

# FOCUS

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### Editorial

### Online

In 1948, the drafters of the Universal Declaration of Human Rights must have believed that information and communication technology would develop to an almost unimaginable degree that they saw the need to adopt a future-oriented clause in Article 19. The clause "to seek, receive and impart information and ideas through any media and regardless of frontiers" points to the current digital information and communication technology's still to-be-imagined impact on the whole wide world. Current experiences show that this medium is definitely able to assist people "to seek, receive and impart information and ideas ... regardless of [physical and digital] frontiers."

But the very foresightedness of Article 19 is now the worry of some governments. Online information and ideas are now seen as threat to national security, instead of fulfillment of the right declared in Article 19. There are governmental attempts at stifling access to online information, or to express ideas online. These attempts are a throwback to the period of human rights repression during the Cold War era. But whether such attempts would succeed is highly doubtful considering the varied uses of online information and the strong support for online media from the people.

National security has to be properly defined in order to avoid human rights repression. In the meantime, the development of digital technology is unstoppable due to people's unquenchable thirst for information available online. What is online is now a need, as much as a right.

# Central Asia: Censorship and Control of the Internet and Other New Media<sup>1</sup>

Brigitte Dufour and Farid Tuhbatullin on behalf of International Partnership for Human Rights, Turkmen Initiative for Human Rights and Other Partner Organizations

Authorities in Central Asian countries in the former Soviet Union closely monitor and restrict the use of the internet and other communications technologies, filter and block access to undesirable online content, and intimidate and put pressure on websites and internet users who publish or share information that is critical of official policies. The authorities of these countries have sought to justify their repressive approach to the internet and other new media with the fight against "extremism" and other vaguely defined threats to national "security" and "stability". However, in reality, this fight is used as a pretext for implementing measures to stifle free speech and help preserve the governments' grip on power.

## Developments at the Regional Level

Recently, several joint initiatives have been made by Central Asian and neighboring countries to regulate the internet for the stated purpose of countering "extremism", "terrorism" and other vaguely defined threats to national security. These steps appear to reflect growing fear on the part of the authorities of these countries that the internet may be used to scrutinize the conduct of those in power and mobilize opposition.

The Shanghai Cooperation Organization (SCO), an organization founded in 2001 by China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan to counteract "terrorism", "separatism" and "extremism", has recently paid increasing attention to perceived online security threats. At a SCO summit held in June 2011 draft "Rules of conduct in the field of safeguarding international information security" were adopted.<sup>2</sup> In a joint letter dated 12 September 2011, the Permanent Representatives to the United Nations (UN) of China, Russia, Tajikistan and Uzbekistan proposed that the same rules be endorsed by the UN General Assembly in the form of a resolution.<sup>3</sup>

The stated purpose of the draft code of conduct is to enhance cooperation among states in addressing "the common threats and challenges in the information space". By adopting it, states would undertake, among others, to cooperate in "curbing the dissemination of information that incites terrorism, secessionism or extremism or that undermines other countries' political, economic and social stability, as well as their spiritual and cultural environment."<sup>4</sup>

"Online threats" are also being dealt with in the framework of the Collective Security Treaty

Organization (CSTO), a military cooperation body consisting of Russia, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. According to media reports, efforts are under way in this organization to create a mechanism to control social networks for the purpose of preventing "extremist" actions in the form of mass riots, such as those seen in Tunisia and Egypt in early 2011.<sup>5</sup>

In connection with a meeting in Minsk in September 2011, the general prosecutors from Russia, Belarus and Kazakhstan publicly defended the need to control the use of social networks, as well as the internet more generally. Kazakhstani General Prosecutor Ashad Daulbaev was quoted as saying that this is "a question of the future" and that states "should jointly counteract this evil", obviously referring to "extremism" in the internet. According to him, the Russian-language part of the internet alone has "hundreds of sites that instigate extremism and terrorism."<sup>6</sup>

The Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), Ms. Dunja Mijatovi, has expressed concern that initiatives such as the SCO and CSTO "endanger freedom of expression" and "risk erecting

barriers" to the free flow of information and ideas.<sup>7</sup> She noted that they rely on broad and vague definitions of terms such as "extremism", as is already the case with the national laws in the countries behind them.<sup>8</sup>

International experts have emphasized that restrictions relating to internet use are only permissible if they meet the strict requirements set out by international law provisions protecting freedom of expression (in particular article 19 of the International Covenant on Civil and Political Rights).

### Developments in Three Central Asian Countries

In spite of its proclaimed commitment to promoting information technology, the government of Kazakhstan has created different mechanisms to monitor and filter online material. Access is regularly blocked to websites that contain information that shows those in power in a bad light. As of October 2011, more than one hundred websites had been blocked for allegedly containing "extremist" propaganda, among them the popular blog community *Live Journal*. The online video portal *stan.kz*, which has provided independent coverage of the oil workers strike that is currently under way in the country, has been sued by authorities for allegedly violating health and safety regulations. Its journalists have reported intimidation and two of them were brutally attacked in October 2011. The online news outlet *guljan.org*, which reports on corruption and other misconduct involving official figures, has been

subjected to invasive cyber attacks and one of its reporters was recently convicted on criminal defamation charges.

