



Editorial

National Human Rights Institutions

Public expectation on national human rights institutions is always high, at least at the beginning of their operations. Human rights organizations give the benefit of the doubt to the newly-established ones, continuing criticism to those who have been operating for some time now, and also cooperation in other cases.

How far the national institutions will be able to satisfy the expectations of the victims of human rights violations, the human rights community, and the general public depends it seems on several factors.

A number of national institutions in Asia are suffering from financial and staff limitations. Some are restricted by their legal mandate to enforce decisions. In certain cases, governments are not fully supportive of national institutions.

The creation of national institutions is a step toward strengthening national mechanisms for human rights. The work of the national institutions adds to the work of human rights organizations, the courts, and the government agencies on human rights protection, promotion and realization.

National institutions, therefore, have a distinct role to play. They need support to perform their tasks well. They also need a reminder that since human rights work is always difficult, they will always be up on their toes. And that the best gauge of effectiveness is the redress provided to human rights violations victims, and measures established to prevent such violations from happening again.

FOCUS Asia-Pacific is designed to highlight 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 Yoshio Kawashima, Director of HURIGHTS OSAKA.

National Human Rights Commission: Nepal Experience

Jogendra K Ghimire

As a national institution established in line with the Paris Principles, the National Human Rights Commission of Nepal is an autonomous institution, established by a 1997 Act of Parliament.¹ The five members of the Commission enjoy security of tenure and can be removed from office only through impeachment by the House of Representatives. They enjoy a term of five years, eligibility for reappointment, and salaries and facilities not less than that of judges of the Supreme Court.²

Mandate

The enabling Act grants a fairly broad mandate to the Commission, which can generally be grouped into two principle functions—promotion and protection. (Sections 9 and 11 of the Act). Under Section 11 of the Act, the Commission, "... while inquiring into the petition or complaints or reports within its jurisdiction, [has] the same powers as a court may have under the prevailing laws of Nepal..."

Autonomy

Theoretically, the Commission enjoys complete statutory autonomy, and is free from any kind of government interference. Functional autonomy, as the Commission is learning the hard way, is a rather tricky phenomenon, and slightly difficult to attain. The functional autonomy of the Commission has been affected due to lack of two primary resources: 1) requisite staff and 2) finances.

Finances: During the fiscal year 2000-2001, the Commission received from the government an allocation of five million Nepali rupees (around 66,000 US dollars). The allocation was made amidst the recommendation of a government-appointed task force, headed by the secretary at the Cabinet Secretariat, for a budget in excess of 1.6 million Nepali rupees for the Commission's first year of operation, considering that the infrastructural needs during the first year are bound to be high. For the current fiscal year (2001-2002) the government has again allocated five million Nepali rupees, which will not even be enough to meet the Commission's basic administrative costs. The Commission requested for a budget of over

twenty nine million rupees, considering its requirements in the early years. In the absence of sufficient funding from the government, the Commission has been forced to seek outside resources for most of its promotional and research initiatives.

Staffing: The Commission presently has twenty-one staff members that include the Secretary, ten professional staff and ten support staff. Considering the need to investigate over four hundred complaints of rights violation, and the need to carry out a host of promotional, legislative and policy work, the number of staff is miniscule. Insufficient funds from the government constrained the recruitment of staff. Four of the ten professional staff presently working with the Commission are government officers on deputation from their respective departments (generally on a three-month duration). Considering that the government has not shown a great deal of eagerness to sufficiently fund the Commission to enable it to recruit new staff, the Commission thinks that more staff should be brought from the government on deputation. The government appears reluctant even to heed this request, but the matter is yet to be settled.

NHRC and the Government

Barring a few instances of public expression of displeasure by some government senior officials, government officials have generally been positive in their views about the Commission.³ However, there is an acute lack of cooperative spirit among the civil servants—in particular those associated with the Home Office and the police—when it comes to providing information to the Commission. There are several instances of the police providing false information to the Commission, especially on illegal arrest cases. In one case, the Commission directed that the families of the victims be compensated to the tune of 100,000 Nepali rupees each, and that the chief district officer and the chief of police in the district pay five percent and two and half percent respectively of the total amount, with the rest to be borne by the government. The Home Ministry reported back after three months, saying the entire sum had been borne by the govern-

ment, thus defeating the purpose of the NHRC in holding the officials individually liable for the human rights violation.

NHRC and the Civil Society

The Commission enjoys a great deal of confidence and support of the civil society and the human rights community. Almost all of the Commission's promotional activities have had the active participation and support from the NGOs and many complaints of human rights violation reached the Commission through them.

Working with the civil society, however, is not free from tricky situations and unrealistic expectations. There is a tendency among NGOs to criticize the government for virtually every ill under the sun, and to expect quick-fix solutions to complicated instances of human rights violation. At times, there are expressions of impatience even with the due process.

Challenges/Opportunities

Following are some challenges and opportunities facing the Commission:

1. 1. Unrealistic expectations from the Commission. The means of the Commission, financial as well as human, are limited. The general population expect the Commission to accomplish almost everything. Cases, for example, involving economic, social or cultural rights, which may not be easily enforceable in a court of law, are brought to the Commission with the expectation of immediate and direct remedy. It would be great if the Commission could pass directives after directives to meet those expectations and if the government agencies acted according to the directives.
2. Confidence and respect for the Commission. Since most of the state organs do not deliver to the people the services they are expected to do, the Commission can have a very good name in public psyche by just doing its work right.
3. Avoidance of becoming a government NGO. If government funding is not forthcoming, the Commission will inevitably have to look for outside funds for all of its activities, including even some of the administrative expenses. That could be fatal to the Commission's development as an effective state institution for human rights. It can become a government NGO. Excessive reliance on donor money will affect the independence and autonomy of the Commission

With funding comes the required procedures and project management of individual donors, which

may not be to the liking of the Commission. The best scenario is for the government to bear the Commission's entire administrative as well as program costs. In the absence of that, the government should bear at least one hundred percent of the administrative costs, leaving the Commission to look for funds for programs/projects. Funding for non-administrative work of the Commission will be forthcoming from the donors at least for the first few years.

