



Editorial

Tragedy of Finding Peace

The International Committee of the Red Cross (ICRC) reported on its website that “around 300 patients, accompanied by 18 ICRC staff, fled Puthukkudiyiruppu Hospital in northern Sri Lanka after it was shelled repeatedly.” Neither the shelling of a hospital in time of war nor the forced stranding of thousands of civilians in a place where fighting is taking place can ever be justified.

Another human tragedy is unfolding right before the eyes of the whole world. So far, there is no ceasefire in this current Sri Lankan fighting, even for the sake of getting helpless civilians out to a safe zone. The same story has been happening in other places of armed conflict; Mindanao is an example.

Behind this tragedy, and many other armed conflict situations in Asia, is a long history of discrimination and other forms of human rights violations. In such situations, the use of violence became the means to gain justice despite the high costs in terms of loss of life and damage to property.

To obtain peace, there must be respect for human rights. To respect human rights, there must be peace. Otherwise, the undesired resort to violence remains an option for those whose rights have been trampled upon.

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.

Mindanao Conflict: In Search of Peace and Human Rights

HURIGHTS OSAKA

The current armed conflict in Mindanao reflects the recurring call for the fulfillment of the right to self-determination of the Muslim population in the Philippines in order to obtain sustainable peace.

With almost forty years of on and off fighting between Muslim armed opposition groups and the Philippine military forces, and the resulting high toll on human lives, the search for sustainable peace and full respect for human rights remains a big challenge.

The current armed conflict started in late 1960s, when a Muslim armed group (Moro National Liberation Front or MNLF) started to advocate for a “Moro homeland.” The Philippine government responded through military means, resulting in numerous deaths among, and displacement of, the civilian population (Muslims as well as Christians). In the 1970s, the Philippine government initiated peace talks and obtained a peace agreement with the then main Muslim armed opposition group (MNLF) to stop the conflict and address the problems. But armed confrontations broke out every now and then, between the Philippine military and the MNLF and also with another Muslim armed opposition group (Moro Islamic Liberation Front or MILF). For every break out of armed hostilities, thousands of non-combatants are caught in the crossfire, and suffer displacement and other human rights violations.

To emphasize their deep sense of independence as a people, many Muslims in Mindanao collectively call themselves “Moro,” the word used by the colonial Spanish government to refer to the Muslim people. This extends to the use of the word “Bangsamoro” (Moro Nation) to indicate a people separate from the rest of the Philippine population.

Roots of the conflict

The 2005 Philippine Human Development Report (2005 PHDR) lists the following major historical and contemporary roots of the conflict in Mindanao:¹

- (1) The forcible/illegal annexation of Moroland to the Philippines under the Treaty of Paris in 1898;²
- (2) Military pacification by the American colonial government;

- (3) Imposition of confiscatory land laws;
- (4) “Indionization” (or Filipinization) of public administration in Moroland and the destruction of traditional political institutions;
- (5) Government financed/induced land settlement and migration to Moroland;³
- (6) Land-grabbing/conflicts;
- (7) Cultural inroads against the Moros;
- (8) The Jabidah Massacre in 1968 (killing of Muslim army recruits by their superiors);⁴
- (9) Ilaga (Christian vigilante) and military atrocities in 1970-72; and
- (10) Government neglect and inaction on Moro protests and grievances.

The 2005 PHDR states that the declaration of martial law on 21 September 1972 by then President Ferdinand E. Marcos was a triggering event of the contemporary Moro armed struggle.

The migration of Filipinos from the northern and central regions of the Philippines to Mindanao led to conflicts. As the 2005 PHDR explains:

The Muslims resented the loss of their lands, including those idle but which formed part of their traditional community. This resentment grew as Muslims witnessed the usurpation by Christian settlers of vast tract of prime lands. This ignited disputes between them and the Christian settlers. The question on land ownership and land disputes between Muslims and Christians was crucial during the post-war period.⁵

Peace initiatives

The resulting armed conflict from the early 1970s created a major crisis in Mindanao, and in the Philippines as a whole. In December 1976, the Philippine government signed an agreement with the MNLF through the intercession of the Organization of Islamic Conference (OIC). This agreement, known as the 1976 Tripoli Agreement, provided for the creation of an autonomous region in Mindanao and Palawan (covering thirteen provinces), and the

establishment of an autonomous government, judicial system (for Sharia law), and special security forces.

In 1977, President Marcos and the *Batasang Pambansa* (legislature) came out with a series of laws to implement the 1976 Tripoli Agreement that resulted in the creation of “Sangguniang Pampook [Regional Council] in each of Regions IX and XII” in Mindanao.⁶ This solution was rejected by the MNLF.⁷

The 1987 Philippine Constitution brought in a new legal basis for a Muslim autonomous government in Mindanao. It has a provision (Article X) for an Autonomous Region in Muslim Mindanao, whose creation is dependent on acceptance in a plebiscite by the people in the affected provinces. Consequently, in 1989, a law⁸ was enacted that led to a plebiscite for the Autonomous Region in Muslim Mindanao (ARMM). In 1990, ARMM was established covering the provinces of Lanao del Sur, Maguindanao, Shariff Kabunsuan, Sulu and Tawi-Tawi, whose respective populations voted in a plebiscite for inclusion into the new region.

But peace was still elusive. Formal peace talks between the government and MNLF had to start again in 1993 through the mediation of OIC and the Indonesian government. The Philippine government and the MNLF signed the 1996 Final Peace Agreement (FPA) to complete the implementation of the “1976 Tripoli Agreement between the Government of the Republic of the Philippines (GRP) and the Moro National Liberation Front (MNLF).” The 1996 agreement called for the establishment of a “Special Zone of Peace and Development (SZOPAD), the Southern Philippines Council for Peace and Development (SPCPD), and the Consultative Assembly,” and the merging of the MNLF forces with the Philippine military, among other provisions. The agreement also called for an amendment to the law that created the ARMM. In 2001, the law was amended⁹ that led to a plebiscite in other provinces with predominant Muslim population regarding their inclusion in the ARMM. One province (Basilan) and one city (Marawi) joined the ARMM as a result.

By winning in the 1996 elections for the ARMM posts, the MNLF virtually took power since 1996 over six provinces and one city with predominant Muslim population.