In March 2010, the head of Kazakhstan's State Communications Agency informed members of parliament that a new "center for computer incidents" had been set up to review and compile blacklists of "destructive" websites.<sup>9</sup> While the official referred to concerns about "political and religious extremism," no details have been made public about how the work of this center is carried out, to whom it is accountable or on what grounds websites are singled out for review. Civil society activists have expressed concern that the center may be tasked to censor websites that do not please the authorities.<sup>10</sup> An existing presidential Security Council has already been regularly compiling lists of websites that should be blocked.

Turkmenistan is one of the world's most hostile countries for internet users, with its monopoly state-run provider offering only a highly censored version of the internet. All online activities in internet cafes are recorded, while rates for private internet connections remain excessively high. New repressive measures have followed the July 2011 explosions at an ammunition depot in Abadan, whose destructive impact the authorities wanted to hide. Security services have tried to track down internet and cell phone users suspected of reporting on the accident to the outside world; the website of Austria-based Turkmen Initiative for Human Rights was hacked

after it published a set of stories about the explosions; and a Radio Free Europe/Radio Liberty correspondent who blogged about the events was imprisoned on trumped-up charges (even if later amnestied).

While official media initially did not report anything about the Abadan events, and foreign-based internet sites that provided coverage about them were not accessible in Turkmenistan, many residents received information about the blasts and their impact through satellite TV channels. Such channels are among the few remaining means for obtaining information that is independent of official propaganda inside the country. In what appeared to be an attempt to choke off also this source of information, the president issued an order in August 2011 to dismantle private satellite dishes because they allegedly "spoil the appearance" of residential buildings.<sup>11</sup> A similar campaign was initiated in 2008, but gradually subsided.

Aside from Turkmenistan, Uzbekistan is the most repressive country for internet users in the former Soviet Union. It is characterized by a pervasive regime of online control and censorship: material that does not please authorities is systematically filtered and blocked. Email and cell phone correspondence by "suspicious" individuals is subject to surveillance, and participants in online discussions on politically charged issues risk facing harassment, as did a number of *arbus.com* forum users, who were arrested in early 2011. The recent launch of a new social networking site by the state

telecom monopoly has raised concerns about growing control in this area of the internet. Internet users who openly speak up on social problems are highly vulnerable to intimidation and harassment. Recent victims include two women human rights defenders who published online articles about shortcomings in waste management, the care of old people, as well as the implementation of a reform to promote non-cash transactions.

In a step that appeared aimed at muzzling online debate on inconvenient issues, a new governmental oversight body was set up in August 2011. This "committee of experts" was charged with tracking down material distributed on the internet, satellite channels and other media resources that does not "correspond to the requirements of the law", has a "destructive and negative" impact on the "social conscience of citizens" or undermines "national cultural traditions and heritage". It was given powers to identify and propose measures to address the "violations" it identifies, as well as to elaborate new media legislation.<sup>12</sup> The broadly worded mandate of this body makes it possible for it to single out any internet material that does not please the authorities for control and sanction.

### Recommendations

The following are recommendations to the authorities of Kazakhstan, Turkmenistan and Uzbekistan:

- a. Respect freedom of expression in the internet and other new media and refrain from imposing any restrictions on the use of these media - by law or in practice - that are not consistent with the strict requirements of international human rights law, in particular article 19 of the International Covenant for Civil and Political Rights.
- b. Do not misuse national security concerns to restrict the use of the internet or other new communications technologies, keeping in mind that restrictions on these grounds only are permissible in exceptional circumstances and if they are shown to be a necessary and proportionate response to a direct and imminent threat of violence.<sup>13</sup>
- c. Refrain from systematic filtering, censoring or blocking of online content, and do not restrict access to online content simply because it contains information that authorities do not like or agree with.
- d. Ensure that any measure to prevent access to online content deemed illegal is strictly limited to that specific content. The measure must also be fully consistent with international human rights standards, proven to be absolutely necessary, and sanctioned through a court decision, which provides justification for the measure and is subject to appeal.
- e. Put an end to existing schemes for systematic monitoring of email and other online communication, tapping of phone conversations of journalists, human rights defenders or others known to be critical of authorities, as well as surveillance of the activities of visitors to internet cafes.
- f. As a matter of priority, take effective measures to promote universal access to the internet, ensuring that internet access is widely available, accessible and affordable to the population.<sup>14</sup>
- g. Do not subject internet or other electronic communications service providers to strict licensing regimes or other requirements that are not compatible with international freedom of expression standards, and promote free competition in this area;
- h. Implement recommendations relating to freedom of expression and the use of the internet and other new media made by the UN Special Rapporteur on Freedom of Expression, the OSCE Representative on the Freedom of the Media, as well as other UN and OSCE human rights bodies.

The following are recommendations to international telecommunications companies:

- a. Uphold international standards on freedom of expression when doing business in the Central Asian countries and act with due diligence to avoid infringing protected rights in any way.<sup>15</sup>
- b. Provide full transparency on company policies and terms of service in Central Asian countries, implement ethical codes of conduct, and seek advice from international human rights bodies when relevant.

