



# FOCUS

ASIA-PACIFIC

NEWSLETTER of the Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA)

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## Editorial

### Institutionalizing Human Rights

Human rights is practiced. It forms an essential part of people's behavior in society. It is also made part of the societal infrastructure as an ideology and a facility for maintaining human dignity.

Promoting, protecting and realizing human rights require personal endeavor as well as societal support. Mechanisms that promote, protect and realize human rights are therefore necessary. States are obligated to create such mechanisms pursuant to international declarations and agreements on human rights.

The establishment of a national human rights institution is a concrete example of a mechanism for human rights. In the Asia-Pacific region, it is mainly in the form of national commissions.

National commissions existing in Australia, New Zealand, Indonesia, India and the Philippines (with the latest one to be set up in Sri Lanka soon) do provide contrasting experiences on how such mechanisms work on varying issues and contexts. The diverse experiences, however, do point out common elements deemed crucial in developing effective, independent and credible institution.

The prospect of having six more national human rights institutions for Nepal, Bangladesh, Fiji, Solomon Islands, Papua New Guinea and Pakistan in the near future requires exchange of information and experiences with those countries having national human rights institutions. It further requires a critical review of the experiences in order to see what should be avoided and what should be adopted.

The first ever regional workshop among the national human rights institutions in the region held in early July this year in Australia supports the need for a forum for close collaboration among countries in the region having, or planning to have, national human rights institutions.

This regional initiative can support national mechanisms in maintaining their role as the premier instrumentality of the State in upholding human rights. May this happen as envisioned.

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.

FOCUS Asia-Pacific is edited by Dong-hoon Kim, Director of HURIGHTS OSAKA.

# A View on the Nature of National Human Rights Institutions

*(This is the second in a three-part series on national human rights institutions. The main issue in this article is the perception of non-governmental organizations on the nature, functions and powers of these institutions. - Editor's note.)*

Having six more national human rights institutions in the next few years in the Asia-Pacific region brings out the issue of effectiveness, independence and credibility of these institutions.

The experiences of the five existing national institutions in the region should be instructive in establishing new institutions. The main concern is in molding institutions that would effectively respond to the continuing violations of human rights (in whatever nature and form they may be) in each of the countries in the region. No country is exempt from this reality.

The United Nations has set some guidelines on what could be the more appropriate features of effective and independent national institutions. There are also ideas from some non-governmental organizations in the region about the nature, powers and functions of these institutions.

## Paris Principles

The United Nations convened a workshop in 1991 to explore ways of increasing the effectiveness of national institutions, among other matters. This workshop known as the first International Workshop on National Institutions for the Promotion and Protection of Human Rights was held in Paris, France. The conclusions of the workshop were recognized by the UN as the principles relating to the status of national institutions. These principles became more popularly known as the Paris Principles.

Paris Principles set out the guidelines for effective national institutions by providing details on functions, powers, membership, guarantees of independence and pluralism, and methods of operation. It also declares the distinct character of national institutions as creations of the constitution or law for the specific purpose of promotion and protection of human rights. Two other international workshops were sponsored by the United Nations. One was in 1993 in Tunis, and the latest one was held in 1995 in Manila. These workshops basically reiterate the Paris Principles.

To be able to review the experiences of the national institutions in Asia-Pacific, the Paris Principles have to be considered.

## Suggested ideas on national human rights institution

In a meeting held by the Asian Human Rights Commission in March 1996, several suggestions on specific aspects of national human rights institutions were raised and discussed. Based on an assumption that the existing national institutions can still be improved and that future national institutions should be able to learn from the experiences of the existing ones, the suggestions raised indicate a strong call for an extensive review of the whole rationale of

national institutions to find out how they can truly meet the expectations of people who have suffered, or are presently suffering from, human rights violations. This will address the criticism that the national institutions may simply become a tool to cover up human rights violations (especially those that involve government personnel). These suggestions complement the United Nations' Paris Principles and other documentation on the matter.

Following are the suggestions on important characteristics of national institutions culled from the meeting:

a. nature - national institutions should not be seen as merely another office in the legal structure. They have a distinct mission of addressing human rights violations - the most serious societal plague. They are established to respond to the grave problem of violation of human rights of people who cannot protect themselves from the violators. They should therefore be dynamic institutions that favor the victims much like affirmative action programs favoring the discriminated or social action litigation favoring the poor and the oppressed. In this sense, the philosophy, policies, programs and procedures should be peculiar to this nature of the national institutions instead of being mere copies of the usual governmental systems. They should not be constrained by the legalistic approach to human rights and be able to proactively address human rights problems at their roots. They are not only existing to resolve specific cases of human rights violations but more importantly to facilitate the creation of processes, programs and institutions for the realization of human rights and prevention of human rights violations;

b. mandate - national institutions should cover all human rights issues. There should be no limitation of coverage such as in focusing on either civil and political rights or economic, social and cultural rights, or on so-called fundamental or enforceable/justiciable rights rather than on rights enunciated by international human rights standards;

c. functions -

1. inquiry - national institutions should expand the meaning of inquiry to be able to analyze much more the root causes of human rights violations. Multi-disciplinary approach should be adopted. It should likewise be more oriented towards getting the people to come out and speak up. People of proven integrity and experience in human rights work should be involved in the inquiry;

2. visitorial - national institutions should not be hindered in jail, prison and detention center visitation work. They should have access at any time they feel needed to be able to find out the real situation of these facilities;

3. education - national institutions have to adopt human rights education systems that allow the participants to recognize the total situation enveloping the human rights questions and acquire values and culture of respect for human rights. This entails adopting methods that facilitate self-reflection and sharing of ideas. Prime target of the human rights education activities are government personnel including members of the police and the military;

