet Reporter, (No. 1/2) 108-109 (1983)).

162. The Asian Coalition of Human Rights Organizations (ACHRO), *Human Rights Activism in Asia: Some Perspectives, Problems and Approaches*, at 74-75 (1984).

rejections by the governments in this region to any type of regional inter-governmental human rights system. The AHRC and ALRC were formally inaugurated on December 10, 1984 in Tokyo. Both organizations are based in Hong Kong.¹⁶³

The objectives of the AHRC are “to promote human rights, to inform public opinion, to seek relief for the victims of violations of human rights, to examine alleged violations, to assess allegations, to send investigations, to develop safeguards for jurists, and to take such other action as may be appropriate for the protection, development and advancement of human rights in the region.”¹⁶⁴ The ALRC will work to develop effective legal resources for the poor and disadvantaged in Asia, especially those subjected to multiple forms of oppression. The ALRC will seek to strengthen and encourage positive actions with regard to legal and human rights issues by the bar and other legal bodies and personnel, at local and national levels.¹⁶⁵

Regional Council on Human Rights in Asia

Jurists and human rights advocates from Thailand, the Philippines, Malaysia and Indonesia founded in Manila, in February, 1982, the Regional Council on Human Rights in Asia (Regional Council), a human rights NGO based in the ASEAN region in Southeast Asia. The goals of the Regional Council as expressed in its Constitution are : (a) to adopt a regional declaration of human rights that reflects the culture, values, and aspirations of the people in the region ; (b) to disseminate the Declaration of the Basic Duties of ASEAN Peoples and

163. 4 CCRAI Documentation Series, (No. 2), *supra* note 6, at i (1985).

164. Article 2 of the Statute of AHRC.

165. 10 Human Rights Internet Reporter, (No. 1/2) at 203 (1984).

Governments as widely as possible in the region ; (c) to encourage the governments in the region to ratify human rights conventions including the International Covenants on Human Rights ; (d) to receive petitions or complaints from individuals and groups of violations of their rights and to assist them to obtain redress ; and (e) to to undertake study and research into the state of human rights in the region, develop indications of respect for human rights, and publish their findings.¹⁶⁶

The Regional Council met in Jakarta in December 1983 and issued a statement on the promotion of human rights in the ASEAN region and Declaration of the Basic Duties of ASEAN Peoples and Governments.¹⁶⁷ Unlike other existing human rights documents, this Declaration adopted a unique form of providing rights and freedoms by imposing “duties” on governments and peoples.¹⁶⁸ It urged all governments and peoples in the region to incorporate duties enumerated in it into their national constitutions and laws, and to faithfully implement and enforce them (paragraph 6 of the preamble to the Declaration).

The Regional Council requested ASEAN to create a division on human rights and to adopt the Declaration at its Fifth General Assembly in Manila in December, 1987.¹⁶⁹

166. 7 Human Rights Internet Reporter, (No. 3) 570-571 (1982).

167. 9 Human Rights Internet Reporter, (No. 3) 420 (1984). The Text of the Declaration: Regional Council on Human Rights in Asia, Declaration of the Basic Duties of Asean Peoples and Governments (Dec. 9, 1983).

168. The Declaration set out the duties of governments and peoples in the following articles: Article I. Basic Principles; Article II. Peace; Article III. Independent Development; Article IV. People's Participation; Article V. Social Justice; Article VI. Education; Article VII. Mass Communications Media; Article VIII. Cultural Communities; Article IX. The Military; Article X. Torture and Similar Practices; and Article XI. Public Emergencies.

169. 12 Human Rights Internet Reporter, (No. 2) 49 (1988). The Council had already made the same appeal at its meeting in December 1984 (10 Human Rights Internet Reporter, (No. 3/4) 365 (1985)).

V. Conclusion

The survey has shown that Asia has suffered from various kinds of human rights violations. Asian countries have their own legal framework to promote and protect human rights in their states. However, fundamental rights and freedoms set forth in their constitutions have been often infringed in the name of the restrictions imposed by laws, by preventive detentions or state emergency. The judiciary is not necessarily independent in many Asian countries, even if the independence is legally protected under their constitutions. Thus, the actual and legal human rights circumstances in this region remain in an undesirable situation.

Various efforts have been made so far at national, regional and international levels to improve human rights conditions in this region. We focused on the efforts by UN and NGOs to encourage regional approaches for that purpose.

On the basis of the foregoing survey, several recommendations can be made. First, it is highly desirable and fruitful to open and maintain a forum, especially at an inter-governmental level, for the discussion and exchange of information on human rights situations in Asian region. This forum must be open to all governments which are interested in improving human rights situations in Asia, but a forum must be established at the initiative of the Asian countries.

Second, we have to be more interested in the effectiveness of a regional approach for the promotion and protection of human rights for the Asian region. The fact that the region is a conglomeration of countries with radically different social structures, and diverse religious, philosophical and cultural traditions should not deter anyone

from considering the effectiveness of a regional approach.

Third, we have to find a common base of human rights norms which are acceptable to Asian countries and are consistent with internationally established ones.¹⁷⁰

170. In this context, the following book may offer suggestions as to the human rights norms from different religious perspectives. Human Rights and Religions in Sri Lanka: A Commentary on the Universal Declaration of Human Rights (Sri Lanka Foundation ed. 1988).