

FOCUS

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Contents

Shifting Paradigms and Building National Civil Society: Refugee Protection in South and South East Asia

This is an overview of the situation of refugees in South and Southeast Asia, the significant issues that have to be resolved, and the measures to address the problems. It also discusses the important role of the civil society organizations in addressing the refugee problem.

- Anoop Sukumaran

Page 2

Women Urban Asylum Seekers

This is a report on the situation of women asylum seekers living in Bangkok. It presents the problems women (and also their children in some cases) suffer while waiting for recognition as asylum seekers, and when their application for such recognition has been rejected.

- Valeria Racemoli

Page 7

Being Gay (Lesbian or Transgender) in Singapore

This article explains the current problems facing those who would like to promote the rights of lesbians and transgenders in Singapore, including the laws that discriminate against them and restrict their activities.

- Sylvia Tan

Page 10

HURIGHTS OSAKA Activities

Brief information on recent activities of HURIGHTS OSAKA

Page 15

Editorial

Fleeing for Safety

Imminent of loss of life or limb, political or religious persecution, and torture experience are some of the reasons that force people to decide to leave their own country and face an uncertain future elsewhere.

The decision to cross the border to another country in order to live in safety is an extreme decision millions of people the world over have made for decades.

A significant number of them have to suffer prolonged wait for recognition as asylum seekers, many more have to live in dire straits as refugees. Many also have to cross the border back to homeland.

While transit countries and those being asked to grant asylum have the right to protect themselves against abuse of the exercise of right to asylum, there must be a way to avoid unjustified suffering for those who legitimately fled from imminent loss of life and freedom or from persecution.

There must be protection of the human rights of refugees and asylum seekers, rather than excessive concern for such abuse. Neither should the legitimate refugees and asylum seekers be subjected to forced return to country of origin, and make such people suffer the human rights violations they fled from.

Shifting Paradigms and Building National Civil Society: Refugee Protection in South and South East Asia

Anoop Sukumaran

The Asia Pacific Region has some of the largest and most protracted refugee situations in the world. In 2010, the United Nations High Commissioner for Refugees estimated the number of refugees worldwide as reaching 10.5 million.¹ Asia and the Pacific hosted more than half of these refugees, fifty-four percent and 0.3 percent respectively. The number does not include additional several million asylum-seekers, stateless persons and internally displaced persons (IDPs) in the region.

As of 1 April 2011, nineteen Asian and Pacific countries had become party to the 1951 Convention Relating to the Status of Refugees (1951 Convention).²

Refugee Issues

While developing nations of Asia have been the sites of large refugee populations, increasingly countries of the global north³ have been increasingly adopting policies of non-entre to refugees and asylum seekers.

Despite the unwillingness of post-colonial Asian states to become hosts to refugees, they continue to remain the largest recipients of refugees. South and Southeast Asia host more than two million refugees and people in refugee-like situations.

Table 1: Refugees, people in refugee-like situations and asylum seekers in Asia and the Pacific⁴

	Refugees	People in refugee-like situations	Asylum-seekers (pending cases)
Asia	5,475,351	240,467	72,410
Pacific	28,815	5,000	3,986
Grand Total	5,504,166	245,467	76,396

Table 2: Refugees, people in refugee-like situations and asylum seekers in South Asia⁵

Country/territory of asylum	Refugees	People in refugee-like situations	Asylum-seekers (pending cases)
Afghanistan	43	6,391	30
Bangladesh	29,253	200,000	-
Bhutan	-	-	-
India	184,821	-	3,746
Maldives	-	-	-
Nepal	87,514	2,294	938
Pakistan ¹⁴	1,900,621	-	2,095
Sri Lanka	223	-	138
Grand Total	2,202,475	208,685	6,947

Protection for refugees has in the process become adhoc and differentiated resulting in some groups having better conditions than others.

For instance in India, Tibetans who arrived in India before 1979

or who can prove that they were born in India prior to 1979 are given residence permits issued by the Indian Home Ministry which must be renewed yearly. Residence permits are necessary in order to obtain work, to rent an apartment or to open a bank

Table 3: Refugees, people in refugee-like situations and asylum seekers in Southeast Asia⁶

Country/territory of asylum	Refugees	People in refugee-like situations	Asylum-seekers (pending cases)
Brunei	-	-	-
Cambodia	129	-	51
Indonesia	811	-	2,071
Lao PDR	-	-	-
Malaysia	80,651	865	11,339
Myanmar	-	-	-
Philippines	243	-	73
Singapore	7	-	-
Thailand	96,675	-	10,250
Viet Nam	1,928	-	-
Grand Total	180,444	865	23,784

Living without legal status also means that many refugees have to eke a living in the shadow economy. Many suffer violations of their labor and human rights, for which redress through formal legal mechanisms is often impossible. Desperate for effective protection, some have moved onwards to seek asylum in other places, such as Japan, South Korea, Australia and New Zealand.

Reinventing the Non-entre Regime

Global north countries have established a "non-entre regime" based on border policing, visa requirements, carrier sanctions (forcing airlines to bear the costs of returning migrants refused entry), "safe third country" rules, and deterrent measures like detention and denial of the right to work.⁹ This deterrent policy has now been extended in the guise of combating people smuggling and trafficking, and 'regularizing' refugee flows. The extension of this 'new asylum paradigm'¹⁰ finds expression in the recently concluded Australia-Malaysia refugee deal.¹¹ The deal provides for the repatriation to Malaysia of eight hundred asylum seekers who had arrived in boats to Australian shores, while assuring the resettlement in Australia of four thousand UNHCR-recognized refugees in Malaysia over a four-year period. The deal is supposed to send a clear message to the "queue jumpers" that they would be sent back. This constant reference to a queue, begs the question, where is the queue?