4. monitoring - national institutions have to moni-

tor the over-all situation of human rights including the steps taken by the governments in complying with their obligations under international human rights instruments;

5. advisory - national institutions should be able to review government policies and legislations related to human rights and advise governments on how to develop their policies and enact legislations in support of human rights;

6. protection - national institutions should have some means of assisting the victims of human rights violations through their own resources or in cooperation with other government agencies. This includes protecting witnesses of human rights violations.

d. powers -

1. rule-making - national institutions should have the power to promulgate their own rules of procedure governing their operations including the rules of inquiry that facilitate easier access by human rights violation victims to investigators and less burden on their part (victims) to prove the violations that occurred;

2. selection and appointment of employees - national institutions should have the power to set the criteria for the recruitment, selection and appointment of the members of their own staffs;

3. reporting - national institutions should have the power to make reports on the existing human rights situation to the general public, the government, NGOs, and the relevant United Nations human rights agencies;

4. inter-agency collaboration - national institutions should have the power to solicit support from other agencies of governments in order to effectively address human rights problems without compromising their own independent operations. This can include having joint projects, joint review of policies affecting human rights and setting up a system of alerting these agencies on the possibility of occurrence of human rights violations or on providing assistance to victims of human rights violations.

e. attributes -

1. financially secured - in order to maintain their independent status, national institutions should not only have the power to make their own rules of operation and selection of personnel but also secured budgetary outlay. Their funding should not be subject to political influences. It should be made available on a regular and normal basis. The fund should be in such an amount that will keep national institutions able to perform their tasks. The fund can come from the consolidated fund of the government or any other equivalent budgetary categorization that secures allocation of fund;

2. diverse membership - to be able to acquire a wider perspective on human rights, the members of national institutions should not only come from the legal profession and/or government service. Other disciplines as well as exposures to human rights issues should have adequate representation;

3. non-political appointment of members - the appointment of members of national institutions should not be subject of political considerations and processes. Instead, they should be appointed based on a clearly defined set of criteria and procedures. Proven integrity and actual experience in human rights work should be paramount qualifications.

f. other features

1. remedies - national institutions should be able to identify remedies for human rights violations other than

those provided for by judicial recourse;

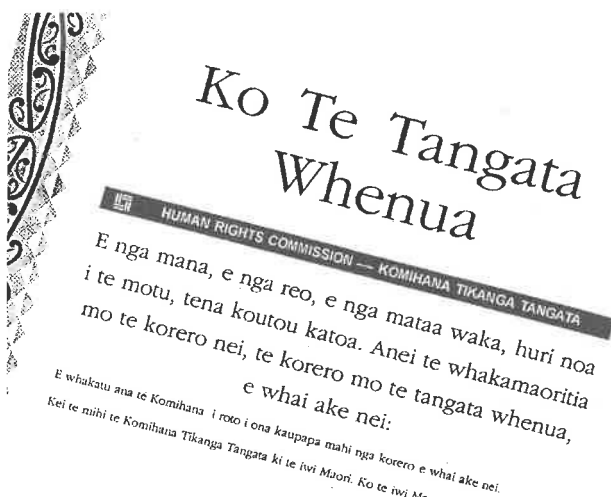
2. branch offices - offices of national institutions should be established also in places other than the country's capital to decentralize operations and increase accessibility to and by the people.

g. complementing systems

1. human rights court/tribunal - there is a need to have specialized judicial bodies which can concentrate on adjudicating on human rights violation cases. This will assure not only speedy disposition of cases but also proper application of human rights principles;

2. special public prosecutor - in case the national institutions do not have the power to prosecute the cases they found deserving to be filed in the human rights court, public prosecutors should be specifically assigned to work closely with the national institutions in prosecuting the cases;

The Paris Principles and the United Nations' handbook on establishment and strengthening of national institutions have even more detailed presentation on these matters. The suggestions presented above, on the other



hand, reflect the experiences in the Asia-Pacific.

These suggestions may help the public gauge their respective national human rights institutions.

### Ultimate requirement

The suggested ideas on national human rights institutions present a demand for responsive and responsible institutions. They require a means by which victims of human rights violations will find trust and confidence on the institutions. They also require a recognition by the general public of the value of such institutions in their lives.

The existing national human rights institutions in Asia-Pacific do have laudable features. But a more integrated review of their role may have not been done yet. There are certainly criticisms raised against them. But all these positive and negative views about these institutions should be appreciated in the light of the need to constantly improve for the sake of human rights.

Though there are always difficulties to overcome, national human rights institutions need to always strive to realize their important role.

## Asia-Pacific Regional Forum of National Human Rights Commissions

A regional initiative for national human rights institutions called the Asia-Pacific Regional Forum of National Human Rights Commissions was established during the first regional workshop of national human rights institutions held in Darwin, Australia early July.

The workshop led to an agreement to strengthen and institutionalize cooperation among the national human rights institutions in the region and extend assistance to countries setting up their own institutions. Thus, in addition to establishing the informal Asia-Pacific regional forum, the participants decided to:

- a. exchange information;
- b. undertake training and staff development for members of the national human rights institutions;
- c. develop joint positions on issues of common concern;
- d. do joint projects;
- e. share expertise;
- f. organize periodical regional meetings;
- g. hold specialist seminars on common themes and needs;
- h. respond promptly and effectively to requests from other national human rights institutions to investigate violations of the human rights of their nationals present in a country that has a national human rights institution.

A significant conclusion of the workshop states

“[T]hat to ensure effectiveness and credibility the status and responsibilities of national institutions should be consistent with the Principles relating to the status of national institutions adopted by the General Assembly that provide that national institutions should be independent, pluralistic and established wherever possible by the Constitution or by legislation and in other ways to conform to the Principles.”