Conclusion

One of the notable achievements of the Commission during its first fifteen months is the finalization of a project on capacity development of the Commission. The 1.5 million US dollar project will be primarily used for the physical infrastructure of the Commission—from vehicles to computers to overhead projectors to the international communication system—and training and international exposure of the Commission members and some senior staff, as well as for advisory, promotional and investigative functions. It proposes extensive use of international as well as some national consultants. It is coordinated by the United Nations Development Programme (UNDP) and will have financial support from several donor governments, as well as a number of UN agencies. The project now awaits administrative approvals within the UN system as well as His Majesty's Government of Nepal. If that goes well, and if the Commission can convince the government to fund its administrative costs, the going could be smooth in the administrative front. In the absence of that, a smooth and effective functioning of the Commission is unlikely to materialize.

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Endnote

1. Human Rights Commission Act, 1997.
2. Sections 4-7, id.
3. Sher Bahadur Deuba, the present prime minister, for example, in a meeting with the Chair, Members and Secretary of the Commission, said he would provide the Commission with all the necessary resources, and allocate extra finances if necessary.

The Human Rights Commission of Sri Lanka

S. Wijegoonawardena

The Human Rights Commission of Sri Lanka was established in March 1997 under the Human Rights Commission Act No. 21 of 1996. The first three months were devoted to preparatory work. Actual operations commenced from July 1997 when the Head Office of the Commission was set up.

The enabling Act of Parliament gave the Commission a mandate which combines the functions of two other institutions which preceded it, i.e., the Commission for the Elimination of Discrimination and Monitoring of Human Rights, and the Human Rights Task Force. The Commission is, however, vested with more powers and responsibilities.

The activities of the Commission are carried out from its Head Office and the ten regional offices spread throughout the country. The mandate of the Commission is couched in relatively broad terms. It provides for

1. A complaint-based jurisdiction (power to dispose complaints regarding alleged violations of human rights caused by Executive and administrative action)
2. A proactive (role) function
 - a. Review of legal procedures to ensure compliance with the Constitutional guarantees of fundamental rights;
 - b. Advise the government in formulating legislation and administrative procedures for the protection of fundamental rights and ensuring that existing and proposed legislation conform with international human rights norms, etc.;
 - c. Undertake human rights awareness activities.

The first Board of Management of the Commission (consisting of a Chairperson and four members) was preoccupied with the resolution of complaints relating to alleged violations of fundamental rights contained in Chapter Three of the Constitution of Sri Lanka. A greater part of these complaints relate to allegations of human rights violations such as deprivation of personal liberty, unlawful arrest and detention, torture,

and inhuman and degrading treatment.

The activities of the Commission are carried out in the context of an on-going internal armed conflict in the Northern and Eastern parts of the country. Two concomitant factors exist, namely, military security operations and the police work under the Emergency Regulations (ER) and the Prevention of Terrorism Act (PTA).

In these circumstances, the Commission tries to

- a. Safeguard human rights and minimize their derogation in an emergency/conflict situation.
- b. Protect and promote human rights to meet the challenges and constraints of a multi-ethnic society.
- c. Pay attention to disadvantaged/vulnerable groups to facilitate full enjoyment of their human rights.

The Commission regularly receives complaints of alleged violations of fundamental rights. The average annual inflow of complaints during the last three years is about three thousand six hundred cases. About forty percent of these complaints relate to violations of rights of the government employees mainly by denial of right to equal protection of the law or equality before the law. Other complaints relate to alleged violations by members of the police and the armed forces. Most of these complaints relates to enforcement of the PTA and ER. Some allegations are of a serious nature and include illegal arrest and detention, abduction, torture, homicide, and disappearances.

The highest number of complaints received by the Commission relate to arbitrary arrest and detention. This number exceeds two thousand cases a year. Majority of them are received from areas suffering from internal armed conflict in the northern and eastern parts of the country.

The Commission also receives complaints relating to torture. These range from complaints of simple assault to more brutal forms of physical violence while in

custody. Cases of simple injury as a general rule are settled at the preliminary inquiry stage giving some measure of relief to the victims. More serious cases are inquired fully and the findings are reported to the relevant authorities and to the Attorney General where appropriate.

The victims in some cases have gone before the Supreme Court and obtained relief in the form of compensation. In many cases, the compensation was borne by the State. But in a couple of cases, the respondents (government officials) were made to pay compensation personally.

The Commission has also investigated cases of deaths while in the custody of the government authorities. Two important cases investigated by the Commission are the killing of twenty-seven detainees in a rehabilitation camp at Bidunuwewa (Bandarawela) and the killing of a prison inmate at Kalutara Prison.

The investigation officers of the Commission regularly visit police stations and detention centers to monitor their condition under the powers vested with the Commission. The Commission set up a twenty-four hour telephone "Hotline" to enable the public to reach it with complaints requiring prompt intervention such as unlawful arrest, detention, etc. The Commission Act requires every person who arrests or detains another under the PTA or ER to make a report to the Commission in any case not later than forty-eight hours from such arrest or detention.

The Commission also holds regular meetings with the police and armed forces officials to discuss important issues relating to alleged human rights violations concerning those agencies. A directive has been issued by the President of Sri Lanka, as the Commander-in-Chief of the Armed Forces, ordering those agencies to cooperate with the Commission.

All these measures have contributed to reducing human rights violations in the country.

During the last one and a half years, the Commission has addressed the problem of several special population groups, namely, internally displaced persons (IDPS), migrant workers and the disabled persons. It called the attention of the relevant government authorities on some problems faced by these groups. A project has been formulated by the Commission with the assistance of the Colombo office of the United

Nations High Commissioner for Refugees (UNHCR) to address the grievances of the IDPS based on the studies carried out jointly by human rights NGOs and the UNHCR.