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#### Endnotes

- 1 This is an edited short version of a briefing paper jointly published by the International Partnership for Human Rights (IPHR), the Netherlands Helsinki Committee, Kazakhstan International Bureau for Human Rights and Rule of Law, Turkmen Initiative for Human Rights (TIHR) and the Initiative Group of Independent Human Rights Defenders of Uzbekistan in November 2011. The full report is available at websites of IPHR and TIHR, at [www.iphronline.org/ca\\_internet\\_20111128\\_e.html](http://www.iphronline.org/ca_internet_20111128_e.html), as well as [www.chrono-tm.org/en/archives/207](http://www.chrono-tm.org/en/archives/207).
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# Freedom of Information in the Pacific

HURIGHTS OSAKA

Freedom of information is slowly getting support in Pacific Islands countries as seen in the recent developments at both Pacific and national levels. But challenges remain, and continuing efforts by various stakeholders are needed.

## Pacific Commitments to Accountability and Transparency

Leaders of the Pacific Islands Forum declared in 2000 in Biketawa their "[C]ommitment to good governance, which is the exercise of authority (leadership) and interactions in a manner that is open, transparent, accountable, participatory, consultative and decisive but fair and equitable."<sup>1</sup>

In 2004, they adopted the Forum Principles of Good Leadership and Accountability<sup>2</sup> that commit Pacific Islands Forum member-states to principles on disclosure of fraud, corruption and mal-administration,<sup>3</sup> as well as transparency in budget-making, spending, auditing and reporting processes in the government sector.<sup>4</sup> Under the Forum Principles, they also have a duty to ensure that their people have ready "... access to the administrative laws governing access to government benefits, the applications of taxes, duties, and charges, etc." and "executive discretion is at a minimum."<sup>5</sup>

In the same year, Pacific Islands Forum Leaders invited "members to consider signing

and ratifying the UN [United Nations] Convention against Corruption [UNCAC] to strengthen good governance in accordance with the spirit of the Biketawa Declaration."<sup>6</sup> To date, seven Pacific Island countries have ratified UNCAC, namely, Papua New Guinea (PNG), Fiji, Palau, Vanuatu, Marshall Islands, Cook Islands and Solomon Islands.

Article 13 of the UNCAC provides that each state-party "shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption."<sup>7</sup>

Article 10 of UNCAC specifically provides for measures that would support public participation, namely:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to nontolerance of corruption, as well as public

education programmes, including school and university curricula;

- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.

In 2005, the Pacific Islands Forum Leaders endorsed the Pacific Plan, which provides guidance to the work of the Pacific Islands Forum Secretariat (PIFS) as well as of relevant development partners. Under Initiative 12.3 on enhancing governance mechanisms, Freedom of Information (FOI) is identified as a milestone in support of the Plan's Good Governance Pillar.

A 2009 study,<sup>8</sup> reviewing the implementation of the Forum Principles of Good Leadership and Accountability, reveals obstacles to the fulfillment of these commitments. The study cites three major difficulties: mindset influenced by colonial past, poor communication facilities, and outdated public records management systems and practices.<sup>9</sup>

## Freedom of Information Legislation in the Pacific

In 2008, Cook Islands became the first Pacific Island country to enact freedom of information (FOI) legislation, with the enactment of the Official Information Act. But other Pacific Islands countries have not been able to follow suit. The 2009 study mentioned earlier identifies several probable reasons for the

lack of progress on FOI legislation, such as the:<sup>10</sup>

- a. "ever-present debate over the suitability of democracy and human rights as core values of governance in Pacific Island communities, many of which are used to the exercise of authority based on traditions and privilege"
- b. "Commonwealth history of closed governments, as evidenced by the Official Secrets Acts which were imported from England during the colonial period," and
- c. government resistance to "public transparency and accountability and [the] downplay[ing of] the fact that in a democracy information is a public good that is created and held by public authorities and functionaries to be used in the public interest."

Nevertheless, there is a growing commitment among governments in the Pacific Islands to give more importance to right to information and translate it into effective and reliable mechanisms that would help improve their overall governance.

Since 2007, the United Nations Development Programme (UNDP) Pacific Centre has been working with partners such as PIFS, the Commonwealth Pacific Governance Facility, Commonwealth Human Rights Initiative and national partners to implement a program on FOI in the Pacific. Following a regional UNDP-PIFS workshop on FOI for Pacific policy-makers in 2008, a number of Pacific Island countries started to more actively work on FOI. In Nauru, a national workshop in 2009 on FOI resulted in the right to information being included as a new human right in the proposed amendments to the 1968 Constitution, along with a

duty of the government to enact a law to protect this right. However, the proposed constitutional amendments did not receive sufficient votes in the 27 February 2011 referendum. But other proposed constitutional amendments (including the proposed FOI provision) that did not need approval by referendum might still be adopted through legislation.

The governments of Palau and Solomon Islands also respectively held national FOI workshops in 2009 and made public commitments to enact FOI legislation. These initiatives also received support from UNDP and/or PIFS.

