



*Editorial*

## *Eviction*

Slums in cities result from poor people's need for a place to stay. Many of them come to the cities to escape poverty in the rural areas. Many also came decades before and settled in places that were unused, if not almost abandoned.

The slums are home to many workers in the city, to people who engage in the so-called informal economic activities (such as market and street vending). They constitute communities, like any other community, of families with children and old people as members.

Eviction is a trauma. It dislocates people who have less means of coping with loss of homes and sometimes livelihood. It disrupts communities whose residents survive on their own.

Governments are obliged to support the realization of the right to adequate housing especially of those who need it most - the poor. Tolerating forced eviction, instead of enforcing humane and appropriate solution to squatting and the rise of slums, does not uphold the right to adequate housing. Experience shows that eviction is not the answer.

There is no dearth of experience in having appropriate answers to the slum issue that satisfy the interest of government, the landowners and the urban poor. Finding that appropriate solution must be the objective, rather than eviction.

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 Yoshio Kawashima, Director of HURIGHTS OSAKA.

# Struggling for Housing Rights in Asian Cities

*Ted Añana*

3.2 billion or 52% of the world's population live in Asia. Urban population may constitute anywhere from 25% to 70% of the population in the region. And between 30% to 50% of the urban population reside in slums, where social facilities are either poor or lacking.

Due to economic growth and globalization, business and other economic activities are on the rise, and construction of buildings and other infrastructures takes place in many parts of the cities. The need for labor as well as the economic opportunities offered by the cities accelerated rural to urban migration.

Globalization translates into government privatization of public assets and services. This includes selling or leasing of government lands to business groups and property developers. Large tracts of government lands (including former military bases) in Metro Manila, for example, were sold or leased. Thousands of urban poor families who squat on these lands were forcibly evicted and transferred to distant resettlement sites where job opportunities, basic infrastructures such as water, electricity, and roads, and social facilities like schools and medical clinics do not exist. As a result, many of the resettled families eventually went back to the city.

Globalization supports decentralization that provides local governments with more power to raise revenue, tap investments and make their own development plans. In the most infamous case, the city government of Jakarta enacted a local regulation (*Perda* No. 11) authorizing the demolition of the houses of the urban poor and also the destruction of their means of livelihood, such as vending and pedicab driving. The Indonesian national government professes it cannot intervene to stop these brazen violations of human rights which attracted international condemnation because of the so-called decentralization law.

Globalization meant welcoming foreign investors usually to modern, well-developed urban centers where two cities co-exist: the area of the rich and middle class people (exclusive subdivisions, high rise buildings, well-lighted parks, offices and malls equipped with the latest information technology gad-

gets, etc.), and the congested slums that do not have the most basic services such as clean drinking water, electricity, sanitation, schools and clinics.

Governments provide easy and cheap money to developers who build houses for the rich and middle class in many Asian cities. In the Philippines, 80% of the government's housing fund went to the so-called economic (non-poor) housing projects and only 20% for social housing and resettlement program. The government housing finance institution went bankrupt twice because it could not collect the loans from the developers. On the other hand, amortization payments by poor families were as high as 80%.

When the financial crisis hit Asia in 1997 the cities were strewn with many unfinished and unsold condominiums and high-rise buildings, while distant resettlement sites were half-empty as well.

The continuing migration to the cities, the natural growth of the urban poor population, and the massive forced evictions created the phenomenon of thousands of families living under bridges and fly overs, along railroad tracks and pavements, in cemeteries, and on riverbanks and canals in Asian cities.

Governments generally neglect, and at times even show open hostility to, the plight of the urban poor.

## **Mega Projects**

Massive forced evictions are also occurring in Asia due to big projects like the Narmada, Three Gorges, and Bakun Dams, and the Mekong River development programs whose objectives are irrigation, flood control and the generation of hydro-electric power for the ever-increasing demands of the cities. Many peasant farmers migrate to the cities as a result.