The regional officers of the Commission carried out a series of education and awareness activities during the last four years. These activities were held based on the belief that creating rights consciousness among the government personnel (including members of the police and the armed forces) and the public could help reduce human rights violations. Several NGOs are involved in these activities. As a concerted national effort, the Commission recently started to implement a national human rights education program to improve the human rights situation in the country.

Given the limited resources of the Commission, it had not been able to pay adequate attention to other functions or mandate. Improvement of systems and procedures of the Commission itself, review of legislation for compliance with fundamental rights principles and international human rights norms, and research and education are important areas needing more attention.

The Commission has also not been able to keep pace with the inflow of complaints. Inadequacy of trained professional staff is one major constraint faced. Hence a restructuring program, with a view to strengthening the institution, is now in progress.

A special project for review of legislation has been formulated with funding assistance from the United Nations Development Programme (UNDP) office in Colombo. The review of relevant legislation could be completed within the next two years under this project.

The Commission is also following a policy of collaboration with the human rights NGOs in the country. An action plan is being drawn up as a follow up to the outcome of the 6th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions held in September 2001 in Colombo. Several important human rights protection and promotion activities under the action plan will be carried out by the Commission with the participation of the NGOs in the country.

Recently, the Parliament of Sri Lanka passed the 17th Amendment to the country's Constitution which pro-

vides for the setting up of several independent Commissions in the country. The Constitutional Council which will be set up shortly will comprise of representatives nominated by all recognized political parties in the country. This Council will appoint the Chairpersons and the members of seven commissions including the Elections Commission, Public Service Commission, National Police Commission, and the Human Rights Commission.

It is widely believed that these Commissions will provide the required impetus to strengthen democracy and improve the human rights situation in the country .

In the meantime, a new political front (The United National Front) led by the United National Party has come to power. This party introduced the present Constitution of Sri Lanka (1978) during its last tenure of office (1977 to 1994). The fundamental rights provisions currently in force are contained in Chapter 3 of this Constitution.

It is incumbent upon the new government, in line with its mandate and the declared policy, to work towards lasting peace and the strengthening democracy and human rights in Sri Lanka.

Problems and challenges

One of the main problems of the Commission from inception is the continued influx of a large number of complaints on alleged violations of fundamental rights. During the first few months, the Commission was ill-equipped to cope with the workload for want of required trained staff. This resulted in a backlog of work. The following steps were taken by the Commission to tackle the problem:

- a. recruitment of more senior staffmembers who can inquire into the complaints;
- b. engagement of the services of professionals outside the Commission on a part-time basis;
- c. holding of education and awareness activities for public officials, including members of the police and the armed forces, as preventive measure .

The Commission suffers from shortage of funds. The government has not been providing adequate budget to the Commission as required by the Commission Act. The Commission has to seek financial support from donor agencies such as The Asia Foundation,

UNHCR, and the UNDP offices in Colombo to fund some of the its programs.

The Commission also suffers from the inability of its members to do full-time work. All of them work part-time because of their obligations in other organizations or their professional work.

A restructuring program is now going on to address these organizational deficiencies and the accumulated work.

The Commission faces also the problem of non-compliance by some public authorities with its decisions or recommendations. The Commission has no power to enforce its own decisions. The Commission is still considering ways of addressing the problem at present .

In sum, the Commission is confronted with the great challenge of performing its functions and meeting public expectations while saddled with these problems.

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Human Rights Commission – The Malaysian Scenario*

Chiam Heng Keng

On 24 April 2000, four months after the dawn of a new millennium, three former high court judges, three former politicians, three professors, a medical doctor, an environmentalist, a female activist and a former State Secretary received letters of appointment as Human Rights Commissioners from the King of Malaysia. The Chairperson of this newly-appointed thirteen-member group is *Tan Sri Dato' Musa Hitam*, who served as the Chairperson of the 52nd session of UN Commission on Human Rights in 1995. The speed at which the Commissioners were appointed surprised quite a few as the Human Rights Commission of Malaysia Act was only gazetted on 9 September 1999.

A Bill to establish the Human Rights Commission was tabled at the July 1999 sitting of the Malaysian Parliament. It was passed without any dissenting voice, implying that even the Opposition agreed to the establishment of a Human Rights Commission in Malaysia. However, the tabling of the Human Rights Bill was not without suspicion and critics. Some questioned the government's motive, being unaware that the idea of Malaysia having its own national human rights institution was mooted by *Tan Sri Musa Hitam* in 1994 when Malaysia was elected to serve on the UN Commission on Human Rights. Perhaps being elected to serve a second term on the UN Commission on Human Rights (1996-1998) provided the impetus to the government to consider *Tan Sri Musa Hitam's* suggestion seriously. In addition, the success of the 1993 World Conference on Human Rights in Vienna drew international attention to the importance of national human rights institutions.

Human Rights Commission of Malaysia Act

Suruhanjaya Hak Asasi Manusia Malaysia (Human Rights Commission of Malaysia), which is better known in Malaysia by its acronym **SUHAKAM**, was established under the Human Rights Commission of Malaysia Act 1999, Act 597 (Act). The functions of SUHAKAM as set out in section 4(1) are:

- i) To promote awareness of and provide education in relation to human rights;
- ii) To advise and assist government in formulating legislation and administrative directives and procedures and recommend the necessary measures to be taken;
- iii) To recommend to the government with regard to the subscription or accession of treaties and other international instruments in the field of human rights;
- iv) To inquire into complaints regarding infringements of human rights.

Four working groups were formed to carry out these functions. The Education Working Group is headed by Professor Dr. Chiam Heng Keng, a social psychologist and educationist attached to the University of Malaya while Ms. Mehrun Siraj, a former professor of law, heads the Law Reform Working Group. *Dato Mahadev Shankar*, a former Judge, chairs the International Treaty Working Group, whereas the Complaint and Inquiry Working Group is headed by *Tan Sri Dato' Hj Anuar Hj Zainal Abidin*, a retired Chief Judge.