On 31 August 2011, the High Court of Australia ruled that the declaration by the Australian government that Malaysia was

account. These residence permits also allow Tibetan refugees to obtain identity certificates that are necessary for international travel.⁷ Unlike the Tibetan refugees, the Government of India does not permit Burmese refugees and refugees from other countries to acquire residential and other legal documents, with some exceptions.

Similarly, in Malaysia, the government issued temporary work permits to around 35,000 Muslim refugees from Aceh, Indonesia in 2005 for several years, and continues to extend the temporary work permits of an estimated 61,000 Filipino Muslim refugees who fled to Sabah in the 1970s. However, it refuses the same privileges to refugees of other nationalities, who live in constant poverty,

fear, insecurity and threat of violence.⁸

Without formal legal recognition, many refugees are treated as irregular migrants and subject to arrest, detention, punishment for immigration offences, and deportation. In some countries, such as Bangladesh, Malaysia and Thailand, refugees have been held for years in indefinite detention. In Malaysia, immigration offences are punishable by whipping; between 2002 and 2008, 34,923 men suffered this brutal punishment, some of them asylum seekers and refugees. In India, Bangladesh, Nepal, and Thailand, hundreds of thousands of refugees have been 'warehoused' indefinitely in overcrowded refugee camps.

qualified to become a specified country to which asylum seekers could be transferred was in violation of Australian migration law.¹²

Regional Mechanism for Refugee Protection

Unlike Africa and Latin American regions, the Asian region has no regional instrument that either identifies or further elaborates on refugee protection within the region. It is argued that immense diversity of Asia makes it difficult to attempt to generalize refugee protection frameworks.¹³

Scholars argue that Asian governments are reluctant to sign the 1951 Convention due to a mix of a) political realism, where refugee rights are sacrificed at the altar of national security and nationalistic foreign policy, b) suspicion of international human rights instruments as real or imagined western influences and thus see the international refugee regime as being hostage from the very beginning to "foreign policy interests of dominant Northern States..."¹⁴ c) most post-colonial States endeavored to create a national identity which often created tensions with establishing a plural polity and respect for minority rights. This makes it particularly difficult for post-colonial states to allow groups from neighboring countries to reside in its territory even if they are fleeing danger to their life or freedom, that is, unless 'there is an ethnic link between the incoming refugees and the receiving state.'¹⁵ This 'cartographic anxiety'¹⁶ has been furthered in Asia by porous borders and the fact that post-

colonial States have been carved out of peoples inhabiting a "common space" for long periods in history.

Other scholars like Alice Nah argue that "the key priorities of postcolonial states have been nation-building, political stability, and economic development."¹⁷ The nation-building discourses have created perspectives that emphasizes preferential treatment of citizens over non-citizens.

National Civil Society in South and Southeast Asia

In view of these socio-political legacies, the role of national civil society in advocating for refugee protection in South and Southeast Asia becomes even more crucial. National civil society actors are able to represent their own citizens in lobbying their governments for refugee protection. They cannot be easily dismissed by their governments as 'outsiders' who 'interfere' in the domestic affairs of a state; the argument that refugee protection is a 'Western idea' becomes harder to defend.

However, the civil society in South and Southeast Asia is still relatively weak in advocating for refugee protection. There are more groups that focus on the human rights of their own citizens (both at home and as migrant workers abroad) than there are that focus on the rights of refugees. I suggest a number of possible reasons for this.

Firstly, violations of the rights of citizens seem to resonate more easily and quickly among fellow citizens; the lives of non-citizens are relatively more abstract and distant. Secondly,

refugee protection has become very complex – technically, legally and politically. This has not been complemented by broad-based and in-depth education and public debate on forced displacement in South and Southeast Asia. There is also little incentive to study the international refugee regime as it stands, as most of it is not applicable in these two regions. Indeed, the international human rights regime has greater utility. Finally, UNHCR plays a strong role in advocating for the rights of refugees in South and Southeast Asia, hoping to influence policy discourses and practices concerning refugees according to its key priorities. These factors contribute to national civil society groups becoming less engaged on refugee protection.

Nevertheless, there are national civil society groups across South and Southeast Asia who are very committed to the protection of the rights of refugees. In 2008, along with their counterparts in East Asia and the Pacific, they formed the Asia Pacific Refugee Rights Network (APRRN) as a platform for the advancement of the rights of refugees in the Asia Pacific region. Since its inception, APRRN has held a number of consultations, dialogues and training workshops aimed at building civil society commitment, capacity and collaboration concerning refugee protection. It has also released a number of joint statements, protesting, for example, the mistreatment of Rohingyas in Asia in 2008, and the refoulement of Lao Hmong and Uighurs from Thailand and China respectively in early 2009.

In December 2010, eighty-five Ahmadis¹⁸ were rounded up from their homes in Bangkok and sent to the Bangkok Immigration Detention Center to be repatriated back to Pakistan. Nearly half of those detained were women and children. One woman was seven months pregnant, and there were children as young as two years old. Later in January 2011 more Ahmadis were arrested.