But the autonomous region formula was not a complete solution toward peace in Mindanao. Another Muslim armed opposition group, the MILF, demanded an independent Islamic state. The Philippine government had to deal with MILF separately for a negotiated settlement of its demands.

The 2005 PHDR states that by early 2000s, “three tracks had emerged, parallel though sometimes converging, which now constitute the current evolution of the Moro conflict: (1) the implementation of the GRP-MNLF Peace Agreement; (2) the GRP-MILF peace negotiations; and (3) Post-9/11 terrorism and counterterrorism on the Moro front.”¹⁰

The Philippine government (GRP) and the MILF started peace talks toward a negotiated political settlement in 1996. Support for the peace talks by Malaysia, Indonesia and Libya led to the GRP-MILF Tripoli Agreement on Peace of 2001. The Implementing Guidelines on the Security Aspect of the GRP-MILF Tripoli Agreement of Peace of 2001 was signed on 7 May 2002 in Putrajaya, Malaysia. To maintain the ceasefire, three mechanisms were adopted 1) Joint Coordinating Committees on the Cessation of Hostilities, 2) the International Monitoring Team (composed of representatives from Malaysia, Brunei Darussalam, and Libya), and 3) the Ad Hoc Joint Action Group.

The continuing peace negotiations between the GRP and MILF resulted in a 2008 Memorandum of Agreement on the Ancestral Domain Aspect of the GRP-MILF Tripoli Agreement of Peace of 2001 (MOA-AD). The MOA-AD provides for the delineation of the Bangsamoro homeland, similar to the delineation of the ancestral domain of indigenous Filipinos.¹¹ It provides for the establishment of a Bangsamoro Juridical Entity (BJE), which is the legal body that will govern the Bangsamoro homeland. Both GRP and MILF saw the MOA-AD as a necessary step to a final peace agreement.

But before the scheduled signing of the MOA-AD on 5 August 2008 in Kuala Lumpur was held, its legality was questioned before the Philippine Supreme Court. The Philippine government decided not to sign the agreement in view of the opposition raised by some Christian local government leaders in Mindanao and other political personalities. The court declared the unsigned MOA-AD unconstitutional in October 2008.¹² The court viewed the BJE, provided for in the MOA-AD, as “more of a state than an autonomous region” allowed by the 1987 Constitution for the ARMM governing body.

Human rights and the peace agreements

Did the agreements between the Philippine government and the MILF consider the human rights dimension of the issues at hand? Some say the MOA-AD ignored human rights due to the unlimited power given to the BJE.¹³

As one author pointed out,¹⁴ the Terms of Reference (TOR) for the discussion of the MOA-AD, the General Framework of Agreement of Intent Between the GRP and the MILF (GFAI) dated 27 August 1998, the Agreement on the General Framework for the Resumption of Peace Talks Between the GRP and the MILF (AGFRPT) dated 24 March 2001, and the Tripoli Agreement on Peace Between the GRP and the MILF (TAP) dated 22 June 2001 all refer to the United Nations Charter, the Universal Declaration of Human Rights, and mention the principles of justice, freedom and respect for the identity and culture of the Moro people. The TOR also includes the “ILO Convention No. 169, in correlation to the UN [United Nations] Declaration of Rights of the Indigenous Peoples.”

Even the Philippine Supreme Court referred to the UN Declaration on the Rights of Indigenous Peoples in discussing the appropriateness of the MOA-AD provision on the right of the Moros to a homeland.

Way forward

The failure of the Philippine government to sign the MOA-AD led to a new round of armed hostilities in late 2008 causing death to a number of people and displacing thousands more.

Nevertheless, the MOA-AD is just one step on the long road to peace in Mindanao. The peace negotiations between the Philippine government and the MILF will continue and eventually deal with the existing legal structures brought about by the agreements with the MNLF.

Whatever final peace settlement is reached by all parties (the Philippine government, the MNLF, and the MILF), the international human rights standards should form a crucial part of both the process and content of achieving it. Peace without human rights is not a final peace settlement.

For further information, please contact HURIGHTS OSAKA.

Endnotes

¹ Human Development Network, *2005 Philippine Development Report* (Manila: Human Development Network, 2005), page 66, citing Macapado Abaton Muslim, *The Moro Armed Struggle in the Philippines: The Nonviolent Autonomy Alternative* (Marawi City: Office of the President and College of Public Affairs, Mindanao State University, 1994).

² This is the peace treaty between the US and Spain that ceded the Philippines to the US for 20 million US dollars.

³ The government colonization program led to the migration to Mindanao of Filipinos from the northern and central regions of the Philippines prior to the Second World War.

⁴ This refers to the killing of members of a special military force who were being trained on guerrilla tactics in preparation for "Operation Merdeka," a secret plan to invade Sabah. See Jocelyn Uy, "Lone survivor recalls Jabidah Massacre," *Philippine Daily Inquirer*, in <http://newsinfo.inquirer.net/breakingnews/nation/view/20080318-125522/Lone-survivor-recalls-Jabidah-Massacre>

⁵ Busran-Lao, Y., 2005, "Human Development, Economic and Social Costs and Spillovers of Conflict: The Case of the Province of Lanao del Sur" cited in Human Development Network, op. cit., page 67.

⁶ See Presidential Decree No. 1618, Implementing the Organization of the Sangguniang Pampook and the Lupong Tagapagpaganap ng Pook in Region IX And Region XII and for Other Purposes.

⁷ Human Development Network, op. cit., page 71.

⁸ Republic Act No. 6734, An Act Providing for the Autonomous Region in Muslim Mindanao.

⁹ Republic Act No. 9054, An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734.

¹⁰ Human Development Network, op. cit., page 66. The third track covers the Abu Sayyaf Group, which became notorious for its kidnapping activities in early 2000s.

¹¹ The delineation of ancestral domain of the indigenous communities is provided for under the Indigenous Peoples' Rights Act of 1997 (IPRA), Republic Act No. 8371.

¹² G.R. Nos. 183591, 183572, 183893, and 183951, *The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, et al., October 14, 2008.

¹³ Soliman M. Santos, *GRP-MILF peace agreements and human rights*, Action for Economic Reforms, in www.aer.ph/index.php?option=com_content&task=view&id=747&Itemid=88

¹⁴ Ibid.

