



Human Rights Defenders and Democracy Building: An Asian Perspective

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Abstract

The 1992 Treaty on European Union (TEU) declares that ‘the Union is founded on the principle of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to the Member States’. Thus, human rights protection and democracy building are two core tenets of European Union (EU) policy that should underscore all engagement with third countries, affecting political dialogue and diplomacy, development assistance, financial and commercial agreements, and action in multilateral organizations like the United Nations (UN).

Supporting and protecting human rights defenders is a significant aspect in strengthening democracy-building efforts. Protecting the rights of one human rights defender protects the human rights of hundreds of others. In fostering a culture of democracy, there is a need to establish a vibrant and active civil society and strong state institutions that treat citizens in a fair and just manner. The rights that human rights defenders promote and protect provide the very foundations of a democratic society. The absence of protection of human rights in a society is an indicator of the absence of democracy.

In Asia, human rights defenders face restrictions on their freedom to protest, which includes the right to freedom of opinion and expression. In 2008, more and more governments in Asia have either enacted new laws or increased the use of domestic laws to silence dissent, stifle criticism, and prevent human rights defenders from accessing and sharing information vital to their work. This is a worrying indication of a gradual collapse of democracy in the region.

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Summary of Recommendations

The European Council adopted the EU *Guidelines on Human Rights Defenders* in June 2004. The document was considered an important tool that could pave the way for better protection for human rights defenders, especially in Asia. However, these

guidelines are not widely known and are underutilized by human rights defenders in the region. There is an urgent need to publicize the guidelines to governments, human rights defenders and to citizens at large.

One of the primary factors impeding the implementation of the EU Guidelines on Human Rights Defenders is the lack of specific instructions by EU member states to their missions in third countries. EU member states should issue these instructions as local implementation strategies for the guidelines. These implementation strategies must be formulated and developed with human rights defenders who will be beneficiaries of these strategies.

These local implementation strategies must also include steps to build and strengthen institutions to protect defenders, as well as combat the culture of impunity that is the core reason why human rights defenders always find themselves under constant threat and danger.

The work of human rights defenders increases the quality of public participation in democratic processes. Human rights defenders work for the participation of voters in national and local elections. They initiate public debates on issues of common concern. Human rights defenders also promote the participation in decision-making processes of vulnerable or marginalized groups.

1. The Situation of Human Rights Defenders in Asia

Human rights defenders often put their lives at risk in their work for the fulfillment and protection of the rights of others. Human rights defenders all over the world have consistently been the victims of extrajudicial killings, enforced disappearances, arbitrary arrests and detention, and torture. Their everyday work is severely impeded by restrictions on the freedoms of assembly, association, expression and movement, particularly where states use national security laws in the context of countering terrorism.

According to Hina Jilani, former UN special representative of the secretary-general on human rights defenders, '[T]he active presence of defenders, free from retribution, is one indicator of the health of a State's democratic processes' (Jilani, 2003). Based on the following incidents, democracy in Asia is doing poorly:

In Singapore, authorities from the Media Development Authority interrupted a private film screening in May 2008,¹ claiming that the organizers could not show a film without a valid certificate. Human rights defenders argue that all Singaporeans who host private screenings of films are then breaking the law. Also in 2008, the government filed charges against 20 human rights defenders (Forum Asia, 2009) who participated in various peaceful protests and distributed flyers to the public.

In Malaysia, government authorities used the Internal Security Act (ISA) to stifle dissenting voices of human rights defenders. On 12 September 2008, Raja Petra Kamaruddin, Tan Hoon Cheng and Teresa Kok were arrested and detained under the ISA. Raja Petra Kamaruddin is a blogger and the editor of 'Malaysia Today', a popular news Web site. He was arrested because he allegedly insulted Islam and the Prophet Muhammad. Tan Hoon Cheng is also a news writer; authorities arrested her

¹ Film on Lee Kuan Yew Seized by MDA, 17 May 2008, available at <http://theonlinecitizen.com/2008/05/film-on-lee-kuan-yew-seized-by-md/>

because they allegedly needed to protect her from death threats. Teresa Kok, a member of parliament, was accused of allegedly ordering mosque officials to tone down the call to prayer. In fact, a mosque official explained that the call to prayer was toned down due to a damaged amplifier. Teresa Kok has spoken publicly against policies imposed by the Malaysian government. It is believed that this was the real reason why she was arrested and detained by Malaysian police.

