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Editorial

Inclusive Society

When foreign migrant workers are treated as disposable components of the industry, there is a clear case of discrimination against them. They therefore do not enjoy the rights that workers should enjoy. Their cases are dealt with as simply immigration concerns, ignoring their just claims as workers. This situation forces them to either silently suffer the exploitation or be subjected to unjust deportation.

On the other hand, paternalistic treatment of foreign residents does not mean they are not discriminated. In the process of giving them support, their voices are not heard, their contributions (existing and potential) to the society are downplayed, and when crisis occurs, their access to needed government services might be curtailed.

Human rights principles are needed in formulating government policies and programs that support equal treatment and non-discrimination of the different sections of society. Unfortunately, these principles are neither known nor appreciated properly in many cases.

Employing the human rights principles in relation to foreign residents should lead to an inclusive society. A society that does not exploit the contributions of the foreign residents, and instead value their presence.

Cheap, Vulnerable and Easily Exploitable: Migrant Workers In Malaysia

Charles Hector

Malaysia, a multi-ethnic, multi-religious country of about twenty-nine million,¹ has about two million documented migrant workers, and at least two million undocumented migrant workers.² The Malaysian labor force is forecasted for 2013 at 13.3 million, with unemployment rate at 3.1 percent.³

Malaysia officially started to allow migrant workers into the country in the 1990s allegedly to overcome the labor shortage faced by Malaysian employers, particularly in the plantation and construction sectors. In 2000, this was expanded to the manufacturing and service sectors. Migrant workers, especially from neighboring Indonesia, Philippines and Thailand, have always been in Malaysia long before the official policy was adopted.

In 2010, it was reported that there was about 1.8 million foreign workers spread across sectors such as manufacturing (688,886), construction (288,722), plantation (256,382), domestic workers (224,544), services (180,890), with the rest being in agriculture.⁴ Majority of these workers come from the following countries ranked according to number of workers: Indonesia (917,932), Bangladesh (307,366), Nepal (175,810), Myanmar (140,260), India (113,797), and Vietnam (74,842).⁵

Services sector consists of eleven sub-sectors: restaurants, cleaning services, cargo handling, launderette, golf clubs (caddy), barbershops, wholesale/retail businesses, textile shops, metal/scrap/recycling, welfare homes, and hotels/resorts.

Nationals from Indonesia, Cambodia, Nepal, Burma [Myanmar], Laos, Vietnam, Philippines (male only), Pakistan, Sri Lanka, Thailand, Turkmenistan, Uzbekistan, and Kazakhstan are generally allowed to work in all permitted sectors. Workers from India are permitted only to work in the services sector (as cooks, wholesale/retail workers, barbers, metal/scrap/recycling workers, textile sellers), in the construction sector (fixing of high voltage cable only), and agriculture and plantation sectors. There seem to be no justification for the discrimination against workers from India, and women from the Philippines.⁶

Employers of migrant workers are required to pay an annual levy for each worker whereby the rates depend on the sector employed in – manufacturing (RM 1,250 [409 US dollars]), construction (RM 1,250 [409 US dollars]), plantation (RM 590 [193 US dollars]), agriculture (RM 410 [134 US dollars]), domestic help (RM 410 [134 US dollars]), services - welfare homes (RM 600 [197 US dollars]), services - island resorts

(RM 1,200 [393 US dollars]), services - others (RM1,850 [606 US dollars]).⁷

Article 8 of the Federal Constitution of Malaysia provides that "All persons are equal before the law and is entitled to equal protection of the law." By using the term "person," as opposed to "citizen," the constitutional provision makes it most clear that this guarantee of rights extends to all persons, including migrant workers.

Malaysia has no quota system to restrict the number of migrant workers employed, and many employers prefer to employ the more vulnerable and exploitable migrant workers. Migrant workers are vulnerable to exploitation due to several reasons:

First, migrant workers are bound to a single employer, which means they cannot opt to change employers. Thus, even in cases of exploitation and rights violation, they have no choice but to work for the said employer or return back to their country of origin. Considering the debt already incurred when they came to Malaysia, they virtually have no other choice but to remain working despite bad conditions.

Second, employers also can very easily compel migrant workers to work long hours, sometimes even twelve hours for seven days a week. The 1998

amendment to the Employment Act authorizes the Director General of Human Resources to allow employers to require their workers to work for more than eight hours per day or more than forty-eight hours a week even on rest days and public holidays. The hard-fought right to eight-hour work per day does not exist anymore in Malaysia. The right of workers to refuse overtime work has also disappeared.

Third, violating migrant workers' rights and getting away with it is easy. Access to justice, even though available in law, is practically not a right enjoyed by migrant workers. It matters not that there is a pending labor claim, or even a criminal case against employers, Malaysian Immigration Department continues to terminate and/or end the right of migrant workers to stay and/or work legally in Malaysia at the behest of employers, without giving the migrant workers the right to be heard. Premature deportation of migrant workers back to the countries of origin, despite their protest and the intervention of the Malaysian National Human Rights Commission, happens.

