

ARTICLES

RHRIS, NHRIS AND HUMAN RIGHTS NGOS

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Governments and NGOs need each other: governments, because they can use the information supplied by NGOs; NGOs, because their objective – the promotion and protection of human rights in the world – can only be attained through the activities of governments. They are, as it were, two sides of the same coin.¹

[R]eaffirmed faith in the crucial importance of cooperation between national human rights institutions and NGOs and recognised they should work together on the basis of their common commitment to the universality and indivisibility of human rights as expressed in the Universal Declaration of Human Rights, international human rights instruments and the Vienna Declaration . . . also recognised that national human rights institutions and NGOs have different roles in the promotion and protection of human rights and that the independence and autonomy of civil society and NGOs and of national human rights institutions must be respected and upheld.²

I. INTRODUCTION

It is no more a new phenomenon, and indeed, undeniable fact that human rights NGOs have played a crucial role for the promotion and protection of human rights in the world. In particular, since the 1990s, their transnational character³ and increasing intervention on and participation in human rights issues at the national, regional and international level has been emphasized in a large number of studies.⁴ That is, civil societies, including NGOs, have externalized their human rights claims by seeking support from regional and international allies when they have been frustrated with their inability to attain redress from

1. PETER R. BAEHR, NON-GOVERNMENTAL HUMAN RIGHTS ORGANIZATIONS IN INTERNATIONAL RELATIONS 124 (2009).

2. ASIA PACIFIC FORUM, *The Kandy Program of Action: Cooperation Between National Institutions and Non-Governmental Organizations*, ¶ 1.5 (July 28, 1999), available at http://www.asiapacificforum.net/support/training/regional-workshops/non-government-organizations/downloads/Kandy_Program_of_Action.doc/at_download/file (last visited Mar. 15, 2012).

3. See Mary Kaldor, *Transnational Civil Society*, in HUMAN RIGHTS IN GLOBAL POLITICS 195 (Tim Dunne & Nicholas J. Wheeler eds., 1999).

4. H. STEINER ET AL., INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 1421 (3d ed. 2008). See generally MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998); *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* (Thomas Risse et al. eds., 1999) [hereinafter *THE POWER OF HUMAN RIGHTS*].

their own governments,⁵ and their transnational activism has been empowered and legitimized by the international human rights norms.⁶ Margaret Keck and Kathryn Sikkink call such an externalization of claims by networks of NGOs *the boomerang effect*:

When channels between the state and its domestic actors are blocked, the boomerang pattern of influence characteristic of transnational networks may occur: domestic NGOs bypass their state and directly search out international allies to try to bring pressure on their states from outside. This is most obviously the case in human rights campaigns.⁷

Keck and Sikkink, however, focus on only one form of pressure, namely “*informational politics*,” in which external allies “diffuse information about abuses to sympathetic governments[,] and public opinion abroad . . . then *boomerangs* into pressure on repressive states;” the authors leave unspecified other pathways of externalization, including the use of *institutionalized access*, in which NGOs bring domestic human rights claims to external institutions in authority[,] and those institutions transform the complaints received into binding rules for the correction of abuses.⁸ I believe Regional Human Rights Institutions (RHRIs) can play such a role as an intermediate institution to link regional human rights NGOs’ advocacy network to social change and legal mobilization at the national level for better human rights practices.

At the same time, while the transnational human rights movement by NGOs plays a critical role in the national and regional human rights mechanisms, the traditional roles of national governments still “remain central to the lives of citizens,”⁹ because, as Sidney Tarrow maintains, “sustainable change will only be achieved when national governments are continually pushed to live up to their claims and when the pressure ‘*from below*’ and ‘*from above*’ continues.”¹⁰ Therefore, National Human Rights Institutions (NHRIs) and their networks are also vital as channeling institutions for active cooperation and collaboration with international and regional human rights institutions and human rights NGOs.

5. SIDNEY TARROW, *THE NEW TRANSNATIONAL ACTIVISM* 145 (2006).

6. See Kathryn Sikkink & Jackie Smith, *Infrastructures for Change: Transnational Organizations: 1953-1993*, in *RESTRUCTURING WORLD POLITICS: THE POWER OF TRANSNATIONAL AGENCY AND NORMS* 24-44 (Sanjeev Khagram et al. eds., 2002).

7. KECK & SIKKINK, *supra* note 4, at 12.

8. TARROW, *supra* note 5, at 146, 158-60.

9. HELEN M. STACY, *HUMAN RIGHTS FOR THE 21ST CENTURY: SOVEREIGNTY, CIVIL SOCIETY, CULTURE* 118 (2009).

10. TARROW, *supra* note 5, at 159. See also RISSE ET AL., *supra* note 4, at 33.

In this Article, I will review the characteristics of human rights NGOs and their evolving role within the existing international and regional human rights mechanisms, and further, the way in which they have worked together for better human rights practices and the establishment of RHRIs in the Asian region. Then, I will examine the role of human rights NGOs in strengthening human rights protection systems at the national level, especially in cooperation with NHRIs. Lastly, I will discuss the process of establishing NHRIs in selected Asian countries and more specifically, how human rights NGOs have influenced this process.

II. NON-GOVERNMENTAL HUMAN RIGHTS ORGANIZATIONS IN THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The number of NGOs has dramatically increased over the last century—from 1,083 in 1914 to more than 37,000 in 2000, with about one-quarter of them established after 1990.¹¹ “There are over 300 international human rights NGOs which operate across national borders[,] and nearly two-thirds of them are based in Western countries: 46% in Western Europe and 17% in North America.”¹² While Western-based major international NGOs are more focused on civil and political rights, NGOs from the Third World (or the Global South) are generally reported to work more on development and social, economic, and cultural rights.¹³ Southern human rights NGOs are also more likely to cooperate with other NGOs and to influence domestic institutions.¹⁴ As Henry Steiner points out, this shows the regional differences in priorities and even reflects understandable tensions within the international human rights movement.¹⁵ However, the margin of differences is, while significant, nevertheless nominal, and the growing emergence of human rights NGOs in the Third World has helped strengthen the indivisibility of international human rights norms because most of them “assume the universality of human rights as a point of departure. This assumption provides them with the right to challenge governments’ performance in the field of human rights.”¹⁶

11. HELMUT ANHEIER ET AL., *GLOBAL CIVIL SOCIETY* 4 (2001); BAEHR, *supra* note 1, at 6.

12. BAEHR, *supra* note 1, at 7. *See also* Jackie Smith et al., *Globalizing Human Rights: The Work of Transnational Human Rights NGOs in the 1990s*, 20 *HUM. RTS. Q.* 379, 387 (1998).

13. Smith et al., *supra* note 12, at 390.

14. *Id.* at 411.

15. *See* HENRY J. STEINER, *DIVERSE PARTNERS: NON-GOVERNMENTAL ORGANIZATIONS IN THE HUMAN RIGHTS MOVEMENT, THE REPORT OF A RETREAT OF HUMAN RIGHTS ACTIVISTS* 17-18 (1991).

16. BAEHR, *supra* note 1, at 120. At the same time, he also recognizes the different

Given this background, Part II.A below examines how human rights NGOs can be defined and what their role has been within the development of the international human rights system.

A. *Human Rights NGOs: What Are They?*

“There is no international law which provides an authoritative definition of non-governmental organizations in general[,] and there is no generally agreed upon definition of human rights NGOs among scholars, either.”¹⁷ I broadly maintain that human rights NGOs should have four basic elements, that is, they should be: 1) non-profit, 2) independent—specifically without interference from governments, 3) people-based, and 4) devoted to the promotion and protection of human rights. The first three aspects are not necessarily limited to human rights NGOs but apply to NGOs in general.

The first element is clearly suggested in the 1994 report of the Secretary-General for the U.N. Economic and Social Council (ECOSOC), which was prepared to make *suitable arrangements* for consultation with NGOs based on Article 71 of the U.N. Charter¹⁸ and further, to decide which organizations are granted consultative status with the United Nations:

An NGO is a non-profit entity whose members are citizens or associations of citizens of one or more countries and whose activities are determined by the collective will of its members in response to the needs of the members or of one or more

perspectives between Western-based NGOs and those from Southern countries and describes their tension:

At the UN World Conference on Human Rights in 1993, differences of view arose between large, well-organized NGOs, usually based in Western countries, on the one hand, and relatively poor, less well-organized organizations often from ‘Southern’ countries, on the other. The latter showed some irritation that the former assumed that they could speak on behalf of all NGOs. The claim of different ‘cultural’ approaches, as well as different interests, does not seem to be limited to governments alone.

Id. at 5.

17. Menno T. Kamminga, *The Evolving Status of NGOs under International Law: A Threat to the Inter-State System?*, in NON-STATE ACTORS AND HUMAN RIGHTS 93, 95 (Philip Alston ed., 2005).

18. Article 71 of the U.N. Charter stipulates that “[t]he Economic and Social Council may make suitable arrangements for consultation with nongovernmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.” U.N. Charter art. 71.

communities with which the NGO cooperates.¹⁹

Such a non-profit aspect is an essential element that constitutes NGOs as credible and accountable entities pursuing non-material goals.

The second element comes from the very title of NGOs. They are not governmental institutions but independent and impartial organizations. Indeed, most NGOs reject support from government sources in the belief that states cannot adequately represent the interests of local groups and individuals. The third aspect is closely related to the *social movement*, which is the foundation of NGOs as they are defined by Dianne Otto: “[O]rganizations that aim to represent values and aspirations associated with peoples rather than with states, including the promotion of human rights, gender and race equality, environmental protection, sustainable development, indigenous rights, nonviolent conflict resolution, participatory democracy, social diversity, and social and economic justice.”²⁰

The last element comes from human rights NGOs’ own activities and their aims: the promotion and protection of human rights. There can be general human rights organizations and ones that specialize in a particular human rights issue. Laurie Wiseberg clearly distinguishes the latter from other NGOs by defining a human rights NGO as “a private association which devotes significant resources to the promotion and protection of human rights, which is independent of both governmental and political groups that seek direct political power, and which does not itself seek such power.”²¹ Overall, while there is no authoritative definition, human rights NGOs should be understood—based on their activities, aims, transnational networks, and social movements—as independent, non-profit, and people-based organizations, which seek to make individual governments at least reconsider their people’s rights and interests that have been neglected.

B. Role of Human Rights NGOs in the International Human Rights Mechanism

As Hidetoshi Hashimoto maintains, “NGOs have strengths where governments have weaknesses.”²² “As impartial and credible people-

19. U.N. Economic and Social Council Secretary-General, *Report of the Secretary-General: General Review of Arrangements for Consultations with Non-Governmental Organizations*, ¶ 9, U.N. DOC. E/AC.70/1994/5 (May 26, 1994), cited in Dianne Otto, *Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society*, 18 HUMAN RIGHTS Q. 107, 111 (1996).

20. Otto, *supra* note 19, at 112.

21. Laurie Wiseberg, *Protecting Human Rights Activists and NGOs: What More Can Be Done?*, 13 HUMAN RIGHTS Q. 524, 529 (1991).