The concern for independent and effective national human rights institutions remains to be a major agenda as shown by this conclusion.

The workshop recommends the recognition by the United Nations

of national human rights institutions' unique status and character as independent institutions which can participate in UN activities in their own right.

In connection with the NGO participation, the workshop concludes that the “...promotion and protection of human rights is the responsibility of all elements of society and all those engaged in the defence of human rights should work in concert to secure their advancement...” and that the “...national institutions work in close cooperation with non-government organisations and wherever possible with governments to ensure that human rights principles are fully implemented in effective and material ways”. These ideas may hopefully extend to regional meetings of national human rights institutions where NGOs are participants not merely observers so that they can contribute more meaningfully to the discussions.

Representatives of national human rights institutions in Australia, New Zealand, Indonesia and India attended the workshop. The meeting was likewise attended by government representatives from Thailand, Pakistan, Nepal, Sri Lanka, Mongolia, Fiji, Solomon Islands and Papua New Guinea. These countries are in the process of setting up national human rights institutions. The Centre for Human Rights of the United Nations was also represented. While NGO representatives from Thailand and Australia attended as observers.

A statement of the workshop, called Larrakia Declaration, was issued that contains the conclusions, recommendations and decisions of the participants.

The next meeting will be held in India. Australia's Human Rights and Equal Opportunity Commission serves as secretariat while the New Zealand Human Rights Commission is the forum coordinator.

For further information, contact the Human Rights and Equal Opportunity Commission - Level 8 Piccadilly Tower 133 Castlereagh Street, Sydney NSW 2000 Australia, telephone (612) 9284-9600, fax (612) 9284-9611.

## A New Political Priority: The Need for an Effective National Human Rights Commission in Thailand

Ian Hamilton

Coordinating Committee of  
Human Rights Organizations in  
Thailand

As Thailand's politicians engage in a new round of bargaining over the future of the country, it is doubtful that they will be able to put aside their own interests to represent the aspirations of the people. How quickly it appears that Thailand's politicians have forgotten the people's sacrifices made in May 1992 in the names of democracy and freedom. While the “May Events” may have returned control of the government to the elected politicians, it should also be remembered that the restoration of democracy was also accompanied by demands for the implementation of effective measures to ensure the future protection of human rights. One of the many important measures initiated after the “May Events” was a cabinet resolution by the Anand Panyarachun government calling for the creation of a national human rights mechanism. Regrettably four years later, politicians remain preoccupied with the struggle for power and the Thai people are still without any effective national institution to protect their human rights.

Frustration at the inability of Thailand's current political institutions to reflect the aspirations of the people, including the desire for human rights protection, has contributed to the current debate on political reform. However, the creation of effective political institutions will not be enough to safeguard human rights in Thailand. Even in well-established and supposedly “healthy” democracies, violations of human rights are common and the rights of marginalized groups need protection against the will of the majority. Many countries, at various stages of social and economic development, have models for the promotion and protection of human rights.

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# The City Summit

Akio Kawamura

"Please stop your watch at 12.00". Kakahel, the Chair of the Working Group for Habitat Agenda, pleaded the delegates. The Conference was officially ending at midnight of June 14.

Among the series of the United Nations' conferences on humanitarian issues held during the last several years, the second United Nations Conference on Human Settlements (Habitat II) held on June 3-14 in Istanbul turned out to be one of the most controversial and confrontational meetings.

The two main themes, "adequate shelter for all" and "sustainable human settlements in an urbanizing world" sound apparently harmless. Nevertheless, there were heated debates over various issues such as "right to adequate housing", "good governance", and "international cooperation". In other words, the very key issues of the conference were challenged. At the last moment, however, "the spirit of international cooperation" somehow worked, and the Habitat Agenda, together with the Istanbul Declaration, was adopted by consensus.

## Why a conference on cities?

The first United Nations Conference on Human Settlements was organized in Vancouver in 1976. That conference agreed on the Vancouver Declaration and Action Plan. Two years later, the United Nations Centre for Human Settlements (Habitat) was established in Nairobi to coordinate efforts for the betterment of shelter and human settlements.

Two decades passed and the present situation is not encouraging at all. The Global Report on Human Settlements published by the Centre in March this year says "about 500 million urban dwellers are homeless or live in inadequate housing." The situation is getting worse, especially in cities because housing cannot keep up with an exploding urban population. In the year 2025, 5 billion or two thirds of the world's population will live in cities. At present, forty per cent of residents in the expanded urban area do not have access to safe drinking water or adequate sanitation.

Habitat II was organized in order to address these mounting challenges.

## Right to adequate housing

To many who are familiar with the International Bill of Human Rights, it would be very difficult to understand the United States' initial position on "the right to adequate housing" in the preparatory meetings for the Habitat II. The US delegation categorically denied the existence of such a right, and even indicated that it would vote against the inclusion of any such reference in the Habitat Agenda, the final outcome of the conference.

This position embarrassed many human rights activists and experts. Philip Alston, the Chair of the Committee on Economic, Social and Cultural Rights – a monitoring body for the International Covenant on Economic, Social and Cultural Rights – was one of them. Learning the position of the US in the Preparatory Committee, he officially expressed his concern to the Executive Director of the UN Centre for Human Settlements. Besides presenting legal arguments against the



US position, he pointed out that the reference on right to a standard of living including housing found in Article 25 of the Universal Declaration for Human Rights actually derives "to a very significant extent from a draft ... by ... the American Law Institute", which in turn took the idea from US President Roosevelt's State of the Union Address in 1944 when he defended "the right of every family to a decent home". [1]

52 years later, President Roosevelt's successor changed his position but only temporarily. The mounting pressure from NGOs and other governments finally forced the most powerful government in the world to withdraw. In the Habitat Agenda, the governments reaffirmed the "full and progressive realization of the right to adequate housing as provided for in international instruments."

