



# South Asian Citizens' Voices on Democracy and People's Security



Report of the regional consultation organised by  
South Asians for Human Rights (SAHR)

25 - 26 February 2016, Kathmandu, Nepal



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The views and opinions entailed in the presentations at the consultation are not essentially of South Asians for Human Rights (SAHR).

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## Contents

Acknowledgements	6
Abbreviations	7
Introduction	8
Building Peoples' Solidarity in South Asia	9
People's Rights, Governance and Democracy	11
Democratic Challenges and Peoples' Rights	15
Constitutional Making and Citizens' Participation	20
Freedom of Association and Assembly: The South Asian Experience	22
Participation of Women in Governance in South Asia	27
Conclusion	31
Annexure	32
The Citizens' Voices Declaration, Kathmandu, 2016	34

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## Abbreviations

CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
EVAW	The Law on the Elimination of Violence against Women
HPC	High Peace Council
ICCPR	International Covenant on Civil and Political Rights
INSEC	Informal Sector Service Centre
SAARC	South Asian Association for Regional Cooperation
SAHR	South Asians for Human Rights

## Introduction

This report on the South Asian Citizens' Voices on Democracy and Peoples' Security' is produced detailing the discussion and recommendations brought out at the Regional Consultation organised by South Asians for Human Rights (SAHR) held on 25 and 26 February 2016 in Kathmandu, Nepal.

SAHR organised this initiative as part of its efforts to strengthen the role of citizens in articulating their concerns and demands regarding human rights protection. This consultation was attended by individuals and representatives of organisations working on human rights in the countries of the SAARC region. The main objectives of the programme were to facilitate exchange of information on main human rights concerns, threats and challenges faced by those engaged in advancing human rights in the region, evolve common strategies, and to strengthen networking among civil society to increase joint action and advocacy at the regional level.

This publication features the discussions of four sessions of the two day consultation and other supplementary documents. The report includes country perspectives on 'Democratic Challenges and Peoples' Rights'; 'Constitution Making and Citizens' Participation' in Afghanistan, Nepal and Sri Lanka; Country perspectives on 'Freedom of Association and Freedom of Assembly' and the country presentations on 'Participation of Women in Governance in South Asia'. This publication also includes the South Asian Peoples' Charter 2016, which was produced at the end of the regional consultation.



## 'Building People's Solidarity in South Asia'

Hon. Chandra Prakash Mainali, Deputy Prime Minister and Minister of Women, Children and Social Welfare

South Asian nations, with a population of more than 1.62 billion people, are tied together through similar geography, spirituality and also with the problems and challenges stemming from the same historical background. This region has had to fight for its freedom and overcome regimes of terror, deal with tension between ethnic groups and border disputes, and leaders and citizens alike have cherished the dream of a democratic and peaceful social transition.

States have affirmed compliance to all ideals of human rights, rule of law and constitutions. However, with the emergence of factors such as economic development, and fear of terrorism, states have opted for repressive measures to curtail the public's voice. In this backdrop, the demand for the establishment of a regional human rights mechanism in South Asia is important. Civil society across the borders has strongly voiced for the establishment of such a mechanism to recommend solutions based on the South Asian reality.

The outbreaks of unrest and violence following the promulgation of Nepal's new constitution underscore the urgent need for a vibrant dialogue and respect for the principles of *panchsheel*<sup>1</sup>. The constitution enshrines federalism, republican democracy and equality, inspiring other South Asian nations, and the challenges faced in its implementation are relevant to the entire region. It is hoped that in this respect the SAHR report<sup>2</sup> on Nepal's border blockade will be able to reveal the root causes of the problem, which has to be dealt with sensitivity and understanding that human relationships have the capacity to transcend political borders.

The political challenge faced by Nepal in sharing borders with two global powers, India and China, is also similar to that faced by all South Asians. Bangladesh, Pakistan, Afghanistan, India, Sri Lanka, all have their own border disputes, be it on land or sea. People living in border areas are heavily interdependent. Compulsive bureaucracy has been causing crisis in the daily life of fishermen in Sri Lanka and India; people across the borders between Bangladesh and India and people living bordering India and Nepal are harassed by border security forces. There are also many visa issues among the states and this highlights the need to strengthen the alliance between South Asian nations. SAARC today remains inactive in the realm of human rights and democracy. Therefore, it is important to question: How can we create a dialogue with SAARC? Where is the citizen's voice within SAARC? Does South Asia only belong to the leaders of these countries? Emerging from these border disputes is the topic of sovereignty. All South Asian nations crave their sovereignty. When Sri Lankan activists in Geneva called for human rights, they were labelled traitors. But they were struggling to establish the sovereignty, not only for their country but, as political leaders need to recognize, as citizens they were also struggling to establish their individual sovereignty.

Citizens call out for the protection of their human rights; equality, and the right to live in a non-discriminatory environment. It is not only countries that need to fight for their territorial sovereignty. Those in the political community should be aware that as a community, while cherishing the sovereignty of a country or of a community, citizens also crave their sovereignty as individuals. In Sri Lanka, human rights activists espouse the rule of law, and the right to self-determination of the Tamil speaking people in the North, and their own rights as a Muslim community and as a Sinhalese community. Many South Asian countries have faced unconstitutionality and authoritarianism and are also now facing impositions to their lives and in their politics by

<sup>1</sup> The Five Principles of Peaceful Coexistence, known in Nepal and India as the Panchsheel Treaty.

<sup>2</sup> SAHR (2016). Nepal Blockade: Humanitarian Crisis amidst Diplomatic Kerfuffle, SAHR fact finding mission report: <http://www.southasianrights.org/wp-content/uploads/2016/06/Report-on-the-Fact-Finding-Mission-to-Nepal.pdf>

**'Building People's Solidarity in South Asia'**

super powers and external sources. In this light, the voices, actions and initiatives of South Asian citizens become an essential factor in transforming the justice systems, assessments and reports, the SAARC declarations, and the constitutions of nations from mere bureaucracy into meaningful policies which can be applied in the day to day lives of people as guiding principles that will address these grave challenges and build harmony and solidarity. SAHR is only a single platform amongst many South Asian platforms, individuals, and various forums. Therefore, there is a greater need to focus on uniting all these South Asian voices in order to face the common challenges of the region.

## 'People's Rights, Governance and Democracy'

Dr. Hameeda Hossain

Some years ago several South Asian states met at Neemrana, an old fort in Rajasthan, and decided to work together towards social and political change that would make our societies more equal and democratic. It was expected that these states would be inclusive of diversity, respectful of dissent, and prevent discrimination on the basis of class, caste, ethnicity, gender and age. Thus began the journey of South Asians for Human Rights. This yardstick of human rights was the standard bearer as SAHR worked, within each individual state and with like-minded organisations across borders.

Today the question remains if South Asian nations have met their professed goals of development and democracy, of respecting people's rights and ensuring their participation. It becomes important to also then consider the questions of why these societies have remained exclusive and why there is so little tolerance of diversity and difference.

Looking back to the early years of independence, the similarity of the language in which people expressed their aspirations is striking. South Asians had asserted their right to self-government, to representative institutions to be established through free and fair elections, to the rule of law, to an independent judiciary. These institutions were to lead to social and economic transformation of our societies in order to address social and economic inequalities.

The slogans for independence were 'freedom from want', 'freedom from fear', and as each country in South Asia became independent there was a promise of democracy, equality and peace. Newly formed constitutions reflected the visions of independence struggles for human dignity, equality and human rights and the active participation of citizens in each of these aspects. By ratification of many international rights, all states in South Asia have taken responsibility for their implementation and the formation of democratic structures: with parliaments, judiciary, human rights commissions, right to information laws etc., and are supposed to set the standards for state-citizen relations.

But the challenges that confront South Asia are many. The following questions will highlight these issues:

- How far have governance structures succeeded in fulfilling the commitments to human rights and to people's participation?
- Has economic development reduced glaring inequalities?
- How have conflicts and hostilities that are an obstacle towards peace and stability in the region been dealt with?
- Is it possible to challenge the impunity of lawless law enforcement by both state and non-state actors that silences citizens' voices?
- How can a culture of tolerance and inclusive participation be retrieved and lead to raising shared concerns?

These questions warrant a discussion of the challenges posed by current directions in economic development, political dynamics and social relations.

### Economic Changes

The economic advances made by South Asia in the last few decades are undeniable. Most reports and surveys indicate that poverty levels have gone down, that social policies have raised life expectancies, that maternal mortality has declined, and that education opportunities have expanded. Today, economically, India sees itself as an emerging tiger, a global power, competing in international markets, and investing overseas. Other smaller states forecast their entry into middle income status.

But it is essential to question the cost of these changes: it may be true that poverty levels have gone down and exports have created employment opportunities. But has selective economic growth led to greater disparities and inequalities, with one class benefiting at the cost of other classes or communities? Has economic development contributed to an improvement in the lives and livelihoods of the larger population?

