



# FOCUS

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Editorial

## Human Rights Across the Borders

Asian migrant workers continue, in growing number, to seek employment in the regions' economic growth countries.

This scene characterizes the movements of people across the region in search of better economic opportunities. A development that has impact beyond the economic field.

Mainstream media highlights the highly lucrative labor export and import business, the contribution of migrant workers to the economies of the region, and the economic successes and failures of the workers themselves. Reported too are the well-entrenched systems of exploiting the migrant workers whether legally permitted to work or not.

One is led to ask about the human rights of these migrant workers. Are their rights respected? Can the economic benefits pay for the violations that they endure?

An essential factor to the continuing migration of workers is the economic and social conditions in both sending and receiving countries. While there is an undeniable need on the part of the receiving countries for migrant workers, the legal, social and political systems of these countries fail to provide the necessary support for their work. Instead, migrant workers are treated as disposable units of economic programs - gaining maximum benefits during the pre-determined short period of their use.

Treating migrant workers as low status labor will not lead to respect for their human rights. And again, the economic benefit (which is not necessarily commensurate to the actual cost of labor) gained by the migrant workers cannot compensate for the violation of their rights as workers, as people.

The migrant workers issue must therefore be seen from the perspective of the workers in order to recognize the real value of their work and address the human rights violations that result.

FOCUS Asia-Pacific is the new name of the quarterly newsletter of HURIGHTS OSAKA. This name suggests the design of HURIGHTS OSAKA to provide significant attention to the issues and activities relating to human rights in the Asia-Pacific. Related news and articles can be sent to HURIGHTS OSAKA for inclusion in the next editions of FOCUS Asia-Pacific.

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# Migrant Workers and Human Rights

In the midst of continuing economic growth among countries in northeast and southeast Asia, migrant workers occupy a significant yet undervalued place. The last few years saw the continuing stream of workers to countries where industries and development projects require much needed labor.

Japan, South Korea, Taiwan, Singapore, Hong Kong, and Macau are the countries and territories receiving migrant workers. While Thailand and Malaysia do receive migrant workers, they too send their workers abroad. The Philippines, Indonesia, China, Sri Lanka, India, Bangladesh and Pakistan figure prominently in the supply side of the trade.

By mid-1990s, estimates indicate that there are at least 4 million documented and undocumented Asian migrant workers in the region. Undocumented migrant workers number almost 300,000 in Japan (mainly Peruvians, Iranians, Koreans, Chinese, Filipinos and Thais), 150,000 in Korea, 500,000 in Thailand (mainly Burmese), and about 1.2 million Indonesians, Filipinos and Bangladeshis combined in Malaysia, to name a few.

It is also reported that about 1.6 million of these migrant workers are women. At the rate of 800,000 women workers leaving their countries to work abroad annually, there is a greater "feminization" of the migrant workers situation.

Today's migrant workers take up jobs in construction projects, manufacturing firms, household work, entertainment establishments, agricultural plantations, and even maritime and fishing industries.

The migration of Asian workers has developed into a sophisticated web of industries that covers both legal and illegal systems of export and import of labor. It has certainly benefited a whole lot of institutions engaged in the legal and illegal labor trading business. Employment recruitment agencies, travel agencies, airline companies, airports, government labor and immigration offices, police forces, hotels, and companies in need of cheaper workforce all gain from the billion-dollar business. The underground economy is composed of illegal recruiters, "human cargo"

smugglers, and women trafficking syndicates linked to the entertainment businesses in both sending and receiving countries. Added to this are the informal, and sometimes family/social, connections that facilitate supply of workers.

Remittance of money earned by the workers runs into billions of dollars per year. In the case of the Philippines, with more than 4 million workers all over the world, the remittance comes up to a total of 6 billion dollars annually. It is the most stable source of economic support for the country.

## Causes

The phenomenon of massive migration of workers from one country to the other within the Asian region is caused by several factors. One prominent reason is the continuing need for cheap labor to be able to produce goods and services in countries where economic development has already reached, or on the threshold of reaching, the industrialized status. Japan, South Korea, Singapore, Taiwan, Hong Kong, Macau and Malaysia need (in varying degrees)



the migrant workers to help them continue getting a share of the ever growing market domestically and abroad, and to construct the infrastructures for transportation, communication and industries. Another reason is the decreasing number of workers in agricultural and manual work in many receiving countries that made foreign workers the easy substitute. Still another reason is the encouragement by governments in most of these countries, with the exception of Japan, on their citizens to work and leave household and childcare to foreign domestic help. Lastly, the entertain-

ment industry that mainly caters to needs of the male workforce in receiving countries recruits thousands of women to work as entertainers. All these contribute to these countries' continuing economic growth and competitiveness in the world market.

On the otherhand, the governments of sending countries such as the Philippines, Indonesia, China, Sri Lanka, Bangladesh, India and Pakistan are generally suffering from high unemployment (and in some cases underemployment and low-paying employment conditions) rate. Export of labor has become an official program to address the labor situation in particular and the national economic woes in general. Many governments either established offices for job sourcing, recruitment, training, and documentation services for workers willing to work abroad, and/or allowed private employment agencies to do the same work. The basic idea is the reduction of local unemployment rate, continuation of foreign earning remittance into the local economy, and increasing the technical know-how of their workers (particularly those in construction and industrial enterprises).

Thailand and Malaysia, with continuing high economic growth, import workers as well as export their own. Thousands of Malaysia's workforce cross over to Singapore for work. Japan, South Korea, and Taiwan also "export" workers as they expand their businesses in many countries in the region.

The complex system of recruitment and deployment of migrant workers is in itself an industry that supports the economic growth of the region.