SUHAKAM has the power to inquire, on its own motion, into allegations of infringements of human rights, in addition to acting on complaints submitted to it. SUHAKAM, however, may not investigate complaints that are subject of proceedings pending in a court of law or which have been finally decided by any court. Investigations have to cease if the subject matter of a complaint is brought to court.

The Act also provides SUHAKAM with powers to enable it to discharge its functions effectively. Under the section 4(2), the Commission is empowered to do the following:

- i) To undertake research by conducting programs, seminars and workshops and to disseminate and distribute the results of such research;
- ii) To advise the government and/or the relevant authorities of complaints against them and to recommend appropriate measures to be taken;

* The opinions expressed in this article are strictly those of the author.

- iii) To study and verify any infringement of human rights;
- iv) To visit places of detention in accordance with procedures as prescribed by laws relating to the places of detention and to make necessary recommendations;
- v) To issue public statements on human rights as and when necessary;
- vi) To undertake appropriate activities as are necessary.

Activities

The Commissioners felt that a good logo is needed to give SUHAKAM an easily recognizable identity. Hence one of the first tasks of the Education Working Group was to organize a logo competition. As this competition could also promote awareness of human rights among school children, the competition had three categories, namely, primary school students, secondary school students and the public. The simple but rather distinctive SUHAKAM logo is the winning entry submitted by Mr. Yunus bin Onn, an architect.

In 2000, in conjunction with the World Human Rights Day, an essay competition with the theme, "Human Rights for All" for secondary school students was held. But in 2001, SUHAKAM decided to declare September 9 as the Malaysian Human Rights Day. A two-day Forum, "Human Rights of the Disabled," and one-day seminar, "Human Rights and the Media," were organized to celebrate this occasion.

The Malaysian public appeared to be very keen to know about human rights and the functions of SUHAKAM, particularly in its first year of existence. Hence, in 2000 the Commissioners were kept busy as speakers at forums, seminars and conferences. They were also invited to give talks to the public, government employees, university students and the private sector. Several Commissioners were also invited by television stations to discuss or debate on human rights issues. Besides issuing statements as required by the Act, the Commissioners also gave press interviews.

Holding dialogue with government ministries and departments, non-governmental organizations, political parties, the media, religious bodies and disadvantaged groups is one of the ways SUHAKAM uses to assess people's awareness of human rights, gauge human rights practices in organizations, promote awareness of human rights to target groups, and

exchange viewpoints. SUHAKAM had road shows at several States for the same purposes as the dialogues.

In addition to enhancing awareness of human rights through informal channels, SUHAKAM is also promoting human rights through formal means. Currently, SUHAKAM is working on human right education modules for the training of police officers, and human rights education in schools.

The Law Reform Working Group has identified areas of human rights and laws that are in need of review, in particular the right to peaceful assembly and the rights of remand prisoners. A booklet on the freedom of assembly has been printed. Members of the Law Reform Working Group had visited prisons, remand centers, police lock-ups, immigration detention centers and juvenile reform schools. They also visited those detained under the Internal Security Act.

A workshop on young prisoners was held recently to discuss problems faced by them. A report on this workshop had been prepared.

Up to date, SUHAKAM has received 5,230 complaints, 458 were lodged by Malaysians while the rest were made by people outside Malaysia. The vast majority of foreign complaints were on same issues but were submitted by different bodies and persons. The breakdown of the complaints according to year and type of complaints is given in Tables 1 and 2.

Table 1
Complaints According to Year

Year	April-Dec 2000	Jan-Nov 2001
Local complaints	152	306
Foreign complaints	338	4,434
Total	490	4,740

Table 2
Breakdown of January-November 2001
Complaints by Categories

Complaints relating to	Total
Government	169
Private sector	41
Individuals	69
Public statements	27
Total	306

Table 3
Actions Taken by SUHAKAM

Year	April-Dec 2000	Jan-Nov 2001
Settled/failed	78	122
KIV ¹	8	21
Pending	66	163
Total	152	306

SUHAKAM has so far conducted one open inquiry. It investigated the police handling of an assembly that did not have a police permit. This inquiry is known as the Kesas Highway Incident.

Until December 2001, SUHAKAM had received twenty-five memoranda. On the basis of four memoranda alleging infringement of human rights of certain groups of indigenous people of Sarawak, in particular their customary land rights, SUHAKAM sent a team of three Commissioners and an officer to visit the places where the infringement occurred. The preliminary report is being prepared as the investigation continues.

Reflections

I would like to numerate some of our achievements before discussing a number of problems encountered. Nationally, a number of changes pertaining to human rights have taken place that SUHAKAM is directly or indirectly responsible for. Article 8 (2) of Part II of the Federal Constitution has been amended to include gender as a prohibited ground for discrimination. In addition, widows who remarry can now continue to receive their late husbands' pension. Although Malaysia has ratified the Convention on the Rights of the Child, primary education was universal but not compulsory. The Education Act is soon to be amended to make primary education compulsory for all. Active steps are now being taken to ensure that juvenile prisoners are separated from adult prisoners and are housed in different buildings. At the recent seminar on young prisoners organized by SUHAKAM, the move is toward making the prison terms of juvenile offenders rehabilitative rather than punitive. Even the Minister of National Unity and Social Development, in her Opening Address in the workshop, made this appeal. Conditions in police lock-ups are improving and ways are sought to reduce overcrowding.

SUHAKAM has, on two occasions, demonstrated that

peaceful assembly is possible if the people act responsibly and the members of the police are restrained and kept at a respectable distance from the people. Although the members of the police were very upset with the outcome of SUHAKAM's inquiry into the Kesas Highway Incident, nonetheless there appears to be some changes in their attitude. Someone maintained that a policeman remarked that he had to record complaints, no matter how trivial, for fear of being reported to SUHAKAM.