**'People's Rights, Governance and Democracy'**

The lure of investment has encouraged resource poor countries to offer economic zones for private investment, where the interests of the market prevail over those of the state, and where settled communities are uprooted to make way for new industries. Indeed labour surpluses in South Asia have contributed to these successes allowing traditional occupations to be overtaken by commercial cultivation in plantations. It has allowed the entry of multinationals and added to the economic power of corporations. The urban-rural divide is also a symptom of a skewed growth as demands of the middle class or upper middle classes take priority over the needs of the working population. Every city has witnessed how families are evicted from their makeshift settlements, as their land is transformed into luxury construction.

This expansionist tendency has implications for the environment. Land taken over for industrial development or exploration deprives farmers and small farmers of subsistence agriculture. It is then not surprising to find long lines of peasants moving into urban areas or migrating for work overseas. New sources of energy such as mining of coal have also endangered people's livelihoods. In Bangladesh protests by indigenous communities led to the suspension of coal mining in the North, but today Bangladesh and India have undertaken a joint venture to set up a coal plant near the Sunderbans forest which is likely to damage the environment seriously. Two years ago SAHR presented an investigative report which showed, as indeed had other reports, that this would damage the largest surviving mangrove forest.<sup>3</sup> But these reports have not been taken note of by policy planners. The prospect of profits has played a greater role than the future security of the region.

To use the human rights yardstick is to expect economic growth with distributive justice. The economy owes its

growth to the labour of millions of farmers, to women workers in garment industries and to migrant workers overseas. Therefore, a competitive advantage in the market depends upon the use and exploitation of labour, allowing the workers little space for collective bargaining for their rights. Any resistance or demands for implementation of laws leads to suspension of work or of the closure of a factory. The loss is to the worker while the investor moves on.

**Political Divisions**

The wars in Afghanistan, Iraq and the recent violence in Syria and Yemen are impending threats to peace in the region, and are likely to have implications for peace in South Asia.

The region has not been immune to an arms race started by India and Pakistan due to their historical hostility since partition. Their pursuit of "national security" by building military capability has been a long standing threat to peace and stability. Unsurprisingly South Asia remains one of the poorest, but most militarised regions. According to Akmal Hussain, a Pakistani economist, "These military expenditures, whose scale is unprecedented in the developing world, are being undertaken in the name of achieving national security in a situation where the majority of the population in South Asia is living below the international poverty line..."<sup>4</sup>

The psychology of "national security" has also allowed for an arbitrary use of violence by state forces which are evident in the narratives of encounter, crossfire, disappearances, custodial death and torture, practices which have all been rejected as means of law enforcement by the constitutional and international guarantees undertaken by South Asian states. The impunity for these acts raises a serious challenge as it negates the state's

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<sup>3</sup> SAHR (2015). Report of the Fact Finding Mission to Rampal, Bangladesh: <http://www.southasianrights.org/wp-content/uploads/2015/09/Report-of-the-FFM-Rampa-Bangladesh.pdf>

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<sup>4</sup> Akmal Hussain, A Perspective on Peace and Economic Cooperation in South Asia, 2008

responsibility to protect a citizen's right to life. It also leads to a culture of brutalization and violence from which non-state actors are not exempt.

To address the meaningless brutalization of society by acts of terrorism by non-state actors will require more than security measures. It will need an understanding of a more active citizenship, through an engagement with the promotion and protection of human rights. This is possible only if citizens are given the freedom to speak freely and without fear, and allowed space for the openness of debates and discussions. The tendency to control thought and ideas is detrimental to a vibrant society.

South Asia constitutes of diverse communities marked by differences in language, culture, and religion, ethnicity and gender, all which South Asian citizens have lived with throughout the ages. But today the tendency to homogenise allows the dominant majority to impose its own norms and to exclude the others. Communal violence between Muslims and Hindus, between Shia and Sunni, Sinhala and Tamil or violence and exclusion of Ahmadiya are all examples of a flawed democracy in South Asia.

The application of security measures has been adopted as a modality of governance. They have been justified as means of law enforcement. The impunity for such acts has created an environment of fear. Recent incidents of individualized violence, such as the killing of a Dalit child, attacks on mosques and temples, torture of young children, and the rape of women are symptomatic of a narrowing of identity politics which negates human rights.

Some years ago SAHR set up a minority rights commission which was to identify the causes of discrimination within each country. In each case the disputes were related to acquisition of land and material resources or to the imposition of power by the dominant majority. We need to adopt peaceful means for settlement of disputes. The war in Sri Lanka has ended, and a new beginning is being made. We must welcome this initiative for post conflict

reconciliation that it is hoped will be creative and set an example of tolerance and mutual respect.

### **Challenge of Social Inequalities**

A serious challenge in South Asia is the persistence of traditional social inequalities based on gender, ethnicity and caste. There have been many international treaties ratified and several laws, policies and programs adopted in order to end discriminatory practices, but much of this remains on paper.

Some opportunities have been made available and thus, women's enrolment in education has expanded, maternal mortality has declined, and work opportunities have increased. But inequality persists in marriage, divorce and inheritance. Few political leaders have been willing to make changes that defy conventional beliefs and morals, or ones that would challenge power relations. Even where constitutions have guaranteed equality and non-discrimination, religious precepts have prevailed.

Women's struggles and the rising struggles of the Dalit communities and indigenous people demand justice. That is essential if these societies are to ensure peace and stability and respect for human rights. The space for debate and dissent is absolutely essential.

Only a few priorities are listed here, but the challenge for change in governance that will ensure people's rights and a sustainable democratic development is formidable.

"Once seen as a contradiction in terms which required a country to choose either political freedom or economic equality, the challenge of simultaneously pursuing the two goals is present in some measure in all parts of the world, but nowhere is the challenge as imposing as it is in South Asia<sup>5</sup>."

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<sup>5</sup> The State and Democracy in South Asia (2008)

**'People's Rights, Governance and Democracy'**

It is important to understand the reasons to develop a culture of tolerance and inclusiveness, of respect for citizens' rights and their participation, to make democracy a meaningful everyday practice, not to be preserved in documents alone.

There is a great need to overcome the structures that divide people and to move forward through open borders, with constitutional freedoms that protect the right to life and fundamental rights. As human rights defenders SAHR should work towards the common objectives for peace, stability and development with social justice in South Asia.

## Democratic Challenges and Peoples' Rights

**Afghanistan**, although a poor country, was relatively stable until 1978, when, in the midst of the Cold War, the Soviet Union invaded. Civil war, insurgency, drug trafficking, extremism, rampant corruption, and utter state failure did not characterise Afghanistan, for the most part, until the end of the 1989. Afghanistan was certainly poor and rarely democratic, but did not reach the depths of failure and bloodshed as that of recent decades. Today the country faces terrorism, grave security threats, threats to human rights and is today a quagmire. Hopes for stabilisation were raised with the involvement of the US in Afghanistan, but were not realised.

However, a closer look at the aid process to Afghanistan during the last fifteen years demonstrates some contradictory trends and results, in particular in the protection of human rights. In accordance with the Bonn Agreement, a major percentage of foreign assistance was devoted to the security sector. Less attention was paid to reforms and rehabilitation in political, economic and social sectors. The issue of institution building and development necessary for delivering basic social services, including the protection and promotion of human rights, was quite ignored. Little attention was paid to structural reforms to enable the government to win over the trust of the population, and strengthening the rule of law that is essential to building a sustained peace. Serious human rights violations occurred during the presidential, national assembly, and provincial council elections of 2009/10 and 2014. The 2010 parliamentary elections were deeply flawed, with the lowest turnout recorded. The dispute over 62 candidates caused the then President to postpone the inauguration of the Parliament until January 2011. Finally, an independent Election Commission replaced nine of the seated representatives with new lawmakers.

Afghanistan has lost millions of people and millions more are suffering. Thousands of people leave Afghanistan every

year.<sup>6</sup> The country sits on the crossroads of Asia between Pakistan, the Middle East and the former Soviet Union territories. It is a victim of the great Cold War between the Soviet Bloc and the Western Allies which is taking on a new agenda. The Western Allies are divided in their vision of the new post-Cold War world and balance of power. The Cold War brought the menace of terrorism and extremism and has paralysed the region. It has encouraged the growth of radical Islamic centres around Afghanistan. Thousands of madrasa (religious schools) were established by religious fundamentalists and have become safe havens for radical extremists from around the world. Youth from poor families are brainwashed into seeing the Western Allies as infidels and enemies of Islam. Their innocence is exploited to attack the Western Allies through suicide missions. Today, although Afghanistan has been occupied by the United States of America and has had trillions of dollars poured into the region, it has not brought about the desired outcome. Therefore, regional and international support, coordination and cooperation are essential to eradicate terrorism from Afghanistan and the region.

