



*Editorial*

## *Approaches to Creating NHRIs*

Asia-Pacific is awaiting the birth of three more national human rights institutions. Thailand and Malaysia recently enacted their respective laws for the establishment of national human rights institutions, while Nepal has an existing law that remains unimplemented since 1997. South Korea and Bangladesh, on the other hand, are still preparing the legislative proposals for their respective institutions.

The Thai government is duty-bound to have a national human rights institution because the 1997 Thai Constitution provides for the creation of such institution within two years from its promulgation - that is in 1999. The Thai Parliament enacted the law creating its institution toward the end of October 1999.

The Bangladeshi government, on the other hand, has made the commitment to establish a national human rights institution some years ago. The process of drafting a bill for this purpose started way back in 1996. The draft bill will hopefully become a law next year.

The Thai and Bangladeshi experiences show two approaches in establishing a national human rights institution. Each approach provides a set of advantages worth considering.

What should be noted in both cases is the envisaged participation of the general public in the drafting of the respective bills. Whether it is the public hearings in Thailand or the Participatory Rural Appraisal process in Bangladesh, it serves the same purpose of giving the public the chance to provide inputs in the creation of systems for the protection and promotion of human rights.

At the end of the day, the general public or the affected groups in society (human rights violations victims, disadvantaged people) will have to continuously press the government to establish institutions that have the independence, power, resources and the right people to protect and promote human rights. This task should continue, and even increase in scale, when the institutions have been established.

FOCUS Asia-Pacific is designed by HURIGHTS OSAKA as a means of highlighting significant issues and activities relating to human rights in the Asia-Pacific. Relevant information and articles can be sent to HURIGHTS OSAKA for inclusion in the next editions of the newsletter.

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

# An Act without Action: A Nepalese Experience

*Mukunda Kattel*

Shortly after the first general elections in 1992, the issue of national human rights institution came to a public debate. The Forum for the Protection of Human Rights (FOPHUR), a human rights NGO, organized a workshop on "Human Rights in SAARC Countries" on January 20-21, 1993. In the *Janakpur Declaration* adopted by the workshop, a concern regarding the setting up of an all-party national institution was raised. After a month, the Informal Sector Service Centre (INSEC) published the *Human Rights Year Book 1992*, a first-ever comprehensive report on human rights situation in the country. Documenting all major events of human rights violations that occurred everyday round the year, the publication spelled out an urgent need for a "high level commission on human rights" to investigate cases of violations. In the subsequent years, up till this point, the demand for the establishment of a national institution has been one of the prime concerns of the non-government movement.

The voice slowly permeated into the political arena. The Communist Party of Nepal (United Marxist and Leninist), to its credit, tabled a motion through one of its MPs in the National Assembly in early 1993 on the establishment of the national institution. The motion was placed for discussion, the opposition stood for its favour, but the ruling party objected to it. The then Home Minister gave the reason for such a turn: "The ruling party and I myself are more concerned than the opposition to protect and promote human rights. Only the formation of a high level commission is, however, not a solution to problems emerging. After consulting with other countries and practices [sic], an independent human rights commission can be set up under the Home Ministry, if needed." Taking part in the discussion, a ruling party MP in the National Assembly gave yet another reason: "Human rights commissions formed in the government level in Asia have just covered up wrongs committed by the government. I do not believe in anything pledged by the government and established at the government level."

Thus, a funny stand of a democratically elected government suspending a democratic proposal forwarded by the opposition came about. Put to vote, the motion was defeated by 27 as against 16 at a National Assembly meeting held on March 5, 1993. UML however kept up its concern, in its election manifesto for 1994 mid term polls, it pledged that it would "set up a commission on human rights to make a regular assessment of human rights situation in the country..." Even in its policy statement, prepared as a minority government, the issue was mentioned as a priority. Hung as the parliament was, the UML government was brought down shortly, with the Nepali Congress-led coalition replacing it. The fate of the national institution still stood undecided thanks to the composition of the parliament.

Non-governmental organizations, suspicious of the move the coalition would take, mounted pressure to highlight the need for a national institution. They even threatened to observe as a 'black day' the date that rejected the proposal to set up the national institution. The Nepali Congress could not turn a deaf ear to all that were happening, it was forced

to review its stand. In June 1995, in what seemed to be a dramatic move, a Nepali Congress MP in the National Assembly tabled a private bill, which became the Human Rights Commission Act 1996, providing for the establishment of a national institution.

## The Act

The law has 24 articles divided into 4 parts. As stated in the preamble, the national institution is a response to a need for an autonomous and independent body responsible for effective execution, protection and promotion of human rights as stipulated by the Constitution and other prevailing laws of the land. Articles 3 and 4 of the law provide for the establishment and formation of the commission. Article 9 details out its duties and responsibilities, article 10 limits its jurisdiction, article 11 vests investigative authorities, article 13 provides for methods of operation, and article 14 obliges the commission to submit its annual report.

## Features of the Act

### Human Rights Commission Act 1996

#### Structure:

- Members are to be taken from -
- among retired chief justices or Supreme Court Judges of Nepal
  - among persons with outstanding merits in the field of law, human rights, journalism, communication and social services (as far as possible representing all sectors)
  - among former special class civil servants or retired officials from the constitutional body

#### Appointment:

His Majesty the King appoints as per the recommendation made by a committee that comprises of Prime Minister, Chief Justice and leader of the main opposition party in parliament.

#### Duty and Responsibility:

The commission is vested with competence to protect and promote human rights. It is mandated to: investigate into complaints, monitor and report on human rights situation, inspect prison conditions and other institutions under His Majesty's Government (HMG) with a view to assessing their compliance with human rights standards, submit to the government opinions or recommendations, promote research on human rights, disseminate information on human rights, laws/mechanisms protecting human rights through interactions, seminars, media and publications, contribute to the reports the State is to submit to UN and other bodies. The commission is also mandated to encourage efforts of non-governmental organizations involved in promoting human rights.

#### Limitation:

The commission cannot stretch out to subjects under military jurisdiction; it is restricted from touching areas which are notified by the Attorney General as being dealt with under prevailing criminal laws and procedures, and subject proved by the Principal Secretary of HMG to possibly adversely affect relations or treaties entered into between HMG Nepal

and foreign governments or other international institutions, and the security of the kingdom.

#### **Power to Investigate:**

It has power to investigate complaints at par with the power the courts enjoy. In doing so, the commission can summon a person to seek witness or personal testimony before the court, order to submit written documents, ask government/public offices or courts to furnish copies of relevant documents, conduct fact-finding missions and public hearings if so required. It can also establish committees or subcommittees and seek the assistance of experts to discharge its function.

#### **Methods of Operation:**

The commission shall recommend in writing to the concerned authority measures/actions to be taken against the culprit. It can also demand compensation for the victim. The concerned authority/official is required to inform the commission within three months of any action taken as per the recommendation. If no action could be taken, the reason should be explained.

#### **Submission of Report:**

The commission shall submit an annual report to His Majesty the King, who will then arrange place it before parliament. The commission shall also publish similar report annually for public information. However, it can at anytime publicize reports if it is deemed necessary.

#### **Office, Officials and Funds:**

The commission shall have its central office in Kathmandu, can establish branches in other parts of the country, and can appoint officials as per the specified rules. Grants and aids shall be its sources of funds.

### **The Act and the Paris Principles**

Viewed in light of the Paris Principles on national human rights institutions, the law generally coheres with what is stipulated as competence and responsibilities of such an institution. The Commission can accept complaints from any sources, it can itself initiate investigation into complaints if it is felt necessary. Even an individual victim can file a case or depute someone to do so. The Commission has an investigative power at par with that of the courts, and it has its own office and officials to discharge the duty.

However, the Attorney General and the Principal Secretary of His Majesty's Government can limit the scope of the law. Unlike what is mentioned in the Paris Principles, the law does not provide the Commission with any power to mediate or arbitrate; the role is reduced to recommendations and proposals. In other words, the Commission has a slim chance to intervene into cases of violation that may occur at the hand of the state. There is therefore a danger that the body might be subservient to the government rather than be an independent and effective national institution. Thus, military jurisdiction is not the only impediment to its function.

Despite all above, the law, by and large, is progressive as it has enough scope and power to mobilize awareness activities, undertake investigation into the cases of violation and submit reports on the findings with due recommendation. The Commission can bring any culprit to book, if not to justice. This definitely creates moral pressure on the government and other concerned institutions to respond accordingly.