Refugees and asylum seekers in Thailand are governed by the same Immigration Act and as such considered to be illegal aliens. In Thailand, the lack of distinction between refugees, asylum seekers and other immigration offenders contributes to the further victimization of those seeking protection from persecution. It is often a situation of despair as the only way out of it is resettlement to a third country or return back to their country of origin.

Conditions in the Thai detention center have been variously described as overcrowded, inhumane and unhygienic.¹⁹ Over one hundred twenty people have to share cells separated by gender that is meant for thirty to forty people. Cells are so crowded that there is often no place for the detainees to sleep and families are separated from each other. In the women's cell, women took turns to sleep as there was not enough space and children were sleeping near toilets that are often overflowed with faeces and urine.

In response to this detention and similar detentions in the recent past, the APRRN issued a statement in January 2011 demanding the release of

refugees and asylum seekers in detention. The statement was endorsed by the APRRN members and submitted to the Prime Minister, the National Human Rights Commission of Thailand (NHRCT), the National Security Council, the Immigration Department and the Ministry of Foreign Affairs. Simultaneously, APRRN representatives also met with the members of the NHRCT. The NHRCT took immediate cognizance of the issue and along with members of APRRN and others conducted a fact-finding mission to the Immigration Detention Center. The mission was widely publicized in Thai media.

As a response, to the openness of the Thai authorities, the Thai Committee for Refugees (TCR), a member of APRRN, created the Refugee Freedom Fund to bail the most vulnerable refugees who are indefinitely detained.

On 6 June 2011, ninety-six detainees were released, through the efforts of the Thai civil society. This release was historic, because never before has such large number of detainees been released on bail in Thailand. In the long-term, it is hoped that leadership from the Thai civil society will continue changing the dynamics and that the Thai government will consider establishing a legal framework and systematic mechanism to deal with all asylum seekers and refugees seeking protection in Thailand. In an effort to do so TCR and APRRN launched a campaign on the Draft Bill of Domestic Legislation for Refugees in Thailand. The campaign was launched on World Refugee Day, June 20,

and began to solicit ten thousand signatures from Thai citizens supporting the bill, which are needed in order to get the bill tabled for consideration in the parliament.

APRRN members across the region are formulating advocacy strategies to increase the space for protection of refugees and asylum seekers. In Nepal, INHURED International has presented the Nepalese parliament a draft refugee bill for its consideration. However, given the political turmoil in the country the bill is yet to be discussed.

Conclusion

National civil society groups have a vital role to play in strengthening refugee protection in Asia. They have unique capacities to influence public opinion and to shape domestic laws and politics. However, strong, locally owned, popular movements of committed refugee advocates are only just emerging in South and Southeast Asia. Local knowledge production still plays a marginal role in shaping global discourses concerning refugees. Only with vibrant national civil society movements will states in South and Southeast Asia be convinced that refugee protection is the desire of its citizenry; only then will there be local ownership of refugee protection in these regions.

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Endnotes

- ¹ UNHCR *Global Trends 2010: 60 years and still counting*, 20 June 2011, available at www.unhcr.org/4dfa11499.pdf [accessed 27 September 2011]
- ² *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*, documents available at www.unhcr.org/pages/49da0e466.html.
- ³ "Global north" refers to economically and industrially advanced countries, including many members of the Organisation for Economic Co-operation and Development (OECD).
- ⁴ Op. cit., page 41.
- ⁵ Ibid., pages 38-40.
- ⁶ Ibid.
- ⁷ South Asia Human Rights Documentation Centre. *Tibetan Refugees in India: Declining Sympathies, Diminishing Rights* (2008). Retrieved 2 August 2011, *Human Rights Features*, available at www.hrdoc.net/sahrdc/hrfeatures/HRF183.htm.
- ⁸ Nah, A. (n.d.), *Strengthening Refugee Protection in Asia: The Significance of National Civil Society*.
- ⁹ This is not a new development, but has been in place for many years now. Restrictive entrance policy has been adopted particularly targeted at parts of the world from where 'migrants' or refugees might arrive.
- ¹⁰ An author terms this new refugee policy as 'new asylum paradigm' which is predicated on the notion that refugee flows particularly to the global north could be 'managed' thereby ensuring that such population movements take place in an orderly, predictable and organized manner. See Crisp, J., "A new asylum paradigm? Globalization, migration and the uncertain future of the international refugee regime." *Working Paper No. 100* (UNHCR, 2003).
- ¹¹ This agreement is formally titled "Arrangement Between The Government of Australia and The Government of Malaysia on Transfer and Resettlement," and signed by the parties on 25 July 2011 in Kuala Lumpur.
- ¹² This court decision on the petition of Afghan asylum seekers rendered the Australia-Malaysia refugee deal ineffective. Australia's Department of Foreign Affairs and Trade has itself noted to the Minister for Immigration and Citizenship that "Malaysia is not a party to the Refugee Convention and does not itself grant refugee status or asylum or have in place legal protections for persons seeking asylum." The Court was not convinced that the Australian government has adequately considered the extent of adherence of Malaysia to "international obligations, constitutional guarantees and domestic statutes which are relevant to the criteria" for determining a specified country under the migration law. For the full text of the court decision see "Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship [2011]" HCA 32 (31 August 2011), available at www.austlii.edu.au/au/cases/cth/HCA/2011/32.html.
- ¹³ Muntarbhorn, V., *The Status of Refugees in Asia*. (Oxford: Clarendon Press, 1992), page 3.
- ¹⁴ Chimni, B. S.. "Improving the Human Conditions of Refugees in Asia," in *SARWATCH*, 2 (1), 3.
- ¹⁵ Muntarbhorn, op. cit., page 16.
- ¹⁶ Chimni, op. cit., page 4.
- ¹⁷ Nah, op. cit.
- ¹⁸ The persecution of Ahmadis has been particularly severe and systematic in Pakistan, which is the only state to have officially declared the Ahmadis to be non-Muslims. They are being persecuted for professing their religion. The systematic persecution of the community in Pakistan is also well documented by human rights groups.
- ¹⁹ "Pakistani refugees freed on bail from Thai jail," *Dawn.com*, June 6, 2011. <http://www.dawn.com/2011/06/06/pakistani-refugees-freed-on-bail-from-thai-jail.html>

