

FOCUS

Asia-Pacific



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

September 2013 Vol. 73

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Local and Community-Led Conflict Monitoring

This is a report on the work of local community members monitoring the conflict situation in Mindanao, particularly the situation of affected Bangsamoro people. It provides a model for engaging members of the local communities in monitoring their respective areas. It also highlights the need for fast circulation of credible information from the communities themselves in order to secure the needed support for the affected people.

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Protecting Refugees, Asylum Seekers, Stateless People and Internally Displaced Persons in the Asia-Pacific

This is a report on the conference organized by the Japan Association for Refugees (JAR) and the Asia-Pacific Refugee Rights Network (APRRN) on the protection of refugees, asylum seekers, stateless people and internally displaced persons in the region. The report cites developments in the region on the treatment of refugees, asylum seekers, stateless people, and internally displaced persons. It also highlights the vision statement of the APRRN regarding protection for refugees, asylum seekers, stateless people and internally displaced persons.

- Jefferson R. Plantilla

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9th National Forum in Solidarity with Migrants: A Report

This is a report on the highlights of the first day sessions in the 9th National Forum in Solidarity with Migrants organized by the Solidarity Network with Migrant Japan in Kobe in July 2013. The report includes a suggestion to discuss in the forum not only the problems affecting migrants in Japan but also measures to address them.

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Human Rights Events in the Asia-Pacific

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

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Editorial

Monitoring for Human Rights Protection

The continuing movement of people seeking safety within and beyond national borders in the Asia-Pacific region remains a serious problem.

Armed conflict, discrimination, various forms of harassment, and persecution are undeniable reasons for such movement of people. Such people face many obstacles in getting support from governments (their own or of other states).

A key issue is the availability of information about them, their suffering, their needs, and the threats against their life or limb.

Making such information available is a challenge particularly regarding people who fled their country in a rush and with secrecy. This situation puts them at risk of having their application for refugee status denied either by governments or by the United Nations Office of the High Commissioner for Refugees.

For the internally displaced people, such information is vital in urging governments to act with dispatch in mobilizing resources to support their needs – security, food, housing, medical care and other services.

Groups monitoring the situation of refugees, asylum seekers, stateless people, and internally displaced persons play a vital role in this issue.

Local and Community-Led Conflict Monitoring

Zainudin S. Malang

The 9 September 2013 Displacement Alert entitled "Fighting in Zamboanga City" records the events of that morning:¹

At around 5:00 a.m. today, September 9, 2013, a gunfight erupted between AFP [Armed Forces of the Philippines] troops and alleged members of the MNLF [Moro National Liberation Front] at Barangay [community] Rio Hondo, Zamboanga City. Residents from Barangay Rio Hondo and the nearby barangays of Sta. Barbara, Sta. Catalina, and Mariki were reported to have been trapped in the area.

At around 6:00 a.m., MinHRAC's staff from Zamboanga Satellite Office (ZSO) arrived at the field to conduct a verification mission.

Per our colleagues, who were just meters away from the frontline, many of the residents found it difficult to move to safety as the gunfight broke out while they were still in bed and woke up amid gunfight.

Further, at around 8:00 a.m., the fighting spread to the nearby barangay of Sta. Barbara. Then at around 10:00 a.m., the fighting reached the Barangay of Sta. Catalina.

Per the team also, [a] M79 grenade launcher exploded at Barangay Sta. Catalina at around 9:05 a.m., allegedly killing a soldier from the AFP.

Further, as the skirmishes shifted from one area to

another, one more barangay was affected by the fighting, in addition to the 4 aforementioned affected barangays. Residents of this barangay of Talon-talon were unable to move for fear that the gunfights might move into their barangay and that they might get caught in the crossfire.

According to the team also, they had to use their vehicle to shield a family of 8, including 5 minors, trapped earlier in Barangay Sta. Catalina.

The fighting subsided at around 10:45 a.m., allowing some residents to move out of their affected barangays. However, many [were] still trapped in their residences out [of] fear that firings [might] continue to occur.

MinHRAC- ZSO staff are now in identified evacuation sites to gather related information.

Another report on 16 September 2013 states:

The residents of the villages that needed flash protection alert due to the artillery shelling yesterday reported that it [had] already ceased. Up until 2 p.m., we have not heard of any reports of resumption of shelling.

These reports provide a picture of the quick response of a team from the Mindanao Human Rights Action Center (MinHRAC) when encounters between government soldiers and members of the armed opposition occur. They also

present the role played by members of affected communities in monitoring the situation.

Conflict Monitoring in Mindanao

All throughout the 2008-2009 humanitarian emergency situation in the Bangsamoro areas,² there was a running debate on the basic information about the internally displaced persons (IDPs) - how many persons were involved, which villages where they from, where did they evacuate, who were they, etc. There was a huge uncertainty on who needed food relief goods, and how many IDP tents had to be built. Even when most of the IDPs have returned home, how many lost their homes and who needed help to rebuild them remained unanswered.

Reports about the emergency situation cite 120,000 deaths resulting from the conflict. But this number had been cited since the 1980s and it is still being used as reference figure for the total number of deaths in current literature. One researcher pointed this out and observed that "considering the fact that many more have died in the last 20 years it is evident that there is no systematic data [collection] on the death toll".³

Regarding employment, the Autonomous Region in Muslim Mindanao (comprised of Lanao

de Sur, Maguindanao, Basilan, Sulu and Tawi-tawi provinces) registered the lowest unemployment rate (2.7 percent) among all regions of the Philippines during the large-scale violence between the GRP and the MILF in 2008. However, mainstream media has not cited this information.

These are examples of the glaring flaws in conventional data generation about the conflict-affected Bangsamoro communities, including data about IDPs.

Monitoring Conflict Situations: Challenges

The conflict in Mindanao involving Moro rebel groups affects a total of 3,831 barangays (villages), in one hundred fifty municipalities (towns), spread out over thirteen provinces.⁴ This is the size of the area that needed to be monitored. Many of these barangays are highly inaccessible. To illustrate the point, the mediation of a year-old clan feud in a community fifty kilometers away from Cotabato City required the mediation team a half-day ride through rough dirt roads in the mountains to reach the community.

