Focus

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Contents

Editorial

Death Row

How many death row inmates have been subsequently proven innocent of the crime they were convicted of? How many other death row inmates who deserved to be declared innocent have no hope of having that fate? And how many executed inmates were later proven to have not committed the crime?

In our imperfect criminal justice system, people who are innocent and have no means of maintaining appropriate defense are doomed to face a higher probability of getting death sentence. Poverty and discrimination cause innocent people to end up wrongly convicted and wrongly sentenced to die.

Death penalty is not the only means of punishing those who have been proven beyond any reasonable doubt of committing the serious crime they were charged of. Life sentence deprives a person of much of the human rights and freedoms many people could enjoy. Lifetime imprisonment is a harsh punishment, even in the best, modern and humane prison facilities. And it is a better option than death penalty.

Death by execution is an injustice to an innocent person. It is an easy way out for government that has the responsibility of finding the culprit, and having the appropriate punishment served with due process properly respected.

Death Penalty in Central Asia

Penal Reform International

Central Asia presents a unique picture of a region on the cusp of abolition of the death penalty. Turkmenistan, Kyrgyzstan and Uzbekistan abolished the death penalty in law in 1999, 2007 and 2008 respectively. In Kazakhstan and Tajikistan, official moratoriums have been in place since January 2004 (in Kazakhstan) and July 2004 (in Tajikistan). Between 2000 and 2010, the abolitionist Central Asian countries all ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (aiming at the abolition of the death penalty).

The moratorium in Kazakhstan was imposed by Presidential decree in December 2003. This would make it easier to reverse than Tajikistan's, which passed a law imposing the moratorium. In addition, the Tajik moratorium covers both executions and sentencing, while the Kazakh moratorium only covers executions. This means that (in theory) people could still be sentenced to death in Kazakhstan, even though there would be no way for them to leave death row. Currently, nobody is on death row in either country, as all death sentences were commuted following the moratoriums. However, in both countries, the death penalty is retained in law and in their constitutions, raising the risk that executions could be resumed.

An additional issue is that the classification of the death penalty as a state secret makes accountability almost impossible. In both Kazakhstan and Tajikistan, families were not informed in advance about the execution of their loved one, nor were the burial places of executed persons revealed (in Kazakhstan, families were told of the location after two years).

In 2014, Kazakhstan completed a reform of its Criminal Codes. This did not abolish the death penalty, instead slightly reduced the number of death penalty-applicable offences from 18 to 17. These offences are clustered under two headings of "acts of terrorism resulting in death" and "especially grave crimes committed during times of war," the two offences that can carry the death penalty in the Constitution.

A study conducted on behalf of Penal Reform International in 2014, gauging public support for the death penalty for terrorism-related offences, found that 72 percent did not want the death penalty abolished for terrorism-related offences (though over half of that number wanted to retain the moratorium). 37 percent of all two thousand three hundred thirty-seven respondents were misinformed about the death penalty in Kazakhstan, as they did not know that there was a moratorium.

Tajikistan retains the death penalty for five offences: murder; terrorism; rape of a minor; genocide; and biocide. A review of the Criminal Code is ongoing, though there is hope that the death penalty will be abolished in the coming years. A public opinion survey carried out in 2013 for Tajik NGO Nota Bene found that of over two thousand respondents, 67 percent wanted the death penalty abolished.

In neither country is the death penalty applied to minors (those under 18 at the time of the offence) or to women of any age. Men over 63 (in Tajikistan) or 65 (in Kazakhstan) at time of sentencing cannot be sentenced to death. Those not criminally liable due to mental health issues are also exempted.

Life imprisonment is now the most severe sanction that is used in all Central Asian countries. In certain circumstances this amounts to life without the option of parole, and where there is a determinate "life" sentence, its length is overly punitive.

In Kazakhstan, the prisoners who were on death row at the time the moratorium was established had their sentences commuted to life without the option of parole. Following the

moratorium, a new "life" sentence was created by lawmakers to replace the death penalty, and established the maximum sentence as twenty-five years imprisonment (thirty years for cumulative offences). This effectively established a parallel but discriminatory system, whereby those initially sentenced to death are serving a harsher sentence than those sentenced after 2004. Tajikistan also provides for whole life sentences.

The number of life sentenced prisoners is growing. In November 2011, Kazakhstan had ninety-five lifers (twenty-nine of whom are serving a whole life sentence) and Tajikistan fifty-two lifers. There are no women or juveniles serving a life sentence, and the maximum age up to which a man can be sentenced to life is 65 in Kazakhstan and 63 in Tajikistan. Furthermore, the types of crime for which a life sentence may be imposed raise doubts about whether this severe sentence is being used only for the most serious of offences. For example, prior to the introduction of the 2015 Criminal Code, Kazakhstan had twenty-four crimes for which a life sentence may be imposed. These included drug-related offences, smuggling, and various non-lethal military offences.

The growing use of life imprisonment in the region, its disproportionate length and overly punitive nature raise a number of legal and practical issues.