Women Urban Asylum Seekers

Valeria Racemoli

Half of all of the world's refugees live in urban areas, such as Bangkok. But still, the vast majority of assistance to refugees remains in refugee camps. The United Nations High Commissioner for Refugees (UNHCR) amended its Urban Refugee Policy in 2009 to, among others, encourage "host governments to accede to and respect the international refugee and human rights instruments and to adopt and implement appropriate domestic legislation," and "to work closely with the national authorities, the police and judiciary, the private sector, NGOs [non-governmental organizations], legal networks, other civil society institutions and development agencies" in serving the needs of refugees in urban areas.¹

The UNCHR has also adopted the Age, Gender and Diversity Mainstreaming (AGDM) approach that "recognizes that the different groups to be found within any refugee population have varying interests, needs, capacities and vulnerabilities, and seeks to ensure that these are taken into full account in the design of UNHCR programmes."²

Jesuit Refugee Service

The Jesuit Refugee Service (JRS), founded in 1980 as an international Catholic organization with a mission to accompany, serve and advocate

on behalf of refugees and other forcibly displaced persons, established the JRS Asia Pacific in 1981. From an emergency response to crisis, the work of JRS expanded towards a longer-term commitment. With diminished worldwide sympathy for refugees, they are now expected to wait in camps much longer, and are more likely to be rejected for resettlement. They face more unwelcoming reception in countries of first asylum. Thus, the long-term needs of refugees received increasing attention—education, culture support and the ability to participate in the decisions that shaped their lives besides the needs of food, medicine and shelter.

JRS Asia Pacific has expanded its assistance to forcibly displaced persons in eight countries: Thailand, Cambodia, Timor Leste, Singapore, Papua New Guinea, the Philippines, Indonesia, and Australia. The number of people who share in the mission of JRS in Asia Pacific has grown to include one hundred thirty-seven employees and eight volunteers of different faith and cultural backgrounds.

Since the then Superior General of the Society of Jesus, Fr. Pedro Arrupe, SJ envisioned to see JRS working where no one else works and assisting people who are forgotten, JRS Asia Pacific is dedicated to serving, accompanying and advocating for refugees living in cities. The

JRS Asia-Pacific urban refugee program (JRS-URP) began in 1990 in response to the basic survival needs, mainly of urban asylum seekers by providing services such as casework, social counseling, legal assistance, and community support to asylum seekers in the urban areas. The majority of the asylum seekers after registering with UNHCR are referred to JRS-URP for assistance.

Women Asylum Seekers in the City

Adhi has given up hope. When she left Sri Lanka with her four children in 2009 she did not know what to expect. All that she was looking for was a place where she could finally feel safe from the war that had been devastating Sri Lanka for the past twenty years. "The soldiers were coming almost every day so we were afraid for our safety. Therefore my husband went to get the tickets to come to Bangkok, but he was kidnapped so I came alone. I was not able to look for my husband when he disappeared. I was alone and the military were coming every day to my house. So at one point I decided to take the tickets and leave anyway to protect my children."

She has been living in Bangkok and surviving alone with no access to work or the ability to provide for her children. For two years she has depended on the assistance of other

organizations, and in March 2011 Adhi's claim for refugee status was rejected by the UNHCR.

"My mother is in Sri Lanka. Sometimes she calls us. She also asks about the United Nations and if I received a decision. I didn't tell her that the UNHCR rejected me because I didn't want to upset her. I don't explain to her everything that is going on here."

Adhi is just one of approximately two thousand six hundred asylum seekers and refugees registered with the Office of UNHCR in Bangkok. Hundreds of them are women and girls who came to Thailand either with their family or alone. Once in Bangkok they have to survive and to provide for their children without any legal right to work or to health care, and depending only on the assistance and the benevolence of organizations and individuals.

Adhi is not alone in her wait for starting a new life. Muznah waited for one year for her interview with the UNHCR. According to the UNHCR Bangkok's own informational pamphlet for asylum-seekers, the interview should occur within twelve weeks from registration. But after fleeing from Pakistan with her husband and children, Muznah has waited more than a year for her interview, and in that time her visa expired, causing her the constant fear of being arrested and detained. Thai law does not make any distinction between irregular migrants on one side, and asylum seekers and refugees that over-stay their visa, on the other. Thus, once

their visas expire, they are at risk of getting arrested and indefinitely detained at Immigration Detention Centers.

Moreover, during their stay in Thailand most of the children are not able to continue their studies. While Thailand has ratified the Convention on the Rights of the Child and recognizes the right to education for young asylum seekers and refugees, very few schools in Bangkok, mostly private international schools, are willing to accept them. Language barriers, the lack of understanding among Thai society of the specific needs of the urban refugee population, and the parents' inability to pay the school's fees without a steady income are some of the factors that make this right unattainable. The Bangkok Refugee Center (BRC), UNHCR's implementing partner in Bangkok, provides informal education for refugee children, but asylum seekers can only attend once a week.