**Bangladesh** human rights and democracy are under sustained attack by an increasingly authoritarian government. Extra judicial killings, custodial killings, arbitrary arrests and disappearances are carried out by the armed forces and extremists against those who espouse secular views. The freedom of speech and expression are under threat. The right to express one's opinion freely and oppose political views and ideologies is curtailed, with thousands of political opponents in jail and some assassinated. The editor of the Daily Star, a leading English newspaper, published a list of those suspected of terrorism which included the name of the

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<sup>6</sup> Everybody is leaving Afghanistan': Refugees flee increasing violence, Al Jazeera America, 3 October 2015, <http://america.aljazeera.com/articles/2015/10/3/refugees-flee-afghanistan-in-face-of-increasing-violence.html>

## Democratic Challenges and Peoples' Rights

present prime minister. The editor was forced to publicly state that this was a mistake and currently there are about 70 cases filed against him<sup>7</sup> which shows the extent of the curtailment of media freedom and the collapse of rule of law. General Elections are conducted under threat and human, political and voting rights are violated. There is an absence of the rule of law. Corruption is endemic and the present authoritarian regime seems intent on destroying institutional forces. Bangladesh as a society can only move forward with four forces: people's power, political power, institutional forces and civil society. Basic rights must be restored, including voting rights and rule of law. It is hoped that the region will support this view.

**India**, in comparison to other South Asian countries, is unique in having sustained a stable democracy. Democracy has several components such as effective political mechanism, basic human rights including right to life and right to human security, a compatible economic system with individual property rights, economic coordination with mechanisms provided by the market, a multi-tier government, effective and comprehensive systems of social protection, right to dissent and free speech. But the Indian democracy meets these requirements only by law and not in implementation. People are dictated to most of the time by higher powers through an ultra-nationalist doctrine and democracy is discriminatory towards far and remote people. People's power depends on the location, distance from the seats of power, socio economic class and communal identity of people.

Amongst the challenges facing India today are those of continuous communal violence between Hindus and Muslims, widespread corruption and the curtailing of people's rights. Unfortunately, the media has not been able

to effectively highlight the inefficiency of the government and their authoritarian practices. During the imposition of Emergency law (1975 - 1977) by Prime Minister Indira Gandhi, the media was heavily censored. At present, there is an undeclared emergency under the Modi regime, and it is communal to the core. The media being completely under control is a crisis.

There is fallout from the Maoist insurgency and civil war in Nepal, which is land locked from three sides by India. The violence and abuse of human rights in the country could be a result of democracy being diluted in India creating a deprivation of social, economic and political rights.

Despite being a democracy, 360 million people are declared poor; this is poverty defined as those who are starving. Prime Minister Narendra Modi has centralised power and underestimates the opposition. Mr. Modi is completely answerable for the activities of *Rashtriya Swayamsevak Sangh* (RSS), a right-wing, Hindu nationalist, paramilitary volunteer organisation which wants to convert India into a non-secular country for Hindus only, run according to the *Manusmriti*.<sup>8</sup>

Kashmir is a political problem, essentially between India and Pakistan, where the interests of both governments intersect and collide, with the people of Kashmir caught helplessly in between. There is repression and human rights violations, with democracy being squeezed in the name of fighting insurgency. This further pushes youth towards radicalisation and violence, causing spill over effects all over South Asia.

In India the growing fascist tendency is a concern for the whole region. Although often held up as a model

<sup>7</sup> 79 cases and counting: Legal challenges pile up for Daily Star editor who admitted error in judgment, Committee to Protect Journalists, <https://cpj.org/blog/2016/02/79-cases-and-counting-legal-challenges-pile-up-for.php> (Accessed on 4 November 2016)

<sup>8</sup> The Manusmriti is an ancient moral text among the many Dharmasastras of Hinduism. Taking the Dharmasastra as a legal code and considering its authors lawgivers is dangerous since it is repressive and discriminates against women and the Dalits; women are considered secondary citizens and Dalits as outcasts.



for democracy to other South Asian countries, there has been an absolute monopoly of power by the ruling elite for 30 years in India. A democracy run by the elite does not function as such, and thus, people are frustrated and a handful of politicians have become very powerful. Fundamental rights are being threatened including the right to life, right to form a family, and other social and economic rights and citizens have become the servants of the powerful.

**Maldives** elected a democratic government in 2008 after a long struggle. The government established a new constitution and during this period the conversation turned to democracy as opposed to a dictatorship and people started to enjoy their rights and freedoms. The new constitution provided all the democratic structures of government, the executive, the judiciary and the legislator and enshrines all the ideals of human rights that are in international human rights covenants, including the ICCPR, and the UN Charter.

Sadly, the 2008 government did not last long and the president was compelled to resign in 2012, and in 2013 a new government under President Yameen was formed. In 2015 the former president Nasheed, who was also the leader of the opposition, was arrested under the charges of terrorism. Currently, many other politicians have been arrested under various charges; they are imprisoned with ongoing trials.

The governance structure in the Maldives is built to ensure people's rights, but at present these institutions are failing to uphold democratic values and promote human rights. Civil rights and economic, social and cultural rights of citizens are severely violated and the freedom of expression of Maldivians is increasingly curtailed by the government.

The National Human Rights Commission in the Maldives too is restrained. After 30 years of dictatorship, a hard earned democracy has been severely distorted, bureaucracy has become politicized where government servants are

accountable to the dictator and not to the people. The gap between the rich and poor is widening and the poor are unable to afford the amenities such as electricity, water, medical care and education for their children.

**Nepal** is one of the most corrupt countries according to a Transparency International report; politics seem to be the only thriving industry, due to widespread and absolute corruption.<sup>9</sup> There is a severe lack of accountability and transparency within the government. The elections commission and judiciary are controlled by the parliament, the authorities encourage police to be violent, torture is routine and the rule of law has collapsed. Further to these issues, Nepal's controversial new constitution is a challenge to implement. There is a huge divide in Nepal between the Pahadi (people of the hill country) in the North and Madhesi in the South. The Pahadis are confident that the new constitution is the best but the Madhesi say it denies their ownership. They organised protests against the constitution, leading to violent clashes in the far west claiming 52 lives and leaving hundreds injured. As the Tharu and Madhesi continued agitation, India supported them with a trade blockade at the border.<sup>10</sup> Due to this, a disruption of flow of trade and services occurred, severely violating the socio economic rights of the people and causing a countrywide acute humanitarian crisis. People were deprived of accessing the most basic essentials which compelled them to purchase those items in the black market at extremely high prices for survival. While the cost of living increased drastically the people also suffered due to the lack of public transport, health services etc. they were put through the worst of suffering and misery during

<sup>9</sup> Nepal slips further in corruption ranking, Kathmandu Post, January 27, 2016 <http://kathmandupost.ekantipur.com/news/2016-01-27/nepal-slips-further-in-corruption-ranking.html>

<sup>10</sup> SAHR (2016). Nepal Blockade: A humanitarian crisis amidst diplomatic kerfuffle, fact finding mission report, p21 <http://www.southasianrights.org/wp-content/uploads/2016/06/Report-on-the-Fact-Finding-Mission-to-Nepal.pdf>

## Democratic Challenges and Peoples' Rights

the winter months without much needed fuel and medical care. Due to the blockade the reconstruction process in the aftermath of the dreadful earthquakes slowed down to a great extent.

**Pakistan** at this time is passing through an extraordinary phase in the context of people's rights and the country's democratic evolution. A military campaign against terrorism and extremism has been ongoing for more than a year. A National Action Plan has underlined comprehensive measures to deal with the sources of extremism and militancy and to wipe out the remnants of banned terrorist outfits, including the ones that have indulged in sectarian violence.<sup>11</sup> What became a trigger for this vigorous national security enterprise was the Taliban attack on the Army Public School in Peshawar on 16 December 2014 in which more than 130 schoolchildren were massacred. In the bloody history of terror in Pakistan, this attack shook the country to its core and the stage was set for stringent measures that would naturally undermine civil liberties. The parliament was willing to sanction the establishment of military courts, albeit for only two years, to try the arrested terrorists. The moratorium on executions was lifted and justified to enforce death sentences awarded to terrorists, but executions in Pakistan in 2015 were the third largest in the world. With this focus on national security, the military establishment has visibly gained the upper hand over the civilian administration. Pakistan has had a troublesome civil-military relationship marked by long stretches of military rule. Now, however, the military's role has a good measure of popular support.

Pakistan was born with a crisis of identity, unsure about its sense of direction. This conflict between a conservative Islamic - religious - and a modern, democratic dispensation has stunted the growth of an open and liberal society. Pakistan's obsession with India and its

problematic relations with Afghanistan have fostered militant and obscurantist elements in the country. Hence, with no academic community and no popular sentiment, the civil society is weaker in Pakistan than in other South Asian countries. In India, an incident of rape brought out thousands of people onto the street, whereas that could not happen in Pakistan.

Positively, even with the ongoing campaign against terrorists and extremists, there are some indications that the rulers are gradually veering towards liberal and progressive policies. But this is bound to be a long and hazardous struggle.

**Sri Lanka** has been given a golden opportunity after 10 years of dictatorship and authoritarian government. But will it lead to a real change?

