

## **Establishment of a Regional Human Rights Mechanism in South Asia:**

### **Possibilities and Challenges**

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#### **1. General Background**

South Asia being the host of one-fifth population of the world is still grappling with poverty, illiteracy, interstate and internal conflict followed by gross violation of human rights and abuses attributing to the culture of impunity. On the one hand, lack of effective initiatives from the respective governments in defending diversity and addressing geo-political situation, illiteracy and poverty have contributed for ongoing impunity, lack of good governance and transparency and violations of human rights. On the other hand, there is growing realization about human rights and democracy among the civil society organizations and policy makers. South Asia like most other post-colonial security regions is a "conflictual security complex"<sup>2</sup>. The vibrant civil society of the region has also contributed to the continuous struggle of the people against the repressive regime in order to restore democratic freedom and human rights in South Asian countries. SAARC has been unable to push forward its agenda of social development, economic cooperation/integration and building trust among the South Asian nations. Similarly, SAARC has been ineffective to meet the emerging challenges such as terrorism, climate change and environmental degradation. Regional connectivity with strong mechanism for consolidating democracy and human rights through the wider participation of civil society still remains a dream and

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<sup>2</sup> Buzan and Wæver define a Regional Security Complex (RSC) as a set of units whose major processes of securitization, de-securitization, or both are so interlinked that their security problems cannot reasonably be analyzed or resolved apart from one another. The RSC theory uses a blend of materialist and constructivist approaches. On the materialist side it uses ideas of "bounded territoriality and distribution of power". On the constructivist side, RSC builds on the securitization theory which focuses on the political processes by which security issues get constituted. See, Barry Buzan & Ole Wæver, *Regions and Powers: The Structure of International Security*, (Cambridge University Press, 2003)

cooperation in energy sector and harnessing of water resources continues to be marred by regional security issues. This paper will try to discuss an overview of SAARC in the context of democracy by highlighting major challenges and opportunities for establishment of human rights mechanism in South Asia.

## **2. SAARC in the Context of Democracy and Human Rights**

The United Nations and other national ,regional and international organizations have been raising serious concerns on the human rights of South Asian countries such as disappearances, extra-judicial killings, impunity, suppression of freedom of expression, freedom of assembly and freedom of association and attack against the Human Rights Defenders(HRDs) ,civil society advocates and media. Similarly, the human rights mechanisms including the UN Office of the High Commissioner for Human Rights(OHCHR) have made number of recommendations to improve the human rights situation of South Asian countries .The overall ratification of human rights treaties and their implementation record of South Asian countries is not satisfactory.

The decision of UN Human Rights Council (HRC) to undertake Universal Periodic Review (UPR), as new review mechanism has provided a unique opportunity for an active engagement of all relevant stakeholders including Non-Governmental Organizations (NGOs), National Human Rights Institutions (NHRIs) in the UPR mechanism. All South Asian countries have undergone the UPR process where the civil society organizations and the National Human Rights Institutions (NHRIs) had played important role for the fulfillment of human rights obligation of the state.

The situation of human rights in South Asia is very challenging due to geo-political situation, poverty, illiteracy, discrimination and denial of basic human rights to the marginalized and disadvantaged communities. Moreover, the internal conflict and anti-terror measures of the state in the name of fighting against terrorism have resulted with violation of human rights and abuses by the state and non-state

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actors. Moreover, growing emergence of neo-liberal global economy has pushed the limited role of the state in fulfilling its obligation-respect, protect and promotion of human rights. Majority of SAARC member states are also yet to ratify the Optional Protocol (OP) to the ICCPR and the Convention on the Elimination of Discrimination against Women (CEDAW), which enable the respective treaty-based Committees to receive complaints from individuals. Only Maldives and Sri Lanka have ratified both Protocols, while Nepal has ratified only the OP to the ICCPR. Among the SAARC countries, Bhutan has still not ratified the International Conventions on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR). Sri Lanka is the only member to have ratified the Convention on the Rights of Migrant Workers (ICMW). Bhutan and Pakistan have neither signed nor ratified the Convention against Torture. Bangladesh has recently ratified the Rome Statute and has become the youngest member of the International Criminal Court (ICC).

Some of the countries have made reservations and following restrictive treatment on the ratified treaties related to the civil and political rights and limited willingness to implement the treaties related to economic, social and cultural rights and specific treaties such as Convention on Elimination of All Kinds of Discrimination. None of the SAARC members except Nepal has officially ratified the ILO's Indigenous and Tribal Peoples Convention, 1989 (No. 169) which guarantees the "effective protection of [indigenous and tribal peoples] rights ownership and possession" of land. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has called the governments to recognize the rights and ensure the Free and Prior Informed Consent (FPIC) with the representatives of the Indigenous peoples while conducting development activities which has direct or indirect impact to them. Among SAARC countries, only Nepal has ratified the Second Optional Protocol to the ICCPR aimed at the abolition of the death penalty. Pakistan and Bhutan do not have National Human Rights Institutions (NHRIs).