Wanting to Work

Nikou abandoned everything when she left Iran, at the age of 27. She left her family, her friends, and her university study in Graphic Design. She had to escape one year of arbitrary detention and torture. She arrived in Bangkok in February 2011 and attended her interview with the UNHCR at the beginning of May. Like many other asylum seekers and refugees in Bangkok, Nikou spends most of her days doing nothing except wait for the UNHCR decision on her asylum application. The frustration of not knowing what will be of her

future is doubled by the insecurity of her life in Bangkok and the total inability to provide for herself.

"I would love to have a job, but I can't get one here. I spend all my time at home because I am afraid that the police will arrest me," she said.

Being denied the right to gain an income under Thai law, urban asylum seekers and refugees in Bangkok are often left with no other choice but to join the informal economy to be able to provide for themselves and their dependents. Zarah Alih, the JRS psychosocial counsellor, knows very well the challenges that female asylum seekers and refugees have to face in Bangkok. She notes that most women who come to Bangkok get assistance from JRS Asia-Pacific for six months if they meet the 'extremely vulnerable' criteria. JRS Asia-Pacific provides housing assistance, economic assistance, referral for medical support and psychosocial counselling. However, once JRS Asia-Pacific stops its aid, the female asylum seekers and refugees are left without income. They sell their jewellery and when that money runs out, they come back to JRS Asia-Pacific. Once they realize how long they have to stay in Thailand and how long NGOs are able to support them, they know they will have to figure out something else. Some have resorted to "survival sex," particularly for women with or without children, and girls.

While the UNHCR Urban Refugee Policy places high-priority on establishing an environment that allows urban

refugees to be self-reliant “as a way of retaining their dignity,” it cannot be fully realized in Thailand because urban asylum seekers are not fully recognized by the Thai government. JRS Asia-Pacific tries to find ways for them to generate income as they struggle with language barriers (most of these women and girls do not speak English or Thai language), suffer from lack of previous work experience, and face security risks.

“We realize that due to the length of the Refugee Status Determination process (RSD) what we can do is actually insufficient to cover the whole stay in Thailand. That is why I try to point out activities for them but the challenges are many. Because of the risk of arrest we have encouraged income generation that happens at home. However, because of the same threat they often need to change apartments, thus making it difficult to keep the activity alive. Another challenge is represented by their lack of work experience. In the first session of a support group activity I ask them what they need. They need training. Even if they enjoyed the right to work legally, for many of them without any training their situation would not change,” Zarah said.

Based on her experience, Zarah finds that income-generating activities – like beading hijabs or sewing – are more than just a way to make money. Activities take their minds off of waiting day after day for a UNHCR decision on their cases. And increasing their ability to survive without assistance also improves their sense of self-

esteem and confidence while preparing them for their future.

Alone in their Communities

Most refugees living in the city admit that it is an isolating existence.

“We never go to BRC. All the people there sit around, waiting and gossiping about each other,” said one teenage Sri Lankan refugee.

Isolation in the city is another factor with which women and girl asylum seekers and refugees have to cope with during their stay in Bangkok. Integration within the Thai society is almost impossible to reach because of the many legal, social and language barriers. But also inside the refugee community solidarity among the different nationalities is still in many cases only a distant dream.

Whenever she goes to BRC, Adhi knows that she has to ignore the men because other refugees will make up stories about her. She has to dress a certain way, or people will talk about her. But, her friend admitted, people talk and make up stories about one another because they have nothing but gossip to fill their time. After two years in Bangkok she knows how “difficult it is to make friends and create a community.”

Zarah has begun the process of developing female support groups in different refugee communities, but admits there are difficulties.

“I want them to understand that they cannot always rely on other organizations and that they are in the same situation

and they can help each other. I want them to be supportive,” Zarah said.

Urban refugees are often forgotten. They live anonymously. They do not live in refugee camps, where much funding and media attention is focused. They try to exist invisibly until they are resettled. But the needs of urban refugees and asylum seekers, particularly women, are not invisible to anyone who cares to look closely. In reality, they suffer from a lack of assistance compared to refugees living in camps where most services are coordinated and provided for by many NGOs. Safety, support, work skills, income and fast resettlement—these needs are just hopes to many of the hundreds of women seeking asylum in Bangkok.

“No girl would come here and leave her country if she could stay there and live a normal life,” Nikou said. “It is very difficult to be alone here.”

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Endnotes

- ¹ UNHCR policy on refugee protection and solutions in urban areas, September 2009, pages 5-6.
- ² Ibid., page 7.

Being Gay (Lesbian or Transgender) in Singapore

Sylvia Tan

Singapore is one of nine countries in Asia - alongside Bangladesh, Bhutan, Maldives, Pakistan, Sri Lanka, Brunei, Malaysia and Myanmar - that criminalizes male-to-male sexual relations. Female-to-female sex is not criminalized.

A legacy of its British colonial past, Section 337A of Singapore's Penal Code provides for up to two years imprisonment if a male is convicted of having sexual relations with another male person, even if it is among consenting adult men in private. Section 377A states:

Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to two years.

In 2007, at the end of a year-long review of the Penal Code - the most wide-ranging in twenty-two years, the Singapore government announced its decision to retain the law that criminalizes oral sex among males while decriminalizing oral and anal sex among opposite-sex parties.

