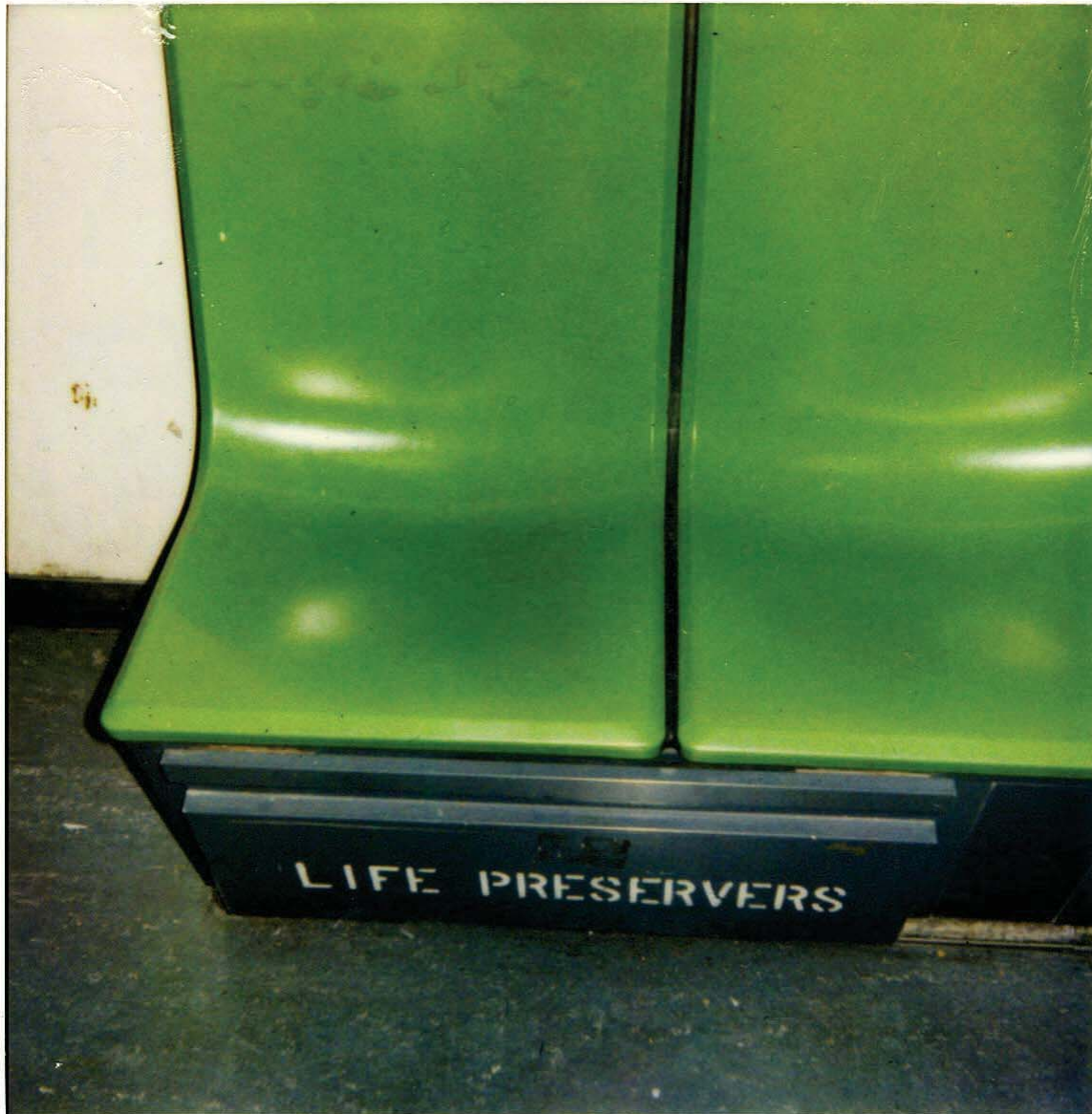


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Australia and the Asia Pacific - Institutionalised Social Exclusion

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Front Cover Artwork

Karma Jercher, *Seven Choices*, 2008, inkjet print, 40x50cm. From the exhibition *2008 Kodak Salon* at the Centre for Contemporary Photography 2008

Contents

1. **Editorial**
Claudia Tazreiter
2. **A new frontier in human rights protection: human rights, NGOs and business**
Justine Nolan and Michael Posner
5. **Promoting and Protecting Human Rights in the Asia Pacific: the relationship between National Human Rights Institutions and Non-Governmental Organisations**
Catherine Renshaw and Katrina Taylor
8. **Why it is time for the Australian Government to assume responsibility for governing Australian corporate misconduct committed overseas**
Dominic Renfrey
12. **Human Rights Organisations in Palestine: Challenges and Hopes for the Future**
Randa Siniora
15. **Defending Human Rights in the Occupied Palestinian Territories: A Day in the Life of Al-Haq**
Michelle Burgis
18. **The Road to an Australian Bill of Rights and the Role of NGOs**
Katherine Neeson
22. **Locked Up, Locked Out**
John Falzon



Michael Coyne, *New born baby - Uganda*, Photography. Courtesy of the Anita Traverso Gallery, Melbourne, Australia.