The Human Rights and Humanitarian Costs of the 2008-2009 Mindanao War

Zainudin S. Malang

The parents of 16-year-old Saadudin Ampuan recall the morning of 21 September 2008, when they told him to go to their farm, one and a half kilometers away from their house. Aware of the danger, they said they would be following right behind him. Thirty minutes later, the parents saw him in the custody of soldiers. Saadudin saw his parents and called to them. The parents tried to get near him but was fired upon by the soldiers. The following day they saw his dead body in a shallow grave – both his ears were cut off, both his legs had seven deep cuts each, and his sex organ was mutilated. This Moro family's farm is located in Lanao del Norte province, which is heavily affected by the ongoing offensive by government soldiers against Moro rebels.

Basilan Kamidon, in an evacuation camp in the province of Maguindanao, recounts how he and all the Moros in his village in the adjoining North Cotabato province had to scamper for safety in early August 2008 after fighting between soldiers and rebels erupted. They walked and waded the whole day through the swamps to find safety in a secluded area of the Liguasan Marsh. The elderly and children had to be carried on the back of some of the adults. The next day, they walked again till the afternoon to reach a camp for internally displaced persons (IDPs) in the town of Datu Piang, Maguindanao province. They joined one hundred thousand other IDPs who have to put up with inadequate food aid, diseases, hot and crowded makeshift shelters, and the longing to go back home. Basilan says some of his fellow villagers tried to go back but were shot at and driven away by soldiers and Christian militia members. At the moment, he and the others see no hope of going back.

Events leading to the war

Mindanao has seen major outbreaks of fighting between Moro rebels waging an armed struggle for their right to self-determination against the Philippine Republic. The latest outbreak between the forces of the Moro Islamic Liberation Front (MILF) and the Government of the Republic of the Philippines (GRP) began in early August 2008. Ironically, the two sides were supposed to sign an interim peace agreement (2008 Memorandum of

Agreement on the Ancestral Domain Aspect of the GRP-MILF Tripoli Agreement of Peace of 2001 [MOA-AD]) in the same month.

As expected, both sides pin the responsibility on the other side for the breakdown of the ceasefire which has been holding for the previous five years. However, members of local civilian ceasefire monitors point to local Christian politicians in North Cotabato as engaging in attempts to incite or spark a big war between the government and the rebels as early as July 2008. According to these local monitors, the International-Monitoring-Team-brokered emergency agreement between the ceasefire committees of both sides to prevent a major breakdown of the ceasefire was sabotaged by civilian militias beholden to these politicians. The rebels were already pulling-out pursuant to that agreement when the militias fired at them, prompting the former to stay put. This provided an excuse for the military to launch an offensive against them.

Meanwhile, these politicians in tandem with their conservative but powerful counterparts in the nation's capital were successful in scuttling the peace process through a well-coordinated disinformation campaign against the interim peace agreement. By pandering to Filipinos' ultra-nationalist sentiments, they were able to generate widespread opposition among Christians against the agreement, forcing the government to abandon the product of eleven years of negotiations with the MILF.

Within a week after fighting broke out in early August 2008, there were almost one hundred thirty thousand IDPs. The military offensive carried on through the fasting month of Ramadhan and onwards such that by early October, the number of IDPs ballooned to almost four hundred thousand. Although the frequency of encounters between the government and rebel forces has decreased, IDPs still number more than three hundred thousand individuals as of 27 January 2009. The bulk of these IDPs are in the Moro communities in the provinces of Maguindanao, Lanao del Sur, Lanao del Norte, and North Cotabato.

Pattern of violations of international human rights and humanitarian laws

International human rights and humanitarian laws that protect non-combatants in armed conflict situations from such acts as food blockades, summary killings, use of civilian communities as human shields have little impact in protecting the IDPs of Mindanao.

Vilma Mandi recalls how on the morning of 8 September 2008 her husband and five of her children died after their boat was fired upon by a plane of the Philippine Air Force (PAF). The boat was part of a convoy of boats carrying civilians who hurriedly left their village upon seeing planes hovering over it. A few hundred meters before reaching a safe area, a rocket from one of the planes hit the boat. The military claimed that the victims were combatants who fired at the planes, but five of the victims were only two to seventeen years old. Civilians, including the village chief, who saw the incident along the highway that morning belied the military claim.

Numerous village officials and residents of several Moro towns in Maguindanao say that houses (except those along the highway) have been torched by government soldiers. This problem occurred in Barangay (Community) Muslim in Guindulungan town, Barangay Pamalian in Datu Unsay town, Barangays Pusao and Tukanalipao in Mamasapano town, and Barangays Tapikan and Lapok in Sharif Aguak town, among other places. However, in the village of Pagatin, at least ten houses along the highway were torched allegedly by government soldiers during the Eid'l Fitr celebrations commemorating the Islamic Holy Month of Ramadhan. In Pamalian, where residents say three hundred of the four hundred houses were torched, even the rice mill was set afire by placing burning tires under the machinery. Residents and village officials say civilians are victims of retaliation as the burning of civilian properties usually occur whenever soldiers suffer casualties in the hands of the rebels.

The IDPs could not go back to their farms to forage for whatever was left of their crops due to continuing aerial and artillery bombings. For instance, on 10 December 2009, IDPs from Barangays Balanakan, Liong, and Alongan in Datu Piang town trooped back to their villages upon the military's assurance that there would no longer be any bombardment. But before they could even complete their return, those villages were bombed again forcing the IDPs to hurry back to the IDP camp. In another village in another municipality, IDPs trying to get back to their farms were simply shot at similar to what happened in Barangay Tapikan in Sharif Aguak town.



Further, the IDP camps are not always safe because they can get hit by artillery. They can be exposed to rebel attacks when soldiers, with their military vehicles and tanks, roam places where IDP shelters are located as in the towns of Datu Saudi Ampatuan, Datu Piang and Piagapo. Residents note that soldiers move in among them when their detachments become vulnerable to attacks by rebels. They theorize that soldiers are using the civilians, some of whom are related to the rebels by family ties, as shields to deter the rebels from attacking. In case of attack, the civilians will be caught in the cross-fire.

Inefficient aid delivery adds suffering

IDP camps are mainly constructed by the IDPs themselves using light materials such as plastic sheets and coconut leaves. These makeshift tents expose them to unbearable heat and rain.