## Problem areas

The complication of the migrant workers issue provides a fertile ground for problems to arise. The problem areas can be classified under the following:

### a. sending country inadequacies

Despite the enormous support by the migrant workers to the economy, the governments of the sending countries appear to be ill-prepared to deal with the problems that face their migrant workers. Bureaucratic red

tape in processing documents for would-be migrant workers has been a cause for the resort to illegal recruitment agencies. Inadequate orientation as well as preparation of the migrant workers for the new environment and systems that they will be moving in characterize government programs. Inability to stop illegal recruitment activities is also present. Support by sending countries' consulates in receiving countries has not been satisfactorily extended to those in need.

b. receiving country restrictions

Many receiving countries maintain strict regulatory measures against migrant workers. This stance is premised on their fear of having migrant workers becoming permanent residents. Those migrant workers considered as having low skills are not welcomed to stay longer than their employment contract will allow. They are considered to be added burdens to the social security systems of these countries. The discriminatory treatment of migrant workers maintained by the general public of receiving countries is yet another ground for regulation. In some ways, the opposition posed by the local labor unions against the importation of workers also contribute to maintaining a regulated stance toward migrant workers.

In many cases, migrant workers endure restrictions such as limited period of stay after employment contract has lapsed or has been abrogated, prohibition against seeking new employment under the existing visa, prohibition against marrying citizens of receiving countries, deportation of woman migrant workers in case of pregnancy, and short period visas. In both cases of documented and undocumented migrant workers, the governments of receiving countries accept the benefits of the work done but deny the workers the corresponding job security. The "trainee" visa is another example of how receiving countries can exploit migrant workers.

c. organized exploitation

The presence of migrant workers who entered the receiving countries without proper visas or even passports is mainly due to crime syndicates which prey on people desperate in finding work abroad. The syndicates extract money from the would-be workers and receive payment from companies who would need the workers.

The syndicates are more pervasive in the sex industry. Women are induced, tricked or forced to work in the sex industry proliferating in the entertainment circuits of Japan,



Taiwan, Hong Kong, Thailand, and Macau. Some are lured into prostitution through mail bride system.

Those without legal permission to work are exploited by employers who keep them in "3D" (dangerous, dirty and difficult) jobs that do not provide appropriate compensation for and protection from the nature of the work being done.

d. social and family consequences

Migrant workers suffer from the separation from their own families and communities. New and indifferent environment cause worries and anxieties. Women who are separated from their families suffer even more.

The families left behind are reportedly not getting a better treatment either. Materialistic and consumerist values develop, children grow up without proper guidance, spouses become unfaithful - all creating problems that negate whatever economic benefits are obtained from working abroad. The psychological, familial, social and economic costs are quite high for the migrant workers whose primary aim in the first place is a better and more financially-secured life.

**Human rights questions**

While many migrant workers have returned home safe and much better off economically, there are a significant number of them who have suffered without redress.

Men migrant workers suffer from the exploitation of their employers through changes in contract of employment, non-payment of wages, unhealthy working conditions, long working hours, and exposure to unnecessary risks. Even worse situation occurs for the undocumented migrant workers who are almost under the total control of exploitative employers. Physical injuries sustained at work or inflicted upon them by the employers have been reported.

Women migrant workers who

work as domestic help tell of psychological, sexual, and other physical abuses by the employers. They are sometimes deprived of agreed amount of salary as well as other benefits such as day-offs, and medical treatment. Those who are in the entertainment industries are exposed to syndicates which force them into prostitution. Physical injuries, and even death for some, have occurred.

The suffering extends outside the workplace as the migrant workers become targets of discrimination by the host community. Seen as occupying low social rank, they have problems of getting access to social, medical, legal and cultural institutions that can help assuage their alienation and depression borne out of oppressive working conditions.

Governments are likewise violating human rights as the police and immigration authorities arrest, detain and sometimes summarily deport them without due process of law. There are reported cases of abuse by the immigration authorities causing physical and psychological suffering for the migrant workers in their custody. There are also inadequate government policies, facilities and programs to protect the rights of the migrant workers.

The basic conditions that create the need for migrant workers and the corollary industry that highly benefits from the labor trade lead to human rights violations. Labor as a commodity becomes subject to trading that eventually bargains away rights, benefits and services for the migrant workers. Low regard for women place them either in risky, difficult jobs or in the sex industry. Trafficking in women, an illegal component of migration, suits this economic scheme of things.

The slow ratification of the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) and the lack of enforcement (in case they have been ratified) of relevant ILO conventions by most Asian countries is a telling sign of the general resistance to protecting the rights of migrant workers.

The saga of the migrant workers is another sad human rights story that deserves attention.

(References omitted due to space limitation.)

# Migrant Workers in Japan

Yuka Ishikawa

In Japan, the number of foreigners is estimated to be about 1,750,000 people. The rapid economic development from 1970's to 1980's made Japan an economic superpower. This economic success stirred up the idea among people in Third World countries that Japan is a rich land of opportunity. Many foreigners, therefore, have come to Japan in search of jobs since then. After the Japanese economy became so strong, most Japanese moved into white collar jobs, creating a new demand for labor in the blue collar industries. The construction, manufacturing, and service industries have been employing foreigners in great numbers ever since.

Japan does not accept and welcome foreigners who come to Japan to work under the Immigration Control Law. According to this law, only the children of people with Japanese nationality and the third generation Japanese descendants in other countries can legally work in Japan. In other cases, foreigners who would like to work in Japan must belong to the skilled category. Most foreign workers, however, do not fall under this category. Most of them are working in Japan by overstaying their tourist or student visas or without working visas. It is common for such workers to develop personal relationships with Japanese people, to marry and have children. As a result, these workers wish to become legal permanent residents of Japan, enjoying the rights and privileges of their spouses. They are hardworking members of society providing essential services and labor, yet they are in constant fear of being discovered by the police or immigration authorities. As long as the present laws and immigration policies remain the same, these foreign workers will have to continue living as second-class citizens and outlaws. Therefore it is necessary for Japan to search for the appropriate system of accepting these valuable members of society as human beings, and not simply as foreign laborers.

Before discussing the reality of foreigners in Japan, one must understand the definition of who is a foreigner in the Japanese context. This definition has two parts, each describing a different group of people. One group defined as foreigners are Koreans, Chinese and Taiwanese, who have been living in Japan since the time of Japanese colonization or were born in the country. They are called "residents". They are estimated about 750,000 people. The second group consists of people who came to Japan since the 1970s. They are called "migrant workers". Today about 1 million "migrant workers" are living in Japan.

