Focus

Asia-Pacific

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

June 2012 Vol. 68

Contents

Editorial

International Pressure

International pressure, with international media support, can force governments to take action on specific human rights violations. It can make governments admit the existence of such human rights violations, or hold those responsible for the violations accountable.

But the more "regular" international pressure may not have the same impact. International pressure arising from conclusions, recommendations, general comments and resolutions of the human rights bodies of the United Nations (UN) needs assistance to create national impact.

Outside the halls of the UN and beyond the circle of human rights organizations lobbying in the UN, much of the analyses and recommendations by the human rights bodies for better promotion and protection of human rights remain unknown to the people who should benefit from them.

Government action on the conclusions, recommendations, general comments and resolutions of the UN human rights bodies depends on national pressure. Unless they suffer from massive repression that provides little space for action, people at the national level should be able to assert the pressure on their respective governments.

It is thus imperative on the part of the organizations involved in UN human rights lobby to bring this international pressure from UN human rights bodies to the domestic sphere.

Detention Centers and Prisons in Japan

HURIGHTS OSAKA

The Universal Periodic Review (UPR) of the United Nations (UN) Human Rights Council facilitates the discussion and analysis of reports on the human rights situation in UN member-states.[1] The record of the UPR processes, however, would remain stuck in the files of the UN and diplomatic missions unless deliberately and systematically brought out to the people of the countries involved for further discussion and subsequent action.

It is in this light that the 2008 UPR of Japan's human rights situation is being presented in this article. It focuses on the situation of detention centers and prisons in Japan, one of the issues discussed in the UPR process.

Later in 2012, the second UPR of Japan's reports will be held. Will there be new answers to old issues?

Detention Centers and Prisons

The 2008 UN summary report on observations of the treaty monitoring bodies on detention centers and prisons in Japan raises questions:[2]

> 14. CAT [Committee Against Torture] noted with concern that a definition of torture, as provided by article 1 of the Convention [against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment], was not included in the [Japanese] Penal Code, and that in particular "mental torture" within the meaning of the Convention's definition is not clearly defined under articles 195 and 196 of the Penal Code and also that penalties for related acts, such as intimidation, are inadequate.[3]
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> 16. CAT was deeply concerned about allegations of continuous prolonged use of solitary confinement, despite the new provisions of the 2005 Act on Penal Institutions and the Treatment of Sentenced Inmates limiting its use. The State should amend current legislation to ensure that solitary confinement remains an exceptional measure of limited duration. In particular, the State should systematically review all cases of prolonged solitary confinement, by means of a specialized psychological and psychiatric evaluation, with a view to releasing those whose detention can be considered in violation of the Convention.[4]

The report further states that:[5]

> 15. The general conditions of detention in [Japanese] penal institutions, including overcrowding, were of concern to CAT. The Committee recommended that Japan take effective measures to improve conditions of detention, ensure strict monitoring of restraining devices, the provision of medical assistance to all inmates at all times and that it should consider placing medical facilities and staff under the jurisdiction of the Ministry of Health.[6]

The national report of Japan for the 2008 UPR explains the steps being taken on the issues raised by treaty monitoring bodies such as ensuring that "a heating/cooling system is installed in the detention facilities" and "medical treatment from a doctor at public expense if a detainee is sick or injured" is provided. There is no response to the suggestion to put the medical service under the "jurisdiction of the Ministry of Health." There is a statement that the overcrowding of the penal institutions is being addressed.

The national report of Japan does not discuss the issues regarding non-inclusion of the definition of torture in the penal law, and solitary confinement.

The UN summary report discusses the long-standing issue of substitute prison system called *daiyo kangoku*:[7]

> 17. In 2007, CAT was deeply concerned at the systematic use of the Daiyo Kangoku substitute prison system for the prolonged detention of arrested persons even after they appear before a court, and up to the point of indictment. This may lead to a de facto disrespect of

> the principles of the presumption of innocence, right to silence and right of defence.[8] Similar concerns were raised by the HR [Human Rights] Committee in 1998.[9]

During the interactive dialogue of the UPR, Japan's response further explained this issue:[10]

> With regard to the police detention system, it was explained that the necessity of detention was strictly examined by the police, a prosecutor, and a judge in due order, and that a judge decides on its necessity and the placement of the detention for a maximum of 10 days. A prosecutor and a judge respectively review the necessity of the extension of the detention, and a judge order is also necessary for the extension, which cannot exceed 20 days in total. The Delegation stated that the substitute detention system was indispensable to carrying out prompt and effective investigations. At the police detention facilities, investigative officers were not allowed to control the treatment of detainees; detention operations were conducted by the detention division of the facility, which is not involved in investigations at all. The Delegation also explained that, regardless of the type of crime committed, detainees can have consultations with their lawyer at anytime and there is no official watch person during the meeting and no time limitation.

Japan's 2010 submission on follow-up to the recommendations in the 2008 Concluding Observations of the Human Rights Committee on Japan's Fifth Periodic Report[11] provides additional explanation that justifies the continued existence of *daiyo kangoku*. Essentially, the argument for continued use of *daiyo kangoku* is that it is "operated for swift and appropriate investigation and also for the convenience of the detainee's defence counsel and family members."[12]

The UN summary report also mentions the issue of complaints mechanism:[13]

> 24. Additionally, CAT was concerned at: (a) the lack of an effective complaints system for persons in police custody; (b) the lack of authority of the Board of Visitors for Inspection of Penal Institutions to investigate cases or allegations of acts of torture or ill–treatment; (c) the lack of independence of the Review and Investigation Panel on Complaints by Inmates in Penal Institutions and its limited powers to investigate cases directly; (d) statutory limitations on the right of inmates to complain and the impossibility of defence counsel assisting clients to file a complaint; (e) reports of adverse consequences for inmates as a result of having filed a complaint and of lawsuits rejected on the grounds that the term for claiming compensation had expired. The State should also consider establishing an independent mechanism, with authority to promptly and impartially investigate all allegations of, and complaints about, acts of torture and ill-treatment from both individuals in pretrial detention in police facilities or in penal institutions. The State should take all appropriate measures to ensure that the right of inmates to complain can be fully exercised.[14] In relation to victims of sexual violence, CAT also called for the prompt and impartial investigation of allegations of torture and ill-treatment with a view to prosecuting those responsible.[15] Additionally, the State should take appropriate measures to ensure that all victims of acts of torture or ill-treatment can exercise fully their right to redress, including compensation and rehabilitation.[16]

