

# ISSUES SURROUNDING THE CREATION OF A REGIONAL HUMAN RIGHTS SYSTEM FOR THE ASIA-PACIFIC

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The only major region of the world that does not have a regional human rights commission or court is the Asia-Pacific. The Asia-Pacific can generally be recognized to include not only the entire Asian region, from Japan and the Philippines in the East to Pakistan and Afghanistan in the West, but also areas of the South Pacific, including Australia, New Zealand, the East Indies and the Pacific Islands, and Russia. These countries are diverse in a wide variety of areas, including culture, language, history, wealth, technology, development, and legal systems. Yet they share not only a territorial commonality but also some similar interests and problems.

There are currently three regional human rights systems: the European, Inter-American, and African systems. The European Commission and the European Court of Human Rights were established in response to the atrocities committed during the Second World War. In 1950, the Council of Europe created the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which entered into force in 1953. The ECHR subsequently created the European Commission on Human Rights and the European Court of Human Rights. Optional protocols afford additional rights. The European Commission can receive complaints from state parties and individuals, but only states can refer a case to the European Court, unless the Ninth Protocol is ratified by the state to allow individuals to have standing before the court. Ratification of the Eleventh Protocol by state parties to the ECHR, which is expected to enter into force on November 1, 1998, will dissolve the European Commission on Human Rights and allow individuals and states to take a case directly to the European Court of Human Rights.

In 1948, the Organization of American States (OAS) adopted the American Declaration of the Rights and Duties of Man. In 1959, the Inter-American Commission on Human Rights was created, and in 1969, the American Convention on Human Rights (ACHR) was adopted by the OAS.

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The Inter-American Commission may receive communications from individuals, states, and others, such as non-governmental organizations. Optional protocols to the ACHR provide additional rights. In 1978, the Inter-American Court of Human Rights was established by the ACHR, despite lack of individual court standing.

In 1981, the Organization of African Unity (OAU) adopted the African Charter on Human and Peoples Rights. This charter established the African Commission on Human and Peoples Rights. While discussions have greatly progressed on establishing an African Court on Human and Peoples Rights, this court is not yet a reality. The African Charter places an emphasis on collective rights not recognized in the European and Inter-American Conventions and imposes duties not only on state parties but also on individuals.

There are strengths and weaknesses in the European, Inter-American, and African systems. Any human rights system created in the Asia-Pacific region can learn and borrow from the other systems and adapt them to the special needs of in the Asia-Pacific region. Financial resources may pose grave difficulties, and language will certainly be another problem, as there are thousands of languages and dialects within the Asia-Pacific region. Undoubtedly, many states will resist guaranteeing people certain fundamental rights or resist submitting the state to any outside authority.

Despite these and other obstacles, incentives abound. For instance, a commission or court could provide impartial resolution of disputes between state parties, possibly preventing escalation of tensions into armed conflicts. A regional human rights charter or convention on human rights principles could establish a more uniform minimum standard of treatment for persons, based on principles agreed upon by and within the Asian and Pacific arena. A human rights system would likely create both international and domestic goodwill, as a result of efforts and initiatives made by states to protect the basic human rights of people in the region. The Asia-Pacific frequently complains about Western nations and other areas of the world imposing its standards on them or interfering in their activities, but a regional system would allow the Asia-Pacific increased freedom to resolve international disputes and to keep internal human rights accusations within its region. Such a system could stand to educate citizens, states, corporations, and organizations on the importance of respecting human dignity, and to serve as a deterrent for those who assume that impunity is the norm.

For many years, various human rights organizations, and in recent years the United Nations and various Asia-Pacific state representatives, have participated in meetings and conferences concerning the establishment

of a human rights system in the Asia-Pacific. The Asian Human Rights Commission, a non-governmental organization based in Hong Kong, spent three years working on a draft Asian Charter for Human Rights, which was inspired by a desire to allow the people of Asia to live in peace and dignity. In 1997, the final draft of the Asian Charter for Human Rights was completed.

It remains to be seen whether any human rights mechanisms or systems will have the support of states in the Asia-Pacific. Many problems pervasive in this region, such as drug and sex trafficking, slave and child labor, torture, and forced detention of prisoners of conscience are often perpetrated, endorsed, or acquiesced to by the states that may have little or no incentive to stop or prevent such abuses. Nevertheless, nations as diverse as Russia, China, India, Japan, and Australia can and should work together to create a strong contingency in the Asia-Pacific for protecting its citizenry against human rights violations. It is important to emphasize that creating a regional system for the Asia-Pacific will not necessarily obligate states to increased legal responsibility, but the majority of states in the Asia-Pacific have signed, ratified, or acceded to many of the international human rights instruments currently in force, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination Against Women, the Convention on the Elimination of Racial Discrimination, the Genocide Convention, the Convention against Torture, and the Slavery Convention.

Issues surrounding the creation of an Asia-Pacific regional human rights system are complicated and diverse. There will be no easy solutions. However, articles by human rights scholars, lawyers, and/or activists, Dr. Clarence Dias (India), Bina D'Costa (Bangladesh), and Ali Qazilbash (Pakistan), provide greater insight into these issues. Their articles review past and current efforts to create a regional human rights system in the Asia-Pacific by non-governmental organizations, the United Nations, and state actors; provide a descriptive analysis of obstacles to a regional human rights system; report on human rights organizations and systems already established in various Asian countries; compare a regional human rights system in the Asia-Pacific with other human rights systems already established in other regions of the world; and detail the final draft of The Asian Charter on Human Rights.