

FOCUS

Asia-Pacific



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

March 2010 Vol. 59

Contents

Human Rights in the Philippines: Government Response

This presents the major responses of the Philippine government to the problem of extrajudicial killings and other human rights issues in the country, as well as lists issues that have to be addressed.

- HURIGHTS OSAKA

Page 2

Korea's City of Human Rights: Gwangju

This is a brief yet critical review of a human rights ordinance that addresses the situation of the city of Gwangju in Korea.

- Jean Ahn

Page 5

Northeast Asian Subregional Human Rights Mechanism: Feasible?

This is a report on the highlights of a symposium on the prospect of establishing a Northeast Asian subregional human rights mechanism.

- HURIGHTS OSAKA

Page 9

Human Rights Events in the Asia-Pacific

Brief information on some important human rights events in the region

Page 13

HURIGHTS OSAKA Activities

Brief report on the recent HURIGHTS OSAKA activities

Page 15

Editorial

State Obligation

A basic rule in international law is that states must fulfil their obligations under ratified or acceded international agreements in good faith. In the case of international human rights treaties, this means that all state institutions (executive, legislative and judicial) apply human rights principles in performing their respective functions. The executive branch undertakes concrete measures that protect, promote and realize human rights.

But a greater state obligation is that owed to the people by the state. This is an obligation that defines the rationale for the existence of the state, and based on principles akin to human rights. State institutions are meant to protect the people from harm, support the exercise of their people's freedoms, and promote their welfare. Ideally, state institutions must work to ensure that no person is left unprotected from any threat to life, liberty and security. They must also help realize the larger freedoms of the people.

State obligation in relation to human rights is not only based on ratified or acceded international human rights treaty, or on international customary law. More importantly, it exists as a given component of state functions, a crucial element in the agreement between the people and their state.

The people themselves have the right to demand action on such state obligation, as much as state institutions are duty-bound to ensure that the people enjoy their rights and freedoms, and security and welfare.

Human Rights in the Philippines: Government Response

HURIGHTS OSAKA

The human rights situation in the Philippines became an issue in recent years with reports of rising number of victims of extra-judicial killings, prompting the United Nations to take action. The Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, visited the Philippines in 2007 and subsequently filed a report with recommendations on how to address the situation.¹ The European Union (EU), in seriously considering the situation, launched the EU-Philippine Justice Support Programme [EPJUST] to “help all stakeholders in the Philippines – in government, in the judiciary and in the Commission on Human Rights, and in civil society - to work together to address the critical issue of extra-legal killings and enforced disappearances.”² This project was formally launched on 11 February 2010 in Manila.

Local and international human rights organizations launched campaigns on the extra-judicial killings issue, demanding accountability for those involved in the killings. Media organizations in the Philippines and their international counterparts also campaigned to stop the killing of members of the media.

The Philippine human rights situation is not however limited to the issue of extrajudicial killings and disappearances. The

country faces problems related to its political, economic, social and cultural conditions that breed many more human rights problems.

Philippine Government Response

The Philippine government created in 2002³ the Presidential Human Rights Committee (PHRC) as the “advisory body to the President in effectively addressing all human rights issues in the country.” Its role and membership were strengthened in 2006.⁴ The Executive Director of its secretariat, Undersecretary Severo S. Catura, explained the response of the Philippine government to the human rights situation in the country in a study meeting held in Osaka on 5 February 2010.⁵ Following are highlights of the presentation based on his discussion paper.⁶

Undersecretary Catura explained that the “Philippine government has clear directions and takes pride in milestones in its human rights advocacy.” He explained that, as a matter of principle, while others may look at human rights in the context of violations, the Philippine government looks at it in the context of good governance. He noted that “[I]n essence, as we protect and secure human rights, we create conditions needed to counter the prevailing global recession,

attain economic growth, and induce development that would confidently last across generations.”

He cited numerous steps to address all allegations of human rights violations, such as the following:

- Creation of several investigative groups to work on the issue of unexplained killings, such as the Melo Commission,⁷ Task Force Usig,⁸ and Task Force 211.⁹ In support of this, the PHRC, in partnership with the Department of Justice (DOJ), Department of Interior and Local Government (DILG), and the Supreme Court’s Office of the Court Administrator (OCA), began the consolidation of all human rights cases under a standard databank.
- Engagement of the civil society groups through monthly Human Rights Forums led by the PHRC, which is now on its fourth session. This resulted in the creation of the Philippine OPCAT¹⁰ Working Group, Multi-sectoral Partnership Against Disappearances, and the Multi-sectoral Partnership for the Protection of Migrant Workers’ Rights. The PHRC also requests appropriate agencies to look into all human rights cases referred to it by civil society groups from around the world.