In South Asia many urban evictions are due to infrastructure projects, such as the construction of new roads and expressways, road widening, canal improvement, flood control projects and beautification clean-ups to make the city attractive to tourists. Thousands of poor families are evicted without sufficient notice, consultation, compensation, and

provision of alternative housing.

Massive infrastructure projects and beautification clean-ups in the urban centers restarted in Southeast Asia with the recovery of their economies. This in turn resumed demolition of slums.

Some of the big projects that will evict thousands of people are the following: Kolkata Canal Improvement Project, Lyari River Expressway, Dhaka Slum clearance, Surabaya Normalization Project, Jakarta Bay Reclamation Project, Manila North and South Rails, Pasig River Rehabilitation, Laguna Lake Ring Road, and Camanava Flood Control Project. The Asian Development Bank, the World Bank, and the Japan Bank for International Cooperation fund many of these projects.

Slums are likewise destroyed by fire of suspicious origin. Fires displace thousands of poor people as what happened in Phnom Penh and Metro Manila recently. Fire is a cheaper and less politically controversial way of removing urban poor settlements.

In the prosperous countries of Northeast Asia, while house demolitions have generally disappeared, homelessness continues to persist. The number of homeless people increased as a result of the 1997-98 economic crisis.

Many poor people live in cages in overcrowded tenements and on top of high rise buildings (Hong Kong). As homeless people, they live on the sidewalks, train stations, subways, parks, and under bridges.

Development projects, including construction of facilities for the 2008 World Olympics, expose thousands of migrant Chinese peasants and their families as well as those who have lived in the cities for generations to forced eviction.

### **Eviction of migrant workers**

Prosperous urban centers in Asia such as Seoul, Kuala Lumpur, Hong Kong, Bangkok and Singapore evict thousands of foreign migrant workers from time to time. In Kuala Lumpur, houses of local squatters are demolished along with those of the migrant workers.

Housing rights activists, community organizers and

leaders, and city planners noted in a meeting in Bangkok in July 2003<sup>1</sup> that urban and rural evictions are increasing and likely to continue in the coming years. They also pointed out a disturbing trend on increasing evictions due to armed conflict in some Asian countries such as Burma/Myanmar, Philippines (southern region), Nepal and Indonesia (Aceh).

### **Right to adequate housing**

Right to housing is recognized in most Asian constitutions. But without an enabling law, this right remains unrealized in the face of well-defined property laws. In countries where enabling laws have been legislated, implementation is quite poor. In the Philippines, an assessment in 2003 of the *Urban Development and Housing Act of 1992* by a group of housing activists and development workers shows that while the law is good, implementation is very poor. The Japanese parliament enacted *Special Measures to Support the Self-reliance of the Homeless* in 2002. Opinion regarding this law, however, is divided. The law's recognition of the housing right of the homeless is considered positive. But many organizations of the homeless and non-governmental organizations (NGOs) say that it has so many weaknesses that can be used to evict homeless people.

Courts generally decide in favor of the landowners, whether government or private persons, on land issues and rarely would recognize the right of the urban poor to due process and alternate housing, except in rare cases in Pakistan, Bangladesh and Indonesia. At times, urban poor communities use the legal process to stay the eviction, a stopgap but expensive measure.

### **Urban poor movement**

Urban poor movements are alive in the urban centers of Asia, struggling and working for the recognition and realization of their housing rights that they consider as indivisible from and interconnected to other human rights (rights to livelihood, education, health, water, etc.). Their miserable condition and struggles have attracted the concern and support of members of the academe, activists, NGOs and some sympathetic government officials. The urban poor movements in various Asian countries have devel-

oped their own methodologies and strategies, some of which are presented below.

In Pakistan, young professionals, members of the academe, and urban poor organizations work together in combining the people's experience and the technical knowledge of the young professionals to come out with their own plans that are technically good and even superior to government plans. The plan could be on sanitation, housing, and community education. They also take advantage of the government's "regularization" program that provides long-term lease on government lands to urban poor families.

