

FOCUS

Asia-Pacific



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

March 2011 Vol. 63

Contents

Right to Information in West Asia

This is a summary of the highlights of a report on the state of access to information in Arab countries in West Asia.

- Amman Center for Human Rights Studies

Page 2

Arab Minority in Israel

This is a short report on the continuing efforts to deprive the Arab citizens in Israel of their rights as Arab and indigenous minority in a supposedly democratic state.

- The Association for Civil Rights in Israel

Page 6

Abuse of Bahraini Children

This is a short report on the cases of physical abuse of children in Bahrain in the context of political suppression, and social and economic exclusion.

- Bahrain Center for Human Rights

Page 9

Asian Laws and Jurisprudence and the International Human Rights Standards

This is a report on the HURIGHTS OSAKA law and jurisprudence project.

- HURIGHTS OSAKA

Page 11

Human Rights Events in the Asia-Pacific

This is information on important human rights events in the region.

Page 14

Editorial

Human Rights and West Asia

The Arab world is experiencing a major political turmoil that would hopefully lead to greater emphasis on the right of the people to decide on the form and components of their political system, and on the process of determining who their leaders should be and how long should they stay in power.

Peaceful political, social and economic changes benefit from proper circulation of information, as well as debate, on laws, government policies, programs and services. Assertion of such changes through "people power" usually occurs in the context of a long history of government abuse of power that caused human rights violations.

Accountability of the government and their leaders for the root causes of the present political turmoil is a major issue in this regard.

But beyond the call for change in political leadership is the need to call for a wide-ranging review of laws and government systems from the perspective of human rights protection, promotion and realization. What legal and institutional measures would address political repression, social exclusion and economic marginalization? Finding rights-based measures and putting them into practice constitute a much more difficult challenge to undertake. West Asian societies, or any society for that matter, ought to be self-critical in responding to these calls.

Right to Information in West Asia*

Amman Center for Human Rights Studies

In calling for an international conference on freedom of information, the United Nations General Assembly declared during its first session on 14 December 1946 that "Freedom of information is a fundamental human right and is the touchstone of all freedoms to which the United Nations is consecrated." [Resolution 59 (1)].¹ Freedom of information subsequently became a constitutional right in many countries of the world, and has been translated into laws that guarantee the right of the journalists and citizens to access information.

There is a noticeable increase in the number of the countries with legislations that guarantee access to information. A 2009 survey shows ninety countries around the world have these laws, generally known as the "Freedom of Information Act" or [FOIA].²

Recent Developments

In West Asia, Jordan was the first country to enact a freedom of information law on 17 June 2007 (Law of Access to Information No. 47/2007). However, the implementation of the law has not been satisfactory. Despite the lapse of more than three years, the law has not yet been properly disseminated. Government departments have not been adequately informed of the

requirements of the law. Civil society organizations have to help explain the law, promote its use, and facilitate the flow of information to journalists and citizens.

The Yemeni legislature started to deliberate on a draft law on freedom of information in 2008. The Yemeni draft law has provisions compatible to some extent with the international criteria and best practices. Article 2 of the proposed law lists the offices that should provide access to information. The list includes a range of state institutions (covering legislative, executive and judicial bodies), other government offices, and non-governmental organizations receiving public funds in whole or in part. The head of the proposed government office that would implement the law (National Center of Information) has the power to include more institutions in the list if necessary. Freedom of information watchdog Article 19 commented on this provision:³

Although this seems to encompass a broad range of bodies within the scope of the draft Law, the draft Law should focus on the *function* performed by the body, rather than its formal designation. To this end, it should include all branches and levels of government, including local government, elected bodies, bodies which operate under a

statutory mandate, nationalised industries and public corporations, non-departmental bodies or *quangos*⁴ and judicial bodies, as well as private bodies carrying out public functions. In other words, if the function performed is a public one, the body should be included within the scope of the draft Law to ensure uniform coverage over all bodies that perform public functions.

Article 3 states that the purpose of the draft law is to "ensure and facilitate the *citizen's right* to have access to information," while Article 4 states that "[access to information is one of] the citizen's fundamental rights and citizens and foreigners are entitled to exercise such a right within the limits of the law."

Though many believe that the draft law still needs work in order to make it fully subscribe to international standards, it is important to emphasize that those supporting the draft law in Yemen are heading towards the right direction. The enactment of this law would make Yemen the second Arab country in West Asia to have such law.

Among the Gulf countries, the existing press and publications laws in the six countries (United Arab Emirates, The Kingdom of Bahrain, The Kingdom of Saudi Arabia, The Sultanate of Oman, Qatar, and Kuwait, all member-states of the Gulf Cooperation

Council or GCC) have no clear or direct reference to the right to information.

The Kingdom of Bahrain is expected to be the first state among the six member-states of the GCC to enact a freedom of information law. The Foreign Affairs, Defense and Security Committee at the Shura Council (legislature) of the kingdom has already discussed the draft freedom of information law. However, with the current political turmoil in the country, the enactment of the law may not happen within 2011.

Ranking of Countries

The extent of freedom of access and circulation of information that exist in a country can be measured according to a number of indicators such as the existence/non-existence of: laws on right to Freedom of Information; laws that refer to people’s right to information; adequate flow of information from top to bottom in government departments and publicly-funded institutions; and finally, provision of information to all who make requests (and not dependent on knowing someone in the office concerned or on the status of the person requesting for information). Using these indicators, Arab States in West Asia have been ranked accordingly in 2010, as Table 1 shows.