As to the "residents", many of them were forced to come to Japan by the Japanese Government since colonization. In Chinese case, before the war, they came to Japan as traders or merchants. After the war ended, some of these "residents" could not return to Korea or China or Taiwan for various reasons. Now, a fourth generation of these original "residents" live in Japan. However, they are not considered "constituent members of Japanese society" though they were born in Japan. This means they do not enjoy the rights and privileges of Japanese citizens. For example, these so-called "foreigners" cannot work for some government institutions or offices because of the "requirement of nationality" adopted by the government.

As to the second group, about one million of them are living in Japan today. Among this group, 284,744 are overstaying. Among these undocumented residents, people from Thailand rank number one with 43,014 people; followed by

41,122 people from the Philippines, 25,036 from China, 14,693 from Peru and 14,638 from Iran. (data from Japan Immigration Association, November 1995)

Most of the male foreigners are working in the construction of houses, buildings, and roads, and in cleaning and maintenance jobs. Their jobs are typically low salaried, in dangerous or dirty conditions, physically demanding, and without insurance benefits. There are many women who intended to work as entertainers but forced into prostitution. There are also those, especially from Thailand, who are trafficked into Japan by Yakuza. They are often not told by the recruiters of the sex industry about the nature or conditions of the work they will have in Japan. After arriving in the country, they are often detained and forced to work as prostitutes to pay back the overpriced expense of 3 to 3.5 million yen.

There are many other problems in the immigration system in Japan. For example, the reasons for forced deportation is not made public. There are also well-known reports of violence against foreigners by Immigration Officers.

On April 28-29, 1996 the first Forum on Migrant Workers' Problems was held in Fukuoka, Japan. About 400 people participated in this forum. On the first day, the discussion focused on the Japanese immigration policy, the HIV/AIDS issue, the situation of migrant workers in Korea, and so on. Next day, there were 11 small discussion groups on international marriage; children of Japanese and foreigner couples, the sex traffic and foreign women, the medical system for foreigners in Japan, the full implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the rights of foreigners, and so on.

At the last session on the second day, the participants adopted a statement of appeal directed to the Japanese government and the general public. The appeal states that, in order to solve these problems, Japanese government personnel should learn to respect the human rights of foreigners through seminars, workshops, and other means. Secondly, a Migrant Workers Policy should be made by revising Japanese laws concerning foreign workers' issues. The International Convention on the Rights of Migrant Workers and their Families should be ratified and become the basis of that policy. Also, since Japan ratified the International Convention on the Elimination of All Forms of Racial Discrimination, harder work is needed to implement it in the country. Finally, the discriminatory consciousness which many Japanese people have against foreigners should be countered by human rights education as envisaged by the goals of the United Nations' Decade for Human Rights Education.

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# Refugees in Asia: A Human Rights Understanding

Roque Raymundo

## A Brief Overview

For most of the 1980's, Asia hosted the largest refugee population in the world. By the end of 1995, Asia was hosting a conservative estimate of just under 8,000,000 refugees, spread across the region. Today,

" [A] quick sweep across the map of Asia reveals both how widespread is forced displacement, and how varied are the causes and numbers and circumstances of the people affected. In the northwest, the people of Afghanistan continue to flee chronic civil war in their country while millions wait in adjoining Pakistan and Iran for a lasting peace. Down in the southeast, indigenous peoples of Irian Jaya are displaced within the province or forced over the border into Niugini by the environmental damage of a giant mine, by violent repression of protests, and by the sponsored migration of outsiders from other parts of Indonesia. Up in tiny Hong Kong in the northeast, 18,000 Vietnamese asylum-seekers wait in detention until they are forced back home. Their grand dreams of a life in the west have now ended and their youth is wasted amid the boredom and brutality of long years in the camps. Down in the tear-drop island of Sri Lanka in the south west, probably a million of its 16 million people are forcibly displaced in the country or living as refugees in India as the civil war moves into a yet more violent phase, and civilians of all communities - Tamil, Sinhalese and Muslim - are targeted for deception and terror. Hardly one country is spared". (Dignam, 1996)

Refugees form but a part of the larger phenomenon of forced displacement, which in turn is a smaller component of contemporary mass migration. Problems in refugee policy and practice are inter-related and often better understood in conjunction with issues surrounding mass migration. This brief essay focuses on refugees, and will look briefly at their legal condition, and proceed to deal with the broad human rights aspects of the refugee problem - from the point of displacement from the country of origin, through the period of entry and stay in a temporary country of asylum, to the point of securing a lasting solution - and the challenges confronting the human rights community.

## The Internally Displaced

Although technically not a "refugee" problem, one of the most disturbing aspects of forcible displacement in the region that needs brief mention is the plight of the internally displaced (IDP). In Afghanistan, Sri Lanka, and Burma, the problem is particularly acute: each of these countries has anywhere from 500,000 to 1,000,000 internally displaced. The problem is of concern not only because of the significant numbers involved, but also because of the absence of an officially mandated international structure to respond to their needs for assistance and protection. Another disturbing aspect of the plight of IDPs, is that many of them have experienced multiple displacement within the borders of their own country, some in the course of a year. In most cases, they flee for similar reasons as do refugees, except they do not or are not able to cross an international border.

## The Legal Condition of Refugees

Asia is also a region where the majority of states have not acceded to the international instruments governing the protection of refugees - the Convention Relating to the Status of Refugees, 1951 (hereinafter the Convention), and the 1967 Protocol, which removed the temporal and geographical limitation of the Convention. And many of the few countries signatory to the Convention ( to date only the Philippines, China, Cambodia, Japan, Australia, New Zealand, and some Pacific and Middle East states) have so far failed to enact the necessary legislation or institute the necessary policy and mechanism to implement their obligations. Thus, in many cases, refugees and asylum seekers enjoy no legal protection and face the constant risk of harassment, extortion, arrest, detention, and deportation. Some states, including those who have not signed the Convention, do have policies allowing for temporary admission, but in most cases, it is of limited applicability (only for certain nationals) or allowed only on condition of resettlement to a third country. Such seemingly generous policy often turns sour, notably after

national interests or some economic/political aim have been served, or when new national interests dictate a less obliging policy.

