

Asian Human Rights Charter is a people's charter. It is part of an attempt to create in Asia a popular culture on human rights. Thousands of people from various Asian countries participated in the debates during the three-year period of discussion on this document. In addition, more than 200 non-governmental organizations (NGOs) directly took part in the drafting process, and many other NGOs and people's organizations (POs) have endorsed the document. Several drafts of the document, including some translations, were published widely in newspapers, magazines and NGO newsletters. This final version of the charter was written by Prof. Yash Ghai under the direction of a committee of which he was a member consisting of Justices Krishna Iyer and P. N. Bhagwati, Prof. Kinhide Mushakoji, Mercedes V. Contreras, Lourdes Indai Sajor and Basil Fernando, Mark Daly and Sanjeewa Liyanage from the Asian Human Rights Commission (AHRC). This charter is presented to deepen the Asian debate on human rights, to present the people's views on human rights as against those of some Asian leaders who claim that human rights are alien to Asia and to promote political, social and legal reforms for ensuring human rights in the countries of the region. While drawing from the cultural wells of the region, it also points to the need for cleaning these wells that have been polluted by millenniums of prejudice, discrimination, inequality and violence.



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ASIAN HUMAN RIGHTS CHARTER

A Peoples' Charter

OUR COMMON HUMANITY

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A PEOPLES' CHARTER

DECLARED IN KWANGJU, SOUTH KOREA ON 17 MAY 1998

On the Occasion of the 50th Anniversary of the
Universal Declaration of Human Rights

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ASIAN HUMAN RIGHTS CHARTER



PREAMBLE

For long, especially during the colonial period, the peoples of Asia suffered from gross violations of their rights and freedoms. Today large sections of our people continue to be exploited and oppressed and many of our societies are torn apart by hatred and intolerance. Increasingly the people realize that peace and dignity are possible only when the equal and inalienable rights of all persons and groups are recognised and protected. They are determined to secure peace and justice for themselves and the coming generations through the struggle for human rights and freedoms. Towards that end they adopt this Charter as an affirmation of the desire and aspirations of the peoples of Asia to live in peace and dignity.

BACKGROUND TO THE CHARTER

1.1 The Asian struggle for rights and freedoms has deep historical roots, in the fight against oppression in civil society and the political oppression of colonialism, and subsequently for the

establishment or restoration of democracy. The reaffirmation of rights is necessary now more than ever before. Asia is passing through a period of rapid change, which affects social structures, political institutions and the economy. Traditional values are under threat from new forms of development and technologies, as well as political authorities and economic organizations that manage these changes.

1.2 In particular the marketization and globalization of economies are changing the balance between the private and the public, the state and the international community, and worsening the situation of the poor and the disadvantaged. These changes threaten many valued aspects of life, the result of the dehumanizing effects of technology, the material orientation of the market, and the destruction of the community. People have decreasing control over their lives and environment, and some communities do not have protection even against eviction from their traditional homes and grounds. There is a massive exploitation of workers, with wages that are frequently inadequate for even bare subsistence and low safety standards that put the lives of workers in constant danger. Even the most elementary of labour rights and laws are seldom enforced.

1.3 Asian development is full of contradictions. There is massive and deepening poverty in the midst of growing affluence of some sections of the people. Levels of health, nutrition and education of large numbers of our people are appalling, denying the dignity of human life. At the same time valuable resources are wasted on armaments, Asia being the largest purchaser of arms of all regions. Our governments claim to be pursuing development directed at increasing levels of production and welfare but our natural resources are being depleted most irresponsibly and the environment is so degraded that the

quality of life has worsened immeasurably, even for the better off among us. Building of golf courses has a higher priority than the care of the poor and the disadvantaged.