22. HIDETOSHI HASHIMOTO, THE PROSPECTS FOR A REGIONAL HUMAN RIGHTS MECHANISM

based organizations, they freely criticize individual country's human rights situations at the international level[,] and their criticism is taken ever more seriously by international human rights monitoring bodies."²³ Indeed, human rights NGOs are increasingly recognized as important independent actors in the international human rights system and have extended the discourse of international human rights norms "beyond the interests of states to hear the many voices currently excluded."²⁴ Here, I define four ways in which human rights NGOs significantly impact the international human rights mechanism.

First, human rights NGOs monitor individual countries' compliance with ratified international human rights treaties and report on the domestic human rights situation to the international community using the Internet, mass media, and social media. They also expose each government's human rights violations to international civil societies in order to mobilize them into actively preventing such abuses.

Secondly, human rights NGOs provide essential, reliable, objective, and up-to-date human rights information at the local, national and regional level to the United Nations, including human rights treaty bodies, for effective implementation of international human rights norms. The NGOs' oral and written interventions, made through briefs, petitions, documentary evidence, and reports, have played a crucial role as *the eyes and ears* of the U.N. human rights system.²⁵ The Economic and Social Council (ECOSOC),²⁶ the International Labor Organization (ILO),²⁷ and the Educational, Scientific and Cultural Organization (UNESCO),²⁸ for example, offer human rights NGOs *consultative status*, which allows them to attend meetings, and to make and circulate their own statements.

Thirdly, human rights NGOs contribute to setting up international norms in various human rights areas through their constant efforts to identify still unveiled human rights areas and to require the adoption of

IN EAST ASIA, 39 (2004).

23. See Emanuele Rebasti, *Beyond Consultative Status: Which Legal Framework for an Enhanced Interaction Between NGOs and Intergovernmental Organizations?*, in *NGOS IN INTERNATIONAL LAW: EFFICIENCY IN FLEXIBILITY?* 25, 30-34, 42 (Pierre-Marie Dupuy & Luisa Vierucci eds., 2008).

24. Otto, *supra* note 19, at 107-09, 140-41.

25. Irwin Cotler, *The Role of Non-Governmental Organizations in the Promotion and Protection of Human Rights in a Revolutionary Age: The Helsinki Process as a Case Study*, in *INTERNATIONAL HUMAN RIGHTS: THEORY AND PRACTICE* 459, 462-63 (Irwin Cotler & F. Pearl Eliadis eds., 1992).

26. See Otto, *supra* note 19, at 107.

27. See Nicolas Valticos, *The International Labor Organization*, in *THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS* 363-400 (Karel Vasak ed., 1982) [hereinafter *INTERNATIONAL DIMENSIONS*].

28. See Hanna Saba, *UNESCO and Human Rights*, in *INTERNATIONAL DIMENSIONS*, *supra* note 27, at 401-46.

related international treaties and resolutions. Further, in many cases, they participate in or provide input into the process of drafting international human rights standards like the Universal Declaration of Human Rights,²⁹ the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,³⁰ and the Convention on the Rights of the Child.³¹

Lastly, when there are gross human rights violations in certain countries, human rights NGOs can provide humanitarian assistance to target states and, if possible, can indirectly intervene to mobilize public opinion against their governments because the United Nations and Member States rarely take any concrete action to intervene in most cases with complicated political and diplomatic interests. In addition, NGOs can report and reveal the human rights situation in target countries, especially when the United Nations cannot conduct fact-finding missions in the countries because of limited accessibility.³²

Overall, human rights NGOs have contributed to strengthening the international human rights system and to effectively implementing international norms at the national and regional level. However, they also face many challenges. First of all, many governments, and not only authoritarian ones, hamper human rights NGOs' activities that expose governments' wrong-doings to the international community and pressure governments to change their human rights policies.³³ Most NGOs in Third World countries also struggle with limited financial resources, and if they are funded by Western donors, a common practice, governments restrict their activities in suspicion of the foreign

29. Theo Van Boven, *The Role of Non-Governmental Organizations in International Human Rights Standard-Setting: A Prerequisite of Democracy*, 20 CAL. W. INT'L L.J. 207, 211 (1990).

30. *Id.* at 217-20. See also Virginia Leary, *A New Role for Non-Governmental Organizations in Human Rights: A Case Study of Non-Governmental Participation in the Development of International Norms on Torture*, in U.N. LAW, FUNDAMENTAL RIGHTS: TWO TOPICS IN INTERNATIONAL LAW 197-210 (Antonio Cassese ed., 1979).

31. Boven, *supra* note 29, at 218. See also generally Cynthia Price Cohen, *The Role of Nongovernmental Organizations in the Drafting of the Convention of the Child*, 12 HUM. RTS. Q. 137 (1990).

32. See generally David Weissbrodt & James McCarthy, *Fact-Finding by International Nongovernmental Human Rights Organizations*, 22 VA. J. INT'L L. 1 (1981).

33. For example, in the Asia-Pacific region, human rights defenders have continuously been "subjected to assassinations, disappearances, illegal arrest and detention, and torture," even in democratic countries with the excuse of national security and public order. See U.N. General Assembly, *Human Rights Defenders*, Rep. of the Secretary-General, ¶ 53, U.N. Doc. A/57/182 (July 2, 2002); see also ASIA PACIFIC HUMAN RIGHTS NETWORK, BACKGROUND PAPER: HUMAN RIGHTS DEFENDERS (Feb. 2004), available at http://www.asiapacificforum.net/about/annual-meetings/8th-nepal-2004/downloads/ngo-statements/ngo_hrdefenders.pdf (last visited Mar. 15, 2012).

funders' motivation.³⁴ Moreover, with the increasing number of NGOs, it has been difficult to effectively reflect their concerns and address their interests at the United Nations³⁵ and other international institutions; as Michael Posner describes it, because so many governments and NGOs want to speak, NGOs are frequently allotted the least popular time, "late at night, when the great majority of government representatives have gone home. [As a result,] [t]he impact of months of research and information-gathering [of NGOs] may be virtually nil."³⁶

All those challenges show that it is necessary to have intermediate institutions—NHRIs and RHRIs—for human rights NGOs to effectively play their role in the promotion and protection of human rights. The former can work as official channels between governments and NGOs to lessen their conflicts and enhance their relationship because NHRIs have both governmental and non-governmental characteristics. The latter can provide many more opportunities for NGOs to present their concerns and cases and relatively easier accessibility to RHRIs for them than international institutions. Therefore, in the following two Parts, I will review the role of human rights NGOs at the regional and national level and their relationship with RHRIs and NHRIs.

III. RHRIS AND HUMAN RIGHTS NGOS

Human rights NGOs are increasingly becoming not only international but also regional. As "sovereign-free-actors," their activities are not limited within the boundary of national borders in their pursuit of the promotion and protection of human rights issues in common concern within the region.³⁷ That is, to achieve their aims, they promote regional integration, active transnational cooperation, and collaboration with other NGOs across national borders. Thus, in this Part, I will first examine the role of human rights NGOs and their impact on the existing regional human rights systems in Europe, the

34. See Clarence J. Dias, *Relationships Between Human Rights NGOs in the Third World*, in HUMAN RIGHTS PERSPECTIVE AND CHALLENGES: IN 1990 AND BEYOND 105, 109, 112, 125-26 (K.P. Saksena ed., 1994).

35. For example, the number of NGOs that enjoy consultative status at the United Nations has increased from 41 in 1945 to 3400 today. See U.N. Dep't of Econ. and Soc. Affairs, Introduction to ECOSOC Consultative Status, UNITED NATIONS, <http://esango.un.org/paperless/Web?page=static&content=intro> (last visited Aug. 31, 2012); see also U.N. Economic and Social Council Secretary-General, *List of Non-Governmental Organizations in Consultative Status with the Economic and Social Council as of 1 September 2010*, U.N. Doc. E/2010/INF/4 (Sept. 1, 2010), available at <http://esango.un.org/paperless/reports/E2010INF4.pdf>.

36. Michael Posner, *The Establishment of the Right of Nongovernmental Human Rights Groups to Operate*, in HUMAN RIGHTS: AN AGENDA FOR THE NEXT CENTURY 405, 415 (Louis Henkin & John Lawrence Hargrove eds., 1994).

37. HASHIMOTO, *supra* note 22, at 43.

Americas, and Africa. Then I will focus on how human rights NGOs have worked together to foster a human rights culture in the Asia-Pacific region and the way in which they take concrete steps toward establishing RHRI in this region.

A. Role of Human Rights NGOs in Regional Human Rights Mechanisms

In the European human rights system, human rights NGOs have made significant contributions in the following five main ways. First, they have been actively involved in drafting regional human rights treaties like the European Convention on the Legal Status of Migrant Workers, the European Convention for the Prevention of Torture, the European Cultural Convention and the European Charter for Regional or Minority Languages.³⁸ For example, the text of the European Convention for the Prevention of Torture was prepared by two human rights NGOs: the Swiss Committee against Torture and the International Commission of Jurists.³⁹

Further, following guidelines for granting consultative status to a group of NGOs in 1954 under the Committee of Ministers' Resolution, the Council of Europe has offered NGOs consultative status.⁴⁰ With it, they can address their concerns and activities to the Council of Europe and at the same time, the Parliamentary Assembly and its committees can seek advice from them.⁴¹ Currently, over 350 NGOs have been granted consultative status.⁴²

Second, they can file direct complaints before the European Court of Human Rights (ECtHR) based on Article 34 of the European Convention on Human Rights (ECHR).⁴³ In other words, similarly to private individuals, human rights NGOs have the right to lodge an application before the ECtHR if they are victims of violations of the Convention. Moreover, they can act as witnesses before the Court. For

38. *See Open to Voluntary Organizations*, THE COUNCIL OF EUROPE, <http://www.coe.ro/nog.html> (last visited Feb. 26, 2012).

39. *See The Council of Europe, Historical Background and Main Features of the European Torture Convention*, THE COUNCIL OF EUROPE, available at <http://www.cpt.coe.int/en/documents/historical-background.htm> (last visited Mar. 15, 2012).

40. Marek Antoni Nowicki, *NGOs Before the European Commission and the Court of Human Rights*, 14 NETH. Q. HUM. RTS. 289, 292 (1996).

41. *Id.*

42. *Id.*

43. European Convention on Human Rights art. 34, Nov. 4, 1950, 213 U.N.T.S. 221:

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

example, in 1968, when the European Commission of Human Rights reviewed the case submitted by Member States in the Council of Europe against widespread torture in Greece, representatives of Amnesty International, which had conducted a fact-finding mission to Greece a year before, presented as witnesses during the proceedings.⁴⁴

Third, human rights NGOs can provide legal advice to the victims who wish to bring their cases before the ECtHR by completing their application, consulting the ECHR procedures, and assisting them in formulating competent arguments. In addition, they can stand before the Court as lawyers to represent the victims or find adequate attorneys for them.