## Existing Definitional Norm

The principal legal definition adopted and employed by the international community is found in the Convention, which states that a refugee is,

"any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

[Chapter I, Article 1 (2)] The key phrase is "well-founded fear of persecution". This is interpreted to mean that fear must not only be subjective, but that it must have an objective basis, i.e. conditions in the country of origin. Only fear of persecution based on any of the five grounds will lead to recognition as refugee.

## Human Rights Perspectives on the Refugee Problem

### Human rights violation as cause of forced displacement

In most refugee crises, one need only take a cursory look to realize that the violation of human rights is one of the principal causes of refugee flows. To cite two urgent situations: In Burma, ethnic minority groups continue to flee forced labor by the State Law and Order Restoration Council, or SLORC, which has ruled since 1988 after a violent crackdown on pro-democracy activists where some believe as many as 10,000 may have been killed. Ethnic Nepalis started leaving Bhutan in great numbers in late 1991 due to a "Bhutanisation policy" characterized by human rights abuses, including arbitrary detention, torture, and rape.

The recent document of the World Council of Churches, "A Moment to Choose", groups causes of flight under three headings:

- a) "the multiple causes of forced displacement: war, civil conflict, human rights violations, colonial domination, and persecution for political, religious, ethnic, or social reasons..."
- b) "severe breakdown of economic and social conditions that once provided people with the means to

survive in their traditional communities and in their own countries..."  
c) "environmental degradation..."

All of the above clearly relate to the infringement or brutal disregard for human rights. The same conclusion is inevitable, if we look at individual motives for flight.

"Reasons for flight vary across a scale from alarming to urgent. Consider the following reasons given for leaving home:

\* To find schooling for my children. All the schools at home were closed because of the war.

\* To find a home for my family. Ours was destroyed in the fighting.

\* To find work. My shop was burned "or my fields were mined" or my cattle looted by the soldiers.

\* To find a safe place near friends. Where I was living, anyone who looked like me or shared my beliefs risked arrest.

\* To go to a safe place. Around us the violence never ceased." (Raper, 1995)

But what does it mean for refugee advocates to realize that massive human rights violations cause displacement? Many have already pointed to the answer, or one of the problems: the inapplicability of the existing definitional norm under the Convention and the inadequacy of the Convention itself to most refugee situations today. The persecution standard under the Convention is based on the Cold War and its specific ideological conflict, and under existing interpretation accorded to it by the UNHCR and contracting states, persecution pertains generally to any threat to life or liberty and requires individual targeting. Such narrow interpretation results in a situation where human rights abuse not involving threat to life or liberty, or human rights violations directed not to any particular individual but to the general population or occurring "at random", is not considered persecution.

Many among refugee advocates and human rights groups, as well as legal and policy experts, have already taken the initiative to propose measures to bridge the gap between human rights and the "persecution" standard under the Convention and to augment the inadequacies of the Convention. Conflicting perspectives have led to debate, and an objective and courageous examination of the issues should be the concern of both refugee and human rights groups, governments and UNHCR.

### Human rights as source of protection

As earlier noted, the protection afforded by international instruments have limited applicability to today's refugee crises. Human rights, as a body of aspiration and as a set of legal principles, offers a broader source of protection to people who are forcibly displaced.

Unfortunately, deprivation of human rights of refugees and asylum seekers is a reality in many refugee-receiving countries, where refugees are also considered in most cases as illegal aliens. In a region noted for decrying human rights as a



Western imposition, respect for human rights is hardly ever assured for nationals, let alone for refugees. What therefore confronts the human rights community is a broader challenge to improve the level of human rights protection, for both refugee and non-refugee populations. In responding to this immense challenge, the specific rights of refugees, e.g. admission, protection, and the right against refoulement, should be given priority concern. Several issues also need to be considered: the particular vulnerability of refugees as outsiders; the legitimate national interests of host states; the sometimes competing claims of refugees and host communities, to name a few. An understanding of these issues will help achieve a balance of interests that could ensure optimum human rights protection for refugees.

### Human rights as key to a lasting solution

Where human rights violation lies at the heart of a refugee problem, a lasting solution clearly requires efforts on the part of the international community, both inter-governmental and non-governmental, to put pressure on concerned governments and other parties to ensure respect for human rights. Such efforts need to relate to all three modes of durable solutions - voluntary return, local integration, and third country resettlement.

Obviously, efforts to secure

respect for human rights in the country of origin would, if fruitful, encourage voluntary return and facilitate reintegration. In the country of temporary asylum, deprivation of human rights often occurs within a harsh physical and socio-psychological environment for refugees, and for periods that extend from five to fifteen years, or more in many cases. Under such conditions, every effort must be made to secure basic minimum rights from the very start.

On third country resettlement, what is of concern is the increasingly scant attention paid to the right to seek and enjoy asylum, and the correspondingly ample concern for the so-called "right to remain".

"Northern governments have recently extended their prophylactic program by championing the refugees 'right to remain' in his or her own state. The 'right to remain' is superficially attractive. After all, the best solution to the refugee problem is obviously to eradicate the harms that produce the need to escape... In reality however, no international commitment exists to deliver dependable intervention to attack the root causes of refugee flows, clearly a condition precedent to the exercise of any genuine right to remain..." (Hathaway, 1996)

UNHCR, particularly in the last few years, have been actively promoting the right to remain. This is a laudable objective that warrants a cautionary note. The right to remain, like the related concept of "safe zones", is liable to distortion/manipulation by governments keen to dispense with their obligation to grant asylum. Moreover, over-emphasis on the right to remain may lead to a further weakening of the instrument of asylum, an important tool both for protection and durable solution.

### Conclusion

Signs are that forced displacement will continue, at a rate faster than solutions can be found. The direct human suffering alone engendered by forcible dislocation should continue to demand the sustained attention and response of the broad human rights community. The human rights concerns in the distinct stages of forced displacement represents broad challenges, the effective response to which will help bridge the gap between human rights and the protection of those who are forcibly displaced.

(References omitted due to space limitation.)