However, we have problems too. Being a human rights institution, SUHAKAM has, on many occasions, been a strong critic of the government's policies and actions. Consequently, it is perceived by many quarters to be an NGO and anti-government. On the other hand, several NGOs and individuals have censured SUHAKAM for not doing enough. Some even accuse SUHAKAM of being a toothless tiger, referring to the fact that, by the 1999 Act, SUHAKAM has no enforcement power. Its role is only advisory. Many fail to realize that SUHAKAM, like other national human rights institutions, has only the power to monitor, investigate, report and advise the government on the appropriate measures to take when human rights are violated.

SUHAKAM realizes that there are several laws and government proclamations that infringe upon human rights. These include the Internal Security Act, Official Secrets Act, Printing Presses and Publication Act, Sedition Act, Police Act, University and University Colleges Act and the four Proclamations of Emergency. It is an unrealistic expectation that SUHAKAM within its short existence can perform the "superman" act of dismantling these laws. Malaysia is often criticized, particularly by quarters outside Malaysia, for its Internal Security Act. The attack on New York's World Trade Center on September 11, 2001 seemed to have changed the opinions and practices of some countries. Detention without trial apparently is now practiced in those countries.

A few months ago I attended an international conference on human rights, specifically addressing social, economic and cultural rights. I was approached by a participant who suggested that Malaysia should recognize sex trade as a legitimate profession and visitors who engaged in sex trade in Malaysia should not be apprehended. We discussed these issues and I explained our stand on sex trade and work without

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The Fiji Human Rights Commission

Shameem Shaista

The Fiji Human Rights Commission is a constitutional office established under Section 42 of the 1997 Constitution of the Republic of Fiji. Its enabling legislation is the Human Rights Commission Act 1999 (HRC Act).

When the Constitutional Review Committee was drafting the 1997 Constitution, it recognized the need for Fiji to have a Human Rights Commission. The initial role envisaged for it is to educate the public about the Bill of Rights, its contents and its origins in International Law and how these rights are protected under the Constitution. It also recommended that the Commission's jurisdiction be not confined to the State and statutory bodies, but extend to private individuals and companies. These recommendations resulted in section 42 of the Constitution and the HRC ACT.

Role of the Commission

The primary role of the Fiji Human Rights Commission is to promote and provide better protection of human rights to all persons in Fiji Islands in accordance with the "Paris Principles" and the relevant law on human rights, in our case, the Constitution and HRC Act.

The Commission comprises three members. The Ombudsman is the Chairperson with two part-time Commissioners.

The Commission has a full-time Director who oversees its effective operation with the support of eleven staff members.

Their responsibility is to ensure that the state, and in certain circumstances the public, adhere to human rights law protected by the Constitution and the HRC Act.

Functions of the Commission

In accordance with the Constitution and the HRC Act, the Commission's functions are as follows:

1. To educate the public about the nature and content of the Bill of Rights, including its origins in international conventions and other international instruments, and the responsibilities of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and other organs of the General Assembly of the United Nations for promoting respect for human rights;
2. To make recommendations to the Government about matters affecting compliance with human rights, including the making of a recommendation that a particular question about the legal effect of a provision of the Bill of Rights be referred to the Supreme Court for its opinion; and
3. To perform such other functions as are conferred on it by law.

At its inception in 1999, the Commission initially concentrated on its education function - publishing pamphlets and conducting workshops and training for trainers and human rights activists as well as the police and prison authorities.

In the aftermath of the events of May 2000, the Commission has now concentrated on its function of investigating allegations of human rights violations and breaches of the Bill of Rights by the police, military and prison authorities during the State of Emergency. On the same token, the Commission is continuing its promotion and educational function.

Powers and Duties of the Commission

Under Section 7 (1) of the HRC Act 1999 the Commission has a number of powers and duties, for example to:

- a. Increase general awareness of human rights, including issuance of public statements and educating public opinion and public officials, coordinating human rights programs and acting as a source of human rights information.
- b. Invite and receive representations from members

of the public on any matter affecting human rights.

- c. Consult and co-operate with other persons and bodies concerned with the promotion and protection of human rights.
- d. Inquire generally into any matter, including any enactment or law, or any procedure or practice whether government or non-governmental, if it appears to the Commission that human rights are, or may be, infringed thereby.
- e. Recommend to the government the desirability of legislative, administrative or other action to better protect human rights.
- f. Promote better compliance in the Fiji Islands with standards laid down in international instruments on human rights.
- g. Encourage the ratification of international human rights instruments by the State and, where appropriate, recommend the withdrawal of reservations entered on those instruments.
- h. Advise the government on its reporting obligation under international human rights instruments and, without derogating from the primacy of the government's responsibility for preparing those reports, to advise on the content of the reports.
- i. Make recommendation on the implications of any proposed Act or regulation or any proposed policy of the government that may affect human rights.
- j. Investigate allegations of violations of human rights and allegations of unfair discrimination, on its own motion or on complaint by individuals, groups or institutions on their own behalf or on behalf of others.
- k. Resolve complaints by conciliation and refer unresolved complaints to the courts for decision.
- l. Advise on any human rights matter referred to it by the government, having regard to the available resources and priorities of the Commission.
- m. Publish guidelines for the avoidance of acts or practices that may be inconsistent with or contrary to human rights.
- n. Take part in international meetings and other activities on human rights and co-operate with other national, regional and international human rights bodies.

The powers and functions as outlined above can be

best summarized by the service which the Commission provides to three main sectors; the State, the people in Fiji (this includes non-citizens residing in Fiji); our international human rights partners and the United Nations.