Jordan is ranked first among the Arab countries in West Asia in terms of freedom of access and circulation of information for the primary reason perhaps of the existence of a law guaranteeing the right to

Table 1. Freedom of access and circulation of information in Arab States in West Asia

Rank	State
1	Jordan
2	Yemen
3	Bahrain
4	Palestine
5	Iraq
6	Lebanon
7	Kuwait
8	Qatar
9	United Arab Emirates
10	Saudi Arabia
11	Syria

information. There is also another reason for this top ranking: existence of various domestic and foreign human rights and civil society groups that try to hold the government and themselves accountable to such a law, that pressure the government to facilitate adequate circulation of information, and that also pressure the government to allow media access to such information.

Yemen and Bahrain, both in the process of enacting their respective freedom of information laws, follow Jordan. Palestine, Iraq and Lebanon come next, while at the bottom of the list are Saudi Arabia and Syria.

Saudi Arabia’s low rank in freedom of information is

explained by what many in the international community consider as the existence of a strict and ultra-conservative police state that has full control over media broadcasts and on what government activities could be shown in public. Journalists and human rights organizations face difficulties in finding answers to questions such as: Who are suffering from injustice? Why are they detained, and where are they now?

Syria, like Saudi Arabia, punishes those who broadcast or actively search for information that sheds negative light on the government. This is a consequence of the declaration of state of emergency, even though there is no legitimate emergency within Syria, that has remained effective for almost fifty years. It gives the military and the police the power to arrest anyone at anytime and as many times as they like without any judicial intervention. Many opposition members and human rights activists have been arrested and intimidated over the years due to the state of emergency. The Amman Center for Human Rights Studies (ACHRS) agrees with Amnesty International that it is “unacceptable that authorities [n Syria] continue to use the national state of emergency to suppress dissenting voices”.⁵ One of the most notable prisoners until recently was a 79-year old human rights lawyer (Haythem al-Maleh), who was only released due to his “old age.” Amnesty International reported that Haythem al-Maleh was “serving a three-year sentence after being convicted by a

military court in July 2010 of “conveying within Syria false news that could debilitate the morale of the nation” and “weakening national sentiment.”⁶ Military court convictions, such as that of Haythem al-Maleh, prevent human rights defenders from exercising their right to access and relay to the public any information on human rights issues. This completely violates the Universal Declaration of Human Rights and its guarantee of the freedom of access to information as stated in Article 19: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Additionally, this situation creates a society where corruption and injustice run unimpeded.

Issues

Freedom of information has to confront a number of political, social and other constraints existing in the Arab society. Access to and circulation of information that expose Arab political leaders, and also prominent families, may lead to public unrest or violence caused either by the leaders (or prominent families) as retaliation or by the general public as an expression of dissatisfaction with the misuse of power by the leaders. In either case, the parties involved would suffer devastating results, including crippled economy (as in the recent case of Egypt). National leaders would normally not want to take the

risk of losing power due to freedom of information.

In the Arab society, where individual and family reputations are given high importance, exposure of corrupt practices within the government, business and other pursuits is equivalent to shaming the individual involved as well as his/her family. Thus people would not attempt to publicly disclose the corrupt activities of colleagues, in order not to shame them and their respective families and be held responsible for it. Such public disclosure can turn into a conflict between families, the family of the individual whose bad practice is exposed retaliating against the family of the person who makes the public disclosure. To avoid this situation, many issues are settled “under the table” or “behind closed doors” so that no one gets shamed or hurt.

There is also a notion in the Arab society that information should be available only to those who have influence, wealth, or power. Ordinary people, on the other hand, are supposedly incapable of accurately analyzing such information. With such view of the people, the statement “Egypt is not ready for democracy” from Egyptian Vice President Omar Suleiman is not surprising at all.

Economics is also a factor against freedom of information in the Arab world. Political and business leaders stand to lose financially by making information available. With public protests coming at the heels of exposure of bad

practices, foreign investments are threatened. As in the case of Egypt, public disclosure of violations of human rights means cut in financial support from the United States. Restrictions on the freedom of the press foster an environment for corruption and injustice at all levels of society.

Summary and Recommendations

Information is the cornerstone for the exercise of the freedom of opinion, freedom of expression, and the freedom of the press. These three freedoms cannot be exercised without the right to information, which translates into governments allowing journalists to access information on governmental programs and projects, refraining from imposing restrictions on the flow of information to the citizens; not imposing measures that make access to information difficult.

ACHRS believes that the right to information is the criterion for measuring all the other rights and liberties. This right is parallel to democratic choice. The freedom of the press necessarily requires ability by individuals to search for facts and to publish information without obstruction of any kind. ACHRS affirms that the culture of secrecy that prevails in the Arab countries and the laws that reinforce and strengthen this culture (such as emergency laws, laws on state secrets, laws regulating civil service) contradict the principle of transparency. This situation consequently bars the disclosure of mistakes, promotes corruption, and

precludes good governance (which includes accountability).

ACHRS strongly recommends the reinforcement of the right to information in the Arab countries of West Asia together with the elimination of obstacles to exercising this right. In this regard, the following are recommended:

1. Emergency laws and martial rule in the Arab states where these laws are still enforced should be repealed/lifted
2. The right to information being part of the Constitutions should be respected
3. A special law on the right to information should be enacted in those countries where such law does not yet exist
4. Arab countries in West Asia should accede to the international human rights instruments, particularly the International Covenant on Civil and Political Rights
5. Laws regulating freedom of the press, particularly the laws on the protection of the secrets and documents of the state, should be made compatible with Article 19 of the International Covenant on Civil and Political Rights
6. Seminars and workshops for government officials to facilitate the flow of information from government institutions to the media and enhance the culture of openness and

transparency should be held

7. Seminars and workshops for journalists and media workers on the right to information and its relationship with the freedom of the press (along with the promotion of professionalism among members of the press) should also be held
8. The culture of openness and transparency in society and the personal culture of exercising the right to information and to disseminate this information should be promoted
9. Government control over the media, whether supported by law or not, should stop and the law as the case maybe should be repealed
10. The civil society in the Arab countries of West Asia should sponsor local and Arab initiatives, such as alliances and networks that exert pressure for the consolidation of the right to information and the dissemination of its culture.