The Constitution of Papua New Guinea (PNG) has provisions on Freedom of Information (S.51) and the Freedom of Expression (S.46) that journalists utilize to be "able to gather news of the frustrations of the people and express those frustrations and concerns in relation to issues affecting PNG."<sup>11</sup> PNG has yet to enact an FOI law, but the new National Anti-Corruption Strategy launched in early 2012 specifically recognizes enactment of an FOI law as a priority. In January 2012, PNG Prime Minister O'Neill specifically recognized the need for an FOI law as one of his key anti-corruption legislative reforms.<sup>12</sup>

### Recent FOI Developments in Tonga<sup>13</sup>

The government of Tonga, through the Ministry of Information and with the support of the UNDP Pacific Centre and the Commonwealth Pacific Governance Facility, began in October 2011 the drafting of a new FOI policy. In November 2011, when

launching the new Radio Mast for the Tonga Broadcasting Commission, Lord Prime Minister Tu'ivakano highlighted that a FOI policy would be an important framework in the ongoing development of the information infrastructure of Tonga.

In early February 2012, the government made available to the general public a draft "Discussion Paper on the Freedom of Information Policy" (FOI Discussion Paper) to enable people to submit their views and input on the policy considerations and guidelines recommended by this FOI Discussion Paper.

This FOI Discussion Paper sets out guiding principles for the FOI Policy, with explanation of procedures for requesting and accessing information, a set of exemptions for non-disclosure of government information, and the public's right to information held by the government and public authorities. This document outlines expected implementation costs once the policy is approved. In addition, it discusses key issues for appeals process and independent complaints mechanisms for Tonga.

On 13 February 2012, the government held a national consultation on the FOI Discussion Paper. The Chairperson of the Cabinet Steering Committee for the Freedom of Information Policy, Tongan Deputy Prime Minister Samiu K. Vaipulu, stressed the government's strong commitment to have "a more open government." Lady Fusitu'a, former Minister for Information and Communications as one of the key Facilitators emphasized that the fundamental issues of language and cultural identity

be addressed. "We are pleased that [the] Government is giving us this exercise, where we can participate in drafting [the] context of the Policy, with the voices of our very community who make up the very essence of this policy, be[ing] heard and [their] views be[ing] considered."

The Acting Police Commissioner explained that the Police Ministry's information disclosure policy involved the use of public interest test to determine whether or not a disclosure would be at the interest of the government, public or personal level, and in accordance with the law.

Mr. Pesu Fonua, President of the Tongan Media Council reiterated that

[W]hen the government is deciding what information should be released and what should remain exempt, it should always apply the 'public interest' test. ... 'Public interest' basically refers to information held by government which is of such importance that it will affect the decisions and day-to-day lives of the Tongan people.

The Cabinet Steering Committee for the Freedom of Information Policy has adopted "the guiding principle of maximum disclosure" with exemptions being harm-based and subject to public interest test. A subsequent FOI legislation will entrench the legal right to information for all Tongans.

### Recent Developments in Vanuatu

In 2011, the government of Vanuatu created an Information Committee, with the task of developing a media development policy for the government, including

formulating an FOI Bill. This initiative indicated the commitment of the government to the fundamental aim of developing an information disclosure policy that promoted and enhanced the processes of democracy and representative government by increasing access by the public to information. This Information Committee was comprised of representatives from the Office of the Prime Minister, the Ministry of Justice, the Parliament of Vanuatu, the Ombudsman, civil society, and the media.

The planned FOI policy and law will guide officials, as well as the media, civil society and the public, and provide a clear framework and process for accessing and disseminating information. It will also guide the government's implementation of e-governance and information management systems.

A civil-society-drafted FOI bill in 2006 did not move further due to the need at that time to make this proposal reflect local conditions. This draft bill nonetheless provided an important starting point.

### Final Note

The Leaders of Pacific Islands countries have recognized the importance of FOI in promoting transparency and public accountability, and thus address the problem of corruption. The Samoan Prime Minister, Hon. Tuilaepa Lupesoliai Sailele Malielegaoi, specifically recognized that "resources lost to corruption are resources lost to the poor... [that] slows the progress towards the achievement of the Millennium Development Goals."<sup>14</sup>

FOI is a necessity, as observed by a UNDP officer in the Pacific:<sup>15</sup>

The right to know is fundamental to empowering people to better exercise and protect their human rights. As such, the right to access information underpins the Millennium Development Goals because it recognised that without information people will struggle to enjoy their right to health services, education, a clean environment and adequate housing.

*HURIGHTS OSAKA appreciates the substantive assistance provided by Ms. Charmaine Rodrigues, the UNDP Pacific Regional Legislative Strengthening Expert, in the preparation of this article.*

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### Endnotes

- <sup>1</sup> "Biketawa" Declaration, Pacific Islands Forum Leaders' Retreat, 31st Pacific Islands Forum, Biketawa, Republic of Kiribati, 28 October 2000.
- <sup>2</sup> Forum Principles of Good Leadership and Accountability, at [www.forumsec.org/pages.cfm/political-governance-security/good-governance/forum-principles-of-good-leadership-accountability.html](http://www.forumsec.org/pages.cfm/political-governance-security/good-governance/forum-principles-of-good-leadership-accountability.html). The text of this paragraph is based on Laura Halligan and Claire Cronin, *Status of the Right to Information - The Pacific Islands of the Commonwealth* (Delhi: Commonwealth Human Rights Initiative, 2009) page 3. Full report available at [www.humanrightsinitiative.org/publications/rti/status\\_of\\_rti\\_in\\_pacific\\_island\\_of\\_cw.pdf](http://www.humanrightsinitiative.org/publications/rti/status_of_rti_in_pacific_island_of_cw.pdf).