Japan responded to this issue by stating during the interactive dialogue of the UPR that "a complaints mechanism has been developed in order to ensure the appropriate treatment of detainees." In its national report, it cites as one of the amendments to the penal law (Act on Penal Detention Facilities and Treatment of Inmates and Detainees) that "(C)omplaint mechanisms consisting of a petition for review, report of cases and filing of complaints are provided." Thus a complaints mechanism has been developed where a "petition of objection may be sent to the Prefectural Public Safety Commission, a third party institution which controls the prefectural police."

Comments of the Stakeholders

The UPR process includes the consideration of reports from the "stakeholders" which mainly consist of non-governmental institutions that work on human rights issues. Among these stakeholders,

several Japanese non-governmental organizations submitted their respective reports. Their reports contradict on several points the national report of Japan and its responses during the interactive dialogue. The OHCHR compiled these reports and submitted a summary to the HRC.[17]

On the issue of *daiyo kangoku*, the stakeholder summary report stresses several points:[18]

a. The detention of persons in police cells for up to twenty-three days without charge.

b. The lack of regulations regarding the length of interrogations, the restriction on access to lawyers of detained persons, the lack of recording of interrogation sessions[19] and the concern that this system is routinely being used to obtain 'confessions' through torture or other cruel, inhuman or degrading treatment, such as beating, intimidation, sleep deprivation, questioning from early morning until late at night, and making the suspect stand or sit in a fixed position for long periods. The 2008 National Police Agency guidelines for conducting interrogations have been found inadequate.

c. The lack of an independent institution to investigate complaints while suspects are in police detention facilities.

The stakeholders recommend the abolition of the *daiyo kangoku* (substitute prison) system, or "bring it into line with international standards, and implement safeguards, such as explicit directives for prompt and unhindered access to legal counsel as well as electronic recording of all interrogations."[20]

The Japan Federation of Bar Associations (JFBA), responding to the 2010 comments of Japan on this issue (in response to the Human Rights Committee Concluding Observations), persistently argues for its abolition on the ground that:[21]

> no other system in the world where police detention can be continued for as many as 20 days. In addition, the excuse that it is impossible to construct detention facilities cannot be accepted today, 30 years after the problem of substitute prisons was first pointed out by the JFBA. The only way to avoid "the risk of prolonged interrogations and abusive interrogation methods with the aim of obtaining a confession" is to abolish substitute prisons, which the JFBA has consistently called for.

JFBA adds that it does not call for immediate abolition of *daiyo kangoku*. Instead, it asks to "begin ... abolishing the [system of] detention of suspects to whom it would cause more adverse effects, such as those who deny the alleged crimes and juvenile suspects."

On the new Act on Penal Detention Facilities and Treatment of Inmates and Detainees enacted in 2006, and took effect in June 2007, several stakeholders recognize the "positive provisions, such as the expansion of prisoners' contacts with the outside world, the establishment of independent committees to inspect prisons, and the improvement of the complaints mechanisms."[22]

However, they express concern about "the possibility for the revalidation of the period of the solitary confinement with no limitation, the introduction of a new type of handcuffs and their use together with the solitary confinement, ... the absence of definitive provisions for the investigation of deaths in prisons," and the provision of "medical assistance to prisoners" not being under the jurisdiction of the Ministry of Health.[23] JFBA explains further in 2010 that "mental and physical effects of the solitary confinement rule for death row inmates is serious, and it is absolutely necessary to amend Article 36 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, so as to substantively guarantee mutual contact outside of individual cells."[24]

While some improvements have been made on the situation of detention centers and prisons in Japan, there remain a number of issues that have to be sufficiently addressed in order to fully protect the human rights of detained persons and convicted prisoners in the country. It is expected that the recommendations[25] of several member-states during the 2008 UPR would be the focus of discussions in the 2012 UPR of the human rights situation in Japan.

For further information please contact HURIGHTS OSAKA.

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Death Penalty in Japan

International Federation for Human Rights and the Center for Prisoners' Rights Japan

Since 2008, when Japan's human rights record was brought under the Universal Periodic Review of the United Nations Human Rights Council, twenty people had been executed. Among these executions, fifteen were approved by the previous government of the Liberal Democratic Party (LDP), and five by the current government of the Democratic Party of Japan (DPJ) that won the general elections in 2009.

While there was no execution in 2011, the current Justice Minister Toshio Ogawa ordered the execution of three death row inmates on 29 March 2012. The conservative LDP and some sections of the media have been calling for executions in response to the growing death row population.

INDEX 2009 and Death Penalty

Prior to taking power, DPJ adopted a set of policies called 'INDEX 2009' that included a review of the death penalty system and a consideration of moratorium on executions.

The new DPJ government appointed Keiko Chiba as Justice Minister, a lawyer turned politician who belonged to the *Diet* (Parliament) Members for the Abolition of the Death Penalty, and was the Secretary-General of the Amnesty *Diet* Members' League of Japan. However, Chiba, as Justice Minister, did not take any action to realize INDEX 2009 during the first ten months of the new government.

On 28 July 2010, the first executions under the DPJ government took place. At a press conference, Minister Chiba announced that she had ordered the execution of two prisoners, both detained at Tokyo Detention Center. She was also the first Justice Minister to attend executions. On this occasion she announced her plan to create a Study Panel at the Justice Ministry to study the following items: a. approach on addressing the issue of either abolition or retention of the death penalty; b. execution system including notices on executions; c. provision of information on executions to the public; and d. visit of members of the media to the execution chamber.