The problem of physical access is compounded by the lack of fast means of communications. Outside its capital town of Jolo, communication by mobile phone to or from Sulu province is difficult. And even in the center of the capital town, fax and e-mail are problematic. Providing monitors with hand-held radios is both costly and unwise. Hand-held radios are a

magnet for rebels, who have an even greater tactical need for them.

There are obviously security concerns to worry about.

A person from Maguindanao province might have enough links with the local people to enable her/him to visit various parts of the province. But visiting local places in another province would not necessarily be possible for such person, moreso if he or she was not a Moro.

Assuming all these access issues have been hurdled, the next challenge is on defining the monitoring strategy, which is determined by the object of the monitoring.

What is being monitored? - The incidence of violence? The number of IDPs? The number of homes burned? Who is involved in the violence? - The Armed Forces of the Philippines (AFP) and the Bangsamoro Islamic Armed Forces (BIAF)? AFP and the Abu Sayyaf Group (ASG)? Rival politicians? Civilian Volunteer Organizations (CVOs) and the Citizen Armed Force Geographical Unit (CAFGUs)? Is a specific violent incident between the Ampatuan CVOs and the 105th Base Command of the BIAF just another clan feud or a proxy war between the AFP and the BIAF? How does one classify a confrontation where members of the MNLF, ASG, and local Philippine National Police (PNP) unit are ranged against the Philippine Marines? Is this still counter-insurgency incident? The conflict in the Bangsamoro areas is of such

type that many of the incidents of violence are not necessarily between the military and the mainstream Moro liberation movement. And even if they were involved, there is no certainty on their motivations for engaging in the violent acts. Is the military upholding the duty to defend the state, and is the other side fighting for the right to self-determination? Or, are they motivated by something else?

The biggest challenge in monitoring the conflict in the Bangsamoro areas lies in the fact that the conflict is a very complex situation. Thus the interpretation of an incident can be a problem. As most of those who have had an in-depth experience in responding to emergencies, a wrong reading of an incident can lead responders to a wrong decision or action which creates more harm than good.

Past and Existing Monitoring Mechanisms

The peace agreement mediated by the Organization of Islamic Countries and signed in 1996 by the Government of the Republic of the Philippines (GRP) and the Moro National Liberation Front (MNLF) led to the deployment of a team of Indonesian monitors to Mindanao. This monitoring team, with the support of a major multilateral organization, operated from 1996 to 2001. In 2001, it reported to the OIC that the implementation of the agreement was going well save for a few minor problems. However, one "minor" problem turned out to be the decision of the MNLF leader, Nur Misuari,

to go back to the hills and his declaration of war against the government.

On the other hand, soon after signing a Cessation of Hostilities Agreement in 1997, the GRP and the Moro Islamic Liberation Front (MILF) constituted their respective Ceasefire Committees, primarily to coordinate their respective forces' movements but also to monitor the implementation of the agreement. But fighting broke-out from 1998 onwards, which showed the agreement's inherent weakness. For each violent encounter between their armed forces, both sides blame the other for starting the fight.

The International Monitoring Team of the GRP-MILF Peace Process (IMT) is by far the most well-known among existing monitoring mechanisms. It enjoys the advantage of being officially recognized by both the GRP and MILF. As a third party, it performs the role of "referee". Further, being made up of representatives of foreign governments, the reports of IMT are accorded weight. This privilege is not available to non-governmental conflict monitoring entities. IMT's main disadvantage though is the lack of monitors. As of last count, IMT has thirty-nine monitors deployed in four field sites to cover the entire conflict-affected region.

Government agencies are sources of data about the conflict, but their data have problems as shown earlier. The local media can provide data, but its limited presence in the provinces involved is a huge disadvantage.

Grassroots Led and Operated Monitoring to Fill in the Gaps

There is still much to do in gathering reliable and comprehensive data on the armed conflict in Mindanao. And there is a need to search for additional data sources to complement existing ones. The residents in the conflict-affected communities are a monitoring resource that has unjustly been downplayed. These residents are the first to know about any incidence of conflict, and are in the best position to interpret it. And most of all, they have the biggest interest in reporting it.

To avoid the impression that they are being exploited for monitoring purposes, it is important that they have a real stake and participation in the monitoring and data generation process. The residents should have the autonomy to decide on the deployment of monitors, trending and forecasting, and many other issues. They can be supported with information on common monitoring template, and other tools.

Thus, in relation to the operations of the Civilian Protection Component (CPC) of the International Monitoring Team (IMT), the involvement of the Moros is a must. The Moros

comprise 85 percent of those affected by the conflict being monitored by the IMT-CPC. They should be participating in the meetings of the IMT-CPC.

Empowering Conflict Affected Communities

MinHRAC promotes the idea of empowering the residents of communities affected by the conflict. The residents of the communities are encouraged to form their own organizations that can coordinate their human rights activities with MinHRAC.

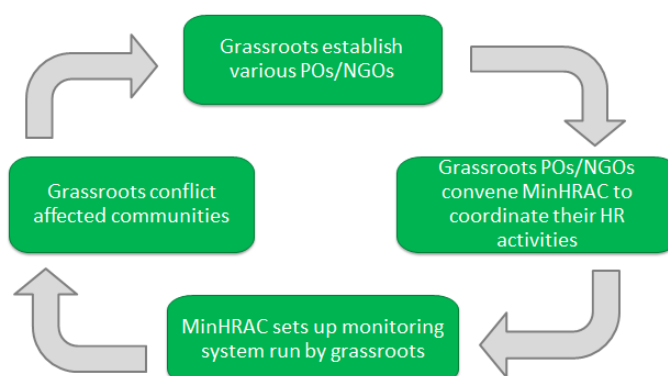
MinHRAC in turn establishes a monitoring system to be run by community organizations.

This idea of community-led monitoring system is illustrated below.

The interests of the residents in the conflict-affected areas permeate the entire structure.