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# Human Trafficking in the Mekong Region: One Response to the Problem

Matthew Friedman

Human trafficking – essentially the recruitment, transport, receipt and harboring of people for the purpose of exploiting their labor – affects almost all parts of the world and is widely believed to be increasing in both scale and gravity. In the Asia-Pacific Region, the International Labour Organization (ILO) estimated that 9.49 million people were in forced labor (2005), with a significant proportion thought to be in the Greater Mekong Sub-Region (referred to as the Mekong Region from this point on), which includes Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam. Although trafficking has existed for centuries, the uneven effects of globalization have, in recent times, contributed to an environment in which trafficking has been able to flourish into a highly profitable and generally low-risk criminal business.

The Mekong Region compared to many other parts of the world contains very diverse patterns of human trafficking, e.g. internal and cross-border; highly organized and also small-scale; sex and labor, through both formal and informal recruitment mechanisms; and involving the victimization of men, women, boys, girls, and families. Thus, within the Mekong Region, there is not so much a single pattern of trafficking in persons as a range of different patterns,

with various victim and criminal profiles.

## Human Trafficking Myths and Misconceptions

Over the years, human trafficking has become increasingly complex and sometimes confusing for many, including those who work to address the problem as well as those who fund the response. There are several important myths that have influenced our collective anti-trafficking responses in Southeast Asia but, thanks to recent empirical research, they have been shown to be incorrect – based on assumptions or outdated data. Some of the “busted” myths include:

- Myth: Trafficking is primarily caused by poverty and a lack of education.

Reality: Being at risk of human trafficking is often not as simple as poverty or lack of education, in terms of what motivates people to migrate or look for opportunities to improve their lives. The common assumptions often do not fully apply in this region, or perhaps others. The real risk factors – inability to access or afford formal migration mechanisms, a desire to utilize education and skills but no local opportunities to do so, lack of citizenship, or

inability to access emergency medical loans or quick money when family members fall ill – need to be examined and proven before any intervention is designed.

- Myth: Large, organized criminal networks drive the human trafficking problem in Southeast Asia.

Reality: Throughout much of Southeast Asia, human trafficking criminal networks are loosely organized, with often difficult to trace linkages. While larger-scale organized trafficking rings certainly do exist in the Mekong Region, moving both sex and labor trafficking victims, the vast majority of networks that do exist are more typically small-scale, loosely connected, and opportunistic.

- Myth: Human trafficking relates mostly to women and girls being exploited within the sex industry.

Reality: A significant portion of trafficking is for the purposes of labor exploitation, victimizing men, women, and children. Trafficking is not only for sexual exploitation. Forced labor and slavery-like practices exist within a number of labor settings including exploitative factories, domestic

servitude, fisheries, construction and plantations. Despite this, some national laws in Southeast Asia still limit the definition of trafficking to women and children.

- Myth: If we could catch all of the ‘traffickers’ and put them in jail, the problem would go away.

Reality: Focusing mostly on those who trick, deceive and transport a person into an exploitative situation will only solve a portion of the problem. To address the real demand related to human trafficking, the response has to include more of an emphasis on actual exploiters and enslavers – those who own and run the establishments that enslave trafficking victims, and who make the most profits from slave labor.

### Lessons Learned

After years of anti-trafficking programming in the Mekong Region, some key lessons learned have emerged that have helped policy makers and practitioners to better understand the issue and what is required to address it. A summary of some of the key factors include:

- Much of the trafficking in the Mekong Region is for labor exploitation. Counter-trafficking efforts should address both labor and sexual exploitation, with the understanding that this exploitation makes victims of human beings, whether men, women, or children.
- Interventions should be empirically based and

targeted at the most exploitative destinations and the most vulnerable communities and victim populations, rather than taking a *comprehensive and holistic* approach that may spread efforts and resources too thin.

- Objective impact assessments are needed to ensure that interventions are targeted and having the intended positive impacts at addressing the problem.
- Exploitation and enslavement should be our target, recognizing that the transportation in human trafficking is often a peripheral factor in Southeast Asia and sometimes not a factor at all.
- Law enforcement should be targeted at those perpetuating the trafficking crime and all related crimes, with sentences commensurate with the crimes.
- Victim support should be tailored to the needs of the individual victim first and the needs of the criminal justice process (and any others) second.