Across the region, people are sentenced to life after proceedings which fail to meet international standards for a fair trial as guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which all Central Asian countries are state-parties. Although the right to a fair trial is not impeded by a lack of legal guarantees, it is impeded in practice. One of the fundamental problems lie in the fact that in the judicial systems across the region, which date back to the times of the Soviet Union, the office of the prosecutor has disproportionately strong powers, often exhibited through its influence over the judiciary and an unfair advantage vis-à-vis the accused. This is amplified by a judiciary that is overly influenced by the executive, lacks security of tenure, and is subject to allegations of corruption. As a consequence thorough investigations are not carried out. Instead, investigations are often focused only on collecting evidence sufficient to demonstrate guilt rather than collecting information that may reveal innocence. This results in notoriously low acquittal rates.

Ineffective access to legal aid for indigent defendants, obstruction of detainees' access to a lawyer during the arrest and pre-trial stages, and lawyers with limited expertise or experience further undermine the right to an adequate legal defence.

Allegations of widespread ill-treatment and torture made before, during or after trial by investigative and other officials to obtain information also raise serious concerns across the region. There is evidence to demonstrate that allegations of torture are inadequately investigated or are ignored, and although evidence obtained under torture is legally inadmissible in a court of law, courts continue to rely on "confessions" extracted through torture as evidence in criminal trials.

A harsh and discriminatory prison regime, and a lack of rehabilitation for life or long-term prisoners, reinforces the punitive nature of life imprisonment. Prison conditions across the region are far below international standards. Improvements are desperately needed to be made in terms of accommodation, nutrition, sanitation, access to medical and psychological care, visitation rights, sentence planning, and reformation and social rehabilitation programs including work and education programs. Life and long-term prisoners are often separated from the rest of the prison population and kept under a much harsher and stricter regime – including solitary confinement and semi-isolation – which is unrelated to prison security, but based on their legal status as lifers. Financial and other resources are under-committed, demonstrating a lack of prioritization by governments in the region in upholding a human rights model for the administration of justice.

To their credit, concerns related to fair trial safeguards and humane sentencing practices have prompted both government and civil society

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Death Penalty: Fig Leaf for Government's Incompetence

Lin Hsin-yi

The spring of 2014 marked the season of restlessness and discontent in Taiwan. The ruling party, the Kuomintang (KMT), made a unilateral move on 17 March 2014 at the Legislative Yuan (Parliament) that would force the Cross-Strait Service Trade Agreement (CSSTA) with China to the legislative floor without giving it a clause-by-clause review as previously established in a June 2013 agreement with the opposition party, Democratic Progressive Party (DPP). To protest against the move of the KMT, crowds of people thrust into the Legislative Yuan building and occupied the legislative floor on the evening of 18 March 2014, while several hundred protesters remained outside the building demanding the clause-by-clause review of the CSSTA, and the adoption of public monitoring rules before such review. Hundreds of other protesters tried to occupy the Executive Yuan (Premier's office) on the night of 24 March 2014, but were brutally dispersed by the police. The movement, also called the Sunflower Movement, lasted for twenty-three days and received wide attention from the international media.

Soon after the anti-CSSTA protest, on 27 April 2014, over fifty thousand people occupied the main roads in front of the Taipei train station and paralyzed the traffic for an anti-nuclear energy road rally. At 2:30 a.m. on the following day (28 April 2014), Taipei Mayor Hau Lung-bin ordered to disband the unarmed peaceful protesters with water cannon, causing injuries to several people. The government's brutal action enraged Taiwan citizens. However, the government did not know how to respond to the disappointment and anger from the civil society. Later, in the evening of 29 April 2014, news came that the Minister of Justice, Luo Ying-shay, had signed earlier in the day the first batch of death warrants; the first warrants she signed since taking office. Five death row inmates, Deng Guo-liang, Liu Yen-guo, Dai Wen-qing, and brothers Du Ming-lang and Du Ming-xiong were subsequently executed.

The first transfer of power in the past fifty-five years in Taiwan took place in 2000. The then elected President, Chen Shui-bian, from the DPP announced the policy of phasing out the death penalty. As a result, the number of executions decreased every year since then. From 2006 onward, a de facto moratorium was applied in Taiwan. Taiwan experienced the second transfer of power in 2008, when Ma Ying-jeou from the KMT was elected President. In 2009, the Taiwan government ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) by passing the Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. By 2009, four years had passed without any executions in Taiwan. Many human rights workers and international death penalty abolition organizations had hoped to keep the moratorium. Moreover, they hoped that Taiwan could become the next death-penalty-free country in Asia.

Contrary to these expectations, the Minister of Justice, Tseng Yung-Fu, signed four death warrants on 30 April 2010. Four executions were carried out. Execution of death row inmates continued in the succeeding years: five in 2012, six in 2013, and another six in 2014. With the ratification of the international human rights covenants, the government not only failed to reduce the number of executions; instead, it increased the number of executions every year. Tseng ordered twenty-one executions in total during his term. The current Justice Minister, Luo Ying-shay, has ordered to carry out five executions so far despite her media statement that she personally preferred the abolition of the death penalty because she was a Buddhist.