Fourth, as Article 36 (2) of the Convention allows, human rights NGOs can get involved in the proceedings by third-party intervention, namely, *Amicus Curiae* briefs.⁴⁵ This is the only way NGOs can participate in sensitive human rights cases when they are not the original parties to the cases. Through such participation, they can address unrepresented public interests in the case and also raise public awareness of related human rights issues.⁴⁶ Lastly, they can disseminate knowledge of the European Human Rights Convention and the Court to newly-joined member countries, especially those from Central and Eastern Europe.⁴⁷

While the European system does not grant human rights NGOs access to non-victim representatives, in the Inter-America human rights system, human rights NGOs can bring their cases—even if they are not the victims of violations—before the Inter-American Commission on Human Rights based on Article 44 of the American Convention of Human Rights (ACHR).⁴⁸ Though there is no specific provision regulating their submission, they can also file *Amicus Curiae* briefs to advisory proceedings by the Inter-American Court of Human Rights,

44. Dean Zagorac, *International Courts and Compliance Bodies: The Experience of Amnesty International*, in CIVIL SOCIETY, INTERNATIONAL COURTS AND COMPLIANCE BODIES 11, 18 (Tullio Treves et al. eds., 2005).

45. Article 36(2) of the European Convention on Human Rights stipulates: “The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.” European Convention on Human Rights art. 36(2), Nov. 4, 1950, 213 U.N.T.S. 221.

46. Luisa Vierucci, *NGOs Before International Courts and Tribunals*, in NGOs IN INTERNATIONAL LAW: EFFICIENCY IN FLEXIBILITY? 155, 165-66 (Pierre-Marie Dupuy & Luisa Vierucci eds., 2008). See also Dinah Shelton, *The Participation of Nongovernmental Organizations in International Judicial Proceedings*, 88 AM. J. INT’L L. 611, 630-40 (1994).

47. HASHIMOTO, *supra* note 22, at 94.

48. Art. 44 American Convention on Human Rights, Advisory Opinion OC-13/93, Inter-Am. Ct. H.R. (July 16, 1993) (“Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.”).

just as the ECHR permits.⁴⁹

For example, the Center for Justice and International Law (CEJIL), one of the most active human rights NGOs in the region, directly intervened in more than two hundred cases before the Inter-American Commission and Court of Human Rights to represent over ten thousand victims who had suffered human rights violations such as forced disappearances, extrajudicial executions, due process violations, conditions of detention, freedom of expression, and inhumane treatment.⁵⁰ Further, many human rights NGOs in the Inter-America region have actively worked for the documentation of the human rights situation there through visiting countries regularly, collecting information on human rights violations by Member States, and publishing periodic state reports.⁵¹

In contrast to Europe or the Americas, in the African human rights system, human rights NGOs cannot bring individual cases of human rights violations because the case must reveal the “existence of a series of serious or massive violations of human and peoples’ rights,” as Article 58 of the African Charter on Human and Peoples’ Rights points out.⁵² The African Commission on Human and Peoples’ Rights, however, grants observer status to NGOs, which provides them with the opportunity to be present in public sessions of the Commission and its subsidiary bodies, and to propose items for the Commission’s agenda.⁵³ Every two years, the NGOs also submit a report to the Commission on their human rights activities, which can provide an alternative view to the official state reports.⁵⁴

49. Shelton, *supra* note 46, at 628.

50. FAQs about CEJIL, The Center for Justice and International Law, <http://cejil.org/en/faqs-about-cejil> (last visited Feb. 24, 2012).

51. HASHIMOTO, *supra* note 22, at 96-97.

52. African Charter on Human and Peoples’ Rights art. 58, ch. I (Oct. 21, 1986) (*adopted* June 27, 1981).

53. The African Commission on Human and Peoples’ Rights, Resolution on the Criteria Granting and Enjoying Observer Status to Non-Governmental Organizations Working in the Field of Human Rights with the African Commission on Human and Peoples’ Rights, 25th Ordinary Session, in Bujumbura, Burundi (May. 5, 1999), *available at* http://www.achpr.org/english/_info/observer_en.html (last visited Mar. 15, 2012).

All observers shall be invited to be present at the opening and closing sessions of all Sessions of the African Commission. . . . Observers may be authorised by the Chairman of the African Commission to make a statement on an issue that concerns them, subject to the text of the statement having been provided, with sufficient lead-time, to the Chairman of the Commission through the Secretary to the Commission. . . . Observers may request to have issues of a particular interest to them included in the provisional agenda of the African Commission, in accordance with the provisions of the Rules of Procedure.

Id.

54. *Id. Annex*, ch. III. Relations between the African Commission and Observers.

The African human rights system, however, is based on state-centric perspectives with a consistent respect for the principle of national sovereignty.⁵⁵ Thus, compared to other regional systems, which have advanced a judicial settlement, in the African region, human rights violations cases are handled mainly through diplomatic settlement and, as a result, so far there has not been much room for human rights NGOs to intervene in the cases directly or indirectly.

Overall, all three regional human rights systems are more readily accepted and accessible for human rights NGOs to address their concerns and problems in the region than the international system. Within each regional system, NGOs have contributed to enhancing the human rights situation through their active participation and cooperation.

There is one more thing to be noted here: all three regional systems also share the same limitations. That is, the primary responsibility for implementation of international human rights norms rests on individual Member States, and the regional system can serve a complimentary role only after local remedies have been exhausted. This leads to the conclusion that, for NGOs to contribute to the further development of human rights in the region, it is important for them first to strengthen the domestic human rights systems, and consequently, to cooperate with NHRIs at the national level. I will discuss this point further in Part IV.

B. Human Rights NGOs in the Asia-Pacific Region

The Asia-Pacific region is the only region that does not have regional human rights institutions comparable to Europe, the Americas, and Africa. In the absence of a regional human rights system in this region, NGOs such as the Asian Forum for Human Rights and Development (Forum-Asia), the Asia-Pacific Human Rights Information Center (HURIGHTS Osaka, Japan), the NGO Forum on Asia-Pacific Economic Cooperation (APEC), the Asia-Pacific Human Rights NGOs Congress, and the Law Association for Asia and the Pacific (LAWASIA) have deliberated the establishment of an NGO-led

55. See Makau Mutua, *African Human Rights Court: A Two-Legged Stool?*, 21 HUM. RTS. Q. 342, 343 n.3 (1999). The function of the African Court on Human and Peoples' Rights is to "complement the protective mandate of the commission," and individuals and NGOs cannot bring a suit against a state through the Court. See Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court of Human Peoples' Rights (June 9, 1998) art. 2; Mutua, *supra*, at 355. Thus, the responsibility of human rights protection is heavily imposed on the Commission itself. But because of the African states' risk-averse political culture, the African Commission has no power to enforce its decisions, which is considered a major drawback of the African human rights system. See also Claude E. Welch, *The African Commission on Human and Peoples' Rights: A Five-Year Report and Assessment*, 14 HUM. RTS. Q. 43, 58 (1992).

regional human rights system in the region for over two decades.⁵⁶

In 1993, more than 110 NGOs from 26 Asian countries formulated the Asia-Pacific NGO Conference on Human Rights in Bangkok, Thailand, and adopted the Bangkok NGO Declaration on Human Rights.⁵⁷ At the 1995 Expert Meeting organized by HURIGHTS in Osaka, participating NGOs identified the obstacles to establishing RHRIs as follows: 1) the low level of ratification of human rights treaties, 2) the non-observance of treaty obligations after ratification, and 3) the cultural relativist argument as opposed to the universality of human rights by the leadership in the region.⁵⁸

The NGO Forum on Asia Pacific Economic Cooperation (APEC) was held the same year in Tokyo, Japan with more than 100 NGO participants, which urged the Member States of the APEC to ratify and implement all major human rights treaties.⁵⁹ The 1996 Asia-Pacific Human Rights NGO Congress was organized in Delhi, India by 117 NGOs from 28 Asian countries to reaffirm the importance of observing existing international human rights norms and the respect for the universality, indivisibility, and non-selectivity of human rights.

Further, numerous Asian NGOs actively discussed and worked together for the drafting of the regional human rights charter for three years prior to 1998, when more than 200 human rights NGOs in the region gathered in Kwangju, South Korea, and declared the Asian Human Rights Charter: Our Common Humanity.⁶⁰ It reflects the growing recognition by NGOs of the importance of regional human rights institutions and conventions⁶¹ against “the official disregard or

56. HASHIMOTO, *supra* note 22, at 117-19.

57. *Id.* at 118.

58. *Id.* at 119. The Expert Meeting also proposed three steps for establishing a regional human rights mechanism. They are 1) to set up sub-regional NGO-led body to handle research and education, 2) to set up inter-governmental forum, and 3) to set up sub-regional or regional human rights mechanism. See Asia-Pacific Human Rights Information Center, *Conclusions and Recommendations of the Experts Meeting, July 26-28, 1995, Osaka, Japan*, 2 FOCUS (1995), at <http://www.hurights.or.jp/archives/forcus/section2/a995/11/conclusions-and-recommendations-of-the-experts-meeting-july-26-28-1995-osaka-japan.html> (last visited Aug. 31, 2012).

59. HASHIMOTO, *supra* note 22, at 119.

60. Amnesty International, *Charter Reflects Growing Strength and Determination of Human Rights Movement in Asia and Pacific*, Public Statement on the Occasion of Declaration of Asian Human Rights Charter (May 15, 1998); see also U.N. Human Rights Council, Progress Report on the Right of Peoples to Peace by Advisory Committee ¶ 14, U.N. Doc. A/HRC/AC/6/CRP.3 (Dec. 22, 2010); Seth R. Harris, *Asian Human Rights: Forming a Regional Covenant*, 1 ASIAN-PAC. L. & POL'Y J. 17, 1-4 (2000); Vitit Muntarbhorn, *Asia, Human Rights and the New Millennium: Time for a Regional Human Rights Charter?*, 8 TRANSNAT'L L. & CONTEMP. PROBS. 407, 413-15 (1998); Asian Human Rights Commission, *Asian Human Rights Charter (adopted May 17, 1998)*, available at <http://material.ahrchk.net/charter> (last visited Mar. 15, 2012).

61. See Asian Human Rights Charter arts. 16.1 & 16.2.

contempt of human rights in many Asian states.”⁶² Many human rights NGOs have also been deeply involved in and have cooperated in intervening and raising awareness by preparing reports, presenting issues, and disseminating information during most of the major inter-governmental regional meetings, and have urged Member States and regional organizations to place human rights at the center of their agenda.

Undoubtedly, the role of human rights NGOs in the Asia-Pacific region for the support of RHRIs cannot be ignored. I believe such extensive transnational alliances and rich networks make human rights NGOs in this region the impetus for a regional human rights system. The reason lies in the fact that many NGOs are not tied to the boundary of the state in their particular human rights issues but instead work across national borders as agents for a regional civil society and for fostering a human rights culture in the region.