- Continuing human rights education and training for
 - law enforcement organizations in partnership with the Commission on Human Rights of the Philippines (CHRP). PHRC proposed an assessment of the impact of all on-going human rights education and training activities of the CHRP.
 - lawyers and paralegals by the Philippine Judicial Academy (PHILJA) to ensure the effective prosecution of extrajudicial killings.
- Support for appropriate legislative actions, such as the enhancement of the CHRP Charter, the anti-torture law, anti-discrimination bill, and other related legislative actions.
- Setting up of institutionalized mechanisms, such as the Comprehensive Agreement on Human Rights and International Humanitarian Law (CAHRIHL)¹¹ to address human rights abuses reported in relation to the peace process between the Philippine government and the local Communist movement. This is in line with the policy of the Philippine government that human rights shall remain a component of the peace process.
- Issuance by the Supreme Court of a Circular in 16 October 2007 ordering judges of the lower courts with pending cases involving unexplained killings to submit information on the status of cases filed before them.
- Promulgation by the Supreme Court of the Rule on the Writ of Amparo and the Rule on the Writ of Habeas Data immediately after the conduct of the first Summit on Extrajudicial Killings and Enforced Disappearances held in July 2007.
- Issuance of Presidential directives to the DILG and Philippine National Police (PNP)
 - to investigate the alleged vigilante killings in Davao as “the Philippine government does not – nor will it ever – condone, abet, tolerate, encourage or sponsor such acts” (13 May 2009)
 - to intensify efforts to stop the violence against members of the media, and to bring the political killings to zero (11 March 2009).
- Strengthening of the Regional Units of the Task Force Usig to make them more proactive, efficient and capable, specifically through the creation of “tracker teams” to go after suspected killers of media personalities and to conduct manhunt operations on every at-large suspect.
- Approval by the President of a two-million peso (roughly forty four thousand US dollars) infusion to the Freedom Fund for Filipino Journalists to help bereaved families seek justice for slain relatives through courts.
- Issuance of order for all law enforcement agencies to closely coordinate with media organizations.
- Institution of a “reward system” through the publication of “Wanted” posters/rouge galleries to hasten the arrest of suspects through the cooperation of the community (such as for

the neutralization of the twenty one Most Wanted Persons relative to media killings and the nineteen Most Wanted Persons involved in the killings of militants/activists). The total reward now stands at 21.645 million pesos (roughly 468,000 US dollars)

- Abolition of the Inter-Agency Legal Assistance Group (Executive Order 808) whose activities have been unfairly criticized as monitoring of groups perceived as anti-government.

In line with the presidential directives, there were seminars held for the security and protection of media practitioners and also the signing of a memorandum of understanding between the PNP and CHRP on 23 June 2009 upholding the visitorial powers of the CHRP over detention facilities operated by the PNP in police camps, stations, and detachments.

He also noted the formulation of the 2nd National Human Rights Action Plan 2010-2014 (NHRAP-2) on 10-11 December 2009 in a National Human Rights Forum in celebration of the International Human Rights Day. This NHRAP-2 includes all policy directions, institutional plans and programs on which to further build a continuing advocacy of human rights.

International Scrutiny

In the first universal periodic review of the Philippine situation in 2008, the members of the Human Rights Council listed a number of

recommendations on issues that still needed action:¹²

1. To continue to develop a gender-responsive approach to issues of violence against women and continue to build supportive environment for women and children within the judicial system; this environment should take into account the special needs for rehabilitation and post-conflict care of women and children in vulnerable situations and conflict areas (New Zealand);
2. To ensure that members of the security forces are trained on human rights and on their responsibility to protect human rights and human rights defenders (Canada);
3. To enable the visit by the Special Rapporteur on the promotion and protection of human rights while countering terrorism as soon as possible (Slovenia);
4. To sign and ratify the Optional Protocol to the Convention against Torture (Slovenia, Mexico, United Kingdom and the Netherlands) and the International Convention on the Protection of All Persons from Enforced Disappearance (Slovenia, Mexico);
5. To report regularly to the Committee against Torture (Slovenia);
6. To completely eliminate torture and extrajudicial killings (Holy See), to intensify its efforts to carry out investigations and prosecutions on extrajudicial killings and punish those responsible (Switzerland) as well as to provide a follow-up report on efforts and measures to address extrajudicial killings and enforced disappearances, taking into account the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions (The Netherlands);
7. To protect children in the womb, notwithstanding undue pressure from certain groups (Holy See);
8. To establish an organic legal framework for eliminating gender-based discrimination and promoting gender equality (Italy);
9. To address legislative gaps in the field of children rights in order to fully comply with the 2005 recommendations of the Committee on the Rights of the Child (Italy);
10. To share with other countries, especially developing countries, its experience in the area of justiciability of economic and social rights (Sudan);
11. To strengthen the witness protection programme and address the root causes of this issue in the context of the reform of the judiciary and the armed forces (Switzerland);
12. While noting the involvement of civil society in the preparatory process of the national report, to fully involve civil society in the follow-up to the review (United Kingdom);
13. To continue its successful policy in combating trafficking in human beings at the national level and to play a leading role at the international level on this matter (Belarus);
14. To step up efforts to continue to meet the basic needs of the poor and other vulnerable groups (Nigeria);
15. To consider extending a standing invitation to special procedures (Brazil);
16. That the second National Human Rights Action Plan should take into account the recommendations formulated by treaty bodies and special procedures (Mexico);
17. That national legislation and customs and traditional practices should be harmonized with the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women (Mexico).

The Philippine human rights situation still requires a careful monitoring regarding the resolution of specific human rights cases within available limited resources as well as the holistic/comprehensive approach in addressing many other human rights violations.

No country has the capacity to stop all human rights violations but there is justified expectation that any government has enough resources to do substantial measures to address the situation as long as it has the political will to do so.

For further information please contact HURIGHTS OSAKA.