# National Human Rights Institutions in Asia-Pacific

(This is the first in a three-part series on national human rights institutions in Asia-Pacific - Editor's note)

Asia-Pacific has national human rights institutions in a number of countries. Australia, Aotearoa/New Zealand, India, Indonesia, and the Philippines have human rights commissions. Pakistan has just recently set up a Ministry of Human Rights based in Islamabad. Sri Lanka has a long history of ad hoc commissions for specific human rights questions. A few more countries have other forms of human rights mechanisms.

Thailand, Bangladesh, Nepal, Sri Lanka, Papua New Guinea and Hong Kong have pending legislative proposals for the establishment of human rights commissions.

## National human rights commissions

National human rights commissions in the region generally perform the following functions:

- a. investigate cases of human rights violation upon receipt of complaints or on their own volition;
- b. monitor compliance of governments on their obligations under the ratified international human rights instruments;
- c. visit jails and detention centers;
- d. resolve human rights violations cases through conciliation and other means;
- e. engage in human rights education;
- f. provide advice and proposals to governments on needed legislative and administrative measures to realize human rights.

Corresponding powers relate to their investigation, monitoring, education and case resolution functions. Included also is the power to get the cooperation of other government agencies in performing these functions.

The Philippines can be credited for having created a wide network of government agencies which can support its Commission of Human Rights. This inter-agency cooperation covers programs on human rights education for members of the police, military and officials of local government; creation of community-level human rights action centers; and operation of a child rights center. The National Commission on Human Rights Indonesia relatively overcome an initial skepticism on its effectiveness as it tackles nationally significant human rights cases ranging from Dili massacre, closure order of three lead-

ing newspapers and magazines to the latest military attack on student demonstrators in the Muslim University of Indonesia. The National Human Rights Commission in India has been praised for the positive effect of a rule it issued regarding liability of members of police for failing to report within a certain period of time any death of detainees in their custody.

Each national human rights commission has a peculiar character that may suit the different national contexts. But there remains a big space for improvement based on the criticisms raised.

## Other forms of human rights protection mechanism

Sri Lanka had set up ad hoc commissions that dealt with disappearances, discrimination and other



human rights issues. These commissions were able to investigate cases of human rights violations and recommend legislative measures to improve human rights protection. The Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights and the Commission on Involuntary Removals are quite well-known. The Sri Lanka Foundation has a Human Rights Centre while a Human Rights Task Force has been established.

In Thailand and Cambodia, legislative committees on justice and human rights function as investigating bodies on human rights problems. Thailand has the Committee on Justice and Human Rights (with a sub-committee on human rights). This committee has taken up several significant human rights issues in the country. Its inquiries have been publicized and created pressure on the government to resolve the problems.

Cambodia has the National Assembly Commission on Human Rights. This body has received numerous complaints from the Cambodian public.

In the absence of any formal institution on human rights protection and promotion, these legislative committees become such institution with admittedly limited powers.

Japan has a dual system of addressing human rights problems. The first is an office (Civil Liberties Bureau) within the Ministry of Justice, and the second is a mainly honorary office (Civil Liberties Commissioner) sponsored by the local government units. The latter system is also under the supervision of the Ministry of Justice. The former system, with branch offices in almost all provinces of the country, investigates human rights violations; promotes human rights activities in the private sector; supervises the Civil Liberties Commissioner; and provides legal aid and other measures. But its more than 200 personnel are also assigned to do other tasks such as keeping the registers of residents and lands in their respective areas.

The Civil Liberties Commissioners are given the task of monitoring and preventing human rights violations, and promoting the philosophy of human rights and civil liberties. More than 12,000 civil liberties commissioners have been appointed. Most of them are senior, retired citizens with relatively high status in society. They do not receive a salary nor personnel support.

The Japanese government is currently reviewing this system.

## Some questions

The experiences of the national human rights institutions in existence are varied. The ideas on what are appropriate elements for an effective national human rights institution are highly dependent on specific view of the national situation. Some questions are raised on these issues:

1. non-State violators - the criticism that covering non-State or private entities constitutes an unnecessary burden on the commissions is not settled. But many legislative proposals (Thailand, Hong Kong and Sri Lanka) as well as the respective legal mandates of the Philippine, Indonesian, Australian, New Zealand and Indian commissions cover private

entities;

2. prosecutive function - whether or not the commissions should have the power to handle the prosecution of the persons found liable for human rights violations is still not clear. This idea of having prosecutive function is related to the problem of lack of assurance that the government agency(s) to which the commissions would refer the cases will act upon their recommendation or treat the cases in the way they (commissions) deem appropriate. The Philippine and Indian commissions are proposing the inclusion of prosecutive function in their respective mandates, while the Australian, New Zealand, and also Indian commissions already have the authority to make interventions in court proceedings;

3. quasi-judicial function - whether or not commissions should have quasi-judicial function to be able to completely deal with human rights violations remains a question. This function will give the commissions the power to issue resolutions that would make entities complained against liable. The commissions may likewise order the payment of compensation for the damage done. This idea will have to be reconciled with the system of having separate human rights courts/tribunals.

It should be noted also that in the case of the Philippines, its Supreme Court has ruled against the issuance of restraining orders (specifically in relation to eviction of urban settlers) while the Australian government reinstated the rule that the determination of its commission must be enforced only through a complaint filed anew with the Federal Court. The Indian commission likewise has no power to issue an enforceable order determining liabilities of parties involved. All these point to the current view of governments against any quasi-judicial function for the commissions.

A clarification on having both prosecutive and quasi-judicial functions may also have to be made.

### Major concerns

The experiences of these national human rights institutions show some problem areas. They generally would fall under the following matters:

1. independence - there is a consistent question on whether these commissions are truly independent or not due to their membership (inclusion of former military personnel), system and amount of budget allocation (lack of automatic fund appropriation system and thus subject to political influences), powers and functions

(dependence on cooperation of other government agencies to be able to perform functions such as investigation and monitoring).