The Commission's obligation to the State is to be its advisor on matters pertaining to human rights as well as to keep the State updated on its obligations under the various treaty bodies to which Fiji is a member. The Commission also provides legal opinions to the State on the human rights aspects of any proposed Bill or policy to be implemented, and also provides guidelines on minimum standards as regards human rights.

The Commission's obligation to the general public is to promote and protect human rights as well as to investigate allegations of abuses of human rights; and in the appropriate cases take matters up to the High Court for judicial interpretation and intervention. The Commission also has the function of acting in partnership with civil society in promoting and protecting human rights.

The Commission also has the obligation of keeping Fiji linked to the various treaty bodies to which Fiji is a party and to also write shadow reports to these bodies if it is not satisfied with the country report submitted by the State. The Commission is also obliged to attend international meetings and conventions to keep abreast of developments in international human rights law.

The Courts and the Commission

The Commission, by legislation, acts as a filter in the judicial process by investigating allegations of human rights violations and discrimination, and attempts to resolve these complaints by conciliation. Courts are used as a forum only when complaints remain unresolved.

The Complaints Resolution Process

Complaints reach the Commission through people calling in personally, over the telephone or by mail. A complainant has to fill up a questionnaire that will be used to determine whether or not the complaint relates to the Bill of Rights. Most complaints are out of jurisdiction because they do not pertain to the Bill of Rights. They may be contractual issues, matters

already in the Courts or complaints more appropriate for another, better equipped government department to resolve successfully.

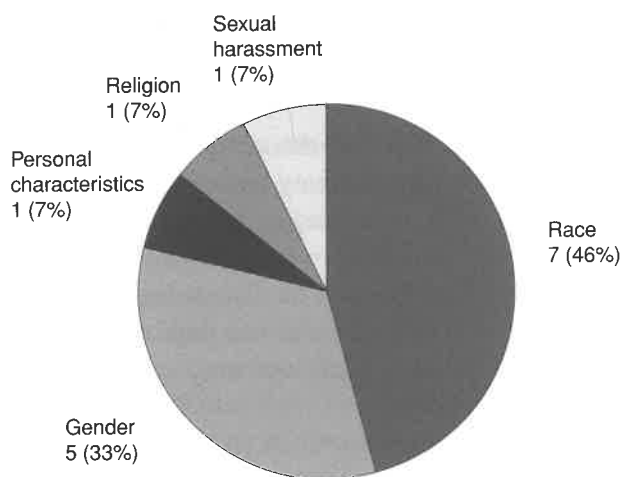
An Investigation Team assesses the complaint to determine whether the complaint is within jurisdiction, and whether or not to investigate it. Once the investigation is completed, the two parties are invited for conciliation talks in an attempt to reach an amicable solution. Only if the conciliation attempt fails will the matter be taken to court.

Roughly half of the initial inquiries made to the Commission are out of jurisdiction, mostly family court matters, delays in having a matter tried by the courts, and contractual matters.

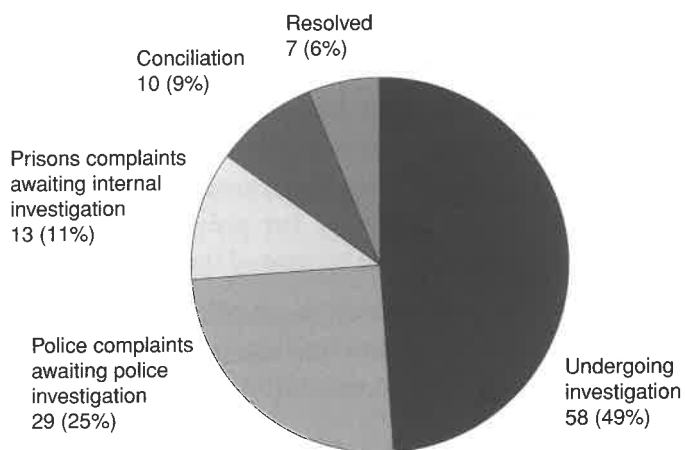
Conversely, of the complaints that are within jurisdiction, a significant number relate to unfair labor practices (such as unfair dismissal, unsafe working conditions, and unconscionable working conditions and terms of employment). This situation is a direct consequence of the political events of the May 2000 attempted coups with garment factories either closing or restructuring, and the workers bearing the brunt of the cost-cutting measures. Another direct result of the events of May 2000 are the complaints of excessive and extra-judicial use of force, brutality and arbitrary detention by the police, military and prison services.

The following tables illustrate the type of complaints received by the Commission in 2000.

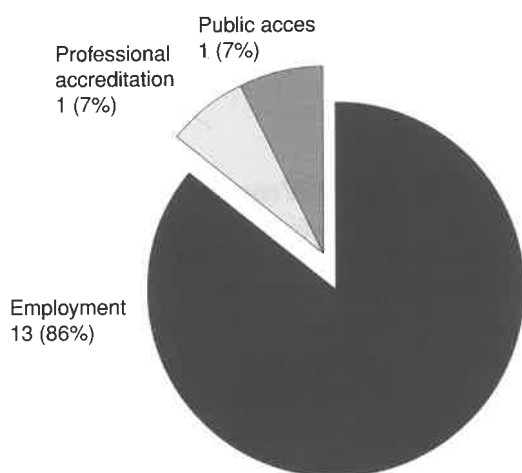
Basis of the 15 Unfair Discrimination Complaints



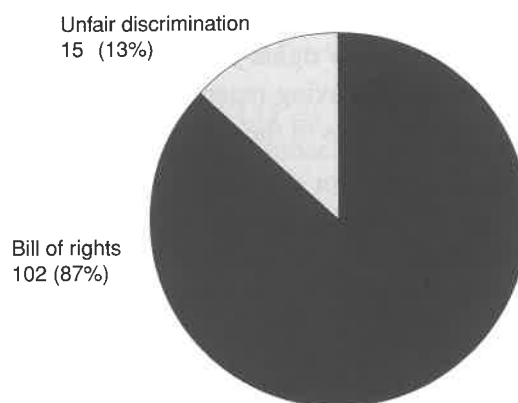
Status of 117 Complaints



Areas of 15 Unfair Discrimination Complaints



117 Valid Complaints



The Commission during the 2000-2001 period

The attempted coups of 2000 and the declaration of a state of emergency by the Army gravely affected the work of the Commission. There were budget cuts and security issues that the Commission had to face. At the same time, complaints from the public on human rights violations continued to be lodged with the Commission, which barely managed to deal effectively with all the human rights violations occurring in the country.