The Study Panel was established on 6 August 2010 with all members belonging to the Ministry of Justice (i.e., Minister, Vice Minister, Parliamentary-Secretary for Justice and high-ranking officials of the Ministry).[1]

Coincidentally, the DPJ announced the establishment within the party of a working group on death penalty.

Since its establishment, the Panel held several meetings. Minister Chiba held two meetings, her immediate successor Minister Yoshito Sengoku held one meeting, and Minister Satsuki Eda held three meetings. Each Minister expressed the expectation that the Panel discussions would trigger national debate on death penalty, but no such debate occurred.

Challenges to the New Minister of Justice

By September 2011, a new Minister of Justice was appointed (Hideo Hiraoka) who said that "some people say [that] not signing off executions is sabotaging the duty of the Justice Minister, but the minister also has the duty to consider how to handle the death sentence amid various international opinions on the subject."[2]

During the first Panel meeting on 17 October 2011 that he attended, Minister Hiraoka expressed his determination to initiate a real "national debate" on death penalty. He then referred the matter to the Legislative Panel of the Ministry, which dealt with issues that required legal amendment. But the Ministry officials refused his proposal.

Minister Hiraoka then planned to establish another panel that would not be an internal body of the Ministry and would have various experts or stakeholders

from outside the Ministry as members. But just before its formal establishment, Toshio Ogawa replaced Hiraoka in early January 2012.

Toward the end of 2011, Minister Hiraoka had been facing strong pressure not only from bureaucrats at the Ministry who wanted to retain the death penalty, but also from the DPJ-led Cabinet.

On 26 October 2011, at the Diet session, Chief Cabinet Secretary Osamu Fujimura said "the Cabinet has no plan to abolish the death penalty and it is the role of Justice Minister to sign off eventually after reflection. I'd like to say to Hiraoka that he should clearly express his own opinion [on the role of the Minister on this matter]".

It was obvious that Fujimura, and Prime Minister Yoshihiko Noda as well, wanted to avoid issues during the Diet sessions that would be targeted by the opposition party LDP. A de facto stay of executions was one such issue.

Furthermore, on 21 November 2011, the Supreme Court affirmed with finality the death sentence of Seiichi Endo, a former leading member of Aum Shinrikyo Cult, as penalty for committing a series of serious crimes including the Tokyo Subway Gas Attack in 1995. A total of thirteen death sentences handed down to Aum Shinrikyo cultists including its guru, Shoko Asahara, have been affirmed with finality. Voices from the media demanded the execution of Asahara, bringing another pressure on Minister Hiraoka on approving executions.

Resumption of Executions

The new Justice Minister, Toshio Ogawa, clearly and repeatedly foreclosed the possibility of continuing the stay of executions. He claimed that authorizing executions was the Justice Minister's responsibility, and expressed his intention to order executions. At the same time, Minister Ogawa scrapped former Minister Hiraoka's plan for a special panel on capital punishment. He also abolished the Study Panel two months after assuming office. The Panel, as its last activity, issued a report that simply summarized the discussions during its meetings without providing any recommendation or conclusion.

On 29 March 2012, Minister Ogawa ordered the execution of three inmates detained at Tokyo, Hiroshima and Fukuoka Detention Centers. At the press conference, he said:

> I just performed my duty as a justice minister. The right to punish criminals rests on Japanese nationals, and a government poll shows the majority of Japanese support the death sentence.... Also, lay judge trials maintain the death sentence as a punishment, and lay judges are from the general public.[3]

It is notable that Prime Minister Noda also told a press conference on 30 March 2012 that he had no plan to abolish the death penalty. He explained:

> in view also of the fact that there is still no decline in or end to atrocious crimes, I recognize that it will be difficult to abolish the death penalty immediately. There is no change to the fact that Japan does not have a policy to abolish the death penalty.[4]

After the executions, Minister Ogawa announced that the three top officials at the Ministry (i.e., himself, the Vice Minister and the Parliamentary Secretary) would have private deliberations on the execution method. The four key points to be discussed were reportedly the following: whether or not the current execution method of death by hanging should be reviewed; whether or not inmates should be informed of their executions the day before the scheduled time rather than in the morning of the day of execution as currently practiced; how to inform inmates' relatives of the execution; and finally, how to handle prisoners sentenced to death in case of abolition of the death penalty.[5]

The lack of transparency in the process makes deliberation on these issues doubtful. In case such deliberation would take place, there is a likelihood that it would not involve in-depth research or discussion since Minister Ogawa deemed a year-long period for deliberation as too long. Neither would the deliberation stop executions in view of the repeated statement by Minister Ogawa that he would perform his 'duty as Justice Minister'.

Public Opinion

Government officials frequently cite public opinion to justify the death penalty, and yet the fact remains that the government

has never properly measured the public opinion.

In February 2010, the Cabinet Office released the results of an opinion poll on the justice system. On the issue of death penalty, respondents were asked to choose one of the three answers: 1. Death penalty should be abolished unconditionally; 2. In some cases, the death penalty cannot be avoided; 3. I don't know/It depends. 85.6 percent of the respondents chose the second option that saw death penalty as unavoidable in "some cases." Thus, there is no basis for claiming that more than 85% of the people actively supported the death penalty.

More importantly, Japanese citizens have never been provided with essential information on the death penalty system in Japan. Even after then Minister Chiba allowed the media to visit an execution chamber at the Tokyo Detention Center, almost all information other than the names and the detention places of the executed people have remained hidden to the public.[6] Despite the recommendation made by the United Nations Human Rights Committee, the government has failed to disclose necessary information and has done nothing to "inform the public about the desirability of abolition [of death penalty]."

Disclosure of information should be the precondition and the first step in initiating public discussion on the death penalty. People would gradually advance the level of discussion on this issue if the government did not have total control of relevant information.

Lay Judge Trial and the Death Penalty

Under the new Lay Judge system, introduced in May 2009, fourteen defendants have been sentenced to death.[7] Among them, two death sentences have become final due to withdrawal of appeal by the defendants themselves, while three sentences have been upheld by the High Courts.