(Continued on page 8)

Korea's City of Human Rights: Gwangju

Jean Ahn

The so-called May 1980 Gwangju Uprising turned Gwangju City into a symbol of democracy in Korea as well as Asia. In response to the Korean army's massacring of its citizens that lasted for about a week, the citizens of Gwangju City organized civilian militias to fight back. Against the state machinery, the Gwangju citizens endured a long campaign with civil protest and armed rebellion. In June 1987, the South Korean government officially recognized the civil protest as the Gwangju Democratization Movement. With this acknowledgement, a strong awareness of civil and political rights among Koreans arose. But whether or not this led to full realization of human rights and increased awareness of all human rights is difficult to say.

Many cases of discrimination and other human rights violations continue to occur. While it is important to honor human rights in museums, they have to be realized in daily life now and in the future.

There is a distorted situation among regional political parties in South Korea that prevents the representation of various interests to occur. Gwangju City, for example, is dominated by one political party. While local government autonomy has been revived in earnest since 1995, local voters continue to cast their votes for candidates based

on their membership in a particular political party instead of the individual candidate's policy commitment. This makes the citizens' votes unnecessary since local candidates are not even considered in their own precinct during elections.

Under the local ordinance system, each local community has the inherent power to enact its own ordinances suited to its own situation. In this case, the process of enacting local ordinances by local legislative bodies is combined with the citizen's voluntary initiative to propose ideas for such ordinances, guaranteeing public participation in the process. However, with a distorted local government system, local ordinances that help improve the lives of the citizens including those on human rights are few.

Local Ordinance on Human Rights

Enacting human rights ordinances at the local level is a relatively recent occurrence. Ordinances on human rights are allowed as long as they do not violate national laws and the Constitution of the Republic of Korea. Local governments can enact human rights ordinances, even without explicit national laws delegating local legislative power on the protection of the citizen's rights and the imposition of duties and

penalties for their violation. These "autonomous" ordinances can even lead to the enactment of national laws on human rights.

The South Korean human rights movement on minority issues developed only after 1990. In the 1960s and 1970s, the successive military regimes could not differentiate the fight for democracy and the anti-dictatorship movement from the human rights movement. In 1990, the Korean Council for the Women Drafted for Military Sexual Slavery by Japan raised the Korean comfort women issue that led to the prohibition of discrimination against minority groups and the establishment of a protection system against discrimination as provided in the Act on the Prohibition of Disability Discrimination and the Provision of Remedies that went into effect on 11 April 2007. In the late 1990s, persistent human rights campaigns led to the enactment of the National Human Rights Commission Act on 24 May 2001 that became the basis for the establishment of the independent National Human Rights Commission of Korea six months later. But the heated discussion on the draft Anti-Discrimination Act in mid-2000s, that raised the public consciousness on the importance of equal rights, led the Korean National Assembly to reject the bill in 2007. The

inclusion of sexual orientation and other bases of discrimination created much public debate, with some groups opposing their inclusion in the bill.

Gwangju City's Human Rights Ordinance

Though unknown to other local governments, Gwangju City has been progressively enacting basic as well as comprehensive human rights ordinances. It has enacted a number of ordinances pertaining to the rights of persons with disabilities and the immigrants. A review of Gwangju City's human rights ordinances would show their rapid development since 2005 particularly regarding minorities. An example of such human rights ordinance is the Gwangju Metropolitan City for Democracy, Human Rights, and Peace Development Ordinance, enacted on 15 May 2007.

However, this ordinance was passed by the Gwangju legislative assembly to pursue urban development rather than promote or protect human rights, and without the participation of the members of the civil society. Until now, the Gwangju City government and its Mayor have not adopted a human rights plan to implement the ordinance.

It is difficult to assess this ordinance as a human-rights-legislation especially with its declaration of promoting a "city of peace." The City Mayor has been trying to issue a proclamation based on this ordinance that includes peace-loving philosophy, peace work, peaceful protests, and other

ideas. An earlier proposal to include a provision in the ordinance on withdrawal of support for organizations involved in violent protests was opposed by the citizens on the ground that it meant tolerating violence, and therefore was not approved. A provision on cultivating a "culture of peaceful protest" was included instead.

Revision of the Human Rights Ordinance

NHRCK has been promoting the necessity of enacting appropriate local ordinances on human rights. It has been undertaking nationwide campaign to encourage local governments to enact the appropriate ordinances. At the local level, NHRCK's Gwangju Regional Office played a major role in organizing members of human rights groups, researchers, local government officials and local assembly members in Gwangju City to discuss the issue. A series of study meetings was started in August 2008 for this purpose. At the "2nd Workshop on the Human Rights Perspective of a Local Autonomous Ordinance," organized by the 2009 Gwangju International Peace Forum and NHRCK's Gwangju Regional Office, representatives of Japanese non-governmental organizations spoke about the experiences of local governments in Japan in enacting local ordinances on human rights, and exchanged experiences with their Korean counterparts.