- 1.4 Asians have in recent decades suffered from various forms of conflict and violence, arising from ultra-nationalism, perverted ideologies, ethnic differences, and fundamentalism of all religions. Violence emanates from both the state and sections of civil society. For large masses, there is little security of person, property or community. There is massive displacement of communities and there are an increasing number of refugees.
- 1.5 Governments have arrogated enormous powers to themselves. They have enacted legislation to suppress people's rights and freedoms and colluded with foreign firms and groups in the plunder of national resources. Corruption and nepotism are rampant and there is little accountability of those holding public or private power. Authoritarianism has in many states been raised to the level of national ideology, with the deprivation of the rights and freedoms of their citizens, which are denounced as foreign ideas inappropriate to the religious and cultural traditions of Asia. Instead there is the exhortation of spurious theories of 'Asian Values' which are a thin disguise for their authoritarianism. Not surprisingly, Asia, of all the major regions of the world, is without a regional official charter or other regional arrangements for the protection of rights and freedoms.
- 1.6 In contrast to the official disregard or contempt of human rights in many Asian states, there is increasing awareness among their peoples of the importance of rights and freedoms. They realize the connections between their poverty and political powerlessness and the denial to them of these rights and

freedoms. They believe that political and economic systems have to operate within a framework of human rights and freedoms to ensure economic justice, political participation and accountability, and social peace. There are many social movements that have taken up the fight to secure for the people their rights and freedoms.

- 1.7 Our commitment to rights is not due to any abstract ideological reasons. We believe that respect for human rights provides the basis for a just, humane and caring society. A regime of rights is premised on the belief that we are all inherently equal and have an equal right to live in dignity. It is based on our right to determine our destiny through participation in policy making and administration. It enables us to develop and enjoy our culture and to give expression to our artistic impulses. It respects diversity. It recognizes our obligations to future generations and the environment they will inherit. It establishes standards for assessing the worth and legitimacy of our institutions and policies.

GENERAL PRINCIPLES

- 2.1 It is possible from specific rights and the institutions and procedures for their protection to draw some general principles which underlie these rights and whose acceptance and implementation facilitates their full enjoyment. The principles, which are discussed below, should provide the broad framework for public policies within which we believe rights would be promoted.

UNIVERSALITY AND INDIVISIBILITY OF RIGHTS

- 2.2 We endorse the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and other international instruments for the protection of rights and freedoms. We believe that rights are universal, every person being entitled to them by virtue of being a human being. Cultural traditions affect the way in which a society organizes relationships within itself, but they do not detract from the universalism of rights which are primarily concerned with the relationship of citizens with the state and the inherent dignity of persons and groups. We also believe that rights and freedoms are indivisible and it is a fallacy to suppose that some types of rights can be suppressed in the name of other rights. Human beings have social, cultural and economic needs and aspirations that cannot be fragmented or compartmentalised, but are mutually dependent. Civil, political and cultural rights have little meaning unless there are the economic resources to exercise and enjoy them. Equally, the pursuit and acquisition of material wealth is sterile and self-defeating without political freedoms, the opportunity to develop and express one's personality and to engage in cultural and other discourses.
- 2.3 Notwithstanding their universality and indivisibility, the enjoyment and the salience of rights depend on social, economic and cultural contexts. Rights are not abstractions, but foundations for action and policy. Consequently we must move from abstract formulations of rights to their concretization in the Asian context by examining the circumstances of specific groups whose situation is defined by massive violations of their rights. It is only by relating rights and their implementation to the specificity of the Asian situation that the enjoyment of rights will be possible. Only

in this way will Asia be able to contribute to the world-wide movement for the protection of rights.

2.4 Widespread poverty, even in states which have achieved a high rate of economic development, is a principal cause of the violation of rights. Poverty deprives individuals, families, and communities of their rights and promotes prostitution, child labour, slavery, sale of human organs, and the mutilation of the body to enhance the capacity to beg. A life of dignity is impossible in the midst of poverty. Asian states must direct their development policies towards the elimination of poverty through more equitable forms of development.

THE RESPONSIBILITY FOR THE PROTECTION OF HUMAN RIGHTS

2.5 The responsibility for the protection of rights is both international and domestic. The international community has agreed upon norms and institutions that should govern the practice of human rights. The peoples of Asia support international measures for the protection of rights. State sovereignty cannot be used as an excuse to evade international norms or ignore international institutions. The claim of state sovereignty is justified only when a state fully protects the rights of its citizens.

