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Extrajudicial Killing and Enforced Disappearances in South and Southeast Asia

This is a brief review of the extrajudicial killings and enforced disappearances that continue to occur in several countries in South and Southeast Asia. The causes, the victims and the perpetrators of these human rights violations vary. But there is a common element of impunity that pervades in all countries reviewed in this article.

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This article discusses some of the issues raised in relation to the Japanese government decision to accede to the Hague Convention on the Civil Aspects of Child Abduction. Resolving the continuing problem of children of international marriages being brought to Japan that cut off contact with their non-Japanese parents requires addressing the issues raised.

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

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Editorial

Culture of Violence

In Asia, unexplained killings and disappearances are not unfamiliar to people who experienced authoritarian rule from the 1960s to 1980s. Members of the police and security forces have long been suspected of perpetrating these heinous human rights violations.

While political changes led to a new sense of hope that human rights would be protected and also fulfilled, much of the issues have remained. The perpetrators of human rights violations have not been held accountable to a large extent.

Data of the last ten years in some countries in Asia reveal a familiar picture: continuing trend of extrajudicial killings and enforced disappearances.

There is an unquestionable sense of impunity on the part of those who committed these crimes, fueled by the glaring absence of serious efforts to hold them accountable. There is a chilling sense of paralysis on the part of governments in facing the truth that extrajudicial killings and enforced disappearances occurred and continue to occur, and that justice has not been served not only to the victims' families but also to the country as a whole.

There is definitely a culture of violence.

Extrajudicial Killing and Enforced Disappearance in South and Southeast Asia

Munty Khon

In 1983, a group of prominent human rights personalities in Southeast Asia made a collective plea to the Association of the Southeast Asian Nations (ASEAN) that in addressing public emergencies the:

Government shall not, under any circumstances, resort to or authorize:

(a) Violence to life, health and physical or mental well-being of persons who are not or are no longer combatants in armed conflict, in particular, murder, political assassination or extra legal executions, kidnapping or unexplained disappearances, torture, mutilation or any form of corporal punishment, use of so-called truth serums and other drugs, and slavery or other forms of involuntary servitude. (Article XI [4] Public Emergencies)

This statement, among others, reflected the prevailing situation in a number of countries in Southeast Asia in the 1970s and 1980s.

What were then known as political assassinations or extra legal executions and unexplained disappearances are now termed by the United Nations as extrajudicial killings and enforced disappearances respectively. In the Philippines, extrajudicial killing has been known as “salvaging” since the 1970s or during the period

when the country was under martial rule.

A decade later, in 1993, Asian human rights organizations appealed to the Asian governments to take “urgent and effective” action on a number of issues including “political repression by means of killings, disappearances, and torture.”² The Asian governments’ declaration however failed to mention this matter, though the document mentioned threats due to all forms and manifestations of terrorism.³

Continuing Concern

While changes in the political situation in many countries in South and Southeast Asia occurred during the recent

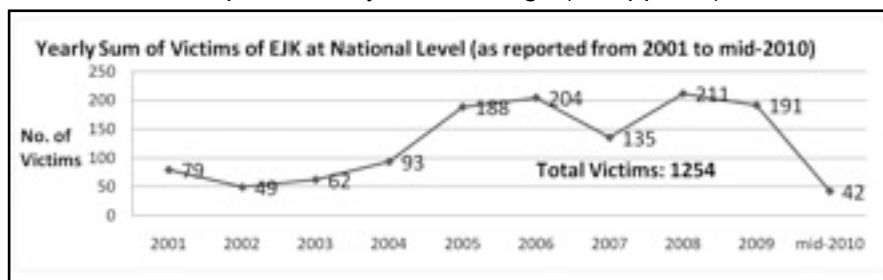
years, the overall situation of extrajudicial killings and enforced disappearances has hardly changed. Some reports illustrate the seriousness of the situation during the last decade.

Statistics from the Philippine Commission on Human Rights covering 2001 to 2010 period,⁴ Graphs 1 and 2, show increased number of cases during the last five years.

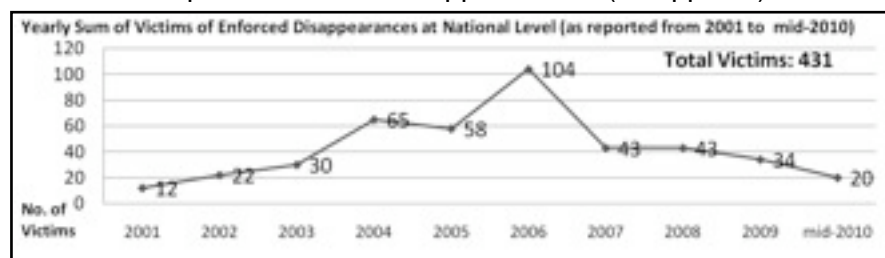
In India, the Asian Center for Human Rights tallied the figures from the National Human Rights Commission of India on reported deaths in police and judicial custody and came up with the statistics in Table 1.⁵

Reports from Bangladesh by ODHIKAR⁶ show data regarding

Graph 1. Extrajudicial killings (Philippines)



Graph 2. Enforced Disappearances (Philippines)



deaths attributed to “crossfire” and torture involving members of the police, members of other enforcement agencies, and members of the security forces. Table 2 provides some data.

In Pakistan, the Human Rights Commission of Pakistan (HRCP) noted in its 2010 report⁷ the continuing trend of killings and disappearances. Several hundred people died due to police encounters (with few “suspects” being captured alive), targeted killings, and deaths in prison. There are also reports of almost sixty missing persons, while the dead bodies of some reported missing persons had been found. More than thirty cases of enforced disappearances had been reported. Statistics on missing persons over a ten-year period are shown in Table 3.

The National Human Rights Commission of Nepal reported the number of cases of extrajudicial killings and the disappearances in Table 4.

These statistics show fluctuating number of cases over the years. What could have brought the increase in the number of cases in some of those years?