## Forced but legal eviction?

One of the concrete expressions of the right to adequate housing is right to protection from eviction. The experts in the Committee on Economic, Social and Cultural Rights were very clear about this. In its General Comment No. 4, it "considers that instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law". [2] Politicians look at it in a different manner. In the draft Habitat Agenda presented in Istanbul, the governments are supposed to commit themselves to "avoiding forced evictions, when possible" meaning nothing for most of the "impossible" cases. Many people expressed their unhappiness, and the final outcome was slightly better – "protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solution are provided." In this formulation, human rights at least should be considered.

## "Equal" partnership: governance or government?

Partnership has become a fashionable term everywhere. Istanbul was no exception. Besides the Committee I which engaged in writing the text of Habitat Agenda and Istanbul Declaration, Committee II – the Partnership Committee – was invented to listen to the interventions of partners, meaning local governments, private sector, NGOs, CBOs and others. In Committee I, NGOs were allowed to distribute a NGO composite document compiling all the suggestions made by NGOs as an official UN document, and to occasionally make intervention in the informal meetings of the Working Groups where the real drafting exercise took place.

Not everyone was happy to have partnership with NGOs. Earlier at the Preparatory Committee meeting in New York, one government delegate complained about the "privatization of diplomacy".

At any rate, it was a consensus that partnership is needed. Nobody believes that the State alone can solve this complicated

problem of human settlements. The question was how. For NGOs, transparent, accountable, participatory, and democratic governance is a key. For others, it may be just a question of assigning roles thus only effective governments matter. In the end, Habitat Agenda included the term "governance" only for the local level, and used the term "governments" in the preamble.

### **Plight of the Pacific Islands neglected**

Another surprisingly controversial issue was a reference to the area affected by nuclear testing. In the draft, "a need for the safe resettlement of displaced populations and the restoration of economic activity to the affected areas, especially for small island developing States and coastal regions" was recognized and all Governments and international organizations are invited to "consider giving appropriate assistance as may be required for remedial purposes in areas affected by radioactive contamination from nuclear weapons programmes". It is a very mild request indeed compared to the scale of the tragedy.

But for some governments, this was still too much. Faced with the opposition raised by powerful nations, it was transformed into a text that is even milder – "consideration by all governments and international organizations that have expertise in the field of clean-up and disposal of radioactive contaminants to give appropriate assistance as may be requested for remedial purposes in adversely affected areas."

### **Gender: equality or equity**

Women were the strongest lobbyists in the conference rooms in Istanbul. They must be strong, otherwise the past achievements could have been destroyed.

There were many gender-related issues under attack from governments, but in most cases the governments failed. The Holy See, supported by Iran, wanted to use the term family instead of families, but it was footnoted by a reference to "existence of various forms of families". The women's organizations were also able to add a new topic "Gender Equality" in the chapter on commitment. Equal access to "economic resources, including inheritance" was referred to in the final document.

### **International Cooperation**

Actually, the most difficult part was that on international cooperation. Industrialized nations are now feeling "aid fatigue" and not in a mood to commit more. They even

tried to withdraw from the past commitment by not referring to the target of 0.7 % of GNP for development aid agreed upon at the UNCED in Rio de Janeiro in 1992.

Industrialized countries were neither in a mood to support the UN agencies. They feel that the present UN system is not efficient because of duplication of work. They were determined not to refer to the expansion of role and mandates of the UN Centre for Human Settlements.

The developing countries had very different opinions on the two issues. This is understandable as one of the important difficulties the UN system is facing is on funding, which is largely the result of rejection by US government to pay its dues of up to 1.5 billion US dollars.

The compromise text agreed upon at the last minute is, as always with such compromise, something vague that allows different interpretations. The 0.7 of GNP goal was referred to without specific time frame. The UN Centre for Human Settlements was expected to play certain role but within the existing resources and mandates.

### **Conclusion: Habitat Agenda, another commitment**

HABITAT II was the last conference on humanitarian issues in this century. After two weeks of meetings, a new set of commitments was added to the existing ones. But how and who are to implement these commitments and plans? HABITAT II tried to broaden the scope of implementation by inviting NGOs and local governments to take part in fulfilling the responsibility.

Civil society, of course, should have a role to play. But the important thing is that they must be allowed to play the role on their own. At least, the Habitat Agenda shows some understanding on this point by confirming the need for respect for human rights and freedoms, accountable and transparent government, and democracy. Recognition of need for action is there. The question is: how can we utilize and expand that space for the future?

### **End notes**

1. E/C.12/1995/11, 21 July 1995
2. Paragraph 18, General Comment No. 4 (1991), The Right To Adequate Housing (Article 11(1), International Covenant on Economic, Social and Cultural Rights adopted by the Committee on Economic, Social and Cultural Rights on 12 December 1991.

## **Asian Summit on Child Rights and the Media**

Media plays an important role in the promotion of child rights. This is the basic premise of an Asian conference on this theme held recently in Manila.

The media according to the conference should:

a. adopt policies that are consistent with the principles of non-discrimination and the best interests of all children;

b. raise awareness and mobilize all sectors of society to ensure the survival, development, protection and participation of all children;

c. address all forms of economic, commercial and sexual exploitation and abuse of children in the region and ensure that such efforts do not violate their rights, particularly their rights to privacy;

d. protect children from material which glorifies violence, sex, horror and conflict; and

e. not perpetuate discrimination and stereotypes.