What is more, these NGOs’ own initiatives are extremely important in the sense that their capacity is a vital consideration in setting up RHRIs in the region. Indeed, it is encouraging that numerous NGOs in the Asia-Pacific region have worked for the establishment of regional human rights mechanisms. There are, however, still weak links between NGOs and governments and relatively low support from individual governments for NGO initiatives.⁶³

Once RHRIs are established in the Asia-Pacific region, NGOs can also play a crucial role for them. That is, human rights NGOs are in a position to witness and advocate for victims of abuses and are best placed to accurately report and discern the latest human rights violations in the target states. Similarly, the adequate cooperation among individual governments and human rights NGOs toward the establishment of RHRIs can make regional bodies more legitimate, independent, and effective institutions for the promotion and protection of human rights.

In addition, human rights NGOs in the Asia-Pacific region have constantly maintained the universality of international human rights norms and pressured individual governments to ratify major international human rights treaties and to comply with them. For example, before the 1993 World Conference on Human Rights, numerous NGOs in Asia gathered and expressed their position in the Non-Governmental Bangkok Declaration as:

Universal human rights standards are rooted in many cultures.
We affirm the basis of universality of human rights which afford

62. *Id.* art. 1.6.

63. *See* HASHIMOTO, *supra* note 22, at 39-41.

protection to all of humanity, including special groups such as women, children, minorities and indigenous peoples, workers, refugees and displaced persons, the disabled and the elderly. While advocating cultural pluralism, those cultural practices which derogate from universally accepted human rights including women's rights, must not be tolerated. As human rights are of universal concern and are universal in value, the advocacy of human rights cannot be considered to be an encroachment upon national sovereignty.⁶⁴

In the same vein, the 1998 NGOs' Asian Human Rights Charter rejects Asian values debates and strongly stresses the indivisibility and universality of human rights. It especially emphasizes the role of human rights NGOs related to establishing RHRIs in the region, as Article 16.2 of the Charter stipulates:

Asian states should adopt regional or sub-regional institutions for the promotion and protection of rights. There should be an inter-state Convention on Human Rights, formulated in regional forums with the collaboration of national and regional NGOs. The Convention must address the realities of Asia, particularly the obstacles that impede the enjoyment of rights. At the same time it must be fully consistent with international norms and standards. It should cover violations of rights by groups and corporations in addition to state institutions. An independent commission or a court must be established to enforce the Convention. Access to the commission or the court must be open to NGOs and other social organizations.⁶⁵

Furthermore, human rights NGOs have effectively operated at the regional level particularly for the human rights problems of common concern in the region like human trafficking, prevention of torture, rights of women, people with disabilities, internally displaced persons, migrant workers, and human rights defenders.

Overall, NGOs' initiatives, input and endeavors have become the foundation for formulating regional human rights arrangements in the Asia-Pacific region. The emergence of an increasing number of human rights NGOs accelerates the development of a human rights culture and of strong civil societies in this region.

64. Asian Cultural Forum on Development, *OUR VOICE: BANGKOK NGO DECLARATION ON HUMAN RIGHTS* 199 (1993).

65. Asian Human Rights Charter art. 16.2.

IV. NHRIS AND HUMAN RIGHTS NGOS

NHRIs can play a crucial role in promoting and protecting human rights within the domestic human rights system, and their very nature shows they hold a unique position among all stakeholders including the government, civil society and human rights NGOs. Especially, as the Paris Principles stress, the cooperation among NGOs is vital for the effectiveness of NHRIs because NGOs can monitor the institutions' performance, and at the same time, NHRIs benefit from using the knowledge, experience and expertise of human rights NGOs. Thus, Part IV will show how both actors can mutually benefit within their cooperative relationship.

First, the cooperation between NHRIs and NGOs can give human rights NGOs a public legitimacy that cannot otherwise be enjoyed because NHRIs are established based on national legislation, and such legitimacy is usually not given to human rights NGOs.⁶⁶ Second, in authoritarian governments, there exist numerous human rights NGOs under constant persecution. Local human rights advocates and activists are detained for years and sometimes deported to foreign countries. International human rights delegations also find it hard to enter countries which prevent an effective human rights protection. But cooperation with NHRIs can make it difficult for authoritarian governments to restrain the activities of human rights NGOs and international human rights bodies.⁶⁷

Third, NGOs can recommend and advise the government on the initial establishment of NHRIs that may give them public accountability.⁶⁸ In fact, NGOs have been a touchstone for the creation of NHRIs in individual states. As Dong Wook Kim argues, "human rights NGOs have systematic and robust effects on the occurrence and depth of the global diffusion of NHRIs."⁶⁹ Borrowing the concepts of *rooted cosmopolitans* from Sidney Tarrow's 2005 book, *New Transnational Activism*, Kim analyzes 96 cases of NHRI creation from 1978 to 2004, and then concludes that human rights NGOs significantly influenced the individual government's decision to establish NHRIs and at the same time, contributed to ensuring the independence and

66. See BRIAN BURDEKIN, NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE ASIA-PACIFIC REGION 60-62 (2007); RACHEL MURRAY, THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS AT THE INTERNATIONAL AND REGIONAL LEVELS: THE EXPERIENCE OF AFRICA 59-68 (2007); see also INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, PERFORMANCE & LEGITIMACY: NATIONAL HUMAN RIGHTS INSTITUTIONS 97-99 (2004).

67. *Id.* at 97.

68. *Id.* at 98.

69. See Dong Wook Kim, Institutionalizing Human Rights: The United Nations, Nongovernmental Organizations and National Human Rights Institutions 232-37 (Aug. 2009) (unpublished Ph.D. dissertation, University of Wisconsin-Madison) (on file with author).

accountability of those NHRIs.⁷⁰

Fourth, human rights NGOs can be a source of information for NHRIs by providing expertise on the human rights conditions in the local communities.⁷¹ In addition, there are many different human rights NGOs that represent children, women, prisoners, workers, migrants, minority groups, and so on. Cooperation between these various NGOs and NHRIs can provide a wide spectrum of human rights problems to discuss, and such a process ensures effective protection of fundamental human rights.⁷²

Lastly, for the people in remote regions of large countries, sometimes it is hard to access and submit their complaints to NHRIs. In this case, the local NGOs can be effective communication channels for human rights violations.⁷³

It is, however, also necessary for NHRIs to be independent from NGOs and civil societies and thus not overly influenced by certain interest groups. In addition, it is essential that NHRIs balance and reflect all stakeholders' interests and concerns on various domestic human rights issues, as Anne Smith stresses:

[I]n establishing a close relationship with NGOs, NHRIs should be conscious that NGOs are not representative of the public, they are not appointed by the people or parliament, and as such may be perceived as lacking some form of the legitimacy that a NHRIs may have . . . [and at the same time] civil society groups need to continue to be vocal, criticizing a NHRI's action that undermines human rights protection and promotion, without interfering with the NHRIs' independence.⁷⁴

Overall, human rights NGOs' collaboration with NHRIs is indispensable in making them operate effectively. Such a close relationship between NHRIs and NGOs can ultimately contribute to the strengthening of the national system for the protection and promotion of human rights.

A. *The APF, NHRIs and Human Rights NGOs in the Asia-Pacific Region*

In the Asia-Pacific region, ever since its establishment, the Asia

70. *Id.*

71. See BURDEKIN, *supra* note 66, at 61; see also MURRAY, *supra* note 66, at 59-68; see also INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 66, at 97-99.

72. See MURRAY, *supra* note 66, at 64-67.

73. *Id.* at 66-67.

74. Anne Smith, *The Unique Position of National Human Rights Institutions: A Mixed Blessing?*, 28 HUM. RTS. Q. 904, 941, 946 (2006).

Pacific Forum of National Human Rights Institution (APF) has stressed the important role of human rights NGOs and their engagement with the member NHRIs, a point that was especially emphasized at the 1999 Workshop on National Institutions and Non-Governmental Organizations: Working in Partnership.⁷⁵

The APF actively cooperates with human rights NGOs to deal with various human rights issues of common concern in the Asia-Pacific region. The APF also facilitates NGO participation in the planning, implementation and evaluation of member NHRIs' activities, for example, by providing an opportunity for the Asian NGOs Network on National Institutions (ANNI) to present their annual Report on the Performance and Establishment of NHRIs in Asia at the APF annual meetings. Further, the APF encourages member NHRIs to collaborate with NGOs in monitoring their respective government's implementation of the ratified human rights norms and publishing shadow reports for the human rights treaty bodies and other international human rights institutions as a complement to the state report. Lastly, in active consultation with NGOs, the APF urges countries with no NHRIs to create one and supports countries in the process of establishing an NHRI.

B. Case Study: *The Establishment of NHRIs in Asian Countries and Human Rights NGOs*

In this Part, I will briefly review the process of establishing NHRIs in individual countries in Asia, and how civil society, including human rights NGOs, in these states and the human rights culture formulated by the NGOs have influenced this process. Focusing on the interaction between NHRIs and human rights NGOs, I will also examine what, if anything, they have jointly achieved in the promotion and protection of human rights.

For this case study, I selected seven countries with or without NHRIs and grouped them into three categories based mainly on the relationship of human rights NGOs and individual governments: Legitimate Civil Society, Controlled and Communalized Civil Society, and Repressed Civil Society.⁷⁶ This categorization is based on Muthiah Alagappa's 2004 book, *Civil Society and Political Change in Asia*.⁷⁷ He describes the first category, Legitimate Civil Society, as countries with "a

75. See ASIA PACIFIC FORUM, *supra* note 2, § 1.1.

76. CIVIL SOCIETY AND POLITICAL CHANGE IN ASIA: EXPANDING AND CONTRACTING DEMOCRATIC SPACE 1-19 (Muthiah Alagappa ed., 2004) [hereinafter CIVIL SOCIETY AND POLITICAL CHANGE IN ASIA]. See also COERCION AND GOVERNANCE: THE DECLINING POLITICAL ROLE OF THE MILITARY IN ASIA (Muthiah Alagappa ed., 2001) [hereinafter COERCION AND GOVERNANCE].

77. CIVIL SOCIETY AND POLITICAL CHANGE IN ASIA, *supra* note 76, at 1-19.

growing acknowledgment . . . of the legitimacy of the non-state public realm;” the second category, Controlled and Communalized Civil Society, as states as “quasi-democracies with relatively stable political systems that display strong authoritarian features;” and the third category, Repressed Civil Society, as countries with a military regime where civil society is severely suppressed in limited political liberalization.⁷⁸

1. Legitimate Civil Society

a. Thailand

Since the early 2000s, Thailand has achieved great economic success, at least in Southeast Asia.⁷⁹ There have also been noticeable human rights movements against poverty and unemployment.⁸⁰ The history of human rights in Thailand is closely linked to the history of its continuous contention for democracy. Between the overturn of the monarchy in 1932 and 1992, there were 15 constitutions, mainly under the military government.⁸¹ For 60 years, military governments held power by periodic coups. Following the bloody May 1992 demonstrations against the military government and the subsequent social and academic movements between 1996 and 1997, a civilian government was established through a national election.⁸²

The 16th constitution, enacted in 1997, is the most democratic one.⁸³ It stipulates all internationally recognized basic human rights as well as people’s fundamental freedoms.⁸⁴ Despite the democratically elected government and the democratic constitution in Thailand, it has been argued that, in itself, this “does not automatically imply that [Thailand’s government] will promote and protect human rights in a comprehensive manner.”⁸⁵ Increasingly, there has been a public push from the civil society for the necessity of an independent institution established by the

78. *Id.* at 18-19.