In Sri Lanka, the United Nations Working Group on Enforced or Involuntary Disappearances has “transmitted 12,230 cases to the Government; of those, 40 cases have been clarified on the basis of information provided by the source, 6,535 cases have been clarified on the basis of information provided by the Government, and 5,653 remain outstanding.”¹⁰

Table 1. Deaths in Police & Judicial Custody (India)

Year	Police Custody	Judicial Custody
2000–2001	127	—
2001–2002	165	1,140
2002–2003	183	1,157
2003–2004	162	1,300
2004–2005	136	1,357
2005–2006	139	1,591
2006–2007	119	1,477
2007–2008	187	1,789
2008–2009	142	1,527
2009–2010 (February)	124	1,389
2010–2011	147	—
Total	1,631	12,727

Table 2. “Crossfire “ and “Torture to death” (Bangladesh)

Year	Crossfire	Torture
2004	166	46
2005	340	24
2006	290	27
2007	130	30
2008	136	12
2009	129	21
2010	101	12
2011 (Jan-Aug)	44	12
Total	1,336	194

Table 3. HRCP list of reported missing persons (Pakistan) (traced and still missing)⁸

Year	Traced Missing Persons	Still Missing
2000	3	2
2001	—	—
2002	3	1
2003	3	—
2004	9	2
2005	33	4
2006	75	20
2007	30	11
2008	—	2
2009	3	28
Total	159	70

Table 4. Extrajudicial killings and disappearances⁹ (Nepal)

Year	Extrajudicial killings	Disappearances
2001	3	—
2002	—	—
2003	6	13
2004	15	
2005	45	1
2006	38	1
2007	22	
2008	56	
2009	54	1
Total	239	16

Characteristics

Members of the police, security forces and paramilitary groups have long been suspected of perpetrating extrajudicial killings and enforced disappearances. In South Asia, extrajudicial killings have invariably been called “fake encounters” or “crossfire” killings to describe cases of people who got killed because they were allegedly members of rebel or insurgent groups and fought members of the police or security forces. A report from India, for example, indicates that the victims have actually been detained or arrested, unarmed, and unlikely members of any rebel or insurgent groups.¹¹

In most countries in South and Southeast Asia, extrajudicial killings and enforced disappearances have been linked to internal armed conflict or the anti-terrorism campaign.

As shown in the earlier tables, “deaths in custody” or deaths resulting from torture are also widely reported in South Asia. The police attribute these deaths to either natural causes or self-inflicted injury, but the involvement of suspicious circumstances suggest deaths caused by torture, ill-treatment or outright killing by officials. “Death in custody” is considered a type of unlawful killing under the mandate of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions.¹²

The 2011 report of the Commission of Human Rights of the Philippines refines the list

of perpetrators by identifying them in Table 5.¹³

The 2010 report of the National Human Rights Commission of Nepal identified the perpetrators of extrajudicial killings as security forces, members of the Communist Party of Nepal, and others.¹⁴

The victims of extrajudicial killings and enforced disappearances include a variety of people including suspected members of rebel or insurgent groups, journalists, suspected criminals, members of minority groups, political activists and ordinary people. In a number of cases, human rights defenders have become victims, and also people suspected of being related to the drug trade (in the case of Thailand).

The cases of extrajudicial killings and enforced disappearances have been reported in places where active campaigns against terrorism or insurgency exist. This is seen in Balochistan in Pakistan,¹⁵

southern Thailand, southern Philippines and other regions of the country with communist insurgency, several regions in Indonesia (Aceh, Maluku, Papua and West Papua),¹⁶ Punjab and Manipur states in India, and places where the Maoist movement was strong in Nepal.¹⁷ But cases have also been reported along borders of countries like India and Bangladesh, and other places where criminal acts are alleged to exist (as in the anti-drugs campaign in Thailand).

Causes

National counter-insurgency and anti-terrorism policies along with the culture of impunity among state agents, weak laws, weak judicial system, and weak National Human Rights Institutions (NHRIs) combine to create an environment for the perpetration of extrajudicial killings and enforced disappearances.

In many cases, “enemies” are identified and targeted for

Table 5. Perpetrators of extrajudicial killings and enforced disappearances (2001 to mid-2010)

Perpetrators	Extrajudicial killings	Enforced disappearances
Police	25%	13%
Military	38%	31%
Public Officials	—	1%
Other armed groups/Insurgents	37%	6%
Civilians	—	14%
Unidentified	—	35%

police or military action. However, the “enemies” are not merely rebel or insurgent groups but also “leftist” organizations, trade unions and civil society organizations (including human rights organizations), and journalists.¹⁸ The situations in Manipur (India) and Balochistan (Pakistan) illustrate the problem:

- During the 2009, 1,119 cases of illegal arrest and detention were documented while one hundred forty two cases of extrajudicial killings were reported in the province of Manipur alone.¹⁹ Also, deaths in police custody are of alarming concern.
- In the same year, in the conflict-stricken province of Balochistan, more than three thousand five hundred people were extra-judicially killed and some four thousand people were reported missing.²⁰

It seems that whenever governments launch special programs to address a national problem using the police and the security forces, a sudden rise in the number of killings that qualify as extrajudicial killings occur. This happened in Thailand during the 2003-2004 period in relation to the “war of drugs”²¹ and in Bangladesh in 2002 (“Operation Clean Heart”) and 2004 (with the formation of an “elite force known as Rapid Action Battalion or RAB). There can also be an increase in number of deaths due to political upheavals such as the 2010 political violence in Thailand.²²

Actions Taken at the National Level

Extrajudicial killings and enforced disappearances should be properly investigated in order to make those who committed the crime accountable, and to give justice to the victims. Wherever they exist, national human rights institutions should investigate and recommend the prosecution of these cases particularly when members of the police and security forces are involved. The respective national human rights institutions in India, Bangladesh, Nepal, Indonesia, the Philippines and Thailand, investigate reports of extrajudicial killings and enforced disappearances, and recommend the prosecution of people found to be responsible for the crimes. They also do other measures. The National Human Rights Commission of India laid out in 1997 guidelines for the state governments to effectively and properly address the issues of encounter killings and custodial deaths. The guidelines were revised in 2003.²³ It also strongly stated that “the anti-terrorism and anti-militancy measures must be directed only against perpetrators or abettors of these acts and not against innocent citizens.”²⁴ The National Human Rights Commission of Thailand has requested the Thai government to sign “but not ratify, pending changes in domestic law” the Convention for the Protection of All Persons from Enforced Disappearances.²⁵ The Commission on Human Rights of the Philippines has been lobbying for enactment of laws on extrajudicial killings and enforced disappearances.²⁶

However, the national human rights institutions have limited powers in preventing impunity regarding extrajudicial killings and enforced disappearances. They have no power to enforce their recommendations. The recommendations issued by the National Human Rights Commission of Nepal “to take legal action against the human rights violators associated with the security forces and those affiliated to various political parties have not been implemented” by the Nepali government.²⁷ This is probably true of other national human rights institutions. Thus they resort to collaborating with various institutions (governmental, non-governmental, and international institutions) to address human rights issues.