Fourth, using migrant workers maybe now cheaper since Malaysia has removed the burden of levy from the employers and the requirement for them to pay minimum wages to migrant workers.

Lastly, migrant workers in Malaysia are not only important as workers – but have become a source of income not just to the government and the contractors for labor but also to many financial institutions that provide banking and remittances services, insurance companies, and medical institutions that provide the

annual medical check-up for migrant workers. As cheap vulnerable labor, they help Malaysia stay competitive in attracting foreign investors and multinational companies (MNCs) to open up factories and businesses in Malaysia.

Asserting Rights

When a migrant worker claims rights, many employers resort to terminating the employment contract that leads to the cancellation of the work permit/visa/pass, and thus also ends their right to remain and/or work legally in Malaysia. The visa/pass is cancelled in disregard of the complaint filed or the pending proceeding at these avenues of justice. With the complainants forced to leave Malaysia, the search for justice effectively ends.⁸

This reality makes documented migrant workers vulnerable and easily exploitable, and many employers take advantage of this fact. As a result, employers can get away free from any responsibility including payment of wages and other monies due and payable to the migrant workers.

Undocumented Much More Vulnerable

The estimated two to five million undocumented migrant workers in Malaysia are certainly in much worse situation. Labor and contractual rights should rightfully not be linked with immigration status but alas in Malaysia, it seems to be. When undocumented migrant workers claim their unpaid wages, their employment is considered illegal and employers who have reaped the benefits of their labor escape liability.

Further, being undocumented places migrant workers at risk of being arrested, detained, charged and convicted in court, sentenced to prison and whipping, and also deportation. Undocumented migrant workers are thus even more vulnerable and subjected to greater injustice.

Minimum Wages for All Workers

Government mandated minimum wage did not exist in Malaysia till mid-2012. A 2009 government survey of about 1.3 million workers revealed that about 34 percent of Malaysian workers earned RM 700 (225 US dollars) or less, lower than Malaysia's poverty line income of RM 800 (260 US dollars).⁹ This seemed to have led the Malaysian government move to fix a minimum wage that all workers should be entitled to.

Almost four years passed before the Minimum Wage Order 2012 was gazetted in July 2012. Under this Order, workers in Peninsular Malaysia can enjoy a minimum wage of RM 900 (290 US dollars), while workers in Sabah and Sarawak would have RM 800 minimum wage. Employers with more than five workers employed have to give minimum wages beginning January 2013, while other employers would give minimum wages by July 2013.

On 28 December 2012, the Minimum Wage (Amendment) Order 2012 was issued exempting over six hundred employers from paying minimum wages until April, July or October 2013. These employers are required to comply with the obligations to pay workers minimum wages only after these new dates.

In January 2013, many workers who began receiving minimum wages found that their monthly remuneration was adjusted without their approval. Allowances and other benefits that they previously enjoyed were removed or reduced, resulting in many workers receiving even less than what they had been earning. Some found that their normal working hours per week were increased, hence affecting their overtime income. Some workers, especially those that did not have a union, were also 'forced' to sign documents agreeing to the re-structuring of their monthly remuneration, the alternative being termination.¹⁰

The minimum wage law is supposed to make basic wages equal at least to RM 900, without affecting overtime and other allowances/benefits they were entitled to. Many workers protested the restructuring of monthly remuneration, but did not get much attention from the government.¹¹

It is a grave injustice for employers to subject with impunity the migrant workers already working in Malaysia, based on promised several years of employment, to sudden change in the terms and conditions of their employment. Despite protests, the government has not taken action to remedy the situation. It may be more just if the new terms and conditions of employment were applied only to incoming first-time migrant workers, who would have to be properly informed of the new liabilities and/or changes in the rights of workers.

Exceptions to the Minimum Wage Rule

The Malaysian government repeatedly gave the assurance

that the right to minimum wage would be enjoyed by all workers, including migrant workers. But of late, things changed to the detriment of migrant workers.

The National Wage Consultative Council of Malaysia issued on 19 March 2013 a press statement¹² regarding a government decision on the Implementation of Minimum Wages. The decision states that "local employees (citizens) shall be paid minimum wages as per the [2012] Order." But for migrant workers, the following apply:

- a. Deferment of payment of minimum wages by small and medium enterprises (SMEs) for migrant workers. The SMEs are "given blanket deferment of the implementation of the minimum wages for their foreign workers until 31 December 2013." Even those enterprises that do not fall under the SME category can apply for deferment of payment of minimum wages of migrant workers if they face "difficulties" in doing so.
- b. Burden of paying levy – employers are given "a blanket approval for deductions of levy and cost of accommodation" from the migrant workers. The general limit of the amount of levy that can be taken from the migrant workers is RM 50 (16 US dollars) per month. But this amount can still be raised upon application with the Labor Department due to cost of accommodation.