2.6 On the other hand, international responsibility cannot be used for the selective chastisement or punishment of particular states; or for the privileging of one set of rights over others. Some fundamental causes of the violation of human rights lie in the inequities of the international world economic and political order. The radical transformation and democratization of the world order is a necessary condition for the global enjoyment of human rights. The logic of the universalism and equality of

rights is the responsibility of the international community for the social and economic welfare of all people throughout the world, and consequently the obligation to ensure a more equitable distribution of resources and opportunities across the world.

2.7 The primary responsibility for the promotion of human rights rests with states. The rights of states and peoples to just economic, social, political and cultural development must not be negated by global processes. States must establish open political processes in which rights and obligations of different groups are acknowledged and the balance between the interests of individuals and the community is achieved. Democratic and accountable governments are the key to the promotion and protection of rights.

2.8 The capacity of the international community and states to promote and protect rights has been weakened by processes of globalization as more and more power over economic and social policy and activities has moved from states to business corporations. States are increasingly held hostage by financial and other corporations to implement narrow and short sighted economic policies which cause so much misery to so many people, while increasing the wealth of the few. Business corporations are responsible for numerous violations of rights, particularly those of workers, women and indigenous peoples. It is necessary to strengthen the regime of rights by making corporations liable for the violation of rights.

SUSTAINABLE DEVELOPMENT AND THE PROTECTION OF THE ENVIRONMENT

2.9 Economic development must be sustainable. We must protect the environment against the avarice and depredations of commercial enterprises to ensure that the quality of life does not decline just as the gross national product increases. Technology must liberate, not enslave human beings. Natural resources must be used in a manner consistent with our obligation to future generations. We must never forget that we are merely temporary custodians of the resources of nature. Nor should we forget that these resources are given to all human kind, and consequently we have a joint responsibility for their responsible, fair and equitable use.

RIGHTS

3.1 We endorse all the rights that are contained in international instruments. It is unnecessary to restate them here. We believe that these rights need to be seen in a holistic manner and that individual rights are best pursued through a broader conceptualization which forms the basis of the following section.

THE RIGHT TO LIFE

3.2 Foremost among rights is the right to life, from which flow other rights and freedoms. The right to life is not confined to mere physical or animal existence but includes the right to every limb or faculty through which life is enjoyed. It signifies the right to live with basic human dignity, the right to livelihood, the right to a habitat or home, the right to education and the right to a clean and healthy environment for without these there can be no real and effective exercise or enjoyment of the right to life. The state must also take all possible measures to prevent infant mortality,

eliminate malnutrition and epidemics, and increase life expectancy through a clean and healthy environment and adequate preventative as well as curative medical facilities. It must make primary education free and compulsory.

- 3.3 Yet in many parts of Asia, wars, ethnic conflicts, cultural and religious oppression, corruption of politics, environmental pollution, disappearances, torture, state or private terrorism, violence against women, and other acts of mass violence continue to be a scourge to humanity resulting in the loss of thousands of innocent human lives.
- 3.4 To ensure the right to life, propagation of war or ethnic conflict or incitement to hatred and violence in all spheres of individual or societal or national or international life should be prohibited.
- 3.5 The state has the responsibility to thoroughly investigate cases of torture, disappearances and custodial deaths, rapes and sexual abuses and to bring culprits to justice.
- 3.6 There must be no arbitrary deprivation of life. States should take measures not only to prevent and mete out punish for the deprivation of life by criminal acts and terrorist acts but also prevent arbitrary disappearances and killings by their own security forces. The law must strictly control and limit the circumstances in which a person may be deprived of his or her life by state authorities or officials.
- 3.7 All states must abolish the death penalty. Where it exists, it may be imposed only rarely for the most serious crimes. Before a person can be deprived of life by the imposition of the death penalty, he or she must be ensured a fair trial before an independent and impartial tribunal with full opportunity of legal representation of his or her choice, adequate time for preparation of defence,

presumption of innocence and the right to review by a higher tribunal. Execution should never be carried out in public or otherwise exhibited in public.