Everyone was puzzled. Why did the government ratify the international human rights covenants if it had no intention to abide by them? Article Six of ICCPR does not require a State-party to abolish the death penalty immediately, however, it can be affirmatively concluded that the State-parties should reduce the use of the death penalty and work towards its abolition. The Taiwan government has completely ignored its obligation. We wonder why.

All the executions since 2010, when the four-year moratorium was lifted, took place when the government approval rate was low. For instance, executions were carried out in 2010 after the controversy over the Economic Cooperation Framework Agreement (ECFA) between Taiwan and China broke out. More executions were carried out after the re-opening of investigation of the wrongly executed Air Force Private Chiang Kuo-ching in 2011. In 2012 and 2013, executions were ordered after the disclosure of high-level government officials' corruption and serious criminal offenses that fueled public indignation. Finally, the executions in 2014 were obvious examples of using execution to divert the frustration of the people.

More and more Taiwanese people have seen through the government's problem-shifting tactics. The Du Brothers executed last year were actually found not guilty in their district court trial. In their case, the problematic Cross Strait Agreement on Cracking Down on Crimes Collectively and Judicial Cooperation between Taiwan and China was applied because the offense took place in China. Prior to the execution, the Taiwan Alliance to End the Death Penalty and the Taiwan Association for Innocence both considered their case as a potential wrongful conviction. After the execution of the Du Brothers, reactions from the society were remarkably different from the other executions in the past four years. People started to question the motivations of the executions and were concerned that state violence was threatening people in various ways.

Taiwan still has a long way to go before it abolishes the death penalty. In my opinion, the government constitutes the biggest obstacle to the abolition of death penalty since it takes the lead in breaking the laws and violating the international covenants. Even though the government has ratified the two human rights covenants, it is simply unwilling to fulfill its obligations. And since Taiwan is not a member-state of the United Nations, the Human Rights Committee does not recognize its ratification of the two human rights covenants. But for the death penalty abolition organizations and the defense lawyers, the passage of the law to implement the international human rights covenants in Taiwan provided a basis for arguing cases in court based on international human rights standards. Failure to use that law may even lead the Taiwan government to shirk its duty to fulfill the obligations enshrined in the covenants. Some preliminary results have been obtained by lawyers citing the international human rights standards in courts. Before 2010, most appeals in the Supreme Court of defendants with death sentences were not assisted by lawyers. This lack of assistance from lawyers in appeals to the Supreme Court was a widely accepted practice and not considered unlawful. But the practice could have affected the right to fair trial of the defendants. After 2012, with the enforcement of the two human rights covenants, all appeals of death sentences by defendants in the Supreme Court were mandatorily assisted by defense lawyers. Court hearings and oral debates have also been held on these appeals. This is one example of a little progress on the way to the abolition of the death penalty. Nevertheless, we will not give up hope and continue to strive for the abolition of the death penalty.

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Additional information on the death penalty situation in Taiwan can be found in these articles:

Taiwan Alliance to End the Death Penalty, *When a Trigger-Happy Government Willfully Uses Violence to Threaten Its People, How Can They Ask the People to Renounce Violence?*, www.taedp.org.tw/en/story/2670.

The Death Penalty Project, *The Death Penalty in Taiwan: A Report on Taiwan's Legal Obligations under the International*

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Champion Open Debate and Discourse on Islamic Law*

WE, a group of concerned citizens of Malaysia, would like to express how disturbed and deeply dismayed we are over the continuing unresolved disputes on the position and application of Islamic laws in this country. The debate over these matters displays a lack of clarity and understanding on the place of Islam within our constitutional democracy. Moreover, they reflect a serious breakdown of federal-state division of powers, both in the areas of civil and criminal jurisdictions.

We refer specifically to the situation where religious bodies seem to be asserting authority beyond their jurisdiction; where issuance of various *fatwa* violate the Federal Constitution and breach the democratic and consultative process of *shura*; where the rise of supremacist NGOs [non-governmental organizations] accusing dissenting voices of being anti-Islam, anti-monarchy and anti-Malay has made attempts at rational discussion and conflict resolution difficult; and most importantly, where the use of the Sedition Act hangs as a constant threat to silence anyone with a contrary opinion.

These developments undermine Malaysia's commitment to democratic principles and rule of law, breed intolerance and bigotry, and have heightened anxieties over national peace and stability.

As moderate Muslims, we are particularly concerned with the statement issued by Minister Datuk Seri Jamil Khir Baharom, in response to the Court of Appeal judgment on the right of transgendered women to dress according to their identity. He viewed the right of the transgender community and Sisters in Islam to seek redress as a "new wave of assault on Islam" and as an attempt to lead Muslims astray, and put religious institutions on trial in a secular court.

Such a statement from a federal minister (and not for the first time) sends a public message that the prime minister's commitment to the path of moderation need not be taken seriously when a cabinet minister can persistently undermine it.