The old Section 377 states:

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman

or animals, shall be punished with imprisonment for life, or with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

As a result of gender-neutral Section 377 being abolished, female-to-female sex is now legal.¹

Section 377A now sits between Section 377 that proscribes sexual penetration of a corpse and Section 377B that proscribes sexual penetration with living animal.

Despite the retention of the law, the government has made public assurances that consensual sex among adult men in private will not be prosecuted.

Prime Minister Lee Hsien Loong said during the parliamentary debate in 2007 that his government's current legal position to not enforce the law is a "practical arrangement that has evolved out of our historical circumstances" that "reflects the social norms and attitudes." He further said that²

we have decided to keep the status quo on section 377A. It is better to accept the legal untidiness and the ambiguity. It works, do not disturb it.

Lobby for Repeal

In November 2006, the Ministry of Home Affairs announced its decision to retain gay sex laws

although laws that criminalize anal and oral sex between consenting heterosexual adults would be repealed.

In the lead up to the parliamentary debate on 22 and 23 October 2007 about the proposed Penal Code amendments, a fiery debate raged in the mainstream media and on the Internet.

Pro-repeal advocates organized two major campaigns: An Open Letter to the Prime Minister, and a parliamentary petition.

The Open Letter, which gathered 8,120 signatories using the Internet, was hand-delivered to the Prime Minister's office at the Istana.³ The parliamentary petition, with 2,341 physical signatures was presented by Nominated Member of Parliament Siew Kum Hong in Parliament on 22 October 2007.

The petition argues that if "an act performed by a heterosexual couple is permitted, while the same act performed by a homosexual or bisexual male couple is criminalized," the law is discriminatory as it "infringes the right of homosexual and bisexual men to equal treatment by and protection before the law, as set out in Article 12(1) of the Constitution of the Republic of Singapore."⁴

The campaigns however also attracted an opposing group

that launched a website of its own to campaign against the repeal of the penal law.⁵

Although it was unsuccessful, the petition marked the first attempt in twenty years by a citizens' group to use formal parliamentary procedures to change the law.

Arguing for the law to be retained, Senior Minister of State for Law and Home Affairs, Ho Peng Kee, said Singapore remains a largely conservative society and that "the majority find homosexual behaviour offensive and unacceptable."

He reiterated his position that the police has not been proactively enforcing the provision and will not enforce the law⁶ if the parties involved were consenting and the encounter was in private, a position MARUAH, a local human rights group finds unacceptable.

A MARUAH (Singapore Working Group for ASEAN Human Rights Mechanism) spokesperson commented on this issue:⁷

The intentional maintenance of laws that are deliberately not enforced will tend to bring the law into disregard, which should be avoided. As a human rights group, we see the law as a critical mechanism for the protection of rights and of minorities, and accordingly any provisions that would tend to bring the law into disrepute should be repealed.

In 2007, the Law Society of Singapore, the professional association of lawyers in Singapore, formed an ad hoc committee of sixteen members

to study the matter and issued a report saying, "the retention of s. 377A in its present form cannot be justified."⁸

Legislation Regarding Transgenderism

Individuals who have undergone a sex re-assignment procedure can legally change their gender (as being of the sex to which the person has been re-assigned) on all documents such as passport and identity card (but not birth certificate). The Women's Charter was amended in 1996 to allow a transgender person (who has legally changed his or her gender) to legally marry any person of the opposite sex.⁹ But the Women's Charter maintains the general rule: same-sex marriage is void in Singapore.¹⁰

Consequences of Section 377A

The existence of Section 377A of the Penal Code has various adverse consequences such as the following:

a. Safer sex outreach

Singapore's only HIV/AIDS-related NGO Action for AIDS (AfA) reports that the police had stopped volunteers from distributing materials containing information on homosexuality and safer sex practices even though these materials were given out at gay venues and events.

Professor Roy Chan, President of Action for AIDS Singapore, wrote in a position paper about this matter:¹¹

The reasons repeatedly given by the authorities was that

because homosexual sex is illegal, it cannot be mentioned; therefore providing information on safe sex relevant to MSM [men having sex with men] is also illegal. At a party catering to MSM, AfA was ordered to close its information booth by the police, the reason given for the order was that information materials contained references to homosexual sex.

The group also points out Section 377A to be an obstacle in reaching out to young men who have sex with men or contemplating of having sex with men.

b. Sex education in schools

The government announced in 2010 that it had approved six vendors - four of whom are known to be part of conservative Christian groups - to conduct sex education programs in schools. The decision follows a high-profile takeover attempt in 2009 by a group of Christians who thought that a women's rights group (Association of Women for Action and Research or AWARE) had gone overboard for not condemning homosexuality in its sex education program for teenaged students. AWARE's sex education program has since been suspended.

According to the Ministry of Education's policy, students will only be taught that homosexual acts are illegal.¹² The curriculum will not discuss homosexuality or safer sex techniques, and will focus on abstinence in general.

c. Censorship in the media

Television programs that "advocate" or "promote"

homosexuality are routinely censored. During the 2009 Oscar awards broadcast, speeches by winners Dustin Lance Black and Sean Penn who spoke about discrimination against gays and lesbians were snipped.¹³

In 2008, Singapore's state-owned television was fined S\$15,000 (US\$10,800) by the Media Development Authority for broadcasting an episode of a home and decor reality television show "Find and Design," in which the host helped a same-sex couple decorate a nursery for their adopted child. A statement from MDA read: "This is in breach of the Free-to-Air TV Programme Code which disallows programmes that promote, justify or glamourise gay lifestyles."