PROMOTING AND PROTECTING

Human Rights in the Asia Pacific: the relationship between National Human Rights Institutions and Non-Governmental Organisations

By Katherine Renshaw and Katrina Taylor

From the early 1990s, there has been growing recognition of the role of National Human Rights Institutions (NHRIs) in implementing the norms of international human rights at the national level. In its 1993 Vienna Declaration,¹ the United Nations called upon states that had not already done so, to consider the establishment of NHRIs. In the Asia Pacific region, this call was answered with enthusiasm. In a region which has failed to establish a regional mechanism for monitoring human rights (in contrast with other regions Africa, Europe and the Americas), an impressive 17 NHRIs were established in the period from 1993 to 2008.² Part of the explanation for this development lies in the existence of a strong regional network of NHRIs – the Asia Pacific Forum of National Human Rights Organisations (APF). APF has been successful in encouraging and assisting the creation of new NHRIs and strengthening the capacity of nascent and established NHRIs. APF³ has endeavoured to ensure that the NHRIs of the Asia Pacific region conform to the *Paris Principles*⁴, which are the essential criteria of independence and effectiveness which the United Nations General Assembly endorsed in 1993.

NHRIs are institutions of the state – created constitutionally or by statute – that have a mandate to protect and promote human

rights by monitoring (and in some cases enforcing) state adherence to international human rights law. The institutions are Janus-faced – they look inward to the domestic human rights context in which they work and outward to a set of universally accepted principles that determine their mandate. In democratic states with an independent judiciary and a free press, NHRIs are often able to exercise their mandate to promote and protect human rights through a collaborative working relationship with government. In situations where state institutions are government-controlled, the role of a NHRI is potentially more significant. In both situations, the relationship between Non-Governmental Organisations (NGOs) and NHRIs is pivotal to ensuring the effectiveness of the NHRI.

This paper explores the importance of the relationship between NGOs and NHRIs and the potential synergies that their relationship can generate. It seeks to remind both NGOs and NHRIs of the central importance ascribed to their relationship by the *Paris Principles*.

The Kandy Declaration on Cooperation between NGOs and NHRIs

In 1999, representatives of NHRIs and NGOs from the Asia Pacific region met in Kandy, Sri Lanka in order to discuss future cooperative efforts. The workshop was organised by the APF. The Workshop recognised the “*crucial importance of cooperation between national human rights institutions and NGOs and recognised they should work together on the basis of their common commitment to the universality and indivisibility of human rights as expressed in the*



Michael Coyne, *Refugee Worker - Tanzania*, Photography. Courtesy of the Anita Traverso Gallery, Melbourne, Australia.

*Universal Declaration of Human Rights, international human rights instruments and the Vienna Declaration.*⁵ The *Kandy Program of Action* set out detailed structures and mechanisms of cooperation and outlined strategies for NGO / NHRI collaboration in the fields of education, complaints and investigations, public enquiries, relations with legislatures, legislation and the establishment of new national institutions.

Since *Kandy*, NGOs from the Asia Pacific region have used the occasion of the APF Annual Meeting to hold a concurrent regional conference on human rights and NHRIs in the Asia Pacific. They have done so with a view to providing a NGO perspective (to other APF members and to United Nations representatives) on the effectiveness and independence of individual NHRIs. APF has provided NGOs with space to observe and address the APF annual meeting. NGO representatives have also been encouraged to prepare a collective report to present to the APF.

NGO involvement in APF Annual Meetings has promoted co-ordination and information-sharing amongst NGOs in the region, who have sought to synthesise their analyses of NHRI effectiveness and independence in order to make their critiques stronger. In 2008, NGOs in the region formed their own network: the *Asian NGOs Network on National Human Rights Institutions (ANNI)*, to further structure and facilitate the relationships that have developed between NGOs and between NGOs and NHRIs since *Kandy*.

The Paris Principles and the relationship between NGOs and NHRIs

In 1993, the United Nations General Assembly approved the

Paris Principles,⁶ which detail a set of minimum criteria that NHRIs ought to meet in order to fulfil their mandate for the promotion and protection of human rights. The key criteria are independence, pluralism of composition, adequate funding, a broad mandate, creation by constitution or statute (not decree) and a commitment to consultation with civil society, including NGOs.⁷ The *Paris Principles* ascribe a central role to NGOs in ensuring the independence and effectiveness of NHRIs. This is reflected in three central provisions of the *Paris Principles*.