79. Vitit Muntarbhorn, *Human Rights in the Era of “Thailand Inc.”* [hereinafter Muntarbhorn, *Human Rights*], in HUMAN RIGHTS IN ASIA: A COMPARATIVE LEGAL STUDY OF TWELVE ASIAN JURISDICTIONS, FRANCE AND THE USA 320 (Randall Peerenboom et al. eds., 2006) [hereinafter HUMAN RIGHTS IN ASIA].

80. *Id.* at 320-21.

81. *Id.* at 321; James Ockey, *Thailand: The Struggle to Redefine Civil-Military Relations* [hereinafter Ockey, *Thailand*], in COERCION AND GOVERNANCE, *supra* note 76, at 190-98.

82. Ockey, *Thailand*, *supra* note 81, in COERCION AND GOVERNANCE, *supra* note 76, at 196-200.

83. Muntarbhorn, *Human Rights*, *supra* note 79, in HUMAN RIGHTS IN ASIA, *supra* note 79, at 321.

84. *Id.* at 322-25.

85. *Id.* at 344.

constitution that can provide checks against abuses of state power.⁸⁶

Finally, in 1999, the National Human Rights Commission of Thailand (NHRCT) was established under the National Human Rights Commission Act and Sections 199 and 200 of the 1997 Constitution.⁸⁷ Since then, as stated in the 1999 NHRC Act, the NHRCT has worked to maximize the checks and balances against the power of the state with the intense cooperation of NGOs and local community leaders.⁸⁸ Further, the Commission has earned the trust of many human rights NGOs, which partly stems from the fact that half the number of Commissioners had worked with NGOs prior to their appointment.

In 2006, there was a military coup to overthrow Prime Minister Thaksin Shinawatra's administration, which was followed by numerous protests and demonstrations. The Commission had to face human rights issues related to the persistent and occasionally violent mass anti-government demonstrations that questioned the legality and legitimacy of successive governments. In 2007, 2008, and April 2009, the NHRCT issued recommendations against the government opposing the enforcement of the 2005 Emergency Decree on Public Administration that authorized the use of massive violence to disperse demonstrators.⁸⁹ In the statement, the Commission criticized the government and stated that "the application of the state of emergency overrides the role and responsibility of the Parliament and politicians in checking and balancing the administrative power to ensure that it uses the state power legitimately in accordance with the spirit of the Constitution." As a result, the Commission was able to hinder the government's harsh repression of the demonstrators.⁹⁰

The NHRCT also faced the issue of its own status following the coup. The new military government abrogated the 1997 Constitution that had mandated the establishment of the NHRCT, including the number, qualifications, and selection process of Commissioners.⁹¹ Then, the present Constitution, ratified by a referendum in 2007, introduced important changes in the selection procedure for Commissioners of the NHRCT. In 2009, many human rights NGOs criticized the selection of

86. *Id.*

87. See Asia Pacific Forum, *Thailand*, <http://www.asiapacificforum.net/members/apf-member-categories/full-members/thailand> (last visited Feb. 24, 2012).

88. *Id.*

89. See Office of the National Human Rights Commission of Thailand, *The NHRC Opposing the Enforcement of the Emergency Decree on Public Administration in Emergency Situations in Bangkok* (Sept. 2, 2008), http://www.nhrc.or.th/2012/wb/en/news_detail.php?nid=265&parent_id=1&type=highlight.

90. *Id.*

91. See Working Group on Justice for Peace, *Thailand in a Period of Polarization, in 2009 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN ASIA 231* (Emerlynne Gill et al. eds., 2009) [hereinafter 2009 ANNI REPORT ON PERFORMANCE AND ESTABLISHMENT].

the new Commissioners under the new Constitution as seriously flawed in both process and results.⁹² Thus, the effectiveness and independence of the new Commission in the future remains an open question.

b. India

India became independent in 1950 after a long period of colonial rule.⁹³ It has more than 1 billion people, 18 major languages, 28 states, and more than 6 major religions.⁹⁴ With such diversity and plurality, in 60 years, India has achieved a remarkable success in technology and economic development.⁹⁵ There is, however, a comprehensive inequality in India “between rural and urban areas, within communities and castes, and between women and men.”⁹⁶ For example, more than half of the children under the age of 5 remain anorexic, two-thirds of women are illiterate, and 34% of the total population still lives below the poverty line.⁹⁷ Overall, this reflects the difficulties in the promotion and protection of human rights in India in spite of its noticeable economic growth,⁹⁸ even though the country is generally not considered a state of human rights concern compared to other countries in South Asia.⁹⁹

Since the early 1980s, India has established a number of NHRIs, such as the National Commission for Women, the Minorities Commission, and a Child Rights Commission.¹⁰⁰ In 1993, the National Human Rights Commission of India (NHRCI) was established under the 1993 Protection of Human Rights Act.¹⁰¹ Such an NHRI network has

92. See Working Group on Justice for Peace, *Setbacks in Thai Democracy Impact NHRCT*, in 2010 ANNI REPORT ON PERFORMANCE AND ESTABLISHMENT OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN ASIA 232 (Emerlynne Gill et al. eds., 2010) [hereinafter 2010 ANNI REPORT ON PERFORMANCE AND ESTABLISHMENT].

93. Amitabh Behar & Aseem Prakash, *India: Expanding and Contracting Democratic Space*, in CIVIL SOCIETY AND POLITICAL CHANGE IN ASIA, *supra* note 76, at 191-93.

94. *Id.* at 192.

95. *Id.*

96. *Id.*

97. *Id.* at 193 (referring to Census of India 1991).

98. Upendra Baxi, *Protection of Human Rights and Production of Human Rightlessness in India* [hereinafter Baxi, *Protection of Human Rights*], in HUMAN RIGHTS IN ASIA, *supra* note 79, at 384-90.

99. Library of Congress – Federal Research Division, *Country Profile: India 25* (Dec. 2004), <http://lcweb2.loc.gov/frd/cs/profiles/India.pdf>.

100. Baxi, *Protection of Human Rights*, *supra* note 98, in HUMAN RIGHTS IN ASIA, *supra* note 79, at 385.

101. See Asia Pacific Forum, *India*, <http://www.asiapacificforum.net/members/apf-member-categories/full-members/india> (last visited Feb. 20, 2012). Subsequent to the establishment of the NHRCI, a number of State Human Rights Commissions (SHRCs) have come into existence, for example, in Andhra Pradesh, Assam, Chhatisgarh, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Manipur, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal, Karnataka, Gujarat; see also *India –*

lessened the judicatory burdens of the Supreme Court of India by handing over human rights violations cases.¹⁰² For example, in 2008, more than 94,000 complaints against human rights violations were submitted to the NHRCI.¹⁰³

The Commission formed a National Core Group of NGOs.¹⁰⁴ It has coordinated the monitoring of human rights violations and ensured the credible and accurate reports on human rights abuses.¹⁰⁵ The Protection of Human Rights Act 1993 stresses in Section 12(i) that the NHRCI has the responsibility to “encourage the efforts of non-governmental organizations and institutions working in the field of human rights.”¹⁰⁶ Some human rights NGOs criticized the NHRCI as a “toothless tiger and a mere *post office* to provide a certificate of *good behavior* to the Government for its *wrong-doings* rather than to ensure *better* protection of human rights,”¹⁰⁷ suggesting that the NHRCI has operated as a recommendation rather than a binding orders body.¹⁰⁸ However, numerous cases show that the Commission has made *de facto* changes and reforms needed, especially in the police and the prison system.¹⁰⁹

Further, with the increasing number of human rights violations complaints and the growing complementarities between the judiciary and the NHRCI, the Commission has become, as Justice A.S. Annand argues, the conscience of the nation.¹¹⁰ Currently more than 150 statutory human rights institutions are operational in India and in the future, the NHRCI should be able to provide effective leadership for

Time to Raise the Benchmark, in 2008 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN ASIA 57, 66 (2008) [hereinafter 2008 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT].

102. Baxi, *Protection of Human Rights, supra* note 98, in HUMAN RIGHTS IN ASIA, *supra* note 79, at 385. See also Justice A.S. Annand, *The Protection Role of the Indian Human Rights Commission* [hereinafter Annand, *The Protection Role*], in THE PROTECTION ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS 87, 91 (Bertrand G. Ramcharan ed., 2005).

103. Press Trust of India, *Human Rights Violation Maximum in UP, Delhi*, HINDUSTAN TIMES (Mar. 15, 2009), available at <http://www.hindustantimes.com/StoryPage/Print/389522.aspx> (last visited Mar. 10, 2012).

104. See People’s Watch-India, *India: Losing Its Long Established Standards?* [hereinafter People’s Watch-India, *India*], in 2009 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT, *supra* note 91, at 47, 53.

105. *Id.*

106. The Protection of Human Rights Act 1993, No. 10 of 1994, as amended by The Protection of Human Rights (Amendment) Act 2006, No. 43 of 2006, available at <http://www.alrc.net/PDF/HRActEng.pdf>.

107. Annand, *The Protection Role*, in THE PROTECTION ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS, *supra* note 102, at 88.

108. See People’s Watch-India, *India, supra* note 104, in 2009 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT, *supra* note 91, at 59.

109. Annand, *The Protection Role*, in THE PROTECTION ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS, *supra* note 102, at 96-98.

110. *Id.* at 104-05.

them in active cooperation with civil society groups.¹¹¹

c. The Philippines

The Philippines was one of the wealthiest countries in Asia in the 1960s. The human rights situation in the country, however, has worsened since 1972, when President Ferdinand Marcos enforced martial law to seek his third term.¹¹² International human rights NGOs such as Amnesty International and the International Commission of Jurists issued a report against the increasing human rights violations by the Philippine government.¹¹³ After a series of public demonstrations in 1986 (the so-called EDSA Revolution or People Power Revolution of 1986), Corazon Aquino was elected President, and the authoritarian government was overthrown.¹¹⁴

In 1987, the current constitution was adopted under the Aquino administration.¹¹⁵ It codifies the democratic goals and clearly takes a stand against former President Marcos' trailing economic and social rights as an excuse for the cutback on political liberties.¹¹⁶ In 2001, there was another peaceful public demonstration (so-called EDSA 2 or the Second People Power Revolution of 2001) against the corruption of President Joseph Estrada's administration, led by numerous human rights activists and NGOs.¹¹⁷ Gloria Arroyo became President following the impeachment of the Estrada administration.¹¹⁸ Overall, the continuous historical resistance against authoritarian governments and their human rights abuses has increased the discussion of human rights in the Philippines.¹¹⁹

111. See People's Watch-India, *The NHRC in India - Another Department of the Government of India?*, in 2010 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT, *supra* note 92, at 63, 67.