Intense local media coverage and international pressure on extrajudicial killings in 2006 forced the Philippine government to create a commission (known as the Melo Commission) that investigated cases of extrajudicial killings and enforced disappearances and gave recommendations on how to address the problems, a special monitoring body of the police (the Philippine National Police’s Task Force Usig), a special investigative body (the Task Force against Political Violence) on political violence, and another commission (the Independent Commission to Address Media and Activist Killings) that investigated media and political killings and gave policy recommendations. Similar special bodies have been established in Sri Lanka²⁸ (special units under the

Department of the Attorney General to address the extrajudicial killings and enforced disappearances as well as other human rights violations such as the Missing Persons Unit and the Habeas Corpus Unit),²⁹ and in Pakistan (Commission of Enquiry on Missing Persons).

The Philippine Supreme Court organized a national conference in 2007 to discuss measures to stop extrajudicial killings. It also adopted the Rule on the Writ of Amparo, effective since 2007, to provide a remedy in extrajudicial killing and enforced disappearance cases.³⁰

In the legislative branch, bills have been filed to criminalize extrajudicial killings and enforced disappearances in the Philippines.³¹ The Bangladeshi Parliament took several positive initiatives in 2009 to enact laws that promote and protect human rights, including the National Human Rights Commission Act 2009 and the Code of Criminal Procedure Act 2009.³² But in the same year it also passed the Anti-Terrorism Law in its first session without consultation with the general public, as reported by ODHKAR.³³

The Pakistani media reported the recent decision of the Ministry of Human Rights of Pakistan to create a task force that would probe human rights violations in Balochistan. This body is being formed in the context of the "surfacing of thousands of deaths and abduction cases in Balochistan, where political workers and students are routinely found missing and then dead."³⁴ The

media also pointed out the need to look into the military operation in the province, as well as the "kill and dump" policy being pursued by the military and its intelligence agencies.³⁵

Final remarks

As clearly seen, extrajudicial killings and enforced disappearances are widespread in many Asian countries due to both political and non-political reasons. Despite varying national contexts and factors, extrajudicial killings and enforced disappearances were most likely perpetrated by state agents under the pretext of national security in an attempt to eliminate real and perceived enemies, and intimidate oppositionists and the general public.

Such systematic human rights violations can only be deterred by the political will of governments in taking resolute action against them at all levels.

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For further information, please contact HURIGHTS OSAKA.

Endnotes

1 This is article 4 of the *Declaration of the Basic Duties of ASEAN Peoples and Governments*. See full text of the declaration in HURIGHTS OSAKA website: www.hurights.or.jp/archives/

other_documents/section1/1983/03/declaration-of-the-basic-duties-of-asean-peoples-and-governments.html.

2 This is taken from *Bangkok Declaration on Human Rights*, the non-governmental organization statement to the Regional Meeting for Asia of the World Conference on Human Rights, March 1993.

3 "Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights." See A/CONF.157/ASRM/8 A/CONF.157/PC/59, 7 April 1993. Full text of the document available at www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/9d23b88f115fb827802569030037ed44?Opendocument.

4 Graphs taken from powerpoint presentation entitled "Philippine Trends on Human Rights Violations" prepared by the Commission on Human Rights of the Philippines, July 2011.

5 See report of the Asian Centre for Human Rights, *Torture in India 2010*, page 2, and the 2011 report, *Torture in India 2011*, pages 2 and 3.

6 Data drawn from the separate statistical tables "crossfire" and "torture to death" respectively available at ODHIKAR's website: www.odhikar.org/stat.html.

7 See report of the Human Rights Commission of Pakistan, *State of Human Rights in 2010*, pages 6 and 7.

8 Data drawn from Human Rights Commission of Pakistan documents on "Missing Persons" available at www.hrcp-web.org/default.asp.