2. effective use of powers - while it is admitted that there are limitations in the mandate of the commissions, there is still the concern that their powers and functions have not been maximized to be able to deal with human rights problems effectively;

3. public image of the institutions - there is no substantial information that can warrant a conclusion on the real public image of the existing national institutions. But there are some observations which tend to suggest a need to assure that these institutions are beyond suspicion and can have the full trust and confidence of the public.

### Positive Features

There are a number of laudable features that can be taken from the different experiences of the existing national human rights institutions.

Classified into major categories, the worthy features are as follows:

a. structure - the creation of branch offices as in the case of Australia, New Zealand and the Philippines (and may also be in India) provides greater physical access by victims of human rights violations to the institutions. Likewise, the idea of having community human rights action centers (also in the Philippines) serves the same purpose. The idea of Human Rights Court in the case of India and the Complaints Review Tribunal in New Zealand recognizes the necessity of speed in the prosecution of the cases and appreciation by the courts of the

spective of a policy of avoiding litigation to settle disputes. Court intervention comes when needed by the situation not as a matter of course. Another good service is the provision of financial assistance to victims or their families as in the Philippine and Indian experiences (although the existence of a huge amount of unused financial assistance fund does not speak well of the Philippine commission's capability to identify and assist human rights victims);

c. approach - the conciliatory mode that is found in the Australian, Indonesian, New Zealand and Sri Lankan experiences is based mainly on the premise of getting an effective resolution of the cases without the difficulties, delay and costs of legal proceedings. The inter-agency cooperation most clearly shown by the Philippine commission is a good approach to enlarging the system and resources which can help in the human rights work. And lastly, the links with NGOs is laudable as proven by the report of the commissions themselves who admit to their (NGOs) essential role in providing needed information, assistance on program implementation, and other support for a more effective resolution of cases;

d. system - the Australian commission's system of confidentiality in its investigation processes addresses the concern regarding the Philippine commission's investigation procedures. It likewise creates confidence on the part of aggrieved persons to be able to communicate with the institutions and initiate an investigation without putting them at unnecessary risks of retaliation from people complained against (especially if they have the means to do so as in the case of members of the police and military);

e. specialization - the Sri Lankan experience is showing the value of specializing in specific areas of human rights work. This is somewhat similar to the rule of the Australian commission in not adding in its mandate international human rights instruments which have been ratified if so determined by the Minister (although this raises the question of deliberate limitation of coverage in human rights mandate) and to the limitation of jurisdiction in the New Zealand commission to discrimination in specific areas;

f. human rights education - there is a notable attention given to human rights education by the existing national human rights institution in region. Focus is given mainly on the military/police, students and the gene-



human rights principles in the treatment of the cases.;

b. service - the authority of the institutions to provide legal service such as making interventions in court proceedings (just like in Australia, New Zealand and India) to help prosecute the cases is good. This is short of the prosecutive function but can find much meaning if seen from the per-

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# Report on the Recognition of Ainu as Indigenous People:

## A Critique

Hideaki Uemura

(Citizen's Centre for Diplomacy - Japan)

*(The Ainu are indigenous people whose territory at least included Hokkaido, southern Sakhalin, all of the Kurile islands, and the northernmost part of Honshu in Japan. During the 17th century (Edo period), a feudal clan (Matsumae) banned free trade among the Ainu and other peoples in northern part of Honshu to monopolize trade in the region. In the 18th century, Japanese merchants, with trading rights bought from the clan, came to Hokkaido and destroyed the ecosystem of the Ainu territory through destructive fishing methods and forced the Ainu to become workers in the fishing activities. The Japanese government did not and was not able to control the Ainu lands from Hokkaido and northward until the 19th century. Since 1868, the Japanese government appropriated the Ainu lands and enforced assimilation policies. The Ainu were designated as "former Savages". The myth of "mono-ethnic country" prevailed in Japan, as part of the process of modernization, and remained even after the second world war. The government refused to consider the Ainu as an ethnic minority. At present, the Ainu number around 50,000 and remain only in the island of Hokkaido. An advisory panel formed by the government recently issued a well-publicized report recommending, among others, the recognition of the Ainu as a distinct and separate ethnic group. This is the first government organized body that has made such a recommendation. Following is a critique of that report. - Editor's note. )*

### Human Rights Institution...

There is still much room for further substantive development and geographical spread of human rights education programs;

g. nature of the institution - the Philippine commission is the singular case of a national human rights institution created by the basic law of the country. This set-up can help prevent usurpation of functions, withdrawal/reduction of budget, abolition of the office, political confirmation of appointment of members, and other means. It should be noted, however, that problems still arise affecting independence and effe-

Japanese experts on law, ethnology, administration and anthropology, in a meeting held on April 1, 1996, handed an advisory panel report to the Chief Secretary of the Japanese Cabinet that proposes the adoption of a policy for the Ainu, and strongly recommends the enactment of a new law based on this proposal.

First of all, in order to properly appreciate this report, it is necessary to recognize its unique logical framework. Its logic is faulty because it basically excludes the concept of indigenous people and their rights. The report neither discusses the rights of Ainu as indigenous people nor explains the necessity of a new law to recognize these rights. Based on this framework, the report presents the issue in the following manner: Japan should aim at becoming a "dynamic society" by promoting multiculturalism. It is therefore indispensable for Japan to maintain and develop the culture of the Ainu people, considered as unique in the world, so that the Japanese society can become more vital in the future. It mentions the necessity of a new Ainu law to maintain and develop the culture of the Ainu. It must be added, though, without exaggerating that the report indicates that some aspects of the indigenous people's rights can be effected by this framework.

As a result, the report has

ctiveness of the Philippine commission's actions despite this nature of the institution.

### Last note

National human rights institutions in the Asia-Pacific show a wide set of experiences which collectively support human rights. It is in learning from the weaknesses and strengths of these institutions, that the challenge of protecting, promoting and realizing human rights should be seen.

(References omitted due to space limitation.)

advantages and disadvantages.

Following are the advantages. First, the logic of the necessity for a new Ainu law becomes clearer and more persuasive to people who are against the enactment of such law (namely, conservative politicians, bureaucrats, and many indifferent citizens). For them, a new law to promote multiculturalism is acceptable. For instance, bureaucrats, who have so far been trying to delay the study of the proposed enactment, cannot object to the promotion of multiculturalism to create a dynamic Japanese society. In addition, since multiculturalism implies the acceptance of the rights of minorities, the Japanese government cannot deny such rights of the Ainu as it has already accepted the Ainu as an ethnic minority in 1991.