For further information please contact: Amman Center for Human Rights Studies, Al Abdali, Al Sharaf Building 4th Floor, P.O. Box 212524, Amman 11121, Jordan; ph (962 6) 46 55 043; fax (962 6) 46 55 043; e-mail: maysoon@achrs.org, ir@achrs.org; www.achrs.org

* This report was prepared by a team of researchers of ACHRS composed of Anwar al-Khatib,

Salem Qubailat, a. Muhammad Yaqoub, Magdy Helmy, Naji Alkhchnawi, and Aaron Williams. Mr. Yahya Shqair supervised the team.

Endnotes

- 1 Resolutions Adopted by the General Assembly During Its First Session (January 1946 – May 1947) <http://www.un.org/documents/ga/res/1/ares1.htm>
- 2 Roger Vleugels, "Overview of all 90 FOIA countries & territories," *Fringe Special*, 7 September 2009, available at the Freedom of Information Advocates Network (FOIANet) website: www.foiadvocates.net/en/resources.
- 3 Article 19, *Memorandum on the Draft Information Law of Yemen*, May 2009 (www.article19.org/pdfs/analysis/yemen-memorandum-on-freedom-of-information-draft-law.pdf), page 4.
- 4 A *quango* is an acronym for quasi-autonomous non-governmental organization. See Nigel Morris, "One by one, the *quangos* are abolished. But at what cost?," *The Independent*, 27 July 2010, in www.independent.co.uk/news/uk/politics/one-by-one-the-quangos-are-abolished-but-at-what-cost-2036175.html.
- 5 Amnesty International, *Syria must release all prisoners of conscience after human rights lawyer freed*, 8 March 2011, <http://www.amnesty.org/en/news-and-updates/syria-must-release-all-prisoners-conscience-after-human-rights-lawyer-freed-2011-03>
- 6 *Ibid.*

Arab Minority in Israel

The Association for Civil Rights in Israel

One of the most important principles in a democracy is to protect the minority against the tyranny of the majority. A democratic state is by nature pluralistic and respectful of diversity among its citizens, and enables each group within its population that so wishes to maintain all the components of its own identity, including its heritage, culture, and national identity. In a democracy, every minority group has the right to express its own narrative concerning the past and its own vision of the future, even if these differ from or challenge the narratives of the majority. A democracy does not condition citizens' rights on declarations of agreement or "loyalty" to certain ideas and opinions. All the above are basic principles of substantive democracy.

The attitude of the State of Israel towards Arab citizens contradicts these democratic principles. Many Jewish citizens and many of their elected representatives believe that Arab citizens of Israel are entitled to equality and to protection of their rights only on condition that they abandon their national identity, culture, language, and historical heritage, and declare their "loyalty" to values they do not share.

Arab Citizens

Today, Arab citizens of Israel comprise close to 20% of the total population of the country,

numbering over 1,000,000. They live predominantly in villages, towns, and mixed Arab-Jewish cities in the Galilee region in the north, the Triangle area in central Israel, and the Naqab (Negev) desert in the south. They belong to three religious communities: Muslim (81%), Christian (10%), and Druze (9%). Under international instruments to which Israel is a state party, they constitute a national, ethnic, linguistic, and religious minority.

In Israel there are glaring socioeconomic disparities between Jewish and Arab population groups, particularly with regard to land, urban planning, housing, social services, employment opportunities, and education. Over half of the impoverished families in Israel are Arab families, and Arab municipalities are among the poorest in the country.

Issues

The events of October 2000, exactly one decade ago, were a particularly sharp and painful manifestation of the complex relationship between the State of Israel and the Arab minority that lives in this country. During these events, thirteen Arabs were killed, including twelve Israeli citizens and one resident of the Occupied Territories. None of the policemen involved in these events has been prosecuted. This reality created

a grave sense among Arab citizens that they could be injured with impunity, seriously damaging the already fragile trust between the Arab minority and the state. These events are a chilling illustration of the possible outcomes of ongoing discrimination and injury to a minority group. October 2000 added a new layer of pain, offense, and mistrust to the relations between the state and the Arab minority, leaving an open wound that has yet to heal. From the standpoint of the Arab public, the lesson of October 2000 was that the state will not hesitate to employ lethal violence against its Arab citizens if they fail to act in accordance with its policies.

The investigation of the events of October 2000 by the Ministry of Justice's Police Investigation Department (PID) was marred by grave defects. Justice was not done, and no-one was called to account for their actions. The failure to prosecute those responsible for the killing of the Arab citizens exacerbates the mistrust that dominates the relationship between the Arab minority and the state; impairs the status of the Arab minority and leads to a negligent attitude to Arab lives; weakens the rule of law in the State of Israel; delegitimizes protests; and constitutes a blemish that will continue to mar Israeli democracy.

The Or Commission, a state commission of inquiry, was established to investigate the events of October 2000. The commission's recommendations offered the state a historic opportunity to redefine its attitude to the Arab minority that lives in Israel; to acknowledge the needs and rights of this minority; to repair injured trust; and to correct the course of the relationship with the Arab minority. Ten years after these events, however, the State of Israel does not seem to have internalized the commission's conclusions, since its attitude towards the Arab minority has only worsened.

Over the past two years, in particular, we have seen an unprecedented deterioration in the attitude of the state towards the Arab citizens. This has been manifested in discriminatory proposed laws - some of which recently passed as laws by the Knesset (parliament);¹ attacks on freedom of expression and political activity; racist statements by public figures; a hostile approach by the police and the law enforcement bodies; policy based mainly on force; and ongoing discrimination against the Arab public in the allocation of budgets and resources. Alongside these attacks, a growing attempt is being made to force Arab citizens to meet inherently antidemocratic tests of "loyalty."