9 Data drawn from *Summary Report of National Human Rights Commission Nepal (2000-2010)*, November 2010, page 3.

10 See Report of the Working Group on Enforced or Involuntary Disappearances 2010, A/HRC/16/48, page 99.

11 See Human Rights Initiative, *Human Rights Special Report*

- Manipur 2009* (India: Human Rights Initiative Publication, 2009).
- 12 See Report of the Special Rapporteur on extrajudicial, summary or arbitrary killings, Philip Alston, A/HRC/14/24, 20 May 2010, page 12.
- 13 *Supra* note 4.
- 14 See report of the National Human Rights Commission of Nepal, *Summary Report of National Human Rights Commission Nepal (2000-2010)*, pages 8 and 12.
- 15 See for example, Human Rights Watch, *We Can Torture, Kill, or Keep You for Years: Enforced Disappearances by Pakistan Security Forces in Balochistan*, Retrieved 10 September 2011 from www.hrw.org/reports/2011/07/25/we-can-torture-kill-or-keep-you-years.
- 16 KONTRAS, *Enforced Disappearances, Summary and Extrajudicial Killings Inside Indonesia's Counter Terrorism Laws, Policies and Practices*. Retrieved 09 September 2011 from ejp.icj.org/IMG/KONTRASSubmission.pdf.
- 17 See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Mission to Nepal, E/CN.4/2001/9/Add.2.
- 18 See Maria Socorro I. Diokno, *Extrajudicial, Summary or Arbitrary Executions in the Philippines, 2001-2006* (unpublished), pages 2-3, 8. An edited version of this document was published in *FOCUS Asia-Pacific*, 48/2007, and available at www.hurights.or.jp/archives/focus/section2/2007/06/extrajudicial-summary-or-arbitrary-executions-in-the-philippines-2001-2006.html.
- 19 *Supra* note 11.
- 20 Asian Human Rights Commission, *The State of Human Rights in Ten Asian Nations 2009* (Hong Kong: Asian Human Rights Commission Publication, 2009).
- 21 See Pasuk Phongpaichit and Chris Baker, "Slaughter in the Name of a Drug War," *New York Times*, 24 May 2003.
- 22 See Justice for Peace Foundation, "Report on the National Human Rights Commission of Thailand 2010," in *2011 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia* (Bangkok: FORUM-ASIA, 2011), page 268.
- 23 The guidelines can be downloaded at www.nhrc.nic.in/. The guidelines set out procedures on reporting, investigation, prosecution and compensation in all cases of encounter deaths and custodial deaths.
- 24 See National Human rights Commission of India, *Annual Report 2007-2008*, page 23.
- 25 *Supra* note 22, page 280.
- 26 The Lawyers League for Liberty, "Philippines: A Time of Vigilance and Hope," in *2011 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia* (Bangkok: FORUM-ASIA, 2011), pages 216-217.
- 27 *Supra* note 14, page 20.
- 28 Sri Lanka in the past has also had several human rights bodies. These bodies include the Ombudsman with the mandate to investigate cases of human rights violations; Human Rights Centre of the Sri Lanka Foundation to address the issue of discrimination; Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights to provide conciliation services; Human Rights Task Force to investigate and monitor cases of custodial detention and disappearances; and a number of ad hoc commissions to deal with specific issues, including disappearances. For details, see HURIGHTS OSAKA, "Government Human Rights Work: National Human Rights Institutions," in Jefferson R. Plantilla & Sebasti L. Raj, SJ (editors), *Human Rights in Asian Cultures – Continuity and Change* (New Delhi: HURIGHTS OSAKA, 1997).
- 29 See the National Report by the Government of Sri Lanka submitted to the Human Rights Council for the Universal Periodic Review, A/HRC/WG.6/4/BGD/1, (19 November 2008).
- 30 See Adolfo S. Azcuna, *The Philippine Writ of Amparo: A New Remedy for Human Rights*. Retrieved 09 September 2011 from www.venice.coe.int/WCCJ/Papers/PHI_Azcuna_E.pdf.
- 31 See Vincent Michael Borneo, *Does the Philippines need an anti-EJK law?*, Retrieved 09 September 2011 from www.targetejk.net/index.php?option=com_content&view=article&id=66:does-the-philippines-need-an-anti-ejk-law&catid=7:extra-judicial-killings&Itemid=14.
- 32 For details see Ain o Salish Kendra (ASK), *Human Rights in Bangladesh 2009: A Summary Report*, available at http://www.askbd.org/web/?page_id=430.
- 33 See ODHIKAR, *Human Rights Report 2010 on Bangladesh*, available at <http://www.odhikar.org>
- 34 "Balochistan violence: Human rights ministry to form task force," *The Express Tribune*, 21 November 2011, <http://tribune.com.pk/story/294761/rising-violence-in-balochistan-human-rights-ministry-to-form-task-force/>
- 35 "EDITORIAL: Baloch blood on our hands," *The Daily Times*, 21 November 2011, www.dailytimes.com.pk/default.asp?page=2011\11\21\story_21-11-2011_pg3_1

Zainichi Firipin-jin: Status and Hardships

Adrian Ablao Bonifacio

With the latest amendments to the Japanese immigration law¹ taking effect in July 2012, debates within migrant communities in Japan have once again amplified. In a July 2011 forum largely attended by Filipinos living in Kyoto, several questions were raised: How will these amendments affect the entry of new migrants? Will graduate degree enrollment drop? How might this lead to an increase in domestic violence? What will happen to the employment rate of overstays? Official records put the number of Filipinos in Japan at more than 200,000,² constituting the fourth largest foreign demographic in the country.

Who are these Filipinos living in Japan and what difficulties do they face? They are often referred to as *zainichi Firipin-jin* (resident Filipinos), covering those who stay in Japan for more than three months.

Filipinos in Japan

Filipinos have been visiting and working in Japan since the late 19th century. A significant number of Filipinos worked in Japan as musicians in the 1920s and 1930s.³ Most Filipinos in Japan during the post-war period till the 1970s, when they came in several thousands, were male musicians.⁴ It was also in the 1970s when Filipino women started to come as entertainers. This new migration flow in the 1970s is attributed to the Treaty of Amity, Commerce, and Navigation Between Japan and

the Republic of the Philippines. The treaty was signed in 1960 but was ratified by the Philippines only in 1973. Though the treaty does not have a provision on migration of Filipinos to Japan, it “facilitated personal and business encounters between Filipinos and the Japanese...” and in “time Japanese-led demand and Japanese Immigration allowed for the entry of ... Filipino women [initially] as tourists and later on as entertainers to work in Japan in the 70s.”⁵

The Philippines’ Labor Export Policy (LEP) instituted by former President Ferdinand Marcos in the 1970s officially opened the Filipino migratory valve. In 2010, the Philippine Overseas Employment Agency recorded 1,470,826 Filipinos having been hired and rehired for work abroad. 5,938 were hired and rehired for work in Japan in the same year.⁶

Most *zainichi Firipin-jin* fall under the following categories: 1) permanent residents; 2) spouses or children of Japanese nationals; 3) spouses or children of permanent residents; and 4) long-term residents.⁷ Many of these residents are Filipino women married to Japanese men, and to a lesser extent Filipino men married to Japanese women. These marriages led to a significant number of Japanese-Filipino children (JFCs).⁸

Other *zainichi Firipin-jin* would cover: 1) researchers, teachers, religious workers, business

people, diplomats and other government officials, specialists in humanities, intra-company transferees, entertainers, technical interns; 2) students; 3) trainees.⁹ Under the entertainment visa, many Filipinas were trafficked to work in bars or even the sex industry.¹⁰ The Japanese government curbed the issuance of this visa in 2005,¹¹ contributing to a significant drop in the number of Filipinos entering Japan with entertainment visa from over 82,000 in 2004.¹²

Those who stayed beyond permitted period of stay (so-called undocumented people) in Japan numbered more than 9,329 as of 2011 according to the Japanese Immigration Bureau.¹³ Data from the Philippine Commission on Overseas Filipinos in 2010, however, put the number of Filipino overstayers (those with “irregular” status) in Japan at 12,840.¹⁴ They are known as *bilog*, and are not technically eligible to work but many are still hired as day laborers, usually for construction work.¹⁵

Hardships Faced by Zainichi Firipin-jin

Many *zainichi Firipin-jin* who come to Japan as trainees and even those with other residence visas may end up working in industries that are shunned by Japanese workers because they offer *kitanai*, *kiken*, and *kitsui* (dirty, dangerous, and difficult) or 3K jobs. The 3K jobs include work in the construction

industry (work on buildings and other structures).