The available food aid (twenty-five kilos of rice per family per month) has not been able to sufficiently serve the needs of the IDPs. In January 2009, a man who set up a tent for his family along the road in Datu Saudi Ampatuan burned his tent out of frustration for failing to receive any food for months from humanitarian organizations. The system of delivering food has also caused the exclusion of some IDPs from receiving food. This happened in the case of an international humanitarian organization whose strict system of distributing food using food stamps excluded IDPs who could not get the stamps. Also, a faulty system of determining who deserve to receive the food stamps has been seen as a cause of this problem. In one documented case, one group of IDPs received food, while another group who were present during the food distribution failed to get any due to lack of food stamp. While in another case, some IDPs were considered fake IDPs and thus disqualified from receiving aid.

Crowded and ill-prepared camps are places for diseases to spread quickly. Without proper medical support, IDPs especially children suffer from the diseases. Journalists, in a fact-finding mission in five conflict affected areas in Mindanao in October 2008, noted the high number of deaths at the IDP camps due to treatable diseases. In Lanao del Norte town, eleven children have died since August 2008 due to diarrhoea. Yet this situation has not been noticed by an international humanitarian organization (International Committee of the Red Cross) operating in the camp, whose staff likely saw dead children being brought out to the burial grounds.

Recommendations

On the whole, disease, hunger, and death would have been a much bigger problem at the IDP camps if the international aid organizations had not given support. But there are serious issues on their services to address, as the IDPs clearly say. The following suggestions are thus offered to the international aid organizations :

- a. Engage as partners in aid delivery the local NGOs with proven track records, which can provide appropriate information on the conditions on the ground.
- b. Hold periodic validation of the number and location of the IDPs in view of the changing situation over time.
- c. Hold direct consultation with the IDPs themselves for purposes of identifying gaps in aid delivery, complementing the coordination with the local social, political and administrative structures.
- d. Organize the IDPs by camps and inform them of the grievance mechanism regarding aid abuse. The government guideline (NDCC Circular No. 18, Series of 2008) says that any complaint, injustice, wrongdoing, accusations, or criticisms relating to humanitarian efforts may be addressed to the Regional Disaster Response Coordination Desk.

The human rights situation of the IDPs require more intense efforts, and the following are suggested:

- a) The international community should remind the government and rebel forces of their agreement to comply with international human rights and humanitarian law standards. Under the Tripoli Agreement of 2001, both parties obligated themselves to be bound by such standards.

- b) The local and foreign civil society organizations should likewise call upon both parties to respect international human rights and humanitarian law standards.
- c) The Philippine Commission on Human Rights should provide adequate resources for the investigation and legal aid work of its offices in the conflict affected areas.
- d) Aid organizations should abandon their reluctance to fund human rights monitoring and legal aid services to victims.

In view of the bias of the international media in covering the situation of Christian IDPs in Mindanao (as in the case of IDPs in Kauswagan and Kolambugan, Lanao del Norte province), local and foreign aid organizations should pressure, or at least remind, the media outfits of their responsibility to be fair and to give sufficient attention to the plight of the Muslim IDPs in Mindanao. Lack of media coverage deprives the Muslim IDPs of the opportunity to generate public pressure against the continuation of the war.

These suggestions are merely remedial. A true long lasting and sustainable protection for the victims of the conflict is a successful peace process between the government and the rebels. A ceasefire will only offer temporary respite. Only by addressing the demands for the full respect for the human rights (i.e., self-determination) of Moro people can the people of Mindanao reasonably look forward to living in an environment of peace.

Zainudin S. Malang is currently an adviser to an international non-governmental organization providing medical aid to internally displaced persons in Mindanao.

For further information, please communicate with Mr. Malang through morolaw@yahoo.com.

Employment Measures for Persons with Disabilities in Japan

Ryosuke Matsui

There are more than seven million persons with disabilities in Japan. This is almost 6 percent of the total population, a much lower rate than that of the USA and European Union countries due to the difference in the definition of disability. Those with disabilities in Japan consist of three and a half million persons with physical disabilities, more than five hundred thousand persons with intellectual disabilities, and more than three million persons with mental disabilities. The number of persons with physical disabilities living at home increased from three million in 1996 to three and a half million in 2006, an increase of 18.6 percent while those who are 65 years old and over increased from more than one and half million in 1996 to more than two million in 2006, an increase of 39.3 percent reflecting the rapid aging of the Japanese population.

23.4 percent of persons with intellectual disabilities are in institutions and 11.7% of persons with mental disabilities are in mental hospitals while only 2.4% of persons with physical disabilities are in institutions. Based on the Basic Disability Plan (2003 – 2012), the government has been trying to promote the transfer of those in institutions and mental hospitals to communities by encouraging local

Table 1. Total number of persons with disabilities and employment rate of those who are working (2004) (in ten thousands)

	Persons with physical disability	Persons with intellectual disability	Persons with mental disability	Total number of persons
Number of persons with disabilities	352	46	258	656
Number of those who are in working age and living at home	125	26	149	300
Number of those who are working	52	13	61	126
Number of those who are working at sheltered or small-scale workshops	3	7	14	24
Employment rate (%)	41.6	50	40.9	42

governments and voluntary agencies to increase the number of care homes as well as attendant and personal care services in the communities.

But both central and local governments cannot afford to drastically increase funding to secure enough care services and care homes for all persons with disabilities who are ready to move from institutions/hospitals into the communities.

The government is now reviewing the current national laws and regulations for persons with disabilities in order “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities,” and prepare for the ratification of the Convention on the Rights of Persons with Disabilities (CRPD).

Employment of persons with disabilities

According to the most recent government statistics, out of a total number of 1.26 million persons with disabilities in Japan who are working, 240,000 are employed at sheltered or small-scale workshops (Table 1). And out of a total of around 1 million persons with physical and intellectual disabilities who are working, nearly half of them are employed at private enterprises or public sector while another half are self-employed or employed at family businesses (Table 2).

Table 2 shows that around 93 percent of the total employees with disabilities are employed by private enterprises while only 7 percent are employed by the public sector. And among those employed by private enterprises about three out of four are employed by private enterprises with fifty-six or more employees, under the employment quota system.

And among employees with disabilities about one out of three have severe disabilities. This means that the employment quota system plays a key role in the employment of persons with disabilities, including those with severe disabilities in Japan.

Legal measures

Japan started enacting a series of laws regarding persons with disabilities after the Second World War (Table 3).

