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## National Human Rights Institutions and Civil Society Organizations: New Dynamics of Engagement at Domestic, Regional, and International Levels



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*This article examines the dynamics of engagement between national human rights institutions (NHRIs) and civil society organizations (CSOs) in the Asia Pacific region. It explores the role of CSOs in the establishment of NHRIs and argues that this history is essential to understanding the experience of NHRIs within different states. Second, it explores the evolution and impact of networks of NHRIs and CSOs in a region that currently lacks a supranational mechanism for promoting and protecting human rights. Finally, it considers the potential for CSOs to utilize the evolving processes of the International Coordinating Committee of Institutions for the Promotion and Protection of Human Rights (ICC) to strengthen the independence and effectiveness of NHRIs. KEYWORDS: NHRIs, CSOs, ICC, Asia Pacific region.*

In 2003, SONIA CARDENAS DESCRIBED "A NEW AND SIGNIFICANT DEVELOPMENT in the field of human rights: the UN-led proliferation of national human rights institutions (NHRIs)."<sup>1</sup> Since then, increasing attention has been paid to the role of these state-based, but nominally independent, institutions in promoting and protecting human rights. The potential importance of NHRIs stems from their location within the state. NHRIs are (ideally) vectors for the norms of international human rights law, transmitting them from the global sphere of UN treaties and treaty bodies to the domestic arena where they can be promoted through education, protected in legislation, and enforced by the executive. Because of their accessibility, independent and well-resourced institutions, which possess a broad mandate and wide-ranging powers, have the potential to significantly increase the level of human rights protection afforded to citizens. In the wake of Cardenas's article, scholars have studied the establishment of NHRIs in diverse political systems;<sup>2</sup> the work of NHRIs in transposing international human rights from the international to the national levels;<sup>3</sup> the issue of how NHRIs, created and funded by the state, can maintain legitimacy and effectiveness;<sup>4</sup> and whether or not, and how, the impact of NHRIs can be measured.<sup>5</sup>

As more states have established NHRIs and more scholars have examined their work, the contested nature of NHRIs has become more visible. While some NHRIs have been successful in effecting positive change and have assumed a central role in the political life of the state, shaping the discourse on human rights and inspiring new understandings of the responsibilities of the state toward its citizens, others have been paralyzed in situations of conflict and still others have succumbed to politicization.<sup>6</sup> Many NHRIs seek a path between building relationships with governments so that they can collaborate on human rights policy and being independent enough to criticize governments when their human rights programs fall short. This is a difficult line to walk and, at different periods in relation to some human rights issues, some commissions become—or are perceived to be—sidelined. John von Doussa, former president of the Australian Human Rights Commission, reminds us “how fragile these types of organisations are, and when they start to challenge the authority of the ruling power, then they are terribly fragile.”<sup>7</sup>

In this article, I aim to shed new light on the nature and potential of NHRIs by examining an area that has previously received little attention—the relationship between civil society organizations (CSOs) and NHRIs.<sup>8</sup> This is an area of practical significance for human rights policymakers and practitioners, as the CSO/NHRI relationship is a central dynamic in the creation and maintenance of effective NHRIs. Positive CSO/NHRI engagement is a feature of all NHRIs, which are perceived as legitimate, credible institutions—by government, by regional peers, and by the international community. Concomitantly, in cases where CSO/NHRI relations are strained or nonexistent, NHRIs inevitably suffer a crisis of legitimacy.

Because the Asia Pacific region currently lacks an overarching regional mechanism for the promotion and protection of human rights,<sup>9</sup> NHRIs have assumed significant social, legal, and political roles within many states. In the Asia Pacific region, therefore, the role of CSOs in advocating for strong and effective institutions has been all the more important. As the NHRIs of Europe, Africa, and the Americas begin to strengthen links between CSOs and NHRIs, it is instructive to consider the chemistry of NHRI/CSO interaction in the Asia Pacific region.<sup>10</sup>

In the first part of this article, I consider the role of CSOs in the establishment phase of a NHRI. Most explanations of why states create NHRIs have tended to overlook the part played by domestic forces, and I argue that unless we understand the endogenous impetus to create NHRIs we cannot understand the experience of these institutions within the state. Next, I examine two important networks in the Asia Pacific region that have fostered and shaped CSO/NHRI engagement: the Asia Pacific Forum of National Human Rights Institutions (APF) and the Asian NGO Network on National Human Rights Institutions (ANNI). Finally, I survey new strate-

gies that CSOs are developing in international forums, such as the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), to challenge the legitimacy of NHRIs and move them toward meeting international standards of independence and effectiveness.