Within the SME category, the medium enterprises are businesses having a sales turnover between RM 10 million (a little over 3 million US dollars) and RM 25 million

(8 million US dollars) or with more than fifty to one hundred fifty full-time employees. These businesses are big enough to afford paying all workers their minimum wages including migrant workers.

Migrant workers¹³ have been protesting the non-receipt of minimum wages according to law, and now indications are that Malaysia may indeed go against its previously declared position that all workers in Malaysia, including migrant workers, will be entitled to minimum wages.

The Malaysian Cabinet had already decided on 30 January 2013 that a levy that was previously paid by employers would be recovered from migrant workers. Labor Director-General Datuk Ismail Abdul Rahim was reported to have said in 2009 that "[T]he rationale behind getting employers to bear the levy was to discourage them from employing foreigners..."¹⁴ The recent Cabinet decision does not support this rationale anymore, instead helps the employers of migrant workers.

The Malaysian Trade Union Congress and many groups¹⁵ protested the new decision, which affects the policy of equally entitling all workers (local and migrant) to minimum wage. The migrant workers, with additional levy deduction, would receive less than minimum wage.

Khalid Atan, the President of the Malaysian Trade Union Congress (MTUC) said, "...if workers were asked to pay the levy, the minimum wages policy would not benefit them at all, as whatever little increase in salary they enjoyed, would be wiped out with the levy payment."¹⁶

With the recent government decision not having been gazetted, would it have legal effect?

Loss of Right to Join Trade Unions

Despite the immigration condition that migrant workers do not enjoy freedom of association, Malaysian trade unions maintain that they have the right to join trade unions. As a result, many migrant workers are members of trade unions, and enjoy the benefits of collective bargaining agreements whenever they exist.

But the situation changes when the owners/operators of factories, plantations and workplaces resort to using migrant workers supplied by third parties. Since they are technically not the employers, trade unions cannot deal directly with them. As a consequence, migrant workers cannot enjoy the benefits that collective bargaining agreements provide.

This “outsourcing scheme” in bringing in migrant workers is allowed under the 2012 amendment of the 1955 Employment Act that recognized a new entity now called the ‘contractor for labor’.

Essentially, the contractor for labor is a human resource supplier for factories and industries that need workers. These workers do not become employees of the owners/operators of the workplaces despite the fact that these owners/operators control and supervise the workplaces.

As a result, employers (local or foreign) can now avoid employment relationships and hence escape all obligations of an employer. The practice

started with migrant workers, but it has now been extended to local workers.

Workers under this scheme are at a disadvantaged position because

- a. they get lower pay from the contractors of labor, who are paid based on hours worked
- b. they cannot put pressure on the owners of the workplace when their rights are violated. When they get abused at the workplace, they cannot go on strike and force the shutdown of workplace operations.

Becoming a licensed contractor for labor is akin to striking gold. With hundreds of workers under its management, it can earn so much each day.

Many contractors for labor do not have much real assets that provide them an excuse from paying liabilities to workers who succeeded in their claims for payment. The contractors for labor can easily seek a declaration of bankruptcy or wind-up the company. Once closed, they can open another company the next day.

Given the restrictions as to union formation as mentioned earlier, compounded by the fact that in Malaysia trade unions are sector/industry based, it is difficult for employees of contractors for labor to even join national or regional trade unions since most contractors for labor supply workers to so many different sectors/industries.

Trade unions and civil society have protested this move,¹⁷ calling for the abolition of the “contractor for labor” system, and for the absorption of all workers supplied by these third parties as employees of the

owner/operator of workplaces and businesses.

Will the UN “Protect, Respect and Remedy” Framework Improve the Plight of Migrant Workers?

Malaysia has not ratified or signed the United Nations (UN) Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and most other UN and International Labour Organization (ILO) conventions. Even for Conventions that it has signed or ratified, criticism and recommendations by the international community fall on deaf ears – more so since many of these international obligations concerning human rights and workers rights do not have effective teeth to ensure compliance, unlike trade agreements.

Migrant workers, and workers in general, will continue to suffer injustice and rights violations unless people and governments of the world change their priorities from promoting solely the interest of businesses, and refocus the attention to justice and human rights, including the rights of migrant workers. In June 2011, the United Nations Human Rights Council adopted the report of the UN Special Rapporteur on Business and Human Rights (John Ruggie) entitled “Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.” But one wonders to what extent will it impact on protecting the rights of workers, especially migrant workers, in Malaysia.

For the rights of workers, especially those of migrant workers, to be protected, there must be serious efforts undertaken not just by

governments and businesses, but also the general public who must realize that they have the power to make a change as consumers, owners of businesses, and electors of governments. Workers and unions must also transcend personal self-serving agendas confined to workplaces, their unions and national/regional boundaries and struggle to promote human rights and workers rights for all.