112. Anja Jetschke, *Linking the Unlinkable? International Norms and Nationalism in Indonesia and the Philippines* [hereinafter Jetschke, *Linking the Unlinkable?*], in THE POWER OF HUMAN RIGHTS, *supra* note 4, at 139; Jennifer C. Franco, *The Philippines: Fractious Civil Society and Competing Visions of Democracy* [hereinafter Franco, *The Philippines*], in CIVIL SOCIETY AND POLITICAL CHANGE IN ASIA, *supra* note 76, at 97-98.

113. Jetschke, *Linking the Unlinkable?*, *supra* note 112, in THE POWER OF HUMAN RIGHTS, *supra* note 4, at 142.

114. Franco, *The Philippines*, *supra* note 112, in CIVIL SOCIETY AND POLITICAL CHANGE IN ASIA, *supra* note 76, at 109.

115. Raul C. Pangalangan, *The Philippines: The Persistence of Rights Discourse vis-à-vis Substantive Social Claims* [hereinafter Pangalangan, *The Persistence of Rights*], in HUMAN RIGHTS IN ASIA, *supra* note 79, at 346.

116. *Id.* at 346-47.

117. Franco, *The Philippines*, *supra* note 112, in CIVIL SOCIETY AND POLITICAL CHANGE IN ASIA, *supra* note 76, at 126.

118. *Id.*

119. Pangalangan, *The Persistence of Rights*, *supra* note 115, in HUMAN RIGHTS IN ASIA, *supra* note 79, at 346.

The Commission on Human Rights of the Philippines (CHRP) was established in 1987 under the 1987 Philippine Constitution (Article XIII, Section 17) with the operative decree of Executive Order No. 163.¹²⁰ The CHRP was one of the founding Member State institutions of the *Paris Principles* and the Asia Pacific Forum.¹²¹ Its focus areas are not only the protection of human rights itself but also the interconnection between all stakeholders, including the government, civil society, and the media.¹²² It had the important role of drafting human rights legislation such as the Anti-Trafficking in Prison Act of 2003 and the Anti-Violence against Women and their Children Act of 2004.¹²³ The CHRP also worked actively to enact legislation against human rights violations during the 2001 demonstrations in which at least 900 human rights activists and members of left-wing groups were supposedly killed and tortured, 300 of whom are still missing.¹²⁴

Despite its lack of prosecutorial or quasi-judicial functions, the CHRP also made use of its investigative power to bring human rights violations to the forefront through holding public inquiries, fact-finding missions, and special operations on cases like extra-judicial killings, enforced disappearances, and illegal and arbitrary arrests.¹²⁵ When several natural disasters hit the country, the Commission also released an Advisory reminding the government to demonstrate its positive obligation to prepare, respond, and rehabilitate when disasters occur.¹²⁶ Further, the Commission proactively launched a campaign for the right to political participation of vulnerable groups including young persons, internally displaced persons, indigenous peoples, and persons with disabilities.¹²⁷

No specific provisions on the cooperation and consultation with NGOs are provided in the CHRP's operative decree of Executive Order

120. Purification C.V. Quisumbing, *The Protection Role of the Philippines Human Rights Commission*, in THE PROTECTION ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS, *supra* note 102, at 156. See also Asia Pacific Forum, *Philippines*, <http://www.asiapacificforum.net/members/apf-member-categories/full-members/philippines> (last visited Feb. 22, 2012); Commission on Human Rights of the Philippines, <http://www.chr.gov.ph> (last visited Nov. 22, 2011).

121. See BURDEKIN, *supra* note 66, at 98, 99; Pamela A. Jefferies, *Human Rights, Foreign Policy, and Religious Belief: An Asia/Pacific Perspective*, 2000 BYU L. REV. 885, 892 (2000).

122. Quisumbing, *The Protection Role of the Philippines Human Rights Commission*, *supra* note 120, in THE PROTECTION ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS, *supra* note 102, at 156-58.

123. *Id.* at 160.

124. GMA News TV, *CHR Urges Arroyo to Certify Human Rights Bills*, GMA NEWS ONLINE (Mar. 14, 2009, 4:17 PM), <http://www.gmanetwork.com/news/story/152717/news/nation/chr-urges-arroyo-to-certify-human-rights-bills> (last visited Mar. 10, 2012).

125. See *Libertás, Philippines: A Time of Great Irony*, in 2010 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT, *supra* note 92, at 170-71.

126. *Id.* at 172.

127. *Id.*

No. 163.¹²⁸ There has not been any periodic regular consultation with human rights NGOs even though consultative meetings are sometimes held on certain issues.¹²⁹ While the CHRP has an NGO, the Civil Society and Media Linkages Cooperation Office, operationally, this office is not involved in consultation for policy or program formulations and serves as a public relations unit of the Commission to popularize its advocacy messages through the collaboration with NGOs.¹³⁰ Compared to the Commission's active involvement in the area of international and regional cooperation, the CHRP's rocky relationship with human rights NGOs has been considered one of its weakest points,¹³¹ though the current Commission has gradually forged close working relationships with civil society.¹³²

d. Japan

Under the name of *fundamental human rights*, the basic rights of the Japanese people are protected under the 1946 Japanese Constitution.¹³³ Various legal scholars of Japan see the current human rights system in Japan as having been heavily influenced by American constitutionalism after WWII but also argue that the Japanese Constitution "is inappropriate for Japanese society where individual freedom and individual wishes must yield to group harmony."¹³⁴ There are more than a thousand registered NGOs in Japan.¹³⁵ They are working in various human rights fields including one of the biggest human rights problems in Japan, the minority discrimination against the Zainichi,¹³⁶ the Burakumin,¹³⁷ and the Ainu.¹³⁸

The movement toward the establishment of an NHRI started during the late 1990s, and it was initiated by international institutions and

128. See *Libertás, Old Challenges for a New Commission* [hereinafter *Libertás, Old Challenges*], in 2009 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT, *supra* note 91, at 161, 178.

129. *Id.*

130. *Id.*

131. See Vincent Pepito Yambao, Jr., *The Philippines: A Hamstrung Commission*, in 2008 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT, *supra* note 101, at 133, 147.

132. See *Libertás, Old Challenges*, *supra* note 128, in 2009 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT, *supra* note 91, at 165, 192.

133. Shingenori Matsui, *The Protection of "Fundamental Human Rights" in Japan*, in HUMAN RIGHTS IN ASIA, *supra* note 79, at 121-28.

134. *Id.* at 145-46, 150.

135. HASHIMOTO, *supra* note 22, at 108. See also Robert Pekkanen, *Japan: Social Capital without Advocacy*, in CIVIL SOCIETY AND POLITICAL CHANGE IN ASIA, *supra* note 76, at 223.

136. Zainichi is a Japanese term which means "foreigner residing in Japan." It refers mainly to Korean Japanese. HASHIMOTO, *supra* note 22, at 108.

137. *Id.* Burakumin (or Hisabetsu buraku) are descendants of feudal-era outcasts and take up approximately 2.5% of the population. *Id.*

138. *Id.* Ainu are indigenous people in Japan. *Id.*

domestic human rights NGOs.¹³⁹ They argue that while there are existing human rights protection systems in Japan, like the Human Rights Bureau and the human rights volunteers under the Ministry of Justice, those systems are neither independent nor effective; thus, it remains necessary to create an NHRI in Japan.¹⁴⁰

In early 2002, the Human Rights Protection Bill to set up a national human rights commission was drafted and submitted to the Japanese government.¹⁴¹ This draft bill, however, was dropped under the strong opposition of NGOs, the media, and lawyers.¹⁴² Their main concerns can be summarized in the following way: first, the lack of independence of the human rights commission, which is stipulated under the jurisdiction of the Minister of Justice; second, the lack of procedures against human rights abuses by public officials; and lastly, the omission of a clear definition of human rights.¹⁴³

In 2005, a modified draft Human Rights Protection Bill was proposed, but, again, many human rights NGOs and the media strongly objected to the submission of the bill because the key issues that had been previously criticized had not been changed.¹⁴⁴ In 2008, the Japan Federation of Bar Associations, one of the major human rights NGOs, proposed the Outline of National Human Rights Institution (JFBA Outline) which lays down the framework and principles of the NHRI to be created in Japan: independence, mandate, scope of covering violations, functions, composition, resources, efficiency, and accessibility.¹⁴⁵ This outline was publicized and submitted to the Minister of Justice too.¹⁴⁶

The following year, the Democratic Party of Japan (DPJ) took power away from the Liberal Democratic Party (LDP), which had been the ruling party for 54 years, and the new Minister of Justice, Keiko Chiba, emphasized in her inaugural statement that the establishment of a NHRI

139. See Mikiko Otani, *Situation of Japan – Working Towards the Establishment of an Independent NI*, in 2008 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT, *supra* note 101, at 87.

140. *Id.*

141. Human Rights Forum 21, *Japanese National Human Rights Commission*, ASIA-PACIFIC HUMAN RIGHTS INFORMATION CENTER (June 2002), available at <http://www.hurights.or.jp/archives/focus/section2/2002/06/japanese-national-human-rights-commission.html> (last visited Mar. 10, 2012).

142. *Id.*

143. *Id.*

144. Koshi Yamazaki, *Proposed Human Rights Commission in Japan: A Critique*, ASIA-PACIFIC HUMAN RIGHTS INFORMATION CENTER (Mar. 2005), available at <http://www.hurights.or.jp/archives/focus/section2/2005/03/proposed-human-rights-commission-in-japan-a-critique.html>.

145. See Azusa Yamashita & Mikiko Otani, *A Look at the Human Rights Protection Bill of Japan*, in 2009 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT, *supra* note 91, at 73, 80, 81.

146. *Id.* at 81.

is one of the crucial issues to be achieved in Japan.¹⁴⁷ It seems that under the new administration, there has been rapid progress in the establishment of an NHRI,¹⁴⁸ and indeed, the Japanese government should work together with civil society groups, including human rights NGOs, to make an NHRI in Japan a reality.

Further, as the most developed country in the Asia-Pacific region, Japan should show positive leadership not only in the economic sphere but also in the human rights area¹⁴⁹ because many human rights scholars indicate that the Japanese government's constant refusal to provide an apology and compensation to WWII victims, such as comfort women and forced conscripts from various countries in Asia, and to address the Nanking Massacre has prevented the establishment of a regional human rights mechanism in Asia.¹⁵⁰

2. Controlled and Communalized Civil Society

a. Malaysia

Since Malaysia won its independence in 1957, the opposition parties have not succeeded in winning the national elections, and the ruling party, the National Front Coalition, has always been in power.¹⁵¹ Most Malaysian leaders, including the longest-serving Prime Minister Mahathir bin Mohamad, have constantly argued that Malaysia's diverse and multiethnic uniqueness has inevitably restricted basic human rights, such as freedom of expression, assembly, and due process.¹⁵² The Malaysian Constitution guarantees various basic human rights, but it also contains *traditional* factors—for example, declaring Islam as the religion of the Federation and the Malay language as the national language.¹⁵³ Unlike other developing countries in Asia, however, Malaysia has not fully changed its 1957 Constitution since independence.¹⁵⁴

147. See Citizens' Council for Human Rights Japan, *Rapid Developments in Japan, in* 2010 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT, *supra* note 92, at 91-92.