### CSOs and the Establishment of NHRIs

The idea of establishing a human rights body within each nation—an “agent” of international law within the state—first appeared in a United Nations forum in 1946.<sup>11</sup> By 1990, eight NHRIs had been established: in Australia, Canada, Denmark, France, Guatemala, Mexico, New Zealand, and the Philippines. In 1991, representatives of some of these institutions met in Paris for the First International Workshop on National Institutions for the Promotion and Protection of Human Rights. From this workshop emanated the “Principles Relating to the Status of National Human Rights Institutions” (the Paris Principles), which set out the functions and responsibilities of NHRIs and established guarantees of independence and pluralism. The Paris Principles were adopted by the UN General Assembly in 1993.<sup>12</sup> In 1993, the ICC was established to accredit NHRIs according to their compliance with the Paris Principles. Conforming institutions are accorded “A” status by the ICC; those that do not conform are accorded “B” or “C” status. “A” status NHRIs have speaking rights in the Human Rights Council and other international human rights fora, and are entitled to request that they be recognized as the official national monitoring mechanism under the Optional Protocol to the Convention Against Torture<sup>13</sup> and the Convention on the Rights of Persons with Disabilities.<sup>14</sup>

The Vienna World Conference on Human Rights also convened in 1993. The conference adopted the Vienna Declaration, which recognized “the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.”<sup>15</sup> That same year, the Office of the High Commissioner for Human Rights created the position of coordinator for national institutions, and encouraging the creation of NHRIs in all states became a central concern of UN human rights bodies. Now in 2012, 125 of the 152 member states of the United Nations have established NHRIs.<sup>16</sup>

The worldwide proliferation of NHRIs in a relatively short span of time has puzzled students of international relations. Why would states create and support an institution that is a source of criticism of the state and a potential brake on state power? Cardenas, who attributes to the UN a “critical role in the proliferation of NHRIs,”<sup>17</sup> argues that for some states NHRIs

have presented a way of deflecting international scrutiny and avoiding greater international institutionalization.<sup>18</sup> Highlighting the role of three significant actors—the UN, the international community, and the state—Cardenas depicts NHRI promotion as “a strategy that achieved consensus precisely because it promised to shield state sovereignty while satisfying rising demands for human rights reform.”<sup>19</sup>

From within states themselves, a fourth actor—CSOs—have also played a significant role in driving the establishment of NHRIs. The Vienna World Conference, which was attended by approximately 800 civil society representatives from across the globe, informed domestic and regional CSOs of the existence of an institutional model for the national monitoring of human rights. CSOs were quick to recognize the potential of a state-based human rights body, established by constitutional or legislative provisions and thus (unlike CSOs) not subject to deregistering by government or the vagaries of donor funding. Such a body was seen as a powerful potential ally for CSOs in the promotion and protection of human rights. In many cases, CSOs seized the opportunities presented by a change in domestic political circumstances (usually the imminent election of a liberal government after a long period of monarchical, single-party, or authoritarian rule) to convince new leaders that the establishment of a NHRI was in line with a progressive political agenda. The Paris Principles provided a set of internationally endorsed benchmarks that nongovernmental organizations (NGOs) could use in lobbying governments to create bodies with significant powers, independence, and a broad mandate. The Paris Principles also helped to allay civil society fears that the new human rights body could be used by future recalcitrant governments to cloak human rights abuses.