Despite the repeated recommendations made by the United Nations Committee against Torture and the Human Rights Committee, the government of Japan still insists that mandatory appeal system is not needed because most defendants exercise their right of appeal. However, the fact that two out of the twelve people tried at the lay judge courts did not exercise their right of appeal provides a compelling reason for having the system of mandatory appeal.

A simple majority, with at least one vote each from among professional judges and lay people respectively, is enough to render a death sentence (and other punishments). Until the death penalty has been abolished, unanimous verdict should be absolutely necessary for death sentences.

Human Rights Violations on Death Row

Despite the repeated recommendations by United Nations human rights bodies to respect the rights of death row inmates, their rights are still strictly restricted.

The Prison Law,[8] as amended in 2006, provides that a death row prisoner shall be detained in a single cell and separated from other prisoners day and night. But the law allows, as an exception, "mutual contacts with other death row prisoners" when they are deemed "advantageous [to the prisoners] in light of the principle of treatment prescribed in paragraph (1) of Article 32.[9] However, the Ministry of Justice admits that such treatment has never been allowed.

Contacts with people outside prisons are also strictly limited. Only three to five people are allowed to visit death row inmates, while those who are allowed to exchange letters with the prisoners are not necessarily permitted to meet with the prisoners.

Meetings between prisoners and their legal representatives are usually done in the presence of prison guards. On 27 January 2012, the Hiroshima High Court ruled that a meeting between a prisoner and her/his lawyers for a retrial case without the presence of prison guards was for the 'legitimate interest of the inmate sentenced to death' and unless special circumstances exist, a guard's attendance at such a meeting should not be allowed. The government sought to overturn this ruling by appealing to the Supreme Court, where the case is currently pending. Attendance of prison guards at meetings between lawyers and prisoners is still a common practice.

The idea underlying the exception to inhumanely restrictive treatment is "to maintain the peace of mind" of the prisoners as stipulated in Article 32 of the new Prison Law. The Ministry of Justice says that "maintaining the peace of mind" should not be interpreted as a tool for restricting prisoners' rights, but should be used to assist the prisoners. In practice, however, "peace of mind" still works as a strong reason to restrict the prisoners' rights, especially the right to be in contact with people outside the prison.

Conclusion

Recently, Japan failed to step forward in the right direction, i.e., maintain a de-facto moratorium on executions that could bring the country to agree to their ultimate abolition, by hanging three inmates after twenty months without executions.

As far as the issue of the death penalty is concerned, the attitude of the government of Japan deserves the strongest denunciation. And UPR process is an absolutely precious opportunity to convey international voices to the Japanese society.

Now is the most crucial time for Japan to face the strong criticism from the international community. Voices from the world, which tend to be ignored by Japanese society, should be conveyed to the government so that they can change the government's attitude towards the death penalty.

This is an edited version of the section on death penalty of the Stakeholder's Information Report for the 14th session of the Working Group on the UPR (April 2012) entitled "Prison and the Death Penalty in Japan," submitted jointly by International Federation for Human Rights (FIDH) and the Center for Prisoners' Rights Japan (CPR).

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Endnotes

1 Other members are: Assistant Vice-Minister of Justice, Director-General of the Criminal Affairs Bureau, Director of the Legislative Division, Director of the General Affairs Division of the Bureau, Director-General of the Correction Bureau, Director of the General Affairs Division of the Bureau, Director of the Prison Service Division of the Bureau, Director-General of the Rehabilitation Bureau and Director of the General Affairs Division of the Bureau.

2 Minoru Matsutani, "Hiraoka urges "active" debate on executions," *The Japan Times*, 20 September 2011. Text available at www.japantimes.co.jp/text/nn20110920f1.html.

3 Minoru Matsutani "Three hanged: executions are first since '10'," *The Japan Times*, 30 March 2012. Text available at www.japantimes.co.jp/text/nn20120330a1.html.

4 Press conference statement of Prime Minister Yoshihiko Noda, 30 March 2012, *Speeches and Statements by the Prime Minister*, www.kantei.go.jp/foreign/noda/statement/201203/30kaiken_e.html.

5 "Ministry of Justice's top officials to hold non-disclosed death penalty deliberations," *Mainichi Shimbun*, 10 April 2012.

6 Maiko Tagusari, 'Death Penalty in Japan' (2010), *East Asian Law Journal*, vol. 1, no. 2, pages 93-106.

7 As of 19 April 2012.

8 Act on Penal Detention Facilities and Treatment of Inmates and Detainees. See full English version at www.japaneselawtranslation.go.jp/law/detail_main?vm=&id=142. For further information see "Reform of Penal Institutions," at www.moj.go.jp/ENGLISH/issues/issues06.html.

9 Article 32: Upon treatment of an inmate sentenced to death, attention shall be paid to help him/her maintain peace of mind. Text available at www.japaneselawtranslation.go.jp/law/detail_main?vm=&id=142.

Map Ta Phut: Thailand's Minamata?

HURIGHTS OSAKA

Fearing the possibility of another leak of toxic chemicals, villagers from Map Ta Phut in Rayong province sued in early 2009 the government of Thailand and demanded the demarcation of areas where the petrochemical industries could be located. In March of that year, the Administrative Court ruled that Map Ta Phut was a "pollution control zone" that obliged the "authorities to measure soil and water quality regularly and to come up with a plan to reduce pollution if [found to be] too high."[1] In order to hold accountable those who violate the environmental law, the villagers and the People's Eastern Network filed another lawsuit before the Administrative Court to stop the expansion of the industries. The court decided in September 2009 to suspend seventy-six projects due to absence of health impact assessment required under Article 67 of the 2007 Constitution. The decision was appealed to the Supreme Administrative Court that decided on 2 December 2009 to maintain the suspension of sixty-five projects, but allowed eleven projects[2] to proceed.[3] The companies affected included "Bayer, the German pharmaceutical giant; Aditya Birla Chemicals, an Indian conglomerate; BlueScope Steel of Australia; and two dozen companies belonging to [Petroleum Authority of Thailand] PTT, the Thai energy giant."[4]