The war between the government forces and the LTTE led to the intensification of military intervention in civil life. There were high levels of human rights violations and Sri Lanka was the worst country for journalism. Journalists were killed or had to live in exile, and political dissent was difficult, with people having to work almost underground.<sup>12</sup> Disappearing people has been part of the state strategy since 1989. During the previous regime, civil society was controlled by the Defence Secretary who was the president's brother.<sup>13</sup> A new gazette notification forbade NGOs to hold press conferences or workshops, and they were not given the freedom of association and assembly that is rightfully provided by the constitution.<sup>14</sup>

<sup>12</sup> Sri Lanka Country Report 2015 <https://freedomhouse.org/report/freedom-press/2015/sri-lanka>

<sup>13</sup> NGO Secretariat was attached to the Ministry of Defence and Urban Development, of which the secretary of the Ministry was Gotabhaya Rajapaksa

<sup>14</sup> Sri Lanka bans NGO news conferences, Al Jazeera, 9 July 2014 <http://www.aljazeera.com/news/asia-pacific/2014/07/sri-lanka-bans-ngo-news-conferences-20147911164236904.html>; also see Sri Lanka bans press conferences, workshops and press releases for NGO, Nidahasa, 8 July 2014 <http://nidahasa.com/news/news.php?go=fullnews&newsid=1340> (Accessed on 4 November 2016)

<sup>11</sup> 20 points of the National Action Plan, National Counter Terrorism Authority <http://www.nacta.gov.pk/NAPPoints20.htm>

On 8 January 2015, through an electoral process, civil society and the opposition political party made it possible to remove the authoritarian leader. It was followed by a general election, and on 18 August 2015, Sri Lanka formed a new government, a national unity government. This led to the removal of provisions in the constitution that gave the president power to dissolve the parliament at his wish and a constitutional council was established to appoint independent commissions that could lead to democratic reforms. Currently, Sri Lanka has an independent elections commission, an independent human rights commission, and a Buddhist commission. The auditor general and attorney general are nominated through a transparent process.

In terms of human rights and reconciliation, the government is ambitiously embarking on a transitional justice process, and has announced the establishment of four mechanisms corresponding to the four pillars of transitional justice:<sup>15</sup>

- **Right to know:**

A Commission for Truth, Justice, Reconciliation and Non Recurrence and an Office of Missing Persons to look into enforced disappearances

- **Right to Justice:**

A judicial mechanism with a special counsel with the participation of the Commonwealth & other foreign judges, defence lawyers and authorised prosecutors and investigators

- **Right to reparations:**

An Office for Reparations

- **Guarantees of non recurrence:**

Domestic law reforms and reforms in the security sector

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<sup>15</sup> Infographic: Transitional Justice in Sri Lanka <http://www.cpalanka.org/infographic-transitional-justice-in-sri-lanka> (Accessed on 4 November 2016)

## Constitutional Making and Citizens' Participation

The aftermath of the attack of the World Trade Center in 2001 brought many changes to the political status of **Afghanistan**.<sup>16</sup> The Taliban was defeated by the US led forces of the Northern Alliances, paving the way to the signing of the Bonn agreement in 2001. In 2002 October, the Constitutional Drafting Commission set up by presidential decree entailed 9 members. This Commission had several issues including resources and the draft they submitted to the President was not released to the public. In April 2003, the second Constitutional Drafting Commission was formed comprising 35 members including 6 members of the original commission. It edited the draft constitution extensively with public support and international expertise and the draft was handed over to the President in September 2003. Key aspects of the document were redrafted by the Cabinet and the National Security Council to secure more powers to the president and to curb the alternative power centres. The revised version of the constitution was made public 5 weeks before the *Constitutional Loya Jirga* (the Grand Assembly) which was to ratify the constitution that was formed.

The two month long public consultation process conducted by the Constitutional Drafting Commission entailed meetings at provincial level with pre selected groups; concrete views on key issues were not taken at these meetings. The report entailing views of the public and the results of the meetings compiled by the Secretariat of the Constitutional Drafting Commission was not made public even though there was a decree for it to be publicised. At the same time there were discrepancies in selecting delegates to the *Constitutional Loya Jirga*. The *Jirga* consisted of people from different factions

who were divided amongst themselves. They tried to promote their own agenda with regard to the constitution. The new constitution was adopted in January 2004 and delegates were asked to stand for one minute to denote their accession to the document. Thus there was no formal count or recording of dissenting votes and the opposition was muted.<sup>17</sup>

Afghanistan has a modern constitution that guarantees democracy and freedom of association but this hardly applies in practice. Women are guaranteed 33 percent participation in the parliament though at times women in decision making positions have been killed by the Taliban. Women are reluctant to involve themselves in politics and becoming targets for threats and intimidation, especially in the promotion of women's rights.

The new constitution of **Nepal** was promulgated on 20 September 2015.<sup>18</sup> It is drafted by the second Constitutional Assembly convened in 2013.<sup>19</sup> It embraces the concepts of federalism, secularism and inclusiveness. Human rights and fundamental rights are enshrined in it and it envisions a Nepal divided into seven federal provinces. The Tharu and Madhesi groups demand that the province must be demarcated based on ethnic concentrations with a straight east to west demarcation in the southern part of the country. They have boycotted the new constitution and the resulting conflicts have claimed the lives of around 60 people. Although the constitution stipulates that all are equal by law, women and the Dalit are not being represented. There is a huge polarisation of this society as the seven new districts of Nepal are delineated according to high and low-caste, Nepali-speaking versus speakers of indigenous languages, hill ethnicities versus lowland

<sup>16</sup> Thier, J.A. (2006/7). Making of a Constitution in Afghanistan, pp566 [http://eprints.lse.ac.uk/28380/1/Thier\\_LSERO\\_version.pdf](http://eprints.lse.ac.uk/28380/1/Thier_LSERO_version.pdf) ; the secretariat of the constitutional commission of Afghanistan (2003) Constitution Making Process in Afghanistan <http://unpan1.un.org/intradoc/groups/public/documents/APCIT Y/UNPAN016658.pdf>

<sup>17</sup> Thier, J.A. (2006/7). Making of a Constitution in Afghanistan, pp 571

<sup>18</sup> In the Constituent Assembly, 507 members voted in the favour of the constitution where 25 members voted against and 66 were absent during the vote

<sup>19</sup> SAHR 2015. Report on the fact finding mission to Nepal, p20 <http://www.southasianrights.org/wp-content/uploads/2016/06/Report-on-the-Fact-Finding-Mission-to-Nepal.pdf>

ethnicities, and gender divisions, with high-caste men from the hills almost supremely dominant.

The main challenge is to find a way to create a larger ownership of this constitution as power is extremely centralised. At this critical juncture in Nepal, it is most necessary to create mechanisms to make the constitution a reality.

The constitution of **Sri Lanka** is the basic law of the nation, an agreement between citizens and government as to how the citizens will be governed. It must be promoted and upheld for the safety of people. Granted universal franchise in 1931, Sri Lanka has had two constitutions while under the British, from 1931 and another formulated in 1947, based on the British parliamentary model. In 1972 Sri Lanka was declared a Republic, with a new constitution being enacted in 1977, based on an American and French model that created an Executive Presidency in Sri Lanka. Although the most important stakeholders in constitution making are the people of the country, they had never been consulted in the past. A constitution made without the participation of the people will not be a constitution of the people.

In its recent past, Sri Lanka witnessed a complete breakdown of rule of law, blatant violations of human rights and fundamental freedoms and corruption of a level previously unknown. The wide ranging powers vested in the presidency during former President Mahinda Rajapaksa's time were abused as he used his powers to prolong the authoritarian regime. Sri Lanka's present challenge is to promote a constitution that will not permit the possibility of another dictator.

The present National Unity Government is working on a new constitution as the current constitution lacks adequate safeguards to protect democracy, rule of law and fundamental rights, as demonstrated by the previous regime. Consequently, a peoples' consultative process has started. The commission appointed to hear public representations on the constitution is accessible on all media and has, up to date, received hundreds of representations from all layers of society.<sup>20</sup>

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<sup>20</sup> Full report of the PRC <https://www.colombotelegraph.com/wp-content/uploads/2016/05/PRC-Report-English-Final.pdf>

## Freedom of Association and Assembly: The South Asian Experience

In **Afghanistan**, with the fall of Taliban in 2001, the international community shared ambitious goals regarding the reconstruction and recovery of this war devastated land. As a result of this assistance, significant achievements were made, including the adoption of the Afghan Constitution in 2004, and conducting presidential, parliamentary and provincial council elections in 2004/5, 2009 and 2014.