CSOs from South Korea, for example, attended the Vienna Conference and returned home determined to convince reformist presidential candidate Kim Dae Jung that the establishment of an NHRI should be included as one of the “100 election promises” of Jung’s campaign for the 1997 elections. After Jung won the election, he placed the National Human Rights Commission Bill before the National Assembly. Nepalese NGO activist Sushil Pyakurel<sup>20</sup> recognized prior to 1993 that Nepal needed a “national institution, with a broad base to monitor the [human rights] situation and somehow report to the parliament.”<sup>21</sup> But it was not until he attended the Vienna World Conference that Pyakurel and other Nepalese NGOs became aware that the model for such an institution existed and that the Office of the High Commissioner for Human Rights could be enlisted to assist with the establishment of the institution. Nepal’s National Human Rights Commission was eventually established in 2001. In Fiji, CSOs demanded that the 1997 Constitution of the Republic of the Fiji Islands, drafted to safeguard democracy in the wake of the 1990 coup d’état, should include a provision for the establishment of a National Human Rights Commission.<sup>22</sup> The National

Human Rights Commission of Fiji was established in 2000. In Bangladesh, which for the most part had been under military rule since gaining independence from Pakistan in 1971, democratic elections held in 2008 were followed by the establishment of a National Human Rights Commission in 2009.<sup>23</sup> In August 2009, the Democratic Party of Japan (DJP) was elected to power, ending more than fifty years of almost uninterrupted rule by the Liberal Democratic Party. Lobbied by Japanese NGOs, the DJP moved to establish an NHRI. Following elections in 2010, Myanmar's new government announced the establishment of the Myanmar National Human Rights Commission.

As Cardenas explains, the desire to appease an international audience is often one of the motivating forces behind a government's decision to establish an NHRI. In other cases, as I suggest, motivation stems from a new government's desire to distinguish itself from political predecessors for the benefit of a domestic audience. In the latter case, CSOs play a significant role in lobbying for the creation of NHRIs. CSOs have been responsible for putting the issue of NHRI establishment on the domestic political agenda and creating expectations about the potential for this new institution to protect human rights, promote the rule of law, and safeguard democracy, often in states where these principles have never existed or have been absent for long periods of time. CSOs have advocated for the establishment of a NHRI as a form of "democratic lock-in" at the domestic level.<sup>24</sup> In states emerging from long periods of authoritarian rule (Malaysia, South Korea, Indonesia, the Philippines, Myanmar), states emerging from conflict (Afghanistan, Timor Leste), or states transitioning to democracy (Nepal, Bangladesh, Afghanistan), NHRIs have become a powerful symbol of the new (liberal) order promised to the people. Passionate advocacy has surrounded the subject of NHRI establishment in the Asia Pacific region. CSO efforts to convince governments to establish independent NHRIs have included violent demonstrations,<sup>25</sup> mass protests,<sup>26</sup> and hunger strikes.<sup>27</sup>

But the institution's ability to fulfill the role of safeguarding democracy, the rule of law, and human rights has in many cases proven limited, particularly in circumstances where there is no independent judiciary, free press, or politically accountable government. The symbolic importance attached to NHRIs at the time of their establishment explains the high level of disappointment that occurs when NHRIs fail to meet expectations. In many cases, initial enthusiasm for NHRIs has been quickly tempered. In 1998, a coalition of NGOs from the Asia Pacific region wrote that:

Asia-Pacific NGOs have an unhappy history with National Human Rights Institutions. The Philippines Human Rights Commission has consistently been used by the Government for its own propaganda activities. The determinations of the Indonesian Human Rights Commission on human rights abuses

in East Timor and Irian Jaya have been flawed. India's human rights commission—which was designed, as the then ruling party admitted to “counter Western propaganda”—has no power to investigate human rights abuses by the armed forces.<sup>28</sup>

By 2008, this picture was even more bleak. The Fiji Human Rights Commission supported the 2006 coup d'état of Commodore Frank Bainimarama and, shortly afterward, withdrew its membership in the ICC. In October 2007, the ICC Sub-Committee on Accreditation recommended that the Sri Lanka Human Rights Commission—then operating under a state of emergency—be demoted from “A” to “B” status because of its failure to maintain independence and political objectivity.<sup>29</sup> In April 2010, the National Human Rights Commission of Nepal was placed under review by the subcommittee amidst accusations—from two of the five human rights commissioners themselves—about “corrupt practices and the dysfunctional nature of the institution.”<sup>30</sup> Indeed, it is in those cases where an independent, effective human rights body is most urgently required, that the experience seems to show that NHRIs are least able to function effectively.

