OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

DISCUSSION PAPER

BY

PROFESSOR VITIT MUNTARBHORN

EXPLORING THE WINDOW OF OPPORTUNITIES: Evolving a Framework for the Promotion and Protection of Human Rights in the Asia-Pacific Region

JULY 2007
Exploring the Window of Opportunities: Evolving a Framework for the Promotion and Protection of Human Rights in the Asia-Pacific Region

Given the vastness and heterogeneity of the Asia-Pacific region, one of the recurrent challenges facing the region is the building of a comprehensive national system for the promotion and protection of human rights, in addition to a correlative framework at the regional level. The past decade has witnessed progress in some key areas, while there is a further window of opportunities to be explored in other areas. They include the following dimensions.

First, there has been an expansion of various institutions and mechanisms for the promotion and protection of human rights at the national level. Today, there are some 20 countries which have national human rights commissions or the equivalent which offer key components of the national system to deal with critical human rights issues and those affected by them. Many have become part of a network at the Asia-Pacific level, thus offering an entry point for regional cooperation. That network is in the form of the Asia-Pacific Forum of National Human Rights Institutions which has set up an Advisory Council of Jurists to advise on aspects of human rights in the region. There is mutual interchange and capacity building through the process. Yet, the challenge is always effective implementation at the field level and access to all stakeholders.

In reality, there is increasing realization that national systems for the promotion and protecting of human rights should comprise a broad range of actors and institutions. While governmental channels are important, there is much space for independent institutions, civil society participation, media inputs and various checks and balances varying from an active judiciary to parliamentary committees and the totality of the democratic process.

Second, for over a decade, Asia-Pacific countries have participated in periodic/annual regional workshops under the umbrella of the United Nations (UN), particularly the Office of the UN High Commissioner for Human Rights (OHCHR), which have developed various pillars for common activities at the regional level. Operational since 1998, the activities focus on four areas: national human rights institutions (such as national human rights commissions); national human rights action plans; human rights education; and the realization of economic, social and cultural rights and the right to development. The OHCHR has been instrumental in assisting the organisation of numerous workshops on these areas as well as providing technical assistance for a range of related activities. The various forums have become more open to civil participation as well as that of national human rights institutions. They have been exploring more thematic issues of common interest, such as human trafficking and poverty.

Third, UN presence in the region has grown. This ranges from OHCHR country offices to offices at the regional and other levels to help promote capacity-building and programming. This is complemented by the rise of UN country teams,
encompassing the variety of UN agencies at the field level, with a view to integrating human rights into and through all UN activities. Interestingly, the UN Development Programme is now setting up governance centres, including in the Asian region, which delve into various aspects of human rights, such as research and capacity building on women’s rights and indigenous issues. There are also OHCHR inputs through a number of UN peace-keeping units in the region. The types of presence may range from the establishment of OHCHR offices to the stationing of human rights advisers in various countries, and programmes supported directly from Geneva. There is greater emphasis on country engagement programmes supported by the OHCHR’s Plan of Action which offers more possibilities for field-related activities enabling the reinforcement of national systems.

On a related front, the increasing participation of Asia-Pacific countries in various human rights treaties propelled by the UN is welcome. While the most ratified treaty is the Convention on the Rights of the Child, countries have become more open to acceding to other treaties such as the Women’s Convention, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. The newly adopted Convention on the Rights of Persons with Disabilities has enjoyed broad support from this region and there is likely to be widespread ratification accordingly. Some countries have also opened the door to visits by the special procedures of the UN, such as Special Rapporteurs or Special Representatives of the UN Secretary-General.

Fourth, various inter-governmental organisations in the Asia-Pacific region have been exploring opportunities to promote and protect human rights beyond the national setting. In West Asia, there is the League of Arab States which has been instrumental in propelling a revised version of a longstanding Arab Charter of Human Rights. The 2004 version offers many improvements from the 1994 text to ensure more consistency with international human rights standards. There is also the possibility of expanding the monitoring of human rights implementation at the national level by means of an Arab Human Rights Committee to be established under the Charter. The South Asian Association on Regional Cooperation (SAARC) has moved towards more specific treaties on various dimensions of human rights. These include the 2002 SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia; and the 2004 SAARC Social Charter which addresses poverty and development issues to complement global targets such as the Millennium Development Goals (2000).

In South-east Asia, there is the Association of South-east Asian Nations (ASEAN) which has moved towards the possibility of establishing a human rights mechanism. In 2004, the group adopted the Vientiane Plan of Action which referred to the possibility of an ASEAN Commission on Women’s Rights and Children’s Rights. More recently, it adopted a Declaration on the Rights of Migrant Workers. ASEAN is now drafting an ASEAN Charter as a kind of Constitution for the region; this could include a specific reference to human rights, a human rights mechanism, and other actions to promote implementation of the Charter. On another front, there is the Pacific Islands Forum which has been supportive of the establishment of national human rights institutions as well as possibly a regional framework for activities.
Fifth, 2007 is a timely window on UN reforms, since key changes have been taking place at the UN level which will have impact on the Asia-Pacific region. The new UN Human Rights Council recently adopted a text proposed by its President which introduces various new elements for the promotion and protection of human rights worldwide. The new mechanism of Universal Periodic Review will be operationalised under the umbrella of the Human Rights Council; it is a review process covering all countries in relation to their implementation of human rights, particularly at the national level. It is likely that each of the countries will be reviewed every four years, and the process is to be based upon interactive and constructive dialogue, inviting the State to be reviewed to submit a short report, together with compilation of information and inputs from other sources, subject to analysis by the Council. The process may lead to technical cooperation as well as other measures. The UN reforms include a new process for individual communications to the Council, with improved access and information to those sending such communications.

The above developments thus offer a window of opportunities to be maximized, with more focused measures as follows:

- support effective implementation of human rights, especially at the national level, through the building of comprehensive systems for the promotion and protection of human rights, including the presence and network of national human rights commissions or the equivalent, with adequate resources;

- maximize the value-added of the periodic workshops which have been taking place under the UN umbrella by focusing on key activities in a sustained manner through a variety of methods; where workshops are organized, they should aim for a “workshop-plus” process with emphasis on follow-up activities after each workshop and the incorporation of human rights into concrete programming with the involvement of key stakeholders;

- foster the work of UN country teams so as to help integrate human rights into the national and regional settings; a related activity could be the promotion of implementation of the recommendations of the various human rights treaty bodies and other UN mechanisms; and more ratification of human rights treaties and engagement of UN special procedures, together with related capacity-building;

- interchange between the experiences of various inter-governmental organisations which are taking initiatives on human rights instruments and mechanisms, and provide support to enhance complementarity with the international framework;

- introduce the region to the new UN reforms and help prepare countries for the Universal Period Review and other processes, with broad civil society participation, premised upon the nexus between human rights, democracy, peace and sustainable development.
Vitit Muntarbhorn is a Professor of Law at Chulalongkorn University, Bangkok. He has helped the UN in a variety of capacities, including as an expert, consultant and Special Rapporteur. This paper is for the 14th Annual Workshop of the Framework of Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region, Bali, 10-12 July 2007.