Table 2. Number of persons with physical or intellectual disabilities who are employed at private enterprises and public sector (2003) (in ten thousands)

	Number of fulltime employees with disabilities	Number of fulltime employees with severe disabilities
A. Persons with disabilities who are employed at private enterprises with 5 or more employees	483	171
B. Persons with disabilities who are employed at enterprises with 56 or more employees	369	134
C. Persons with disabilities who are employed at public sector	38	11
Total (A+C)	521	182

Table 3. Japanese laws on persons with disabilities

Year	Laws
1949	Law for the Welfare of Persons with Physical Disabilities
1950	Mental Hygiene Law, amended in 1995 to become The Law Concerning Mental Health and the Welfare of Persons with Mental Disabilities
1961	Law for the Welfare of Persons with Intellectual Disabilities
1960	Law for the Employment Promotion of Persons with Physical Disabilities, amended in 1987 to become the Law Concerning the Employment Promotion, etc. for Persons with Disabilities (in preparation for the ratification of the ILO Convention on Vocational Rehabilitation and Employment [Disabled Persons] of 1983)
1970	The Basic Law on the Measures for Persons with Intellectual and Physical Disabilities, amended in 1993 to become the Basic Law for Persons with Disabilities
1982	The Long-term Plan of the Measures for Persons with Disabilities, which corresponded to the UN Decade of Disabled Persons (1983–1992) and the World Program of Action concerning Disabled Persons (1982)
1993	The New Long-term Plan of the Measures for Persons with Disabilities, which corresponded to the Asian and Pacific Decade of Disabled Persons (1993–2002)
1994	Law for the Promotion of the Construction of Special Buildings for Smooth Use by the Aged and the Disabled, revised in 2002
1995	Plan for Persons with Disabilities – Seven-Year Strategy toward Normalization (FY 1996 – FY 2002)
1997	Personal Care Insurance Law for the Aged
2000	Law for Promoting Easily Accessible Public Transportation Infrastructure for the Aged and the Disabled
2002	Basic Program for Persons with Disabilities (FY 2003 – FY 2012) and Five-Year Plan for Implementation of Priority Measures (FY 2003 – FY 2007), which corresponds to the 2 nd Asian and Pacific Decade of Disabled Persons (2003 – 2012)
2004	Latest revision of the Basic Law for Persons with Disabilities

The government aims to increase regular employment for persons with disabilities by leading them away from sheltered employment. There are two programs currently being implemented by the government: a) regular employment programs established under the Law Concerning the Employment Promotion, etc. for Persons with Disabilities, and the b) sheltered employment programs established under the welfare laws for persons with physical, intellectual and mental disabilities.

The central features of the government program for the regular employment of persons with disabilities are the a) employment quota system, b) levy and grant system for the employment of persons with

disabilities, and c) vocational rehabilitation programs.

Employment quota system

The law governing the employment quota system penalizes employers who fail to meet the quota. Both private enterprises and public institutions (national and local governments) are required to comply with this employment quota system. Private enterprises that fail to meet the quota are required to submit a plan to employ persons with disabilities within a three-year period. Failing to submit the plan is penalized by a fine (200,000 Yen maximum), while neglecting to implement the plan is penalized by the Minister of Health, Labor and Welfare who would

expose this neglect to the mass media. Table 4 provides information on the situation of the employment quota system.

Table 4. Status of implementation of the employment quota system

Employer	Employment quota for persons with disabilities
Private enterprises/General private enterprises (at least 56 regular employees)	1.8%
Government-affiliated organizations in certain categories (at least 48 regular employees)	2.1%
National and local public organizations	2.1%
Prefectural boards of education, etc.	2.0%

As of 1 June 2008, private enterprises covered by the employment quota system maintain 1.59 percent, 0.21 point below the required legal quota, employment rate. Comparing the rates among private enterprises, large size private enterprises with at least one thousand employees have been making more efforts in the employment of persons with disabilities in recent years than the small size private enterprises,

which used to employ higher percentage of persons with disabilities. Large size enterprises establish special subsidiary companies for the employment of persons with disabilities. As of 1 June 2008, two hundred forty-two special subsidiary companies employ around 7,700 persons with disabilities with more than 40 percent being persons with intellectual disabilities. While the special subsidiary companies increased the number of employees with intellectual disabilities, this system avoids their employment in regular company operations and can be criticized as against the concept of inclusion or mainstreaming.

Levy and grant system

The levy and grant system is intended to improve the level/rate of employment of persons with disabilities by collecting levies from those enterprises which fail to satisfy the employment quota and use the collected levies to financially assist (in various forms of grants) those who employ persons with disabilities. This is meant to support the economic burden accompanying the employment of persons with disabilities that requires the remodeling of the work facilities/equipments, special employment management, assignment of workplace attendants, and skill development. It should be noted that an employer who pays the levy is not exempt from the obligation to comply with the employment quota system.

Table 5. Institutions providing vocational rehabilitation services

Public Employment Security Offices (PESOs)	A PESO registers the application of persons with disabilities who seek employment, and provides these applicants with such services as vocational guidance and job referrals.
National Institute of Vocational Rehabilitation (NIVR)	NIVR conducts research and surveys on vocational rehabilitation and provides training for experts engaging in vocational rehabilitation as well as provides experimental vocational rehabilitation services especially for those with severe disabilities.
Prefectural centers	These centers provide disabled persons with such services as vocational evaluation, vocational guidance, support services by job coaches, and work preparation training in close collaboration with PESOs and Employment and Living Support Centers for Persons with Disabilities, etc. They also provide employers with vocational consultation and advice concerning employment management of persons with disabilities.
Private employers	An employer can be commissioned by a prefectural governor to conduct on-the-job training for persons with disabilities in the types of work suitable for their capacities for a period of six months or less (one year or less in the case of persons with severe disabilities). Short-term on-the-job training (from less than two weeks to four weeks in the case of persons with severe disabilities) is also available.
General public vocational ability development centers	Public vocational training is provided, under the Vocational Ability Development Promotion Law, for persons with disabilities to help them acquire skills necessary to facilitate their employment. For those who can receive vocational training together with non-disabled persons, it is conducted by general public vocational ability development centers. And for those having difficulty receiving vocational training together with non-disabled persons, a total of nineteen Public Vocational Ability Development Centers for Persons with Disabilities have been established in the country so far. The training period varies from three months to three years depending on the training categories.
Other educational and training centers	Vocational training services are also provided by eighteen other educational and training centers established by employers, educational foundations and social welfare foundations to develop and improve the vocational skills of persons with disabilities, by making the most of the grants which are available under the Levy and Grant System.