The study meeting series discussed the 2007 local ordinance on human rights of

Gwangju City, and proposed the enactment a new local ordinance on human rights. This idea was initially opposed by the members of the local assembly who originally sponsored the 2007 local ordinance. Those who wanted a new local ordinance thought that the existing local ordinance was a mere symbolic act of the city and did not contain concrete provisions to promote and protect human rights. Further discussions in the study meeting series led the members of the local assembly to agree to revise the existing local ordinance by incorporating new provisions, such as the following:

- a. Change of the ordinance title into "Ordinance on the Promotion of Human Rights and the Development of a City of Democracy, Human Rights and Peace" to indicate the promotion of human rights and also a broader aim of having a city enjoying democracy, human rights and peace.
- b. Defining human rights by adding an explicit mention of the Universal Declaration of Human Rights along with the NHRCK law provision on rights guaranteed by the Constitution and the international human rights treaties ratified by Korea or protected under customary international law.
- c. Defining "citizens" to include the people who come to work in Gwangju city and the foreign residents regardless of visa status.

- d. Providing for the respective responsibilities of the city mayor, educational superintendent, and the citizens on the implementation of the ordinance.
- e. Emphasizing that the citizens as not just people whose rights should be protected but also actors who promote human rights.
- f. Providing for the formulation by the City Mayor of a basic plan to implement the ordinance, and the establishment of a Citizen's Committee as the consultative body for its implementation.
- g. Providing that for the promotion of the human rights policies public hearings can be held with the participation of the citizens and experts.

Under the revised local ordinance, the Citizens' Committee shall be composed of not more than fifteen members. The City Mayor, expected to be designated as the Chairperson, shall appoint the other members. The members of the Citizens' Committee include human rights practitioners from the civil society.

The local legislative assembly of Gwangju City passed the revised local ordinance on 27 October 2009.

The revised local ordinance however has some limitations, compared to the draft ordinance developed in the series of study meetings. First, the revised ordinance does not have a preamble that would help guide the interpretation of its

provisions. Second, it does not include the proposal to treat this ordinance as the basic policy on human rights that will guide the enactment of other ordinances for particular human rights issues.

Third, regarding human rights impact assessment system, the revised ordinance authorizes the City Mayor to ask an "independent specialized organization" to make the assessment if necessary. The proposed revision to the ordinance however provided that the Citizens' Committee assessed the impact of the implementation of the human rights plan.

This human rights impact assessment system provision in the revised ordinance is not effective since the City Mayor has an influence in assessing the correctness of the human rights policies that she/he (City Mayor) has implemented. The better system is to give the Citizens' Committee the authority to recommend the withdrawal of particular policies, including those of the City Mayor, that may adversely affect human rights.

Conclusion

The enactment of the revised Gwangju City human rights ordinance was unique. The ordinance resulted from the initiative of the Gwangju Regional Office of NHRCK in organizing various sectors (including the academics [faculty members of the Law School of Chonnam University], local human rights activists, local assembly members, and local government officials) to

discuss human rights issues. The commitment and active role of the NHRCK as a mediator in legislating human rights ordinances are crucial.

Local autonomy has existed only for twenty years, and few citizens know this development. The revised Gwangju City human rights ordinance is a very significant contribution to the realization of local autonomy and the first comprehensive ordinance on human rights in the country. Despite its limitations, it is most important that it succeeds in creating the Citizen's Committee that will allow citizens participation in deliberating on the basic human rights plan of the city and in implementing it.

The local governments in Korea do not yet have specific offices for human rights policies. On the other hand, many local governments in Japan have human rights offices with stable supporting budget. The local human rights ordinances in Japan have strong influence in setting norms, while the local human rights ordinances in Korea are just beginning to develop. If the Gwangju City human rights ordinance is implemented well, it will certainly positively affect the movement for legislation of human rights ordinances. In addition, it may encourage new laws on human rights at the national level. Autonomous local ordinances such as the human rights ordinance should be enacted with citizens' participation. A citizens' committee created by such ordinance should have the character of representative

democracy, function relatively independent from the local government, and have some expertise.

Jean Ahn is a Professor at the Chonnam National University Law School.

For further information please contact: Jean Ahn, Chonnam

National University Law School, 300 Yongbong-dong, Gwangju-City 500-757 South Korea; ph (82-62) 530-2263 (office); fax (82-62) 530-2269; e-mail: jean7475@chonnam.ac.kr.

The original Korean language text of this article was translated into English language by Annie Lim and Koonae Park.

Philippines

(Continued from page 4)

Endnotes

¹ See the Addendum to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions submitted by Philip Alston to the Human Rights Council, A/HRC/11/2/Add.8, 29 April 2009. For more United Nations reports on the human rights situation in the Philippines visit: www.ohchr.org/EN/Countries/AsiaRegion/Pages/PHIndex.aspx

² *Formal launching of the EU-Philippine Justice Support Programme (EPJUST)*, European Union Press release, 11 February 2010. Under the agreement, "€3.9 million (approx. PhP 250 million) [will be provided] to cover the cost of technical assistance services, advice and training, intended to strengthen the criminal justice system (investigation, prosecution, and judiciary), to support the Commission on Human Rights as well as civil society groups working in this area, to enhance human rights awareness among the uniformed services, and to establish a credible and effective National Monitoring Mechanism, which will bring together all Philippine stakeholders to help track the nation's progress in addressing this issue."

³ Administrative Order No. 29, dated 27 January 2002.

⁴ Administrative Order No. 163, dated 8 December 2006.

⁵ The Osaka University Global Collaboration Center (GLOCOL) and the Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA) jointly organized this study meeting.