Two particularly problematic pieces of legislation along these lines just passed in the most recent Knesset session -The Nakba Law and the Acceptance to Communities Law. Part of the

recent slew of anti-democratic legislation that the Association for Civil Rights in Israel (ACRI) has been relentlessly working to prevent, these two bills became laws on 22 March 2011.

Together with the Abraham Fund Initiatives and residents of communal villages who oppose the bill (Atid Misgav), ACRI filed a petition in the Israeli High Court of Justice, demanding to disqualify the "Acceptance to Communities" law on the grounds that it provides a "license to discriminate" against "unwanted" communities, who are rejected by acceptance committees in communal villages and in kibbutz expansions. This law legalizes a common discriminatory practice, which has already been criticized by the High Court of Justice.

The Nakba Law, officially titled "Budget Principles Law (Amendment 39) – Reducing Budgetary Support for Activities Contrary to the Principles of the State," will enable a committee of bureaucrats from the Ministry of Finance to fine municipalities, public institutions, or publicly supported organizations – if they believe that these bodies oppose the interpretation of the term "Jewish and democratic State," express feelings of mourning related to the Israeli Independence Day or the Nakba, or violate the symbols of the State.

Therefore, for example, it will be possible to fine cultural or educational institutions and local municipalities if they hold an event that gives artistic expression (or any other form of expression) to critical or

alternative opinions. The actual meaning of this fine is the revocation of public funding, up to ten times the cost of the event in which the "offense" was committed.

The bill seeks to single out and mark Israel's Arab citizens as dangerous and disloyal to the state if they seek to express their own narrative and interpretation of historical events. The bill completely ignores the state's duty to recognize ethnic-national minority groups, their culture, and their narrative, as part of their right to cultural independence.

Arab Israelis as Indigenous Minority

It is important to note that the Arabs in Israel constitute not only a minority, but an indigenous people - that is, a minority that was present before the establishment of the current political entity. This status was recognized inter alia in the Report of the aforementioned Or Commission. An indigenous minority, as distinct from an immigrant minority, bears a stronger affinity to the local land and history, and views the country (though not necessarily the state) as its historical homeland. International law has enshrined the rights of minorities in general, and of indigenous minorities in particular, notably the right to equality, the right to property, and the right to maintain cultural identity, in a series of conventions and declarations to which the State of Israel is committed.

A democratic state does not demand that a minority - and

certainly an indigenous minority with the history and circumstances that exist in Israel - forego its identity in order to receive rights. An understanding on the part of the Jewish majority, and on the part of the institutions of state, of the indigenous affinity between the Arabs in Israel and this country is critical in order to build relations of trust between the state and the Arab minority. It is also critical to understand the manner in which the Arab minority perceives its identity, as well as natural affinity - in historical, national, social, and familial terms - with the Palestinian residents of the Territories and with the Arab inhabitants of neighboring countries.

In addition to the conditioning of rights on "loyalty," demands have also been made to condition the rights of Arab citizens to benefits provided by the National Insurance Institute, on the basis of the slogan "no rights without obligations." Recent examples include the decision to condition acceptance to the Foreign Ministry's cadet course on military or national service, and the granting of benefits to released soldiers in institutions of higher education. Arab citizens - like religious Jews and people with disabilities - are exempt from service in the Israeli military by law; neither are they obliged to perform alternative civil service.

More importantly, however, a democracy does not present its citizens with conditions for enjoying basic rights, and does not discriminate among citizens. In 2006, the Haifa

District Court ruled in a petition submitted by Adalah (a human rights center) that the use of military service as a criterion in acceptance to student dormitories discriminates against Arab students and should be abolished. It is important to understand that the demand for citizens to declare allegiance to the State of Israel as a Jewish state (as if there was a single monolithic perception of the Jewish nature of the state); to the Zionist vision (as if there was a single monolithic definition of this vision); and to the narrative of the Jewish majority (as if there was a single monolithic narrative accepted by all the Jewish citizens) is tantamount to a demand for Arab citizens to erase their own identity and deny their past. At the same time, these same demands are also (indirectly) imposed on Jewish citizens, reflecting an imaginary consensus within the majority group regarding these issues.

Final Statement

It is not impossible to improve the trust between the various arms of the state and the Arab citizens. This will be achieved if the Jewish majority and its representatives in positions of power understand that democracy entails an obligation to enable the Arab minority to maintain its identity, heritage, and culture, and if they abandon the desire to control the life of the Arab population and to impose on it alien values that it does not share. In this context, it is also worth mentioning the comments by Deputy Prime Minister Dan Meridor during a debate on one

of the proposed laws mentioned above:

Why do we need to add the word 'Jewish' to every proposal and to show the Arab citizens that it does not belong to them? And then people wonder why they are adopting more extreme positions. ...[w]hy do [we] need to make things harsher and more severe all the time? The majority does not need to remind the minority all the time that it is a minority.

Rather than raising improper and impractical demands for Arab citizens to identify with the Jewish identity of Israel and with the symbols of the Jewish nation as common national symbols, an effort should be made to promote solidarity and identity on a civil and egalitarian basis. The minority should enjoy all the legal and democratic courses of action and expression provided in any reasonable democracy.