The media should also be of high quality, made specifically for them, and do not exploit them; and support their mental, social, moral and spiritual development.

Enabling children to hear, see and express themselves, their culture, their languages and their life experiences through media which affirm their sense of self and community, while promoting an awareness and appreciation of other cultures is also a media responsibility. In much the same way, the media should be made accessible to the children at all times when they need and can use it.

In consideration of the discrimination against the girl child, the conference seeks the media to provide for the girl child and counter the widespread discrimination against her. Likewise, children with special needs, in specially difficult circumstances, from indigenous communities, and in situations of armed conflict should be given attention by the media.

Governments, media, NGOs, the private sector and local, regional and international agencies are encouraged to provide support (with funds and other resources) in developing critical understanding of all media forms among the children and their families. They are also sought to promote regional and international cooperation through the sharing of research, expertise

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# China and Human Rights

An international conference on the human rights situation in China started off with a thought-provoking presentation on contextualizing the China question within the region's realpolitik - where the threat to peace comes not from China but the United States. This assertion led to a vigorous exchange of opinions. Dis-agreement on the view about China's non-expansionist behavior surfaced strongly.

The China question is really a controversial issue. It presents the problem of addressing human rights violations that undoubtedly take place in the country despite (or because of) fast-paced economic development.

Presentations on political dissent, workers' rights, migrant peasant laborers, and Tibet highlight the continuing violations of human rights in China. The presentations on universality of human rights and cultural relativism brought forth issues that the Chinese government use to deflect criticisms of its human rights record.

The presentations on NGO strategies and human rights groups in and outside China point to the need to consider carefully the changing situation in China and the region to which it is very much linked by the prevailing free market system. Calls for interlink between groups working on human rights with those on economic, social, environmental and other issues is deemed appropriate in addressing the complex problems in China. Discussions on the seeming promise of change being brought by globalization or free market economics in China, and the need to maintain credibility and integrity of the campaign on China (avoiding the impression of acting as stooges of Western powers such as the United States, or being racist) came up. There is a repeated statement on the reality that change will not happen overnight in China. Thus groups must adopt long-term programs with clear agenda for change.

The conference issued a statement which, among other matters, take China to task by saying that:

"[A]s a member of the UN Security Council and as a member of the UN Human Rights Commission, China has a special duty to uphold the collective will of the international community. As China opens itself to the world and seeks a greater role in global affairs, it must accept the responsibilities and obligations that come with such engagement. It must take steps to create conditions in which all persons can enjoy the exercise of their fundamental rights and ratify international human rights instruments and cooperate with UN human rights mechanisms as well as to bring its domestic laws into conformity with such instruments. China must also open itself to scrutiny by regional and international human rights organizations."

The small group discussions resulted in agreement to set up national support groups which will receive and disseminate information about the human rights situation in China, and to bring up the China issue in different regional and international fora whether they have human rights as the major agenda or not. Equally stressed is the idea of building people-to-people contact between groups in China and groups in other countries in order to have a channel for extending support.

The conference, jointly organized by Amnesty International and Asian Forum on Human Rights and Development (Forum Asia), was attended by representatives of human rights organizations in Asia as well as sections and groups of AI in the region. The conference was held in Manila on August 30 to September 1, 1996. For further information, contact: Amnesty International Pilipinas Section, 114 Scout Limbaga Street, Kamuning, Quezon city, Philippines, tel. (632) 9266-280, tel/fax (632) 411-5450; e-mail: aimnl@phil.gn.apc.org

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## A New Political Priority...

Therefore, regardless of the outcome of the political reform process and the current struggles for power, Thailand's political leaders should recognize the urgent need to establish an independent and effective national human rights commission.

## Why is a National Human Rights Commission Needed in Thailand?

The establishment of a national human rights commission should be a priority in Thailand for a number of reasons. Existing institutions, including parliament and the courts, have proved ineffective in stemming the tide of human rights abuses throughout the country. While the media and non-governmental organizations (NGOs) have an important role to play, they do not have the power or resources to ensure the full promotion and protection of human rights. Moreover, the promotion and protection of human rights is ultimately the responsibility of national governments. In this way, the establishment of a commission can be seen as an indication of the government's sincerity and commitment to uphold human rights. This is particularly true in light of the government's stated intention to ratify the International Convention on Civil and Political Rights (ICCPR). Without an institution focusing exclusively on human rights, who will ensure that the rhetoric of the ICCPR is translated into reality in Thailand?

While the constitutional rule was restored and elections to parliament have taken place twice since 1992, experience has shown that the existence of a functioning parliament is not enough to guarantee that human rights will be respected. Civilian governments are as capable of committing abuses or allowing them to happen as their military counterparts. A commission, thus, fill an invaluable role by acting as monitor of the government's human rights performance, promoting greater human rights awareness and helping to hold governments accountable for abuses that take place.

In Thailand, a commission is also needed because the justice system has had difficulty in dealing effectively with human rights cases. For a variety of reasons, those responsible for violating human rights are rarely prosecuted successfully. The responsibility for investigating such cases lies with the police. Problems and conflicts of interest naturally arise, therefore, when it is members of the police who are being accused of human rights abuses. In cases involving influential business or political interests, an impartial investigation is extremely difficult. Furthermore, there are insufficient safeguards built into the system to guarantee that the subsequent prosecution and trial of human rights cases are free from political influence. The commission model, on the other hand, allows for sufficient safeguards to ensure the commission's independence and allow for the impartial investigation and resolution of human rights complaints regardless of whom is allegedly responsible.

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## About APEC

A message from the workers

# **We have served you well. We can serve you even better. But first...**

As host to APEC 1996, the Philippine Government has given a substantial tax incentive package to all hotels that will house all our foreign guests. The incentive, which includes duty-free importations, was offered to encourage hotels to upgrade or renovate their facilities.