⁶ Undersecretary Catura prepared a discussion paper entitled *Current Efforts in the Promotion and Protection of Human Rights in the Philippines*.

⁷ This Commission was created through Administrative Order No. 157 entitled "Creating an Independent Commission to Address Media and Activist Killings" (21 August 2006). This Commission was tasked to "prioritize and focus investigation of media and activist killings and thereafter to submit recommendations to the President on policies and actions, including prosecution and legislative proposals, if any, aimed at eradicating the root causes of the extrajudicial killings and breaking such cycle of violence." Visit www.ops.gov.ph/records/ao_no157.htm

⁸ Task Force Usig was established in May 2006 by the Department of the Interior and Local Government, and supervised by the Philippine National Police, to investigate alleged killings of

militant leaders and activists, as well as media personalities.

⁹ Task Force 211 was established in November 2007 by virtue of Administrative Order No. 211, Creating A Task Force Against Political Violence (26 November 2007), and placed under the Department of Justice's supervision. Task Force 211 was established to investigate the killing of political personalities, regardless of motive. See www.taskforce211.com.ph/tf211_sub/ao211/ao211_sub.htm.

¹⁰ Optional Protocol To The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

¹¹ This is the full title of the agreement: Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law Between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines, 16 March 1998.

¹² *Report of the Working Group on the Universal Periodic Review - The Philippines*, A/HRC/8/28, 23 May 2008.

Northeast Asian Subregional Human Rights Mechanism: Feasible?

HURIGHTS OSAKA

The establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in October 2009 raised the question of feasibility of such subregional human rights mechanism in other subregions of Asia. The South Asian Association for Regional Cooperation (SAARC) has adopted a number of human rights-related agreements but has not reached the stage of discussing any subregional human rights mechanism. In the Gulf Region, Qatar is hosting the United Nations Human Rights Training and Documentation Centre for South-West Asia and the Arab Region.¹ This Center has the potential of facilitating subregional dialogues on human rights issues. The United Nations General Assembly gave this Center the mandate "to undertake training and documentation activities according to international human rights standards and to support such efforts within the region by Governments, United Nations agencies and programmes, national human rights institutions and non-governmental organizations." One report from the Office of the High Commissioner for Human Rights explains this mandate in the following manner:²

The Centre's overarching mandate is to strengthen existing regional arrangements and mechanisms for the promotion and protection of human rights. It will do this through its training activities building knowledge and expertise in a range of human rights procedures and methodologies, through the development of a library with information and documentation systems in the languages of the region and through partnerships with other human rights organisations, civil society and government.

While this Center is not a regional human rights mechanism, its existence is a positive step in the human rights dialogue in the Gulf region.

A number of human rights issues in Northeast Asia (particularly those that date back to the Second World War) remain unresolved despite some efforts among the countries concerned to address them. While economic relationships among the countries (with the exception of Democratic People's Republic of Korea) in the subregion seem to be strong, human rights issues remain a sour point in inter-state relations. The Northeast Asian

governments have not entertained the idea of having an inter-governmental cooperation towards a human rights mechanism for the Northeast Asian subregion.

African, American and European Experiences

The experiences of establishing and operating regional mechanisms in other regions of the world vary widely, yet they do share certain common features. Regional human rights mechanisms can also benefit the international standard setting. The 1981 African Charter on Human and Peoples' Rights, for example, provides that economic and social rights, such as the right to food, health and education, are equally entitled to legal protection as civil and political rights. Thus the human rights mechanism at the global level has to catch up to this standard, with an Optional Protocol only recently adopted enabling the United Nations Committee on Economic, Social and Cultural Rights to consider individual complaints.

Despite the diverse histories, regional human rights mechanisms share some common characteristics. The

regional human rights mechanisms are

- 1) Subsidiary to national human rights protection systems
- 2) Exist under a normative framework (political consensus, convention, declaration, etc.) that should not be lower than international human rights standards
- 3) Comprised of independent, impartial experts in human rights and persons of integrity as members, which means:
 - Existence of genuine and transparent process of nomination by states and election of members at the regional level with the participation of the civil society
 - Members serve in individual capacity
 - Plurality of membership
 - Provision of privileges and immunities for members
 - Existence of procedure for removal of members
- 4) Do both promotion and protection work:
 - Receive and decide on both individual and interstate complaints
 - Has power to declare occurrence of human rights violations and provide access to a regional court that can order legally binding decisions and reparations
 - Make country visits and engage in country level activities
 - Hold meetings in different member states
 - Hold widely publicized hearings
 - Develop other mechanisms (e.g., special rapporteurs)

that engage in both promotion and protection work

- Have preventive mechanisms (e.g., emergency procedures)
 - Use of transparent documentation and wide dissemination systems regarding decisions and recommendations.
- 5) Supported by competent and full-time secretariat with sufficient resources (including budgetary and human resources)
 - 6) Use established procedures for interaction with civil society and national human rights institutions (NHRIs)
 - 7) Cooperate with international human rights mechanisms.

Furthermore, the regional human rights mechanisms are more accessible to the people who need them, as they operate within local historical, cultural and geographical situations.

But these regional human rights mechanisms have to earn their credibility and effectiveness over time. Engagement of civil society and national human rights institutions with the regional human rights mechanism commissioners, and the supporting political will of member states are needed for these mechanisms to develop.