THE RIGHT TO PEACE

- 4.1 All persons have the right to live in peace so that they can fully develop all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence. The peoples of Asia have suffered great hardships and tragedies due to wars and civil conflicts which have caused many deaths, mutilation of bodies, external or internal displacement of persons, break up of families, and in general the denial of any prospects of a civilized or peaceful existence. Both the state and civil society have in many countries become heavily militarized in which all scores are settled by force and citizens have no protection against the intimidation and terror of state or private armies.
- 4.2 The duty of the state to maintain law and order should be conducted under strict restraint on the use of force in accordance with standards established by the international community, including humanitarian law. Every individual and group is entitled to protection against all forms of state violence, including violence perpetrated by its police and military forces.
- 4.3 The right to live in peace requires that political, economic or social activities of the state, the corporate sector and the civil society should respect the security of all peoples, especially of vulnerable groups. People must be ensured security in relation to the natural environment they live in, the political, economic and social conditions which permit them to satisfy their needs and aspirations without recourse to oppression, exploitation, violence, and without detracting from all that is of value in

their society.

- 4.4 In fighting fascist invasion, colonialism, and neo-colonialism, Asian states played a crucial role in creating conditions for their peoples to live in peace. In this fight, they had justifiably stressed the importance of national integrity and non-intervention by hegemonic powers. However, the demands of national integrity or protection against the threats of foreign domination cannot now be used as a pretext for refusing to the people their right to personal security and peaceful existence any more than the suppression of people's rights can be justified as an excuse to attract foreign investments. Neither can they justify any refusal to inform the international community about the individual security of its people. The right of persons to live in peace can be guaranteed only if the states are accountable to the international community.
- 4.5 The international community of states has been deeply implicated in wars and civil conflicts in Asia. Foreign states have used Asian groups as surrogates to wage wars and have armed groups and governments engaged in internal conflicts. They have made huge profits out of the sale of armaments. The enormous expenditures on arms have diverted public revenues from programmes for the development of the country or the well-being of the people. Military bases and other establishments (often of foreign powers) have threatened the social and physical security of the people who live in their vicinity.

THE RIGHT TO DEMOCRACY

- 5.1 Colonialism and other modern developments significantly changed

the nature of Asian political societies. The traditional systems of accountability and public participation in affairs of state as well as the relationship of citizens to the government were altered fundamentally. Citizens became subjects, while the government became more pervasive and powerful. Colonial laws and authoritarian habits and style of administration persisted after independence. The state has become the source of corruption and the oppression of the people. The democratization and humanization of the state is a pre-condition for the respect for and the protection of rights.

5.2 The state, which claims to have the primary responsibility for the development and well-being of the people, should be humane, open and accountable. The corollary of the respect for human rights is a tolerant and pluralistic system, in which people are free to express their views and to seek to persuade others and in which the rights of minorities are respected. People must participate in public affairs, through the electoral and other decision-making and implementing processes, free from racial, religious or gender discriminations.

THE RIGHT TO CULTURAL IDENTITY AND THE FREEDOM OF CONSCIENCE

6.1 The right to life involves not only material but also the moral conditions which permit a person to lead a meaningful existence. This meaning is not only individually determined but is also based on shared living with other human beings. The Asian traditions stress the importance of common cultural identities. Cultural identities help individuals and communities to cope with the pressures of economic and social change; they give meaning to life in a period of rapid transformation. They are

the source of pride and security. There are many vulnerable communities in Asia as elsewhere whose cultures are threatened or derided. Asian peoples and governments must respect the cultures and traditions of its diverse communities.