148. *Id.*

149. HASHIMOTO, *supra* note 22, at 130.

150. *Id.* at 130.

151. H.P. Lee, *Human Rights in Malaysia, in* HUMAN RIGHTS IN ASIA, *supra* note 79, at 191-94; Human Rights Watch, *Country Summary: Malaysia* 1 (Jan. 2009), http://www.hrw.org/sites/default/files/related_material/malaysia.pdf.

152. Lee, *Human Rights in Malaysia, supra* note 151, *in* HUMAN RIGHTS IN ASIA, *supra* note 79, at 192.

153. See Tun Haji Mohd & Salleh bin Abas, *Traditional Elements of the Malaysian Constitution, in* THE CONSTITUTION OF MALAYSIA: FURTHER PERSPECTIVES AND DEVELOPMENTS, 1-17 (F.A. Trindade & H.P. Lee eds., 1986).

154. Lee, *Human Rights in Malaysia, supra* note 151, *in* HUMAN RIGHTS IN ASIA, *supra* note 79, at 215.

International Human Rights NGOs like Human Rights Watch have criticized the human rights situation of Malaysia since “the government continues to use outdated repressive laws and regulations to silence its critics and extend its rule . . . [especially] . . . to commit abuses against undocumented migrants, refugees, and asylum seekers.”¹⁵⁵ Additionally, domestic human rights NGOs, lawyers, and other human rights activists have worked hard for the protection of human rights in spite of serious personal risks.¹⁵⁶ In response, the Malaysian government has consistently insisted that to maintain economic progress, it is necessary to downgrade the full exercise of civil and political rights.¹⁵⁷ It also argues that national security and stability are essential for economic development and are thus the priority.¹⁵⁸

However, unlike in other Asian countries like Indonesia, the Philippines and South Korea, there has been no threat to national security—for instance, an attempt by the military to overturn the civil power or to intervene in the national political area.¹⁵⁹ In addition, the ruling party, the National Front Coalition, has always enjoyed the majority support of the Malaysian people, even though there has been criticism of the national electoral system.¹⁶⁰

The Human Rights Commission of Malaysia (SUHAKAM) was established by Congress under the 1999 Human Rights Commission of Malaysia Act (Act 597).¹⁶¹ The creation of the SUHAKAM was initially influenced by Malaysia’s involvement in the U.N. Commission on Human Rights (UNHCR) from 1993 to 1995, and then by the fact that other ASEAN member countries, like the Philippines, Indonesia and Thailand, established NHRIs.¹⁶²

Since its establishment, the SUHAKAM’s effectiveness, independence and compliance with international standards has been debated among human rights NGOs. Supporters argue that having the

155. Human Rights Watch, *supra* note 151, at 1.

156. *Id.* See also Meredith L. Weiss, *Malaysia: Construction of Counterhegemonic Narratives and Agendas*, in *CIVIL SOCIETY AND POLITICAL CHANGE IN ASIA*, *supra* note 76, at 278-80, 284-85.

157. Lee, *Human Rights in Malaysia*, *supra* note 151, in *HUMAN RIGHTS IN ASIA*, *supra* note 79, at 216. See also Amnesty International, *Malaysia - Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy 2* (Sept. 1999), <http://www.amnesty.org/en/library/asset/ASA28/006/1999/en/7fb7a29f-e066-11dd-9086-4d51a30f9335/asa280061999en.pdf>.

158. Lee, *Human Rights in Malaysia*, *supra* note 151, in *HUMAN RIGHTS IN ASIA*, *supra* note 79, at 216.

159. *Id.*

160. *Id.* at 217.

161. Asia-Pacific Forum, *Malaysia*, <http://www.asiapacificforum.net/members/apf-member-categories/full-members/malaysia> (last visited Feb. 24, 2012). See also Human Rights Commission of Malaysia, *History*, <http://www.suhakam.org.my/web/guest/info/profil> (last visited Feb. 24, 2012).

162. Asia-Pacific Forum, *Malaysia*, *supra* note 161.

Commission is better than not having it and note that the Commission has been a strong critic of the government's policies and on many occasions has been recognized as an anti-government NGO.¹⁶³ For example, on the Commission's recommendations, gender was included in Article 8(2) of Section II of the Malaysian Constitution as a ground for discrimination, and primary education became compulsory by amending the Education Act.¹⁶⁴

However, there has also been undeniable criticism from human rights NGOs and even from SUHAKAM officials that the appointment process is not transparent and that many recommendations have been ignored by the government.¹⁶⁵ As a result, critics argue that the Commission has operated for the purpose of window-dressing the government's poor human rights practices. Overall, the SUHAKAM has had an ambivalent relationship with human rights NGOs, but still many of them see the importance of the Commission and continue to cooperate with it, for example, because the Commission has access to locations like detention facilities where human rights violations frequently occur and which are not easily accessible to NGOs.¹⁶⁶

The SUHAKAM's operational capacity has been questioned not only by human rights NGOs but also by international institutions like the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). In the same vein, some argue that it may be hard to maintain an A status in the future.¹⁶⁷ In 2009, the 1999 Human Rights Commission of Malaysia Act was amended in an attempt to avoid international embarrassment that would result from the Commission's impending downgrading by the ICC.¹⁶⁸ The amendment was done solely by the government and was passed just one day before the ICC convened to decide on the status of the SUHAKAM. There was no consultation with any civil society group

163. Chiam Heng Keng, *Human Rights Commission – Malaysian Scenario*, ASIAN-PACIFIC HUMAN RIGHTS INFORMATION CENTER (Dec. 2001), available at <http://www.hurights.or.jp/archives/focus/section2/2001/12/human-rights-commission---the-malaysian-scenario.html>.

164. *Id.*

165. See Suara Rakyat Malaysia (SUARAM), *Malaysia Empowerment From Within?*, in ANNI MONITORING REPORT ON THE PERFORMANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS (Sept. 2007), <http://www.asiapacificforum.net/about/annual-meetings/12th-australia-2007/downloads/ngo-reports/ANNI%20-%20Monitoring%20Report%20-%20Malaysia.pdf>.

166. See Suara Rakyat Malaysia (SUARAM) & Education and Research Association for Consumers (ERA Consumer), *Malaysia – Long Concerns Under the International Spotlight*, in 2009 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT, *supra* note 91, at 104.

167. Keng, *supra* note 163. See also Aniza Damis, *Suhakam Treads an Arduous Path*, NEW SUNDAY TIMES (Aug. 3, 2008), available at http://www.malaysianbar.org.my/news_features/suhakam_treads_an_arduous_path.html.

168. See Suara Rakyat Malaysia (SUARAM) & Education and Research Association for Consumers (ERA Consumer), *Malaysia: Substantial Reform Still Elusive*, in 2010 ANNI REPORT ON THE PERFORMANCE AND ESTABLISHMENT, *supra* note 92, at 97.

during the process.

b. Singapore

Since its independence from Malaysia in 1965, Singapore has become one of the most highly developed countries in Asia under the strong leadership of its first Prime Minister Lee Kuan Yew and the People's Action Party (APA).¹⁶⁹ As the World Bank states, Singapore has “the highest standard of living in Asia” and is one of the Four Asian Tiger countries with huge economic success.¹⁷⁰ Though there are no specific reports by international human rights organizations of gross human rights violations by the Singapore government, it has broad power to limit its citizens' human rights as an excuse for economic development and national stability, especially due to the Internal Security Act.¹⁷¹ Singapore is the initiator of advocating Asian values and Neo-Confucianism based on the economics-first discourse in order to justify its authoritarian political order to intervene extensively in the public and private arena.¹⁷²

Ironically, there has been no strong resistance from the opposition party and the public against the government's human rights policy. Some scholars argue that “the excessive, if not repressive, mechanisms of the state prevent any serious challenge.”¹⁷³ In such a restricted political situation, there is limited room for domestic human rights NGOs to work and influence government policy.¹⁷⁴ Therefore, most NGOs have tried to utilize the political decision-making process in order to address broad human rights concerns rather than to confront the government or to undermine it.¹⁷⁵

Regarding the creation of a human rights commission in Singapore, Lee Kuan Yew maintains that it “was for the younger leaders to decide but . . . as long as the Singapore Government remained clean, capable, meritocratic and fair, I don't see the need for more political

169. Li-ann Thio, *Taking Rights Seriously? Human Rights Law in Singapore* [hereinafter Thio, *Taking Rights Seriously*], in HUMAN RIGHTS IN ASIA, *supra* note 79, at 158-62; Library of Congress – Federal Research Division, *Country Profile: Singapore* (July 2006), <http://lcweb2.loc.gov/frd/cs/profiles/Singapore.pdf>.

170. Thio, *Taking Rights Seriously?*, *supra* note 169, HUMAN RIGHTS IN ASIA, *supra* note 79, at 159.

171. *Id.*

172. *Id.* at 158-59.

173. Suzaina Kadir, *Singapore: Engagement and Autonomy Within the Political Status Quo*, in CIVIL SOCIETY AND POLITICAL CHANGE IN ASIA, *supra* note 76, at 324.

174. *Id.* at 328-33.

175. *Id.* at 350. See also Sinapan Samydorai, *Singapore: Everyone Matters*, HUMAN RIGHTS SOLIDARITY (May 2000), <http://www.hrsolidarity.net/mainfile.php/2000vol10no05/473/> (last updated Aug. 16, 2001); SG Human Rights, *SG Human Rights is No More* (June 12, 2008), <http://www.sghumanrights.org>.

policemen.”¹⁷⁶ Yet the real question is whether NHRIs are established to act as policemen rather than to enhance the promotion of human rights and good governance for the civil society.¹⁷⁷

One of the leaders of the opposition party (the Singapore Democratic Party), Dr. Chee Soon Juan, argues that a “human rights commission will not happen in Singapore” because the civil society has not had any willpower to confront the government and to challenge its human rights policy.¹⁷⁸ Michael Hwang, President of the Law Society of Singapore, also points out that a human rights commission in Singapore “would study the human rights situation in Singapore, but not actually do anything about it” if the current political system does not change.¹⁷⁹

3. Repressed Civil Society: Myanmar

Myanmar, formerly known as Burma, has a grim human rights record. There are numerous reports of gross human rights violations by the Burmese military government, such as apartheid, forced labor, and drug trafficking.¹⁸⁰ Millions of ethnic minorities in Myanmar have fled from economic and political oppression to seek asylum in Bangladesh, India, China, Malaysia and Thailand. More than 170,000 Myanmar are living in nine refugee camps in Thailand and two in Bangladesh.¹⁸¹

Myanmar became the object of international reproach after 1988, when the Burmese military junta seized power. This military government formed the State Law and Order Restoration Council (SLORC)¹⁸² after a bloody crackdown on a series of democratic

176. Clarissa Oon, *Major Task to Find Next ‘A Team’ From Small Talent Pool*, STRAITS TIMES (Feb. 2, 2008), available at <http://maruahsg.wordpress.com/2008/02/05/a-human-rights-commission-for-singapore>.