In some cases, many years pass before CSOs realize that an NHRI is not, in the words of Malaysian activists, “the mighty champion that was going to sweep down from the mountains and resolve their problems for them,” but “merely one cog in the wheel of human rights activism.”<sup>31</sup> In the next section of this article, I highlight the activities of two networks that have arisen to support the independence and effectiveness of NHRIs and to foster engagement between CSOs and NHRIs.

### **The Paris Principles and Civil Society Organizations**

The Paris Principles articulate an important role for NHRI/CSO cooperation. The principles enjoin NHRIs to “develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas” in light of the “fundamental role played by the non-governmental organizations in expanding the work of national institutions.”<sup>32</sup> The Paris Principles have been explicated by “general observations,” which have been published by the ICC's Sub-Committee on Accreditation since 2006.<sup>33</sup> The general observations require NHRIs who are applying to the ICC for accreditation or reaccreditation, or who are under review, to explain their relationship with civil society, specifically addressing whether the provisions in the NHRI's founding law formalizes relationships between the NHRI and civil society, how the NHRI has developed relationships with

CSOs in practice, which civil society groups the NHRI cooperates with, and how frequent and what type of interaction the NHRI has with CSOs (e.g., workshops, meetings, joint projects, complaints handling).<sup>34</sup>

The drafters of the Paris Principles recognized the comparative advantage of CSOs (often small, flexible, and responsive to community needs) vis-à-vis NHRIs (official institutions of the state). CSOs benefit from "proximity to their members or clients, their flexibility and the high degree of people's involvement and participation in their activities, which leads to strong commitments, appropriateness of solutions and high acceptance of decisions implemented."<sup>35</sup> In the Asia Pacific region, the goal of achieving productive NHRI/CSO engagement has been advanced by the emergence of two networks: the Asia Pacific Forum of National Human Rights Institutions and the Asian NGO Network on National Human Rights Institutions.

### **The Asia Pacific Forum of National Human Rights Organizations**

The APF was established in 1996 by the NHRIs of Australia, New Zealand, the Philippines, Indonesia, and India. Since then, the APF has increased its membership to eighteen NHRIs and has established an Advisory Council of Jurists with the aim of developing a "regional human rights jurisprudence" to address the absence of a regional human rights mechanism in the Asia Pacific. The APF accepts as full members NHRIs accredited with "A" status by the ICC, and it accepts as associate members NHRIs accredited with "B" status. It holds yearly meetings to which civil society members from across the region are invited, both from countries with already established NHRIs and from countries where NHRIs are yet to be established.

Since its inception, the APF has sought to foster relations between its members and CSOs. At the APF's first regional workshop, CSOs were participants and contributors to the Larrakia Declaration that emanated from it. The Larrakia Declaration emphasized that "the promotion and protection of human rights is the responsibility of all elements of society and all those engaged in the defence of human rights should work in concert to secure their advancement." One of the decisions of the Larrakia Workshop was that the newly created forum would "encourage governments and human rights non-government organisations to participate in forum meetings as observers."<sup>36</sup>

The APF's early convenors recognized that CSO participation would lend their network important legitimacy. Legitimacy was important from the perspective of potential donors to the APF, who (like CSOs) required reassurance that states would not use NHRIs as a foil to deflect international criticism of their human rights records. Official statements from all APF meetings have recorded that the APF and its members continue to be

committed to engagement with CSOs. The Concluding Statement from the second annual meeting of the APF, for example, stresses “the vital role of civil society in the promotion and protection of human rights” and emphasizes “the importance of national institutions working in partnership with non-government organisations, within the framework of their different roles and structures.”<sup>37</sup>