These issues of concern we raise are of course difficult matters to address given the extreme politicisation of race and religion in this country. But we believe there is a real need for a consultative process that will bring together experts in various fields, including Islamic and constitutional laws, and those affected by the application of Islamic laws in adverse ways.

We also believe the prime minister is best placed with the resources and authority to lead this consultative process. It is urgent that all Malaysians are invested in finding solutions to these longstanding areas of conflict that have led to the deterioration of race relations, eroded citizens' sense of safety and protection under the rule of law, and undermined stability.

There are many pressing issues affecting all of us that need the urgent leadership and vision of the prime minister, the support of his cabinet and all moderate Malaysians. They include:

i) A plural legal system that has led to many areas of conflict and overlap between civil and *syariah* laws. In particular there is an urgent need to review the *Syariah* Criminal Offences (SCO) laws. These laws which turn all manner of "sins" into crimes against the state have led to confusion and dispute in both substance and implementation. They are in conflict with Islamic legal principles and constitute a violation of fundamental liberties and state intrusion into the private lives of citizens. In 1999, the cabinet directed the Attorney-General's Chambers to review the SCO laws. But to this day, they continue to be enforced with more injustices perpetrated. The public outrage, debates over issues of jurisdiction, judicial challenge, accusations of abuses committed, gender

discrimination, and deaths and injuries caused in moral policing raids have eroded the credibility of the SCO laws, the law-making process, and public confidence that Islamic law could indeed bring about justice.

ii) The lack of public awareness, even among top political leaders, on the legal jurisdiction and substantive limits of the powers of the religious authorities and administration of Islamic laws in Malaysia. The Federal Constitution is the supreme law of the land and any law enacted, including Islamic laws, cannot violate the Constitution, in particular the provisions on fundamental liberties, federal-state division of powers and legislative procedures. All Acts, Enactments and subsidiary legislations, including *fatwa*, are bound by constitutional limits and are open to judicial review.

iii) The need to ensure the right of citizens to debate the ways Islam is used as a source of public law and policy in this country. The Islamic laws of Malaysia are drafted by the executive arm of government and enacted in the legislative bodies by human beings. Their source may be divine, but the enacted laws are not divine. They are human made and therefore fallible, open to debate and challenge to ensure that justice is upheld.

iv) The need to promote awareness of the rich diversity of interpretive texts and juristic opinions in the Islamic tradition. This includes conceptual legal tools that exist in the tradition that enable reform to take place and the principles of equality and justice to be upheld, in particular in response to the changing demands, role and status of women in the family and community.

v) The need for the prime minister to assert his personal leadership as well as appoint key leaders who will, in all fairness, champion open and coherent debate and discourse on the administration of Islamic laws in this country to ensure that justice is done. We especially urge that the leadership sends a clear signal that rational and informed debate on Islamic laws in Malaysia and how they are codified and implemented are not regarded as an insult to Islam or to the religious authorities.

These issues may seem complex to many, but at the end of the day, it really boils down to this: as Muslims, we want Islamic law, even more than civil law, to meet the highest standards of justice precisely because it claims to reflect divine justice. Therefore, those who act in the name of Islam through the administration of Islamic law must bear the responsibility of demonstrating that justice is done, and is seen to be done.

When Islam was revealed to our Prophet SAW in 7th century Arabia, it was astoundingly revolutionary and progressive. Over the centuries, the religion has guided believers through harsh and challenging times. It is our fervent belief that for Islam to continue to be relevant and universal in our times, the understanding, codification and implementation of the teachings of our faith must continue to evolve. Only with this, can justice, as enjoined by Allah SWT, prevail.

The above letter was issued in the names of 25 prominent Malaysians listed below.

Tan Sri Abdul Rahim Din, Former Secretary-General, Ministry of Home Affairs

Tan Sri Ahmad Kamil Jaafar, Former Secretary-General, Ministry of Foreign Affairs

Tan Sri Dr Aris Othman, Former Secretary-General, Ministry of Finance

Tan Sri Dr Ismail Merican, Former Director-General, Ministry of Health

Tan Sri Mohd Sheriff Mohd Kassim, Former Secretary-General, Ministry of Finance

Tan Sri Dr Mustaffa Babjee, Former Director-General, Veterinary Services

Tan Sri Nuraizah Abdul Hamid, Former Secretary-General, Ministry of Energy, Communications and Multimedia

Tan Sri Dr Yahya Awang, Cardiothoracic Surgeon and Core Founder National Heart Institute

Datuk Seri Shaik Daud Md Ismail, Former Court of Appeal Judge

Datuk Abdul Kadir Mohd Deen, Former Ambassador

Datuk Anwar Fazal, Former Senior Regional Adviser, UN Development Programme

Datuk Dali Mahmud Hashim, Former Ambassador

Datuk Emam Mohd Haniff Mohd Hussein, Former Ambassador

Datuk Faridah Khalid, Representative of Women's Voice

Datuk Latifah Merican Cheong, Former Assistant Governor, Bank Negara Lt Gen (Rtd)

Datuk Maulob Maamin, Lieutenant General (Rtd)