For further information, please contact: The Association for Civil Rights in Israel (ACRI), National Headquarters, Nahalat Binyamin 75, Tel Aviv 65154 ISRAEL; ph (972-3) 5608185; fax (972-3) 56081659; e-mail: mail@acri.org.il; www.acri.org.il

Endnote

1 For details of the proposed legislations see ACRI List of Top Anti-Democratic Legislative Initiatives in www.acri.org.il/en/?p=1639

Abuse of Bahraini Children

Bahrain Center for Human Rights

Since August 2010, Bahraini authorities have been arresting political activists, human rights defenders, and members of the Shiite communities. Bahraini children have not been spared from the crackdowns and have suffered from widespread waves of arbitrary arrests, kidnappings, enforced disappearances, and physical, psychological and sexual torture. Many believed that the attacks on children were perpetrated by members of the national security forces, and also by foreign mercenaries who were hired as members of the Bahraini Special Forces. The Special Forces attack people, including children, randomly. Many people have also been injured due to excessive use of force, and the use of rubber bullets and tear gas. A group of United Nations (UN) independent experts condemned in a March 2011 official UN news release the continuing brutal suppression of the protests.¹

Children in Detention

During a crackdown that started in August 2010 at least seventy-six children were arrested, constituting 21% of the more than three hundred fifty detainees in Bahrain at that time. This rate far exceeded the proportion of child detainees to the total number of detainees or prisoners in countries suffering from disturbances such as in

Occupied Palestine (3.7% of total prisoners)² and Iraq (3% of the total detainees).³ This reflects the severity of the latest security crackdown and arbitrary arrests against the most vulnerable group of people in society. While some of these children have been released in February 2011, many are still in detention charged with crimes mostly related to participation in protests, demonstrations and burning of tires. More children have been arrested recently (February 2011) as part of ongoing crackdown on protesters. Among the youngest of the detained children was Ali Ahmed Abbas (12 years old) who disappeared for several days before his family found out that he was in police custody.

During the August 2010 crackdown, children as young as ten years old were arrested. Ten-year-old Jihad Aqeel AlSari was arrested on 19 November 2010, the eve of the Universal Children's Day, after refusing for fear of his life to heed a call to go to a police station. His family believed that his arrest was meant to put pressure on his father, Mr. Aqeel AlSari, a Shiite cleric who was detained for alleged link to what was known as the "terrorism network," and who spoke before the Court on 28 October 2010 on how he was tortured in detention. Jihad was then released but confined to his place of residence.

Parents are usually not officially informed of the reason for the arrest of their children, since arrests are often denied for several days after disappearance. They are also denied of the right to visit their detained children, and to check their children's safety.⁴

Pleas by parents for the release and continuation of education of the detained children while their cases were being tried in courts (with guarantees to bring them to court hearings) were rejected. In addition, requests by lawyers to release these children under required guarantees because of their young age, especially for those who have already spent more than two months in detention, were also rejected.

Children are being held in criminal detention centers along with adult detainees who are charged with criminal offenses such as drug trafficking. This violates the recommendation of the United Nations Working Group on Arbitrary Detention stated in the report on its 2001 visit to Bahrain. The relevant recommendation states:⁵

The Working Group recommends the [Bahraini] Government to extend the jurisdiction of the Juvenile Court to cover minors aged between 15 and 18, and amend the existing law to require that minors in this category are assisted by

counsel, to allow for rehabilitative measures appropriate to their age and needs, and to have them held separately from adults in prisons.

Prolonged detention caused serious psychological trauma on some of the children. Some of them have stopped eating. Some children who suffered serious injuries due to attacks by the police have been transferred from hospitals to the detention centers before full recovery.

Children as Victims of Suppression of Protests

Children are victims of arbitrary attacks on villages and of the collective punishment policy. They are also being intimidated in order to dissuade them from participating in protest actions.

Some children are also victims of attacks by riot police against people who protest in their villages.

Recently, on 30 March 2011, fifteen-year-old Sayed-Ahmad Sa'eed Shams from Saar village was shot in the face by security forces and died on the way to the American Mission Hospital in the village. Reports show that he was playing outside his house with friends when the riot police came. He panicked and started to run but the police fired on him. There was no protest taking place in the village at that time.⁶

In a different case, in October 2010, two nine-year-olds, and one six-year-old, were injured by rubber bullets fired at them by members of the riot police during a protest in their village. In another case, a thirteen-year-

old child suffered cuts from shattered glass caused by rubber bullets fired by riot police and by the impact of bomb explosion.

The Bahrain Center for Human Rights received a number of complaints regarding kidnapping of children from the streets by groups of armed militia wearing civilian clothes who roam Shiite villages where protests have been held. Most kidnapped children were subjected to enforced disappearance for periods ranging from several hours to several days. They were taken to secret centers in blindfold where they were tortured, severely beaten, stripped and photographed naked, and sexually harassed. They were later released wearing only their underwear in places far from their villages.

Most families of the affected children have filed complaints with the police and requested investigation. But despite the number of complaints filed, there has been no concrete action to hold the perpetrators accountable.

The Bahrain Center for Human Rights believes that this targeting of children through kidnapping and torture is aimed at scaring parents and the village residents. This is also aimed at forcing activists in Shiite villages to stop their demonstrations and protests. These protests have been going on for several years now due to the systematic marginalization and isolation carried out by the Bahraini authorities at all levels (political, social, and cultural) including deprivation of

educational and housing services to Shiite villagers.

Concluding Statement

Bahraini law prohibits children below twenty years of age from participating in any political exercise (such as elections) due to their assumed inability to make sound decision. And yet, children of at least fifteen years of age can be liable to full criminal responsibility just like adults. Criminal cases are filed against children and tried in criminal, rather than juvenile, courts. Some have been sentenced to life imprisonment. This situation violates the international human rights standards.

There is a clear disregard of the rights, security and welfare of children who have been physically harmed, detained and sentenced harshly by the criminal courts in the context of the government campaign to stamp protest actions by the people.