In 1999, the APF held a regional workshop in Kandy, Sri Lanka, entitled: “National Institutions and Non-Governmental Organisations: Working in Partnership.”<sup>38</sup> The workshop resulted in a Program of Action, which participants adopted at its conclusion. The program was based on two important understandings: (1) that NHRIs and CSOs have different roles in the promotion and protection of human rights and (2) that, given the diversity in the nature and composition of NHRIs and CSOs and the common objective of protecting and promoting human rights, there should be mutual consultation and cooperation in human rights projects and education. The program set out a list of Structures and Mechanisms of Co-operation, which included: planning of consultation processes between NHRIs and CSOs, which should be “regular, transparent, inclusive and substantive”; encouraging NHRIs to establish focal points to facilitate relations with CSOs; holding joint training programs; considering temporary personnel attachments between national institutions and CSOs; and cooperating where possible when making recommendations to governments or other national bodies.

### **The Asian NGO Network on National Human Rights Institutions**

The ANNI was established in 2006 as civil society’s counterpart to the APF. The ANNI’s members, CSOs from across the region, have dedicated themselves to creating and maintaining strong, autonomous NHRIs. The ANNI attends the annual APF meetings and submits statements and policy papers to the APF on behalf of its members. It undertakes strategic advocacy in support of NHRIs whose independence is under threat and, as I discuss in the next section, utilizes the procedures of the ICC to bring international pressure to bear on states that fail to support independent and effective institutions.

The formalized processes of engagement between NHRIs and CSOs that the ANNI represents is distinctive to the Asia Pacific region. The ANNI has evolved to coordinate the submissions of CSOs, to develop strategies for influencing NHRIs, and to share information about how CSOs can develop productive relationships with NHRIs. The ANNI’s membership includes: the major CSOs from countries within the region that have established NHRIs, those from countries that have yet to establish NHRIs but



have made commitments to do so, and those from countries where governments are being lobbied by the CSOs to establish an NHRI. In 2007, the ANNI published its first report, "The Performance of National Human Rights Institutions in Asia 2006: Cooperation with NGOs and Relationship with Governments." In this and its subsequent reports, the ANNI has consistently acknowledged the potential power of NHRIs as "the practical link between international standards and their concrete application, the bridge between the ideal and its implementation,"<sup>39</sup> but has also questioned the independence and effectiveness of individual NHRIs in Asia.

The ANNI's objective is to encourage the operation of effective NHRIs that comply with the Paris Principles; in particular, those that are transparent, accountable, independent institutions with a mandate to protect a wide range of human rights, led by human rights commissioners that are representative of society. The network functions as a source of information to members (on international standards relating to NHRIs, on particular strategies for CSO engagement with NHRIs, on challenges faced by human rights defenders) and assists members in providing critiques of the institutions within their own state. The ANNI's yearly report on NHRIs employs a set of benchmarks for measuring NHRI effectiveness, against which CSOs from within different states assess the performance of their own NHRI. The critique has become progressively more sophisticated. It documents the highly particular circumstances in which each individual NHRI operates, from the perspective of a domestic CSO engaged with the NHRI, and analyzes the NHRI's work against a uniform set of standards. The APF publishes the ANNI's yearly reports on its website.

The ANNI operates as a transnational advocacy network (TAN).<sup>40</sup> According to Margaret Keck and Kathryn Sikkink, TANs are networks of actors "who are bound together by shared values, a common discourse, and dense exchanges of information and services."<sup>41</sup> They are "international issue-networks" comprising nongovernmental organizations and international nongovernmental organizations (INGOs), which exert pressure on governments "from above" (by mobilizing international human rights organizations, donor institutions, and great powers) and "from below" (by mobilizing national opposition groups, NGOs, and social movements), to accomplish human rights change. Keck and Sikkink argue that, "in the give-and-take of exposing violations, demanding explanations, providing justifications, and changing practices," states and CSOs construct "the elements of a modified sovereignty."<sup>42</sup>