For women on entertainment visas, hardships often times began even before arrival in the form of debt. From travel costs to living accommodations, many entertainers' (or *talentos'*) initial paychecks are used to pay off debt. Those trafficked into the sex industry work under a thicker veil of secrecy. Aside from being trafficking victims, they may suffer the stigma of being sex workers.

Problems regarding Filipino-Japanese couples have various forms. They range from conflicting cultural practices, to problems with in-laws, and financial issues. Some *zainichi Firipin-jin* wives suffer domestic violence, forcing a number of them (with their children) to seek protection in shelters for domestic violence victims. In cases of divorce, *zainichi Firipin-jin* mothers who have to take care of their children suffer financial problems despite having jobs, similar to Japanese single mothers and divorcees.

JFCs themselves face a slew of problems. Some suffer bullying and racism especially in schools. Regarded by some peers as not wholly Japanese, many JFCs deliberately choose to suppress their Filipino identities in order to fit in, which often times leads to conflict with their Filipino parent. JFCs born or raised in the Philippines who have moved to Japan also tend to struggle with the change in environment, especially in terms of language. The sum of these difficulties may lead to internal ethnic clashes and a strong sense of self-consciousness about what others think.¹⁶

The hardships outlined above provide only a glimpse into the lives of *zainichi Firipin-jin*. While not every Filipino migrant entering Japan face these challenges, they affect a considerable number of *zainichi Firipin-jin*. It should not be conceived, either, that *zainichi Firipin-jin* are solely embroiled in struggle. For example, some, such as Filipino students pursuing higher education in Japan, have succeeded in mastering the language and attaining a higher degree of economic mobility due to their education. Many other non-Japanese are likely facing similar challenges. Socioeconomic hardship is very much a reality among many non-Japanese, and even among the Japanese at present. Understanding this situation is necessary to bring about change.

It is worth noting that the existence of social networks or communities of *zainichi Firipin-jin*, along with Japanese non-governmental organizations, provide help to some extent to those suffering from the problems discussed.

Case Study: Remittance Behavior of *Zainichi Firipin-jin* Wives¹⁷

As the fifth largest source of overseas remittances,¹⁸ *zainichi Firipin-jin* play an important role in keeping the Philippine economy and their families afloat. It is no wonder, then, that migrants fiercely try to overcome any obstacles that block their ability to remit. Such hurdles are prevalent in the lives of *zainichi Firipin-jin* wives married to Japanese nationals. Different factors affect two aspects of their remittance behavior: their ability to remit

and the amount they are able to remit.

Many *zainichi Firipin-jin* wives entered Japan on entertainment visa, and the excessive debt accrued prevented any money from being used towards remitting. Once married, some Japanese husbands cannot understand why their *zainichi Firipin-jin* wives find it necessary to help family that is not only geographically distant, but also distant on the family tree. One respondent, Mary, explained that her husband argued there was "no need to help your family because we have family here." Even more severe was the financial abuse encountered by another *zainichi Firipin-jin*, Veronica, who had to request money from her parents to survive because her husband gave no allowance to her or their children. One more factor affecting the ability of *zainichi Firipin-jin* wives to remit is their difficulty entering the workforce, perhaps due to racial discrimination, an act that remains a non-punishable crime. Nancy recalls facing discrimination in her search for a job as an English teacher, explaining, "it is because we are Filipinos" that she was not considered as capable as native speakers for the position, even in cases where the native speakers "don't have any experience" and "don't know how to teach." Without work, *zainichi Firipin-jin* lose the capacity to remit money regardless of their desire to.

Zainichi Firipin-jin wives encounter other difficulties affecting the amount they are able to remit. Racial discrimination within the workplace may lower wages that could be put towards remitting, as was the case for both Veronica and Bernadette.

While Veronica was explicitly paid a hundred *yen* less than her Japanese co-workers, and was also removed from her scheduled hours without notice, Bernadette was lied to by her boss, who tried to convince her that a certain "tax" had to be deducted from her salary. If *zainichi Firipin-jin* wives have children, the cost of tuition for private schools, which are in vogue for higher levels of education, greatly reduce the amount they are able to remit. Paying for her child's education forced Teresa to stop remitting as frequently and as much as she had in the past. Whereas before she remitted every month, she can now only remit twice a year during Christmas and New Year. As children grow, *zainichi Firipin-jin's* responsibilities toward them grow as well, with financial support toward family in the Philippines weakening as a result.

The factors affecting remittance-sending behavior outlined above may also help to inform the current situation of human rights protection in Japan. Having ratified several international conventions regarding the human rights of migrants,¹⁹ Japan asserts that she "has taken every conceivable measure to fight against racial discrimination."²⁰ However, the engagement with *de facto* human trafficking in the entertainment industry and the prevalence of racial and wage discrimination (not to mention its non-status as a punishable crime) contradict this statement. And to be sure, fault lies with the Philippines as well, which has ratified many of the same United Nations' conventions and protocols that Japan has. There exists a gap between the content in these ratified conventions and its

implementation and enforcement, a gap that *zainichi Firipin-jin* and other foreign populations are continuously falling through.

Conclusion

Zainichi Firipin-jin inhabit a wide variety of niches in Japan, and all are likely to encounter difficulties at some point in their stay. From temporary workers to permanent residents, *zainichi Firipin-jin* not only struggle with a huge language barrier, but also unique problems confronting them based on their status. The specific case study of Filipino wives in Japan and their troubles remitting helps show how deep-rooted these problems can be, and how their existence can highlight human rights enforcement gaps. Both the Philippines and Japan must work together to ensure not only a healthy economic partnership, but also healthy conditions for migrants that settle in either country.

Adrian Ablao Bonifacio was an intern in HURIGHTS OSAKA during the summer of 2011 under the Stanford Kyoto SCTI (Stanford Center for Technology and Innovation) Internship Program.