Charles Hector is a human rights defender and lawyer. In February 2011, he was sued for RM 10 million (3.2 million US dollars) by a Japanese company for highlighting the plight of migrant workers, which the company claimed were not their employees but workers supplied by a third party. The case was amicably settled, and has been documented in a book entitled "Electrifying matters...for human rights defenders and migrant workers in the electronic industry" jointly published by ALIRAN and GoodElectronics.

For further information, please visit the author's blog: <http://charleshector.blogspot.jp/>.

Endnotes

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Support for Non-Japanese Residents in Japan

Jefferson R. Plantilla¹

The tragedy that struck the northeast region (Tohoku) of Japan in March 2011 led to the establishment of a hotline service that initially extended help to the Japanese who were displaced by the earthquake-tsunami-nuclear-meltdown tragedy. It soon covered the non-Japanese residents as well. And with financial support from the national government, the service extended nationwide and covered many other issues.

In light of the nationwide coverage of the service and the inclusion of service for non-Japanese residents, a meeting was organized to consult both institutions that provide service to non-Japanese residents and the communities of non-Japanese residents. The non-Japanese and Japanese participants discussed the situation and challenges in extending service to the needs of the non-Japanese residents, and the need for a nationwide network of migrant communities in Japan.

Hotline Service²

After the “Great East Japan Earthquake,” a 24-hour, 365-day telephone consultation service was established to serve people affected by the tragedy. The service was known as “Yoriso Hotline,” the word “yoriso” means being close together. Yoriso Hotline evolved into the “One-Stop Consultation Support

Project for Social Inclusion” with the establishment of the Social Inclusion Support Center (SISC) in October 2011 under the initiative of several Mayors and former Mayors in Tohoku. SISC initially provided consultation service under Yoriso Hotline using a single telephone line serving three prefectures of Tohoku. With financial support from the national government, Yoriso Hotline became a nationwide hotline in March 2012 and acquired more telephone lines for its expanded service. It also extended the service to many other people who suffer from social exclusion.

SISC, established with the support from the civil society organizations in different parts of Japan, aims to contribute to the realization of a society where anyone can experience 'belonging' and 'having a role'. It provides multidimensional support services to people in Tohoku who have difficulty getting help, and to people anywhere in the country who suffer social exclusion (they are likely the poor people, the elderly, foreign migrants, sexual minorities, domestic violence (DV) and sexual assault survivors, people with disabilities, homeless people, people with multiple debts, single parent families, etc.).

The services consist of the telephone consultation and

direct personal support in emergency cases.

The telephone service covers:

- 1) Consultation regarding problems relating to general life situations (coordinated with local consultation centers)
- 2) Consultation regarding problems of non-Japanese residents (in cooperation with the migrant support organizations network and provided in different languages. Non-Japanese residents who speak Japanese can also use the other consultation services in Japanese language.)
- 3) Consultation regarding sexual assault and DV (coordinated with the women’s support organizations network)
- 4) Consultation regarding sexual minorities (coordinated with the sexual minority support organizations network)
- 5) Consultation on suicide prevention (coordinated with the suicide prevention organizations network).

The Yoriso website (<http://279338.jp/yoriso/>) also offers information on the following services:

- 1) Introduction of available public social or legal services

- 2) Referral of cases to civil society organizations that provide relevant services
- 3) Direct personal support in emergency cases (for instance, coordination with food banks for people in desperate financial situation).

The telephone number 0120-279-338 allows callers to push the number for the kind of service they need. Number 2 refers to multilingual service. Once the number for desired service is pushed, the call is connected to the appropriate center.

While not less than 30,000 calls (around hundred calls per day) are received every month, the people supporting SISC think that Yorisoi Hotline is still not yet well-known enough.

Beyond Yorisoi Hotline and the Non-Japanese Residents³

SISC operates with the support of networks of organizations providing services to specific groups of people. Its telephone consultation service for non-Japanese residents seems to be the first service of its kind that gets support from the national government. Similar services operating in local areas get support only from local governments.

Considering the serious situation of non-Japanese residents in the disaster areas, while aiming to further improve its services at the same time, SISC's work on the three prefectures (Fukushima, Iwate and Miyagi) focused on

- a. Clarifying the situations and needs of non-Japanese residents
- b. Preparing a list of resources necessary to support them, and
- c. Developing support manuals for them.

However, SISC and the Asian Center for Welfare in Society (Japan College of Social Work) see the need to go beyond telephone hotline in order to support the non-Japanese residents on a nationwide basis. And since the financial support from the national government for Yorisoi Hotline has many limitations and restrictions (including its nature as relief budget), the need for other forms of support has become apparent.

The good work done by networks of support organizations on issues with insufficient legal support (such as the DV victims and sexual minorities issues) shows the necessity for a network of organizations supporting non-Japanese residents. In addition, the experiences of these networks of support organizations reveal the fact that the people being supported are actually the specialists on their own issues.

SISC, in cooperation with the Asian Center for Welfare in Society, organized the Fukushima Roundtable for Migrant Support on 28-29 December 2012 in Fukushima city to seek support for Yorisoi Hotline and also to discuss the creation of a network of organizations for non-Japanese residents.