It is of great significance that the largest and most active CSOs in the Asia Pacific region have decided to devote resources and energy to: (1) ensuring the independence and increasing the effectiveness of NHRIs and (2) increasing the level of engagement between CSOs and NHRIs. This reflects a conviction on the part of those CSOs that, in the absence of a

supranational human rights monitoring body in the Asia Pacific, "NHRIs remain the key bodies for the promotion and protection of human rights in the region."<sup>43</sup> The successful example of the ANNI network has inspired subregional offshoots. In August 2009, Jordan hosted the fourteenth annual meeting of the APF, the first time that a country in the Middle East has hosted the meeting. Proximity permitted civil society representatives from organizations in Syria, Palestine, Iraq, Jordan, Qatar, and Iran to attend the meeting, to witness the engagement between CSOs and NHRIs, and to participate in the discussions on issues such as human rights and religious belief and human rights and corruption. Following the event, participants from the West Asian subregion decided to establish their own NGO network, the Arabic NGOs Network on National Human Rights Institutions (ARNNI). Networks such as the ANNI and the ARNNI are significant parts of civil society's aim to challenge NHRIs to be independent and effective protectors and promoters of human rights.

### **The CSO/NHRI Dynamic on the International Stage**

One reading of state enthusiasm to establish an NHRI centers on the issue of state sovereignty. It is often observed that within the Asia Pacific region, with its colonial history and highly diverse cultures, states are historically reluctant to relinquish sovereignty either to mechanisms of international oversight via accession to international treaties and monitoring bodies or to regional oversight bodies.<sup>44</sup> The establishment of NHRIs is read as a state's attempt to forestall pressure (from the international community, from domestic human rights agitators) to accede to external forms of accountability.

One constant theme of CSO engagement with NHRIs has been demands from CSOs that NHRIs maintain their independence from the state, that NHRIs act as instruments that actually challenge state sovereignty, and that NHRIs be given wide-ranging powers to undercut, as far as possible, the state's monopoly on how it treats its citizens. The difficulty is that NHRIs cannot achieve this by themselves: they rely on support from the state for their independence and resources. *Prima facie*, states have little incentive to empower an institution that will critique and discredit them. In the final section of this article, I explore new (and arguably successful) CSO strategies that use the processes of the ICC to encourage states to strengthen their own NHRIs.

As NHRIs assume new and increasingly significant roles in international fora, increasing importance is attached to NHRIs by the international community, by CSOs, and by states themselves. More than ever, states view possession of a respected NHRI as a symbol of international legitimacy and an indicia of democratic liberalism. The stamp of recognition that an NHRI

is bona fide is an "A" accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. Accreditation decisions are made by the Sub-Committee on Accreditation, comprised of representatives of NHRIs from each of the four regional groupings (Africa, the Americas, Europe, and the Asia Pacific).

Recognizing the increasing importance of accreditation, the ICC conducted a review of its processes in 2006. It determined that only institutions that conformed with "the letter and the spirit" of the Paris Principles would be accorded and maintain "A" status accreditation and that all NHRIs would be subject to review every five years.<sup>45</sup> The ICC also established processes for initiating a review of an NHRI's accreditation status where it appears that the circumstances of an NHRI may have changed.<sup>46</sup> The ICC's Guidelines for Early Warning enable it to take action to initiate a review where it appears that an NHRI may be "under threat" (i.e., the government may be impeding the existence or effective functioning of the institution).<sup>47</sup>

The Sub-Committee on Accreditation thus has a mandate to conduct more rigorous inquiries into Paris Principles compliance and direct its attention to substantive as well as technical compliance with the principles. However, the subcommittee's fact-finding capabilities are limited, which presents new opportunities for CSO intervention in ICC accreditation, reaccreditation, and review procedures. Since March 2008, it has accepted reports from CSOs about NHRIs. CSO reports are required to be submitted four months before the date of an NHRI review to allow NHRIs time to respond to the CSO report.<sup>48</sup>