### UNIAP: One Response to the Problem

The United Nations Inter-Agency Project on Human Trafficking (UNIAP) was established in June 2000 to facilitate a stronger and more coordinated response to human trafficking in the Mekong Region. UNIAP is managed by a regional management office in Bangkok, with country project offices in the capitals of

Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam. The seven UNIAP offices have a combined staff of approximately thirty-five. To date, UNIAP has had three phases:

- UNIAP Phase I (2000-2003): This phase concentrated on creating linkages between the different organizations involved in combating trafficking, using a broad and responsive mandate to address emerging issues, and supporting new small-scale pilot counter human trafficking initiatives.
- UNIAP Phase II (2003-2006): In this phase UNIAP facilitated the development of the COMMIT MOU – a regional Memorandum of Understanding to combat human trafficking between the six governments of the Mekong Region. The COMMIT process provides an overall multi-sectoral framework for counter trafficking work at the regional level. (COMMIT is described in detail in the section that follows.)
- UNIAP Phase III (2007-2013): UNIAP’s current phase focuses on increasing its technical service provider role to the counter-trafficking sector, as well as facilitating the overall transition from policy development to anti-trafficking action on the ground. Key functions of UNIAP in Phase III can be summarized as:
  - Inter-agency strategic and operational coordination, at the regional and national levels;

- Information sharing and analysis on trafficking patterns, trends, and programs;
- High-quality training and technical assistance in various anti-trafficking interventions – to government agencies, United Nations (UN) partners, non-governmental organization (NGO) and community-based organization (CBO) partners; and
- Support to the development and piloting of innovative responses to new and emerging issues.

UNIAP's overall goal is to make a *tangible and sustained impact on human trafficking in the Greater Mekong Sub-region through continued advancement of a more cohesive, strategic and incisive response*. UNIAP's modus operandi is to be service-oriented and responsive to identified gaps, needs, and development opportunities within the human trafficking sector. The four main objectives of UNIAP's Phase III are oriented towards key constituencies:

- Objective 1: Services to governments: To support governments in the institutionalization of effective multi-sectoral approaches to combat trafficking, primarily through support to the COMMIT Process in the role of Secretariat;
- Objective 2: Services to UN partners: To maximize the UN's contribution to the overall counter-trafficking

response, including the COMMIT Process;

- Objective 3: Services to the broader counter-trafficking sector, including donors: To facilitate optimal allocation and targeting of counter-trafficking resources, particularly through information and data collection, analysis, and dissemination; and
- Objective 4: Services to the broader counter-trafficking sector, including donors: To play a catalytic role in the counter-trafficking response by identifying and supporting special projects to address new and emerging issues in human trafficking.

To achieve these objectives, UNIAP has six key initiatives that are managed in service to the anti-trafficking community in the Mekong Region.

1. Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT) Process: As Secretariat to the COMMIT Process, UNIAP provides on-going technical and financial assistance to this inter-governmental alliance. UNIAP also supports the monitoring and implementation of programs and activities under the COMMIT Sub-regional Plans of Action (COMMIT SPAs), working closely with UN and civil society partners to align additional technical and financial resources.
2. Strategic Information Response Network (SIREN): The aim of SIREN is to produce high-quality,

reliable research and case analyses to the anti-trafficking sector, through various formats, including events and special reporting (in all six Mekong languages plus English). UNIAP's strategic surveillance and data collection systems are designed to inform, monitor, and increase the effectiveness and responsiveness of anti-trafficking interventions region-wide.

3. Support to Under-served Victim Populations: Working closely with grassroots organizations through the provision of financial and technical support as well as cross-border networking, UNIAP mobilizes rapid and effective assistance for under-served victims of cross-border trafficking, for example, Cambodian men and boys trafficked onto Thai fishing boats.
4. Worst Offenders Project: UNIAP and its partners (primarily police and select NGOs) identify and track some of the worst human trafficking offenders, exploiters, employers and brokers in the Mekong Region, to assist law enforcement with investigating trafficking cases, developing cases for successful prosecution in the courts, and securing compensation for victims. Support to government law enforcement links with COMMIT as well.
5. Shelter Self-Improvement Project: With a host of government and non-government partners, UNIAP is providing targeted

technical, financial, and networking assistance to build the capacity of shelter managers, counselors, and other personnel -- helping them strengthen service referral networks and improve the conditions of shelters and transit centers for victims of trafficking. Support to government social welfare ministries links with COMMIT as well.

6. Ethics and Human Rights in Counter-Trafficking: In September 2008, UNIAP launched a *Guide to Ethics and Human Rights in Counter-Trafficking* and associated training package. Since then, ethics trainings have been provided to police, journalists, victims service providers, researchers, and programmers to help them integrate ethical practices into their day-to-day human trafficking research and programming.

The first three programs listed above – COMMIT, SIREN, and Support to Under-served Victim Populations, are UNIAP's three main programs and constitute over 80% of UNIAP's total program efforts. They support and feed into each other.

As an inter-agency project, UNIAP works with governments, UN, and civil society partners at all levels – regional, national and community. UNIAP has over two hundred fifty local and international partners across seven countries, including well-known international partners ILO, IOM, OHCHR, UNDP, UNESCAP, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, and UNODC within the UN;

and ARTIP, ECPAT, Oxfam International, Save the Children, SEARCH, and World Vision from the NGO sector.

### Collaboration in Action

For anti-human trafficking efforts to be truly effective, there has to be good communication and coordination among the partners. This ensures that the roles and responsibilities of government, UN and civil society partners are harmonized in a way that complements each other. As an example, over the past four years, there have been numerous cases of Cambodians jumping off of fishing boats that had slave-like conditions and ending up in Malaysia. The conditions on these boats as described by the victims have often been brutal, with extreme working and living conditions. Victims were forced to work up to nineteen hours a day, seven days a week. They ate nothing but fish and rice twice a day for years. If the victim got sick, injured or if he complained, reports have indicated that captains would sometimes throw the worker off the boat into the ocean. He was beaten if he did not work hard enough, or even if he did. Days went by with only a few hours of sleep. To keep the person working, drugs were often provided with strong stimulants that destroyed the victims' health.