Roundtable Meeting

Approximately two hundred representatives of Brazilian, Chinese, Filipino, Islamic, Korean, Spanish-speaking, and Thai communities from various parts of Japan along with Japanese participants attended the roundtable meeting on migrant support. Tomoko Endo, Secretary-General of SISC, updated them on the experience of Yorisoi Hotline.

The Yorisoi Hotline experience⁴ during the July-September 2012 period reveals the problems faced by callers (majority of whom belonged to the 30s to 50s age brackets) such as livelihood difficulties (inadequate food and other needs, ceasing of welfare support, housing problems, debt, financial difficulty), mental problems (due to isolation), disaster-related problems (for people who live in evacuation centers or near the nuclear power plant), suicidal tendency, human relations (family relations), lack of job, health problems (anxiety about health and health-service related problems), and violence against women.

During the same period, many calls came from the three prefectures in the Tohoku that were hit by the disaster. They consisted of the following: 79 percent for general guidance, 11 percent for suicide guidance, 6 percent for DV and sexual assault guidance, and 4 percent for sexual minority guidance. No caller selected the multilingual guidance service during this period. This does not mean lack of non-Japanese callers, however, because of the

possibility of non-Japanese callers choosing Japanese-language services.

As of December 2012, Yoriso Hotline had more than one thousand two hundred consultants in thirty seven local centers, more than forty coordinators located mainly in the two national call centers, more the forty referral organizations, specialists available on 24-hour basis (and more than three hundred stand-by specialists), thirty telephone lines available during the day and ten lines at night, and special lines for people with suicidal tendency and those belonging to social minorities (women, migrants and sexual minorities).

Discussion among Non-Japanese Participants

The non-Japanese participants discussed in their own languages and affiliations (Islamic, issue-based) the situation in their respective communities.

The reports of the representatives of the different non-Japanese communities focus on a number of key issues, including:⁵

- a. Information – most communities raised the problem of having little information available for them regarding services that they could avail of. The problem of lack of information takes the form of language (some information are available only in English, and not in many other languages), content (the translated information are not



providing the complete information available), and access (even when information is available, the non-Japanese would not know where to get them).

- b. Education – the education of children of international marriages poses a difficult challenge to the non-Japanese parents who could not keep up with the fast learning of the Japanese language by their children. Education in Japanese language is also a challenge for adult non-Japanese who have lesser capacity to quickly learn a new language and to understand new ideas and gain new skills using the Japanese language. This affects their opportunity to get appropriate jobs.

Proposals on Support for Non-Japanese Residents

Professor Yukio Yamaguchi of Japan College of Social Work gave a presentation on principles that should guide programs for non-Japanese residents in Japan.

Some of the proposed ideas are the following:

- a. “Nothing About Us Without Us” – this concept has long been asserted since late 1990s as the basic principle of the movement of persons with disabilities to counter paternalistic attitudes about them. It has consequently become the principle fought for by other movements of disadvantaged people. In relation to the non-Japanese residents, this should translate into immigrant-centered support where needs are decided by the non-Japanese residents, and where there is partnership between them and the Japanese.

On the part of the non-Japanese residents, this means that they know their strengths, needs, and capabilities. They know their own resources as organizations, and they can express what they want to the Japanese public and to the government.

- b. Multicultural symbiotic societies – while this has already been proposed, the question remains on whether or not this actually meant that the

majority has decided on what was good for everyone – what they need, what they should do.

c. Welfare service - this should mean support that enables people to live their daily life, enables them to exercise their human rights and uphold their dignity. While welfare services for people with disabilities, the elderly, children, mothers and children are already existing, welfare service for the non-Japanese residents has not been established so far. Welfare services should be fair, able to uphold human rights, protect both the vulnerable individuals and the groups, and delivered with no stigma and discrimination.

Professor Yamaguchi has questions regarding disaster situations:⁶ Why should we put higher priority on giving support to minorities during the time of disasters? Are we sure help will come when disaster strikes?

In the case of the Great East Japan Earthquake, he notes that public assistance arrived in many places on the third or fourth day after the earthquake. Prior to this help, local communities had already started

their “mutual help” measures, though the most significant help was “self-help” by the disaster victims themselves. He thinks that in a situation where people have to rely on self-help, non-Japanese residents face higher risk of isolation.

He explains that many people in Japan think that all disaster victims should receive equal welfare services. He, however, cites the IASC [Inter-Agency Standing Committee] Operational Guidelines on the Protection of Persons in Situations of Natural Disasters⁷ that give higher priority to helping people considered to be at high risk. Using the IASC Guidelines, the people at high risk should include children, the elderly, women, people with disabilities, people suffering with human immunodeficiency virus (HIV) or tuberculosis who are particularly vulnerable to infectious diseases and the cold, ethnic minorities, and immigrants. The IASC Guidelines provide that support for those people should be provided in a manner that would not make them feel any stigma (i.e., feeling of disapproval or discontent by other people or the society).