Table 6. Information on institutions involved in sheltered employment measures

Sheltered workshops and welfare factories	Sheltered workshops provide persons with disabilities with training services to prepare them for their eventual placement in regular enterprises, as well as for the work opportunities available to those who have difficulty to be employed in the open labor market even after the training. Welfare factories are designated as employment entities where persons with disabilities are employed as workers whose employment conditions are similar to those in regular enterprises.
Community-based small-scale workshops	These are informal projects that cannot subscribe to the minimum standards provided under the law. They therefore do not receive support from the national government. They depend on local government support and public donations.

Employers who employ persons with physical or intellectual disabilities beyond the legally required quota are entitled to adjustment allowances or rewards taken from the collected levies.

Vocational rehabilitation programs

Vocational rehabilitation services are provided to persons with disabilities by the Public Employment Security Offices (PESOs), the vocational rehabilitation networks operated by Japan Organization for Employment of the Elderly and Persons with Disabilities (JEED) and various other relevant organizations. Table 5 provides information on the services being provided.

The recent trend of vocational rehabilitation programs in Japan is the move from center-based group training program to community-based individual training program. From 1 April 2007 to 31 March 2008 over eight hundred job coaches provided vocational support services to around five thousand persons with intellectual or mental disabilities. This resulted in a success rate of over 80 percent of those who received such services keeping their jobs for six months or more.

Sheltered employment measures

There are two kinds of authorized work facilities, namely, the sheltered workshops established according to the Welfare Law for Persons with Physical Disabilities and Persons with Intellectual Disabilities, and the welfare factories established according to the Law concerning Health and Welfare of Persons with Mental Disabilities. In addition, there are community-based, small-scale workshops established by voluntary organizations, including organizations of parents who have children with disabilities.

As of October 2003, 2,425 sheltered workshops have been serving around 88,400 persons with disabilities. As of August 2004, 6,025 community-based small-scale workshops have been providing training and work opportunities to nearly 84,000 persons with disabilities.

With only about one percent of persons with disabilities finding employment in the open labor market annually, the sheltered workshops became employment places (instead of training facilities) for these people with an average wage in 2006 of about twelve thousand yen per month or less than one tenth of the minimum wage. The government intends to reorganize these facilities into time-limited transitional training programs with emphasis on placement in the open labor market, and non-competitive employment programs that cover those with and without employment contracts. Labor laws do not protect those without employment contracts, regardless of the period of work involved.

Conclusion

The current measures are laudable but still do not yet fully satisfy the needs of persons with disabilities who want and have the capacity to work. To facilitate higher employment rate, the following are recommended tasks that should be considered:

1. Promotion of various forms of employment and work friendly to persons with disabilities;
2. Development of the necessary support and environment to increase the opportunities for short-time work and work at home for persons whose capacities and types of disabilities suit these kinds of work;
3. Provision of support for the utilization of information and communication technology (ITC) for those working at home, taking into consideration the needs of persons with disabilities who have difficulty in commuting to the workplace;
4. Provision of support for persons with disabilities in creating or running new businesses. Likewise, provision of necessary measures (including facilitating financing start-up funding as well as marketing support) for persons with disabilities who are willing to create or run new businesses;
5. Promotion of human resources development for persons with disabilities, including the development of systems for their admission into general human resource development programs, ensuring that the programs consider the trends in employment needs relating to the development of service economy and information society, and ensuring accessibility to facilities where the programs are administered;

(continued on page 13)

International Workshop on Current Buraku Issues

HURIGHTS OSAKA

The Buraku Liberation and Human Rights Research Institute (BLHRRRI) organized a two-day International Workshop on Current Buraku Issues on 31 July – 1 August 2008 in Osaka city to “compare the historical experiences of Buraku people with similar experiences of other social minority groups in other cultures” that will “undoubtedly bring about important recognition of key issues surrounding the life of Buraku and other minority populations.”

Presentations

The presentations were divided into four panels. The panel on “Social Mechanisms that Produce Minorities” dwelt on the Buraku discrimination, the caste discrimination in India, and the racial discrimination in the United States. Midori Kurokawa of Shizuoka University explained that the Buraku discrimination evolved as the Japanese society modernized, despite its legal prohibition as early as 1871. The persistence of Buraku discrimination, she asserted, was due to the drawing of an “innate line” between people who discriminate and the discriminated. The Buraku people assumed such “innate characteristics,” while people who were free of such characteristics were safe from discrimination “for the rest of their lives.” The Indian caste discrimination, according to Motilal Mahamallik of the Indian Institute of Dalit Studies, was based on people’s “affiliation to a certain community.” They were discriminated against certain types of access and opportunities in the society. He said that the Indian affirmative action or reservation policy has helped address discrimination and exclusion of Dalits in different spheres. John Davis Jr. of Michigan State University reported that the United States situation offered paradoxes. While the inclusion of an African-American, a woman and a Latino as nominees for the Democratic Party candidate for President was historical, it hid realities of continuing discrimination based on race and gender in American society. He, therefore, asserted that the suggestion of a post-racial or post-gender America was premature.

In the panel on “Changing Identities of Minorities,” Christopher Bondy of De Pauw University (U.S.) presented a case study of a small town where Buraku youth were helped in openly identifying themselves

as Buraku. He said that his study showed how the Buraku youth learn to share their identity openly within the confines of their “protective cocoon” - the home, school and the community. He also said that outside this area the Buraku students had to struggle to openly share their Buraku identity. Without trust being established, these youth hesitated to reveal their identity as Buraku. A study of Yugo Tomonaga, Ryo Yano and Maya Mori dealt with several case studies on Buraku communities and the Aborigines in Australia. They asserted that the Buraku existence had diverse characteristics, and its relationship with the non-Buraku community contributed to the diversity and uniqueness within the Buraku community.