CSO intervention was undertaken with dramatic effect in the case of the National Human Rights Commission of Malaysia (SUHAKAM). In March 2008, a coalition of Malaysian CSOs (including ANNI members Education and Research Association for Consumers and Suara Rakyat Malaysia [Voice of the Malaysian People]), sent a letter to the ICC in which they claimed that SUHAKAM was not in compliance with the Paris Principles. In April 2008, the subcommittee informed SUHAKAM of its decision to recommend the downgrading of it from an "A" status institution to a "B" status institution. The subcommittee noted four areas of concern:

- the lack of clear and transparent appointment and dismissal processes for commissioners, which weakened the independence of the institution;
- the short term of office of the members of the commission (two years);
- the Paris Principles requirement of pluralism and the importance of ensuring the representation of different segments of society;
- the requirement that a national commission interact with the International Human Rights System.<sup>49</sup>

The subcommittee gave SUHAKAM one year to provide evidence of its continued conformity with the Paris Principles.

On 24 March 2009, two days before the subcommittee was due to make its decision on SUHAKAM's reaccreditation, the Malaysian government tabled the Human Rights Commission of Malaysia (Amendment) Bill 2009 for first reading. The explanatory memorandum accompanying the bill stated that the legislation was intended "to make the process of appointment of the members of the Human Rights Commission of Malaysia more transparent."<sup>50</sup> Section 5(2) of the Amendment Act provided that SUHAKAM commissioners were to be appointed by the Yang Di Pertuan Agong (king) on the recommendation of the prime minister, who must now, before tendering his advice, consult with a selection committee. Section 11(A)(6) of the Amendment Act also provided, however, that the views and/or recommendations of the selection committee were not binding on the prime minister. The Amendment Act also changed the criteria for selection of commissioners, stipulating that "members of the Commission shall be appointed from amongst men and women of various religious, political, racial backgrounds who have knowledge of, or practical experience in, human rights matters."<sup>51</sup> The period of tenure for commissioners was extended in the Amendment Act from two years with possible reappointment for a further two years to three years with possible reappointment for a further three years.<sup>52</sup>

On 25 March 2009, the bill was passed. The day after the Amendment Act was passed, the ANNI sent another letter to the subcommittee. The letter stated: "The hasty manner [in which] the amendments were passed clearly illustrated the government's will to bulldoze this bill through Parliament in time for the review of SUHAKAM by the ICC Sub-Committee on Accreditation, on March 26, 2009. Moreover, this also manifests an intention by the government to avoid a debate over the amendments."<sup>53</sup>

The ANNI's letter stated that the amendments were "superficial" in that they did not ensure pluralism in the appointment process as required by the Paris Principles, and they gave the prime minister absolute discretion over the appointment of new members of the commission. The ANNI argued that:

Should the Sub-Committee on Accreditation maintain the "A" status of the SUHAKAM based on these amendments, this would set a precedence [sic] that would negatively affect future accreditation reviews of other NHRIs. Moreover, should the Sub-Committee maintain the "A" status of the SUHAKAM based on these amendments, it would be difficult to push forward more substantial amendments that would truly make SUHAKAM an independent, effective and accountable NHRI.<sup>54</sup>

The subcommittee apparently concurred with the ANNI's view. In April 2009, it informed SUHAKAM that the government's legislative amendments were inadequate. As a result, it deferred its decision on SUHAKAM's reaccreditation and provided a twenty-eight-day window for the Malaysian government to consider further legislative amendments.<sup>55</sup>

The Malaysian government took this opportunity. On 8 May 2009, *de facto* law minister Datuk Seri Nazri Abd Aziz announced that the government would again amend the Human Rights Commission Act 1999 in a bid to ensure SUHAKAM's compliance with the Paris Principles.<sup>56</sup> The further amendments involved two substantial changes. First, the clause that provided that the prime minister was not bound by the opinions, views, or recommendations of the selection committee was deleted. Second, the clause referring to the composition of the selection committee was amended from "three eminent persons" to "three members of civil societies of human rights." The bill was read for the first time in the Malaysian parliament on 22 June 2009 and passed on 2 July 2009. In November 2009, the Sub-Committee on Accreditation recommended that SUHAKAM retain its "A" status, noting with approval the legislative amendments that had been made.