In view of the serious situation affecting Bahraini children, the Bahrain Center for Human Rights recommends that the Bahraini government undertake the following:

1. Immediate release of all detainees under eighteen years old. Criminal charges against them should be pursued in accordance with international human rights standards on fair trial, considering their status as children
2. Prompt, impartial and effective investigation of all

(Continued on page 15)

Asian Laws and Jurisprudence and the International Human Rights Standards*

HURIGHTS OSAKA

HURIGHTS OSAKA implemented a research project that analyzed Asian laws and jurisprudence from a human rights perspective. The research project involved eight countries in Asia, namely, China, India, Indonesia, Republic of Korea, Japan, Nepal, the Philippines, and Thailand. The research project attempted to determine the extent of incorporation of international human rights standards into the domestic legal system (in terms of laws, government policies and programs, and administrative procedures and mechanisms) and jurisprudence (in terms of court decisions and procedures) to address specific issues in society; and show how far have they been used by the human rights practitioners.

Implementation Scheme

The research project involved human rights centers¹ in the eight Asian countries² that have been undertaking research on human rights issues including the domestic application of international human rights standards. The research project included a regional workshop involving representatives of regional human rights organizations, and international organizations and United Nations (UN) agencies and offices based in Bangkok. The

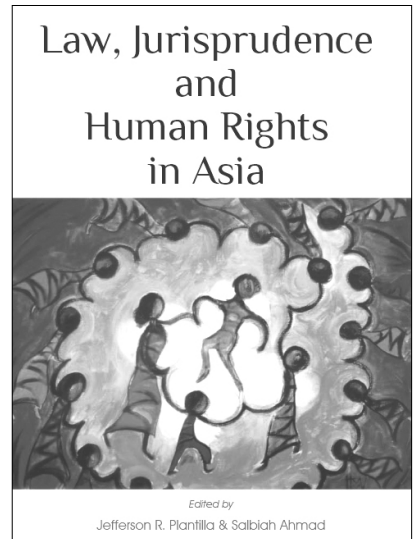
research partners presented the initial version of their respective reports during the August 2010 workshop, and discussed them with the other participants who were equally knowledgeable of the research topics.

Research Reports

The reports of the research partners have been compiled in one book, entitled *Law, Jurisprudence and Human Rights in Asia*. The book also includes four more reports, covering an examination of the jurisprudence in Hong Kong relating to the International Covenant on Civil and Political Rights, the impact of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Japan, CEDAW and the laws of Islamic countries and communities in Southeast Asia, and lastly a summary paper.

The research reports cover the issues confronting the following:

- a. Migrant workers – both local (China) and foreign (South Korea) workers;
- b. Women – protection from domestic violence (Thailand) and equal treatment as workers (Japan), women's rights and Islamic laws in Southeast Asia;



- c. Children – as child soldiers (Nepal);
- d. Indigenous peoples – right to land and freedom of religion (Indonesia);
- e. Prisoners/criminal defendants – right to fair trial (Japan);
- f. Specific sections of society – mainly members of minority communities who have always been suspected of criminal acts under the anti-terror laws (India);
- g. General public – protecting their rights under the Bill of Rights law (Hong Kong); exercising their right to health care (Philippines).

The reports reviewed the issues confronting the different groups of people, the relevant laws that directly affect them, the decisions of the highest courts relating to their human rights,

and the factors that facilitate or hinder the protection, promotion and realization of their human rights.

A number of practical measures have been discussed as concrete examples that may apply to other communities or peoples. A number of questions have also been raised that should be useful not only in drafting new laws or amending existing ones, but also in implementing them on the ground.

The final paper sums up from a regional perspective the different components of the varied national experiences, highlighting relevant laws, court decisions and other information relevant to the issues raised by the reports.

The book presents a variety of national contexts affecting the protection, promotion and realization of human rights at the national level. Each report has stories to tell, and practical experiences to learn from. Alongside inspiring stories of laws and jurisprudence that support human rights are discussions of the problems that inhibit proper application of the international human rights standards in domestic legal systems.

A number of court decisions in several Asian countries support the domestic application of international human rights standards.

Jurisprudence and International Human Rights Standards³

The Supreme Courts have applied the international human

rights standards in different ways:

- a. Recognition of the incorporation of provisions of international human rights instruments in domestic laws such as Bill of Rights Ordinance (BORO) in Hong Kong, and laws on specific issues relating to children, women, and workers.
- b. Recognition of specific provisions of international human rights instruments as *jus cogens* under international law. Three years after the UN adopted the Universal Declaration of Human Rights (UDHR), the Philippine Supreme Court recognized the UDHR as an essential component of the "constitutional structure of world community" and characterized "freedom from arbitrary and unnecessarily prolonged detention as a customary norm." In Hong Kong, Article 7 of ICCPR was considered "a peremptory norm of customary international law from which no derogation is legally permissible."⁴
- c. Treatment of International human rights instruments as "guideline" in making decisions.
- d. Treatment of the provisions of the international human rights instruments as "obligation of the state," and thus ruled that they should be followed.

The Supreme Court of Sri Lanka has applied the international human rights standards by citing the Standard Minimum

Rules for the Treatment of Prisoners.⁵ It states that

Considering the Rules contained in the Prisons Ordinance and the Standard Minimum Rules for the Treatment of Prisoners adopted by the first United Nations Congress,⁶ it is quite obvious that the Prison Officers are bound not only to perform such duties for the purpose of preserving discipline and enforcing diligence, cleanliness, order and conformity to the rules of the prison, but also to treat the prisoners with kindness and humanity.