The Dusit Nikko Manila (formerly, Hotel Nikko Manila Garden) benefits from this tax incentive program. The new owners saw in this an opportunity to cut costs while giving the old Nikko Hotel a new face. The hotel is presently undergoing a six-month renovation that will end in time for APEC's highlight activities in November.

A newly-refurbished Dusit Nikko Hotel, with world-class facilities is a commendable project. Indeed, it is a project that we, the employees of the Dusit Nikko Hotel, who have served our guests for two decades, would want to be a part of -- as partners.

For, no matter how exotic the cuisine, no matter how expensive the wares, no matter how exquisite the new design will be, a hotel will just be another stone-cold building to any guest without the warm, cordial, friendly, efficient service of its employees. Us. Because, more than anything else, making guests feel "at home" is a people-to-people thing. It's not just business, it's an art.

Yet, the Dusit Nikko's management doesn't seem to understand this.

For one, it seems that they don't treat us, their employees, as people. During the renovation, the hotel management has insisted not only on a "no-work, no-pay" policy, but more precisely, a "no-work, no-pay, no-benefit, no-assistance, if-you-don't-like-it-then-drop-dead" policy against us.

For months, 502 Nikko employees have been out of work. Many among us have been evicted from our homes for failure to pay the rent. Our children are forced to transfer to cheaper schools. We are forced to eke out a living by whatever means possible in these tough times. As if these are not enough, a handful of us are now confined in hospitals due to illnesses. Without any assistance from our employer, how can we survive?

We have tried to dialogue with them, reason with them, but they seem unmoved by our plight. A few days ago, they decided that they've heard enough. They shut the door on our face. Just like that.

So we come to you.

To the Philippine Government: Must you treat foreign investors like kings while your citizens are treated like

raggs? A tax incentive without guaranteeing workers' protection? Is this what the APEC is all about?

To Dusit Nikko's Stockholders: Must profit be made at the expense of the lives of workers and their families? Aren't you also morally responsible for this?

To Our Beloved Guests, and Guests-To-Be: We smile and give comfort as we suffer. Knowing this, we hope you will continue to enjoy the service.

### **On another issue...**

Philippine media has been highlighting the plans of the Philippine government to demolish houses in a number of slum areas in Metro Manila in preparation for the APEC activities. Seen as "eyesores", a number of the slum areas have already been cleared without proper support services (food, medicine, and others) to the residents much less an appropriate relocation site. Families are literally thrown out in the street without a place to stay.

### **In New Zealand...**

Two unidentified men broke into the home of a member of an anti-free trade group, GATT Watchdog, in July. New Zealand newspapers reported that the homeowner (Aziz Choudry) and another anti-free trade activist (David Small) suspect the involvement of Security Intelligence Service (a government agency) in the break-in. The following week, police searched the homes of Choudry and Small after a suspicious device bearing anti-APEC slogans was found in the city hall in Christchurch. Both deny any involvement. The security checks were done before the APEC Trade Ministers conference in Christchurch.

The Philippine government also raised security alarm about the possible entry of "terrorists" into the country to disrupt the APEC meetings in November. This stance of the government may have implications on the NGO activities during the APEC meetings.

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### **Asian Summit...**

and exchange of materials and programs, and networking among governments, NGOs, media organizations, educational institutions, advocacy groups and other agencies.

The conference was attended by Ministers of Information, Education, Welfare and Social Development from 27 countries in Asia, senior officials representing the various governments, executives, researchers, practitioners and professionals from various streams of media, NGOs, advocacy groups and concerned individuals. The conference was held in July this year.



# Globalization and Migrant Workers

An international workshop entitled "Migrant Workers Challenging Global Structures" was held in Seoul in late August this year.

In a conference statement, the participants recognize the existence of an estimated 15 million migrant workers (documented and undocumented) in Asia alone and the increasing percentage of women among them. The participants likewise say that migrant workers suffer from economic, political, socio-cultural and religious marginalization.

On globalization, the participants express concern that

*"... globalisation is leading to profit-driven economies that thrive on cheap and docile labor, especially of women, and societies that stress consumerism and competition. In turn, these have resulted in the erosion of human values, commodification of people (especially migrant workers), disintegration of societies, families and communities, racism, xenophobia, unsustainable lifestyles, and the degradation of the environment."*

*"Demand for cheap labour has led to subcontracting mechanisms, adoption of "trainee" schemes and increasing feminisation of migrant labour. This translates into absence of accountability of companies especially transnational corporations (TNCs), unjust wage structures, absence of economic and social security, and violence against women and migrants. The migrant workers, uprooted from their families and communities, have to work under hostile and exploitative situations, and are generally denied their right to organise and unionise."*

*"We recognise the fact that migrant workers boost and contribute to the economic growth of receiving countries and through their remittances, help prevent the collapse of some debt-ridden countries."*

The participants reaffirm the position that migrant workers, whether documented or undocumented, have rights as workers and as human beings as embodied in the Universal Declaration of Human Rights, the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and other international conventions.

The participants resolved to campaign against globalization and APEC; strengthen lobby for ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; continue and strengthen the migrant action alert mechanism to expose blatant violations of migrants' human rights; encourage trade unions and labor movements in each country to develop migrant workers' concerns, and for them to link up with each other; pressure governments to provide decent employment to the people, and encourage and monitor its efforts to undertake reintegration initiatives; and to organize migrants' savings/investment groups and alternative livelihood.

The workshop was attended by over a hundred representatives of migrant workers organizations, support groups, trade unions, women's groups, human rights organizations and religious bodies from 16 countries in Asia, America and Europe.