The ANNI has continued its engagement with the ICC. ANNI members from Nepal, Sri Lanka, and South Korea have all submitted information to the ICC in relation to the NHRI in their country. In the case of Nepal and Sri Lanka, where NHRIs operate in difficult postconflict environments, the subcommittee has recommended that they be demoted to "B" status.<sup>57</sup> The case of South Korea's National Human Rights Commission is somewhat different. At the time of its establishment in 2001, it was a flagship commission, the first to be established in North Asia, with a legislative basis, mandate, and powers that complied with the Paris Principles. In December 2007, the conservative Grand National Party of South Korea claimed power in a landslide electoral victory. Amidst a raft of reforms that included economic and trade liberalization, stronger ties with the United States, and a stronger stance against North Korea, the government substantially reduced staffing of the commission and closed two of its bureaus. Civil society members and human rights activists across the region argued that the changes would undermine the independence and compromise the effectiveness of the commission. The ANNI has requested that the ICC place the commission under review, in accordance with Article 16.2 of the ICC Statute, relating to situations where circumstances have changed in a way that might affect compliance with "A" status.<sup>58</sup>

A member of the ruling Grand National Party in the National Assembly of the Republic of Korea, Jun Seon Park, has stated that, "of course it would be a very big matter to the current government if there was a change in the status I think, because the current government keeps a very keen eye

on the opinions of the international organisations and other human rights organisations around the world. It would be very important to us."<sup>59</sup>

### **Conclusion**

In this article, I have charted the evolution of NHRI/CSO engagement in the Asia Pacific region, from the exalted expectations that accompanied the establishment of the institutions after the 1993 Vienna World Conference through attempts to ensure productive CSO/NHRI engagement by expanding Paris Principles requirements for cooperation in the Larrakia Declaration and the Kandy Declaration. I have also noted the impact of new procedures at the international level, which permit CSOs to challenge the independence and effectiveness of NHRIs through bodies such as the ICC. These are promising developments, allowing CSOs to pull the levers of international influence in order to effect change within the state. The deepening relationship between CSOs and NHRIs, and the way this relationship is played out at the domestic, regional, and international levels, is an area of human rights law that merits further study. At this stage, three conclusions about CSO/NHRI engagement may be drawn from the experience of NHRIs in the Asia Pacific region and the networks that link them.

First, a symbiotic relationship exists between CSOs and NHRIs. CSOs recognize that NHRIs have access to the authority and resources of the state to address human rights problems. NHRIs recognize that, as state institutions, perceptions about their independence and credibility are enhanced by the support of CSOs. CSOs provide legitimacy to an institution that might otherwise be seen as a pawn of the state. CSOs are also able to extend the reach of NHRI services (and information gathering) to parts of the community that NHRIs might otherwise be unable to reach. It is possible that the relationship will always be one of fundamental tension. NHRIs will rarely be robust enough and independent enough to satisfy CSOs. The activism of CSOs often will not suit the *modus operandi* of NHRIs, who see benefits in cooperating with state agencies to make human rights gains. The challenge is to ensure that the inevitable tension is a productive one.

Second, NHRI independence is the key to securing the confidence of CSOs. In February 2008, CSOs from across Asia held a two-day workshop to assess the strength of NHRIs in the Asia Pacific region. They agreed that three prevailing features among NHRIs in Asia were "the issue of independence, due to lack of transparency in selection process for commissioners and budgetary control by government; ineffectiveness, because of the practice of appointing former government officials or former judges to the post of commissioners; the lack of effective working relationship between NHRIs and non-governmental organizations."<sup>60</sup>

Third, there will be variations in state responsiveness to potential downgrading of its NHRI by the ICC. Positive responses are likely to come

from states that are sensitive to the disapprobation of the international community—states emerging from cultures of authoritarianism, for example, who are anxious to establish their status as liberal, democratic, and human rights-respecting. But as I have shown, international influence competes with domestic political imperatives to shape state priorities. The response of the government of South Korea to civil society's ongoing attempt to have the National Human Rights Commission downgraded is likely to be an important test case. 🌐

## Notes

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