- 6.2 The plurality of cultural identities in Asia is not contrary to the universality of human rights but rather as so many cultural manifestations of human dignity enriching universal norms. At the same time we Asian peoples must eliminate those features in our cultures which are contrary to the universal principles of human rights. We must transcend the traditional concept of the family based on patriarchal traditions so as to retrieve in each of our cultural traditions, the diversity of family norms which guarantee women's human rights. We must be bold in reinterpreting our religious beliefs which support gender inequality. We must also eliminate discriminations based on caste, ethnic origins, occupation, place of origin and others, while enhancing in our respective cultures all values related to mutual tolerance and mutual support. We must stop practices which sacrifice the individual to the collectivity or to the powerful, and thus renew our communal and national solidarity.
- 6.3 The freedom of religion and conscience is particularly important in Asia where most people are deeply religious. Religion is a source of comfort and solace in the midst of poverty and oppression. Many find their primary identity in religion. However religious fundamentalism is also a cause of divisions and conflict. Religious tolerance is essential for the enjoyment of the right of conscience of others, which includes the right to change one's belief.

THE RIGHT TO DEVELOPMENT AND SOCIAL JUSTICE

- 7.1 Every individual has the right to the basic necessities of life and to protection against abuse and exploitation. We all have the right to literacy and knowledge, to food and clean water, shelter and to medical facilities for a healthy existence. All individuals and human groups are entitled to share the benefits of the progress of technology and of the growth of the world economy.
- 7.2 Development, for individuals and states, does not mean merely economic development. It means the realization of the full potential of the human person. Consequently they have the right to artistic freedom, freedom of expression and the cultivation of their cultural and spiritual capacities. It means the right to participate in the affairs of the state and the community. It implies that states have the right to determine their own economic, social and cultural policies free from hegemonic pressures and influences.

RIGHTS OF VULNERABLE GROUPS

- 8.1 Asian states should formulate and implement public policies within the above general framework of rights. We believe that in this way we will establish fair and humane conditions for our individual and corporate lives and ensure social justice. However, there are particular groups who for historical or other reasons are weak and vulnerable and consequently require special protection for the equal and effective enjoyment of their human rights. We discuss the situation of several such groups, but we recognize that there are also other groups who suffer from discrimination and oppression. They include people who through civil conflict, government policies or economic hardships are displaced from

their homes and seek refuge in other places internally or in foreign lands. Our states and societies have become less tolerant of minorities and indigenous people, whose most basic rights are frequently violated. Many of our societies still discriminate against gays and lesbians, denying them their identity and causing them great anguish and misery. Various economic groups, like peasants and fishing communities, suffer from great deprivation and live in constant fear of threats to their livelihood from landlords and capitalist enterprises. All these groups deserve special attention. We urge states and communities to give the highest priority to the amelioration of their social and economic conditions.

WOMEN

- 9.1 In most Asian societies women suffer from discrimination and oppression. The cause of their oppression lies in both history and contemporary social and economic systems.
- 9.2 The roots of patriarchy are systemic and its structures dominate all institutions, attitudes, social norms and customary laws, religions and values in Asian societies, crossing the boundaries of class, culture, caste and ethnicity. Oppression takes many forms, but is most evident in sexual slavery, domestic violence, trafficking in women and rape. They suffer discrimination in both public and private spheres. The increasing militarization of many societies in Asia has led to the increase of violence against women in situations of armed conflict, including mass rape, forced labour, racism, kidnapping and displacement from their homes. As female victims of armed conflict are often denied justice, rehabilitation, compensation and reparation of the war crimes committed against them, it is important to emphasize that systematic rape is a war crime and a crime against humanity.

9.3 To end discrimination against women in the field of employment and the right to work, women should be given the right to employment opportunities, the free choice of profession, job security, equal remuneration, the right to compensation in respect of domestic work, the right to protection of health and safe working conditions, especially in safeguarding of the function of reproduction and special protection in times of pregnancy from work that may be harmful. Women should be given the full right to control their sexual and reproductive health, free from discrimination or coercion, and be given access to information about sexual and reproductive health care and safe reproductive technology.