The urban poor, activists and young professionals also research on government projects that cause displacements and organize public meetings to present their findings and alternative solutions. The media cover these activities. In this way they, for example, were able to stop a light-rail project that would have destroyed thousands of shops and houses in Karachi.

Groups in the Philippines, Indonesia, India, South Korea, and Hong Kong engage in issue-based organizing of communities. People's organizations are eventually created as communities act on their issues. Various people's organizations come together as an alliance to generate bigger number to fight for bigger issues, such as holding off implementation of big government projects or a city's beautification drive. This work is combined with winning allies in the media, the middle class and government.

Savings organizing involves bringing people together to generate capital that can be used to buy land or raise additional capital from public or private entities for their housing and other needs. The savings organizations in Asia and Africa have formed the Slum Dwellers International.

In many urban centers in the Philippines, people organize themselves to buy the land they are squatting on, or some other piece of land. Once the owner agrees to sell the land, they secure a loan from the government's Community Mortgage Program (CMP). The government pays the landowner and the people pay back the government over a period of 25 years. The CMP groups in the Philippines lobby the government to allocate more funds for social housing and to lessen red tape that prolongs loan processing.

Others do surveys of lands in the city, especially government lands, that are available for their housing project. They also organize house construction exhibitions to show that poor people with the help of some young professionals, usually architects, can build houses that are often cheaper and better made.

In many Asian cities, governments accuse urban poor communities of dumping garbage into canals and clogging them, thereby causing or aggravating flooding. In some urban areas in Thailand, urban poor communities negotiate with the government to allow them to continue staying in their location, with a proposal that they will organize themselves to undertake projects, with the assistance at times of an NGO that will keep their environment clean, including keeping the canals free of garbage.

People organize themselves with the help of a crisis intervention worker, either a leader or an organizer, to stop demolitions and to negotiate for better resettlement or compensation terms. This is fast or sweeping organizing since demolition notices are usually very short-term, 3 to 5 days. The work when successful can result in the delay or postponement of the demolition and the holding of negotiations.

In all this, Asian women are in the forefront not only by their presence but also by their courage and leadership as well.

While mainstream media (broadcast and print) are still influenced by middle class bias against the urban poor, urban poor organizations and NGOs realize the value of gaining public sympathy and understanding through the media. The work of people's organizations and NGOs in building contacts among media practitioners, providing them good, timely, reliable and newsworthy information, or having their own radio programs to directly reach the public have borne fruit in the form of favorable news reporting, feature articles in the newspapers, and favorable television episodes or stories.

The common thread that runs through these strategies and methodologies is organizing. Unorganized urban poor people have lower chances of resisting evictions. Organized groups aside from lobbying or leveraging government also organize demonstrations to get the attention of government. However, their capacity for mobilization, as ascertained in the Bangkok meeting, is still largely at the local and at

times city level.

The experience of organizing and mobilization, however, has taught them another lesson: it is not enough to oppose, it is equally important to propose alternative solutions that are not only acceptable to the people but technically feasible and even superior to government plans. Alliance between urban poor organizations, NGOs and good technical people such as researchers, urban planners, architects and engineers help them a lot.

Urban poor organizations and NGOs engage governments at different levels, national and local. They lobby national and local legislatures for favorable legislation or ordinance, get information on government policies, programs and projects, and establish contacts with government personnel who can help them get a fair hearing on their issues and proposals. They also lobby governments for more housing funds for the poor.

Actions at the regional level are still largely meant to support domestic or local issues and actions. The Asian Coalition for Housing Rights (ACHR), for example, organizes fact-finding missions and solidarity letter-writing campaigns. Most governments seem impervious to such pressure tactics and may stop evictions for a while to let the publicity generated by the fact-finding mission to cool down. Aside from ACHR, the South Asia Regional Program of the Housing and Land Rights Network, a thematic committee of Habitat International Coalition and the Asia and Pacific Program of the Center for Housing Rights and Eviction (COHRE) also conduct similar activities.