### **3. Possibilities of Regional Human Rights Mechanism in South Asia**

The existing regional human rights mechanisms in Europe, Latin-America and Africa have contributed in the protection and promotion of human rights in these respective regions. The Association of South East Asian Nations (ASEAN) countries have been successful to establish ASEAN Inter-Governmental Commission on Human Rights (AICHR) through the ASEAN Charter<sup>3</sup> followed by long efforts of the human rights defenders. However, there is no regional human rights mechanism in South Asia except the emerging National Human Rights Institutions<sup>4</sup> (NHRIs). However, they have capacity gap to work for the human rights issues beyond national level. Therefore, concerted and consistent efforts are necessary from the civil society organizations and key stakeholders for the establishment of regional and sub-regional institutions and mechanisms for the promotion and protection of human rights in South Asia.

The President of Maldives called the South Asian governments to consider for the establishment of the regional human rights body in South Asia during his inaugural speech on the 16th SAARC Summit held in Bhutan on 28-29 April 2010. Moreover, the advocacy for the regionalism and rights of the South Asian people is being advocated by large number of civil society organizations of South Asia. Many South Asian countries have already signed several treaties and conventions such as convention on narcotics, convention combating trafficking in women and children for prostitution, convention on promotion of child welfare, among other areas. The proposed theme for the 17th SAARC Summit has attempted to focus on women and their role as agent of change through ‘a new rights based approach’ to deliver gender justice and gender equity. Similarly, several agreements have also been adopted under SAARC including the SAARC Social Charter, SAARC Food Security Reserve and some other documents related to specific social issues. Apart from the commitment to the UN Charter, SAARC has already established some

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<sup>3</sup>The ASEAN Charter was signed by the leaders of all member states at the 13th ASEAN Summit on 20th November 2007. The Charter aims to give the inter-governmental organization a legal personality and to establish more clearly its institutional framework and rules of procedure. The signing of the Charter coincided with the 40th anniversary of the foundation of ASEAN in 1967.

<sup>4</sup> Among eight south Asian countries there are National Human Rights Institutions (NHRIs) in five countries namely Afghanistan, Bangladesh, India, Nepal, Maldives and Sri Lanka. A Bill on Human Rights Commission is pending in Pakistan.

regional arrangement for some specified area as well as adopted number of conventions, Charter and Declaration related to human rights, there is potentiality of a regional mechanism in SAARC according to its unique character with large population, rich diversity and strong aspirations of people to come together as “South Asian” identity like other regionalism established and being developed with the passage of time.

#### **4. Major Challenges and Opportunities**

A regional mechanism is the most difficult thing we can think of due to regional mistrusts, regional challenges and regional gaps which contribute to SAARC’s dysfunctional nature. The functioning of the SAARC shows that the primacy of politico-security issues has stymied regional cooperation under SAARC. There has hardly been any serious debate in the region to reform, re-orient SAARC both structurally and operationally, which will enhance its effectiveness as a dynamic vehicle of regional cooperation. This is high time to revisit the main rationale of the SAARC process, its main objectives, structures and modalities.

The geo-political situation and ongoing human rights violations in many South Asian countries have raised number of challenges in the establishment of a human rights mechanism in South Asia as the 10 countries of ASEAN have established an Inter-Governmental Commission on Human Rights (AICHR). Some of the major challenges have been highlighted as follows:

**(i) Slow Democratization Process:** The process of democratization and human rights movement haven’t still been able to create higher momentum for the South Asian governments to push in serious discussion among the SAARC governments and dialogue with civil society for the consolidation of democracy and human rights during more than 25 year’s history of the SAARC. The Association moved slowly both in terms of its institutions and its programmes. The major weaknesses of SAARC have been

its restrictive agenda, weak Secretariat, ineffective implementation machinery and lack of a dispute settlement mechanism.

**(ii) Lack of Enforcement Mechanism:**

The South Asian countries have been witnessing the increasing number of reported and unreported cases of human rights violations followed by institutional failures and attack against the human rights defenders, defenders of freedom of expression and right to information. Adoptions of SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia on January 5, 2002 at the Eleventh SAARC Summit held in Kathmandu were a timely initiative and significant milestone in combating and preventing trafficking. However, there is no effective implementation mechanism in place to implement these Conventions.