177. *Id.*

178. Vernon Lee, *Singapore: Forum on Human Rights*, HUMAN RIGHTS SOLIDARITY (May 2000), <http://www.hrsolidarity.net/mainfile.php/2000vol10no05/472/> (last updated Aug. 16, 2001). See also Dr. Chee Soon Juan, Secretary General of the Singapore Democratic Party, Speech at the Every Singaporean Matters Seminar (Mar. 10, 2000), available at <http://www.singapore-window.org/sw00/000310sj.htm> (last visited Feb. 24, 2012).

179. Gopalan Nair, *Simply Inconceivable: Human Rights Commission for Singapore* (Mar. 18, 2008), <http://simply-inconceivable.blogspot.com/2008/03/human-rights-commission-for-singapore.html>.

180. Bureau of East Asian and Pacific Affairs, *Background Note: Burma*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/r/pa/ei/bgn/35910.htm> (last updated Aug. 3, 2011).

181. *Id.*

182. The State Law and Order Restoration Council (SLORC) was the name of the military government of Myanmar from September 1988 to November 1997. See THE IRRAWADDY, *Cabinets of Burma Since 1948*, available at <http://www.irrawaddy.org> (The IRRAWADDY is published by the Irrawaddy Publishing Group (IPG)) (last visited Mar. 10, 2012). IPG was established in 1992 by Myanmar citizens living in exile. On its research pages, the website has detailed information and statistics on Burma, e.g., a full list of political prisoners, a list of cease-fire agreements with the Junta.

movements led by students.¹⁸³ The SLORC nullified the results of the national election in 1990 and arbitrarily detained democracy activists including their leader, Aung San Suu Kyi.¹⁸⁴ It renamed itself the State Peace and Development Council (SPDC) and has since used a repressive military regime and the curbing of civil liberties as a strategy to maintain law and order.¹⁸⁵

While Myanmar is a Member State of a number of major human rights treaties,¹⁸⁶ including the Convention on the Rights of the Child, the Convention to Eliminate All Forms of Discrimination Against Women, the Convention to Eliminate All Forms of Racial Discrimination, and the Genocide Convention, the Myanmar military government has nevertheless violated fundamental human rights norms regarding arbitrary detention, torture, extrajudicial execution, forced child labor, and coercive relocation of minorities for more than 10 years.¹⁸⁷ The SPDC also used coercive tactics to gain complete control over the border regions by systematic forced relocations of villages.¹⁸⁸ These repressive policies have contributed to a large extent to Myanmar citizens' fleeing the country.¹⁸⁹ Furthermore, the SPDC is highly suspicious of the role played by Western NGOs. The military regime in Myanmar has made consistent attempts to keep international human rights NGOs away from the Thai-Myanmar border, where massive forced relocations of the civilian population have taken place.¹⁹⁰

For the improvement of human rights in Myanmar, I believe the main force should come from the inside. But the existing civil society and NGOs in Myanmar appear to offer no threat to the government, and

183. GlobalSecurity.org, *8.8.88 People's Uprising - SLORC Coup in Burma*, <http://www.globalsecurity.org/military/world/war/slorc.htm> (last visited Feb. 24, 2012).

184. Sarah H. Cleveland, *Norm Internalization and U.S. Economic Sanctions*, 26 YALE J. INT'L L. 1, 8-9 (2001). Aung San Suu Kyi remained under house arrest for almost 15 of the 21 years, from July 1989 until her release on November 2010. *Burma Releases Pro-Democracy Leader Aung San Suu Kyi*, BBC NEWS ASIA-PACIFIC (Nov. 13, 2010), available at <http://www.bbc.co.uk/news/world-asia-pacific-11749661>.

185. See YAN NYEIN AYE, ENDEAVOURS OF THE MYANMAR ARMED FORCES GOVERNMENT FOR NATIONAL RECONSOLIDATION (2000).

186. *Id.*

187. Bureau of East Asian and Pacific Affairs, *Report on U.S. Trade Sanctions Against Burma*, U.S. DEP'T OF STATE (Apr. 2004), <http://2001-2009.state.gov/p/eap/rls/rpt/32106.htm>.

188. Curtis Lambrecht, *Destruction and Violation: Burma's Border Development Policies*, WATERSHED (Nov. 1999 – Feb. 2000), [http://www.terraper.org/pic_water/Watershed%205\(2\).pdf](http://www.terraper.org/pic_water/Watershed%205(2).pdf).

189. See Buhm-Suk Baek & Gauri Subramaniam, *Myanmarese Refugees in Thailand: The Need for Effective Protection*, CORNELL LAW SCHOOL J.S.D./DOCTORAL STUDENT PAPERS (Feb. 2008), http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1000&context=dsp_papers.

190. *Id.* at 12. See also MAUNG AUNG MYOE, NEITHER FRIEND NOR FOE: MYANMAR'S RELATIONS WITH THAILAND SINCE 1988: A VIEW FROM YANGON 83 (2002).

there remains little prospect of them playing a key role in fostering a human rights culture because the civil society in Myanmar is very weak and heavily controlled by the government. NGOs are even funded by the government and former military or government officials participate in them. Therefore, it is necessary for the countries, governments, and societies from the outside to support the expansion of civil society groups in Myanmar and mobilize them more effectively. Those with most opportunities to directly influence the development of civil society in Myanmar are probably its neighbors, especially those with relatively close ties, like the ASEAN countries.

To enhance the human rights situation in Myanmar, Western countries and international organizations have also constantly imposed sanctions against the gross human rights violations by the Myanmar military government,¹⁹¹ which has been criticized by many neighboring Asian countries.¹⁹² However, the main target of the criticism should be the refusal of those countries like China and the ASEAN states to support the sanctions, as it is partly motivated by their own economic interest, which results from the Myanmar economy's heavy dependence on the export of natural resources like natural gas to these neighboring countries in the region.

4. Summary

My broad argument is that NHRIs, in active cooperation with human rights NGOs, have an important role in the promotion and protection of human rights in each country to confirm the international human rights standard and, at the same time, to meet local specificities, traditions, and culture. NHRIs are also the primary institutions within the domestic human rights mechanism and the essential partners for human rights NGOs and human rights defenders working on the ground. Their independence and effectiveness are key elements in determining their capacity. This case study shows that those elements depend mainly on the way in which individual NHRIs interact both with the government and with NGOs, and on the level of relationship between the government and civil society.

Comparing the countries with NHRIs—Thailand, India, the Philippines and Malaysia—the case study shows that the NHRIs in all four states have a tension with human rights NGOs, even though to a different degree. As the ANNI Annual Reports describe, the NHRIs and

191. Bureau of East Asian and Pacific Affairs, *supra* note 187.

192. See generally Leon T. Hadar, *U.S. Sanctions Against Burma: A Failure on All Fronts*, TRADE POLICY ANALYSIS (Mar. 26, 1998), <http://www.cato.org/pubs/trade/tpa-001.html> (providing the criticizing opinion on Western countries and international organizations' sanctions against Burma).

NGOs in the first category, Legitimate Civil Society, have a “rocky” relationship. The NHRIs cooperate with NGOs on certain human rights issues, but in all three cases, their general consultations with NGOs are irregular and lack follow-up. The NGOs in those countries engage with the NHRIs if they perceive them as independent and effective institutions and constantly publicize and raise the issue of the selection and appointment process in each NHRI to the public.

In Malaysia, which is grouped in the second category, Controlled and Communalized Civil Society, the ICC has shown its concern on SUHAKAM’s independence and effectiveness, and in response the government amended its enabling law. The law had been perceived as superficial and flawed since, for example, there was no room at all for NGOs to get involved in the amendment process. Malaysian NGOs have also voiced their concern on SUHAKAM’s limited operational power which can be used just for the government’s interest, not for that of the people.

The comparison of the countries without NHRIs—Japan, Singapore and Myanmar—reveals how civil society in Japan can mobilize pressure to establish a NHRI and support it, while Singapore has provided no room for human rights NGOs to influence government policy toward establishing a NHRI. In Singapore, NGOs also have no willpower to confront the government within such a restricted political system. In Myanmar, the civil society is heavily controlled by the government, and the support from the outside, especially from neighboring states, is essential to fostering the capacity of NGOs inside.

This case study is just the starting point for further research aimed at establishing a series of benchmarks against which to evaluate countries with or without NHRIs in Asia. Understanding how NHRIs are properly established and the way in which they cooperate with human rights NGOs can enhance their far-reaching potential to protect human rights in individual states in Asia.

V. CONCLUSION

In this Article, I reviewed the way in which human rights NGOs can be defined and, based on that definition, how their role has evolved within the existing international and regional human rights mechanisms. My broad argument is that human rights NGOs should be understood as independent, non-profit, and people-based organizations with the goal of protecting and promoting human rights. Not only have they contributed to strengthening the international human rights system, but they have also been key partners of regional bodies to effectively implement international norms at the regional level.

Human rights NGOs are increasingly becoming regional for a better protection and promotion of human rights issues of common concern in the region, and they actively cooperate with other NGOs across national borders. Indeed, NGOs have contributed to enhancing the human rights situation in the region through their active participation and collaboration. All three existing regional human rights systems in Europe, the Americas, and Africa also show how human rights NGOs can interact and effectively address their concerns and problems under their regional framework. In Asia, their initiatives, input, and efforts have become the strong foundation for the establishment of RHRIs in the region.

Further, I examined the important role of human rights NGOs at the national level, especially in relation to the cooperation with NHRIs. I concluded that such collaboration is vital for the effectiveness of NHRIs and ultimately can lead to strengthening the national system for the protection and promotion of human rights. In the Asia-Pacific region, the APF has supported NGOs' active engagement with the member NHRIs since its establishment.

In addition, the case study of seven selected countries in Asia was provided to review the process of establishing NHRIs, successful and unsuccessful ones, and more specifically, how human rights NGOs have worked together with NHRIs and their governments for the protection and promotion of human rights. It demonstrated that NHRIs' effectiveness for better human rights practices in each individual state depends mainly on how they can properly interact both with the government and NGOs, and at the same time, on the level of interaction between governments and civil society.

Overall, NGOs play important roles for the promotion and protection of human rights through their active participation in and cooperation with international, regional, and national human rights institutions. Furthermore, for the accountability, effectiveness, and transparency of all formal human rights bodies, be they national, regional or international, human rights NGOs have constantly monitored and assessed those institutions' performances and operations, for example, by publishing reports. This is also an important role of NGOs which should be emphasized.