In Nepal, the Supreme Court declared that it is the legal and constitutional obligation and duty of the Nepali government to "protect the rights of the child in line with the provisions of the Bonded Labour (Prohibition) Act" and the CRC. It further states that the protection of child-bonded laborers is also the international commitment of Nepal pursuant to Nepal Treaty Act, 1990 and Article 26 of the Constitution of the Kingdom of Nepal.⁷

The Philippine Supreme Court in recognizing the right of a lesbian-gay-bisexual-transsexual group to participate as a political party in an election declared that its decision is

fully in accord with our international obligations to protect and promote human rights. In particular, we explicitly recognize the principle of non-discrimination as it relates to the right to electoral participation, enunciated in the UDHR and the ICCPR.⁸

It also explained the necessity of applying the international standards:

[F]or individuals and groups struggling with inadequate structural and governmental support, international human rights norms are particularly significant, and should be effectively enforced in domestic legal systems so that such norms may become actual, rather than ideal, standards of conduct.

The Korean report presents a case before the Constitutional Court that clarified for the first time the entitlement of foreign migrant workers in Korea to exercise labor and other rights in recognition of the obligation of the Korean state under international human rights treaties.

On the other hand, the courts may even improve the international standards. As one account states:

Justice Bokhary cited extensively international legal materials when he said that “[i]n the field of human rights, municipal law has often walked in the footsteps of international law – and may in some jurisdictions have caught up with or even overtaken it.”⁹

Concluding Comments

The research project reviewed the “spaces” within national laws and jurisprudence in a number of Asian countries that were appropriate (or effective) application of international human rights standards. Because these “spaces” are still at the stage of growth, they should continuously be widened and effectively employed. Human

rights practitioners have to continuously push the boundaries of national application of international human rights standards by building on these “spaces” and by overcoming through practical measures resistance to it.

For further information, please contact HURIGHTS OSAKA.

* This report draws from the texts of Jefferson R. Plantilla and Salbiah Ahmad, editors, *Law, Jurisprudence and Human Rights in Asia* (Kuala Lumpur: HURIGHTS OSAKA and SIRD, 2011).

Endnotes

- 1 For the profile of many of these human rights centers see *Directory of Asia-Pacific Human Rights Centers* (Osaka: HURIGHTS OSAKA, 2008). The directory is also available at <http://hurights.pbworks.com/>, or through <http://www.hurights.or.jp/english/directory-of-hr-centers.html>.
- 2 Research partners:
 1. China - Public Interest and Development Law Institute, Wuhan University School of Law
 2. India - Human Rights Law Network (HRLN)
 3. Indonesia - Association for Community and Ecologically Based Law Reform (HuMA)
 4. Nepal - Center for Legal Research and Resource Development (CeLRRd)
 5. Republic of Korea - MINBYUN-Lawyers for a Democratic Society
 6. Japan - Human Rights Now
 7. Philippines - Institute of Human Rights, University of the Philippines Law Center
 8. Thailand - c/o Center for Human Rights Studies and Social Development, Faculty

- of Graduate Studies, Mahidol University.
- 3 This is from pages 344-346 of the book. References to the research reports in the book have been deleted.
- 4 Ubamaka Edward Wilson v. Secretary for Security, [2009] H.K.E.C. 908 (C.F.I.)
- 5 Lama Hewage Lal (Deceased), Rani Fernando (Wife of Deceased Lal) And Others v. Officer-In-Charge, Minor Offences, Seeduwa Police Station and Others, Supreme Court, S. C. (FR) Application no. 700/2002, 17 September 2003 and 14 June 2004 in http://www.lawnet.lk/docs/case_law/slr/HTML/2005SLR1V40.htm.
- 6 The United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Standard Minimum Rules for the Treatment of Prisoners (adopted in Geneva in 1955 and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31st July 1957 and 2076 (LXII) of 13th May 1977).
- 7 Secretary Som Prasad Paneru, among others v. His Majesty's Government, among others. September 2006, *Nepal Law Reporter*, 2006 A.D.
- 8 Ang Ladlad LGBT Party v. Commission on Elections, G.R. No. 190582, 8 April 2010 in http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/190582.htm#_ftnref41
- 9 Hong Kong: Sec'y for Justice v. Yau Yuk Lung, [2007] 3 H.K.L.R.D. 903, (C.F.A.). Albert H.Y. Chen, “International Human Rights Law and Domestic Constitutional Law: Internationalisation of Constitutional Law in Hong Kong,” *NTU Law Review* 4-3/09, 254. Available at www.law.ntu.edu.tw/ntulawreview/articles/4-3/09.pdf

Human Rights Events in the Asia-Pacific

The Development Alternatives with Women for a New Era (DAWN), which promotes the linkage of gender justice/women's rights with economic justice/human rights, convened a small Asian workshop in order to explore ways in which the Kuala Lumpur Guidelines for a Human Rights Approach to Economic Policy in Agriculture (Kuala Lumpur Guidelines)¹ could become a tool for advancing gender justice and women's rights among groups that work on economic justice issues in the agricultural sector. The workshop analyzed cases in the agriculture sector by identifying the human rights and barriers at stake, and the strategies to promote accountability and policy alternatives/options to further enhance existing policy. The event, "Workshop on a Human Rights Approach to Economic Policy in Agriculture: Engendering the Kuala Lumpur Guidelines in Response to a Fierce New World," was held at the Miriam College in Quezon City last 26-27 January 2011. Miriam College, the International Working Group on Trade-Finance Linkages, and Agribusiness Action Initiative co-organized the workshop. For further information, please contact: Miriam College - Women and Gender Institute (WAGI), Ground Floor, Caritas Building, Miriam College, Katipunan Road, Loyola Heights, Quezon City, Metro Manila, Philippines; ph (632) 5805400 local 3590; ph/fax:

(632) 4359229; e-mail: wagi@mc.edu.ph; www.wagi-mc.org.