9.4 There are few legal provisions to protect women against violations of their rights within the domestic and patriarchal realm. Their rights in public law are seldom observed. Affirmative measures should be taken to ensure full and equal participation of women in the political and public life of the society. A considerable increase in the presence of women in the various institutions of state power and in the fields of business, agriculture and land ownership must be provided for by way of affirmative action. The political, social and economic empowerment of women is essential for the defence of their legal rights.

CHILDREN

10.1 As with women, their oppression takes many forms, the most pervasive of which are child labour; sexual slavery; child pornography; the sale and trafficking of children; prostitution; sale of organs; conscription into drug trafficking; the physical, sexual and psychological abuse of children within families; discrimination against children with HIV/AIDS; forced

religious conversion of children; the displacement of children with and without their families by armed conflicts; discrimination; and environmental degradation. An increasing number of children are forced to live on the streets of Asian cities and are deprived of the social and economic support of families and communities.

- 10.2 Widespread poverty, lack of access to education and social dislocation in rural areas are among the causes of the trends which increase the vulnerability of children. Long-established forms of exploitation and abuse, such as bonded labour or the use of children for begging or sexual gratification are rampant. Female infanticide due to patriarchal gender preference and female genital mutilation are widely practised in some Asian countries.
- 10.3 Asian states have failed dismally to look after children and provide them with even the bare means of subsistence or shelter. We call on Asian states to ratify and implement the Convention on the Rights of the Child. We also call on communities to take the responsibility for monitoring violations of children's rights and to press for the implementation of the UN Convention in appropriate ways in their own social contexts.

DIFFERENTLY ABLED PERSONS

- 11.1 Traditionally Asian societies cared for those who were physically or mentally handicapped. Increasingly our communal values and structures, under the pressure of new forms of economic organizations, have become less tolerant of such persons. They suffer enormous discrimination in access to education,

employment and housing. They are unable to enjoy many of their human rights due to prejudice against them and the absence of provisions responding to their special demands. Their considerable abilities are not properly recognized and they are forced into jobs which offer low pay and little prospects of promotion. They have the right to provisions which enable them to live in dignity, with security and respect, and to have opportunities to realize their full potential.

- 11.2 The need to treat such persons with respect for their human rights is apparent in the dismal way Asian states treat those with HIV or AIDS. They are the victims of gross discrimination. A civilized society which respects human rights would recognize their right to live and die with dignity. It would secure to them the right to adequate medical care and to be protected from prejudice, discrimination or persecution.

WORKERS

- 12.1 The rapid industrialization of Asian societies has undermined traditional forms of the subsistence economy and has destroyed possibilities of the livelihood of large sections of the rural people. Increasingly they and other groups are forced into wage employment, often in industry, working under appalling conditions. For the majority of the workers there is little or no protection from unfair labour laws. The fundamental rights to form trade unions and bargain collectively are denied to many. Their wages are grossly inadequate and working conditions are frequently grim and dangerous. Globalization adds to the pressures on workers as many Asian states seek to reduce the costs of production, often in collusion

with foreign corporations and international financial institutions.

- 12.2 A particularly vulnerable category of workers are migrant workers. Frequently separated from their families, they are exploited in foreign states whose laws they do not understand and are afraid to invoke. They are often denied rights and conditions which local workers enjoy. They slog without access to adequate accommodation, health care, or legal protection. In many cases migrants suffer racism and xenophobia, and domestic helpers are subjected to humiliation and sometimes, sexual abuse.

STUDENTS

- 13.1 Students in Asia struggled against colonialism and fought for democratization and social justice. As a result of their fearless commitment to social transformation they have often suffered from state violence and repression and remain as one of the key targets for counter-insurgency operations and internal security laws and operations. Students are frequently denied the right to academic freedom and to the freedoms of expression and association.

PRISONERS AND POLITICAL DETAINEES

- 14.1 In few areas is there such a massive violation of internationally recognized norms as in relation to prisoners and political detainees.
- 14.2 Arbitrary arrests, detention, imprisonment, ill-treatment, torture, cruel and inhuman punishment are common occurrences in many parts of Asia. Detainees and prisoners

are often forced to live in unhygienic conditions, are denied adequate food and health care and are prevented from having communication with, and support from, their families. Different kinds of prisoners are frequently mixed in one cell, with men, women and children kept in proximity. Prison cells are normally overcrowded. Deaths in custody are common. Prisoners are frequently denied access to lawyers and the right to fair and speedy trials.