Yet, the right to freedom of association is closely related to the rights of expression. There have been attacks on journalists including physical attacks and intimidation by powerbrokers, officials, anti-government elements and security forces. A media advocacy group described 2014 as the most violent year on record for Afghan journalists.<sup>21</sup> The HRW report provides details on the threats and challenges faced by these journalists. According to the Afghanistan Journalists' Safety Committee 68 attacks on journalists were made in just the first six months of 2014. 63 percent of the attacks and threats were attributed to government officials and Afghan security forces, almost 12 percent to insurgent forces, and the remainder to other powerful figures or unidentified sources. The attacks included the killing of *New York Times* reporter Noor Ahmad Noori on January 23, 2014, by unidentified assailants in Helmand province. Foreign journalists were also victims of violence; on March 11, an unidentified gunman shot dead Swedish journalist Nils Horner in Kabul, and on April 4, a policeman in Khost shot dead photojournalist Anja Niedringhaus and wounded Associated Press reporter Kathy Gannon while they were covering preparations for the country's April 5 presidential election. However, despite these huge challenges, civil society, and in particular the human rights community, continues in its struggle to gain support for strengthening of rule of law.<sup>22</sup>

<sup>21</sup> Human Rights Watch, 2015. The World Report: Afghanistan <https://www.hrw.org/world-report/2015/country-chapters/afghanistan>

<sup>22</sup> SIGAR audit Report 2015 <https://www.sigar.mil/pdf/audits/SIGAR-15-68-AR.pdf>

Under the guise of a crackdown on terrorism, a serious erosion of rule of law and civil justice is taking place in **Bangladesh**. There is a dysfunction in the delivery of justice and repressive legal structures restrict people from working collectively or operating freely. The authoritarian government deprives people of their fundamental rights which are guaranteed in the constitution and international covenants. There is a denial of free and democratic space since the farcical election of January 2014.<sup>23</sup> Since then, organisations working for civil and political rights are being targeted. The legal and regulatory mechanisms imposed by the international community to counter terrorism after 9/11 have, at times, also been a barrier.

Article 37 and 38 of the Constitutional framework of Bangladesh entail right to freedom of assembly and association. Despite all national and international legal provisions, people's freedom has been curtailed completely and there is almost no legal recourse in practice. Human rights activists and NGOs are targeted by the government and prevented from working freely. Human rights defenders are being harassed by law enforcing agencies, endangering their lives. In November 2015, the government barred NGOs from accepting foreign funds and cancelled Transparency International's registration in the country for criticising the government.<sup>24</sup> Human rights NGOs and media have been threatened by the police for releasing extra judicial killings reports.

The right to freedom of assembly is severely curtailed by the present government. It bans political rallies, meetings, or gatherings organised by any opposition political parties or people holding alternative views in the name of public safety by enforcing the section 144 of the Code of Criminal Procedure in the pretext of mitigating violence. Views

<sup>23</sup> Freedom House World Report: Bangladesh 2015 <https://freedomhouse.org/report/freedom-world/2015/bangladesh>

<sup>24</sup> Bangladesh NGOs: UN Experts warns against proposed funding bill <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16720&LangID=E> (Accessed on 4 November, 2016)

against the government are repressed by violence and police brutality. The government uses repressive laws such as the Information and Communication Technology Act and the Anti-Terrorism Act to carry out these actions. The government has already closed down some media outlets and arrested a number of journalists on false allegations, some of whom have been subject to torture. Shaukat Muhammad, president of the Federation of Journalists of Bangladesh is a recent example of this and faces 21 charges. Mahamudur Rahman, acting editor of the Daily Amar Desh, is another prominent journalist who has waged war on corruption through his articles and newspaper, who is detained, with 70 allegations against him. The total number of cases filed against the Daily Star editor Mahfus Anam has reached 71.

There is a complete crackdown on human rights, rule of law and freedom of speech and assembly in Bangladesh. Therefore, the restoration of rule of law and the restoration of democracy must be demanded.

**India** continues the struggle for freedom of speech and freedom of assembly. Article 19 of the Constitution enshrines the fundamental rights including freedoms of association and assembly. The very first amendment to the constitution, in 1951, curtailed the freedom of media. At present, the government is curtailing the rights of the people in a brutal way. Section 144 of the Code of Criminal Procedure is invoked regularly which makes illegal congregations of more than five persons. One could be labelled as anti-national for criticising the government. Last year the Maharashtra state government which is known as a more progressive state, released a circular stating that if one criticises the government one will be charged with sedition. The people of India have not accepted the restrictions against freedoms of association and assembly and are protesting around the country and demanding their rights and freedoms.

The constitution of the **Maldives** guarantees the freedoms of association and assembly but the government or 'the system' do not allow the people to enjoy the rights enshrined in the constitution. For example, the Supreme Court of the Maldives recently dissolved the Maldives Bar Association stating private or legal professionals cannot use the term 'Bar' or 'Maldives' in any association they form. The government has ordered all civil society organisations to re-register and announced that if they do not comply, they will be dissolved.<sup>25</sup> The Supreme Court has issued a circular to the lower court not to form any sort of associations such as sports clubs without its approval. The elections commissioner has issued an order to all political parties to, re-register all their members including the founding members, if not they will not be considered as associated with the parties.<sup>26</sup>

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<sup>25</sup> Government grants itself 'extraordinary discretionary powers' over NGOs, 19 October, 2015 <http://maldivesindependent.com/politics/government-grants-itself-extraordinary-discretionary-powers-over-ngos-118579>

<sup>26</sup> All parties except for PPM, required to re-register member, Maldives Independent, 4 July 2015, <http://maldivesindependent.com/politics/all-parties-except-ppm-required-to-re-register-members-100496> (Accessed on 4 November, 2016)

### Freedom of Association and Freedom of Assembly: The South Asian Experience

People at peaceful protests were pepper sprayed by the police including journalists who were pepper sprayed while reporting news.<sup>27</sup> The ex-president Nasheed at a peaceful protest was too sprayed by the police who later denied it. Police torture of political activists has increased<sup>28</sup> and the Police also shot women seated down in protest. It is evident that there is a crackdown on democracy and human rights by the establishment and the seizure of people's right to freedom and assembly.

Freedom of expression, association and assembly are essential elements of democracy and a basic human right.

In **Nepal**, since 1990, there are legal provisions for freedom of association and freedom of assembly. There was no legal right before 1990, under the Panchayat regime. The Constitution of 1990, interim Constitution of 2007 and recent Constitution 2015 all provide legal provisions. Except when specifically mentioned in law, each individual has the right to freedom of expression, peaceful assembly without weapons, establishment of political parties and establishment of organisations and institutions.

However, there are many evidences on the violation of these rights, by both state and non-state actors. In some cases, the state suppresses the rights of marginalised communities. The Maoist rebellion started in 1996 and by 2006 the Maoist had control over more than 80 percent of

the country. There were no possibilities of gathering and association in areas under their control. The state military had also suppressed and killed many people during that time.

Once the Maoists entered the peace process, they also participated in preparing the new constitution. However, the United Democratic Madhesi Front (UDMF), and NCP Maoists (Baidhya), has obstructed the collection of feedback on the preliminary draft of the constitution. Police suppressed a protest staged by Dalit lawmakers in Kathmandu in August 2015, leaving 22 lawmakers and human right activists badly injured. The political parties opposed the right of coalition to constitutional assembly members from Dalit, ethnic minorities and women. As a result, the voices of these groups were neither heard nor heeded during the process. Disappointingly, the government continues to use heavy handed tactics and violence to suppress opposition.

Article 17 of the Constitution of **Pakistan** provides the following:

- (1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.
- (2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.

<sup>27</sup> Maldives: Stop assaulting May Day Protesters, Asia Biz News, 30 April <http://www.asiabiznews.net/asia-tender-business-news/Maldives/115452-Maldives-Stop-Assaulting-May-Day-Protesters.html>; Policeman acquitted of assaulting Feb 8 protester despite video evidence, Maldives Independent, 17 September 2015, <http://maldivesindependent.com/politics/policeman-acquitted-of-assaulting-feb-8-protester-despite-video-evidence-117491>

<sup>28</sup> 54 cases of torture filed against the police, Maldives Independent, 01 August 2015, <http://maldivesindependent.com/crime-2/54-cases-of-torture-filed-against-police-115980> (Accessed on 4 November, 2016)



Pakistan is also party to ILO's Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). Although Pakistani laws do provide for the Right to Association and Assembly, in reality it is a totally different story. Freedom of Association and Assembly is as much an issue of politics and culture, as of legal provisions. Consequently, the situation of three types of associations - political parties, trade unions and NGOs in Pakistan are negatively affected.

Though some political parties may appear to be enjoying more freedom, some parties simply cannot engage in normal political activities due to direct threats from terrorists. The State is either unable to or not ready to protect these parties. A large number of political workers of progressive, secular, and left leaning parties have been targeted and killed. At the last elections, a reason for their poor showing was their inability to campaign freely as some other parties could.

Even now, through selective application of special accountability laws and media trials, some parties are targeted and their right to freedom of association and assembly curtailed without breaking the letters of law. Trade unions are generally losing strength due to a variety of factors and are facing increasing curbs, with most businesses preferring to use contract workers.

Two instances of state high handedness towards the Right of Association and Assembly was the Pakistan International Airlines (PIA) at federal level and Medical Staff, including both Doctors and paramedics in Khyber Pakhtunkhwa. In both cases, the relevant authorities resorted to imposing a Compulsory Service Order, which prohibits the right to strike or form unions.<sup>29</sup> The right to assembly was brutally dealt with, causing the death of two PIA men in Karachi. This is indicative of the overall situation of trade unions in Pakistan.