For further information, please contact HURIGHTS OSAKA.

Endnotes

- ¹ The recent amendments to the "Immigration Control and Refugee Recognition Act and the Special Act on the Immigration Control of, Inter Alia, Those who have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan" were passed in 2009.
- ² Ministry of Justice, 2011 *Immigration Control – Immigration Control in Recent Years*, page 25, in [\[www.poea.gov.ph/stats/2010_Stats.pdf\]\(http://www.poea.gov.ph/stats/2010_Stats.pdf\), and the Philippine Overseas Employment Administration, "Overseas Employment Statistics 2010," in \[www.poea.gov.ph/stats/2010_Stats.pdf\]\(http://www.poea.gov.ph/stats/2010_Stats.pdf\).](http://www.moj.go.jp/nyuukokukanri/ko

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- ³ See Lydia Yu-Jose, "Why are Most Filipino Workers in Japan Entertainers?: Perspectives from History and Law," *KASARINLAN: Philippine Journal of Third World Studies*, 2007 22 (1): 61-84.
- ⁴ Nobue Suzuki, "Filipino Migration to Japan: From Surrogate Americans to Feminized Workers," in Yamashita, et al., editors, *Transnational Migration in East Asia, Senri Ethnological Reports* 77 (2008), page 69.
- ⁵ Mario Rosario Piquero Ballescas, "Filipino Caregivers in Japan: The State, Agents, and Emerging Issues," 九州大学アジア総合政策センター 3, pages 128-129, accessed July 21, 2011, <https://qir.kyushu-u.ac.jp/dspace/bitstream/2324/14081/1/p127.pdf>.
- ⁶ Philippine Overseas Employment Administration, www.poea.gov.ph/stats/2010_Stats.pdf
- ⁷ These categories are taken from Appended Table I of the amended immigration law, www.immi-moj.go.jp/english/newimmact/newimmact_english.html.
- ⁸ Absent statistical data, there is an estimate of 100,000 to 200,000 Japanese-Filipino children having been born since 1980 and living in the Philippines. Many suffer from lack of legal recognition from their Japanese fathers. See JFC Multisectoral Networking Project, www.jfcmultisectoralnetworkingproject.org/index.php/en/who-are-the-jfcs.
- ⁹ See Appended Table I, *supra* note 7.
- ¹⁰ See Nobuki Fujimoto, "Trafficking in Persons and the Filipino Entertainers in Japan," *FOCUS Asia-Pacific*, issue 43, March 2006, in www.hurights.or.jp/archives/focus/section2/2006/03/trafficking-in-persons-and-the-filipino-entertainers-in-japan.html.

(Continued on page 14)

The Hague Convention and Japan: Some Issues

HURIGHTS OSAKA

On 20 May 2011, the Japanese Cabinet adopted a plan to accede to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. According to a report, the plan “basically requires an overhaul of Japan’s family law system ... and would put the Foreign Ministry in charge of the cases related to international child abduction, including finding abducted children, taking measures to prevent child abuse and advising parents on the voluntary return of children.”¹

The Hague Convention aims to “protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.” It applies to children below the age of sixteen years.

The decision to accede to the Hague Convention came under international pressure. A number of failed marriages between Japanese nationals and those of other countries resulted in children being brought to Japan that effectively denied non-Japanese parents of access to their children.

On 22 October 2010, the Ambassadors of Australia, Belgium, Canada, Colombia, France, Germany, Hungary, Italy, New Zealand, Spain, the

United Kingdom and the United States, and the Head of the Delegation of the European Union to Japan issued a press statement expressing “concerns over the increase of international parental abduction cases involving Japan that affect our nationals as well as Japanese citizens, and [urging] Japan to ratify the 1980 Hague Convention.” The statement cited Japan as the “only G-7 nation that has not signed the [Hague] Convention.” It also stated that

Japan is an important friend and partner for each of our countries, and we share many values. We believe this can and should serve as the basis for developing solutions now to all cases of parental child abduction in Japan.

But while accession to the Hague Convention is recognized as necessary, certain quarters in Japanese society express concern about the international agreement, particularly regarding its impact on the welfare of children. One editorial raised questions that should be answered “through in-depth discussions on actual cases”:²

What kind of evidence is needed to prove the exercise of violence in a foreign country, for instance? What does the phrase “seriously traumatized” exactly mean?

What kind of powers and information in the possession of public institutions should be used for carrying out these tasks? Should police also become involved?

The editorial further stated that at the “time of the Cabinet approval of Japan’s participation in the pact, the government specified several conditions that [would] allow it to refuse the return of the child under the law,” namely:

The child has suffered from the father’s violence; the husband has exercised violence against the wife in a way that has seriously traumatized the child; the wife cannot go with the child due to financial and other reasons and there is no appropriate person in the country who can take care of the child.

There are indeed issues that should be addressed in order to assure public support for the Hague Convention. Following are views on the implementation of the Hague Convention expressed in an August 2011 symposium in Osaka.³

U.S. experience with the Hague Convention

Ms. Nancy Zalusky Berg, a lawyer and President of the International Academy of Matrimonial Lawyers – U.S.A.

Chapter, noted that the discussions on issues such as child protection and custody had been going on in the U.S. for a long time. Under the then prevalent "Tender Years Doctrine," it was thought that the mother's influence was important in the healthy development of the child. She further noted that the Best Interest of the Child Approach took its place in the 1970s. The approach coincided with the development of the women's movement in the U.S., that included discussions on distribution of property, spousal maintenance, and above all on child raising.

On the issue of return petition, which seemed to be at the center of the discussions in Japan, she noted the relevant Hague Convention provision:

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

xxx xxx xxx

b) 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.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and

has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

The courts must observe the situation of the child carefully, and listen to his/her wishes or expressions. They need to examine thoroughly, whether the child is being manipulated or is being prevented from speaking, whether the objection is well-grounded, or whether the child has been bribed with a toy or not.

Regarding the "grave risk" in Article 13 paragraph 1(b), she observed that the drafters of the Hague Convention could have used a clearer definition, but they might not have done so deliberately to allow a margin of discretion or interpretation. In this way, sovereign states are free to interpret the term according to its culture or its needs.