Second, the proposal to the government to actively implement multiculturalism through a new Ainu law is very important from the point of view of the history of Japanese policymaking. As mentioned above, in 1991, the government recognized the Ainu as an ethnic minority in a report to the United Nations. The discussion on the issue, however, did not improve. This is due to the idea among the bureaucrats and policy makers that the rights of the Ainu as Japanese nationals are also guaranteed in the negative sense. The Japanese Constitution, according to them, does not deny the rights of minorities. On this point, the report is certainly valuable and has an undeniably positive effect on the rights of other minorities in Japan.

The following present the disadvantages of the report. As another result of its structure, the report has many improper remarks about the Ainu. First, the report presents a view that a new law that would guarantee the fundamental rights of the Ainu is obviously retrogressive because of the precedence of national economic interests. The last paragraph of the report which says that a new law should be used

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## Events in the Region

● Amnesty International and Asian Forum on Human Rights and Development (Forum Asia) are jointly sponsoring "The International NGO Forum on Human Rights in China" that will be held on August 30 to September 1 this year in Manila, Philippines. The conference aims to exchange views and knowledge on the current human rights situation in China; and to promote a closer and more interactive relationship among NGOs in the region. Expected to participate are representatives of Asian and non-Asian NGOs, Amnesty International Asia-Pacific sections and groups, and the Chinese government. Journalists and academics are likewise expected to attend. Contact organization: AI Pilipinas, 114 Scout Limbaga Street, 1103 Quezon city, Metro Manila, Philippines.

● The Canadian Human Rights Foundation will be holding two training activities. One is its first regional training program in Southeast Asia with the theme of migrant workers. This workshop aims to enhance the capacity of Southeast Asian NGOs and other organizations in addressing the situation of migrant workers at the local, regional and international levels. Training modules will also be an outcome of the program which will be tested at a later phase of the program. Another training activity is for national human rights institutions. The training is meant to develop capacities of members and staff of these institutions in such areas as monitoring, investigation, remedies and redress, special measures, education, advocacy, research, promotion and organizational operations. This training is planned to be held in the third quarter of the present year. Contact organization: CHRF, 1425, boul. Rene-Levesque Ouest, b. 307, Montreal (Quebec) Canada H3G 1T7.

● The Psychosocial Trauma Program of the Center for Integrative and Development Studies of the University of the Philippines will be holding a comprehensive education program on medical ethics and torture and training in treatment and rehabilitation for health professionals in the Asian region. The seminar will be participated by health professionals with firm commitment to human rights and willingness to start a treatment, rehabilitation and/or research program for torture survivors. Awareness of the existence of torture in the region, understanding of the relevant international human rights instruments involved, and creation of a regional network are all aimed to be achieved. The seminar entitled "Medical Ethics, Torture and Rehabilitation - An Education Program for Health Professionals in the Asian Region" will be held in

Bangkok, Thailand on October 2-5, 1996. Contact organization: Psychosocial Trauma Program, Center for Integrative and Development Studies, Room 212 PCED Hostel, University of the Philippines, Diliman, Quezon city, Philippines.

● GATT-Watchdog, an NGO based in Christchurch, Aotearoa/New Zealand, will be holding a forum on trade and investment liberalization in the Asia-Pacific. The forum, dubbed "Trading With Our Lives: The Human Cost of Free Trade", will be held on July 12-14, 1996 in Christchurch as a parallel forum to the APEC Trade Ministers Meeting in the same place. This activity is part of the NGO move in the region to continue influencing the APEC process. Aside from Aotearoa, there will be participants from Australia, Mexico, East Timor and India. Contact organization: GATT Watchdog, P.O. Box 1905, Christchurch, New Zealand.

● The Asian Migrant Centre and the Joint Committee for Migrant Workers (Korean group) is holding a workshop on the impact of globalization on migrant workers. The workshop entitled "Migrant Workers Challenge Global Structures" will be held in Seoul, Korea in August this year. The workshop aims to discuss the emerging patterns of migration in the context of globalization, examine the national state policies as well as private corporation strategies in relation to APEC, understand the relevant international human rights instruments, and come up with recommendations, strategies and action plans. More than 20 participants from various Asian countries will be participating in addition to those from south Korea. Contact organization: Asian Migrant Centre, 4 Jordan Road, Kowloon, Hong Kong.

● The Ministry of Foreign Affairs of Japan and United Nations University in Tokyo will again jointly organize a symposium on human rights. This symposium will be attended by representatives of national human rights commissions in Indonesia and Australia and Asians who are, or have been, involved in United Nations human rights work. Human rights and economic development, institutional arrangements for the promotion and protection of human rights (domestic and region), and human rights education will be the main topics for discussion. The symposium will be held on July 4-5, 1996 in Tokyo. Contact organization: Multilateral Cooperation Department, Ministry of Foreign Affairs, Tokyo, Japan.

## Recently Held Events

● The Global Alliance Against Trafficking in Women (GAATW) held an international human rights training on June 10-20, 1996 in Bangkok, Thailand. The training is in support of the campaign for the international recognition of traffic in women as a human rights violation. The training focused on knowledge about practical use of the United Nations Human Rights instruments and mechanisms in order to combat traffic in women. Women activists working on traffic in women from Asia and Eastern Europe attended

the workshop. A human rights expert from the International Human Rights Law Group Women in Law project was the resource person. The training also developed a human rights training manual. The workshop required the participants to undertake a 4-day national training for local activists working on the traffic in women issue in their respective countries within two months from their return. Contact organization: GAATW, c/o Foundation for Women, P.O. Box 1281 Bangrak Post Office, Bangkok 10500

Thailand.