In Sri Lanka, human rights defenders face risks due to an ongoing war by the military against the Liberation Tigers of Tamil Eelam (LTTE). This war has not only displaced thousands of civilians and caused a humanitarian crisis, but it has also caused the deaths of several human rights defenders who expressed their dissent against government policies and the war against the LTTE. One critic was Lasantha Wickramatunge, the editor of *The Sunday Reader* newspaper. He was shot dead by unidentified gunmen on 8 January 2009 as he was driving to work. Another journalist, Jayaprakash Tissainayagam, has been detained by Sri Lankan authorities since 7 March 2008 (Forum Asia, 2008). Prior to his arrest, his articles exposed the impact of military actions on civilians.

In South Korea, human rights defenders were met with severe and violent reprisals from the government after the country signed a trade agreement with the United States of America on 18 April 2008 regarding beef imports (Forum Asia, August 2008). Thousands of people marched on the streets of Seoul and other cities to protest. Many human rights defenders who went to the vigils to act as monitors were beaten by riot policemen. Some of these human rights defenders were representatives of the National Human Rights Commission of Korea and were wearing vests clearly identifying them as commission staff. Volunteer medical workers, also wearing identifying vests, were also attacked by riot policemen.

In China, at least 101 individuals have either been arrested, subjected to interrogation or faced harassment from the police because they supported Charter 08 (Asianews, 2009). This manifesto was signed by 303 prominent Chinese personalities, including intellectuals, academics, and human rights activists, to celebrate the 60th anniversary of the adoption of the Universal Declaration for Human Rights. Charter 08 lists 19 demands for political reform addressed to the Chinese Government. These demands include amending the constitution, legislative democracy, establishing an independent judiciary, election of public officials, and freedom of association, assembly and expression.

2. What Elements are Needed to Further Promote and Protect the Rights of Human Rights Defenders in Asia?

In order to strengthen the protection of human rights defenders working at the national level, there is a need for independent, effective and accountable national human rights institutions. At the regional level, a regional human rights body is necessary to promote an overall culture of respect for human rights. Impunity also needs to be addressed in order to end the vicious cycle of violations that endanger the lives of human rights defenders.

At the national level, there is a need for independent, effective and accountable national human rights institutions. At the regional level, a regional human rights body is necessary as well.

Independent, Effective, and Accountable National Human Rights Institutions (NHRIs)

National human rights institutions (NHRIs) play a pivotal role in promoting and protecting the rights of human rights defenders at the national level. These institutions straddle the gray area between being an institution established by the government and an independent body tasked to monitor the government's human rights record. According to the Paris Principles, which outline the responsibilities of NHRIs, such institutions should be structurally, financially, physically and legally independent of the government. An NHRI should be able to determine its own priorities and activities, and issue reports and recommendations not subject to direction or review by others. Governments should have no power over appointments of members of NHRIs.

The role of NHRIs in relation to human rights defenders involves investigating cases of violations against defenders, ensuring that violators are brought to justice, and applying pressure on state actors to implement laws and policies that would bring greater protection to human rights defenders. National human rights institutions are also important since it is within their mandates to advise governments to incorporate international human rights laws and principles, including the UN Declaration on Human Rights Defenders, into national legislation.

A significant number of Asian countries have still not established NHRIs. These countries include Singapore, Vietnam, Laos, Burma, China, North Korea, Cambodia, and Pakistan. In countries where NHRIs exist, the three most significant problems are the lack of structural and fiscal autonomy and government interference in the appointment of members, their overall ineffectiveness, and the lack of coordination and mutual support between NHRIs and human rights defenders. National human rights institutions need support and pressure both from civil society and the EU to become more robust, accountable and effective.