### **Back to the Street**

Over three years since the enactment of the law, the national institution has not come into being. This delay

compelled the NGOs to take to the street again, with more vigorous forms of protests to pressure political parties, legal institutions and law enforcement agencies to set up the national institution that can help redress the increasing cases of human rights violations.

In 1998 beginning on August 18, NGOs launched a month-long consecutive protest. INSEC and ten other organizations jointly took to the street demanding an immediate set up of the national institution. Referring to the increasing cases of killings and social disorder surrounding the Communist Party of Nepal (Maoist) sponsored "People's War" and the government action aimed at checking the former, the NGOs organized sit-ins and other programs in Kathmandu and some other regional centers demanding a stop to the killings. Their argument was that the national institution should be set up to address this deteriorating human rights situation.

The government responded to this with mere silence. To challenge this reluctance; two lawyers filed a case in the Supreme Court on December 11, 1998. On its verdict, dated July 13, 1999, the Supreme Court ordered that an immediate step be initiated to set up the national institution as per the law, and demand by the claimants. With this verdict in their hands, the NGOs again heightened their movement in July and August of the current year. As part of a series of protests, some 80 human rights activists dressed in black gowns went around the major thoroughfares of the city on September 3 playing loud musical instruments "to rouse the government from slumber," as they said. On September 8, they staged a 24-hour hunger strike in front of Prime Minister's Office displaying placards reading "respect law, respect court order, form human rights commission." And in response to this, the Prime Minister has said, as usual, "human rights commission will be set up soon."

In yet another attempt to coax the government, Human Rights and Peace Society has lately, through a circular dated November 26, 1999, informed that it is to launch a fast-on-to-death beginning December 9, 1999 if no concrete action was initiated by December 7, 1999. However, given the history, it is still premature to speculate that the call would be responded with due honor.

### **Lessons Learned**

Thanks to untiring efforts particularly of human rights activists and organizations, an agreement has been built amidst all, including politicians, that a national human rights institution is a need of the day. However, the authoritarian character prevailing in the law enforcement machinery like the police and other security personnel is arguably deferring the implementation of the law. They fear that the national institution would intervene into their function in cases of violation of rights. Worst of all, politicians in power have not dared to pay a price for committing to democratic norms and principles. For most of them, democracy and human rights are merely slogans to chant in election campaigns.

Our politicians, who claim to be democratic, should learn to be humane, keep their principles and promises. They should be reminded that as an act without action is moribund, so is a politician without principles.

---

Mukunda Kattel is the Coordinator of International Relations in INSEC.  
E-mail addresses: insec@unlimit.com; insec@mos.com.np

# The National Human Rights Commission Act in Thailand

*Ken Bhattacharjee*

## **I. Background:**

The impetus to create an independent national human rights institution in Thailand came in May 1992, when the military cracked down on massive pro-democracy demonstrations in the capital, Bangkok, resulting in at least fifty-two deaths, thirty-eight disappearances, and hundreds of injuries.

In September 1992, following lobbying by non-governmental organizations (NGOs), the Cabinet of Prime Minister Anand Panyarachun passed a resolution, which committed the government to set up a national mechanism for protecting and promoting human rights.

In 1995, the Public Prosecutor's Office circulated a draft law proposing a government-controlled human rights commission, with two-thirds of the commissioners being elected politicians and senior government officials, including the Prime Minister as the Chairperson. The draft law fell far short of international standards and it was never submitted to the Cabinet and Parliament.

After two years of uncertainty, and more lobbying by NGOs, the establishment of a national institution was finally mandated in Articles 199 and 200 of the new Constitution which was adopted by the government in October 1997. Articles 199 and 200, which come under the National Assembly<sup>[1]</sup> section of the Constitution (Chapter 6), are reproduced below:

### Article 199:

The National Human Rights Commission shall consist of a Chairperson and ten other members, who are appointed by the King with the advice of the Senate from persons having knowledge and experience in the field of human rights protection, taking into consideration the inclusion of representatives of non-governmental human rights organizations.

The Speaker of the Senate shall countersign the royal appointment of the Chairperson and other members of the National Human Rights Commission

The qualifications, prohibitions, selection, election, removal, and determination of the remuneration of the members of the National Human Rights Commission shall be as provided by law.

The members of the National Human Rights Commission shall hold office for a term of six years as from the date of their appointment by the King and shall serve for only one term.

### Article 200:

The National Human Rights Commission shall have the following powers and duties:

1. to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for action. In a case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceeding;

2. to propose to the National Assembly and the Council of Ministers policies and recommendations with regard to the revision of laws, rules or regulations for the purpose of promoting and protecting human rights;
3. to promote education, research and the dissemination of knowledge on human rights;
4. to promote cooperation and coordination among government agencies, non-governmental organizations and other organizations in the field of human rights;
5. to prepare an annual report which assesses the human rights situation in the country and submit it to the National Assembly;
6. other powers and duties as provided by law.

In the performance of duties, the National Human Rights Commission shall also taken into consideration the interests of the country and the public.

The National Human Rights Commission has the power to demand relevant documents or evidence from any person and to summon any person to give statements of fact, and other powers for the purpose of performing its duties as provided by law.

Other relevant sections of the Constitution are Article 75 which states that the government shall allocate an "adequate budget" for the "independent administration" of the National Human Rights Commission, and Article 334 which states that the organic law establishing the Commission must be enacted by October 1999. Article 75 suggests that the commission should have some form of "independent" status.

The fact that the national institution is constitutionally-mandated, rather than simply the product of a statute, or even worse, an executive decree, means that once it is established, it will be very difficult for the government to abolish it or weaken its mandate significantly. Any such action would require a constitutional amendment, which would generate strong opposition from many sectors of society. Certain anti-reform elements in the government appeared to be aware of this and pushed — unsuccessfully — for an organic law that would establish a weak, government-controlled national institution.

In April 1998, a government committee established under the Office of the Attorney-General began drafting the enabling legislation. The draft bill was completed in September and approved by the Cabinet in mid-October 1998. Civil society groups supported the bill, which would have established a strong, independent national institution. It was then submitted to the Council of State (the Cabinet's legal advisory body), who has the power to revise legislation in order to ensure that it is legally sound.

In November, following lobbying by human rights organizations, the Prime Minister, Chuan Leekpai, set up a public hearings committee with a forty-five day life span. Six public hearings on the draft bill were held around the country in November and December. 1,380 people attended the hearings and 1,730 completed questionnaires were returned to the committee. The committee's report, which reiterated the call for a strong, independent national institution, was then submitted to the Cabinet, who sent it to the Council of State to be incorporated into the bill.

In mid-February 1999, the Cabinet approved the bill for the

[1] *The National Assembly consists of the House of Representatives and the Senate.*

second time. However, when the bill was disseminated, civil society groups were shocked to discover that, instead of revising the bill and incorporating the public hearings report, the Council of State had submitted a completely new bill, which provided for a weak, government-controlled national institution. Most observers identified the move as a thinly veiled backlash by certain anti-reform-minded politicians and bureaucrats against the new Constitution.

Between February and October, as the bill proceeded to the House of Representatives and then the Senate, many provisions from the original bill were restored, but the coalition government took a fairly hard-line position that the Constitution does not mandate the establishment of an "independent" national institution. Many politicians and bureaucrats wanted to place the Office of the Commission under the Office of the Prime Minister, while groups in civil society lobbied for the Office to be separate from the state but accountable to the National Assembly. After much negotiation and lobbying, a political compromise was reached (see below), and the Act that came into effect on November 26, 1999 was reluctantly supported by both the government and civil society groups.

## **II. The National Human Rights Commission Act:**

### **1. Independence**

The *National Human Rights Commission Act* will establish a Commission that is too closely tied to the state, but there are protective safeguards in the law, which should allow it to act with a fair degree of independence.

#### **(a) Legal independence and operational autonomy**

In terms of legal status, the Commission will be too closely linked to the state. Under section 17, the Office of the Commission is defined as a "government agency attached to the National Assembly." As discussed below, the Office may face interference from the state in its hiring of staff.

Fortunately, there are protective safeguards in other parts of the Act, which should prevent the state from interfering with most functions of the Commission. Section 17 states that the Chairperson of the Commission will supervise the Office of the Commission. In addition, section 4 gives the Chairperson charge and control of the execution of the Act and the power to issue regulations and notifications. Finally, section 9 states that the commissioners must perform their duties with "independence and impartiality."

#### **(b) Financial autonomy**

The Commission will have full control over its finances. Section 21 of the Act provides for the allocation of an adequate budget for the "independent administration" of the Commission.