Grassroots Monitors

The case of a community volunteer provides an example of how the system works. Jocelyn Basaluddin, a thirty-nine year old mother, "learned from years of working with nongovernment organizations as a volunteer relief worker and from journalists she met" what



to do regarding families displaced by violence in Sulu.⁵ She found that many of them “knew nothing about their rights. So I started teaching them basic human rights through casual conversations.” She established a network of contacts and sent them mobile phone text messages every day. Whenever she received information on “possible complaints of human rights abuses,” she forwarded the information to MinHRAC.

The news report further explained the support from community volunteers:⁶

Today, Basaluddin's network has grown to 49 village-based monitors - students, drivers and even ordinary housewives - in Sulu's 19 towns. Among their biggest contribution was the filing of human rights violations against several government personalities, including soldiers, at the Commission on Human Rights (CHR).

In Basilan, 25-year-old Radzmie Hanapi, a criminology graduate, said he had had enough of abuses. "I was doing volunteer work for NGOs and saw some of the abuses myself," he said.

Hanapi cited the case of people in Yakan communities being deprived of their rights to shelter and abode in the aftermath of the 2007 clashes in Al-Barka, which resulted in the killings of 14 Marine soldiers. This strengthened his resolve to teach people their rights, even though he was not receiving any remuneration and was courting risks, especially from violators themselves.

Basaluddin saw as very important the presence of a

grassroots monitor. "The military can always restrict entry into affected areas and outside monitors would have a hard time knowing what's happening inside. In this case, the presence of a grassroots monitor is really helpful," she said.

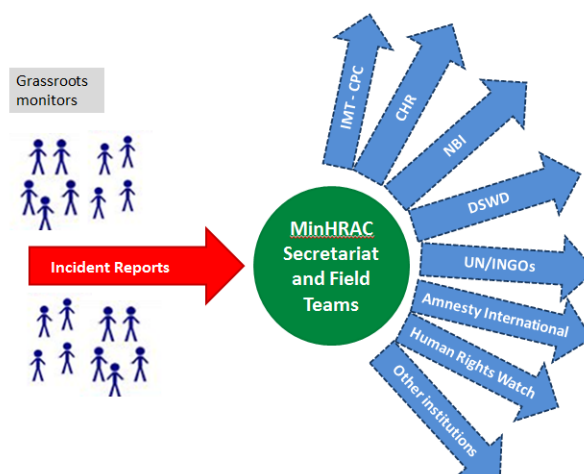
MinHRAC values the role of the grassroots monitors in helping human rights groups advance the protection of affected people. It also recognizes the danger they face, and thus it coordinates with government agencies on their security.

Going Beyond Mere Monitoring: Action Centers

Key to sustaining the interest of the residents in monitoring activities is the existence of benefit for their efforts. Rather than simply satisfy the request of outside monitors for information, the provision of appropriate intervention as a consequence would serve the interest of the residents. Thus came the idea of Action Centers as an initiative complementing monitoring. The Action Centers do not only encode field data but also process them to determine the appropriate type of intervention as shown in the illustration below.

For instance, the MinHRAC Secretariat, besides functioning as a recipient of alerts also functions as an Action Center. Depending on the nature of the incident, a specific protocol is put into action. Ceasefire violations are immediately referred to the International Monitoring Team and the Coordinating Committee for the Cessation of Hostilities, medical needs of civilians are immediately referred to partner humanitarian organizations, displacement alerts are forwarded to the Philippine Department of Social Welfare and Development (DSWD), human rights violations are referred to the Commission on Human Rights, etc.

MinHRAC's membership in the Civilian Protection Component of the GRP-MILF Peace Process can give these communities a tool by which they can communicate their security concerns to the groups most responsible or having the most impact on such concerns. Further, as a sitting member of the Protection Working Group of the United Nations System and International Non-Governmental Organizations operating in Mindanao,



MinHRAC affords the communities a means to convey their humanitarian needs to the agencies concerned. Lastly, MinHRAC itself in tandem with the Commission on Human Rights directly provides human rights and legal aid. Through these modes, MinHRAC hopefully can give back something to the communities. After all, MinHRAC traces its origin to the grassroots communities and it is only appropriate that these communities be the first clientele.

The role of organizations such as MinHRAC has been recognized. A recent report states:⁷

Locally founded organizations like the Mindanao Human Rights Action Center (MinHRAC) have well-functioning networks of local volunteer monitors and professionals who are trained to provide accurate and relevant assessment of humanitarian needs and developments in their communities. This knowledge, for instance on new IDP camps, is further shared with international humanitarian organizations and the local authorities. During the current crisis, the role of grassroots organizations like MinHRAC has been instrumental in attending to the needs of civilians in Basilan and some areas around Zamboanga, which are otherwise inaccessible to international and national organizations. MinHRAC's information campaign also helped in deterring possible disinformation campaigns, which have previously been frequently used in Mindanao to the detriment of stability.

MinHRAC has been providing almost daily news alert via internet on the situation of the IDPs in the Bangsamoro areas. This and other services of MinHRAC will continue as the conflict situation continues.

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Endnotes

- 1 Zamboanga Crisis: Consolidation of Alerts/ Updates from September 9 to 16, 2013, *Monitoring Mindanao*, MinHRAC.
- 2 These are the provinces of Maguindanao, Lanao del Sur, Lanao del Norte, Sulu, Basilan, and Tawi-Tawi.
- 3 Masako Ishii, *The Southern Philippines: Exit from 40 Years of Armed Conflict*, P's Pod, at <http://peacebuilding.asia/southern-philippines-exit-armed-conflict/#return-note-572-3>, last visited on 10 October 2013. Ishii writes:
The death toll in the last 40 years of conflict is said to have been over 120,000...However, the death toll reported in the mid-1990s has also been 120,000. Considering the fact that many more have died in the last 20 years it is evident that there is no systematic data [collection] on the death toll.
Ivan, Molloy, "The Decline of the MNLF in the Southern Philippines," *Journal of Contemporary Asia*, 18:1, 1988, 59-76, page 62:

The subsequent secessionist struggle quickly engulfed the southern Philippines in a conflict that proved staggering in terms of devastation and cost. Estimated figures vary, but many claimed that by the end of the seventies the conflict had resulted in the death of over 100,000 people, and the creation of half a million refugees. The total cost was estimated to be in the billions of dollars.