<sup>29</sup> PM approves Compulsory Services Maintenance Act 1952 for PIA, protest becomes illegal, dunyaneews TV, 2 February 2016 <http://dunyaneews.tv/en/Pakistan/320665-PM-approves-Compulsory-Service-Maintenance-act-195>

NGOs are being increasingly brought under state control through introduction of laws, besides being targeted by the non-state extremists, with many human rights defenders being killed. The threats activists face in Fata and Balochistan (both from state and non-state), are not limited to these areas. Rashid Rehman<sup>30</sup> was murdered in Multan for providing legal defence to a blasphemy accused, and Sabeen Mahmud<sup>31</sup> immediately after hosting an event on missing persons in Balochistan. HRCP recorded 48 attacks on HRDs and journalists in 2014.

The "Policy for Regulation of INGOs in Pakistan," announced on October 1, 2015, will worsen the already deteriorating working climate for international humanitarian and human rights groups.<sup>32</sup> This requires all INGOs to register and obtain prior permission from the Ministry of the Interior to carry out any activities in the country, and restrict their operations to specific issues and geographical areas. The ministry is broadly empowered to cancel registrations on grounds of "involvement in any activity inconsistent with Pakistan's national interests, or contrary to Government policy" - terms that have vague meanings and can be used for political reasons, to target organisations or individuals critical of government. This will significantly limit the Right to Association of Pakistanis working for INGOs. The new regulation also requires ministry approval of funding for local NGOs, thus taking control of their activities too.

<sup>30</sup> Rights Advocate Rashid Rehman Khan gunned down in Multan, Dawn, 8 May 2014, <http://www.dawn.com/news/1104788>

<sup>31</sup> Pakistani Rights Activist Sabeen Mahmud shot dead, Al Jazeera, 25 April 2015 <http://www.aljazeera.com/news/2015/04/pakistani-rights-activist-sabeen-mahmud-killed-150424210251526.html> (Accessed on 4 November, 2016)

<sup>32</sup> INGOs suffering due to policy vacuum, The Nation, 17 January 2016, <http://nation.com.pk/newspaper-picks/17-Jan-2016/ingos-suffering-due-to-policy-vacuum> (Accessed on 4 November, 2016)

**Freedom of Association and Freedom of Assembly: The South Asian Experience**

Even though **Sri Lanka** is party to the ICCPR, the period from 2005 to 2015, ruled by the Rajapaksa regime, can be considered to be the darkest era in Sri Lankan history. Freedom of association and freedom of assembly were completely banned.

In August 2010, Rajapaksa regime enacted the 18th Amendment to the Constitution<sup>33</sup>. The Amendment empowered the President to dismiss or appoint members of the judiciary and other independent bodies. Independence of the judiciary was further compromised by the impeachment of the former Chief Justice in January 2013 under circumstances that raised serious doubts about its consistency with basic principles of due process and judicial independence<sup>34</sup>. In 2014, a Circular was issued by the NGO secretariat which advised NGOs to refrain from engaged in 'unauthorised' activities such as issuing press releases, conducting press briefings, organising workshops and conducting training for journalists.

Police and Army have been documented as having used disproportionate and maximum force against unarmed protestors, and have killed and injured those engaged in peaceful assemblies. Participants of protests have faced threats and intimidation. Peaceful protestors have been discredited as people who support terrorism and international conspiracies against the country. Police have resorted to obtaining *ex-parte* judicial orders to stop peaceful assemblies. The police have also blocked people from travelling from the North to Colombo for peaceful assemblies.

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<sup>33</sup> 18th Amendment, [http://www.priu.gov.lk/Cons/1978Constitution/18th%20Amendment%20Act\(E\).pdf](http://www.priu.gov.lk/Cons/1978Constitution/18th%20Amendment%20Act(E).pdf); PI also see the 19th Amendment [http://slembassyusa.org/downloads/19th\\_Amendment\\_E.pdf](http://slembassyusa.org/downloads/19th_Amendment_E.pdf)

<sup>34</sup> Full text of the five judges SC bench ruling on CJ Shirani Bandaranayake impeachment case, <https://www.colombotelegraph.com/index.php/full-text-of-the-five-judge-sc-bench-ruling-on-cj-shirani-bandaranayake-impeachment-case/>; also see, International Bar Association, 2013. Crisis of Legitimacy: The Impeachment of Chief Justice Bandaranayake and the Erosion of the Rule of Law in Sri Lanka <http://www.refworld.org/docid/524aa7a24.html>

## Participation of Women in Governance in South Asia

The socio-economic and socio-political structures within the South Asian landscape keep women's participation in politics at a minimum. The patriarchal society remains an obstacle in women's journey to make an impactful and a positive contribution in shaping the political and economic setting in the region. The existing structure requires women in politics to behave in the same way that their male counterparts behave while minimising access to women from less privileged and minority backgrounds to participate in the decision making process.

In spite of several progressive provisions such as established safe houses for women and the active participation of women's rights defenders across the country, the overall condition of women in **Afghanistan** is on a backward trajectory. On the positive side, in addition to the newly established the Law of Elimination of Violence against Women (EVAW)<sup>35</sup>, Afghanistan has over 290 women judges, an established 25 percent quota system in the parliament while four women ministers are in active service and recently two women were appointed to decision making roles in the Higher Peace Council (HPC). The latter came about as a result of ongoing lobbying. The Government of Afghanistan is male dominated, similar to the rest of the region. This is an obstacle that prevents women's issues from being taken into serious consideration. Given the ongoing mechanisms in individual countries to women's inclusion in the decision making fore of each country, there is a crucial need for a regional stronghold of advocacy for women's participation in governance to usher in good governance which cannot be accomplished without the involvement of women. Drawing from the 40 year long experience of Afghanistan in dealing with terrorism and violence, there is an urgent need to build solidarity between women across the region to utilise advocacy to establish sustainable peace in the region.

In **Bangladesh**, women's inclusion in decision making roles is rather restricted to filling up the mere numbers and rarely goes beyond that point. Being members of a patriarchal society, Bangladesh's women have had a long and an ongoing struggle towards achieving equality in political participation and in general. Through the quota system, 50 women are nominated by political parties to sit in the parliament. However, the nominated women tend to be more loyal to their respective political parties rather than to the women's movement and there is minimal participation from these female parliamentarians in the decision making process. Nevertheless, in recent times, there has been a surge in women contesting to gain political leadership. The inability of the parliament and the civil society to change the legal system to protect women's rights lies in the country's deeply religious legal system which gives prominence to religious laws over civil laws. While Muslim women are forced to adhere to the Islamic law, women from Hindu backgrounds are forced to adhere to the Hindu legal structure. For example while Muslim women have the right to property ownership similar to their male counterparts, Hindu women do not possess this particular right. In recent times, three women have obtained positions of responsibility in higher judiciary and their sound judgments have provided concrete proof of the requirement for women's participation in responsible posts. There is a dire need to foster relations between women in the parliament and those engaged in the civil movement towards equality. Despite endorsing all international conventions regarding women's right to participation in decision making, there was no female representation in the Chittagong Peace Accord.

At present, women Chief Ministers have been elected all across **India** and are active with the Chief Minister of Tamil Nadu attracting a large following. However, the deep running anti-women sentiments and complex traditional

<sup>35</sup> Law on the Elimination of Violence against Women, <http://www.refworld.org/pdfid/5486d1a34.pdf>

### Participation of Women in Governance in South Asia

perceptions about women's role in society make it harder to achieve true equality. These negative sentiments and traditions have caused the disappearance of 14 million women and instances of tribal and Dalit women elected to parliament being prevented from hoisting the national flag during important occasions such as the republic day. The deep rooted negative attitude about women is a serious issue in India with certain leaders voicing their views on women's roles being restricted to the domestic and marital domain. Women need to mobilise advocacy and form individual political parties in order to fight these issues and bring about democracy.

In the past when the **Maldives** was headed by Sultanas, there existed a matriarchal social system. Maldivian women compared to the women in the region can be considered as liberal and the UN Gender related Development Index ranked the Maldives as second highest in the region. Despite these, with regard to tertiary education, females lag behind as they have to come to the capital Male, from their islands. Maldives has ratified several international legal instruments on women such as the CEDAW and CEDAW optional protocol. The country achieved its goal in fulfilling MDGs in 2015 but has fallen short in accomplishing MDG 3 on gender quality and also empowering women. But the new constitutional amendment removed the provision that stated that a woman can be the Head of State. Only a limited number of women, handpicked from the supporters of the ruling party are appointed to high ranking, decision making posts in the government such as in the Monetary Authority, Prosecutor General's office, and the Human Rights Commission. These women are far more loyal to the ruling political party which appoints them as opposed to the women's progression agenda. In addition, the Decentralisation Act has given women more freedom to voice and address their issues but the current government has narrowed it down by consolidating powers to the central government. Cultural trends in recent times especially the extremist propaganda have restricted

women's freedom and limited their role in the public sphere. Women are often subjected to verbal, sexual and physical abuse at the workplace and in public. Female parliamentarians have received death and rape threats from fellow MPs.<sup>36</sup> A recent survey conducted by Transparency International in 2013 revealed that two thirds of the public do not support gender equality in politics while the national human rights commission survey conducted in 2005 and in 2011 indicates the decline in men's belief in women's equality. As much as men's views become conservative, women's attitudes have become more liberal and pro women's rights. However, women themselves are reluctant to become political leaders as the effects of the 30 year long regime's involvement in creating a negative perception towards women's place in society is yet to dissipate within the society. The single family structure, lack of childcare facilities and lack of financial resources limit women from taking an active role in society. However, political party leadership should make it a priority to give opportunities to women in meaningful contribution at local and national levels. Gender sensitisation is needed for Parliamentarians, the media and other government offices in order to achieve gender equality effectively.