Datuk Noor Farida Ariffin, Former Ambassador

Datuk Ranita Hussein, Former Suhakam Commissioner

Datuk Redzuan Kushairi, Former Ambassador

Datuk Dr Sharom Ahmat, Former Deputy Vice-Chancellor, Universiti Sains Malaysia

Datuk Syed Arif Fadhillah, Former Ambassador

Datuk Zainal Abidin Ahmad, Former Director-General, Malaysian Timber Industry Board

Datuk Zainuddin Bahari, Former Deputy Secretary-General, Ministry of Domestic Trade, Co-operatives and Consumerism

Datin Halimah Mohd Said, Former Lecturer, Universiti Malaya and President, Association of Voices of Peace, Conscience and Reason

Puan Hendon Mohamad, Past President, Malaysian Bar

* Reprinted with permission from *The Daily Star* newspaper (www.thesundaily.my) which published this document on 9 December 2014.

Death Penalty in Central Asia

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across the region to engage actively in various reform programs aimed at humanizing the criminal justice and penal systems, and establishing more stringent controls. However, these reform processes are having a slow or limited effect on those who are accused of, or sentenced to, life imprisonment. One important reform that is taking place in Kazakhstan and Kyrgyzstan is the establishment of National Preventative Mechanisms (NPM) under the Optional Protocol to the Convention against Torture (OPCAT). These bodies have the authority to enter and investigate places of detention, and (it is hoped) will serve as a mechanism to effectively prevent torture and ill-treatment towards those serving the most severe of sentences.

This article is based on Penal Reform International's 2012 report "The abolition of the death penalty and its alternative sanction in Central Asia: Kazakhstan, Kyrgyzstan and Tajikistan," available from www.penalreform.org.

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Death Penalty in Taiwan

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Covenant on Civil and Political Rights, 2014, full report available at http://portfolio.cpl.co.uk/DPP/Taiwan-report/1/.

European Economic and Trade Office, *The European Union and death penalty in Taiwan*, http://eeas.europa.eu/delegations/taiwan/eu_taiwan/human_rights/abolition_death_penalty/index_en.htm.

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APCEIU: Facilitating Human Rights Education in the Region

HURIGHTS OSAKA

The 30th General Conference of UNESCO (November 1999) resolved to establish the Asia-Pacific Centre of Education for International Understanding (APCEIU) in line with UNESCO's responsibility to "promote education for international understanding, justice, freedom, human rights and peace."[1] The General Conference resolution states that the

> main function of the proposed centre is to carry out regional cooperative and collaborative work in the field of education for international understanding, inter alia on research and development, training, teaching materials development, information dissemination, and international conferences and/or workshops...[2]

The Korean government supported the establishment of APCEIU in 2000, and continues to provide financial support for its operations in line with its formal agreement with UNESCO.

UNESCO recognizes APCEIU as its focal point[3] for centers under its Education Sector Category 2.[4] APCEIU has been holding various activities every year including training workshops, preparation of publications, teacher exchanges, research and development of educational resources.

APCEIU photo, 2014

Recently, its programs have been linked to the United Nations (UN) Global Education First Initiative (GEFI) launched in 2012 to foster global citizenship.

Flagship Training Program

APCEIU's flagship training program, the Asia-Pacific Training Workshop on Education for International Understanding (APTW), has been held annually since 2001. Designed as a "Training of Trainers (TOT) program," APTW aims to enhance the participants' knowledge, skills, and commitment to Education for International Understanding (EIU) and further enable them to competently design and implement EIU training activities in their local and national contexts. The 2014 program had the theme "EIU, Fostering Global Citizenship," and provided a platform where participants could learn, experience, share and reflect upon various issues on education to foster global citizenship in today's complex, interconnected society. Fostering global citizenship is one of the three key priorities of the UN's Global Education First Initiative (GEFI) and is in line with EIU's core values in terms of the promotion of learning to live together in order to forge more just, peaceful, and inclusive societies.

The intensive nine-day 2014 APTW included lectures,

discussions, workshops, in-depth seminars, field visits, action plan development as well as formal and informal work in small groups. It was held in Seoul and in an educational center inside a village in the demilitarized zone (DMZ) on 21-29 August 2014.

2014 APTW Objectives

The objectives of APTW for 2014 included the following:

- To expand the participants' understanding and knowledge of key concepts and principles of EIU/GCE;
- To reorient the participants' perspectives towards a Culture of Peace through critical and reflective analysis of the current educational issues;
- To strengthen the participants' practical skills to design and implement EIU/GCE training programs tailored to their respective local context.

APCEIU defines Education for International Understanding (EIU) as a holistic and multi-dimensional educational initiative to promote learning to live together for a Culture of Peace. EIU advocates participatory democracy, human rights and dignity, social and economic equity, ecological sustainability, and peaceful reconciliation of conflicts. EIU pedagogy emphasizes transformative and inclusive education, relevance of knowledge, empowerment of learners, as well as holistic approaches. To APCEIU, EIU is interchangeably called Global Citizenship Education (GCE).