With one exception, the Commission will probably receive its budget allocations without interference from government agencies. Section 21 states that the Office of the Commission shall submit an annual budget, through the Speaker of the National Assembly, to the Cabinet for consideration and inclusion in an appropriations bill. The legal requirement in section 21 that the budget be "adequate" coupled with the openness of the legislative process will limit the ability of government agencies to interfere with the allocation. However, as discussed below, because of certain provisions in the law, the hiring of staff is one area where the Commission may face interference.

#### **(c) Staffing autonomy**

The Office of the Commission may face interference when it recruits staff. Section 19 of the Act states that the Chairperson of the Commission shall recruit staff for the office in accordance with laws and regulations governing the civil service staff of the National Assembly. These laws and regulations require the Commission to consult with the Civil Service Committee of the National Assembly, before it submits a budget to the Cabinet.

The Committee, which is directly responsible for providing funding to remunerate the staff of offices under the National Assembly, has its own interests, which may conflict with the interests of the Commission. For example, in order to have the most qualified staff possible, the Commission will undoubtedly want to hire staff from outside the civil service. However, in order to save money or "protect its own," the Committee may ask the office to accept the transfer of civil servants from other state agencies instead. Under such circumstances, the two sides would probably negotiate a settlement, but it would clearly compromise the Commission's ability to recruit its own staff.

#### **(d) Independence through the appointment process**

The Act, which precisely defines the qualifications of potential commissioners and disqualifies individuals who may be corrupt or have a conflict of interest, should produce well-qualified, independent-minded commissioners. Section 5 states that all the commissioners must have experience in the field of human rights protection. Sections 6 then sets out a list of qualifications and prohibitions, most of which are aimed at preventing individuals who are not independent-minded from being appointed. For example, persons who have been removed from their jobs because of corruption, and politicians and members of political parties are disqualified.

The Act has a highly democratic appointment process. Section 8 states that the Selection Committee shall be composed of twenty-eight members: the Chief Justice of the Supreme Court, the Chief Justice of the Supreme Administrative Court, the Attorney General, the Chairperson of the Law Society, five representatives of tertiary education institutions, ten representatives of non-governmental human rights organizations, five representatives of political parties, three representatives of the media, and the Secretary-General of the Commission.

The Committee must submit a name list of twenty-two persons to the Senate, who will have a secret vote. The King will appoint as commissioners the eleven persons who receive the highest number of votes. The commissioners will then meet among themselves and elect a chairperson. The first set of commissioners will be selected in a slightly modified process set out in section 37 of the Act.

#### **(e) Independence through composition**

The Act is simultaneously positive, silent and negative in ensuring that the commissioners are reasonably representative of society. On the positive side, section 5 states that the selection process for the commissioners must take into consideration the inclusion of both men and women, and representatives of non-governmental human rights organizations. On the silent side, there is no provision for the inclusion of members of ethnic, religious or other minority groups. And on the negative side, the list of qualifications and prohibitions in section 6 contains a number of blatantly discriminatory provisions. For example, the commissioners must have "Thai citizenship *by birth*" and cannot be under thirty-five years of age. (Emphasis added)

The Act is silent on the issue of diversity in the hiring of staff for the Office of the Commission, and, as described above, may be in danger of being stacked with civil servants.

#### **(f) Independence through tenure**

The Act will promote the independence of the Commission through tenure in two ways. First, section 10 states that the commissioners can only hold office for one, six-year term. In Thai society, where nepotism and corruption are endemic in public positions with long-term tenure, the one-term limit is seen as important in ensuring that commissioners will be independent-minded. Second, section 16 requires that the Chairperson and the other ten commissioners all work on a full-time basis. In other words, none of the commissioners will have other jobs that may affect their ability to act effectively and independently.

## 2. Jurisdiction and Powers

The Act clearly and precisely defines the Commission's jurisdiction and grants it adequate powers to carry out its responsibilities effectively, but it is not clear whether its proposed remedies will always be enforced.

### (a) Clearly defined areas of jurisdiction

The Act clearly defines the Commission's areas of jurisdiction. Section 15 lists the Commission's powers and duties in accordance with Article 200 of the Constitution (see above).

### (b) A broad mandate

The Act does not define "human rights" to the widest extent possible, but the definition is adequate, largely because of the liberal nature of the new Constitution and the fact that the Thai government has acceded to several key international human rights instruments.

Section 3 of the Act defines "human rights" as the human dignity, rights, liberty and equality of the people that are guaranteed or protected under the Thai Constitution, Thai laws or treaties which Thailand has an obligation to follow. The Constitution strongly guarantees and protects civil and political rights and to a lesser, but not insignificant, extent, economic, social and cultural rights. In addition, the government has acceded to the *Convention on the Elimination of All Forms of Discrimination against Women*, the *Convention on the Rights of the Child*, the *International Covenant on Civil and Political Rights*, and most recently, the *International Covenant on Economic, Social and Cultural Rights*<sup>[2]</sup>.

### (c) Conflicts over jurisdiction

The Act refers briefly to conflicts over jurisdiction. Section 22 states that the Commission cannot investigate complaints and propose remedies if the case is being litigated in court or a court has given a final order or judgment in the case. Section 25 provides that, where a complaint is not within its jurisdiction, the Commission must inform the petitioner without delay and may refer the matter to another agency.

In addition to the national human rights institution, the new Constitution provides for the establishment of a number of other bodies, including a national counter corruption commission, ombudsmen, an administrative court system, and a constitutional court. Conflicts over jurisdiction are inevitable, particularly in the next few years, and will most likely be worked out in practice and through legal amendments.

### (d) Enforceable powers

The Act gives the Commission clear powers to investigate, mediate, secure cooperation, and propose remedies, but it is not clear whether the remedies will always be enforced.

The Commission's power to investigate human rights violations are set out in sections 22-26 of the Act. Sections 23 and 24 set out the process for receiving a petition, either directly from a complainant or through an NGO. Section 25 states that, if there is a prima facie case, the Commission must notify the person or agency alleged to be the human rights violator and request a response within a specified period of time. Section 26 provides that when the period for response has elapsed, the Commission, or an appointed sub-committee, shall proceed with a formal investigation including factual inquiry and giving the parties an opportunity to present evidence.

The Commission's power to mediate is set out in section 27, which states that, during the investigation, the Commission can mediate between the parties and prepare a written agreement to settle the matter, if both parties agree to the solution and the Commission determines that the agreement is within the scope of human rights protection.

The Commission's powers to ensure cooperation are set out

sections 32-35. Section 32 gives the Commission the power to summon witnesses, compel the production of documents or other evidence, and obtain a warrant from a court to conduct on-site investigations. In addition, sections 34 and 35 mandate imprisonment or a fine or both for any person who refuses to comply with an order to appear as a witness or produce documents or other evidence, or resists or obstructs an on-site investigation.

Unfortunately, although the Commission has the power to propose remedies, it is not clear whether the remedies will always be enforced. Section 28 states that the Commission shall send the proposed remedial measures to the violator of human rights with a specified period for implementation. Section 30 provides that if the violator has not implemented the remedial measure within the specified time period, the Commission shall report to the Prime Minister to order implementation within sixty days. Section 31 provides that, where the remedial measures have not been implemented under Section 30, the Commission shall report the matter to the National Assembly for further proceeding and may disclose the case to the public.

Although remedial measure may be easily enforceable in simple cases involving relatively weak human rights violators, the lack of an explicit mechanism for enforcement or explicit penalties for non-compliance will almost certainly hinder enforcement in difficult cases involving powerful human rights violators.

## 3. Accessibility

The Commission may not be reasonably accessible to all victims of human rights violations, particularly victims from marginalized groups. Although section 23 provides that a complaint may be made orally or in writing and submitted at the Office of the Commission, through registered mail, to a commissioner, through a human rights NGO to be referred to the Office, or by any other methods prescribed by the Commission, there are no provisions in the Act for the establishment of branch offices around the country. The establishment of branch offices is crucial to increase awareness about the Commission, develop a credible reputation for the Commission, and provide accessibility to marginalized groups.

The requirement that the commissioners be of "Thai citizenship by birth" and the absence of positive measures in the selection process for the inclusion of candidates from ethnic, religious or other minority groups, will likely produce a commission with little or no representation from these groups. In addition, the centralization of the Commission in Bangkok and the pressure to hire civil servants will likely produce a staff with a similar lack of representation.