The panel on “The Role of the Minority Middle Class” discussed the case of the anti-discrimination movement in Korea by the *paekjong*, a group similarly discriminated as the Buraku, in the 1920s. Kim Joong-Seop of Gyeongsang National University (South Korea) reported that the successful campaign of the *paekjong* against discrimination was due in part to the role played by the middle class and the intellectuals in the *paekjong* community. The educated middle class intellectuals from the *paekjong* community led the movement’s efforts to abolish discriminatory customs, regain their communitarian fellowship, and lift their social status. Lee Kayoung presented the role of the middle class in a local community anti-discrimination group. He narrated the initial aloofness of the Buraku middle class to the group and the problems of the poorer Buraku members in Hinode community. But this gradually changed when the group began to take up middle class concerns such as tax and business alongside the poorer people’s concerns on education, employment and housing. The middle class in Hinode community began to take active part in the group. But with the government special measures alleviating the condition of the Buraku communities and creating new middle class, the middle class began leaving the community to have private homes instead of the public housing facilities. The community was left with the poorer members that somehow led to a stagnated anti-discrimination movement.

The last panel on other important issues related to Buraku discrimination discussed the problem facing

women, and multi-culturalism in Japanese society. Nehema Misola of Western Visayas College of Science and Technology (Philippines) presented the case of a Buraku woman who was struggling to realize social equality for Buraku women. She reported that the woman was confronted with the traditional roles assigned to women at home and at work. But the woman continued to increase her capacity to pursue social equality for women by studying human rights. Risa Kumamoto of Kinki University presented the situation of women in the Buraku liberation movement. She pointed out that the discussion of women concerns within the movement does not relate to the “universal” problem of discrimination but to the peculiar problem of women. They are debated only within the Women’s Division of the movement. Because of this, she observed that the gender structure in the Buraku community could also be reinforced by Buraku discrimination. Buraku women are being “othered” by the Buraku movement, which is a male-centric structure, by confining them to the role of “mother” and to supporting roles in the movement. In this context, she observed that fighting for a more women-centered system within the movement’s structure could be considered a betrayal of the cause of the movement. Joseph Hankins, PhD candidate in Chicago University, studied the change in the way the Buraku issue was presented in the English literature and the funding support for Buraku studies. He noted the shift from the previous presentation of the Buraku

issue as a “stand-alone issue to an issue that fits squarely in with other minority populations in Japan,” namely discussing the Buraku issue as part of the “otherness” concept in Japanese society. He also studied the record of the Japan Foundation regarding financial support for the study of the Buraku issue. He noted that in its thirty-six years of operation, only one grant on a graduate research on the Buraku issue had been given. A few previous research grants might have considered the Buraku issue as a component of the subjects of research (such as the concept of pollution in medieval Japan, multicultural education, and city planning). These grants were all given during the last five years. He observed that the Japan Foundation probably saw the discussion of the Buraku issue within the framework of multiculturalism as the proper way of “presenting” Japan. Finally, he studied a Buraku activist organization and also noted a shift from focusing on Buraku issue alone to using multiculturalism to relate to other minority groups in Japan and to using human rights as a basis for common action with other minority groups. All these contributed to the effort of debunking the view about the homogeneity of Japan.

For further information, please contact: The Buraku Liberation and Human Rights Research Institute, 1-6-12, Kuboyoshi, Naniwa-Ku, Osaka City, Japan; ph (816) 6568 0905; fax (816) 6568 0714; e-mail: udhr@blhrri.org; www.blhrri.org.

(continued from page 11)

6. Promotion of commissioned training by various human resources development institutions, including private-sector institutions (enterprises and non-profit organizations, etc.) and other organizations; and
7. Provision of labor protection and income support for those who are working on a long-term basis at non-competitive employment facilities so that they can work and live in their communities as equal members.

These recommendations can be incorporated in the programs of the local governments for all categories of persons with disabilities, particularly through their “Municipal Government Basic Program for Persons with Disabilities,” that were supposed to have been adopted from 2007.

They can also be considered in the revision of the Japanese laws and regulations to comply with the principle of “reasonable accommodation” and Article 27 of the CRPD. The Ministry of Health, Labor and Welfare (MHLW) has to prepare recommendations on how to adopt “reasonable accommodation,” defined as “necessary and appropriate modification

and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”

Study of the American and British laws that already incorporate the “reasonable accommodation” principle, and consultation with organizations of persons with disabilities would be the important tasks of the MHLW in this regard.

Ryosuke Matsui is the Vice-President of the Japanese Society for Rehabilitation of Persons with Disabilities.

For further information please contact: Japanese Society for Rehabilitation of Persons with Disabilities, 1-22-1, Toyama, Shinjuku-ku, Tokyo 162-0052 Japan; ph (81-3) 5273-0796; fax (81-3) 5273-0615; e-mail: matsuir@m3.dion.ne.jp; www.dinf.ne.jp.

Assessing Human Rights Education in the School System

Jefferson R. Plantilla

A project supported by UNESCO and the Office of the United Nations High Commissioner for Human Rights under the first phase plan of action (2005-2009) of the United Nations World Programme for Human Rights Education (WPHRE) assessed the state of human rights education in the school systems of four countries in Southeast Asia.

Initially planned for five Southeast Asian countries, the project eventually covered Cambodia, Indonesia, Lao PDR and Thailand. The project implementation started, after more than a year of delay, with the establishment of national teams on human rights education (NTHREs) in each of the four countries and the meeting between the NTHREs and the Regional Project Team (composed of staff of HURIGHTS OSAKA and the Office of Human Rights Studies and Social Development of the Faculty of Graduate Studies of Mahidol University).

The NTHREs were tasked to assess the state of policy support for human rights education in the school system and the extent of the policy implementation. This exercise was meant to lead to planning on improved human rights education within the school systems in the four countries involved.

Achievements

The full report¹ on the project provides a summary of the results of the assessment of human rights education in the school systems in the four Southeast Asian countries. Some of the highlights of the summary are presented below.

A highlighted issue is on the role of the ratified international human rights instruments in the initiatives to teach human rights within the formal education system. The four countries involved have ratified the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). While Lao PDR has signed, the others have ratified the International Covenant on Civil and Political Rights (ICCPR).

Lao PDR and Indonesia have institutions (commissions/committees) that took direct action on human rights education as part of compliance with state obligation under the ratified international human rights instruments. As the report states

In Indonesia, the National Commission on Violence against Women (Komnas Perempuan) is using CEDAW in its Kurikulum Pendidikan HAM Berperspektif Keadilan Gender (Human Rights Curriculum from a Gender Perspective). xxx xxx In Lao PDR, the National Committee for Human Rights (which is tasked with implementing the state obligations under the ICCPR and ICESCR) has requested the MOE [Ministry of Education] to develop a supplementary curriculum and teaching-learning materials on human rights and child rights.