Program

The 2014 APTW had six subthemes, namely, EIU, human rights education, cultural diversity and intercultural understanding, education for global/local justice, education for sustainable futures, and education for peaceful conflict resolution. Human rights are also partly discussed in the other subthemes. There is also a session on pedagogy.

The training program also had significant time allotted to the development of plans on how to implement EIU/GCE program in the participants' respective areas of work.

Participants

APTW facilitates the training of educators and education officials from different countries in Asia-Pacific. It has given particular attention to educators from Central Asia (including Kyrgyztan, Uzbekistan, Kazakhstan, Afghanistan and Iran), and South Pacific (including Fiji, Vanuatu, and Solomon Islands).

School teachers, school administrators, education ministry officials, education institute officers, university professors and officials, and officers of the UNESCO National Commissions have participated in the APTW throughout its fourteen years of existence.

The participation of educators and education officials from different subregions of the Asia-Pacific is a significant merit of APTW. Among the programs that provide the study of human rights at the Asia-Pacific level, APTW has the advantage of having support from both the United Nations (through its status as a UNESCO-mandated institution) and the national governments (through the National Commissions for UNESCO which in many cases are under either the Ministry of Education or the Ministry of Foreign Affairs[5]). Its activities on other issues have been supported by UNESCO Asia-Pacific Education Bureau and in collaboration with the Southeast Asia Ministers of Education Organization (SEAMEO).

Role of HURIGHTS OSAKA

HURIGHTS OSAKA had the opportunity to contribute to the development of APCEIU's human rights education program in its early stage through the 2000 "Regional Workshop on Human Rights in Asia and the Pacific: Challenges and Strategies for the Protection of Human Rights" organized by the Korean National Commission for UNESCO (KNCU) and the then ACEIU.[6] The acronym ACEIU was subsequently changed to APCEIU. This collaboration was repeated in 2003 through the conference entitled "Human Rights Education in Asia-Pacific: Challenges and Strategies" held in Bangkok.[7] In both activities, representatives of non-governmental organizations were the main participants.

HURIGHTS OSAKA has likewise been invited to participate in a number of APCEIU-organized/supported conferences and workshops including the 2013 and 2014 APTWs.

Regional Task

APCEIU clearly falls within the category of institutions that provide human rights education. As a UNESCO-mandated institution, APCEIU has the status that allows it to promote human rights in the field of education among governments.

The financial support provided by the Korean government, which is relatively substantial considering the programs and projects being handled year after year, supplies the stability that is needed in regional programs.

APCEIU is a much-welcomed support for human rights education in the Asia-Pacific region.

For more information, please contact: Asia-Pacific Centre of Education for International Understanding (APCEIU), 26-1 Guro-dong, Guro-gu, Seoul, Republic of Korea 152-050; ph (82-2) 774-3933; fax (82-2) 774-3958; e-mail: ent@unescoapceiu.org ; www.unescoapceiu.org.

Endnotes

1 Text from resolution adopted on the report of Commission II at the 26th plenary meeting, on 17 November 1999, UNESCO, *Records of the General Conference*, 30th Session, Paris, October to November 1999, pages 39-40.

2 Ibid.

3 Network of UNESCO Category 2 Centres of Education, http://category2.unescoapceiu.org/.

4 Education Sector Category 2 Centres

> Category 2 Centres are recognized as an important extension of UNESCO's programme delivery arm and a means to raise UNESCO's profile in Member States. All Category 2 Centres in education contribute to one or more of the Sector's priority areas of teachers, literacy, TVET[Technical Vocational Education and Training], and sector-wide planning.
>
> Category 2 Centres also provide opportunities to showcase and share the capacity, technical expertise, and knowledge of Member States. They can facilitate regional networking and have the potential to act as resource hubs in specific education fields.
>
> Source: www.unesco.org/new/en/education/worldwide/unesco-institutes-and-centres/education-centres/.

5 It should be noted however that the Korean National Commission for UNESCO (KNCU), while receiving support from the Korean government, is an autonomous institution. The 1963 law that created it provides for the "autonomy of the organization, its finances and programme management." See the website of KNCU, www.unesco.or.kr/eng/front/about_us/global_02.asp.

6 See report on the workshop, "Workshop for Human Rights NGOs in Asia and the Pacific," *FOCUS Asia-Pacific*, volume 22, December 2000, www.hurights.or.jp/archives/focus/section2/2000/12/workshop-for-human-rights-ngos-in-asia-and-the-pacific.html.

7 This conference was organized in cooperation with the Asia-Pacific Regional Resource Center for Human Rights Education (ARRC) and HURIGHTS OSAKA. See report on the conference, "Challenges and Strategies for Human Rights Education in Asia-Pacific," *FOCUS Asia-Pacific*, volume 22, December 2003, www.hurights.or.jp/archives/focus/section2/2003/12/challenges-and-strategies-for-human-rights-education-in-asia-pacific.html.

APCEIU photo, 2014

14th Informal ASEM Seminar on Human Rights

Human Rights and Businesses : Key Messages*

While States remain the main duty bearers of human rights obligations, the private sector has a growing responsibility to ensure the protection and promotion of human rights in all its activities.