The court ruling shocked the business community in Thailand. The Ministry of Industry of Thailand estimated the losses that might have arisen from the suspension of the projects at a little over nineteen billion US dollars.[5]

The Thai government appealed the ruling and got the court in 2010 to allow seventy-four projects to proceed, while revoking the operating licenses of two projects that were included in a government list of "harmful activities."[6] The government also ordered a study of the environmental problem, through the National Environment Committee headed by former Prime Minister Anand Panyarachun, that found eighteen types of industrial projects that might harm the environment. But this list was subsequently shortened to eleven types of industrial projects deemed harmful to the environment and subject to environmental and health impact assessments.[7]

Pollution and Health Concerns

A 2010 analysis by Silpakorn University of the "environmental and health impact studies" made by the companies concerned found that thirty-five of the seventy-six industrial plants "suspended [in 2009] in Map Ta Phut industrial estate [would] use hazardous chemicals that [could] cause several ailments." Twenty-one plants would use carcinogenic substances in their production process. Other toxic substances to be used would be harmful to the respiratory system (thirty-four projects), neurological system (twenty-four projects), reproductive system (ten projects), foetus (four projects), blood system (eighteen projects), liver and renal (twenty-five projects), skin and eyes (thirty-three projects).[8] Since Map Ta Phut has been declared a pollution control zone, pollution emissions must be limited.[9]

The serious health and pollution problems in Rayong province were not new. Several studies had shown the rise of cancer cases in the province many years before the court cases came about. One report explains:[10]

> Thailand's National Cancer Institute found in 2003 that rates of cervical, bladder, breast, liver, nasal, stomach, throat and blood cancers were highest in Rayong Province, where Map Ta Phut and other industrial zones are located. A study led by Italian researchers and released in 2007 found that people living near Map Ta Phut had 65 percent higher levels of genetic damage to blood cells than people in the same province who lived in rural areas. Such cell damage, which is a possible precursor to cancer, was 120 percent higher

for refinery workers than for residents of Rayong Province's rural communities.

Petrochemical Industrial Zone

Map Ta Phut was a swampy area with about eight thousand people in the late 1970s. But with industrial development under the Eastern Seaboard Development Plan from early 1980s, Map Ta Phut became a town with the number of residents increasing to 36,000 and over 100,000 migrant workers by 1992. In 1997, serious cases of health problems started to occur, symbolized by the case of students and teachers in Map Ta Phut Pan Pittayakarn School who were hospitalized for inhaling toxic air.[11]

The industrial zone of Map Ta Phut includes a port that is now considered to be a "high-volume, high-capacity industrial port serving the area's heavy industries." Being Thailand's biggest industrial port, it was built to accommodate a wide range of vessels, equipments, and cargoes, and to boost the country's export capacity.[12]

Japanese Companies

In early 2010, Japanese companies raised concerns about the Map Ta Phut court decision and the lingering lack of resolution of the issues. The Japanese Chamber of Commerce (JCC) warned about the possibility of having the operations of Japanese companies transferred to other countries due to the then prevailing situation.[13]

About one-third of the JCC's more than one thousand three hundred corporate members in Thailand were affected by the Map Ta Phut court rulings. These companies operate in the chemical, steel, construction and financial sectors.[14]

In response, the Eastern Peoples' Network and residents in the Map Ta Phut vicinity submitted a letter to the Japanese Embassy, calling on Japanese investors to stop pressing the Thai government to resolve the Map Ta Phut problem within five months. The coordinator of Eastern Peoples' Network criticized the stance of the Japanese companies considering Japan's experience in industrial pollution, particularly the Minamata case.[15]

In January 2010, the Minister to the Prime Minister's Office of Thailand visited the Minister for Internal Affairs and Communications of Japan to explain efforts to resolve the Map Ta Phut problem. In March 2010, the Thai Finance Minister led a high-level government delegation in a visit to Japan to "explain the strategy in dealing with the Map Ta Phut problem to the Japanese public and private sectors."[16] In July of that year, the then Thai Prime Minister (Mr. Abhisit Vejjajiva) met the members of the Japanese business community in Thailand and explained what the government was doing on the matter. He stressed the prospect of resolving the Map Ta Phut issue in the next four months (including the resolution of court cases).[17]

Japanese Support

During the 1982-1993 period, Japan provided loans for the implementation of the Eastern Seaboard Development Program. The loans were meant to develop industrial estates, ports, roads and highway, railway, water reservoir and pipeline, etc. The loans recognized the strategic value of the Eastern Seaboard in the over-all economic development of Thailand. Several of the loans involved projects in Map Ta Phut area, which was planned as the place for heavy chemical industry.[18]

A 2000 evaluation study sponsored by Japan Bank for International Cooperation (JBIC)[19] noted the need to look at measures for limiting environmental impact particularly at the Map Ta Phut area. A 1988 survey of the environmental condition did not reveal serious problems due to the modern technology used by the industrial firms in the area. But at that time, the "current primary environmental issue [was] the odor which has attracted attention in Thailand, in connection with complaints from residents around the complex made in the past two to three years." The complaints started to come out in 1996. The 1997 case of students and teachers in a school in Map Ta Phut area, cited earlier, suffering from the industrial odor became the main example of the problem. The Thai government took countermeasures to minimize the odor, according to the study.

The Issue

Paragraphs 2 and 3 of Section 67 (Community Rights) of the 2007 Constitution of Thailand provides the following:[20]

> Any project or activity which may seriously affect the quality of the environment, natural resources and biological diversity shall not be permitted, unless its impacts on the quality of the environment and on health of the people in the communities have been studied and evaluated and consultation with the public and interested parties have been organised, and opinions of an independent organisation, consisting of representatives from private environmental and health organisations and from higher education institutions providing studies in the field of environment, natural resources or health, have been obtained prior to the operation of such project or activity.
>
> The right of a community to sue a government agency, State agency, State enterprise, local government organisation or other State authority which is a juristic person to perform the duties under this section shall be protected.