Abdurasad Asani, "The Bangsamoro people; a nation in travail," *Journal Institute of Muslim Minority Affairs* 6(2), 1985, 295-314. On page 310, citing Dr. Parouk Hussein's testimony before the Permanent People's Tribunal:

In the last ten years of the conflict in southern Philippines more than "100,000 innocent Moro lives, mostly children, women and the aged, have already perished; about 300,000 dwellings burned down, incalculable worth of properties wantonly destroyed and almost half of the entire population ... uprooted from their homes, including over 200,000 refugees now in the neighboring state of Sabah". [52] By the end of 1983, MNLF casualty figure had risen to 130,000.

For the Philippines, the struggle has certainly eaten up vast chunks of her resources."

Footnote 52: Dr. Parouk Hussein, in Testimony before the Permanent People's Tribunal. See, among others, *A Brief Report: The Permanent People's Tribunal Session in the Philippines*, (Antwerp, Belgium: Komite ng Sambayanang Pilipino, 1980) page 28.

- 4 This covers the Bangsamoro areas (note 1 above) plus other provinces in Mindanao.
- 5 Julie Alipala, "In Sulu, human rights work starts with letting the people know," *Philippine Daily Inquirer*, <http://newsinfo.inquirer.net/166693/in-sulu-human-rights-work-starts-with-letting-the-people-know#ixzz2gcMp2UUI>.
- 6 Ibid.
- 7 Martina Klimesova, "Local Capacity Building and The Current Crisis in Mindanao," *Policy Brief*, No. 132, 27 September 2013, page 2. Full report available at www.isdp.eu/publications/policy-briefs.html.

Protecting Refugees, Asylum Seekers, Stateless People and Internally Displaced Persons in the Asia-Pacific

Jefferson R. Plantilla

The United Nations High Commissioner for Refugees (UNHCR) estimates some 9.5 million refugees in the Asia-Pacific region.¹ In 2012, it served eight million “individuals of concern,” referring to refugees, asylum seekers, stateless people, and internally displaced persons.²

The UNHCR describes the situation in the region in the following manner:³

Many countries in the region have not acceded to the 1951 Refugee Convention and lack legal frameworks for refugee protection. Protracted refugee situations in many countries have led to host-community fatigue and in some cases, secondary movements. Many States in the region consider asylum-seekers on their territory as people in transit and so generally do not provide effective protection.

This situation is further complicated by a number of key issues in the Asia-Pacific region that UNHCR wants addressed:

- improved protection of all individuals of concern
- respect for the principle of *non-refoulement*
- alternatives to detention
- unhindered access to asylum
- high-quality refugee status determination (RSD) procedures

- expanded opportunities for durable solutions
- better opportunities for livelihoods and integration for urban refugees, improved reception conditions, and
- prevention of statelessness.

These issues pose a challenge not only to the UNHCR but also to many other institutions that support the refugees, asylum seekers, stateless people, and internally displaced persons in many countries in Asia and the Pacific. Though hampered by limited resources, these mainly non-governmental institutions continue to work to protect the rights of the so-called individuals of concern of the UNHCR, work for their release from detention, lobby for the enactment of appropriate legal framework for them, support their survival in the country, prevent their repatriation, among others.

Developments in the region

Several developments in different countries in the Asia-Pacific region provide some hope for refugees, asylum seekers, stateless people, and internally displaced persons.

In Korea, a refugee law that took effect in July 2013 prohibits *refoulement*; includes the right of refugee status applicant to

receive the assistance of a lawyer, access of refugee status applicant to the records of application interview, the videotaping of the interview, provision of interpreter in case applicant cannot express her/himself in Korean, appeal on denial of application; prohibits disclosure of personal information without the consent of applicant; establishes the system for making application as well as review on appeal of denial of application; and provides for cooperation between the Ministry of Justice and the UNHCR.⁵

In Mainland China, the new Exit-Entry Administration Law (enacted in June 2012) introduced a provision on refugee definition. As one report states⁶

For the first time, China has added provisions to its domestic law regarding the treatment of refugees. The new law allows refugees to stay in China after obtaining an ID card from public security authorities. Asylum-seekers will also be allowed to use a temporary ID card to stay in the country while their refugee status is under examination.

In 2012, the UNHCR reported on a new procedure to protect both refugees and stateless people in the Philippines, the first country in the Asia-Pacific

to adopt such procedure.⁷ It further reported:

Refugees and stateless people are protected under Philippine law. With the new procedure, there is a way to [reunite] refugees with extended family members such as grandparents. Asylum-seekers have the right to a lawyer and interpreter during the process, and they cannot be deported while undergoing the procedure, ensuring respect for international law.

Other safeguards to protect asylum-seekers and refugees were integrated in the procedure, such as special measures for unaccompanied children.

In Hong Kong, a 2011 court decision upheld certain rights of refugee applicants. In one case, the Court of Final Appeal ruled that Article 3 of the Hong Kong Bill of Rights Ordinance on right against cruel, inhuman or degrading treatment or punishment is absolute and non-derogable right and thus cannot be overridden by legal provisions on immigration.⁸ This court decision obliges the Hong Kong government to protect those who fear torture should they be returned to their home country. Prior to this decision, several court decisions in 2004 and 2007 stressed the importance of applying the high standards of fairness in assessing cases of people claiming risk of facing torture upon repatriation.⁹ The high standards of fairness “requires, amongst other things, the potential deportee be given every reasonable opportunity to establish his claim, decision-makers to make their own assessment taking into account all relevant considerations, and

if claim is rejected reasons sufficient for consideration of subsequent review action be given to claimants.”¹⁰ Due to the 2004 court decision, the Hong Kong Immigration Department established an administrative screening mechanism for claims under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Under this system, the decision of the Immigration Department can be appealed to the Torture Claims Appeals Board (TCAB).