Ms. Berg noted the difficulty of knowing how many Hague Convention cases involved domestic violence, because the number varied depending on how domestic violence was defined. In many cases, the victims themselves were not aware of it. When asked whether she suffered domestic violence, a woman responded

that she did not, although her husband had once held a gun to her head. She said that she did not have to go to the hospital. Ms. Berg also said that it was true that there were "exaggerated domestic violence" cases, in which complaints of domestic violence were raised to get an advantage in divorce proceedings. There were male victims of domestic violence in the U.S. but in reality, more women became victims than men. An estimate put a third of Hague Convention cases involved domestic violence.

She explained the undertaking as a U.S. judicial measure in Hague Convention cases. An undertaking is a promise not to use violence, or to withdraw the criminal complaint by the petitioning parent. There are cases when the undertaking does not work. For the undertakings to be implemented, it is necessary to gather information in broad cooperation with relevant people, including lawyers.

She concluded that the text of the Hague Convention was very well written. But there was no single answer to all of the problems, and consideration should be given to how the text should be interpreted taking into account the cultural differences.

Some Views from Japan

Ms. Mikiko Otani, a lawyer and Vice-Chair of the Working Group on the Hague Convention of the Japan Federation of Bar Associations (JFBA) pointed out that the most important aspect of the Hague

Convention was the “best interests of the child” principle. She explained that the primary purpose of the Hague Convention was to protect the child from harmful effects of abduction, and thus provided for a prompt return to the place where the child used to live before being abducted. It also required ensuring the right of access to children. On the other hand, when a risk existed that the return might cause psychological or physical harm to the child, meaning the return was not in the best interests of the child, the Hague Convention provided exceptions.

She asserted the importance of applying the Hague Convention along the lines of the Convention on the Rights of the Child. The most important point was that the child had the right to maintain relations and direct contact to both parents.

She explained the many concerns raised in Japan on the cases of mothers who returned with their children and who were victims of domestic violence. Sometimes decisions in favor of not returning the child might be taken because of the violence against the mother, the child witnessing the violence against the mother, or being placed in such a stressful environment itself might be violence or abuse against the child. In such cases, she stressed the importance of ensuring the consideration of both the best interests of the child and the human rights of women.

She explained several recommendations from the

ongoing discussions in Japan about the Hague Convention. First, discussions on the Hague Conventions should be based on the perspective of the best interests of the child. Second, the Convention on the Rights of the Child must be included in the discussions regarding the domestic legislation to implement the Hague Convention. Third, since the issues involved were relevant not only to lawyers, everyone involved in matters relating to children (including the children themselves), particularly people working in the field of child and clinical psychology, as well as lawyers, should participate in the discussions to collectively consider how the Hague Convention would apply the children’s best interests, and without causing harm to them.

Ms. Noriko Odagiri, a professor at the Tokyo International University and a Clinical Psychologist, explained that many studies showed high self-esteem and emotional stability in children who were in contact with their parents. Visitations could be seen as important in the healthy growth and development of the personality of the child.

She explained that visitations allowed children to confirm their parents’ love for them. They were also important to children in maintaining equal psychological and physical distance from both parents, gaining independence from their parents, and establishing their own identities.

While visitations are rights for both parents and children, they are ultimately based on the right

of children to know their parents and themselves. She noted the importance of organizing the visitations with due respect for the intentions of the children, although parents might take the initiative in deciding the frequency and schedules while they were young.

In eighty percent of divorce cases in Japan, the mothers are given sole parental right and raised the children. This reflects the culture of giving precedence to the mother-child relationships, and the social expectation of lesser role of fathers in child raising. It is quite natural for Japanese women, who married a foreigner and lived abroad, to return home with their children after divorce. But such acts are not internationally accepted.

One of the issues of concern with the accession to the Hague Convention by Japan was the disruption of the children’s daily lives due to abduction by one of the parents, as well as their return to the country of habitual residence. Another concern was the experience of loss through the abduction and return. The children would lose the familiar environment such as those at home, at school, and in the community, as well as the ties with one of the parents, grandparents and friends.

She presented several proposals on how to address the concerns. Following are the proposals:

a. Mandatory parental education programs - In the U.S., many States require divorcing couples to attend

such programs, and would not receive their divorce applications unless they prove their completion. The purpose of participating in these programs is to understand the children's need for contact with both parents for their healthy development, as well as the effects of the parents' actions on the children, and to change the negative attitudes toward the former spouses.

b. Introduction of children's representative system - Although there is a general assumption of respect for the children's view, in practice, it is extremely difficult to ascertain the children's view on visitations and the separated parents. To understand the children's feelings that do not get expressed in words, implementing a system in which

trained experts in psychology would carefully observe the children using various methods to understand their feelings and act on their behalf is crucial.

c. Recognition of the children's right to know - Parents must tell their children in good faith about the situation at the time of divorce as well as what may happen in the future.

For further information, please contact HURIGHTS OSAKA.

Endnotes

¹ Tricia Escobedo, "Japan takes a step closer to reforming its child custody laws," CNN, May 20, 2011, http://articles.cnn.com/2011-05-20/world/japan.child.custody.law_1_child-abduction-hague-convention-child-abuse?_s=PM:WORLD. The Ministries of Justice and of

Foreign Affairs have drafted the interim report on the domestic legislative measures towards accession to the Hague Convention. The draft legislation is expected to be submitted to the regular session of the Diet in 2012, after further discussions.

² Editorial, "Japan needs effective system for Hague child-custody treaty," *The Asahi Shimbun*, 12 July 2011, <http://ajw.asahi.com/article/views/editorial/AJ2011071210722>

³ The discussions that follow are based on the presentations in a symposium entitled "The Child's Best Interests and the Rights of Parents in Cross-border Child Abduction Cases - Issues to be Considered in Joining the Hague Convention on the Civil Aspects of International Child Abduction" held in Osaka on 5 August 2011. HURIGHTS OSAKA and the Osaka Bar Association jointly organized the symposium.

Zainichi Firipin-jin

(Continued from page 10)

¹¹ The Japanese government changed the criteria for applicants of entertainer visa, resulting in disqualification of many Filipina applicants in 2005. See Amendment to the Criteria for the Landing Permission for the Status of Resident "Entertainer," in www.immi-moj.go.jp/keiziban/happyou/pdf/e_kougyou.pdf.