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<sup>36</sup> Majority leader spits at female opposition MP, Maldives Independent, 24 February 2016, <http://maldivesindependent.com/politics/majority-leader-spits-at-female-opposition-mp-122392>

In **Nepal**, women from less privileged and marginalised backgrounds lack opportunities for education and a large number of women are illiterate and uninformed.<sup>37</sup> Also a staggering number of women suffer physical and mental abuse including rape and torture. Women in Nepal are victims of human trafficking for sexual purposes. The ever increasing internal and external human trafficking problem is a negative sign for economic growth. Without access to equal opportunities for employment, women are subjected to an institutionalised lack of security. The Government should review and revise policies to allow women access to equal rights, authority and security of person as well as more opportunities to participate in planning and decision making levels in the Government and the civil society. The National Action Plan of 1325 has provided many opportunities for women rights and their welfare. The five pillars entail: 1) meaningful participation of women at decision making positions, 2) assurance of protection of rights of women and girls and prevention of violation of these rights in conflict and post conflict situations, 3) promotion of rights of women and girls and mainstreaming gender perspective in all aspects of conflict prevention, conflict resolution and peace building, 4) addressing of specific needs of women and girls in order to ensure effective relief and recovery is achieved through various economic provisions as well as skills oriented and income generating workshops or programmes and 5) to institutionalise a monitoring and evaluation system and ensure required resources for the implementation of the NAP through collaboration and coordination of stakeholders.<sup>38</sup>

<sup>37</sup> According to Nepal's living standard survey 2010 - 2011, adult literacy rate in Nepal is 56.6%. Male literacy rate is 71.6%. Women's literacy rate is 44.5%, <https://iversity.org/blog/women-education-system-nepal/>, 21 January 2014

<sup>38</sup> Shrestha, D (2013). National Action Plan on Implementation of the UNSCR's 1325 and 1820: Case study of implementation in Dhading, [http://www.kpsrl.org/uploads/debatten\\_discussies/national\\_action\\_plan\\_on\\_implementation\\_of\\_the\\_unscrs\\_1325\\_and\\_1820\\_diva\\_shrestha.pdf](http://www.kpsrl.org/uploads/debatten_discussies/national_action_plan_on_implementation_of_the_unscrs_1325_and_1820_diva_shrestha.pdf)

In the recent election in **Pakistan**, a Hindu woman from a less privileged and minority group contested but the humiliation and the systematic harassment she suffered caused her to lose the election.<sup>39</sup> Even though the Government led by President Musharraf reserved seats for women in the local and national Government to serve his own agenda, the women reaped certain benefits from this provision.<sup>40</sup> The provision was the result of years of hard work by human rights activists. However, the Pakistani parliament remains a largely feudal one that denies worthwhile and significant access to women and minorities. However limited, the opportunities that women have gained to enter decision making roles have borne fruit. Enhanced legislation to ensure women's rights and women gaining access to decision making roles were outcomes of increased political representation of women as well as enhanced interest in legislation for gender reforms. In 2008, a woman became the foreign minister for the first time in Pakistan while the recent election of a woman as the speaker of the national assembly resulted in increased support for women's participation in the parliament. However, in the male dominated society women face obstacles in obtaining funds due to systematic bureaucracy. In the 2013 election the number of seats reserved for women in the local government body was reduced to 22 percent from 33 percent, stating a lack of eligible women to fill the quota. The major impediment faced by women is the patriarchal systems within each political party that encourages women to be limited to gender specific roles. Women are not given decision making roles within the

<sup>39</sup> Once a landlord's serf, Pakistani Hindu woman enters election, The Express Tribune, April 14, 2013, <http://tribune.com.pk/story/535448/once-a-landlords-serf-pakistani-hindu-woman-enters-elections/>

<sup>40</sup> Women in Politics, Dawn, 25 May 2015, <http://www.dawn.com/news/1183988>

### Participation of Women in Governance in South Asia

party, resulting in reduced opportunities to train to become seasoned politicians. In the climate of civil violence and lawlessness driven by religious fundamentalism, women politicians often come under threats including politically motivated assassinations. Moreover, women in the northern area were not able to vote in the most recent election and women in rural or less privileged areas in the city are not issued identity cards which are necessary to vote. Women striving to rise to high ranks in the political arena are called upon to prove their character and moral integrity.

Customary law in **Sri Lanka** discriminates against women in all spheres of life including that of land ownership.<sup>41</sup> There have been a host of various programs implemented post-war and post-tsunami, unfortunately in which women are not consulted and therefore remain unequal beneficiaries. The rule of law which ensures women's safety and security is a must in Sri Lanka. But the low budget allocated for women's development in the national budget leads to the disfunctionality of the policies and mechanisms created to prevent discrimination against women in accordance with the CEDAW which the country ratified in 1983. The women's charter, the women's and children's desk in police stations and the prevention of domestic violence act have been formed in the country but they are very inactive. This leads to injustices, such as several rape cases of women and girl children being reported and registered, but not being addressed. Further exacerbating the problem is the fact that women are not included in policy making or any decision making level such as in the police, women are not in any high positions and therefore cases of violence against women and cases of rape are not being heard and dealt with the urgency required.

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<sup>41</sup> Land and Women: The case for equality, Sunday Times, 6 March 2011, [http://www.sundaytimes.lk/110306/Plus/plus\\_09.html](http://www.sundaytimes.lk/110306/Plus/plus_09.html) (Accessed on 4 November, 2016)

## Conclusion

The regional consultation of South Asian Citizens' Voices on Democracy and Peoples Security was attended by representatives of the civil society from Afghanistan, Bangladesh, India, the Maldives, Nepal, Pakistan and Sri Lanka. During the two day consultation they had many deliberations over the current status of human rights in the region.

Issues such as the extent of peoples' participation in constitution making, increasing restrictions on freedom of expression, association and assembly and gradual suppression of civil society spaces, the suffering of people as a result of deprivation of rights owing to bi-lateral issues as well as the growing racist and religious division due to extremism were discussed.

The consultation highlighted the need to strengthen peoples' voice on advocating national issues at regional level in achieving social, economic and environmental justice. There was joint agreement that for effective results which benefit the people, security in a country should be people centric as opposed to state or region centric, which is currently the case in South Asia.

The following recommendations were proposed for collaborative engagements:

- Sharing information regularly on the status of human rights of South Asia through a newsletter.
- Undertaking research on common national issues, such as border conflicts, religious extremism and minority issues, for the purpose of advocacy and information dissemination.
- Activate 'Rapid Action Responses' to any rights violations such as restrictions on freedoms of expression, association and assembly or issues on people centric security in the region.
- Conducting sustained advocacy through electronic and social media on issues at national level supporting the cause and in solidarity with the rights activists and likeminded persons.
- Enhancing the space for civil society at national and regional level by facilitating track two diplomacy on issues of people centric security and peace building as well as rights violations.
- Strengthening civil society networking and collaborations for effective engagement with South Asian Association for Regional Cooperation (SAARC).