ASEAN Experience

The idea of establishing the AICHR was first brought out in 1993 by the foreign ministers of ASEAN member-states after the World Conference on Human Rights held in the same year. But it was the Working Group

for an ASEAN Human Rights Mechanism, a civil society movement, that kept edging the ASEAN member-states to fulfill their promise of establishing such subregional mechanism for more than decade since that initial supporting communiqué from the ASEAN member-states.

The AICHR is composed of representatives of each of the ASEAN member-states. The mandate of AICHR has been criticized for not covering the protection function. The ASEAN however has stated that it is adopting an evolutionary approach to the development of AICHR and thus there is an opening for changes in the powers and functions of this body in the future.

Professor Vitit Muntharbhorn, one of the leaders of the Working Group for an ASEAN Human Rights Mechanism and subsequently appointed as a member of the High Level Panel of ASEAN that drafted the terms of reference of the subregional human rights mechanism, cited a number of considerations about AICHR that deserved reflection.

First, the notion of "intergovernmental" should not mean that it is prejudiced towards states vis a vis individuals and other actors in ASEAN. At the heart of any human rights mechanism should be the protection of individuals and communities rather than of states, simply because states already have a variety of ways and means to constrain the rights of

individuals and communities due to their omnipotent nature and broad range of powers. The representatives on the AICHR are also supposed to act "impartially" according to its terms of reference (TOR).³

Second, the fact that the AICHR is stated to be a "consultative" body does not imply that it should be a taciturn body without the power to make recommendations to ASEAN and its member-states. While it is understood that the AICHR is not a judicial body and cannot issue judgments, it is vested with the power to advise and recommend.

Third, the human rights standards mentioned in the TOR and to be applied by the AICHR and ASEAN are universal human rights standards and considered as basic minimum standards for the region and beyond. The TOR states that the AICHR will "uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and its Programme of Action,⁴ and international human rights instruments to which ASEAN member-states are parties." The two human rights treaties to which all ASEAN member-states are parties are the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.

Fourth, the ASEAN Charter and the TOR refer emphatically to the principles of national sovereignty and non-

interference in the international affairs of ASEAN states. Yet, these principles are not absolute but fall under the ambit of international law; they are to be assessed objectively, not subjectively. Moreover, the advocacy of human rights cannot be seen as interference in a country's internal affairs, since such advocacy is an integral part of international law and jurisdiction. International protection of human rights comes into play when the national setting is unable or unwilling to provide human rights protection.

Fifth, ASEAN's pre-occupation with a non-confrontational and evolutionary approach, based on consensus, also stated in the TOR, should not lead to the condoning of egregious human rights violations such as genocide and crimes against humanity.

Sixth, while the TOR are substantively more-to-do with promotion than protection of human rights, this should not close the door to creative ways of covering human rights protection more proactively. The promotion angle is related particularly to education, awareness-raising and capacity-building. Internationally, the protection angle usually covers the ability of individuals to complain to regional human rights bodies (after exhausting local/national remedies), and the power of such bodies to monitor and investigate cases and situations. While the majority view in the High Level Panel that drafted the TOR

rejected the explicit mention of these protection elements, it is also of note that members of the Panel were generally agreeable to the understanding that "what is not prohibited in the TOR is not forbidden."

Seventh, the AICHR has to prevent retrogression and to ensure forward-looking action of an internationally credible kind. One of the future steps mentioned in the TOR is the drafting of an ASEAN Human Rights Declaration. Such document and related instruments should help elevate international standards and not back-track. Regional particularities that conflict with universal standards are inadmissible.

Eighth, the AICHR is empowered to dialogue with civil society, national and other institutions on human rights, and to obtain information from ASEAN member-states on human rights, as well as to undertake thematic studies on human rights and to prepare annual and other reports on such matter. This provides room for broad discourse on human rights matters that need to be increasingly open to engagement with civil society and other actors. This is a particularly useful entry point for the preparation of the AICHR's forthcoming five-year work plan.

Ninth, the AICHR reports to the ASEAN Foreign Ministers and is assisted by the ASEAN Secretary-General and secretariat. It is thus important

to ensure that key human rights situations are not only conveyed to the AICHR but also to the foreign ministers, the secretary-general and importantly the Summits of heads of government. An ASEAN Commission on women's and children's rights is on the verge of being set up, with its own TOR, and there is already an ASEAN Committee on migrant workers rights, all of which need to be aligned with the AICHR. The AICHR should not be seen as self-contained but as one of the many components in the ASEAN framework to be used, in the setting of checks and balances to prevent human rights transgressions and to respond to human rights promotion and protection effectively. National human rights institutions in Southeast Asia should be seen as complementary to this.

Tenth, the AICHR powers under the TOR have to be read together with the ASEAN Charter which integrates human rights, democracy and the Rule of Law substantively into the total ASEAN structure. In other words, human rights have been legitimized fully as a permeating principle, applying to all actors in ASEAN – governmental and non-governmental.

Challenges for Northeast Asia

Reflecting on the experiences in Africa, America, Europe,⁵ and Southeast Asia, there are a number of issues that should be considered important in determining the feasibility of

having a subregional human rights mechanism in Northeast Asia.