Final Note

The non-Japanese communities in Japan have varying degrees of involvement in serving the needs of their members. In many cases, they work directly with government agencies and Japanese non-governmental organizations. There is much room for improvement however. A significant area for improvement is the application of the “nothing about us without us” principle in their government and non-governmental programs for the non-Japanese residents particularly in terms of the mindset of people implementing them. Paternalistic attitude is certainly not supportive of the idea of making non-Japanese residents partners in making a society that respects human rights.

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For further information, please contact HURIGHTS OSAKA.

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Northeast Asia Training on Human Rights-based Approach to Access to Justice

HURIGHTS OSAKA

The Northeast Asian member-institutions¹ of the Asian Consortium for Human Rights-based Access to Justice (HRBA2J-Asia) held on 8-9 November 2012 in Ulaanbaatar their first training workshop for representatives of institutions in Northeast Asia involved in the access to justice field.

The training workshop was meant to promote the human rights-based approach to access to justice in the context of each of the countries in the subregion. It was also the initial training activity of the Northeast Asian member-institutions that involved institutions deemed to have the appropriate program for promoting and applying the human rights-based approach to access to justice (HRBA2J).

Training Needs Assessment

Prior to the training, the organizers surveyed the training needs of the eight confirmed participants from China, Japan, Korea and Mongolia. Though the survey was not able to cover many non-Mongolian invitees, the responses nevertheless provided important input in finalizing the training program.

The analysis of the survey results revealed the following:

- a. Profile of participants - most respondents were



- engaged in legal service, education and research work; and all of them were working full-time in their respective organizations
- b. Knowledge of human rights – almost all (seven respondents) had human rights training (of various types); most learned HRBA2J in such training or learned about it through research, publication and other activities
- c. Application of HRBA2J – most respondents had the chance to apply HRBA2J in various ways (litigation, education, policy advocacy, project implementation, research, law reform advocacy, United Nations [UN] advocacy, assistance to refugees and internally displaced persons [IDPs])
- d. Training needs – despite the above background of

the respondents, they listed the following topics as training needs:

- HRBA2J concept
- Access to justice strategies and methods
- Best practice/application of HRBA2J
- Evaluation of impact of HRBA2J
- Regional network on HRBA2J
- e. Training offerings – the respondents provided what they can offer to the workshop
 - Law practice on cases of vulnerable groups
 - Good experiences on HRBA2J
 - Women's rights
 - International human rights law advocacy
 - Participatory training method
 - Experiences in their own organization

- Management of HRBA2J organization
 - Experience as UN staff (United Nations High Commissioner for Refugees [UNHCR] and the United Nations Transitional Authority in Cambodia [UNTAC])
- f. HRBA2J network – most respondents did not distinguish the national network of HRBA2J from the subregional one when asked who would likely be appropriate members of HRBA2J. They listed the following individuals and institutions as possible members for Northeast Asia HRBA2J network (either national or subregional):
- Social workers; people in the field of law, psychology, sociology; non-governmental organizations (NGOs) working on access to justice; public interest lawyers; law firms/Bar associations and their networks; law enforcement organizations; judicial institutions; policymakers, Ministries of Justice; clinical legal education organizations; human rights networks; legal groups working on disadvantaged sectors; national human rights institutions (NHRIs); human rights-related government offices; academic institutions
- g. Knowledge of HRBA2J groups – most respondents (six) know of institutions involved in the application of HRBA2J. They listed the following: PIDLI,

environmental organizations, a NHRI, Asian Human Rights Commission, Asia-Pacific Refugee Rights Network, Global Network of Public Interest Law Institutions, and the Structural Alternative Legal Assistance for the Grassroots.

The draft training objectives and program were adjusted in view of the results of the training needs analysis. The session on human rights principles was deleted. In a sense, this converted the focus of the training workshop to human rights practice, instead of understanding human rights principles. The main interest was more on learning from actual experiences in applying HRBA2J.

Training Objectives, Program and Participants

The objectives of the Northeast Asia Training Workshop were as follows:

- a. To train representatives of invited institutions in the subregion on human rights-based approach to access to justice (HRBA2J)
- b. To undertake national-level promotion of HRBA2J using existing opportunities in Mongolia.

The workshop relied much on the contribution of the participants in various sessions, namely,

- Session I - Defining Contexts and Challenges - Brainstorming session

- Session II – Integrating Human Rights into Access to Justice – Group work and presentation
- Session III - How can the human rights standards be applied as an approach to access to justice work? - Group work and presentation
- Session IV – Practicum – presentation of different country experiences on public interest litigation, and dialogue between Mongolian participants and the participants from other countries.

The Northeast Asia training workshop involved representatives of member-institutions as well as invited institutions in the four countries. Majority of the participants were from Mongolia. There could have been more participants from other Northeast Asian countries if not for budgetary limitations.