The local residents, the courts and the government have all used Section 67 of the Constitution.

This constitutional provision is novel in recognizing the right of the community to sue the government and other State agencies. The residents of Map Ta Phut used this constitutional provision to protect their right to health and sound environment.

The Map Ta Phut case is a complicated issue for a number of reasons: a. It involves heavy chemical industries concentrated in one region (Eastern Seaboard region) which are by nature high-risk industries; b. It is part of a major project of the government that involves major domestic and foreign companies, requires huge financial investment, and therefore has huge role in the over-all economy of the country; c. It involves documented health problems suffered by the residents around the factories.

The statement made by Anand Panyarachun, former Prime Minister of Thailand and head of the National Environment Committee cited earlier, to foreign investors in the Map Ta Phut industrial zone captures to a large extent what the affected people want to say:[21]

> You cannot equate your [financial] book losses with the loss of lives and the deterioration of the health of the individuals. They bear no comparison.

The main issue is: Can the health of the people and the protection of the environment be guaranteed in maintaining a huge petrochemical industrial zone?

It seems that the industrial pollution and the consequent health problems (not to mention the documented adverse effects of industrial pollution on the land and water resources in the area) cannot be denied.

The constitutional provision on community rights, the action of the local residents to protect their rights, and the court decisions (which may not resolve the problems completely) are essential in preventing the situation from turning into a Minamata-like situation.

Next scene

Strong explosions preceded the fire at the Bangkok Synthetics Co. (BST) factory in the Map Ta Phut industrial estate on 5 May 2012. Twelve workers died, while one hundred twenty-nine others were injured.[22] Hundreds of residents in the area evacuated.[23] The government ordered the closure of the factory, while other factories in the industrial estate were instructed to recheck their security systems since more than half of them use chemicals. The Thai Prime Minister visited the victims and the factory area. She met with "relevant agencies at the Map Ta Phut industrial estate office where she ordered the committee to be set up to look for toxic residue in the environment. Workers and the people around the factory feared the leak of chemicals and fled the area. The government has warned that inhaling chemical toluene, suspected of leaking from the factory, would be fatal.[24]

This recent industrial accident raises once more the question: Is a Minamata-like situation in Map Ta Phut preventable?

In case a new industrial zone arises in rural Dawei in southern Burma/Myanmar, these industries might relocate there. But then this would-be Southeast Asia's largest industrial complex (dubbed "new global gateway of Indo-China") would become another candidate for a new Minamata.

Endnotes

1 Thomas Fuller, "In Industrial Thailand, Health and Business

Concerns Collide," *New York Times*, December 18, 2009, in www.nytimes.com/2009/12/19/world/asia/19thai.html?_r=2&emc=eta1.

2 The eleven projects allowed to proceed included projects are the clean energy and product quality enhancement programmes of Rayong Refinery, gas recycling enhancement done by HMC Polymers, clean energy, oil-vapour-controlling-unit installations at Star Petroleum Refining, oil-vapour-controlling-unit installations at PTT Aromatics and Refining, air pollution control improvements of Indorama Petrochem, and the chlorine vaporizer and wet scrubber installation of Aditya Berla Chemicals (Thailand). "Thai court suspends 65 industrial projects," *The ASEAN Affairs*, at www.aseanaffairs.com/thailand_news/investment/thai_court_suspends_65_industrial_projects.

3 The Solving of Environmental Problems at Map Ta Phut in Rayong, Foreign Office, The Government Public Relations Department, in http://thailand.prd.go.th/view_inside.php?id=4604. Oranan Paweewun and Leigh Murray, "Thai Court Keeps Projects Frozen on Environmental Concerns," *Wall Street Journal*, available at http://online.wsj.com/article/SB125974924793572579.html.

4 Fuller, op. cit.

5 Suttinee Yuvejwattana and Supunnabul Suwannakij, "Thai Court Lifts Ban on Industrial Projects Halted on Environment Grounds," 2 September 2010 at www.bloomberg.com/news/2010-09-02/thai-court-lifts-ban-on-industrial-projects-halted-on-environment-grounds.html.

6 Ibid.

7 PM visits Map Ta Phut to review progress in solutions to environmental problem, www.mcot.net/cfcustom/cache_page/132374.html. See also Powering Up - Industry and communities go head to head, Business Report Thailand, Issue #1, October 2010, available in www.businessreportthailand.com/maptaphut-industry-communit-1279. See also Malini Hariharan, "Map Ta Phut concerns refuse to fade away," at www.icis.com/blogs/asian-chemical-connections/2010/09/map-ta-phut-concerns-refuse-to.html.

8 Apinya Wipatayotin, "Industries come clean on hazards," *Bangkok Post*, 11 October 2010, www.bangkokpost.com/learning/learning-from-news/200791/chemical-health-hazards-at-map-ta-phut.

9 Ibid.

10 Fuller, op. cit.

11 Tara Buakamsri, Denny Larson, Faikham Harnnarong, Penchom Saetang, Walaiporn Mooksuwan, Thailand's Air: Poison Cocktail - Exposing Unsustainable Industries and the Case for Community Right To Know and Prevention (Bangkok: Campaign for Alternative Industry Network, Greenpeace Southeast Asia, Global Community Monitor, 2005), pages 23, 25.

12 Port of Map Ta Phut, World Port Source, at www.worldportsource.com/ports/THA_Port_of_Map_Ta_Phut_3455.php.

13 "Japanese Warn of Dire Outcome Again," *Bangkok Post*. 29 January 2010 www.bdo-thaitax.com/bdo/in-the-news/79.

14 Ibid.

15 "Japanese investors asked to stop pressing Thailand for Map Ta Phut solution," in www.mcot.net/cfcustom/cache_page/22626.html.