When cases like this were reported, the counter-trafficking community in the Mekong Region regularly stepped into action. Cases would often be reported by a local Cambodian NGO, such as the Legal Support for Children and Women (LSCW), the Cambodian League for Promotion and Defense of

Human Rights (LICADHO) or the Cambodian Human Rights and Development Association (ADHOC), who had received the request for assistance from family members, themselves having received a desperate plea for assistance from the victim who had got hold of a phone while stranded in Indonesia or Malaysia. Once there, the victims might have hidden away from the boat or still be in the harm environment. The NGO meanwhile would alert UNIAP and other partners such as IOM about the cases. They would then be working together, and with government partners, such as the Cambodian embassies in the destination countries, as well as victim service providers at the destination. The victims would be located and interviewed to determine their status as victims. Immediate support would be provided and the process of securing safe, voluntary repatriation home would be initiated by IOM and other civil society partners. IOM, UNIAP and civil society partners would work together to ensure that the person was able to return home with some resources and security. The NGO community then would help to provide job training, job referrals and/or micro loans to help these people get back on their feet.

When partnerships like this come together in unison, the outcome is that real people receive the support they need to move on with their lives. Further collaboration is conducted with law enforcement in the respective countries to follow up on the brokering networks

*(Continued on page 15)*

# Human Rights and Development in ASEAN

## Working Group for an ASEAN Human Rights Mechanism

In November 2010, the Department of Foreign Affairs of the Philippines and the Working Group for an ASEAN Human Rights Mechanism co-organized a Workshop on Developing National Human Rights Action Plans in ASEAN. Some of the interventions in the workshop delved on the more apparent importance being given to national development plans, rather than on national human rights action plans, due to the limited resources of many of the Member States of the Association of Southeast Asian Nations (ASEAN). The discussions subsequently revolved around the link between human rights and development. Some participants shared their experiences in applying the human rights based approach (HRBA) to development. One of the key recommendations of the workshop was the holding of an activity that would discuss the relationship of human rights and development and also further discuss HRBA. Although HRBA as a concept was not new, the workshop participants recognized the need for more discussions on this approach that was yet to be mainstreamed in government plans and operations.

### The 2012 Workshop

On 30-31 January 2012, the representatives of governments, national human rights institutions and non-governmental organizations

within ASEAN countries along with representatives of the United Nations, international civil society organizations, and international development partners met in Bangkok to discuss the issue of human rights and development in ASEAN during the Workshop on Human Rights and Development in ASEAN. The workshop had several sessions focusing on the following themes:

- a. Human Rights Framework and Human Rights-Based Approach to Development
- b. Right to Development
- c. Challenges to a Human Rights-Based Approach to Development
- d. Application of a Human Rights-Based Approach to Development (Case Studies from UNDP and the Philippines)
- e. Special Topics on Human Rights-Based Approach to Development.

They arrived at a set of conclusions and recommendations, as presented below.

### Conclusions

The following are the Conclusions of the workshop:

#### *Recurring Themes and Notions*

1. Though development is perceived and defined in many ways, its description

found in the second preambular paragraph of the United Nations Declaration on the Right to Development (December 1986) is particularly useful,

...[D]evelopment is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.

2. The right to development upholds the principles of universality, indivisibility and interrelatedness of human rights. Civil and political rights and economic, social and cultural rights must be integrated.
3. Development should be people-centered and therefore communities and people should be defined as active participants in the process.
4. Human Rights-Based Approach (HRBA) to Development requires accountability at all levels and stages of the process. Transparency necessarily requires the enjoyment of the right to information.

5. Human rights are seen both as a means and an end; HRBA to Development looks into both the process and the outcome, with equal importance. Development results will be meaningful and sustainable if the process to attain it is rights-based.
6. The essence of HRBA to Development is empowerment. Important questions that must be addressed include: What do the community and people themselves want?, Have their efforts on the ground been understood?, and, How meaningful is their participation?
7. HRBA to Development also focuses on the dynamics of power, the proper distribution of power, and the consequent transformation of relationships. The rights based approach creates opportunities for those who might otherwise be excluded.
8. HRBA to Development requires a shift in paradigm, to see that people live in poverty because they are excluded. Policies may be redirected from fighting poverty to fighting against exclusion.
9. HRBA requires the understanding of the relationship between the rights-holder and the duty-bearer (State). Duty-bearers ensure that the human rights of the rights-holders are respected, protected, and fulfilled. This is not to say, however, that the State is responsible for providing everything; rather, the State has the obligation to create

conditions that enable all duty-bearers to uphold their obligations.

10. Taking into consideration the context in ASEAN, HRBA to Development should be developed locally. Universal human rights principles, namely: equality, nondiscrimination, participation, inclusion, accountability, transparency, and the rule of law, must be upheld.

