The South Asian Regional Charter on Minority and Group Rights: A Proposal for Soft Law at its Softest

Countries in the South Asian region are characterized by a wide and rich diversity of peoples, languages, religions and cultures. Several of those countries have a range of constitutional and legal safeguards which protect minority rights and guarantee fundamental freedoms, and the majority have ratified international human rights instruments. Such provisions cover, for example, protection against discrimination, the recognition of identity, freedom of expression, freedom of association, promotion of the language and culture of minorities, the right to religious freedom and belief, and the prohibition of torture and ill treatment.

In 2007 four South Asian non-governmental organizations (NGOs) for human rights—International Centre for Ethnic Studies, Sri Lanka (ICES), Centre for Policy Alternatives, Sri Lanka (CPA), Human Rights and Democratic Forum, Kathmandu (FOHRID), Mahanirban Calcutta Research Group, Kolkata (MCRG) and the Human Rights Commission of Pakistan, Lahore (HRCP)—elaborated a draft South Asian Charter on Minority and Group Rights (hereinafter “Draft Charter”) on the basis of a previous Statement of Principles on Minority and Group Rights in South Asia. The final text was prepared in the first months of 2008 by ICES with input from a large number of human rights and minority rights experts from the region. The aim of the charter was to address cross-cutting regional minority rights issues and concerns effectively, and to enhance regional responses to some of the current weaknesses in the constitutional and legislative protection and promotion of minority and group rights. More specifically, as the authors put it, the charter was foreseen as

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a reference tool for governments, non-state actors, human rights institutions, NGOs, human rights advocates and policy-makers to draft national legislation, promote legislative reforms, undertake advocacy and influence decisions, policies and programmes that were focused on the promotion and protection of minority and group rights. The aim of drafting such a charter was to enhance national and regional networks, to have broad input for the charter and to promote it through advocacy for rights protection at local, national and regional levels by NGOs and other civil society organizations.

The preamble of the Draft Charter underlines the need for more effective implementation of international human rights instruments with regard to rights referring to racial or ethnic, religious or linguistic minorities. The authors further acknowledge that in the Social Charter of the South Asian Association for Regional Cooperation (SAARC), SAARC member states undertook “an obligation to promote universal respect for, and observance and protection of human rights and fundamental freedoms for all including every minority, section and group in society”. The authors of the Draft Charter then reiterate that, “the obligations of member States of SAARC under the Social Charter must be respected, protected and fulfilled without reservation and that the enforcement thereof at the national level must be continuously reviewed through agreed regional arrangements and mechanisms”.

In three quite complex articles the Draft Charter elaborates the fundamental legal issues with which it deals: non-discrimination (Art. 5), specific minority rights (Art. 6), remedies and implementation (Art. 7). The rest of the Draft Charter is devoted to the establishment, composition and working procedures of the South Asian Human Rights Committee.

At the outset the Draft Charter reaffirms the rights and obligations stemming from UN conventions already ratified by all SAARC member states (International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Elimination of All Forms of Racial Discrimination, SAARC Social Charter) and lays down some general principles, e.g. no person shall be exempt from legal responsibility, no person can call on immunities or special procedures or rules, and nobody shall be exempt from jurisdiction (Art. 2(a)).

Then the Draft Charter delegates responsibility for judicial remedies to competent domestic legal authorities in the respective states, through national tribunals and other institutions. The victims of violations of rights ensured by the Draft Charter may seek “just and adequate reparation and satisfaction for any damage suffered as a result of such discrimination” (Art. 2(d)). However, there is no international judicial institution charged with appeals cases in this respect, such as a South Asian Court of Human Rights.

Article 3 provides a general permission to limit the rights recognized and protected by the Draft Charter. Limitations, which necessarily have to assume the form of a law, can be applied by states only if “compatible with the nature of such rights and solely for promoting the general welfare in a democratic society”. This formulation

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