With the screening mechanism in place, the claimants can avail of publicly-funded legal assistance under the Duty Lawyer Service. More than three hundred fifty barristers and solicitors, “who received training from the Law Society on CAT screening and related matters, are on a roster to provide legal assistance to claimants, including completing the claim form, accompanying claimants at screening interviews, examining the case and assessing merits of appeal for claimants aggrieved by the decision of the [Immigration Department], and representing claims at oral hearings (if any) on appeal.”¹¹

The Immigration Department has announced the plan to establish a Unified Screening Mechanism (USM) for *non-refoulement* claims (based on CAT, Article 3 of the Hong Kong Bill of Rights on torture, and persecution). Under the USM, “claimants will complete a unified claim form to provide all grounds of the *non-refoulement* claim or all

available documentary evidences.”¹²

In Indonesia, organizations of lawyers as well as individual lawyers established the Indonesian Civil Society Network for Refugee Rights Protection or SUAKA.¹³ It has two main aims:

1. To ensure access to legal advice and representation for asylum seekers during the UNHCR RSD process (by having internal capacity building activities such as training and exchange with other organizations in the region [internship]; establishing a standard operational procedure on asylum seeker case work based on international standards; expanding the pool of Pro Bono Lawyers committed to assisting asylum seekers through roadshow to at least five law firms based in Jakarta, including the Indonesian Bar Council (PERADI) and capacity building on refugee law by training and involvement in case work).
2. To ensure public awareness through coordination and advocacy (this includes collection of data and summary of situation and issues in Indonesia; formulating a Term of Reference for SUAKA, including its background, purposes, and membership; creating the network profile, establishing a data center on the updated situation of refugees in Indonesia, may be in cooperation with universities, among others).

In Japan, the Ministry of Justice (MOJ) has a collaborative relationship with the Japan Federation of Bar Associations (JFBA) and other non-governmental institutions in addressing the refugee and asylum seekers issue. Those who apply for refugee status after entering Japan are less likely detained, while those who apply upon arrival at the airport are usually held in detention. The MOJ has agreed to allow JFBA to provide counsel to those applying for refugee status upon arrival at the airport. The lawyer can help the applicants avoid being detained while their applications are being processed. The MOJ, JFBA and other institutions are also discussing the provision of legal assistance during the hearing of the applications, as well as alternatives to detention. But Japan does not yet have a refugee law that would govern the refugee status applications. Japan also has a very low rate of refugee status applications approval.

It must be clear however that these developments are not free from criticisms. Local groups providing support to refugees, asylum seekers, and others would be able to identify possible weaknesses and deficiencies in the legal and governmental systems in place.

Challenges

The Asia-Pacific Symposium on refugees, asylum seekers, stateless people, and internally displaced persons jointly organized by The Japan Association for Refugees (JAR) and the Asia Pacific Refugee Rights Network (APRRN)¹⁴ on

8-11 September in Tokyo yielded a number of challenges that face the non-governmental institutions. They consist, among others, of the following:

- Creation of trust between the legal aid providers and the UNHCR staff and government officials
- Addressing factors (such as reasons for the application) that lead UNHCR and the government to deny the application (e.g., any indication of desire to have better life has been seen as a reason for denial)
- Determining ways to reach the unreached refugees and asylum seekers
- Having the capacity to know whether the application is based on genuine situation or not (having a fake basis may lead to the loss of reputation of the legal provider)
- Maintaining the quality of the service being provided
- Maintaining close ties with the community and other groups that are providing other services.

The refugee status applicants and asylum seekers also face many challenges including the proper translation and presentation of their problem to the legal service provider; having their cases treated as refugee issue and not simply an immigration matter; the government officials' failure to see the human rights dimension of the applications.

In many countries in Asia-Pacific where there is no legal framework on refugees, asylum seekers, stateless people and

internally displaced persons, the challenge lies in lobbying for the enactment of law that subscribes to the international refugee and human rights standards.

Similarly, there is a challenge in lobbying for the establishment of legal mechanisms that would protect refugees, asylum seekers, stateless people and internally displaced persons as they apply for status recognition or support from the government.

Vision for Protection of Refugees, Asylum Seekers, Stateless People and Internally Displaced Persons

A vision statement on regional protection of refugees, asylum seekers, stateless people and internally displaced persons, drafted by APRRN, (13 August 2013 version) states:

The APRRN envisions a region wherein all refugees, asylum seekers, stateless persons and internally displaced people (IDPs) have equal and adequate access to assistance, protection and timely durable solutions. We envision a region wherein governments, non-governmental and intergovernmental agencies engaged in regional protection efforts collaborate effectively towards this common purpose, with respect for their differentiated roles and responsibilities.

The draft vision statement has provisions on major issues facing the refugees, asylum seekers, stateless people and internally displaced persons, namely:

1. Freedom from violence, coercion, deprivation, exploitation and abuse

2. Access to essential services and livelihoods
3. Legal protection
4. Access to durable solutions.

On the section on “Freedom from violence, coercion, deprivation, exploitation and abuse,” the draft vision statement mentions the need to actively pursue the establishment of alternatives to detention so that “displaced persons are not subject to arbitrary or inhumane forms of immigration detention.” One research report defines “alternatives to immigration detention” as

Any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country.

The research report argues that detention is

1. not an effective deterrent
2. interferes with human rights, and
3. harms health and wellbeing.

It introduces the so-called Community Assessment and Placement model (CAP Model), which is based on good practices in different parts of the world. The CAP Model has five main concepts:¹⁶

1. Presume detention is not necessary - a ‘presumption against detention’ establishes each individual’s right to freedom of movement and helps to prevent immigration officials from resorting to

confinement when other options may suffice.

2. Screen and assess the individual case – this helps authorities identify and assess levels of risk and vulnerability as well as the strengths and needs of each person.
3. Assess the community setting – this involves assessment of factors in the community setting that can either support or undermine a person’s ability to comply with immigration authorities.
4. Apply conditions in the community setting if necessary – additional mechanisms (individual undertakings, monitoring, supervision, intensive case resolution, and negative consequences for non-compliance) can be introduced in the community to promote engagement with authorities that do not place undue restrictions on freedom of movement.
5. Detain only as a last resort in exceptional cases – in majority of cases, immigration detention should be avoided in line with the international human rights standards.