The 14th Informal ASEM Seminar on Human Rights was organised by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (as delegated by the Swedish Ministry for Foreign Affairs), the French Ministry of Foreign Affairs and International Development and the Philippine Department of Foreign Affairs. It was hosted by the Ministry of Foreign Affairs of Vietnam and brought together over 125 official government representatives and civil society experts, representing 47 ASEM members to discuss the protection and promotion of human rights in the business sector. Additional events at the Seminar included side-events on Collective Bargaining and on National Action Plans on Business and Human Rights. In addition, a panel discussion was organised on the role of the private sector in protecting migrant workers' rights during the closing plenary session.

There was an overall consensus that the UN Guiding Principles on Human Rights and Business (UNGPs) provide a common framework of globally agreed principles that should be promoted and consistently applied across all ASEM member countries as a means of framing policies and practices at the national and regional level. All ASEM members should develop National Action Plans (NAPs) to implement the UNGPs effectively.

At the country level, existing legislations that protect human rights should be strengthened and effectively implemented. In order to achieve government policy coherence, business-related human rights should [be] integrated into the portfolios of all government departments that touch upon the subject. States should put human rights and business on the agenda of international meetings and inter-regional dialogue, including those meetings that take place on trade, exports and investment. Regional mechanisms that document, evaluate and share best practices in human rights and business are required to strengthen policy coherence across Asia and Europe; such an institution could be set up at the ASEM level.

By failing to protect human rights, businesses can lose their social license to operate which can have disruptive consequences for their operations. The issue of corporate governance is key for strong compliance measures to be incorporated and some multinational enterprises (MNEs) are increasingly motivated to incorporate human rights into their core business activities. In comparison, small and medium enterprises (SMEs) may lack the financial resources and technical know-how to incorporate human rights concerns into their daily business operations. Governments need to build awareness and sensitise businesses, particularly SMEs, to their human rights responsibilities. Clarity on concepts regarding CSR and human rights in business will help create a consensus of understanding and assist in the engagement of companies.

Companies should conduct both detailed human rights due diligence and impact assessments in their value chain management. As various industry codes of conduct are already imposed on suppliers there needs to be a coordinated approach for social audits which can enhance the implementation process on business and human rights by companies in their value chain management. States themselves purchase a large variety of products and services through State-led procurement systems which can be an effective tool to promote and build awareness on corporate responsibility for human rights among companies which do business with state agencies.

Remedy – as defined in the UNGPs – can take on various characteristics and functions but a focus upon the risks and effects on the victim may be a good frame for articulating an effective remedy. Victims of business-related human rights abuses face a range of legal and practical barriers in their access to effective remedy and may need support in receiving the requisite knowledge, skills and resources to do so. It is important to extend full protection to human rights defenders working in the area of corporate accountability and human rights and business; awareness-raising amongst national law enforcement and judicial authorities is required in this regard.

States should encourage support [for] both judicial and non-judicial mechanisms. When non-judicial (both State based and non-State based) grievance mechanisms are engaged, adequate protection to the victims and efforts to ensure fairness in both process and outcome are required and efforts to ensure transparency, such as the effective application of freedom of information legislation need to be strengthened.

States and international organisations should support and work with multi-stakeholder initiatives (MSIs) to learn what human rights means to business. MSIs can bridge the 'language gaps' between policy makers and businesses by emphasising a specific objective or context in which companies operate, through reference to risk management, minimum wages, occupational health and safety. In addition to helping businesses align their activities with the UNGPs, MSIs should develop a roster of good practices with regard to the operationalisation of human rights in business practices.

The Seminar convened 4 working groups for direct and in-depth discussion on the relationship between businesses and human rights protection. The working groups focused on the state duty to protect human rights against violations by businesses; corporate responsibility and its contribution to human rights implementation; monitoring, reporting and access to remedies; and multi-stakeholder cooperation. Detailed reports of the individual working group discussions can be found in the complete Seminar Report, which will be circulated by the organisers.

General Recommendations to ASEM Countries

1. States should implement the UNGPs at the national level and develop National Action Plans (NAPs) on human rights and business which are fully inclusive, participatory and transparent.
2. States should adhere to their existing international human rights and labour commitments by improving the implementation of national legislation that promote and protect human rights. National reporting on human rights in business should be incorporated into existing processes such as the Universal Periodic Review and other treaty reporting.
3. States need to identify appropriate measures to regulate and engage with Multi-National Enterprises (MNEs) and Small and Medium Enterprises (SMEs) to ensure compliance of human rights standards.
   a) All companies should be required to report on the non-financial impact of their activities both at home and abroad. Human rights impact assessments should be a requirement for all new business developments.
   b) SMEs should be encouraged to participate in the United Nations Global Compact's national networks as these can support businesses in their CSR and human rights commitments.
   c) Business responsibilities on human rights protection should be integrated into start-up support and advice provided by public agencies to new companies, especially SMEs.
   d) States should consider developing soft incentives (such as preferential treatment in public procurement or in exports support) as a means to encourage businesses to adopt good practices.
4. Human rights impact and diligence is important in supply chain management. Corporate human rights codes for suppliers could be standardized to cover most of the requirements

that are applicable to all companies. Simplified compliance requirements will allow for a harmonized base for social audits.