## Annexure 1

## Regional Consultation of Citizens' Voices Kathmandu, Nepal, 25 - 26 February 2016

### Agenda

Day 1 (Thursday 25 February)															
09.00am	Registration														
09.15am	<b>Inaugural Address:</b> Building peoples' Solidarity in South Asia <ul style="list-style-type: none"> <li>• Mr. Subodh Pyakurel, Chairperson INSEC</li> <li>• Hon. Chandra Prakash Mainali, Deputy Prime Minister and Minister of Women, Children and Social Welfare</li> <li>• Dr. Nimalka Fernando, Co-Chairperson, SAHR</li> </ul>														
09.45am	<b>Challenges for South Asia: Peoples' Rights, Governance and Democracy - Dr. Hameeda Hossain</b>														
10.15am	Tea														
10.30am	<b>Session 1: Democratic Challenges and Peoples' Rights - Country perspectives</b> Moderator: Mohamed Latheef Speakers: <table style="display: inline-table; vertical-align: top; margin-left: 20px;"> <tr><td>Afghanistan</td><td>Sarwar Mamound</td></tr> <tr><td>Bangladesh</td><td>Dr. Badiul Alam Majumdar</td></tr> <tr><td>India</td><td>Anuradha Bhasin</td></tr> <tr><td>Maldives</td><td>Fareesha Abdulla</td></tr> <tr><td>Nepal</td><td>Dinesh Tripathi</td></tr> <tr><td>Pakistan</td><td>Ghazi Salahuddin</td></tr> <tr><td>Sri Lanka</td><td>Dr. Nimalka Fernando</td></tr> </table>	Afghanistan	Sarwar Mamound	Bangladesh	Dr. Badiul Alam Majumdar	India	Anuradha Bhasin	Maldives	Fareesha Abdulla	Nepal	Dinesh Tripathi	Pakistan	Ghazi Salahuddin	Sri Lanka	Dr. Nimalka Fernando
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Pakistan	Ghazi Salahuddin														
Sri Lanka	Dr. Nimalka Fernando														
01.00pm	Lunch														
02.00pm	<b>Session 2: Constitutional Making and Citizens' Participation - Country perspectives</b> Moderator: Dr. Sudeep Basu Speakers: <table style="display: inline-table; vertical-align: top; margin-left: 20px;"> <tr><td>Afghanistan</td><td>Sarwar Mamound</td></tr> <tr><td>Nepal</td><td>Bijaya Gautam</td></tr> <tr><td>Sri Lanka</td><td>Lal Wijanayake</td></tr> </table>	Afghanistan	Sarwar Mamound	Nepal	Bijaya Gautam	Sri Lanka	Lal Wijanayake								
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03.00	<b>Session 3: Freedom of Association and Freedom of Assembly: South Asian Experience - Country perspectives</b> Moderator: Habib Tahir Speakers: <table style="display: inline-table; vertical-align: top; margin-left: 20px;"> <tr><td>Afghanistan</td><td>Nezamuddin Katawazi</td></tr> <tr><td>Bangladesh</td><td>Adilur Khan</td></tr> <tr><td>India</td><td>Jatin Desai</td></tr> <tr><td>Maldives</td><td>Hon. Imtiaz Fahmy</td></tr> <tr><td>Nepal</td><td>Nirmal Kumar BK</td></tr> <tr><td>Pakistan</td><td>Prof. Ijaz Khan</td></tr> <tr><td>Sri Lanka</td><td>Prabodha Rathnayake</td></tr> </table>	Afghanistan	Nezamuddin Katawazi	Bangladesh	Adilur Khan	India	Jatin Desai	Maldives	Hon. Imtiaz Fahmy	Nepal	Nirmal Kumar BK	Pakistan	Prof. Ijaz Khan	Sri Lanka	Prabodha Rathnayake
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04.00pm	Tea														
04.15pm	<b>Continuation of the country presentations</b>														
05.00pm	<b>Discussion on the Peoples' Charter</b> Moderator: Dr. Nimalka Fernando														
05.30pm	End of Proceedings														
07.30pm	Solidarity Dinner														



Day 2 (Friday 26 February)															
09.00	<b>Discussion on the Peoples' Declaration</b>														
10.15	Tea														
10.15am	<b>Session 4: Participation of Women in Governance in South Asia - Country presentations</b> Moderator: Apekchya Rana Speakers: <table> <tr> <td>Afghanistan</td><td>Mary Akrami</td></tr> <tr> <td>Bangladesh</td><td>Dr. Hameeda Hossain</td></tr> <tr> <td>India</td><td>Fatima Burnad</td></tr> <tr> <td>Maldives</td><td>Aminath Jameel</td></tr> <tr> <td>Nepal</td><td>Sunita Danuwar</td></tr> <tr> <td>Pakistan</td><td>Uzma Noorani</td></tr> <tr> <td>Sri Lanka</td><td>Nalini Ratnarajah/Jansila Majeed</td></tr> </table>	Afghanistan	Mary Akrami	Bangladesh	Dr. Hameeda Hossain	India	Fatima Burnad	Maldives	Aminath Jameel	Nepal	Sunita Danuwar	Pakistan	Uzma Noorani	Sri Lanka	Nalini Ratnarajah/Jansila Majeed
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12.00	<b>Continuation of the country presentations</b>														
12.00	<b>Session 5: Citizens' Participation in Building South Asian Solidarity - Open Discussion</b> Moderator: Jatin Desai														
01.15 pm	<b>Adoption of the Peoples' Charter</b>														
01.45 pm	End of Proceeding														

## Annexure 2

**The Citizens' Voices Declaration, Kathmandu, 2016**

We, the members of civil society organisations, social movements, labour unions, and women's groups from across South Asia, have gathered here in Kathmandu, Nepal from 25 -26 February 2016 at the Regional Consultation of Citizens' Voices, as part of the process of regional civil society empowerment, to reiterate the strengthened vision for peoples voices in South Asia.

We emphasise the peoples' commitment to creating a tolerant, democratic, equal, peaceful, inclusive and just South Asia, free from all forms of discrimination and marginalisation.

We recognise that while the State has the primary responsibility to promote and protect human rights, this is not possible without the active engagement of the people.

We recognize the rich diversity of cultures, languages, religions and a multiplicity of identities that link us by shared histories, geographies and cultural practices. We must collectively stand against all structures of oppression, discrimination and violence facing the people of the region.

We uphold the equal sovereignty and independence of all countries in the region and call upon them to work for the regional peace. We endorse discourses on democratic inclusivity and participatory political processes which respect national and local priorities; take into consideration the very real inequalities between the different states in the region; and inequalities within the states in various forms.

We support the people's movements for democracy and peace against authoritarianism that are ongoing in the countries in the region. We salute the families of the disappeared persons and the victims and survivors of conflict and numerous people who are constantly engaged in such struggles where for justice with unwavering determination despite the manifold risks to their personal security and the safety of their loved ones.

We are concerned with the use of religion as a tool for discrimination and persecution against women and minority communities; and sometimes even in secular

States, where while the constitution guarantees equality irrespective of caste, class, ethnicity, religion or gender, attacks on religious minorities and their places of worship are committed with impunity.

Following discussions at the consultation we affirm our commitment to achieving the following goals and aspirations:

- A South Asia identifying and recognizing the diversities and common histories of the region. We reject racism, ultra-nationalism, xenophobia, religious extremism and hatred based on religion, culture, gender, caste, language and sexual orientation; and will work towards ensuring that hostility between countries is not propagated for narrow sectarian gains.
- Free movement of peoples in the region, encouraging and facilitating people- to- people contact and communication in the region; or in other words a visa-free South Asia.
- Peaceful and just resolution of all conflicts in the region, including border conflicts and resettlement of displaced people through political negotiations entailing democratic inclusivity and revoking national security laws that deprive the rights of their peoples. There must also be an immediate end to border killings. We also advocate right to return of the people displaced by conflicts and refugees.
- Right to mobility, assurance of dignity and right to work as well as physical protection, basic amenities and adequate wages which should be given to migrants and end to slave-like treatment. The survivors of trafficking must be protected, especially women and children.

- Bonded labour should be eliminated at all cost. Similarly, the rights of individuals and communities subjected to forced displacement due to conflict, disaster, and development projects should be protected.
- Freedom of association and assembly ensured for the people; consultation of citizens should be assured at all levels of governance in keeping with the core democratic values such as transparency and accountability. We condemn the state sponsored and other targeted attacks on human rights defenders and their loved ones in restraining their duties and responsibilities by way of threats on life, physical, verbal and mental abuse. We advocate for free space for activism for civil society and citizen groups, including women's groups.
- Immediate release of political, social, media activists and prisoners of conscience in the region. We also urge upon the governments to stop harassing and repressing political opponents.
- Respect for fundamental rights of citizens and ensure the enactment of enabling laws and independence and effectiveness of relevant institutions; ensuring rule of law and granting everyone equal protection under law.
- Ensuring governments' commitment for genuine elections, as recognized by the Universal Declaration of Human Rights and other international instruments, and ensure voting rights to women and other disadvantaged groups.
- Governments' commitment to end direct and indirect control over media and ensure media freedom.
- Governments' assurance to people's right to information and knowledge.
- Governments' commitment to respect the international Human Rights instruments and the mandates of the organisations to which their State is a party; and implement the same effectively in order to uplift the living standards of the people.
- Assurance of social equality for the people of the region, especially Dalits, other minorities and women.
- Rights of all workers in accordance with the International Conventions and National Constitutions.
- Strengthening of peoples' resilience to natural and human made disasters such as floods, landslides droughts, earthquakes, cyclones and other hazards occurring due to the climate change.
- Recognition of health, education, land and housing, food security and work as basic human rights; we endorse the sustenance of the provision of public infrastructure such as housing, health, education and other civic amenities through democratic sources of development finance. We urge upon the governments to implement the 2030 Agenda, otherwise known as the Sustainable Development Goals (SDGs). We uphold the principle of basic services for all notwithstanding privatisation.

We pledge to continue to learn, inspire and empower each other in making citizens' voices heard in the region.

We call upon the South Asian Governments to seriously heed these concerns and effectively address them, actively engage with citizens towards transparent and accountable governance, and enforce constitutional guarantees and freedoms for the people towards a just and peaceful South Asia.

















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