For further information contact: Asian Migrant Centre Ltd., 4, Jordan Road, Kowloon, Hong Kong, tel. (852) 2312-0031, fax (852) 2367-7355.

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## A New Political Priority...

Even in countries where there are fewer concerns about the impartiality of the administration of justice, governments are discovering that the courts are a cumbersome and expensive process. In fact, the bureaucratic nature and high costs associated with courts in general often mean that they are inaccessible to a large proportion of the population. A commission, on the other hand, offers an alternative form of resolving human rights disputes. The procedures of commissions are usually much less formal than those of courts, making them less intimidating to the complainants and allowing for a much cheaper and speedier resolution of human rights complaints. Most commissions are also endowed with the power to conciliate complaints which allows them to find equitable solutions, thereby avoiding the cost and lengthy delays associated with the courts.

In the Thai context, it is perhaps in this last role, as an alternative dispute resolution mechanism, that a national human rights commission could make its most valuable contribution. A large number of human rights violations these days involve disputes between communities and government related to development and competition over local resources. These cases involve many complicated legal issues and human rights principles which are often beyond the capacity of the existing institutions to solve. The current government's failure to adequately address the various problems presented in a workshop called Forum of the Poor recently-held in Thailand underscores this point. Efforts to find solutions have gotten lost in the political process where the influence of the rich greatly outweighs the rights of the country's poorer citizens. In contrast, a commission with the power to conciliate conflicts would be able to investigate complaints and arrive at an equitable solution free from outside influence and based on relevant human rights standards.

While there is no doubt that a national human rights commission has tremendous potential, it can only match this potential if it is invested with a broad mandate, independence and sufficient powers to carry out its functions. Without such a mechanism to resolve human rights complaints in Thailand, the frustration of the victims will only increase, creating the potential for more serious abuses of human rights and leading possibly to greater political instability. In contrast, a national human rights commission capable of effectively addressing some of the serious human rights conflicts within Thai society in an impartial and equitable manner would be in a position to enhance social justice and reinforce political stability. Given this potential, Thailand's political leaders should join with the people to make the creation of a national human rights commission a national priority.

# Breaking the Barrier:

## Japanese NGOs Take Up the Challenge

*(This is the first in a series of articles on Japanese non-governmental organizations that have programs related to human rights. The series is meant to introduce the programs and activities of these organizations as they take up domestic and international issues. The series may likewise bring out problems faced by them in their operations. - Editor's note.)*

In this article, Japanese NGOs focusing on problems faced by foreigners in the Kansai region of Japan are featured. These NGOs have a significant exposure to the long-standing issues of the foreigners.

Foreign workers in Japan, specifically those without proper visas or work permits have been marginalized in a relatively affluent society. They have been deprived of social benefits such as medical services; denied residency permit; remained invisible workforce in economically significant industries; and suffered from the social stigma of being a different people and thus given different (discriminatory) treatment. The gap between those who have the full benefits of an industrialized country and those who remain in the fringes has become too anomalous to be ignored. Breaking the barrier that separates the "illegal" foreigners from the mainstream has become an obsession for most of the Japanese NGOs. This is none other than their call for justice.

The Kansai-based NGOs recognized the need to take action after realizing the suffering of foreigners in their own areas. Their programs generally fall under three main categories: counselling services; case handling; and policy/law reform advocacy. Most groups maintain a multi-lingual telephone hotline that can respond to queries about problems that range from ordinary transactions between foreigners and the Japanese (e.g., getting an apartment), to marriage requirements, labor problems, and immigration issues. They accept calls in English, Tagalog, Thai, Chinese, Korean, French, Spanish, Portuguese and Arabic languages. Immigration, labor and civil/criminal action cases are handled in a limited extent. And with the growing realization that problems have to be tackled by addressing their structural causes, reform in the policies and procedures (and later on laws) of relevant agencies of the Japanese government is getting increasing attention.

These NGOs are generally operating with the help of members and supporters who volunteer time and effort in implementing programs. Running with very minimal financial resources, they nevertheless provide significant help to many foreigners in the Kansai region.

Way back in 1982, calls for help from Filipino women who have fallen victim to the prostitution industry prompted the Catholic Diocese in Osaka to establish Bahay ni Maria (House of Mary). A 24-hour telephone counselling service was set up. Assistance in getting travel documents from the Philippine consulate and processing of documents in the immigration office was also provided. Since then, Bahay ni Maria has helped hundreds of Filipina women in returning back to the Philippines. When marriage between Filipino women and Japanese men rose in number, the counselling service begun to cover problems about marital relationships, education of children, labor, medical needs, among others. It is now planning to establish a shelter for women. As a counterpart measure, Bahay ni Maria has a livelihood program in the Philippines to assist Filipino women who returned from Japan have economic support (and hopefully deter them from returning to Japan to work). The workers of Bahay ni Maria (mainly religious nuns) have been conscious of the dangers posed by their work since most of the prostitution houses are under the control of organized criminals, the Yakuza. They have fortunately been spared of any serious retaliation against their work.

Asian Friends or the Foreign Migrant Worker Support Organization is an association of unionists, church workers, students, professionals and other individuals. It was formed as a response to the growing number of human rights violations of documented and undocumented migrant workers. It was started in 1988 by the so-called daily workers - people hired on a daily basis mainly by construction companies. It has its base in the daily workers area in Osaka city called Kamagasaki where about 25,000 Japanese daily workers and a few thousand foreign workers wait every morning for jobs.

Asian Friends aims to raise the level of public awareness on the plight of foreign migrant workers in Japan. It provides service to foreign migrant workers through telephone counselling, and emergency evacuation and lodging facilities. It is also setting-up an emergency financial assistance system.