5. When governments act as investors, procure goods or privatise the delivery of public services, they should aim to safeguard human rights by: a) Following a socially-responsible investment approach that encompasses human rights in all State investment policies; b) Ensuring transparency in the public procurement process as a precondition of monitoring and accountability; c) Incorporating human rights impact assessment into privatisation processes; d) Integrating human rights standards into public awarded contracts and service user agreements (for example, through the AAAQ or Availability, Accessibility, Acceptability and Quality criteria).
6. Independence, integrity and impartiality of the judiciary and the judicial system are critical to ensuring access to effective remedy. Transparency and access to information are imperative to ensure victims are fully aware of the facts as well as the processes available to them. It is the State's duty to ensure that this is maintained as part of a strong rule of law. In addition, States should support non-judicial mechanisms which are an important complement to judicial grievance mechanisms and can have both remedial and preventive functions.
7. Strengthening the capacity of victims as well as civil society groups (NGOS, trade unions) and other institutions such as national human rights institutions (NHRIs) that can support them in their pursuit of remedies is necessary. Free legal aid for victims bringing human rights-related cases is one means of ensuring this.
8. To enable NHRIs fulfill their Paris Principles mandate on human rights and business, certain measures are needed, such as: a) Safeguarding the independence of NHRIs; b) Ensuring NHRI mandates are adequate to address and remedy human rights and business – related abuses; c) Training and resources to work on human rights and business issues.
9. The UNGPs note that multi-stakeholder initiatives (MSIs) have important contributions to make to the field of business and human rights. Governments and intergovernmental organisations should work with MSIs to share best practice of the corporate responsibility to respect human rights and assist firms in exercising human rights due diligence. MSIs can help States and intergovernmental organisations reach across the legal and policy limitations of international law and focus on what human rights means to business.
10. MSIs are not an end in themselves. Their effectiveness is dependent on their internal dynamics and governance, and on their level of transparency and accountability to all stakeholders. In this regard, a) MSIs need to engage SMEs also and not just large businesses; b) National Action Plans must include the role MSIs can play; c) MSIs themselves may need to be aligned with the guiding principles. They may need to have their own grievance and reporting mechanisms.

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Professor Dong-hoon Kim: A scholar whose action was consistent with his thought

Makoto Kubo

Most dictionaries define international law as the law governing relations among states. However, the character of international law radically changed after the second World War. The inclusion of the human rights promotion and protection provision in the United Nations Charter integrated human rights law into international law; thus extending the reach of international law to relations between states and individuals. This epoch-making change in international law met strong resistance; consequently, international human rights law took a long time to be recognized as a specific field of law study.

In Japan, Professor Dong-hoon Kim was one of those who worked hard for the recognition of the international human rights law as a legitimate field of law study. He was a disciple of one of the pioneer legal scholars on international human rights law in the country, the late Professor Shigejiro Tabata, who organized the Kyoto International Law Research Association.

Professor Kim showed his admiration for Professor Tabata by dedicating his major lifetime work, the book entitled *Kokusaijinkenhou to Mainoriti no Chii* (International Human Rights Law and the Status of Minorities), to Professor Tabata.

But Professor Kim was not only a scholar; he was also an activist. He was very much a part of the domestic human rights movement that pressured the Japanese government to ratify various international human rights conventions. He was also part of the international human rights movement on the elimination of all forms of discrimination. He helped in the founding of the International Movement Against All Forms of Discrimination and Racism (IMADR), the first Japan-based international human rights non-governmental organization to obtain a consultative status with the United Nations Economic and Social Council (ECOSOC).

Professor Kim was involved in the founding of the Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA), and subsequently became its

first Director in 1994. He was involved in both domestic and regional activities of HURIGHTS OSAKA. Despite his many commitments as academic and activist, Professor Kim implemented the objectives of HURIGHTS OSAKA through projects and activities that were meant to serve the Asia-Pacific region.

After retiring from his teaching post at the Ryukoku University, where he was Professor Emeritus, and as Director of HURIGHTS OSAKA, Professor Kim continued to actively facilitate collaboration among the people in Japan and South Korea, his home country.

On 15 May 2014, Professor succumbed to cancer. He was a loss to the human rights movement in Japan and beyond. He was a scholar whose action was consistent with his thought.

Makoto Kubo teaches international law at the Osaka Sangyo University.

HURIGHTS OSAKA Calendar

HURIGHTS OSAKA is preparing a training manual on business and human rights in the context of Northeast Asia. Partner-institutions from China, Korea and Mongolia will join HURIGHTS OSAKA in developing the training manual. This training manual follows the publication of a research project on business and human rights (*Bridging Human Rights Principles and Business Realities in Northeast Asia*, 2014).

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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. lt 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.
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 Osamu Shiraishi, Director of HURIGHTS OSAKA.

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