The problems associated with lack of representation should not be underestimated. Many hilltribe peoples, for example, are not Thai citizens by birth and very few live in Bangkok or work in the civil service. As a result, they are unlikely to be represented either in the Commission or in its staff. Although they are victims of some of the most serious human rights abuses in the country, they may be reluctant to approach a commission where they do not see themselves represented. Conversely, the Commission may not understand how to approach or develop proper relations with hilltribe communities.

## 4. Cooperation

The Act empowers the Commission to develop cooperative relationships with other organizations and groups in society. Section 16 states that the Commission has the power and duty to promote cooperation and coordination among government agencies, non-governmental organizations and other organizations in the field of human rights. In addition, section 18 states that the Office of the Commission has the power and duty to cooperate with the same groups. Finally, under section 24, non-govern-

[2] The Thai government acceded to the *International Covenant on Economic, Social and Cultural Rights* on December 5, 1999.

(Continued on page 15)

# A National Human Rights Commission for Bangladesh

*A H Monjurul Kabir*

The Cabinet of the Government of the People's Republic of Bangladesh at last gave the green signal. On April 12, 1999, it approved the draft bill for the establishment of a National Human Rights Commission. It also formed a cabinet subcommittee to review the proposed bill. The subcommittee so far held two meetings to examine some of the provisions of the proposed bill. It is learned that the government is planning to establish a national human rights institution some time next year after the bill has been enacted into law by the House of the Nation.

The idea of a national human rights institution in Bangladesh has been around for several years. In April 1995, the Government of Bangladesh approved a project to assess the need for such a body and make recommendations on its establishment. The project entitled "Action Research Study on the Institutional Development of Human Rights in Bangladesh (IDHRB)" formulated initially was to start in July 1995, but it was reportedly delayed due to prolonged political crisis in the country. It was revived in March 1996 when an agreement was signed between the government and the United Nations Development Programme (UNDP). Under the agreement, the Ministry of Law, Justice and Parliamentary Affairs is to supervise, monitor and evaluate the IDHRB project, which formally began in July 1996. The project is financed by the UNDP. The main objective of the project was to prepare the grounds for the eventual establishment of a viable institutional mechanism to promote and protect human rights as guaranteed under the constitution of Bangladesh.

The IDHRB Project formulated a draft bill (The Bangladesh National Human Rights Commission Act 1999). The draft bill proposes that a National Human Rights Commission will be set up "for Bangladesh for the protection, promotion and creation of the conditions for the enjoyment of human rights and for matters connected therewith or incidental thereto." Referring to the government's commitment to protect and promote human rights, the bill states that an effective mechanism for the protection, promotion and creation of the conditions for the enjoyment of human rights should be evolved to implement the constitutional commitment. The bill specifically mentions the fundamental principles of state policy enshrined in the constitution of Bangladesh.

From the preamble of the bill it appears that:

- (1) The government is aware of the increasing global concern for human rights and the need for its institutional protection; and
- (2) It has come forward to install such institution as part of its constitutional commitment.

However the national institution will not be a constitutional mechanism. Like many other institutions, it will get a statutory footing.

## Reactions from the human rights community

The human rights community at the non-government level has been watching the process carefully since its inception. The IDHRB project has, so far, arranged a num-

ber of public programs to generate awareness and interest on the proposed national institution in different segments of civil society. Unfortunately they have not attained much success due to lack of meaningful and adequate participation by all stakeholders of human rights. The project directly controlled by the Ministry of Law, Justice and Parliamentary Affairs of the Government of Bangladesh, failed to create needed enthusiasm in public domain. Some of the mainstream legal and human rights NGOs expressed their concern, as they were not properly consulted in the process. Political parties also expressed their apprehension of creating another pro-government institution to defend and justify government acts or omission.

## Salient Features of the Proposed NHRC

A brief analysis of the draft bill reveals the following core features:

1. Definition of Human Rights: "Human Rights" includes the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution of the People's Republic of Bangladesh and such rights embodied in the International Human Rights Instruments adopted by the General Assembly of the United Nations which have been acceded to and ratified by the People's Republic of Bangladesh [Sec. 2(d)].
2. Constitution of NHRC: The President in consultation with Committee consisting of the-
  - (a) Prime Minister
  - (b) Speaker of Parliament
  - (c) Chief Justice
  - (d) Leader of the Opposition in the Parliamentshall constitute the National Human Rights Commission. The Commission shall consist of a chairperson and four members. At least one member should be a woman. [Sec 3 (1) (2)].
3. Qualification: The chairperson and the four members shall be appointed from among persons having knowledge of, and practical experience in, matters relating to human rights. [Sec. 3(2) (a)]
4. Term: The term of chairperson or members of the said commission will be five years and shall not be eligible for further reappointment. (Sec. 5)
5. Remuneration and conditions of service: The salaries and allowances of the Members of the Commission shall be determined by the Parliament and shall be charged in the Trust Fund. (Sec. 7)
6. Removal: The chairperson or any other Members of the Commission shall only be removed from his office by order of the President on the ground of proved misbehavior or incapacity after the Supreme Judicial Council, consisting of the Chief Justice of Bangladesh, and two next senior judges of the Supreme Court, on reference being made to it by the President, has on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Judicial Council, reported that the Chairperson or such other Member, ought on any such

ground to be removed. [Sec. 4 (1)]

The President may by order remove from office the chairperson or any other member in case of judgment of insolvency, involvement with gainful employment, infirmity of mind or body unsoundness, or conviction involving moral turpitude [Sec. 4 (2)].

7. Functions: The Commission shall perform all or any of the following functions, namely:

- (a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of -
  - (i) violation of human rights or abatement thereof or
  - (ii) negligence in the prevention of such violation, by a public servant;
- (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c) visit any jail or any other institution under the control of the Government, where persons are detained or lodged for purposes of treatment, reformation, protection or welfare to study the living conditions of the inmates and make recommendations thereon;
- (d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend the adoption of new legislation, the amendment of the existing laws and the adoption or amendment of administrative measures for their effective implementation;
- (e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) examine the draft bills and proposals for new legislation to verify their conformity with international human rights standards and to ensure the compliance with the international human rights instrument;
- (h) encourage ratification of international human rights instruments or accession to those instruments, and ensure their implementation;
- (i) assist in the formation of programs for the teaching of, and research into, human rights and to take part in their execution in educational and professional institutions.
- (j) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- (k) encourage the efforts of non-governmental organizations and institutions working in the field of human rights;
- (l) freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (m) such other functions as it may consider necessary for the promotion of human rights. (Section 10)

8. Independence:

- (a) The Commission and every member of its staff shall function without political or other bias or inter-

ference and shall be independent and separate from any party, government, administration, or any other functionary or body directly or indirectly representing the interests of any such entity.

- (b) To the extent that any of the personnel of the entities referred above may be involved in the activities of the Commission, such personnel will be accountable solely to the Commission (Sec. 16)

9. Annual and Special Reports:

- (a) The Commission shall submit an annual report to the President and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

- (b) The President shall cause the annual and special reports of the Commission to be laid before the Parliament for discussion and consideration. (Sec. 19)

10. Finance:

The Commission will be financed through a Trust Fund, which shall hold all money appropriated by Parliament and all money donated or contributed to the fund from any source. (Sec. 20, 21)

## A Critical Review

The following points need to be clarified or considered before placing the bill in the parliament:

1. Justice VR Krishna Iyer, former judge of the Supreme Court of India, in an exclusive interview with this writer (the interview was published in the 'Law and Our Rights Page' of *The Daily Star* of Bangladesh on June 1, 1997) urged that, "*Bangladesh could do well if it establish its proposed National Human Rights Commission through a constitutional amendment rather than by a statutory act. If the commission has a constitutional mandate, then it becomes more powerful, effective and would be free from any interference by other institutions or organs of the government.*" It seems the Government ignored this idea for reasons best known to them. Is there any scope to examine this idea of having a National Human Rights Commission as a constitutional body? A statutory footing is fine as long as it assures that the Commission can be independent and autonomous. This means having the independence to have its own personnel, especially its own investigators and a budget that does not come through the bureaucracy that make its own decisions or through a ministry that can bully it. Its budget must be reasonable in comparison to other ministries and should come from a consolidated fund. Its operation must be transparent rather than secretive. It should not give reports to the government, which the government may or may not publish. Its commissioners should be on the scale of high public servants but should not be bound by civil service rules, especially of secrecy.
2. The definition of human rights in the draft bill is not comprehensive. It should specifically include basic economic and social rights and the rights of women should be recognized as human rights. Its preamble can make this explicit otherwise people will argue over it forever.
3. The draft bill does not require special qualification for the members of the Commission except knowledge of, and practical experience in, human rights. This qualifica-

tion is quite vague. There must be some previous experience of public work or public record that shows that the person has a commitment to human rights. The word 'demonstrable' should be inserted before 'knowledge' in the draft bill. If the person cannot show from the public record that she/he has a commitment to human rights how can this qualification be verified? Without some defining category that can be tested before the public and a selection process that relies entirely on politicians, the commission's appointments will again be a place for political bargains and deals.