16 "Minister Satit Wongnongtaey Reassures Japan about Thailand's Efforts to Resolve the Map Ta Phut Problem," Government Public Relations Department, 18 January 2010, at http://thailand.prd.go.th/view_inside.php?id=4711. "Thai delegation to visit Japan on Map Ta Phut progress, National News Bureau of Thailand," Public Relations Department, 19 February 2010, at http://thainews.prd.go.th/en/news.php?id=255302190016. "Finance minister assures Japan of Thailand's ability to cope with rallies," *Thailand Business News*, March 2010, at http://thailand-business-news.com/business/11179-finance-minister-assures-japan-of-thailands-ability-to-cope-with-rallies

17 "Prime Minister meets Japanese Investors," 14 July 2010, at http://media.thaigov.go.th/pageconfig/viewcontent/viewcontent1e.asp?pageid=472&directory=1942&contents=46732.

18 Kenichi Ariga and Shinya Ejima, "Post-Evaluation for ODA Loan Project - Kingdom of Thailand, Overall Impact of Eastern Seaboard Development Program," *JBIC Review* No.2 November 2000 pp 81~115, available at www.jbic.go.jp/en/research/report/jbic-review/pdf/report02_4.pdf

19 Ibid.

20 Unofficial translation of the Constitution of the Kingdom Of Thailand, B.E. 2550 (2007), Foreign Law Bureau, Office Of The Council Of State, available at www.asianlii.org/th/legis/const/2007/1.html#C05P08.

21 "101 East: Toxic Thailand," *AlJazeera*. This report was made available by *AlJazeera*, at www.youtube.com/watch?v=OfHiaAThDPU&NR=1&feature=endscreen.

22 "Map Ta Phut scoured for pollutants," *Bangkok Post*, 5 May 2012, available at: www.bangkokpost.com/breakingnews/292101/map-ta-phut-scoured-for-pollutants.

23 "Blaze at chemical factory in Thailand kills 12," Herald Sun, 6 May 2012, available at: www.heraldsun.com.au/news/more-news/blaze-at-chemical-factory-in-thailand-kills-12/story-e6frf7lf-1226348063704.

24 "Chemical explosion, fire prompts committee appointment," *The Southeast Asian Times*, 9 May 2012, available at: www.southeastasiantimes.com/.

Human Rights Center for Thailand

Jefferson R. Plantilla

The Ministry of Justice of Thailand adopted a plan to establish a human rights center as part of the implementation of the second *National Human Rights Plan of Thailand (2009-2013)*. The planned human rights center would have the following objectives: (1) To create a database (electronic version) on human rights information covering all types of relevant information and statistics; (2) To create "knowledge management space" (a place that provides human rights information in print, digital and other forms to people, and also a place for learning human rights) for those who are interested in human rights; (3) To conduct human rights training for relevant stakeholders; (4) To compile lessons learned from related agencies; and (5) To exchange information, knowledge and experiences among those working on human rights around the world.

In order to understand how existing human rights centers operate, the Ministry of Justice of Thailand organized a two-day international seminar on the subject on 22-23 March 2012 in Bangkok.[1] Representatives of the following human rights centers attended the seminar: Africa - Legal & Human Rights Centre in Tanzania (LHRC), Gulf region - United Nations Human Rights Training and Documentation Center for South-West Asia and Arab Region (Doha Centre), Europe - Norwegian Centre for Human Rights (NCHR), Southeast Asia - Human Rights Resource Centre (HRRC), Thailand - Center for Human Rights and Social Development Studies (CHRSD), the Philippines - Philippine Human Rights Information Center (PhilRights), Japan - Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA), and Australia - Castan Centre for Human Rights Law (Castan Centre).

Human Rights Center Experiences

The human rights centers represented in the seminar have varied experiences due to the different mandates, objectives and target groups. They fall under the following types of human rights centers:

a. University-based centers - NCHR, Castan Centre, CHRSD, and HRRC;
b. Non-governmental centers - LHRC and PhilRights
c. Government-supported centers
    a. Local government, at least partially – HURIGHTS OSAKA
    b. Intergovernmental (United Nations) – Doha Centre.

These human rights centers cover different target groups and provide a variety of services:

a. Target groups
    1. marginalized sectors
    2. non-governmental workers and organizations
    3. national human rights institutions
    4. subregional human rights bodies
    5. academic community
    6. governments, and
    7. United Nations agencies, programs and funds.
b. Services
    1. legal assistance
    2. education (formal and non-formal)
    3. research and documentation
    4. information dissemination
    5. law reform
    6. consultancy service, and
    7. international cooperation.

Among the university-based centers, two (NCHR, Castan Centre) are linked to faculty of law/law school, while the rest have broader mandate. HRRC is a regional structure (network of universities in Southeast Asia) and thus functions mainly to address subregional concerns. The same is true of NCHR, which was established as both university-based institution and a national human rights institution. However, NCHR will cease to function as a national human rights institution in view of stricter rules of the United Nations Human Rights Council.

Among the non-governmental centers, one is a legal assistance/resource center that

covers human rights issues (LHRC) and another is a research and training arm of a network of human rights organizations (PhilRights).

While having a special consultative status as a non-governmental organization with the United Nations' Economic, Social and Cultural Council (ECOSOC), HURIGHTS OSAKA works closely with the local governments in Osaka in view of the support they have provided in its establishment.

The Doha Center, on the other hand, is unique for being a subregional center of the United Nations (Office of the High Commissioner for Human Rights) for the Arab region (covering part of Africa, whole of West Asia and part of South Asia).

It is notable that despite differences in mandates, structures, and target groups, these human rights centers are largely similar on two programs: human rights promotion (from education to policy development), and research. Many of them also operate at subregional, regional and international levels (NCHR, HRRC, CHRSD, and HURIGHTS OSAKA).

Seminar Discussions

During the seminar, the human rights center representatives raised a number of issues regarding the establishment of a human rights center in Thailand.