On “Access to durable solutions,” the draft vision statement envisions improved voluntary repatriation, local integration, and resettlement programs, as well as other programs beyond these three traditional solutions. UNHCR reports that its multi-year *Solutions Strategy for Afghan Refugees to Support Voluntary*

Repatriation, Sustainable Reintegration and Assistance to Host Countries promotes “continued voluntary repatriation, strengthened reintegration through community-based investments in areas of high return in Afghanistan, and the preservation of asylum space and assistance to refugee-affected and host areas in neighbouring countries.”¹⁷ This strategy was endorsed by Afghanistan, Iran and Pakistan. This is an example of UNHCR’s comprehensive solutions strategy. UNHCR also reports that its

reintegration projects aim to promote the enjoyment of economic, social, legal and cultural rights. Yet, for reintegration to be sustainable, they must also strengthen harmonious relations and promote reconciliation at the community level. Community-based peacebuilding and coexistence activities are therefore important elements of re-integration efforts.¹⁸

Regarding self-sufficiency, the 13 August 2013 version of the draft vision statement provides:

We envision a region wherein:

1. Displaced persons, including those who are highly vulnerable, actively participate in all decisions affecting their lives, have access to accurate and up to date information about actions taken on their behalf, and explicit efforts are made to listen to, consult and engage affected communities in order to continually improve existing programs and ensure accountability to vulnerable communities.
2. Those affected or assisted are free to organise, advocate and support each other in accessing

and enjoying their rights, and are supported to identify, and where necessary to establish, supportive networks and community self-help groups.

3. States actively support the efforts of refugees to attain self-sufficiency both to enhance local integration and prospects for other durable solutions.

On Partnerships for the Creation of a Supportive Operating Environment:

1. Governments and civil society collaborate to promote refugee rights and human rights while combatting racism and xenophobia and building broad host community support for the protection of refugees, asylum seekers, stateless persons and IDPs.
2. Refugees, asylum seekers, stateless persons and IDPs are able to build strong community-based organisations (CBOs) that represent their members. Governments, UNHCR and civil society groups must recognize and work to strengthen the capacity of CBOs to support and represent their members, and ensure that community leaders are able to do so without the threats to their security, unnecessary restrictions or jeopardising their prospects for durable solutions.

The review of this APRRN vision statement continues through the consultation with various stakeholders.¹⁹

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

For further information, please contact HURIGHTS OSAKA.

Endnotes

- 1 2013 UNHCR country operations profile - Asia and the Pacific, Office of the United Nations High Commissioner for Refugees, in www.unhcr.org/pages/4a02d8ec6.html.
- 2 United Nations Office of the High Commissioner for Refugees, *UNHCR Global Report 2012* (Geneva: UNHCR, 2013), page 146.
- 3 2013 UNHCR country operations profile - Asia and the Pacific, op. cit.
- 4 2013 UNHCR regional operations profile - East Asia and the Pacific, Office of the United Nations High Commissioner for Refugees, in www.unhcr.org/pages/49e45b276.html.
- 5 The information on the Refugee Act (Law No. 11298) is based on the unofficial translation prepared by the UNHCR Representation in Korea.
- 6 China Briefing, *China's New Exit-Entry Law Targets Illegal Foreigners*, www.china-briefing.com/news/2012/07/06/chinas-new-exit-entry-administration-law-targets-illegal-foreigners.html.
- 7 "UNHCR lauds the Philippines for new mechanism to protect refugees and stateless people," 6 November 2012, www.unhcr.org/5098ced59.html.
- 8 Ubamaka, Edward Wilson v Secretary for Security & Director of Immigration, FACV No. 15 of 2011 on appeal from CACV No. 138 of 2009, 21 December 2012, http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=84948&QS=%24%28ubamaka%29&TP=JU.
- 9 See Sakthevel Prabakar v. Secretary for Security (2004) 7 HKCFAR 187, and FB & Ors v. Director of Immigration and Secretary of Security, HCAL 51, 105-107 and 125-126/2007) cited in *Screening of Non-Refoulement Claims*, LC Paper No. CB(2) 1465/12-13(01), June 2013, pages 1-2.
- 10 Footnote 1 of *Screening of Non-Refoulement Claims*, *ibid.*
- 11 *Screening of Non-Refoulement Claims*, *ibid.*, page 5.
- 12 *ibid.*, page 4.
- 13 The current members of SUAKA are the following: Jakarta Legal Aid Foundation (LBH Jakarta, Lembaga Bantuan Hukum Jakarta), Human Rights Working Group (HRWG), Indonesia Legal Aid Institution Indonesia (YLBHI, Yayasan Lembaga Bantuan Hukum) and individuals who are committed to work for refugee protection.
- 14 APRRN Symposium: Towards the Development of a Regional Protection Framework (8-11 September 2013 Tokyo), www.aprrn.info/1/index.php/news/228-aprrn-symposium-towards-the-development-of-a-regional-protection-framework.
- 15 International Detention Coalition and La Trobe Refugee Research Centre, *There are Alternatives – A handbook for preventing unnecessary immigration detention* (Melbourne: International Detention Coalition and La Trobe Refugee Research Centre, 2011), page 12.
- 16 *ibid.*, see pages 19-50.
- 17 United Nations Office of the High Commissioner for Refugees, *UNHCR Global Report 2012*, op. cit., page 56.
- 18 *ibid.*, page 57.
- 19 The full text of the draft vision statement is available at www.aprrn.info/1/index.php/news/53-announcements/237-the-asia-pacific-refugee-rights-network-s-vision-for-regional-protection?highlight=WyJ2aXNpb24iLCJzdGF0ZW1lbnQiLCJ2aXNpb24gc3RhZGVtZW50Il0=.

9th National Forum in Solidarity with Migrants: A Report

Douglas Maclean

This article summarizes the key sessions of the 9th annual National Forum in Solidarity with Migrants, held in Kobe in July 2013. The article provides a summary of the main session, as well as one workshop session the author attended on the first day of the forum. The author's impressions of the event, and his opinion on the event's impact, are also included.