4. An appointment in the Commission disqualifies a person from further government appointment. Ideally a person appointed to the Commission should not be eligible to hold other office afterwards because this removes any temptation to play the government's game. But it also means that many people would not want to be in the Commission knowing they cannot do anything more with the government afterwards.
5. According to section 13 (1) of the bill, the Commission shall have its own investigating agency. But there is nothing mentioned in the Bill about the nature and composition of the Commission's "own investigation agency." There has to be money allocated; numbers defined; training needs specified. The Commission can do this. But if this is so then it is all the more necessary that the Commission has a strong and credible leadership, which is seen to be so by the public at large.
6. The proposed Commission would be basically a recommendatory body. Section 10 enumerates as many as thirteen broad functions of the commission including inquiry and investigation, monitoring and intervention whenever necessary. It will also submit annual and special report to the President. But no decision or findings of it has any binding force. So what would be the case if government ignores its recommendation? The South African Human Rights Commission has a mandate to get a report from each government department each year to find out what they have done to promote human rights in their work. This is really a great provision. It allows the Commission to look at the functioning of each department to make a sort of human rights assessment. This is linked to the performance of that department. In India, obeying the orders of the Commissions has become a convention though it is still a pretty border line case. The recommendations and orders of the women's commission of India, however, are routinely ignored.
7. The recommendations of the Commission should be legally binding upon all. According to section 17(3) it can "recommend to the Government or authority for the grant of such immediate interim relief to the victim or members of his family." But the reality testifies that such mere power of recommendation is not enough. It should have powers to ensure effective remedies, including interim measures to protect the life and safety of an individual and free medical treatment where necessary. The Commission should ensure that full and prompt compensation is paid and necessary measure of redress and rehabilitation is taken. The government will have to make sure that any recommendatory reports and annual reports are public documents and not dependent on being placed before parliament before they can become so.
8. In Bangladesh, defense forces are considered very sensi-

tive and hence remain beyond any public scrutiny. It is not clear from the draft bill whether the Commission follows the same suit. The Commission should have specific power and jurisdiction to investigate any complaint against defense forces. In a democracy they can not remain above the law.

9. In India there is specific provision to set up Human Rights Courts to provide speedy trial of offences arising out of violation of human rights. This idea can also be incorporated in the proposed bill. But considering the Indian experience, it may prove to be a pretty useless provision if there is no specialized training for the judges and a court is just designated as a human rights court in a district with the same delays and the same judges who know nothing about human rights. We need more than the mere setting up of a human rights court. But there is an issue here: how far can 5 people sitting in Dhaka reach out to people in need? In India, the NHRC has 30,000 cases in arrears already. And yet 90% of the country doesn't even know who they are. If a Commission is to be known and effective, it must travel, or have outposts, across the country. The Indian commission is appointing special rapporteurs and reviving human rights cells in police stations but without adequate infrastructure and training, they end up using the same people of the bureaucracy who in another two years after going back to their posts will be the violators.
10. The result of the Commission's investigation should be referred to appropriate judicial bodies without any delay. The draft bill should have such mechanism.
11. The Commission should establish and maintain close official relations with non-governmental organizations involved in the promotion and protection of human rights.

### Instead of a Conclusion

National human rights institutions are being set up in many parts of the world. While the powers of these national institutions in the different countries vary, there seems to be a "core concept" emerging. In many countries, such national institutions have not matched the expectations they generated when they were first set up. On the other hand, in some other countries, where the expectations were not so great, national institutions have yielded some positive results.

No doubt national human rights institutions can be effective consolation, but without power to adjudicate and issue binding commands they may be turned to be "glorified ciphers and promise of unreality" as rightly termed by Justice VR Krishna Iyer. Only the real political will of the government, the opposition groups and the civil society as a whole can help reach the cherished destination. The decision of the Bangladesh Government to set up a National Human Rights Commission is a welcome development. But again the success of the proposed commission will largely depend on the true political will of the government. At the same time, we cannot solely depend on political will of the ruling class. We need a good process, which will ensure that the Commission is born properly and can grow independently as a people's commission and not a quasi-governmental body.

---

A. H. Monjurul Kabir, an independent researcher, is an Executive Member of ODHIKAR, a coalition for human rights in Bangladesh.  
E-mail address: "A H Monjurul Kabir" <mkabir99@hotmail.com>

# Not for the People!

## The Controversy over the National Human Rights Commission in South Korea

### National NGO Coalition for the Establishment of an Independent NHRC

1998 witnessed the first peaceful turnover of political power and the first true civilian government created in South Korea. Mr. Kim Dae-jung, persecuted under the former military regime, became the most powerful political leader as the new President. The Korean civil society as well as the international society complimented him for evolving 'from a victim of human rights violation to a human rights leader'.

President Kim Dae-jung said "I'd like to be remembered in history as the 'Human Rights President'." He promised to improve the human rights situation and strengthen democracy by revising the National Security Law, releasing prisoners of conscience, etc. He also announced the plan to establish a national human rights institution. Most Koreans and human rights activists expected him to keep his promise.

Two years later, President Kim Dae-jung's word turned out to be 'high rhetoric without action'. The promises were not kept.

The human rights bill that will create the national institution provoked harsh criticism and opposition from the human rights community at both national and international levels. It has been dubbed as "the bill of the current government for the President not for the people, and by the Ministry of Justice not by the people." Why would a large number of human rights groups express collective opposition to the bill?

#### 1. The drafting of the proposed 'Human Rights Law'

In September 1998, almost a year after the election promises were made, representatives of the National NGO Coalition for the Establishment of an Independent NHRC (national NGO coalition) met with Mr. Park Sang-chun, the former Minister of Justice. They requested for a transparent and democratic process in legislating a law for the national institution. But the Ministry of Justice produced a draft human rights bill without any consultation with the civil society. And the draft bill proposes a national institution that is not independent and without power. The national NGO coalition and the Korean Lawyers' Association criticized the bill on these points. Amnesty International also criticized the draft bill and urged the government to revise it. Even the ruling party opposed it.

The following month (October 1998), the first and last public hearing on the draft bill was held by the Ministry of Justice. Many experts and representatives of the human rights community pointed out the substantial flaws discovered in the draft bill. Also, Mr. Brian Burdekin, the Special Advisor of UN OHCHR on national institutions, met the representatives of the Ministry of Justice and commented that the current draft bill would not secure an independent national institution. Subsequently, President Kim Dae-jung, in a meeting with representatives of human rights organizations, promised to formulate a draft bill which can protect people's rights and in accord with the Paris Principles.

In November 1998, the national NGO coalition held a public hearing to formulate its own draft bill. While the Ministry of Justice, facing enormous criticism, announced a

revised draft bill later in the month. Again, the national NGO coalition criticized it on the independence issue. The second meeting between the Ministry of Justice and the ruling party again ended without any agreement.

On February 19, 1999 the consultation meeting between the ruling party and the Ministry of Justice was held and the second revised draft bill was announced. The national NGO coalition likewise criticized the second revised draft bill. It also staged a demonstration in front of the office of the ruling party and demanded the establishment of an independent national institution.

In March 1999, Mr. Kim Won-gil, the former chief of the Policy Planning Committee in the ruling party promised to have a transparent process in establishing the national institution and to consult human rights organizations. Later in the month, another meeting between the ruling party and the Ministry of Justice resulted in a third draft bill. The national NGO coalition again criticized the draft bill for failing to represent the opinions of the civil society and subscribe to the international standards. This draft bill was submitted to the State Council and was approved.

NGOs (including the Association of Families of Those Who Died under Suspicious Circumstances) held public protests, and thirty influential senior human rights activists held a press conference urging the withdrawal of the draft bill. These senior human rights activists called on their friend, President Kim Dae-jung, to fulfill his election promise of creating an independent national institution. They pointed out that a national institution under the Ministry of Justice would be powerless and dependent on the government and unable to properly investigate human rights violation cases.