**(iii) Lack of Strong Commitment towards Human Rights:** The South Asian governments haven't taken human rights as their priority agenda and genuine efforts in addressing the ongoing human rights violations such as Extra Judicial Executions (EJE), disappearances, torture, gender based violence and the common human rights issues of the region such as human trafficking, migration and rights of the minorities.

**(iv) Deficit of Democracy and Good Governance:**

The South Asian government and the democratic institutions are still suffering due to lack of transparency, accountability and deficit of democracy. Despite the establishment of number of democratic institutions including the National Human Rights Institutions (NHRIs), they are grappling with difficulties and capacity gap. The judiciary and quasi-judicial bodies haven't been able to function effectively. The Right to Information Act and the Anti-corruption Commissions has been enacted in most of the countries. However, and the Judges of the Judiciary more to serve the interests of the government than that of the people.

**(v) Lack of Conflict Resolution Mechanism :**

There is no proper mechanism within the SAARC in resolving the conflicting issues at sub-regional level unlike Europe and other parts of the world. The official SAARC Summit can't put the conflicting issues as the agenda of SAARC. As result number of issues with major impact on human rights including the human trafficking, refugees and internally displaced persons (IDPs), border disputes, fisher folks, climate change and labour migration and management of natural resources for the mutual benefits such as water management haven't been adequately addressed and some of the ad-hoc efforts taken at bilateral level are patchy without effective implementation and monitoring mechanism.

Some of the major opportunities<sup>5</sup> that could deliver by the regional mechanism can be elaborated as follows:

- (a) Regional mechanism could help overcome procedural and institutional weaknesses and shortcomings of some domestic jurisdictions and of the international system.
- (b) Regional mechanism could help overcome lack of expertise and experience in human rights jurisprudence.
- (c) Regional mechanism could lead to more effective implementation and enforcement of human rights norms and standards.
- (d) Regional mechanism could draw on the concepts and values which are integral to the intellectual and religious traditions and world-views of Asia and the Pacific.
- (e) Regional mechanism could address regional human rights problems (e.g. trafficking, refugees and displaced persons, migrant workers) more effectively.
- (f) Regional mechanism would be one of the more credible mechanisms as the moral legitimacy would stem from being drawn up by the governments, scholars, lawyers and civil society representatives of the region.

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<sup>5</sup> *Establishing a Robust Regional Human Rights Mechanism in South Asia* an article by Surya Deuja published in the: Asian Human Rights Defender (Vol. 6 No. 1, June 2010) available at: [http://archive.forum-asia.org/index.php?option=com\\_content&task=view&id=2631&Itemid=34](http://archive.forum-asia.org/index.php?option=com_content&task=view&id=2631&Itemid=34)

## **5. Civil Society Initiatives**

Number of human rights organizations and civil society from South Asia has been taking various initiatives for the regional human rights mechanism with aim to address the key human rights problem of the region through transnational cooperation and coordination under the SAARC. FORUM-ASIA South Asians for human rights (SAHR), South Asian Forum for Human Rights (SAFHR), Peoples' SAARC and FORUM-ASIA are some of the organizations and network his have directly or indirectly pushing for the human rights mechanism in South Asia.

FORUM-ASIA which has been actively involved in the civil society process advocating for the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) has been also working with its member organizations, networks, partners and coalitions to push the strong advocacy for the regional mechanism in South Asia. In March 2010, FORUM-ASIA in collaboration with INSEC-Nepal had organized *First Sub-Regional Workshop on Regional Human Rights Mechanism for South Asia* on 24-25 March, 2010 which came up with Kathmandu Declaration 2010 as an outcome document with strong call to the South Asian governments to establish regional human rights mechanism in South Asia and establish National Human Rights Institutions (NHRIs) in Pakistan and Bhutan. A delegation had also met with the Prime Minister of the Government of Nepal and requested to push the agenda of regional mechanism in South Asia in the 16<sup>th</sup> SAARC Summit in Bhutan and other forums. As an immediate follow-up to the Kathmandu workshop, a half-day workshop was conducted at the premises of "People's SAARC at the Indian Social Institute, New Delhi on 21 April 2010 for the sub-regional human rights mechanism in South Asia to broaden, strengthen and consolidate efforts in building sub-regional campaigns on the establishment of a human rights body for South Asia. Similarly, a seminar on "*The Need for Inter-Governmental Human Rights Mechanism in South Asia*" was organized in collaboration with the Sustainable Development Policy Institute (SDPI) on 16 November 2010 at Islamabad, Pakistan. In a series of separate meetings, some of the Government officials including Minister of Human Rights,



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Minister of Minority Affairs and some parliamentarians from India, Nepal and Pakistan have expressed positive response on the idea of regional mechanism. The second meeting of the SAPA Working Group on South Asia was held on 18th February 2011 in Dhaka, Bangladesh in conjunction with the 5th SAPA General Forum had also held an extensive discussion on the issue of regional human rights mechanism in South Asia.