The Asian Consortium on Human Rights Based Access to Justice (HRBA-A2J) organized the Pilot Training Workshop on Human Rights Approach to Realizing Equal Access to Justice (EA2J). The workshop aimed to strengthen the institutional and individual capacities of members of the Asian Consortium to apply human rights norms, standards and principles to realize EA2J. The workshop was designed to enable participants to:

1. Arrive at a common understanding of EA2J;
2. Justify the human rights approach to realizing EA2J; and
3. Integrate the human rights norms, principles and standards in the design and development of EA2J interventions.

The workshop was held in Manila on 4-7 April 2011. For further information please contact: The Secretariat, Asian Consortium on Human Rights Based Access to Justice, c/o ESCR-Asia, Inc., Rm. 6, Mezzanine Floor, Ateneo De Manila University, Loyola Heights, Quezon City, Metro Manila, Philippines; ph/fax: (632) 9293482; e-mail: escasia2003@yahoo.com, jtejada_philja@yahoo.com, jgpallera98@yahoo.com, davidlens@hotmail.com

The International Women's Rights Action Watch Asia Pacific

(IWRAP Asia Pacific) is organizing a Pilot Testing Workshop for Litigating Lawyers on Women's Human Rights Using CEDAW to be held from 16 - 20 June 2011 in Kuala Lumpur. The Workshop is being held in keeping with IWRAP Asia Pacific's on-going efforts in supporting lawyers to litigate cases relating to women's human rights founded on the Principle of Equality and Non-discrimination at the domestic courts. The Pilot Testing Workshop for Litigating Lawyers on Women's Human Rights Using CEDAW aims to enable participants:

- i) Enhance understanding of women's lived realities, the need for claiming human rights, and the challenges in practical realization of such rights;
- ii) Strengthen capacity in drawing State accountability towards the realization of women's human rights through domestic litigation; and
- iii) Strengthen capacity in using CEDAW to promote women's equality and non-discrimination in all fields at the domestic level.

The expected participants are litigating lawyers with substantial experience in representing cases relating to human rights and/or women's human rights. Participants will share their experiences and inputs on litigation at national levels that would help finalize a resource package being developed by IWRAP-Asia

Pacific for lawyers engaged in litigation for women's human rights to use the CEDAW framework and principles more effectively. For further information, please contact: International Women's Rights Action Watch Asia Pacific (IWRAP-Asia Pacific), 80-B, Jalan Bangsar 59200 Kuala Lumpur, Malaysia; ph (603) 2282 2255; fax (603) 2283

2552; e-mail: iwraw-ap@iwraw-ap.org/iwraw_ap@yahoo.com: www.iwraw-ap.org

Endnote

¹ Kuala Lumpur Guidelines are designed as a tool to provide basic information and a methodology for use by anyone concerned with ensuring the primacy and centrality of the human rights of those

affected by trade, investment and finance rules as well as fiscal, monetary and other economic policies related to agriculture. The Guidelines were developed by a number of organizations led by the International Gender and Trade Network, International Network for Economic, Social and Cultural Rights-ESCR-Net and Center of Concern. Visit www.escr-net.org and www.red-desc.org for more details.

Abuse of Bahraini Children

(Continued from page 10)

cases of abduction, enforced disappearance and torture, especially those involving children and minors as victims, to bring the perpetrators of such crimes to justice

3. Provide full care for the victims of these violations, especially the children and minors, and give them adequate compensation and necessary support for rehabilitation
4. In case persons under eighteen years old have to be detained such detention must not contravene the international human rights standards and must be in places established for juvenile detention and under the responsibility of the Ministry of Social Affairs, and not under the Ministry of the Interior or any other security-related body
5. Immediate stop to repeated attacks on Bahraini villages, especially those affecting children and minors

6. Implement the Convention on the Rights of the Child and the 2002 recommendations of the Committee on the Rights of the Child on the reform of the criminal justice system⁷
7. Address political and social problems through dialogue based on an understanding of the root causes of these problems, and in accordance with laws and procedures that comply with international human rights standards
8. Take all necessary measures to ensure that children and minors at risk of detention or trial are not deprived of their right to education, and guaranteed the completion of their education to ensure a decent future.

For further information, please contact: Bahrain Center for Human Rights (BCHR), Manama, Bahrain; ph (973) 39633399; (973) 39400720; fax (973) 17795170; e-mail: info@bahrainrights.org; www.bahrainrights.org

Endnotes

¹ See "Broken promises in Bahrain - UN experts question

Government's human rights commitments," *News and Events*, www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10881&LangID=E

² See report on study of the detainees and prisoners in Israeli jails (Arabic language), in www.palissue.com/vb/palestine14/issue20233.

³ See World Association of Arab Translators and Linguists, *Urgent Appeal for releasing the prisoners detained in Iraq prisons*, 11 March 2010, www.brussellstribunal.org/Prisoners110310.htm.

⁴ "Mothers of detainees plead with officials to disclose place of their sons' detention," *Alwasat News*, in Arabic language, www.alwasatnews.com/2939/news/read/475969/1.html.

⁵ Report of the UN Working Group on Arbitrary Detention: Visit to Bahrain, E/CN.4/2002/77/Add.2, 5 March 2002, page 2.

⁶ "Death of a young man from Saar, shot in the face yesterday afternoon," *Alwasat News*, in Arabic language, www.alwasatnews.com/3128/news/read/535099/1.html.

⁷ Concluding Observations of the Committee on the Rights of the Child: Bahrain, CRC/C/15/Add.175 (2002), available at www.unhcr.ch/tbs/doc.nsf/0/1888017232928146c1256b59004e9cba?Opendocument.

HURIGHTS OSAKA Calendar

HURIGHTS OSAKA has published the report on its research project on analysis of Asian laws and court decisions. The full report is now a book entitled *Law, Jurisprudence and Human Rights in Asia*. The research project was supported by a grant from the Office of the United Nations High Commissioner for Human Rights.



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