On April 7, 1999, the bill was submitted to the Legislative and Judicial Committee of the National Assembly. On the same day, 34 human rights activists started a hunger strike for a week urging the withdrawal of the bill and re-formulation of a new bill for an independent national institution. International human rights organizations including SOS-Torture (OMCT) and Amnesty International sent a joint statement supporting the hunger strike.

In September 1999, the ruling party, seeing that it would not obtain political profits if it passes the bill, tried to revise the bill unofficially. It succeeded in expanding the jurisdiction and investigative power of the proposed national institution by persuading the Ministry of Justice. However, it failed to accept the core request of human rights organizations for a national institution that is independent from politics by making it a state institution in the Korean legal and political context. The ruling party was not able to overcome the resistance of the Ministry of Justice to protect its interests.

On December 22, 1999, the ruling party finally announced to postpone the enactment of 'Human Rights Law'. They said "we cannot pass the bill in a situation where human rights organizations are opposed to it."

## 2. Problems of the bill on human rights

The ending of the 15th session of the Korean National Assembly dropped all pending bills including the human rights bill. Following are the problems of the official bill.

### 2.1. Lack of democratic procedures in the formulation of the bill

The Ministry of Justice consulted only the ruling party in formulating the draft bill in clear violation of the repeated promise of consultation with the civil society and human rights experts. The draft bill was therefore a product of closed-door negotiations between the ruling party and the Ministry of Justice. Ms. Mary Robinson (UNHCR) has already emphasized that "during the establishment of a commission, a democratic and transparent process is as important as the status of the commission itself."

President Kim Dae-jung instructed the Minister of Justice to meet the representatives of human rights organizations and discuss the disputed articles of the draft bill. However, the Minister did not attempt to contact these organizations before presenting the bill to the State Council and the National Assembly. In other words, the Minister ignored the presidential order.

### 2.2. The Commission will be an ineffective institution

#### a. Subordination to the Ministry of Justice

Close analysis of the bill shows that the national institution proposed to be created will simply be relegated to a supporting role in the Ministry of Justice. Article 2.2 of the bill (support of state institutions to the Commission in dealing with human rights issues) and Article 6 (the Ministry of Justice will undertake human rights work) make the Commission assume a mere assisting role to the work of the Ministry of Justice. Article 65 provides that the Commission must report its opinions, processes and decisions to the Minister of Justice, and the Ministry of Justice is entitled to make separate, comprehensive reports on the human rights situation. This clearly places the Ministry of Justice in a position to monitor the activities of the Commission.

The prosecutor's office and the prisons, where human rights violations occur, are under the Ministry of Justice. How can a Commission monitor the Ministry of Justice if it is its supervising office?

The Commission, therefore, to be effective must be established as an independent state institution.

#### b. The Minister of Justice is entrusted with full power to establish the Commission

The problem of 'who has authority in the establishment of the commission' is vital. According to the bill, the Minister of Justice has the power to appoint the members of the committee responsible for the establishment of the Commission. This endangers the independence of the Commission. This task should instead be done by the President with the support of civil organizations and human rights experts.

#### c. Enactment of Presidential Decree is in the hands of the Minister of Justice.

On paper, it appears that the bill protects the independence of the Commission by eliminating the control of the budget by the Minister of Justice. However, in at least 13 items dealing with the administration of the Commission, presidential decrees are needed. Since the Ministry of Justice controls the drafting of these decrees, there is a risk of having them revised to subordinate the Commission under the

government.

Koreans know well the danger of abuse of presidential decrees, having experienced arbitrary governments many times in the past. Therefore, the management and budget of the Commission must be governed by statute instead of presidential decrees in order to prevent possible abuses in the future.

#### d. Limited jurisdiction to investigate violations of human rights

According to the bill, the Commission can only investigate 8 kinds of violations of human rights. This limited jurisdiction means that violations of freedom of expression, rights relating to the environment, residential facilities, education and even prisoner's rights cannot be investigated by the Commission.

Therefore, the jurisdiction of the Commission should be expanded.

#### e. Lack of effective investigation and decisions

According to Article 48, the head of any government organ subject of investigation by the Commission can exercise veto power over the investigation if there is a perceived danger of leaking official confidential information or encroachment of privacy. The reasons for this veto power are not clearly indicated, which makes abuse possible. The Commission has no power to counter such abuse of veto power. As a result, the Commission will not be able to investigate politically sensitive cases.

The Commission has only the power to make recommendations on human rights violation cases. This is in contrast to the situation of the Fair Trade Commission, Labor Commission, and the Commission for Eliminating Gender Discrimination which all have the legal power to enforce their decisions on those found violating the law. The Ministry of Justice has stated that the Commission's power is sufficient for effective implementation of its functions, but this attitude is clearly illogical. The Commission will remain powerless unless given the authority to punish those responsible for human rights infringements.

Therefore, the Commission should have the power to control the abuse of veto power and to enforce its decisions effectively.

## 3. Government's human rights policy facing bankruptcy crisis

The UN already warned against the establishment of 'Alibi Human Rights Institution' which means an institution without independence and effectiveness, existing only as a "decoration" for the governments. The present bill has high possibility of creating an 'Alibi Institution' in South Korea.

As long as the Kim Dae-jung government fails to provide a vision for the improvement of the human rights situation in South Korea, a national institution for the people will not be able to exist in the country.

---

The National NGO Coalition for the Establishment of an Independent NHRC was formed on September 17, 1998. From the original 31 NGO-members, it now has 72 NGO-members. For more information, contact the Secretariat Office (Sarangbang Group for Human Rights)  
E-mail addresses: rights@chollian.net; humanrights@sarangbang.or.kr

# Visit to Myanmar (Burma) by the Australian Human Rights Commissioner

## Press Statement of Commissioner Chris Sidoti

Following discussions between Foreign Ministers I visited Myanmar, as it is officially called, or Burma, as it is still generally known, from 1 to 4 August 1999. The principal purpose of the visit was to discuss with officials of the Government of Myanmar the nature, roles and functions of independent national human rights institutions established in accordance with the relevant international standards, the Paris Principles.

While in Yangon (Rangoon) I met with senior ministers and officials of the government, with the heads of mission of United Nations agencies and of the International Committee of the Red Cross and with the vice chairman of the National League for Democracy. A full list of the persons I met is attached for information.

My discussions with representatives of the government focused on national human rights institutions and on other avenues for exploring exchange and cooperation on human rights matters.

I must admit that I was surprised by the expressions of support at several of these meetings for the establishment of an independent institution in accordance with the Paris Principles. The Minister for Home Affairs, Tin Hlaing, in particular assured me that his government was interested in pursuing this proposal. I advised the Minister of the various national institutions already established in the Asia Pacific region and of the work of the Asia Pacific Forum of National Human Rights Institutions in strengthening existing institutions and promoting the establishment of new institutions. I expressed the view that there would be particular difficulties in establishing a fully independent institution in a political system such as that in Burma but that we were willing to assist if the government decided to pursue the proposal.

I also discussed with ministers and government officials other possibilities for exchange and cooperation, such as in human rights training for civil servants, police and the military.

In my discussions with the National League for Democracy, Vice Chairman U Tin Oo informed me that the NLD had misgivings and that in the NLD's view my visit, though well intentioned, was misguided. We discussed the nature of national human rights institutions and the work of the Asia Pacific Forum. U Tin Oo expressed doubts that Burma would be prepared to establish an independent institution. I assured him that only institutions that complied with the Paris Principles were eligible for membership of the Asia Pacific Forum. I also emphasized my commitment to discuss better mechanisms for the promotion and protection of human rights with anyone who was open to that exchange.

My visit has resulted in the identification of three areas for immediate attention.

First, we will work further with the Government of Myanmar to provide more information about independent national human rights institutions and the Government will give further consideration to establishing such an institution. The Government will be invited this week to send an observer to the next meeting of the Asia Pacific Forum to see human rights commissions in action and to meet with members of other commissions in the region. We will discuss on that occasion what further steps can be taken to assist the Government in its consideration of the proposal.

Second, the Government of Myanmar is interested in exploring

possible exchange and cooperation in human rights training for government officials and the police. We will provide examples of possible curricula and processes for this training within the next month. We would also like to explore the provision of human rights training to the military. Other human rights commissions in the Forum have extensive experience in providing human rights training for police and military and their assistance will be sought for this proposal.

Third, the Government of Myanmar has proposed the development of a joint project dealing with the right to health. Government officials will give further thought to what possible projects could be undertaken. We will also develop project proposals in this area for further discussion.