First, is it realistic to think about establishing a regional human rights mechanism without an effective form of political integration in Northeast Asia? There are indications that the current political environment in the sub-region is not conducive to the establishment of a regional human rights mechanism.

Second, which existing model is the most adaptable to Northeast Asia? The subregion's specificities perhaps call for a different model.

Third, what will be the added-value in starting such a process in Northeast Asia? The main added value would be in bringing together various human rights actors of the sub-region: NGO workers, scholars, judges, lawyers and other interested actors. They can share experiences on the promotion and protection of human rights in their respective countries. This would help to strengthen national human rights protection mechanisms by enhancing human rights awareness in the sub-region. This would help identify common areas of concern in the sub-region. This could further help the establishment of specialized national human rights mechanism, such as a national human rights institution in Japan and China. Such a forum could finally be used as a vehicle for strengthening cooperation with

the United Nations human rights mechanisms.

Professor Muntharbhorn thought that considering the situation in Northeast Asia, a range of networking activities on human rights in the subregion was the most feasible option to take. He said that such networking could be between courts of law; between law enforcers; between civil society groups; between human rights educators. A network among the national human rights commissions/ombudspersons in East Asia already exists. And they can also encourage countries that do not yet have a national human rights institution to set up one.

Professor Muntharbhorn said that ultimately, having effective national human rights mechanism is the best option to take. He explained:

Whatever the ebb and flow of ideas about the regional set-up, one characteristic is certain: the most crucial environment for human rights promotion and protection remains that at the national and local levels, and no regional body should be seen as a substitute for the need to concretize an effective national system responsive to universal human rights.

(Continued on page 14)

Human Rights Events in Asia-Pacific

Asian NGOs Network on National Human Rights Institutions

The 3rd Regional Consultation of the Asian NGOs Network on National Human Rights Institutions (ANNI) was held from 4-5 March 2010 in Tokyo. This Consultation was organized by the Asian Forum for Human Rights and Development (FORUM-ASIA), in cooperation with the Citizens' Council for Human Rights – Japan (CCHRJ). The Consultation had the primary purpose of ANNI member-organizations presenting updates and developments regarding human rights issues, as well as developments on the issue of national human rights institutions (NHRIs) in their countries. The consultation highlighted the importance of establishing a NHRI for the promotion and protection of human rights at the national level. There were panel discussion on "The Role of NHRIs in the Promotion and Protection of Human Rights in the Country," country presentations, working groups that identified key/emerging trends in the region and planned for next activities. The representatives of member-organizations in Northeast (Mongolia, Korea, Taiwan, Hong Kong and Japan), Southeast

(Cambodia, Indonesia, Malaysia, the Philippines), and South Asia (Bangladesh, India, Maldives, Nepal, and Sri Lanka) attended the Consultation.

The Consultation issued a statement encouraging the Japanese government to continue pursuing the establishment of a national human rights institution that subscribes to the Paris Principles.¹

Human Rights-Based Access to Justice Programs

The *Conference on Enhancing Capacities for Human Rights-Based Access to Justice Programs* was held in Manila on 16-18 March 2010 as part of the efforts to set up the Asian Consortium for Human Rights-Based Access to Justice (hrba2j-Asia). The Conference was organized by a Philippine committee.² Consisting of various government agencies and civil society organizations, the regional Consortium seeks to promote the application of human-rights-based approaches in the design and implementation of access to justice programs. The main objective of the Consortium is to share knowledge and to distill best practices and model reform experiences, from the region as well as globally, into

appropriate demand-driven knowledge resources which apply human rights principles to facilitate access to justice. Forty advocates from Northeast, West Asia, South and Southeast Asia, who are engaged in the protection and promotion of human rights, and the enhancement of access to justice by citizens in general, and the poor and marginalized groups, in particular, participated in the Conference. The participants represented national human rights institutions, judicial academies, and other government agencies, and legal resource non-governmental organizations (NGOs), academic organizations, legal aid centers, university-based human rights centers, and other civil society organizations with programs for the promotion of human rights-based access to justice. Officers of donor agencies, especially those with programs on human rights, rule of law, access to justice, and justice reforms, also attended the Conference. The Conference highlighted human rights-based approaches as an integral component of programs that seek to enhance access to justice. The Conference facilitated exchange of information about related human rights and access to justice programs and initiatives

in the region, discussed challenges and ways by which these can be overcome, and shared different programs and initiatives with the objective of exchanging views and adopting best practices which may be viable in the context of the region. Prior to the Conference, the Economic, Social and Cultural Rights-Asia (ESCR-Asia) undertook a regional capacity mapping consisting of initial profiles (nature, scope, strategies/methodologies and depth of the work on "human rights-based access to justice," including an initial inventory of knowledge products developed and disseminated) of institutions in Asia. The capacity mapping project was a preliminary scan

to understand the magnitude, practical difficulties, limitations as well as listening-receiving recommendations in carrying out effective access to justice work in Asia.