They stressed the need to define clearly the distinction between the planned government-supported human rights center and the existing National Human Rights Commission of Thailand (NHRCT), which would facilitate better cooperation between them. This issue has already been noted by the Ministry of Justice of Thailand in its 2011 report on the implementation of the national human rights action plans.[2] The report cites cooperation between government institutions and other institutions including NHRCT as one of the challenges being faced. The NHRCT has also stressed in its *Strategic Plan of the National Human Rights Commission of Thailand (2002-2007)* the need for cooperation with relevant government agencies that are involved in human rights work (as mandated by the *2000 National Human Rights Policy Master Plan of Action)*.

The human rights center representatives also cited the need for the planned human rights center to have the capacity to do research and disseminate human rights information in an objective manner. This can fall under the "neutral" character of a human rights center, which means being focused solely on pursuing the protection, promotion and realization of human rights as defined by international human rights instruments.

This also implies that the planned human rights center should be guaranteed access to relevant information in government records, and authorized to use them in its work.

An overly broad policy of treating government data as confidential would restrict the capacity of the planned human rights center to assess the situation in an objective manner.

Necessarily, the planned human rights center should be able to criticize the government based on data analysis and international human rights standards.

Other issues raised by the human rights center representatives relate to the following:

a. Capacity of the planned human rights center to gather existing resources (information, materials, expertise, etc.) and to mobilize them in its activities;
b. Role of the planned human rights center in increasing the capacity of the judiciary, law enforcement officials, members of parliament and their staff, and other actors in applying human rights standards in their respective areas of work;
c. Need for a continuing emphasis on the international human rights commitments of the government and the stress on universality and other principles of human rights.

The Director General, Mr. Pithaya Jinawat, of the Department of Rights and Liberties Protection, the main agency tasked with the preparation for the establishment of the planned human rights center, presented a summary of the presentations and discussions in the seminar.

He noted that such a human rights center should have human rights database, be a knowledge-based resource center, be useful for human rights policy development and

work, and protect the human rights of both Thais and non-Thais.

He noted the need to further consult stakeholders on the plan to establish a human rights center.

While there is still much to discuss regarding the nature, mandate, powers and functions of the planned human rights center, the plan itself constitutes a move in the right direction as far as human rights are concerned.

Jefferson R. Plantilla is the Chief Researcher of HURIGHTS OSAKA.

For further information, please contact HURIGHTS OSAKA.

Endnotes

1 International Seminar on Human Rights: "Human Rights Center: Possibility and Way Forward," held at the Rama Gardens Hotel, Bangkok.
2 Department of Rights and Liberties Protection, *Development of the National Human Rights Plans of Thailand* (Bangkok, Ministry of Justice, undated), page 26.
3 The 2002-2007 Strategic Plan of the NHRCT discusses the relationship between this plan and the *National Human Rights Plan (2001-2005)*, and the *National Economic and Social Development Plan (NESD Plan) (2002-2006)*. See *The Strategic Plan of the National Human Rights Commission of Thailand* (2002-2007), page 39.

Detention in Japan

(Continued from page 4)

Endnotes

1 The Universal Periodic Review process involves the consideration of information submitted by the UN Member-State involved, the OHCHR (for UN human rights treaty bodies), and "other relevant stakeholders". See Universal Periodic Review - Documentation, in www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx.
2 Compilation Prepared by the Office of the High Commissioner for Human Rights, In Accordance with Paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1 - Japan, A/HRC/WG.6/2/JPN/2, 8 April 2008, page 6.
3 CAT/C/JPN/CO/1, para. 10. Originally note 72 of the UN summary document.
4 CAT/C/JPN/CO/1, para. 18. Originally note 74 of the UN summary document.
5 Compilation, op. cit.
6 CAT/C/JPN/CO/1, para. 17. Originally note 73 of the UN summary document.
7 Compilation, op. cit., page 7.
8 CAT/C/JPN/CO/1, para. 15. Originally note 75 of the UN summary document.
9 CCPR/C/79/Add.102, para. 23. Originally note 76 of the document.
10 Report of the Working Group on the Universal Periodic Review - Japan, A/HRC/8/44, 30 May 2008, page 4.
11 CCPR/C/JPN/CO/5.
12 Para 7, "Substitute detention system and article 14 of the Covenant," CCPR/C/JPN/CO/5/Add.1, 13 April 2010.
13 Compilation, op. cit., page 8.
14 CAT/C/JPN/CO/1, para. 21. Originally note 90 of the UN summary document.
15 CAT/C/JPN/CO/1, para. 25. Originally note 91 of the UN summary document.
16 CAT/C/JPN/CO/1, para. 23. Originally note 92 of the UN summary document.
17 Summary Prepared By The Office of the High Commissioner for Human Rights, In Accordance With Paragraph 15(C) of the Annex To Human Rights Council Resolution 5/1, A/HRC/WG.6/2/JPN/3, 3 April 2008.
18 Ibid., page 4.
19 The National Police Agency of Japan published in March 2009 a report on its verification of videotaped investigations done during the September 2008 - February 2009 period. But the report is being criticized for justifying partial videotaping of investigation "without giving any consideration to the harmful influences of interrogations taking place behind closed doors." See Opinion on "Verification on Experimental Audio/Video Recording of Interrogations at Police", available at www.nichibenren.or.jp/en/document/opinionpapers/20090717.html.
20 Summary, op.cit., page 4.
21 Japan Federation of Bar Associations, *Opinion Paper regarding the Japanese Government's Comments on the Concluding Observations of the Human Rights Committee*, January 22, 2010, page 6. Available at www.ccprcentre.org/doc/HRC/Japan/JFBA_Japan94.pdf.
22 Summary, op.cit., pages 4-5.
23 Ibid.
24 JFBA, op. cit., page 18.
25 Report of Working Group, op. cit., page 18.

HURIGHTS OSAKA Calendar

HURIGHTS OSAKA will be holding the second meeting of educators from China, Hong Kong, Japan, south Korea, and Taiwan to finalize the content of the training resource material on human rights education in the school systems in Northeast Asia. The meeting will be held on 1-2 September 2012 at HURIGHTS OSAKA office.

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

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