My visit to Burma was undertaken with understandable caution on all sides. The Government ministers and officials did not know what to expect of me and I did not know what might be possible in working with them. The NLD of course also has every right to be cautious. I can say at the end of this first visit, however,

- that an exchange of views on human rights has begun where none existed before
- that we have been able to identify some areas in which cooperation may be possible and
- that there is evidently a strong commitment to taking the process further.

Our objective has to be not exchange or discussion for its own sake but better promotion and protection of human rights in Burma. Only time will tell whether this objective can be met.

---

### Meetings in

#### Government of Myanmar

HE Col Tin Hlaing, Minister for Home Affairs  
HE U Win Aung, Minister for Foreign Affairs  
Dr Than Nyunt, Chairman, Civil Service Selection and Training Board  
His Honour U Aung Toe, Chief Justice of the Supreme Court  
U Tha Tun, Attorney-General  
Maj Gen Soe Win, Director General of the Myanmar Police Force  
Director General of the Prisons Service  
U Ba Than Aung, Director General of the Chief Justice's Office  
Daw Thin Thin, Director General of the Attorney-General's Office  
Col Sit Myaing, Director General of the Social Welfare Ministry  
Lt Col Hla Min, Office of Strategic Studies, Ministry of Defence  
Director of the Immigration Ministry  
U Tin Maung Aye, Director, International Organisations Division, Ministry of Foreign Affairs  
Representative from the Ministry of Religious Affairs  
Dr Kyaw Win, Chairman of the Myanmar Red Cross Society  
Ambassador Wynn Lwin, Myanmar Red Cross

#### International Agencies

Mr Patrice Coeur-Bizot, Resident Representative, UN Development Program and UN Coordinator for Myanmar  
Mr Canh Nguyen-Tang, Chief of Mission, UN High Commissioner for Refugees  
Mr Leon De Riedmatten, Head of Mission International Committee of the Red Cross

#### National League for Democracy

U Tin Oo, Vice Chairman

---

\*Commissioner Chris Sidoti can be contacted in this e-mail address: ChrisSidoti@HREOC.GOV.AU

# FOURTH ANNUAL MEETING OF THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

6-8 September 1999, Manila

## STATEMENT OF CONCLUSIONS

1. The Fourth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, consisting of representatives of the National Human Rights Commissions of the Philippines, Indonesia, Australia, India, New Zealand, Sri Lanka and Fiji, met in Manila, the Philippines, from 6 to 8 September 1999.
2. The Forum expressed its gratitude to the Philippines Commission on Human Rights for hosting the meeting. The Forum also thanked the Office of the High Commissioner for Human Rights for its co-sponsorship and financial support of the Annual Meeting and inter-sessional workshops, the Australian Agency for International Development for its financial assistance and the Secretariat of the Forum for its work in the organisation of the Meeting.
3. The Forum affirmed that the status and responsibilities of national institutions should be consistent with the Principles Relating to the Status of National Institutions adopted by the United Nations General Assembly (Resolution 48/134) commonly referred to as the 'Paris Principles'. The Forum stressed that national institutions should conform to the Principles and be independent, pluralistic and based on universal human rights standards and should be established following an appropriate and inclusive process of consultation.
4. In accordance with the decision of its Third Annual Meeting, the Meeting took place over three full days, beginning with a one day closed business session of its member institutions which provided an opportunity for extended discussion of Forum management functioning and future needs.
5. The Fiji Human Rights commission was formally accepted into the Forum, increasing the Forum's membership to seven. The Forum welcomed the participation as observers of representatives of governments, including those with national institutions or considering the establishment of national institutions in conformity with the Paris Principles. The Forum also welcomed the participation as observers of representatives of other relevant institutions and of international, regional and national non-government organisations.
6. The Secretary of Justice of the Republic of the Philippines, Mr. Serafin Cuevas opened the Meeting on behalf of the President of the Philippines, HE Joseph Ejercito Estrada. The President's message noted that there remains an unresolved tension between the pursuit of economic development and the promotion and protection of human rights. It identified the need for governments to forge a broad consensus between the various sectors of society which have traditionally been divided into pro-development or pro-human rights groups. The President's message suggested that the Asia Pacific Forum was well placed to devise a practical program of action to assist regional governments, civil society and the corporate sector in coming to grips with the challenges of globalisation and unequal economic development.
7. The special theme for the Meeting was *National Human Rights Institutions and Economic and Social Rights*. The Forum welcomed the participation, as keynote speakers on this issue, of Justice P.N. Bhagwati, Regional Representative of United Nations High Commissioner for Human Rights and Deputy Chairperson of the United Nations Human Rights Committee, and Professor Virginia Dandan, Chairperson of the United Nations Committee of Economic, Social and Cultural Rights. The keynote speakers, and the discussion which followed, drew attention to the need to maintain a holistic approach to all human rights. It was noted that economic, social and cultural rights continue to be accorded a lower level of priority than civil and political rights by many governments. The Forum called on governments, both in the region and outside, to give explicit effect to their commitment to the realisation of economic, social and cultural rights through all feasible means, including through their input into the policies and actions of international financial institutions and of international and regional economic forums.
8. The Forum expressed its continued concern at the detrimental impact that some policies and practices of international financial institutions and multinational corporations have upon the enjoyment of human rights. It noted its concern that, as non-state actors, these institutions are not subject in law to international human rights treaties and are not formally accountable for compliance with them. The Forum welcomed the initiative of the High Commissioner for Human Rights to establish a dialogue with United Nations agencies and programs, international financial institutions, international agencies and non-state players. It would welcome an update by the Office of the High Commissioner for Human Rights on the progress of its dialogue at the Forum's next annual meeting. The Forum also encouraged the Committee on Economic, Social and Cultural Rights to continue and extend its dialogue with all these bodies in its work.
9. The Forum agreed to further explore means of promoting and protecting economic, social and cultural rights, including, inter alia, by acting on the suggestions for action proposed in the Secretariat's background paper on that subject. To facilitate this work, the Forum resolved to explore closer engagement with relevant organisations. It asked the Secretariat to continue research and analysis on this matter and to make this and other relevant material available, including through the Forum's website.
10. The Forum considered a background paper prepared by the Secretariat on *The role of national human rights institutions in advancing the human rights of women*. Forum members committed themselves to continue to give a high priority to addressing violations of the human rights of women. Special attention was given at the meeting to the trafficking in women and girls, which was the subject of a case-study prepared for the Forum by the Office of the High Commissioner for Human Rights. The Forum agreed to recommend to its members the establishment of focal points on the human rights of women, including the issue of trafficking within each Forum Member institution and the coordination by the Forum Secretariat of a network among them. Attention was