- 14.3 Asian governments often use executive powers of detention without trial. They use national security legislation to arrest and detain political opponents. It is notable that, in many countries in Asia, freedom of thought, belief and conscience have been restricted by administrative limits on freedom of speech and association.

THE ENFORCEMENT OF RIGHTS

- 15.1 Many Asian states have guarantees of human rights in their constitutions, and many of them have ratified international instruments on human rights. However, there continues to be a wide gap between rights enshrined in these documents and the abject reality that denies people their rights. Asian states must take urgent action to implement the human rights of their citizens and residents.

PRINCIPLES FOR ENFORCEMENT

- 15.2 We believe that systems for the protection of rights should be based on the following principles.
- 15.2a Human rights are violated by the state, civil society and business

corporations. The legal protection for rights has to be extended against violations by all these groups. It is also necessary to reform these groups by strengthening their ethical foundations and values and inculcating in them a sense of their responsibility towards the disadvantaged and the oppressed.

- 15.2b The promotion and enforcement of rights is the responsibility of all groups in society, although the primary responsibility is that of the state. The enjoyment of many rights, especially social and economic, requires a positive and proactive role of governments. There is a clear and legitimate role for NGOs in raising consciousness of rights, formulating standards, and ensuring their protection by governments and other groups. Professional groups like lawyers and doctors have special responsibilities connected with the nature of their work to promote the enforcement of rights and prevent abuses of power.
- 15.2c Since rights are seriously violated in situations of civil strife and are strengthened if there is peace, it is the duty of the state and other organizations to find peaceful ways to resolve social and ethnic conflicts and to promote tolerance and harmony. For the same reasons no state should seek to dominate other states and states should settle their differences peacefully.
- 15.2d Rights are enhanced if democratic and consensual practices are followed and it is therefore the responsibility of all states and other organisations to promote these practices in their work and in their dealings with others.
- 15.2e Many individuals and groups in Asia are unable to exercise their rights due to restrictive or oppressive social customs and

practices, particularly those related to caste, gender, or religion. Therefore the immediate reform of these customs and practices is necessary for the protection of rights. The reforms must be enforced with vigour and determination.

15.2f A humane and vigorous civil society is necessary for the promotion and protection of human rights and freedoms, for securing rights within civil society and to act as a check on state institutions. Freedoms of expression and association are necessary for the establishment and functioning of institutions of civil society.

15.2g It is necessary to curb the exploitative practices of business corporations and to ensure that they do not violate rights of workers, consumers and the public.

STRENGTHENING THE FRAMEWORK FOR RIGHTS

15.3a It is essential to secure the legal framework for rights. All states should include guarantees of rights in their constitutions, which should be constitutionally protected against erosion by legislative amendments. They should also ratify international human rights instruments. They should review their legislation and administrative practices against national and international standards with the aim of repealing provisions which contravene these standards, particularly legislation carried over from the colonial period.

15.3b Knowledge and consciousness of rights should be raised among the general public, and state and civil society institutions. Awareness of the national and international regime of rights should be promoted. Individuals and groups should be acquainted with legal and administrative procedures whereby

they can secure their rights and prevent abuse of authority. NGOs should be encouraged to become familiar with and deploy mechanisms, both national and inter-national, for monitoring and review of rights. Judicial and administrative decisions on the protection of rights should be widely disseminated, nationally and in the Asian region. Governments, NGOs and educational institutions should co-operate in disseminating information about the importance and content of human rights.

- 15.3c Numerous violations of rights occur while people are in custody and through other activities of security forces. Sometimes these violations take place because the security forces do not respect the permissible scope of their powers or do not realise that the orders under which they are acting are unlawful. Members of the police, prison services and the armed forces should be provided training in human rights norms.