● The Asian Human Rights Commission convened a meeting of NGO human rights workers and government human rights commission representatives in Hong Kong to discuss the role of national human rights commissions in the region. Participants from India, Sri Lanka, Thailand, Pakistan, Hong Kong, and the Philippines were present in the meeting that was held in March this year. There was frank and engaging exchange of ideas on how to improve the present national human rights commissions and what can be suggestions to countries which are in the process of establishing their respective institutions. These ideas can be good bases in looking for the more appropriate role for the national human rights commissions in the context of the prevailing conditions in Asia-Pacific societies. Contact organization: Asian Human Rights Commission, Flat E, 3rd floor, Kadak Building, Sai Yee Street, Kowloon, Hong Kong.

● The third General Assembly of the People's Plan for the 21st Century was held in Kathmandu, Nepal last March. A large number of NGO and people's organization representatives attended the conference. In the final statement of the conference, called the Sagarmatha Declaration, the participants reiterated their commitment to build people to people alliances that will actively intervene existing institutions of power and decision-making at the local, national and global levels. Prior to the main conference, workshops on human rights, workers and other issues were held. Contact: PP21 Council Organizing Committee, c/o China Social Services and Development Research Centre, Wanchai P.O.Box

#### **Ainu...**

to realize a culturally affluent and well-balanced Japanese society in the 21st century is quite inappropriate as the new law becomes a mere "tool" for the development of Japanese society. Second, while the report reiterates the importance of the Ainu culture, it does not pay enough attention to the Ainu history especially on the appreciation of the Japanese colonization. For example, while the report recognizes the "indigenoussness" and existence of the Ainu as a distinct ethnic group, it also consistently asserts that Hokkaido has been part of Japanese-owned territory. Third, the report provides justifications for the discrimination and destitution being suffered by the Ainu because of the assimilation policy carried out under the "Hokkaido Colonization Program" since 1868. The report does not recommend apology and compensation for the establishment of Japanese rule over Ainu territory that brought in Japanese migrants, destroyed the ecosystem in Hokkaido and the economic system of the Ainu, and usurped the Ainu land. At this point, only the "Hokkaido Former Aborigines Protection Act" is proposed to be

repealed because of its improper name and its lack of rationality and necessity. On the other hand, now that this report addresses the need for society to respect the ethnic pride of the Ainu, it is no wonder that there are some among the Ainu who cannot accept the historical perspective of the report. The Ainu Association of Hokkaido (the biggest organization of Ainu in Hokkaido) made the decision to accept this report with reservations due to this lack of historical accuracy. However, everyone concerned with these issues should grasp this problem for future discussion.

Fourth, the aim and meaning of the report is not very clear to people including the Ainu who advocate respect for the indigenous people's rights. Reading the report carefully, though, one can find some parts proposing the protection of indigenous people's rights. Cultural rights, for example, which are strongly proposed to be protected, are certainly important part of indigenous people's rights. The report admits that the Ainu culture was plundered by forced assimilation policies so that the cultural rights referred to in the report mean those rights that were previously

23467, Hong Kong.

● HURIDOCS held its Second Asian Regional Meeting in Bangkok, Thailand on March 30-31, 1996. The focal issue discussed is the setting up of an Asian regional structure for HURIDOCS. It was agreed that a loose network with a Steering Committee be set up. This network will coordinate activities in the field of information and documentation on human rights in the Asian region. Prior to this meeting, HURIDOCS and Asian Research Centre for Migration held a regional training course on documenting human rights violations and human rights data analysis. This year's training course was attended by participants from groups working on the migrant and refugee issue. Contact: The Asian Research Center for Migration Institute of Asian Studies, Chulalongkorn University, 7F, Prajadhipok, -Rambhai Barni Bldg. Chulalongkorn University, Phayathai Road, Bangkok, Thailand.

● The New Zealand Asia Institute held a policy consultation session on the issue of "Human Rights, Sovereignty and Migration" in Auckland on June 14-16, 1996. Participants from Japan, Hong Kong, and New Zealand exchanged ideas on practical means by which policy related to human rights, sovereignty and migration can be developed through a process of analysis and communication between New Zealanders and those from Asian countries. Contact: New Zealand Asia Institute, The University of Auckland, 1-11 Short Street, Private Bag 92019, Auckland, New Zealand.

violated by the government. It is possible to think that the "recovery of the traditional Ainu community space" means a return of a part of the Ainu land rights (part of the use right) to the Ainu. Of course, this assumes that there are enough available land like national parks for the purpose of exercising these rights (including the right to self-determination on the cultural issue).

In view of the situation, the Japanese government may emasculate the proposals in the drafting of the new law unless the proposals and their possible effects are understood in detail by the Ainu lobby groups. Monitoring of the drafting process is therefore very important. Toward this end, a study of the limitations and possibilities provided by the report as well as the summing up of the varied needs of the Ainu is needed for the next step.

(References omitted due to space limitation.)

## HURIGHTS OSAKA ACTIVITIES

HURIGHTS OSAKA has started its research on human rights and cultural values. The research project will probe on the convergence and divergence of human rights and cultural values in Asia. Six countries are subject of the research: India, Sri Lanka, Indonesia, the Philippine, Korea and Japan. Research papers will be available by mid-1997 after a series of meetings are held to finalize the research output. This is the second research project of HURIGHTS OSAKA. The first project looks at the relationship between social

development and human rights - how human rights can be incorporated in the civil society movement.

Starting in September this year, a series of seminars will be held by HURIGHTS OSAKA on the issues of human rights education, and the Pacific situation. Presentations will focus on international and regional experiences on human rights education, and on the problems faced by people in the Pacific region. This seminar is part of the domestic human rights education program of HURIGHTS OSAKA.



**AIR MAIL**

**PRINTED MATTER**

HURIGHTS OSAKA, inspired by the Charter of the United Nations and the Universal Declaration of Human Rights, formally opened in December 1994. It has the following goals: 1) to promote human rights in the Asia-Pacific region; 2) to convey Asia-Pacific perspectives on human rights to the international community; 3) to ensure inclusion of human rights principles in Japanese international cooperative activities; and 4) to raise human rights awareness among the people in Japan to meet its growing internationalization. In order to achieve these goals, HURIGHTS OSAKA has activities such as Information Handling, Research and Study, Education and Training, Publications, and Consultancy Services.



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