The ratified international human rights instruments were also included in either school curriculum or teaching materials. The report states that²

In Cambodia, the Policy for Curriculum Development 2005–2009 and the 2009 school curriculum have human rights content referring to UDHR, CRC and CEDAW. The Science and Social Studies learning areas discuss child rights (and human rights in general).

In Lao PDR, the MOE supported the “development of textbooks, implementation of a child-friendly school system, and teacher training, that focus on child rights under the CRC.” It also produced textbooks for primary and secondary levels that contain the provisions of ICESCR and ICCPR, teacher guides (*Basic Knowledge of Human Rights*, student textbook for Grades 4-6 and 8 for primary level, and Grades 9-11 for secondary level) that include discussion on ICESCR and ICCPR, and training manuals and children’s book focusing on child rights (*Our Rights*).³

In Indonesia, the Ministry of National Education

... has promoted the provisions of CRC in several teaching materials (Panduan Pendidikan Hak Asasi Manusia Untuk Guru SD & MI, or The Guidelines on Human Rights Education for Elementary School and Islamic Elementary School) that were developed with the support of UNESCO.

Another government office in Indonesia, the Directorate General on Human Rights of the Ministry of Law and Human Rights, produced the *Pengantar HAM – 1, 2, 3* (Introduction to Human Rights – 1, 2,

3) that refer to the “ICESCR, ICCPR, ICERD, CEDAW along with UDHR in discussing human rights issues (discrimination, social security, marriage, etc.)” It also produced “twelve human rights embedded religious education textbooks for pilot study of human rights education through the Islamic Education subject lessons for primary, junior secondary, and senior secondary schools and their equivalent level in the *madrasahs*.”⁴

Human rights education has been integrated into the Moral-Civic education subject under the Social Studies learning area of the *Policy for Curriculum Development 2005–2009* and the 2009 school curriculum in Cambodia, and the Citizenship education subject in the *Standard of Educational Content* of Indonesia. In Thailand, human rights are considered part of the objectives of education and thus to be integrated into Social, Religious and Cultural Subject Area, and in teaching methods.⁵ In Lao PDR, human rights are integrated in several subjects in primary and secondary curriculums in the General Knowledge subject (Lesson 46 for Grade 4 and Lesson 39 for Grade 5).

Supporting factors

Human rights education in the school systems of the four countries has the support of a number of factors:

- a. National action plan on human rights – this is the case of Indonesia that has adopted such plan since 2004 with provisions on human rights education.
- b. National human rights institutions – to some extent, the existence of national human rights institutions in Indonesia and Thailand has helped their respective Ministries of Education in integrating human rights into the school curriculum and in producing training and teaching materials on human rights
- c. Support from international organizations and aid agencies – the initiatives in Lao PDR, Cambodia and Indonesia have benefited from the support of UNESCO, international non-governmental organizations and the international aid agencies (Australian Aid for Lao PDR) particularly in developing teaching materials and implementing teacher training programs
- d. Support from the local non-governmental organizations – the human rights education initiatives in Indonesia, Thailand and Cambodia have been strongly supported by their local non-governmental organizations.

Challenges

However, the four countries face challenges in ensuring the continuation of the human rights education initiatives as well as in making the current

initiatives widely and effectively implemented nationwide.

There are a number of challenges to be considered in this regard. The challenges specific to the schools are the following:

- a. Large classes that affect employment of appropriate pedagogies by teachers who have had training on these pedagogies
- b. Limited training opportunities to cover all teachers in the country
- c. Limited printed materials about human rights
- d. Limitation of project implementation to a particular level or number of schools.

There are also institutional challenges that affect:

- a. Consistent and sustained policy implementation
- b. Provision of adequate supporting resources
- c. Review and assessment mechanism.

The results of this project provide substantial bases for the governments of Cambodia, Indonesia, Lao PDR and Thailand in continuing the review of the current initiatives in order to develop a new national plan or program that can address the current limitations and challenges, and as further step in their achievements.

For further information, please contact: HURIGHTS OSAKA, PiaNPO, 3F, 2-8-24 Chikko Minato-ku, Osaka 552-0021 Japan; ph (816) 6577-35-78; fax (816) 6577-35-83; e-mail: webmail@hurights.or.jp; www.hurights.or.jp

Endnotes

¹ *Human Rights Education in the School Systems in Southeast Asia – Cambodia, Indonesia, Lao PDR and Thailand*, 2009, published by the Asia-Pacific Human Rights Information Center in cooperation with the Office of Human Rights Studies and Social Development of the Faculty of Graduate Studies of Mahidol University.

² Chin Yahan, “National Report on Human Rights Education in the School System of Cambodia,” in *Human Rights Education in the School System in Southeast Asia*, *ibid*.

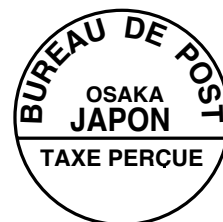
³ Yangxia Lee and Somthavinh Nanthavong, “National Report on Human Rights Education in the School System of the Lao PDR,” in *Human Rights Education in the School Systems in Southeast Asia*, *ibid*.

⁴ Agung Purwadi, Philip Suprastowo, and Iskandar Agung, “National Report on Human Rights Education in the School System of Indonesia,” in *Human Rights Education in the School System in Southeast Asia*, *ibid*.

⁵ Suwittra Wongvaree, “Human Rights Education in the School System of Thailand,” in *Human Rights Education in the School System in Southeast Asia*, *ibid*.

HURIGHTS OSAKA CALENDAR

The Committee on Non-Governmental Organizations of the United Nations approved on 20 January 2009 the application of HURIGHTS OSAKA and eleven other Civil Society Organizations for the Special Consultative Status with the Economic and Social Council. This information was released by the News and Media Division of the Department of Public Information of the United Nations (www.un.org/News/Press/docs//2009/ecosoc6376.doc.htm).



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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

HURIGHTS OSAKA

(Asia-Pacific Human Rights Information Center)

3F, piaNPO, 2-8-24 Chikko Minato-ku Osaka 552-0021 Japan

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

E-mail: webmail@hurights.or.jp

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