Civil society awareness of SAARC activities and its attempts to participate in and influence the SAARC process has also stepped up in recent years. A glance at the list of SAARC's Apex Bodies and SAARC Recognized Bodies reveals that SAARC is more interested in working with technical civil society organizations than civil society organizations working on human rights and democratization. Still, groups such as the South Asian Free Media Association (SAFMA), South Asians for Human Rights (SAHR), and South Asia Forum for Human Rights (SAFHR) now try to lobby SAARC into addressing a wider range of human rights issues than it has in the past. The largest network of civil society groups working to push SAARC deeper into acting on human rights is People's SAARC, a collective of people's movements, rights groups, and prominent members of civil society across South Asia with a Secretariat based in Kathmandu, the same city where the SAARC Secretariat is located.

In 2011 Second Sub-Regional workshop on human rights mechanism in South Asia has been organized as an followed by the First Sub-Regional workshop on a South Asian Human Rights Mechanism, March 24-25, Kathmandu Nepal was held, and participants emerged with the Kathmandu Declaration, demanding the establishment of a regional human rights mechanism in South Asia similar to the Asian Intergovernmental Commission on Human Rights (AICHR) in ASEAN, the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights, and the European Court of Human Rights. The 2011 Workshop has come up with Kathmandu Statement 2011 and establishment of an informal Working Group among the human rights experts and practitioner of South Asia to facilitate

dialogue and discussion with SAARC and South Asian Governments and enhancing civil society participation in the SAARC process.

## **6. Conclusion**

SAARC had agreed to a process of informal political consultations but there is no formal institutionalized process for discussion on bilateral political disputes among the member states within the existing framework of SAARC. It has been suggested by many that the SAARC Charter must be amended to institute a conflict resolution mechanism. The Male summit (1997) established a Group of Eminent Persons (GEP), with the mandate to undertake a comprehensive appraisal of SAARC and to identify measures including mechanisms to further vitalize and enhance the effectiveness of the Association in achieving its objectives. GEP, in its report, supported the process of holding informal political consultations initiated at the 9th SAARC Summit and unanimously recommended that the process should be carried forward and operationalised, so as to achieve the Charter's objectives of fostering mutual trust, understanding and friendly relations among the member States<sup>6</sup>.

The South Asian Association for Regional Cooperation (SAARC) is the only one regional instrument of South Asia established with the initial objective of improving the quality of life of the people of South Asia by accelerating the economic and social development in the region. However, the SAARC still has a long way to go for creating a robust human rights mechanism by instilling human rights value and standards as one of the core principle in the SAARC process. Moreover, the current practice of SAARC restricting access of civil society organizations in the debate, dialogue and discussion needs to be changed and the voice of the people of South Asia and their opinion on how they want to pursue the democratization and human rights must be heard as per the demand made by the vibrant civil society organizations of the region. SAARC has a regional agenda and mechanism on development related

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<sup>6</sup> *The Rationale of Restructuring SAARC: Issues and Modalities* by Dr. Shaheen Akhtar, Institute of Regional Studies, Islamabad during Regional workshop on Restructuring of SAARC, University of Karachi, 30-31 March 2010(unpublished).

matters but it is high time for SAARC to have one focused agenda on human rights agenda in the SAARC with appropriate mechanism to address the pertinent issues of human rights. The regional human right organizations should continue their concerted efforts for the strong advocacy for the establishment of strong regional human rights mechanism at the national, regional and international forum through concerted efforts and shared vision and strategies.

The proposed theme for the 17th SAARC Summit to be held in Maldives on November 2011 has attempted to focus on women and their role as agent of change through ‘a new rights based approach’ to deliver gender justice and gender equity. Similarly, several agreements have also been adopted under SAARC including the SAARC Social Charter, SAARC Food Security Reserve and some other documents related to specific social issues. In February 2011, the SAARC countries have approved the SAARC Charter of Democracy with very narrow aims “*to shield the democracies in the region from extra-constitutional takeovers*”. However, drafting process of SAARC is still made through the closed door meeting among government representatives without representation and meaningful participation of civil society organizations of the region. Moreover, the current practice of SAARC restricting access of civil society organizations in the debate, dialogue and discussion needs to be changed and the voice of the people of South Asia and their opinion on how they want to pursue the democratization and human rights must be heard as per the demand made by the vibrant civil society organizations of the region.



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