It further stated:¹⁴

MDA also consulted the Programme Advisory Committee for English Programmes (PACE) and the Committee was also of the view that a gay relationship should not be presented as an acceptable family unit.

On the same day of the announcement, a three-minute segment of the *Ellen DeGeneres Show* where the host condemned homophobia and spoke about a fatal shooting of a fifteen-year-old gay student in school, was censored on MediaCorp's Channel 5.¹⁵

In the same year, a Singapore cable television operator was fined S\$10,000 (US\$7,200) for airing a commercial that showed two women kissing.¹⁶

d. Freedom of Assembly

While there are over a dozen LGBT-related community groups active in Singapore, none are officially registered or recognized. Pioneer gay advocacy group People Like Us had been unsuccessful in both its attempts in 1997¹⁷ and 2004¹⁸ to register formally as a society. In 2007, the Registry of Societies [ROS] (under the Ministry of Home Affairs) refused to provide any reason for rejection of application despite repeated requests. In 2004, PLU was told by the ROS that its application was rejected on the ground that the society would likely be prejudicial to public peace, welfare or good order, and that it would be contrary to the national interest.

Although the ROS in 2004 introduced a scheme where certain types of societies can be automatically registered, groups whose purpose is to represent, promote or discuss gender or sexual orientation has specifically been excluded from this scheme alongside groups that deal with politics and religion.¹⁹

When contacted to ask why it is so, the Societies Executive of ROS responded in June 2010 via email saying: "Scrutiny of such societies is required to ensure that these groups which aim to promote a particular cause, do not conduct their activities in a manner which could be prejudicial to our national interests when they engage actively in pushing their agenda, without due regard for those who may not agree with their cause."

Gay Activism and Visibility

Singapore currently hosts two Lesbian-Gay-Bisexual-Transgender (LGBT) or LGBT-supportive events: IndigNation and Pink Dot.

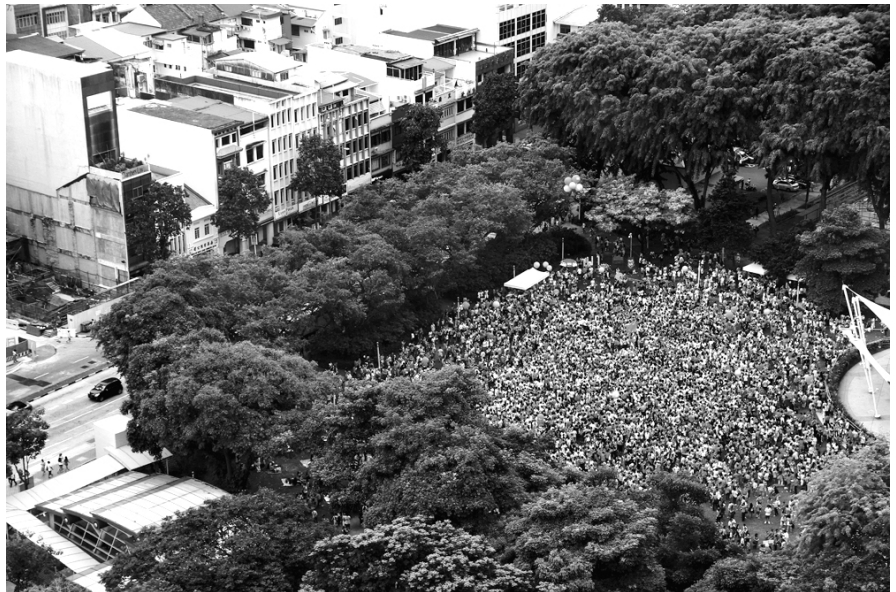
Indignation is the closest thing Singapore has to a gay pride festival. First held in August 2005, the month-long festival typically features talks, art exhibitions, poetry readings, film screenings and social activities; and notably does not feature any public street parades which have become synonymous with gay pride festivals around the world.

While People Like Us coordinates the events, different groups or people who contribute their events to the joint calendar separately organize each event.

The festival started the year after the government banned a gay Christmas party in 2004 and the annual Gay Nation party in 2005 after a government minister hypothesized without providing any proof or data that gay parties in Singapore might have led to sharp rise in new AIDS cases.²⁰

It should also be noted that holding IndigNation was only possible in 2005 after government authorities liberalized restrictions on indoor meetings in 2004. The liberalized rules does not require government permit for indoor events if the subject is not about religion and does not harm racial harmony. Prior to that, a permit was needed for all public events regardless of the subject matter.

Held for the second year in 2010, Pink Dot is Singapore's first and only mass LGBT-supportive event to support "freedom to love" regardless of sexual orientation and to show support for and acceptance of LGBT people in mainstream society. The event which was held at a public park - Singapore's only government-designated venue for public assembly and free speech where a police permit is not required - drew two thousand five hundred people in 2009,²¹ four thousand people in 2010,²² and ten thousand people in 2011.²³



PinkDot 2011 held in Hong Lim Park in Singapore last June 2011 (photo courtesy of PinkDot Singapore).

Google Singapore became the first multinational company to publicly support Pink Dot.

It is impossible to predict what the government would do about the current anti-gay law but I think I can say that: Given that events like Pink Dot and businesses openly catering to LGBTs were largely unimaginable in the 1980s and 1990s, the gay movement with its desire for greater visibility and equal treatment is likely to move at a greater pace than before as an ever increasing number of LGBTs are better informed of worldwide developments and willing to take a more assertive stand while working within the limitations of the law.