As a researcher on international marriage migration in Japan, and as a first time participant, the 9th National Forum in Solidarity with Migrants represented a chance to meet grassroots stakeholders who regularly advocate for migrants, and to hear their thinking about key issues and how to address them. The forum was a two-day affair: the first day was broken into a general session, where three speakers focused on different issues impacting migrants, followed by a set of workshops that delved into specific issues in more detail. The second day included short speeches by immigrants or by second-generation Japanese.¹

The forum was held at Konan University in Kobe. The main session filled a large auditorium, with more than one hundred fifty people in attendance. The audience included non-governmental organization (NGO) workers, scholars, university students, and even a few government officials. While the overwhelming majority of the participants were Japanese, some foreign residents also participated, and the session included English, Spanish,

Portuguese and Chinese translators.

Key Themes of the General Session

Following a number of opening speeches, the general session presented three topics: supporting foreign residents in the aftermath of the Great East Japan disaster, impacts of revisions to the Immigration Control Act, and immigration policy under Korea's Lee Myun Bak administration as a comparison to Japan's system.

1) Supporting foreign residents in the aftermath of the Great East Japan disaster

According to the speaker, approximately 75,300 foreign residents resided in the disaster areas affected by the tsunami and the nuclear meltdown of 2011. The majority were spouses of Japanese men, mostly from Mainland China, South Korea, and the Philippines. While many were concentrated in the larger towns and cities, such as Sendai, a sizeable minority were broadly scattered throughout the countryside, with one, two, or at best a small handful in any given village. These women

were often socially isolated within their local community, making it even more difficult to find them and provide assistance. Some foreign brides lost their spouse in the disaster; a Filipino wife for example saw her husband's car swept away, leaving her to care for her children alone. While she could speak some level of Japanese, her inability to read and write the language well made finding work, particularly in the disaster area, especially difficult.

On a more positive note, we learned that NGO workers and volunteers cooperated with the city of Ishimaki in Miyagi prefecture, an area particularly affected by the tsunami, to carry out the very first survey of foreign residents and their living conditions. This was apparently a groundbreaking survey for a local municipality to carry out. However, as the impetus for this survey came from the grassroots rather than the national level, it is difficult to know the extent to which other localities surveyed foreign residents and how thoroughly they responded to their needs. With local government resources stretched thin providing general disaster relief, such a survey, and with it relief efforts aimed at immigrant

residents, may well have fallen through the cracks.

2) Impacts of revisions to the Immigration Control Act

The Japanese government revised its immigration law, the Immigration Control Act, several years ago, with the changes coming into effect in July 2012. The biggest change was the replacement of the alien registration card all foreign residents carried with a new residence card, similar to what Japanese nationals own. With this change, nearly all government services could be accessed with this one card, while at the same time all immigration control functions moved from local government to the central government. (namely, the Ministry of Justice and its Immigration Bureau) While the stated intent was to make accessing public services and residing in Japan more convenient for foreign residents, the speaker argued that the outcome was far from positive.

The biggest issue: while public services are now more easily accessible with a residency card, they are *not* accessible without one. Before, even undocumented migrants could access health care, education for their children, and other services. The revisions thus served to exclude those undocumented, and whom, the speaker argued, were among the most vulnerable populations. Additionally, the law now carries more severe penalties for those who fail to renew their visa or their permanent residency card on time. In some cases, they may even lose their status for a late

renewal request, and can face stiff fines. The end result, the speaker argued, is that the increased convenience offered by the new law is heavily outweighed by the additional restrictions placed upon foreign residents, and a penalty system that makes residency less secure than it was before.

3) Immigration policy under Korea's Lee Myun Bak administration

Finally, a member of an association that advocates for immigrants' rights in South Korea provided an overview of Korean immigration policy and its impact on foreign residents' way of life. Her description of the policy evolution and implementation in Korea contrasted sharply with the Japanese system. Progressive governments in Korea in the late 1990's and early 2000's, urged on by very vocal civil society actors, enacted immigration policies to assist immigrants in settling in the country. For international marriage migrants, policies on "multicultural families" were created, and included language and culture courses for foreign brides, along with help centers in municipalities throughout the country. Such policies were of course, not perfect. Foreign couples (i.e. where both spouses are foreign nationals) were excluded from the family support policies. Worse, services available for marriage migrants (the vast majority of whom are brides from East and Southeast Asia) focused on assimilating the bride into Korean society, but with little effort to educate her new family or the greater community on

her own cultural background. With the rise of the more conservative Lee administration in 2007, even the more progressive reforms were slowed or brought to a halt.

Ironically, the question and answer session that followed focused on the many drawbacks the Japanese system has in comparison to its Korean counterpart. For example, at present, there is no national policy on international marriages, while low-skilled foreign labor is ostensibly banned from the country. Additionally, much of the support system that exists for marriage migrants in Korea is simply not present in Japan, and international marriage brokers continue to operate unregulated.

Individual Workshops

Following the main session, the event broke into fourteen separate workshops, lasting just over two hours. Unfortunately, the workshops all occurred at the same time, allowing participants to attend only one. As my research focused on international marriage migrants, I attended a workshop on protecting the rights of immigrant women. The panel included a speaker from Korea, a legal practitioner who represented women who were victims of domestic violence, and a woman who spoke on the implications of the Hague Convention on Child Abduction.² The format was much the same as the main session, with short presentations, followed by an in-depth question and answer session.

The speakers were well-experienced in their field, and the benefit to having such a long workshop was that participants were able to delve more deeply into the topics presented.

A personal comment on the workshop: I was the only man in the room. While it is wonderful to have a workshop packed with participants (including women from the Philippines, the US, and other countries), the lack of men was telling. Women's issues are not just for women. Every man has a mother, and many have sisters, aunts, and daughters. The family's treatment of women has a direct impact upon men. More practically, men still wield a disproportionate level of power in most countries, and no more so than in Japan. Without men engaged and advocating on these issues, moving these issues forward becomes incredibly difficult, and stakeholders risk being sidelined for focusing on "narrow" women's issues.

Thoughts on the Forum: Problems presented well, but where are the solutions?

The forum did an excellent job of presenting current pressing problems facing immigrants, and the range of workshop topics was impressive. However, as with similar events held in Japan and abroad, the main session and the workshop I attended featured very little discussion about practical solutions, let alone next steps. As the forum seemed populated with NGO actors, academics, and students, much of the

audience likely already knew the issues, and were at a point where discussing potential solutions would have been productive. Given the large number of attendees, and their representation of most areas of Japan, the forum was a prime opportunity to share best practices in how to advance immigrants' rights on a practical level.