Many of the participants were lawyers working in various capacities: staffmembers of legal assistance organizations or of public interest law organizations, and professors. There were also staffmembers of human rights centers, NHRI, NGOs, judicial body, and a government agency.

The Mongolian participants were actively involved in the workshop activities. They represented governmental and non-governmental institutions, including the National Human Rights Commission of Mongolia, the Supreme Court, and the Ministry of Justice.

Training Presentations and Discussions

The different group presentations revealed a variety of ideas on how human rights and HRBA2J were being applied. They also revealed a number of issues in Northeast Asia including those affecting migrant workers (domestic and foreign), environmental problems, judicial system, problems of marginalized groups, etc.

The session on public interest litigation was rich in terms of presentation of experiences from China, Japan and South Korea. A major issue was on *locus standi* of groups or organizations (such as NGOs offering legal assistance to grassroots communities) in pursuing court cases affecting communities. In Mongolia, the rule on *locus standi* does not allow NGOs to represent cases in court involving local communities without the communities themselves being the litigants. Problems occur when the communities decide to withdraw their complaints, leaving the issues involved unresolved.

While the main language in the training workshop was English, the local host, Center for Human Rights and Development (CHRD), was very effective in facilitating the translation of presentations before the training sessions, and the discussions during the sessions. The translation work allowed the Mongolian participants to participate fully in the training.

The training presentations and discussions helped participants

understand the common challenges in advancing justice and human rights issues across the Northeast Asian subregion, as well as on the application of the human rights based approach to access to justice in the context of the subregion.

The training workshop also emphasized the importance of institutions undertaking self-evaluation of their own activities and programs and critically thinking of ways to improve their work from the perspective of the human rights-based approach.

Further Training

The training needs analysis as well as the discussions during the training workshop provide areas for HRBA2J-Asia work in Northeast Asia:

- More specific training on litigation tactics and good practices on legal service
- Human rights-based approach to development (particularly on business and human rights)
- Focused training for specific groups (NGO and government officers, lawyers, paralegals, etc.).

The promotion of HRBA2J requires continuing engagement with institutions involved in access to justice work or relate to delivery of justice in general. HRBA2J presents an opportunity for discussing human rights from a practical perspective. It can help mainstream the use of international human rights standards in government and judicial systems.

The lessons from the Northeast Asia training workshop point to the need to assess existing access to justice programs and activities, and to develop ways of improving them by applying HRBA2J.

To be able to achieve the employment of HRBA2J in the justice systems, training is necessary.

For more information, please contact HURIGHTS OSAKA.

Endnote

- 1 Current member-institutions of HRBA2J-Asia in Northeast Asia:
 - Public Interest and Development Law Institute (PIDLI) - China
 - Korean Public Interest Lawyers Group (GONGGAM) - Korea
 - MINBYUN - Lawyers for a Democratic Society - Korea
 - Asia Pacific Human Rights Information Center (HURIGHTS OSAKA) - Japan
 - NPO Human Security Forum - Japan
 - Center for Human Rights and Development (CHRD) - Mongolia.

Human Rights Events in the Asia-Pacific

The 11th Annual Global Linking & Learning Programme: Human Rights in Development was held on 1-10 December 2012 in Malaysia. The training program aimed to enable the participants to understand and apply the key elements of human rights-based development. More specifically, it was meant to enable participants among others to:

- a. Link specific development issues to international human rights standards;
- b. Understand the nature of human rights obligations of state and non-state actors and be able to apply the knowledge gained to enhance human rights advocacy;
- c. Understand the importance of "accountability", transparency and the right to information in human rights and be able to use accountability and redress mechanisms at different levels;
- d. Understand the fundamental principle of "non-discrimination" and how human rights can help tackle deep-rooted structures of discrimination that perpetuate humiliation and poverty;
- e. Understand and appreciate "participation" as a human right and that realization of human rights requires participation. Additionally, participants will be able to develop new ideas and skills to encourage meaningful participation of struggling communities in development work;

- f. Comprehend how human rights empower people and steps that can be taken to encourage grassroots "empowerment";
- g. Understand the difference between human rights and non-human rights strategies; and
- h. Improve on/transform existing development strategies into human rights strategies.

People involved with grassroots, national and international development non-governmental organizations attended the workshop.

For further information, please contact: Dignity International. A-2-7 Pusat Perdagangan Seksyen 8, Jalan Sg Jernih 8/1, Petaling Jaya, Selangor, 46050 Malaysia; ph 603 7931 0741, 7931 0741; e-mail: 11thGlobalHRD@dignityinternational.org; www.dignityinternational.org.

The Short Course on Refugees and Statelessness was held in December 2012 in Bangkok and Maesot. The Short Course on Refugees and Statelessness aimed to strengthen participants' capacity, expertise, and knowledge on refugee and statelessness issues in the region. The course was an interdisciplinary overview on refugees and statelessness, including political, legal, social, and economic aspects. It examined responses by civil society, government, and intergovernmental

organizations, and developed an understanding on how to better promote and protect the rights of stateless people and refugees. The course was intended for individuals already working on refugee issues, whether through academic research or non-governmental organization (NGO) activity. The participants were NGO workers, policymakers, lawyers, paralegals, caseworkers, researchers, post-graduate students and refugees themselves.