### Recommendations

The following are the recommendations of the workshop:

1. Advance a common understanding of HRBA through human rights education and training of both duty-bearers and rights-holders.
2. To enable a meaningful participation by the people, particularly the disadvantaged and marginalized groups of society, their right to information, freedom of expression and freedom of assembly shall be upheld.
3. All development strategies must include concrete commitments to respect, protect and fulfil women's rights and their actual and meaningful participation throughout the development process.
4. The application of HRBA to Development requires cooperation. The State should initiate and encourage partnership with and participation of the people.
5. Governments at all levels should consider a rights-

based approach in the formulation, implementation and monitoring all development plans, programs and policies.

6. Encourage ASEAN Member States to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
7. For ASEAN to effectively become a people-oriented organization and to implement the ASEAN Community Blueprints with a rights-based approach, it is recommended that ASEAN complete soonest the revision of Annex 2 of the ASEAN Charter and expedite the adoption of the guidelines of engagement of civil society with ASEAN.
8. Adopt a transparent process in the drafting of the ASEAN Human Rights Declaration for a meaningful participation by the peoples of ASEAN.

The Workshop was co-organized and co-hosted by the Working Group for an ASEAN Human Rights Mechanism (Working Group) and the International Commission of Jurists (ICJ). It was attended by participants representing ASEAN governments of Brunei, Indonesia, Malaysia, Lao P.D.R., Myanmar, the Philippines, Thailand and Viet Nam, Representatives to the ASEAN Intergovernmental Commission of Human Rights (AICHR) of Brunei, Indonesia, Lao P.D.R., the Philippines, Thailand and Viet Nam, the national human rights institutions of Malaysia, the Philippines, and Thailand,

the ASEAN Secretariat, and civil society organizations from around the region. Also in attendance were participants from the United Nations, international civil society organizations, and international development partners.

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**Freedom of Information**

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- <sup>3</sup> Principles 1 and 4, Forum Principles of Good Leadership, *ibid.*
- <sup>4</sup> Forum Principles of Accountability, *ibid.*
- <sup>5</sup> Principle 5, Forum Principles of Accountability, *ibid.*
- <sup>6</sup> Forum Leaders Communiqué, Thirty-Fifth Pacific Islands Forum, Apia, Samoa, 5-7 August 2004.
- <sup>7</sup> Article 13. Participation of society, United Nations Convention against Corruption, United Nations General Assembly resolution 58/4, 31 October 2003.
- <sup>8</sup> Halligan and Cronin, *op. cit.*
- <sup>9</sup> *Ibid.*, pages 79-80.

- <sup>10</sup> *Ibid.*, page 81.
- <sup>11</sup> Chronox Manek , "FOI in Papua New Guinea - Challenges, and the Way Forward," in *Freedom of Information: The Right to Know* (Paris, UNESCO, 2011) page 40.
- <sup>12</sup> See Isaac Nicholas, *Proposed whistle-blower law revisited*, at <http://malumnalu.blogspot.com/2012/01/proposed-whistle-blower-law-revisited.html>.
- <sup>13</sup> The text of this section is drawn from "Tongan Government engages in National Consultation in its commitment to a Freedom of Information Policy," *Tonga Government Portal*, [www.pmo.gov.to/press-releases/3364-tongan-government-engages-in-national-consultation-workshop-in-its-commitment-to-a-freedom-of-information-policy](http://www.pmo.gov.to/press-releases/3364-tongan-government-engages-in-national-consultation-workshop-in-its-commitment-to-a-freedom-of-information-policy).

- <sup>14</sup> United Nations Development Programme Pacific Centre, *International Right to Know Day highlights information for achievement of MDGs in the Pacific*, at [www.undppc.org.fj/pages.cfm/newsroom/2010/international-right-know-day-highlights-importance-of-information-achievement-of-mdgs-pacific.html?printerfriendly=true](http://www.undppc.org.fj/pages.cfm/newsroom/2010/international-right-know-day-highlights-importance-of-information-achievement-of-mdgs-pacific.html?printerfriendly=true).
- <sup>15</sup> Comments of Ms. Charmaine Rodrigues, the UNDP Pacific Regional Legislative Strengthening Expert, at the Right to Information Workshop organized by the Media Association of Vanuatu (MAV) and Transparency Vanuatu in Port Vila, *ibid.*

**Human Trafficking in Mekong**

*(Continued from page 12)*

and exploiters in the case, to determine what action can be undertaken with the evidence provided by the victim towards criminal justice.

**Concluding Note**

Collaboration is not a simple thing. It is not something that just happens by bringing people together. True collaboration is built upon a foundation of trust and a united sense of purpose.

If one can develop feelings of accomplishment within a collaborative process, joint ownership of a problem often follows. With this ownership, we tend to take care of the process and remain committed to it. For this to happen, early and substantial involvement that is positive, supportive and encourages initiative makes all the difference. The process also needs to take place at all levels: between governments, UN and bilateral partners, NGOs and CBOs to develop a comprehensive, sustained response that caters to the needs of the entire sector. When

true collaboration is in place 1+1=11, not 2.

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# HURIGHTS OSAKA Calendar

HURIGHTS OSAKA held a study meeting on the recent amendments to the Japanese immigration law on 4 February 2012 during the One World Festival.

It also held an exhibit of photographs on international human rights issues taken by photojournalists and on the 2011 earthquake-tsunami disaster in northeast Japan taken by residents of Sendai city. The photo exhibit was held during 16-28 February 2012.

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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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