THE MACHINERY FOR THE ENFORCEMENT OF RIGHTS

- 15.4a The judiciary is a major means for the protection of rights. It has the power to receive complaints of the violation of rights, to hear evidence, and to provide redress for violations, including punishment for violators. The judiciary can only perform this function if the legal system is strong and well-organized. The members of the judiciary should be competent, experienced and have a commitment to human rights, dignity and justice. They should be independent of the legislature and the executive by vesting the power of their appointment in a judicial service commission and by constitutional safeguards of their tenure. Judicial institutions should fairly reflect the character of the different sections

of the people by religion, region, gender and social class. This means that there must be a restructuring of the judiciary and the investigative machinery. More women, more under-privileged categories and more of the Pariahs of society must by deliberate State action be lifted out of the mire and instilled in judicial positions with necessary training. Only such a measure will command the confidence of the weaker sector whose human rights are ordinarily ignored in the traditional societies of Asia.

- 15.4.b The legal profession should be independent. Legal aid should be provided for those who are unable to afford the services of lawyers or have access to courts, for the protection of their rights. Rules which unduly restrict access to courts should be reformed to provide a broad access. Social and welfare organizations should be authorised to bring legal action on behalf of individuals and groups who are unable to utilize the courts.
- 15.4c All states should establish Human Rights Commissions and specialized institutions for the protection of rights, particularly of vulnerable members of society. They can provide easy, friendly and inexpensive access to justice for victims of human rights violations. These bodies can supplement the role of the judiciary. They enjoy special advantages: they can help establish standards for the implementation of human rights norms; they can disseminate information about human rights; they can investigate allegations of violation of rights; they can promote conciliation and mediation; and they can seek to enforce human rights through administrative or judicial means. They can act on their own initiative as well on complaints from members of the public.

15.4d Civil society institutions can help to enforce rights through the organization of People's Tribunals, which can touch the conscience of the government and the public. The establishment of People's Tribunals emphasizes that the responsibility for the protection of rights is wide, and not a preserve of the state. They are not confined to legal rules in their adjudication and can consequently help to uncover the moral and spiritual foundations of human rights.

REGIONAL INSTITUTIONS FOR THE PROTECTION OF RIGHTS

16.1 The protection of human rights should be pursued at all levels, local, national, regional and international. Institutions at each level have their special advantages and skills. The primary responsibility for the protection of rights is that of states, therefore priority should be given to the enhancement of state capacity to fulfil this obligation.

16.2 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.

APPENDIX A

GROUPS AND INDIVIDUALS INVOLVED WITH SHAPING THIS CHARTER

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Asian Human Rights Charter is a people's charter. It is part of an attempt to create in Asia a popular culture on human rights. Thousands of people from various Asian countries participated in the debates during the three-year period of discussion on this document. In addition, more than 200 non-governmental organizations (NGOs) directly took part in the drafting process, and many other NGOs and people's organizations (POs) have endorsed the document. Several drafts of the document, including some translations, were published widely in newspapers, magazines and NGO newsletters.

This final version of the charter was written by Prof. Yash Ghai under the direction of a committee of which he was a member consisting of Justices Krishna Iyer and P. N. Bhagwati, Prof. Kinhide Mushakoji, Mercedes V. Contreras, Lourdes Indai Sajor and Basil Fernando, Mark Daly and Sanjeewa Liyanage from the Asian Human Rights Commission (AHRC). This charter is presented to deepen the Asian debate on human rights, to present the people's views on human rights as against those of some Asian leaders who claim that human rights are alien to Asia and to promote political, social and legal reforms for ensuring human rights in the countries of the region. While drawing from the cultural wells of the region, it also points to the need for cleaning these wells that have been polluted by millenniums of prejudice, discrimination, inequality and violence.



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**ASIAN
HUMAN
RIGHTS
CHARTER**

A PEOPLES' CHARTER

DECLARED IN KWANGJU, SOUTH KOREA, ON 17 MAY 1998



**On the Occasion of the Commemoration of the
50th Anniversary of Universal Declaration of
Human Rights**