Most of the migrant workers seeking its help come from the Philippines and Thailand. Many migrant workers from Taiwan, Korea and Peru were previously served until they put up their respective organizations.

Its operation is mainly run by volunteers. Telephone counselling service therefore is mainly done in the evening.

Since Asian Friends deal with foreign daily workers, they generally service male migrant workers. Other groups take up the problems of foreign women migrant workers.

The Asian People Together (APT) is a project of Kyoto YWCA. Formed in 1987, it is a voluntary organization that extends help to people from other Asian countries residing in the Kyoto area. Many of the people who seek their help are foreign migrant workers.

It provides assistance by finding interpreters for those with problems communicating in Japanese language in their transactions with Japanese people, referring trustworthy lawyers for their legal problems, and referring doctors who can understand their situation. It covers issues relating to labor, family and civil transactions. It also maintains

telephone counselling service.

Lately, it started an advocacy program that aims to change the policies and programs of government agencies dealing with the foreign residents. It is initially concentrating on the immigration office's policies, rules and procedures. It wants the immigration office to treat foreign residents with decency such as providing adequate and humane detention facilities and services, and improved policies in dealing with foreigners such as foreign women who have been victimized by Japan's sex industry, or who have children born of Japanese fathers. Above all, it wants the issue affecting foreigners to be seen in a bigger perspective. Women entertainers, for example, who have been arrested for working without permission should be seen as victims rather than offenders. The violators of the law, the sex industry syndicates, should therefore be dealt with properly rather than disregarded.

It has also begun a program of linking with professional groups such as medical, social work and bar associations which can provide assistance to foreign residents in Kyoto area. As part of its case handling work, it has international linking activities that seek the support of NGOs in the countries where the foreigners seeking help come from.

General Union was started five years ago by a small group of Japanese and foreigners living in Kansai. It aims to protect the rights of workers, whether Japanese or foreigners, against employers who violate labor laws. It does not limit itself to a particular industry, profession or type of work - any full or part-time workers are qualified to join it.

The membership of General Union, so far, is mainly composed of foreign workers. They are also mainly English language teachers in private and public schools. In response to the present situation of its membership, General Union has been supporting the English language teachers in fighting against unreasonable requirements on workload, non-payment of overtime work, non-crediting of unused holidays, low salary, failure to provide salary increase, non-renewal of employment contracts, among others.

Counselling is provided by General Union through its telephone hotline service or personal interview. It has been maintaining its telephone counselling service for three years now.

Case handling is also done by the union. It helps negotiate with the employers, represents cases before the government labor office, engages in concerted actions such as strikes to pressure the employers to negotiate and agree to the demands of the workers based on law.

Its over-all aim is to promote unionism as the best way of protecting the rights of workers. It is actively recruiting members and helping set up branch unions in different schools in the Osaka area.

Due to its present membership, it is the only organization that handle the problems of the so-called native English speakers who work as English teachers in Osaka area. It documents the various forms of violations of labor standards and laws which affect many of them. It is said that though they are not in the same situation as the Asian, Latin American and Middle Eastern workers, they still suffer from discrimination. They are treated as contract workers who do not have the full benefits of regular workers. Discriminatory terms of employment such as the three-year tenure for those working in public schools are imposed on them. This only shows that workers who come from Western countries are also victims of discrimination contrary to popular perception.

The Rights of Immigrants Network in Kansai or RINK is a network organization in the Kansai region of groups and individuals concerned with foreigners. It was formed in 1991 with the above groups as either members or supporters. RINK aims to make the government, and society in general, recognize that foreigners do have rights equal to those of the Japanese people. It therefore acts to fight discrimination against foreigners. It has made a clear stand of protecting the rights of foreigners regardless of the legality of their stay in the country.

RINK has the following programs:

- a. advocacy for foreigners' legal rights;
- b. counselling and information dissemination;
- c. litigation; and
- d. public information.

RINK concentrates on family, labor, immigration and other legal problems affecting foreigners. It has lawyer-members who provide assistance for free. It has telephone counselling service which entertains calls from foreigners in several languages. In its public information program, print (newspaper) and broadcast (radio and television) media have been used to announce activities such as its annual three-day free legal service.

It has been concentrating on the immigration policies which create two kinds of foreigners - the skilled mainly from Western countries including New Zealand and Australia and the unskilled mainly from Asian and Latin American countries. RINK sees this dual classification of foreigners as creating a discriminatory image against the "unskilled" foreigners among the Japanese public.

## Conclusion

Human rights norms tell us that foreign migrant workers have the same rights as workers of the receiving country. The situation in Japan unfortunately indicates the contrary. These NGOs aim to break that gap and make human rights norms a reality.

The different experiences of Kansai NGOs in helping foreign workers do point to a common direction - the need to change the basic notion of foreign workers among the Japanese public and their government. These NGOs believe that such change will help promote a more humane Japanese society.

## HURIGHTS OSAKA ACTIVITIES

In connection with the research on social development and human rights, HURIGHTS OSAKA held in September a study group meeting on the topic "Governance and Good Government" and "A Guideline on Human Rights - the Theory on Human Rights in the Asia-Pacific Region". Another meeting about the HABITAT II and about human rights and development in the Asia-Pacific region was also held. At these meetings, lawyers, professors, leaders of human rights

NGOs and others participated. A series of seminars for citizens have been held since June as part of the domestic human rights education program of HURIGHTS OSAKA. Presentations focused on human rights education in Europe, global education, the school system in Japan from the perspective of human rights, internationalization program in Japan and human rights, and human rights education for empowerment at the grass-roots level in Asia.



**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.



**HURIGHTS OSAKA**

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