First, in relation to the composition of NHRIs, the *Paris Principles* provide that:

The composition of the national institution and the appointment of its members, by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civil society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of non-governmental organisations.....

The *Paris Principles* recognise that a national human rights institution must be able to engage with marginalised, disempowered individuals and groups from a diverse range of social backgrounds. NGOs, attuned to the needs of these individuals and groups, have a central role to play in the selection process for NHRI commissioners. NGO involvement in the selection process for NHRI commissioners also enhances public perception of the independence of the NHRI.

Independence is a major factor underlying the effectiveness of a NHRI. In situations where the executive exclusively determines the selection of members of a NHRI (as in Australia), the independence and perceived independence of the NHRI may be open to question. Secondly, the Paris Principles direct NHRIs to work with NGOs in the promotion and protection of human rights. The *Principles* state:

In view of the fundamental role played by non-governmental organisations in expanding the work of national institutions, [NHRIs] shall develop relations with non-governmental organisations 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 specialised areas.

The Paris Principles recognise that NGOs are able to reach sections of society often out of the focus or ambit of state institutions. Where NHRIs are able to harness the ability of NGOs to connect with social groups at the grass-roots level, this may allow for greater use by marginalised groups and individuals – who might resist direct contact with a state – to bring issues of human rights protection to a NHRI and so enhancing its effectiveness.

Section 15 of the Australian Human Rights and Equal Opportunity Commissions Act 1986 provides that:

For the purposes of the performance of its functions, the Commission may work with and consult appropriate persons, governmental organisations and non-governmental organisations.

The discretionary terms of Section 15 may be contrasted with the directive provided in the Paris Principles. If, as NGOs argue, "dynamic relations between NGOs and NHRIs could strengthen the democratic institutions and civil society across the region,"⁶ then NGOs must insist that their voices are heard in relation to NHRI functions such as education programmes, the structure of complaints handling processes and the programme of legislative review. NHRIs must be receptive to NGO involvement in these key fields of operation.

Finally, the *Paris Principles* envisage that where NHRIs have quasi-judicial competence, NGOs as a group should have standing to bring cases before the national institution:

A national institution may be authorised to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organisations, associations of trade unions or any other representative organisations.

Australia's Human Rights and Equal Opportunity Commission (HREOC) permits NGOs to file complaints on behalf of "aggrieved persons," as do many of the NHRIs in the Asia Pacific region. The role of NGOs in initiating and supporting complaints to NHRIs facilitates the making of complaints by individuals and organisations who may not otherwise do so. NGOs are able to provide supporting and expert evidence in matters heard before human rights commissions and offer a perspective that is unavailable from state institutions.

Conclusion: Promoting the role of NGOs in securing effective, independent NHRIs

The *Paris Principles* refer to NGO involvement in the composition and work of NHRIs because without such involvement, there is less

likelihood of securing an independent and representative NHRI. Firstly, NGO involvement in the selection of NHRI Commissioners is a step toward ensuring an independent NHRI. Where NGOs are involved in the selection process for Commissioners, there is greater likelihood of selection resulting in a NHRI commissioner who is able to assess government actions objectively, act autonomously and hear complaints impartially. Secondly, NGO involvement in the selection process also increases the likelihood of a pluralist representation of society within a NHRI; there is a greater likelihood that disparate views from diverse parts of society will influence the final selection of Commissioners. Thirdly, the effectiveness of a NHRI depends on its accessibility. NGOs are connected to communities in ways that state institutions are not. NGOs are essential in bringing disempowered and marginalised groups in society to NHRIs and in taking the work of NHRIs back into the community.

As the 10 year anniversary of the *Kandy Program of Action* approaches, it would be appropriate for NHRIs and NGOs to revisit and assess their relationship and to consider whether more might be done to further the common cause of promoting and protecting human rights. NHRIs are the human rights interface between government and civil society. They cannot fulfil their mandate without dialogue and cooperation with NGOs.

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2 These are: New Zealand, India, Indonesia, Sri Lanka, Fiji, Nepal, Mongolia, Korea, Thailand, Malaysia, Palestine, Jordan, Afghanistan, Saudi Arabia, Timor Leste, Maldives and Qatar.

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7 Ibid.

8 Report of the Alternate NGO Consultation on the Second Asia-Pacific Regional Workshop on National Human Rights Institutions, March 1998

We cannot choose the historical conditions we find ourselves in, but we can choose how we respond to them – Ajamu Baraka



Michael Corridore Untitled 1 2005, type C photograph, 100x150cm. From the exhibition *Angry Black Snake* at the Centre for Contemporary Photography 2008



Michael Coyne, *New born baby - Uganda*, Photography. Courtesy of the Anita Traverso Gallery, Melbourne, Australia.

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