I voiced this opinion to a number of participants after the event, and some responded that there would likely be a closed-door planning meeting next year to discuss how the various stakeholders could achieve shared goals. Understanding my own different cultural background, I found it surprising that they would wait so long, and would not make the event public. Civil society in Japan still faces significant resource and infrastructure challenges; waiting an entire year to discuss strategy, and even then to keep the information private, may well deprive smaller local stakeholders of opportunities to act now, and to learn from the larger and more established actors. As a foreign resident myself, I also struggle to justify waiting another year to formulate strategy when long-term foreign residents face many challenges, including human rights violations, on a daily basis. For the next forum, integrating discussions of solutions would not only promote some much-needed brainstorming among broadly dispersed advocates, but would also help end the sessions on a positive note that solutions are indeed possible.

Douglas Maclean is a US attorney and an associate with the Center for Documentation of Migrants and Refugees at the University of Tokyo. He focuses on international migration and the rule of law, and is currently researching human trafficking and international marriage migration in East and Southeast Asia. His current research is available on the Social Science Research Network at www.ssrn.com

For more information, please e-mail the author at dsm53@law.georgetown.edu.

Endnotes

- 1 The author was able to attend the first day of the forum.
- 2 This is the Convention on the Civil Aspects of International Child Abduction entered into force on 1 December 1983. For the full text of the Convention visit the website of the Hague Conference on Private International Law: www.hcch.net/index_en.php?act=conventions.text&cid=24.

Human Rights Events in the Asia-Pacific

2013 Padjadjaran International Legal Conference Series

The 2013 Padjadjaran International Legal Conference Series, with the theme "Regional Perspective on Law and Rights: "Where Are We Now and Where are We Heading?," will be held on 22-24 October 2013 in the Faculty of Law, University of Padjadjaran Bandung Indonesia. The conference aims to provide a forum for international scholars and lawyers to exchange ideas about contemporary regional perspectives on law and rights and to discuss how these perspectives would evolve in the future.

For further information, please contact: Susi Dwi Harijanti, Ph.D, Director, PAHAM, Padjadjaran Centre for Human Rights, Sri Soemantri Building, Faculty of Law, University of Padjadjaran, 2nd Floor, Jl. Imam Bonjol No. 21 – Bandung, West Java, Indonesia; ph/fax (622) 22508514; e-mail: padjadarconference@fh.unpad.ac.id; http://padjadarconference.web.id/; www.facebook.com/PadjadjaranIntlLegalConference2013; https://twitter.com/PILC_2013.

4th International Law Conference on Transnational Organized Crime

The 4th International Law Conference on Transnational Organized Crime will be held on 28 - 29 October 2013 in the Faculty of Law Universitas Syiah Kuala, Banda Aceh, Nanggroe Aceh Darussalam. The conference will discuss the following: (1) Human Trafficking; (2) People Smuggling; (3) Drug

and Firearms Trafficking; (4) Terrorism and Money Laundering, and (5) General Topic.

For more information, please contact: Center for International Law Studies (Lembaga Pengkajian Hukum Internasional), Faculty of Law, University of Indonesia; fax (6221) 787-1617; e-mail: lphi@lphifhui.org, cils_lphi@yahoo.com, cils.conference@gmail.com; www.lphifhui.org.

Second Conference of Asian Parliamentarians and Human Rights Defenders

The Asian Human Rights Commission (AHRIC) and DIGNITY will hold the second conference of Asian Parliamentarians and Human Rights Defenders on 11-13 November 2013. The conference will discuss the reluctance of governments to achieve a substantial change in the nature of policing in their countries to bring these institutions at par with the policing systems of advanced democracies.

For further information, please contact Bijo Francis, Executive Director, Asian Human Rights Commission (AHRIC), Unit 701A, Westley Square, 48 Hoi Yuen Road, Kwun Tong, KLN, Hong Kong SAR, China; ph (852) 26986339; email: ahrca@ahrc.asia; www.humanrights.asia.

6th Asia Pacific Mediation Summit

The 6th Asia Pacific Mediation Summit (APMF Summit), with

the theme "Mediation in a Globalizing World: Challenges to Multi-Culturalism, Peace-Building, and Religious Tolerance," will be held on 9 -11 December 2013 in Manila. The 2013 summit aims to bring together and engage experienced conflict resolution and mediation practitioners, researchers, educators, trainers, civil society workers/practitioners, human rights activists, business people, and policymakers from different cultural, organizational and professional backgrounds who are prepared to play a leadership role in transforming the way that conflicts are handled in the Asia-Pacific region.

For further information, please contact: Anna Malindog, Chair, 2013 APMF Steering Committee, APMF Executive Board Member, c/o Political Science Department, De La Salle University, 2401 Taft Avenue, Manila 1004, Philippines; ph: (63-2) 9475521711, ph/fax: (63-2) 524-4611 ext 570; e-mail: apmf2013summit@gmail.com; www.asiapacificmediationforum.org, www.apmf2013.tk.

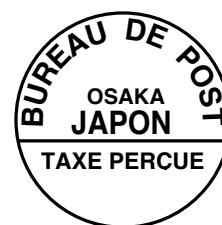
5th Ewha Global Empowerment Program 2013 Winter - "Transnational Feminisms and Women's Activism"

The 2013 Winter Ewha Global Empowerment Program (EGEP) with the theme "Transnational Feminisms and Women's Activism" will be held on 12 - 26 January 2014 in Seoul.

For more information, please visit: Asian Center for Women's Studies, at http://home.ewha.ac.kr/~acws/eng/ or email at egep@ewha.ac.kr.

HURIGHTS OSAKA Calendar

HURIGHTS OSAKA is preparing a report on business and human rights with a focus on Japan. This report is part of a four-country research project on business and human rights under the Asian Consortium on Human Rights-based Approach to Access to Justice (HRBA2J-Asia). A compilation of reports from China, Japan, Korea and Mongolia will be published in early 2014.



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

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

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

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