¹² Ministry of Justice, *Basic Plan for Immigration Control - Salient Points Concerning Foreign Nationals' Entry and Stay*, in www.moj.go.jp/ENGLISH/information/bpic3rd-02.html.

¹³ See statistics from the Ministry of Justice dated 1 January 2011, in www.moj.go.jp/content/000072624.pdf. For a comparison of data on overstayers from other Asian countries visit: Kumusta ka na Bilog? in

www.irregularmigration.info/2010/11/filipinos-in-japan-2010.html.

¹⁴ Commission on Filipinos Overseas, *Stock Estimate of Overseas Filipinos*, December, 2010, <http://cfo.gov.ph/pdf/statistics/Stock%202010.pdf>.

¹⁵ Rey Ventura, *Into the Country of Standing Men* (Manila, Philippines: Ateneo de Manila University Press, 2007).

¹⁶ Almonte-Acosta, Sherlyne A., "Ethnic Identity: The Case of Filipino-Japanese Children in Japan," *Asia-Pacific Social Science Review* 8, n. 2 (2008) 17-33.

¹⁷ The following qualitative analysis was based mostly on personal interviews with Filipinos living in Osaka and Kyoto (seven in total), supplemented by further research based on their responses.

¹⁸ "Overseas Filipinos' Remittances," Bangko Sentral ng Pilipinas, accessed July 15, 2011, <http://www.bsp.gov.ph/statistics/keystat/ofw.htm>. The remittances mentioned here cover both

"landbased" and "seabased" overseas Filipinos. In the 2010 figures for remittance of "land-based" overseas Filipinos, Japan ranks sixth largest source of remittance.

¹⁹ These include the International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); International Covenant on Civil and Political Rights (ICCPR); and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (CSTE).

²⁰ Ministry of Foreign Affairs, "Third, Fourth, Fifth and Sixth Combined Periodic Report on the Implementation of the International Convention on Elimination of Racial Discrimination Japan," August 2008, page 1, in www.mofa.go.jp/policy/human/race_rep3.pdf.

Human Rights Events in the Asia-Pacific

ASEAN Intergovernmental Commission on Human Rights

The United Nations High Commissioner for Human Rights, Ms. Navanethem Pillay, met the representatives of the ASEAN Intergovernmental Commission on Human Rights (AICHR) during the 7th AICHR meeting in Bali on 28 November 2011. She stressed the importance of supporting ASEAN in its process of reform, particularly in relation to the development of its human rights mechanisms. She also met the representatives of the four national human rights institutions in ASEAN countries that are members of the South East Asia National Human Rights Institution Forum. For further information, please contact: The ASEAN Secretariat, 70A Jl. Sisingamangaraja, Jakarta 12110 Indonesia; ph (6221) 7262991, 7243372; fax (6221) 7398234, 7243504; www.asean.org

Southeast Asia Consultation on Human Rights

The 4th Regional Civil Society Consultation on ASEAN and Human Rights was held in Bali on 27 November 2011. Ms. Navanethem Pillay, the United Nations High Commissioner for Human Rights, was the main speaker in the consultation. She emphasized that the "active and sustained engagement of civil society is imperative" in moving the "human rights agenda forward in a manner that

ensures positive outcomes for people" in Southeast Asia. The representatives of the Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights and the Working Group for an ASEAN Human Rights Mechanism attended the consultation. For further information, please contact: Asian Forum for Human Rights and Development (FORUM-ASIA), 246 Times Square Building, 12 Fl., Room 12-01, Sukhumvit Road, Between Soi 12-14, Klongton, Klongtoey, Bangkok, Thailand; ph (662) 653 2940-1; fax (662) 653 2940-1; e-mail: info@forum-asia.org; www.forum-asia.org

Human Rights and Business Workshop

The "Human Rights and Business: Plural Legal Approaches to Conflict Resolution, Institutional Strengthening and Legal Reform", was held in Bali, on 28 November to 1 December 2011, and convened by the Indonesian National Commission on Human Rights (Komnas HAM) and supporting NGOs (SawitWatch and Forest Peoples Programme). The workshop brought together members of the Southeast Asian national human rights institutions, the ASEAN Intergovernmental Human Rights Commission, indigenous peoples' representatives, academics and NGO workers from around the world. For further information, please

contact: Indonesian National Commission on Human Rights (Komnas HAM), Jl. Latuharhary No. 4B, Menteng, Jakarta Pusat 10310 Indonesia; ph (62 21) 3925230, ext. 208; fax (62 21) 3 9 2 5 2 2 7 ; e - m a i l : nurkholis70@yahoo.com>

Human Trafficking in East Asia

The Institute of International Relations and Area Studies, Ritsumeikan University organized on 10-11 December 2011 an international conference entitled "Human Trafficking in East-Asia and Japan: Current Situations and Effective Counter Measures." The conference dealt with the situation of human trafficking in East Asia with a particular focus on Japan. Discussions included measures to effectively counter human trafficking. Lawyers, academics, and non-governmental organization workers attended the conference. The conference was co-organized by the Japan Network Against Trafficking in Persons (JNATIP). For further information, please contact: Institute of International Relations and Area Studies, Ritsumeikan University, 56-1 Kitamachi, Tojiin, Kita-ku, Kyoto 603-8577 Japan; ph (8175) 465-8244; fax (8175) 465-8245; e - m a i l : kokuchi@st.ritsumei.ac.jp; www.ritsumei.ac.jp/acd/re/k-rsc/ras/english/index-en.html

HURIGHTS OSAKA Calendar

HURIGHTS OSAKA has started the preparation of a training resource material for human rights education in the school systems in Northeast Asia. The publication is being prepared in collaboration with educators from China, Hong Kong, Japan, Mongolia, and Taiwan. The publication is expected to be finished by May 2012.

HURIGHTS OSAKA will have this new address from 30 January 2012: 8F, Takasagodo Bldg., 1-7-7 Nishihonmachi, Nishi-ku, Osaka 550-0005 Japan.

It will also have new phone and fax numbers: phone (816) 6543-7002 and fax (816) 6543-7004.



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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.

FOCUS Asia-Pacific is edited by Osamu Shiraishi, Director of HURIGHTS OSAKA.

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