However, the Commission is now slowly re-emerging as a very important institution in the protection and promotion of human rights in Fiji. To date the Commission is dealing with three hundred fifty complaints (Fiji's population is approximately 750,000), and promoting human rights through the publications section of the Commission.

At the same time, the Commission is severely constrained by limitations of human resources and at present most of the complaints and investigative work is limited to the main urban and peri-urban centers in the main islands. There is only one office in Suva although there are plans to diversify and open offices throughout the major centers in order to reach the people directly.

Conclusion

The Commission is regarded in Fiji as a very important national institution for the protection and promotion of human rights. Despite the limitations of resources, the Commission has been able to provide a vital service at a time when it was most needed. In the aftermath of the events of May 2000, the provisions of the Bill of Rights could so easily have been brushed aside, but as a result of the promotional work of the Commission, people are more aware of their rights and there is a growing human rights consciousness that bodes well for the future.

The Commission's close association with the Asia-Pacific Forum for National Human Rights Institutions assists it in keeping in mind international human rights law as well as fosters the type of human rights practice in Fiji that is specific to our own special circumstances as a Pacific Island State with a unique multi-ethnic culture.

Dr. Shameem Shaista is the Director of the Commission.

For further information please contact the Fiji Human Rights Commission Level 2, Civic Towers, Victoria Parade, SUVA, Fiji, Phone: (679) 308577; Fax (679) 308661; e-mail: info@humanrights.org.fj <mailto:info@humanrights.org.fj> Website: www.humanrights.org.fj

Human Rights Commission – The Malaysian Scenario

permit. Despite my explanation, this participant made a formal proposal for the recognition of sex trade and the legitimacy of work without permit at the close of this conference. In my opinion, this proposal was made because many of those who were apprehended for sex trade were from her country. The point I would like to make is not about sex trade but the question of whose human rights we are defending. This can frequently be a bone of contention.

Conclusion

Within its short existence of twenty months, SUHAKAM has accomplished much. But much more work is yet to be done. Infringement of human rights will undoubtedly occur as long as we are imperfect human beings. SUHAKAM hopes that its existence as an independent national human rights institution will

help the number of incidences of human rights infringement drop drastically. With education, SUHAKAM hopes people will bring out their complaints on human rights violations. As a psychologist and educationist, I hope that SUHAKAM will succeed in fostering learning environments that encourage the individuals' participation in developing caring societies that uphold the dignity of human beings, and value friendship, understanding, tolerance and equality.

Professor Chiam Heng Keng is a Commissioner of SUHAKAM.

For further information please contact: Human Rights Commission of Malaysia c/o Kementerian Luar Negeri, Wisma Putra 50602 Kuala Lumpur, Malaysia, ph (603) 247-4240), fax (603) 248-0159; e-mail: humanrights@suhakam.org.my

Endnote

1. KIV means Keep in View, this indicates that the case is still considered active but no further action is taken due to insufficient evidence.

Struggle Against Racism

– Report on WCAR

Kazuhiro Kawamoto

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) finally ended with the release of the conference declaration and programme of action on December 31, 2001 - more than three months after the actual conference closed in Durban.

The conference, the last in the series of world conferences in the 20th century organized by the United Nations, was both significant and controversial. It followed the same format as in the previous world conferences of parallel NGO and inter-governmental meetings.

The international press reported on the controversies relating to the Palestine-Israel and the African slavery issues. For the peoples in Asia who are discriminated by caste and caste-like systems, the more than 200-paragraph intergovernmental conference declaration and programme of action still missed out their issue.

"[D]iscrimination based on work and descent" is not mentioned in the final intergovernmental conference document. Asian NGOs have lobbied for its inclusion since the beginning of the preparatory process of the conference. This issue includes the caste discrimination in India and Nepal, and the Buraku discrimination in Japan. It is believed that the strong objection by the Indian government to the inclusion of the issue is one factor for this omission.

The NGO declaration, on the other hand, explains the problem of caste-based discrimination by citing the number of people affected, the nature of suffering endured by them, the means by which discrimination is perpetuated, and the inadequacies of the legal system in protecting their rights.

Dalits (people from discriminated-against caste) from South Asia, the representatives of Buraku communities in Japan, and several international NGOs formed an international network and appealed the issue in various occasions starting with the preparatory meetings of the conference. Dalit groups in India mobilized about two hundred people to Durban and strongly appealed for an end to what they call the "hidden Apartheid." Their demonstrations during the NGO Forum drew much attention. The international network continued its lobby during the intergovernmental conference.

The declaration and programme of action of the



Demonstration by dalit NGOs in front of the convention hall

NGO Forum strongly raise the voices of the victims of discrimination as well as the earnest appeal of people fighting against discrimination on the ground. On the other hand, the document of the intergovernmental conference reflects the compromises of State governments. Many more paragraphs in the draft intergovernmental document were not included in the final document due to lack of time. But it nevertheless covered many issues ranging from issues concerning Africans and people of African descent, indigenous peoples, migrants, and refugees as victims of discrimination.

The world conference started with a two-day Youth Forum. After which, the NGO Forum began. About ten thousand people working on various discrimination issues attended the NGO Forum. Twenty five thematic commissions were formed to draft statements on specific issues. NGOs held for five days various workshops, symposiums, exhibitions, demonstrations, cultural events, among other activities, touching on diverse issues. They strengthened their networks and cooperated in lobbying in the intergovernmental conference.