Endnotes

- ¹ Principles relating to the status and functioning of national institutions for protection and promotion of human rights (United Nations General Assembly resolution A/RES/48/134 of 20 December 1993).
- ² Currently, the Organizing Committee is composed of representatives from:
 - a. Supreme Court-Program Management Office (SC-PMO)
 - b. Philippine Judicial Academy (PHILJA)
 - c. Commission on Human Rights of the Philippines (CHR)

- d. University of the Philippines-Institute of Human Rights (UP-IHR)
- e. Association of Schools of Public Administration in the Philippines, Inc. (ASPAP)
- f. Alternative Law Groups, Inc. (ALG)
- g. Ateneo Human Rights Center (AHRC)
- h. Economic, Social and Cultural Rights-Asia (ESCR-Asia)
- i. Lawyers League for Liberty (Libertas).

Northeast Asia

(Continued from page 12)

This article is mainly based on the presentations at the "Symposium on the ASEAN Human Rights Protection Mechanism and the Possibilities in East Asia," organized by HURIGHTS OSAKA on 30 January 2010 in Osaka. For further information please contact HURIGHTS OSAKA.

Endnotes

- ¹ Based on United Nations General Assembly Resolution A/Res/60/153 (2005).
- ² "UN Human Rights Centre opens in the Gulf State of Qatar" in

www.ohchr.org/EN/NewsEvents/Pages/UNHumanRightsCentreOpensInGulfStateofQatar.aspx. The Center was formally opened in May 2009 in Doha.

- ³ The TOR of AICHR is available at ASEAN website: www.aseansec.org/22769.htm
- ⁴ Adopted at the 1993 World Conference on Human Rights, Vienna, Austria.
- ⁵ The Council of Europe adopted the Convention on Human Rights in 1950, which established the European Court of Human Rights in 1959. The Organization of American States (OAS) established the Inter-American Commission on Human Rights (IACHR) in 1959 by virtue of its Charter and the American Convention on Human Rights (adopted in 1969. A decade later, in 1979, the OAS established an autonomous judicial institution,

the Inter-American Court of Human Rights. The Organisation of African Unity (OAU) established the African Commission on Human and Peoples' Rights in 1986 based on the African Charter on Human and Peoples' Rights (1981).

HURIGHTS OSAKA Activities

The Osaka University Center for Excellence Program and HURIGHTS OSAKA jointly organized a symposium entitled “Conflict between Asian Values and International Human Rights Standards: The Case of Northeast Asia” on 13 March 2010 in Osaka city. Prof. Mab Huang of the Chang Fo-Chuan Center for the Study of Human Rights, Soochow University, Taipei, analyzed the arguments supporting supposed “Asian Values” that were considered by some leaders in Asia to be in conflict with Western-influenced international human rights standards. He criticized the different justifications for “Asian Values” promoted by some Asian leaders in the 1990s. Prof. Kim Eun-Shil of the Department of Women’s Studies, Ewha Woman’s University in Seoul explained the history of the human rights movement in Korea and the question raised on the treatment of minority issues as human rights issues. She noted that despite the general acceptance of human rights in Korean society, there are still problems particularly in relation to women for various reasons including cultural ones.

HURIGHTS OSAKA held a meeting in Bangkok on 25-26 March 2010 among research partners in the international human rights standards and domestic laws and jurisprudence project. This project involves eight countries, namely, India, Nepal, China, Korea, Japan, Indonesia, the



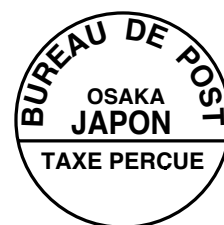
Philippines and Thailand. It aims to analyze examples of national application of international human rights standards from the perspective of human rights practitioners. The research partners in the eight countries are mostly human rights centers that are involved in both research and community outreach. The following are the research partners: Human Rights Law Network (India), Center for Legal Research and Resource Development (Nepal), Public Interest and Development Law Institute (China), MINBYUN-

Lawyers for a Democratic Society (Korea), Human Rights Now (Japan), Association for Community and Ecologically Based Law Reform (Indonesia), Institute of Human Rights (Philippines), and Center for Human Rights Studies and Social Development (Thailand). The representatives of the research partners presented their plans for the research. Their issues range from criminal procedure to right to health. The meeting was also attended by Mr. Homayoun Alizadeh, Regional Representative for Asia-Pacific, and Ms. Nathalie Meyer, United Nations Office of the High Commissioner for Human Rights – Bangkok Office. Ms. Salbiah Ahmad of Singapore is the project consultant, while Jeff Plantilla of HURIGHTS OSAKA is the project coordinator. The research project has financial support from the United Nations Office of the High Commissioner for Human Rights. A regional meeting will be held in August 2010 also in Bangkok to present the results of the research.

HURIGHTS OSAKA Calendar

HURIGHTS OSAKA has renewed its website to be able to present additional information and materials, with a new format for easier use of contents.

The inaugural volume of *Human Rights Education in Asia-Pacific* is coming out in print in April. This publication replaces *Human Rights Education in Asian Schools*, and covers all types of human rights education initiatives in Asia and the Pacific.



PRINTED MATTER

AIR MAIL

May be opened for inspection by the postal service.

HURIGHTS OSAKA, inspired by the Charter of the United Nations and the Universal Declaration of Human Rights, formally opened in December 1994. It has the following goals: 1) to promote human rights in the Asia-Pacific region; 2) to convey Asia-Pacific perspectives on human rights to the international community; 3) to ensure inclusion of human rights principles in Japanese international cooperative activities; and 4) to raise human rights awareness among the people in Japan 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.

Sender: 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>



HURIGHTS OSAKA