A Regional Human Rights Mechanism

At present, Asia lacks a regional body that has the mandate to investigate individual complaints of human rights violations, monitor and report on the human rights situations in its member states, conduct visits and investigations, raise awareness on human rights issues, and issue recommendations pertaining to human rights issues to member states.

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However, there is the potential for the Association of Southeast Asian Nations (ASEAN) to establish such a body, as called for in Article 14 of the ASEAN Charter, which was adopted at the 13th ASEAN Summit in November 2007. In 2008, human rights defenders in the region submitted their recommendations for the mandate and powers of the

ASEAN human rights body. Such a mechanism, if effectively implemented, would be an invaluable tool for human rights defenders. Such a mechanism may also help ASEAN governments integrate international human rights norms and principles into their domestic laws, and promote a common human rights culture throughout the Southeast Asian region.

Combating Impunity

Impunity is one of the most daunting challenges for human rights defenders all over the world. Female human rights defenders, responding to a questionnaire distributed by the Women Human Rights Defenders International Coalition, particularly emphasized that the culture of impunity creates an environment of ‘permanent danger’ for women human rights defenders. It is a culture wherein violations against human rights defenders are ignored and perpetrators are not held accountable.

In order to combat impunity, it is not enough for the state to prosecute perpetrators. Combating impunity also involves giving victims reparations, respecting the victims’ right to know the truth, and ensuring the non-recurrence of violations. In Asia, states often run short of fulfilling these obligations, thereby allowing the cycle of violations to continue and fostering impunity. Most of Southeast Asia, for instance, is still waiting for an apology from the Japanese Government for the suffering of women used as sex slaves by the Japanese army during World War II. In Cambodia, the Khmer Rouge tribunal has yet to begin indictments of those who committed genocide during the period when the Khmer Rouge ruled the country. In the Philippines, victims of human rights violations committed during the Martial Law period in the 1970s are still struggling to have a law passed granting them reparations for the abuses they suffered.

Where there is impunity, there is lawlessness, paranoia, corruption and distrust. Human rights defenders who take on the task of challenging the culture of impunity in their countries find themselves not only risking their lives, but also the safety and well-being of their families.

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International Support and Solidarity

Support and solidarity from the international community, particularly from other regions, is also a significant factor in promoting and protecting the rights of human rights defenders in Asia. More often than not, human rights defenders at risk in Asia seek refuge in Europe and the United States. The process of relocating a human rights defender to another country is often undertaken with the cooperation of regional and international non-governmental organizations and networks.

When the European Council adopted the EU Guidelines on Human Rights Defenders in June 2004, many viewed it as a potential tool to rally international support for human rights defenders in Asia. The document itself was considered an important tool that could pave the way for better protection for human rights defenders in the region.

3. The EU Guidelines on Human Rights Defenders

In December 2006, during the Finnish presidency of the European Union, Erkki Tuomioja, then Finnish foreign affairs minister, said, ‘Democracy and human rights cannot be simply imported or imposed onto any society. That is why the support for the work of civil society, the local defenders of the democratic cause and human rights, is such a priority’. The EU Guidelines on Human Rights Defenders are meant to address concerns regarding human rights defenders and to reinforce the EU’s human

rights policy. The guidelines are a part of policy documents covering issues particularly important to EU member states, such as the death penalty, torture, human rights dialogues, children and armed conflict, and the rights of the child.

Under the guidelines, EU heads of mission (HoMs) are advised to include the situation of human rights defenders in their reports, noting threats or attacks against human rights defenders. HoMs may make recommendations to the Council Working Party on Human Rights (COHOM) for possible EU action, such as statements of condemnation or demarches.

EU HoMs are to maintain contact with human rights defenders and observe their trials. They should set up meetings between human rights defenders and EU and European Commission officials. The guidelines also request that HoMs promote existing regional mechanisms that protect human rights defenders, as well as support the creation of such mechanisms in regions where they do not exist. The latter is significant for human rights defenders in Asia since this is one of the last regions in the world where there is no regional mechanism for promoting and protecting human rights.