Gay Entrepreneurship and Social Space

Singapore has a thriving gay scene with numerous publicly known gay karaoke bars and dance clubs, gay bathhouses/saunas, lesbian parties and other businesses targeting gay

and lesbian patrons and details of which are easily found on the Internet.

Fridae.asia, Asia's largest gay and lesbian portal, chiefly operates out of its subsidiary company in Singapore although the company is officially based in Hong Kong. Dr Stuart Koe, who founded Fridae in 1999, said that they decided to use the system to circumvent regulations by the Media Development Authority (under the Ministry of Information, Communications and the Arts) that prohibited any material that "advocates homosexuality or lesbianism" under the Internet Code of Practice.²⁴

While gay men and lesbians do not appear to be gaining any traction in terms of legal rights or protections, more than before they are able to access a range of publicly identified gay-affirmative community services and organizations such as the LGBT-oriented Pelangi (rainbow in Malay) Pride Center library,

Oogachaga Counselling and Support, and Free Community Church.

Sylvia Tan is the editor and Singapore correspondent of Fridae.asia, Asia's largest gay and lesbian portal.

For further information, please contact: Sylvia Tan, sylvia@fridae.asia >; www.fridae.asia/.

Endnotes

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- ¹⁰ The Women's Charter provides: 12. —(1) A marriage solemnized in Singapore or elsewhere between persons who, at the date of the marriage, are not respectively male and female shall be void.
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HURIGHTS OSAKA Activities

HURIGHTS OSAKA and the Osaka Bar Association jointly organized on 5 August 2011 in Osaka a symposium entitled “Child’s Best Interest and the Rights of Parents in Cross-border Child Abduction Cases.” The symposium dealt with issues that have been debated in Japan regarding the ratification of the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention). The Japanese Cabinet announced on 20 May 2011 its decision to propose to the Diet (parliament) the enactment of a law in preparation for the ratification of the Hague Convention. Several resource persons spoke at the symposium. Ms. Mikiko Otani, a lawyer and Vice-Chair of the Working Group of the Japan Federation of Bar Associations on the Hague Convention, discussed the Hague Convention and the best interest of the child principle that should govern it. Ms. Noriko Odagiri, a clinical psychologist in Tokyo International University, discussed visitations from the child’s perspective, and problems that could arise (such as disruption by the return of the child to the country of the other parent, sense of loss, and the possibility of witnessing domestic violence). Ms. Nancy Zalusky Berg, President of the International Academy of Matrimonial Lawyers – USA Chapter, shared some

experiences in applying the Hague Convention in the U.S. She stressed Article 13(b) of the Hague Convention on the denial of request for the return of the child if “there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.” She also mentioned that there were exaggerated claims of harm and abuse to the children subject of such requests. The U.S. courts, therefore, require “undertakings” to ensure the safe return of the child. More than one hundred participants including members of the bar association, academics, psychologists, human rights workers, public officials, and officials from several Consulates in Osaka attended the symposium.

HURIGHTS OSAKA co-organized the performance of the members of the Bornfree Art School in Osaka on 13 August 2011. The Bornfree Art School is a special school created exclusively for street children, working children and freed bonded labor children. It aims to educate and develop the talents of the children through the arts, and thus put them back into the mainstream education. The Bornfree Art School (based in Bangalore, India) sees art as a therapeutic means for children from such difficult backgrounds to express themselves freely,

regain the confidence and self-respect as well as to generate interest in education. The performance in Osaka (as well as in other places in Japan) focused on peace as main theme. The performance highlighted the importance of Article 19 of the 1947 Japanese Constitution that renounces war as a “sovereign right” of Japan, and linked this to the message that Mahatma Gandhi wanted to convey on the peace issue.

On 3-4 September 2011, HURIGHTS OSAKA held a meeting of educators from China, Hong Kong, South Korea, Mongolia and Taiwan to discuss the development of a Northeast Asian Human Rights Education Training Resource Material. As a teacher training resource material, it would be designed for use in teacher-training colleges or in any form of training teachers. It would include existing human rights education materials in Northeast Asia such as lesson plans, and materials on human rights concepts, pedagogies, school-rules and regulations, links with outside institutions and the local community. The project would seek the help of teachers, law professors, teacher educators, and those involved in non-formal human rights education in Northeast Asia in gathering materials and putting them together as a resource material.

HURIGHTS OSAKA Calendar

HURIGHTS OSAKA has published the second volume of *Human Rights Education in Asia-Pacific*. This volume contains articles regarding a variety of programs of institutions at the national (non-governmental organizations, universities, national human rights institutions, country offices of international organizations) and regional levels. It covers programs for schools, universities, communities, and also for professionals. The pdf file of the whole publication and those of the individual articles are available at www.hurights.or.jp/archives/asia-pacific/.



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HURIGHTS OSAKA, inspired by the Charter of the United Nations and the Universal Declaration of Human Rights, formally opened in December 1994. It has the following goals: 1) to promote human rights in the Asia-Pacific region; 2) to convey Asia-Pacific perspectives on human rights to the international community; 3) to ensure inclusion of human rights principles in Japanese international cooperative activities; and 4) to raise human rights awareness among the people in Japan in meeting its growing internationalization. In order to achieve these goals, HURIGHTS OSAKA has activities such as Information Handling, Research and Study, Education and Training, Publications, and Consultancy Services.

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.

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