The course was supported by leading experts working on refugee issues in the region, including academics, activists, pro-bono lawyers, United Nations High Commissioner for Refugees (UNHCR) representatives, and NGO workers.

The course was a joint initiative between the Asia Pacific Refugee Rights Network (APRRN), Thai Committee for Refugees Foundation (TCR), the Institute of Human Rights and Peace Studies (IHRPS) at Mahidol University, and the UNHCR.

For further information, please contact: Asia Pacific Refugee Rights Network, 7th floor, 81 Ploy Mitr building, Sukhumvit soi 2 Bangkok; ph/fax (66 2) 252 66 54; e-mail: anoop@aprrn.info; www.aprrn.org.

The Ewha Global Empowerment Program (ERGEP) 2012 Winter was held on 9-22 January 2013 in Seoul. It aimed to empower

women working in non-governmental public sectors and to nourish the next generation of women leaders in Asia and Africa. EGEP 2012 Winter is designed for women activists in non-governmental public sectors in Asia, with the theme: "Transnational Feminisms and Women's Activism." It has the following goals:

- To improve their theoretical knowledge and practical capacities from a gender perspective;
- To broaden their understanding of women's lives, women's issues, and women's rights in Asian context; and
- To strengthen their leadership capacities to build women's solidarity and cooperation in local, national, and transnational contexts.

With the minimum three years of experience, women activists working in international and national non-governmental public sectors in Asia, such as non-governmental organizations (NGOs), non-profit organizations (NPOs), civil society organizations, including individuals working

independently are encouraged to apply for this program.

EGEP is a two-week program that takes place twice a year (January and July). EGEP is a two-week residential educational program that takes place twice a year (January and July) offered by Ewha Womans University. The university provides funding to cover fees for the tuition, dormitory, and a two-week allowance for all the participants. Funds for airfare are awarded only to participants from ODA beneficiary countries. EGEP 2013 Summer will be held from July 3 to 16, 2013.

For further information, please contact: Asian Center for Women's Studies, Ewha Womans University, Yeonghak-gwan, 11-1 Daehyun-dong, Seodaemun-gu, Seoul 120-750 South Korea; ph (82-2) 3277-3613; fax (82-2) 3277-2577; e-mail: egep@ewha.ac.kr; http://acws.ewha.ac.kr.

Asia Catalyst is organizing the Health Rights Advocacy Training 2013 for up to twenty health rights advocates from organizations working with

communities directly affected by HIV/AIDS. The training program will include support in gathering documentation and planning advocacy strategies, monthly coaching, and opportunities to collaborate with peer organizations. Participants will convene in May in Thailand for an intensive weeklong retreat where they will receive training on creating advocacy plans that will further their organization's goals. Starting in June, a team of experts will conduct individualized monthly coaching via Skype for all participants, and make several site visits. Participants will reconvene for one day in November around the International Congress on HIV/AIDS in Asia and the Pacific (ICAAP) to report back to one another about their work and develop a plan to continue collaborating with one another at ICAAP and when other regional opportunities arise.

For more information, please contact: ASIA CATALYST, 39 West 32nd Street, Suite 1602 New York, New York 10001 U.S.A., ph 1-212-967-2123; e-mail: info@asiacatalyst.org; www.asiacatalyst.org.

Support for Non-Japanese Residents

(Continued from page 10)

Endnotes

1 The author appreciates the support provided by Mr. Viktor Virag, PhD candidate, Graduate School of Social Welfare, Japan College of Social Work, in verifying the information about Yorisoi Hotline and the roundtable meeting.

2 Texts based on meeting materials of the Fukushima Roundtable for Migrant Support.
 3 Ibid.
 4 The discussion on the Yorisoi Hotline experience is based in the powerpoint presentation entitled "Practice at the 'Yorisoi Hotline,'" presented during the meeting.
 5 This is based on the notes of the author who attended the meeting.
 6 E-mail message of Professor Yukio Yamaguchi to author on 1 April 2013.

7 Inter-agency Standing Committee. 2011. IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters. Washington, DC: Brookings-Bern Project on Internal Displacement. Document available at www.brookings.edu/~media/research/files/reports/2011/1/06%20operational%20guidelines%20nd/0106_operational_guidelines_nd.

HURIGHTS OSAKA Calendar

The second edition of *Directory of Asia-Pacific Human Rights Centers* and the *Human Rights Education in the Northeast Asian School Systems: Resource Material* are now available in print.



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May be opened for inspection by the postal service.

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

FOCUS Asia-Pacific is designed to highlight significant issues and activities relating to human rights in the Asia-Pacific. Relevant information and articles can be sent to HURIGHTS OSAKA for inclusion in the next editions of the newsletter.

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

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