Support for the Special Procedures of the United Nations Human Rights Council is also noted in the guidelines. The EU's actions to support the Special Procedures include encouraging states to accept country visits under the UN Special Procedures and promoting the use of UN thematic mechanisms by local human rights defenders.

Finally, under the EU guidelines, the COHOM is to integrate issues of human rights defenders into EU policies and actions. It is also to report annually on whether or not the Guidelines were followed and to what effect.

4. Implementation of the EU Guidelines from the Perspective of Asian Human Rights Defenders

While there have been efforts to analyze and implement the guidelines in the context of certain Asian countries, such as India and China, there is little awareness of the guidelines throughout the Asian region, let alone successful instances of their implementation.

Reports by international human rights groups reveal that successful implementation of the guidelines tends to rely on the initiative of particular EU member states or the personal dedication of mission staff. There is no coordinated regional mechanism by which to promote the guidelines in an effective and systematic way throughout the region.

In the 2006 Council Conclusions on the EU guidelines, it was shown that EU member states did not issue operational directives to their missions, and most did not train mission staff. There is a general sense of confusion among EU

missions on how to implement the guidelines, with many staffers unaware of the guidelines' status and significance.

Efforts to implement the EU guidelines have been described as 'patchy' (Amnesty International, 2007) and unsystematic. A report issued by Amnesty International in 2007 showed that despite positive efforts by successive EU presidencies, 'the guidelines

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have yet to be sufficiently employed on the ground for the purpose of enhancing EU efforts to support and protect human rights defenders’.

Human rights groups have also observed that the EU focuses more on official mechanisms, such as demarches and political statements. To illustrate, the *2008 EU Annual Report on Human Rights* indicates that human rights dialogues have been established between the EU and China, Cambodia, Laos, Bangladesh, Japan, and Indonesia. During the EU-China dialogue, several individual cases were raised and the EU expressed concern over restrictions of press freedom and the Internet, as well as the treatment of human rights defenders. The EU also carried out demarches to India, Malaysia and Nepal. The EU is also negotiating draft clauses on the International Criminal Court (ICC) with Thailand and Vietnam, while a Partnership and Cooperation Agreement (PCA) with Indonesia is expected to be signed.

The EU has also issued Council conclusions, declarations and presidency statements on the repression of freedoms in Burma and the continued imprisonment of Aung San Suu Kyi. An EU troika met with human rights defenders from Laos and an EU commissioner participated in a workshop on the ICC and civil society in Laos. The EU has also worked with the Philippine Government to establish an EU Justice Assistance Mission to provide training in the criminal justice system. There have also been several dialogues between the EU and the Government of India, with Indian authorities stressing their commitment to ending impunity for perpetrators of crimes against humanity.

However, according to Front Line, a human rights group based in Dublin, these formal mechanisms do not have as much impact on the protection of human rights defenders as small and informal actions. According to a Front Line report, ‘simple steps such as regular phone calls, information sharing, inviting human rights defenders to events taking place in the missions, organizing meetings with them, visiting their areas of work or simply showing moral support, can have an important impact on their public image, and also on their own perception of the support they can get’ (Front Line, 2008). A human rights defender from Sri Lanka, during a regional forum of human rights defenders held in Bangkok on January 2009, said that a visit from an EU diplomat to the home of a human rights defender who is at risk can accord some form of protection. Such a visit conveys to local authorities that the international community is watching over the human rights defender concerned.

In June 2006, two years after the adoption of the guidelines, the Austrian presidency of the EU found significant gaps between the guidelines’ objectives and their implementation.

In 2008, an EU working group recommended establishing human rights groups at the EU level in third countries, increasing efforts to raise awareness of the guidelines at the local level, and emphasizing media freedom with third countries.

Significant gaps have been found between the EU guidelines’ objectives and the implementation of them.