- also drawn to the need for a coordinated regional approach that would facilitate practical responses to entrenched forms of discrimination against women in the law, in economic activity, in the political system and in prevailing cultural attitudes which deny women's human rights. The Forum once again urged all countries of the region to ratify the Convention on the Elimination of All Forms of Discrimination Against Women and urged all parties to take steps to eliminate reservations to it. The Forum agreed to hold a workshop in 2000 on the advancement of women's human rights and asked the Secretariat to take appropriate steps to prepare for the workshop, in consultation with the NGO community. The Forum requested the Secretariat to prepare a paper for the consideration of member commissions, as a basis for the workshop.
11. The Program of Action developed at the Regional Workshop on the theme of *National Institutions and Non-Government Organisations Working in Partnership* was discussed in frank and constructive terms by Forum members and representatives of regional non-government organisations. They saw the Program of Action as a useful checklist of possible areas for cooperation and partnership. A number of priority areas were mentioned; the development of strategic plans and work programs, investigations and inquiries; evaluation of performance; development of National Action Plans; training of staff; ratification of human rights treaties and protecting human rights defenders.
  12. As recommended in the Program of Action, the Forum supported a discussion on the theme of *The role of public inquiries in promoting and protecting human rights* and asked the Secretariat to take appropriate steps for this, in consultation with the Office of the High Commissioner for Human Rights and the NGO community. The Forum requested the Secretariat to work with national institutions and non-government organisations to mobilise funds through technical cooperation programs to give effect to the activities arising from the Program of Action. The Forum also requested the Secretariat to prepare, in consultation with non-government organisations and the Office of the High Commissioner for Human Rights, guidelines for the process of establishing national institutions in accordance with the Paris Principles for consideration at the Fifth Annual Meeting of the Forum. The Forum agreed to include discussion of cooperation and joint activities as a regular item at its annual meetings.
  13. Forum members exchanged views and experiences on the death penalty and on the approaches which national institutions and the governments of the region have taken in the application of capital punishment. They agreed to consider a reference on this issue to the Advisory Council of Jurists. The Secretariat was requested to develop a proposal for such a reference for consideration by Forum members between meetings.
  14. Forum members noted the convening of the United Nations World Conference on Racism and stressed the importance of national institutions' full participation, in their own right, during the preparatory phase and the Conference itself.
  15. The Forum heard statements from representatives of observer delegations from Australia, Bangladesh, China, Indonesia, Iran, Japan, Jordan, Mongolia, Nepal, New Zealand, Pakistan, the Philippines, the Republic of Korea, Thailand, Vietnam and Yemen. It welcomed commitments by many to establish national human rights institutions in accordance with the Paris Principles and to strengthen existing institutions. Progress reports on the development and implementation of National Action Plans were also received.
  16. The Forum affirmed that there is a clear legal obligation under international human rights law to take all necessary measures against child pornography, including on the internet. Forum members took the interim view that relevant international treaties permit reasonable restrictions on the exercise of the freedom of expression and that these restrictions justify action to combat child pornography. They agreed to make a reference on this issue to the Advisory Council of Jurists for its considered opinion. The Secretariat was requested to develop a draft reference for Forum members between meetings.
  17. The Forum noted with appreciation the report of the Secretariat on the Forum's activities since the Third Annual Meeting in Jakarta in September 1998.
  18. The Forum agreed to continue to pursue the proposal, agreed to at the Third Annual Meeting held in 1998, to produce a short documentary video on the role of national human rights institutions in promoting human rights education within their own countries. Forum members requested the Secretariat to continue to seek donor funding for this project.
  19. The Secretariat provided a report on the Advisory Council of Jurists. The Forum endorsed the nomination of the following members of the Council; Mr. Fali S. Nariman, Mr. R.K.W. Goonesekere, Mr. Sedfrey Ordonez, Professor J.E. Sahetapy, the Hon Justice Dame Silvia Cartwright and Sir Ronald Wilson. It expressed its sincere appreciation to them for agreeing to serve on the Council. The Fiji Human Rights Commission will now be invited to make its nomination. The Forum urged that resources be sought to enable the effective functioning of the Council as soon as possible.
  20. The Forum agreed that the Secretariat should continue to be located in Australia for an indefinite period. The Forum asked the New Zealand Commission to continue as Regional Coordinator. It discussed legal and management structures and agreed that a working group of the Regional Coordinator, the Office of the High Commissioner for Human Rights and the host institution of the Secretariat should examine and resolve these issues. The Forum also agreed to a proposal that staff exchanges be promoted and arranged within the framework of a Letter of Intent between the Forum, the Office of the High Commissioner for Human Rights and the United Nations Volunteer Program. The Forum agreed that the Regional Coordinator sign the Letter of Intent on its behalf when the other parties had considered it.
  21. The Forum also decided to establish two working groups on issues presented by the Indonesian National Commission on Human Rights, the development of a handbook on the implementation of human rights values, principles and norms in the Asia Pacific region, and a study of inter-religious tolerance and respect.
  22. Forum Members also addressed the work of the International Coordinating Committee of National Human Rights Institutions and the involvement of Asia Pacific national institutions in the international human rights system.
  23. The New Zealand Human Rights Commission kindly accepted the nomination to host the Fifth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions in approximately 12 months' time.

## UN Sub-regional Training Workshop on Human Rights Education

The first UN-sponsored Northeast Asia training workshop on human rights education in schools was held in Seoul on December 4-6, 1999. It was attended by delegations from Korea, China, Mongolia and Japan. In line with the UN workshop guidelines, country delegations included NGO representatives. The government of North Korea, unfortunately, failed to send a delegation.

The three and a half-day workshop had the following objectives:

- Develop a common understanding of human rights education in schools;
- Discuss strategies, based on lessons learned from other countries, towards the effective incorporation of human rights education in the school system;
- Identify key components and sub-regional and national priorities for human rights education programmes in schools;
- Facilitate sub-regional cooperation in the area of human rights education among relevant partners (Governments, national human rights institutions, educational institutes and NGOs);
- Develop national and sub-regional plans for human rights education in schools.

The workshop document entitled "Seoul Declaration" provides a good picture of the current state of human rights education programs in Northeast Asian schools. There is a clear environment for education reform in view of the changing economic and political situations. Democratization and economic development are pushing societies to adopt appropriate programs that support human rights education.

There is also a recognition of the involvement of various sectors of society in developing human rights education programs. Government education officials are therefore working with students and parents, local authorities, universities,

research institutes and NGOs, among others, in this task.

Likewise stressed are the various limitations of the existing programs including the lack of systematic inclusion of human rights in the curricula, the insufficient courses on human rights in the pre and in-service teacher training, and the inadequate financial support.

The recommendations generally encourage governments to increase support for the development of human rights education programs in schools in the Northeast Asian subregion. They stress the importance of making human rights become part of the curricula at various education levels and activities, giving support to the teachers, linking with the parents and the local community institutions (including the NGOs), working closely with appropriate government agencies, and getting the support of regional and international institutions (UN).

The training workshop was hosted by the Ministry of Education in Korea and supported by the Korean National Commission for UNESCO and HURIGHTS OSAKA. Resource persons from Asia and the Pacific were invited to help facilitate the workshop. The Minister of Education of Korea (Dr. Duk-Choong Kim), UN Regional Adviser for Human Rights (Justice P.N. Bhagwati), the UN Office of the High Commissioner for Human Rights officer (Ms. Helga Klein), the Secretary-General of the Korean National Commission for UNESCO (Dr. Kwon Tai-joon), and the Director of HURIGHTS OSAKA (Dr. Dong-hoon Kim) addressed the opening ceremonies of the workshop.



(Continued from page 6, Thailand)

mental human rights organizations are empowered to file complaints to the Commission on their own initiative or on behalf of individuals.

### 5. Accountability

The Commission will primarily be accountable through its annual report. Section 15 states that the Commission has the duty to assess and prepare an annual report of the performance of the Commission, which must be submitted to the National Assembly and disclosed to the public.

The Act also creates accountability through its dismissal process. Section 11 states that at least one-fourth of the members of the House of Representatives or the Senate may request that the Senate pass a resolution to remove a commissioner from office because of lack of regard for the interests of the country and the public, partiality in the performance of his or her duties, misconduct or immoral conduct that seriously affects the performance of his or her duties, conduct that violates human rights, or serious incompetence in the performance of his or her duties. To pass, the resolution must be approved by three-fifths

of the members of the Senate.

This dismissal process may make commissioners more accountable, but it may also inhibit commissioners from taking up unpopular human rights causes.

### III. Conclusion:

The Thai National Human Rights Commission is expected to be up and running some time in 2000. In theory, the Commission should be able to function with sufficient independence to effectively protect and promote human rights. However, the real test will be whether the Commission can fulfill its role in practice, particularly in cases where the alleged violator is the Thai government or other powerful groups or individuals in Thai society.

*Ken Bhattacharjee is a lawyer working with the Coordinating Committee of Human Rights Organizations of Thailand.  
E-mail address: cchrot@ksc15.th.com*

## HURIGHTS OSAKA ACTIVITIES

HURIGHTS OSAKA will be holding two domestic human rights education activities towards the end of its 1999 fiscal year. In February 2000, the Leaders' Seminar will be held using a workshop format. The implementation of community-based human rights education program is the focus of the activity. Japanese local government officials involved in community education programs are the main participants. In March 2000, the Citizens' Seminar will be held with the theme "Thinking about Link with Asia — from Human Rights Viewpoint." It will review the role of communities and NGOs in dealing with domestic and Asia-Pacific human rights issues.

The HURIGHTS OSAKA website (see address below) reproduces the contents of the FOCUS Asia-Pacific. We urge readers to visit the site for other information on human rights activities in the region.



**PRINTED MATTER**

**AIR MAIL**

May be opened for inspection by the postal service.

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**

### **HURIGHTS OSAKA**

**(Asia-Pacific Human Rights Information Center)**

1-2-1-1500, Benten, Minato-ku, Osaka 552-0007 Japan

Phone: (816) 6577-3578 Fax: (816) 6577-3583

E-mail: [webmail@hurights.or.jp](mailto:webmail@hurights.or.jp)

Web site: <http://www.hurights.or.jp>