About two thousand three hundred government representatives from one hundred sixty-three countries attended the intergovernmental conference. About four thousand NGO representatives were also in attendance. Representatives of governments in African and Caribbean countries faced off with their counterparts in the former colonial powers on the issue of reparation for the damage brought by colonialism and slavery.

The final document of the intergovernmental conference will be meaningless unless it is translated into action. State governments and UN-related bodies are expected to sincerely implement the conference's programme of action. Civil society including NGOs should urge, and monitor, government action.

Kazuhiro Kawamoto, a staff member of HURIGHTS OSAKA, attended the NGO Forum and the intergovernmental conference.

*For more information about WCAR please visit the following:
Asia-Pacific NGO Coordinating Committee for WCAR - www.hurights.or.jp/wcarasia.htm
Office of the UN High Commissioner of Human Rights - www.unhchr.ch*

Recent Events

1. The Asia-Pacific Seminar-Workshop on "Developing Strategies to Monitor and Advance Economic, Social and Cultural Rights" was held October 22-26, 2001 in Davao City. The main objective of this activity is to increase the knowledge and skills of human rights and development workers for the defense and promotion of economic, social and cultural rights in the Asia-Pacific Region. This seminar-workshop was jointly organized by Forum-Asia and the Task Force Detainees of the Philippines (TFDP).

For more information please contact: Aurora A. Parong M.D., Executive Director, Task Force Detainees of the Philippines (TFDP), 19 Malingap St., Teachers Village, Diliman Quezon City, Philippines, ph (632) 434-63-51, ph/fax: (632) 920-99-31, e-mail: tfdp@tfdp.org

2. The Center for Asia-Pacific Women in Politics (CAPWIP) held the first "Asia-Pacific Congress and Training of Women and Men in Media, and Women in Politics, Governance and Decision-making on Transformative Leadership" at the Asian Institute of Management (AIM) Conference Center, on 8-10 November, 2001 in Makati City. The theme of the Congress and Training is "Media and Transformative Leadership." The objective of this Congress-cum-Training was two-fold:

- a. To share and discuss with women and men from media the core concepts of Transformative Leadership and Gender-responsiveness, and how these can be practiced within media organizations and among individual media practitioners; and,
- b. To discuss how media can help in the practice of the culture of Transformative Leadership among women leaders in politics, governance and decision-making positions through media promotion and advocacy.

For more information please contact: Center for Asia-Pacific Women in Politics (CAPWIP), 4227-4229 Tomas Claudio Street, Baclaran, Parañaque City 1700 Philippines, ph (632) 8530226; 8322112; 8320680; fax (632) 8322263; e-mail: capwip@info.com.ph; www.capwip.org

3. A consultation meeting between human rights NGOs and the UN Special Representative on Human Rights Defenders, Ms. Hina Jilani, entitled "Towards More Effective Protection of Human Rights Defenders" was held on 30 November-1 December 2001 in Bangkok. The consultation had the following objectives:

- a. To provide a forum for information exchange between the Special Representative on Human

Rights Defenders and NGOs involved in the protection of human rights defenders;

- b. To provide a forum where local-level human rights activists and organizations can learn from the experiences and protection strategies employed by national and regional level activists and organizations.
- c. To formulate recommendations and strategies for a more effective protection of at-risk individuals and communities;
- d. To use resources compiled during the consultation to produce a Handbook on the Protection of Human Rights Defenders, which can be translated into local languages and distributed to local, national and regional organizations.

For more information please contact the following: Ms. Ami Latona or Ms. Pornpen Khongkachonkiet, FORUM ASIA c/o Union for Civil Liberty (UCL) 109 Shuthisanwinijchai, Samsen-Nok, Huaykwang,, Bangkok 10310, Thailand, ph (662) 276 9846; fax 66-2-693 4939; e-mail: ami@forumasia.org; noi-pornpen@forumasia.org

4. The Korea-based Asia-Pacific Center of Education for International Understanding (APCEIU) held its second regional workshop for human rights NGOs in Asia. The workshop entitled "Education and Training for Human Security in the Asia-Pacific, " was held on 17-19 December 2001, in Ichon. The workshop had the following objectives:

- a. To share experiences focused on education and training in the human rights field and the community at large;
- b. To develop better training skills and resources for human rights education;
- c. To prepare an alternative system for the structure of human rights education in the Asia-Pacific;
- d. To develop the network for education and training courses on human rights issues.

For more information please contact: The Asia-Pacific Center of Education for International Understanding (APCEIU) c/o Korean National Commission for UNESCO, UNESCO House 8F, Myung-dong 2-Ga, Choong-gu, Seoul 100-022 South Korea, C.P.O. Box 64, Seoul, Korea, ph (822) 755 3015; 568-5115; fax (822) 755 7477; 568-7454; e-mail: " Serapina Cha, Mi-kyung " < Sera87@hananet.net >

HURIGHTS OSAKA ACTIVITIES

HURIGHTS OSAKA held the third consultation meeting on the development of its regional human rights education program. This meeting, which dwelt on teaching material development, was held on December 15-17, 2001 and attended by educators from Japan, Indonesia and Pakistan. The second meeting, focusing on training, was held on October 18-20, 2001 with educators from Japan, Sri Lanka and the Philippines in attendance.

The 2001 Leaders Seminar was held on December 21-22, 2001. The seminar took up the issue of human rights and corporate responsibility.

The 2001 public forum of HURIGHTS OSAKA was held on December 12, 2001 on the occasion of the Human Rights Day celebration. A famous Japanese lawyer gave a lecture followed by a panel discussion on international human rights standards and Japanese society.



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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 in meeting its growing internationalization. In order to achieve these goals, HURIGHTS OSAKA has activities such as Information Handling, Research and Study, Education and Training, Publications, and Consultancy Services.



HURIGHTS OSAKA

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