5. Recommendations for Local Implementation Strategies for Human Rights Defenders

The recommendations below suggest how EU member states can implement local strategies in their missions in Asian countries.

Participatory and Consultative Process

The Netherlands is the only EU member state known to have formed local implementation strategies of the guidelines for its missions abroad. The strategies are confidential. This is an issue of concern for human rights defenders in Asia since such strategies should ideally be formulated in consultation with the people for whom they were conceived. If human rights defenders are involved, they would use these strategies since they would see these as practical, familiar and directly addressing their needs.

Intensification of Promotion Activities

Local implementation strategies must also promote the guidelines to human rights defenders on the ground. This may include translating the guidelines into various Asian languages. Where missions have translated the guidelines into local languages, they are still not disseminated widely enough. In 2004, Peace Brigades International provided a translation of the guidelines into Bahasa Indonesia to the EU, but received no information about whether the translation had been distributed by the mission staff in Indonesia.

Copies of the guidelines should be distributed during events for human rights defenders. Although the guidelines are on the EU's official web site and on the web sites of some EU member states' missions in Asia, not all human rights defenders have Internet access.

EU mission staff should also be trained to fully explain the guidelines to local defenders. The guidelines are directed at EU missions in third countries since they are the primary interface between the EU and its member states and local human rights defenders. Best practices should be shared between EU member states; human rights defenders and human rights organizations could also be invited to participate in these training sessions.

Increase Contact with Human Rights Defenders

The local implementation strategies must instruct staff of EU missions to be more proactive in establishing and maintaining contacts with local human rights defenders. A conclusion on the guidelines issued by the Council of the European Union in 2006 revealed that in many cases, a limited EU presence or a lack of resources has meant that missions have been unable to appoint a special liaison officer. Human rights defenders in more remote areas have difficulty accessing EU missions in their countries. In Maldives, for instance, human rights defenders in smaller islands are frequently unable to make contact with EU missions, which are always located in the capital. This is also true for other countries in Asia, such as the Philippines and Indonesia. It should be noted that these rural places are where many human rights defenders face the most risk and would need the assistance of EU missions most.

Establishing and maintaining contact with human rights defenders is important because as noted earlier, small and significant gestures accord more protection to human rights defenders. Visiting human rights defenders in their workplaces and homes, attending events of human rights defenders, and observing trials of human rights defenders have more impact on their well-being than formal demarches.

Taking Up Women Human Rights Defenders Issues

Local implementation strategies must also take into consideration the gender-specific recommendations submitted by the Women Human Rights Defenders International Coalition in 2006. EU missions must have the capacity to identify and document gender-specific or gender-motivated threats, retaliation and violence. Implementation strategies must also include monitoring and documenting the absence of public platforms for pro-women's human rights views, the equal participation of women in decision-making processes in the community, state responses to gender-based discriminatory laws and practices, and ensuring that women have equal access to all other initiatives undertaken by the EU in its implementation of the guidelines.

Recognizing the Vital Role of NHRIs

The Asian NGOs Network on National Human Rights Institutions (ANNI), a network of human rights defenders engaging with NHRIs, has urged Asian NHRIs since 2006 to establish focal persons mandated to address issues of human rights defenders at risk. Only the Commission on Human Rights of the Philippines (CHRP), the national institution of the Philippines, has identified a focal person for human rights defenders. EU missions should encourage NHRIs to appoint these focal persons; they would be able to help EU missions monitor cases of human rights defenders at risk.

In countries where NHRIs have yet to be established, EU missions should urge governments to establish independent, accountable and effective NHRIs, in accordance with the Paris Principles.

Encouraging the Development of Regional Mechanisms

EU missions in Southeast Asia should encourage governments of ASEAN countries to establish a regional human rights mechanism that is independent and effective. They may help in promoting a mechanism similar to the special unit within the Inter-American Commission on Human Rights, which is devoted to the protection of human rights defenders and can refer cases to the Inter-American Court of Human Rights.

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