Asian cities, rapidly growing, urbanizing and attracting more migrants from the rural areas, will continue to be the arena of the poor's struggle to assert their rights, including the right to adequate housing and the right to live in the city. The odds seem stacked against them.

Organizing of communities, using whatever useful and effective methodologies and strategies, has to be pursued in order to create a massive force that governments cannot refuse to heed. This is supported by links with sympathetic people in the media, academe, and government, and support from other social movements. Spread out in most Asian cities, such a force can create a regional impact that can

oblige governments, intergovernmental institutions and donors to heed the urban poor.

*Ted Añana is the Coordinator of Eviction Watch, a regional program of the Asian Coalition for Housing Rights.*

*For further information, please contact: Eviction Watch, c/o Urban Poor Associates, 25-A Mabuhay Street, Barangay Central, Quezon City 1100 Metro Manila, Philippines, phone (632) 4267615; fax (632) 4264118, e-mail: ewatch21@yahoo.com; www.achr.net*

## **Endnote**

1. This is the "Regional Conference on Forced Evictions and Housing Rights" (25-27 July 2003, Bangkok, Thailand) jointly organized by the Asian Coalition for Housing Rights (ACHR) and the Center of Housing Rights and Eviction (COHRE). Participants came from Thailand, Philippines, Malaysia, Indonesia, Sri Lanka, India, Pakistan, Bangladesh, Nepal, Japan, Switzerland, and Australia.

# Malaysian Plantation Workers and Judicial Recourse

*S. Arutchelvan*

Will justice prevail? Will the poor get justice from the courts? Is legal recourse a solution? These are fundamental questions confronting the plantation community in Malaysia. In recent times, the courts have given mixed answers to these questions. Many factors seem to have a hand in the judiciary and justice system in Malaysia but non-governmental organizations (NGOs) and groups working with the plantation workers have learned to be cautious and never let legal solution per se determine the future of the struggle for permanent housing rights. Nevertheless, the legal struggle is an important tool, which can be explored and experimented.

Experience illustrates that it was not the legal battle itself that saved the people but the struggle and the environment created by the workers and a few dedicated lawyers. If there were good laws, the workers would not be running up and down.

## **Eviction in the plantations**

The plantation industry in Malaysia is on the way out. Once the largest exporter of natural rubber in the world, today Malaysia has become an importer of rubber. It is said that by the year 2005, there will be less than 10,000 acres planted with rubber trees for research purposes only while the rest will be devoted to palm. The current work force in the rubber plantations is also expected to drop to 5,000 workers from more than 100,000 workers. Palm plantations will continue to employ workers but they will mostly be contract or migrant workers.

The cases of eviction in recent years are due to Prime Minister Mahathir's policy shift in the 1980s of supporting industrialization instead of agriculture. In the 1990s, most plantation companies converted their plantations to property development such as building luxury houses and factories. For example, the huge Kuala Lumpur Airport was the home of workers from 7 plantations while the recently-built New Capital Administration town - Putrajaya - was the home of 4 plantation communities. Besides evicting the workers at home, the Malaysian plantation com-

panies have also ventured in Vietnam and Indonesia to pursue cheaper labor. While workers are evicted in Peninsular Malaysia to give way to development projects, indigenous communities in Sabah and Sarawak (East Malaysia) are being evicted as plantations encroach into their ancestral land.

In 1998, after the currency crisis hit the Asian market, the government temporarily banned the plantation companies from converting their land into other use because it realized that it was the plantation industry that saved the economy and brought in the money. But two years later, from 2000, the plantation companies started converting rubber plantations to palm plantations, threatening thousands of workers and their dependents with homelessness.

So rampant are the development projects that displaced communities are normally seen as anti-development agents and troublemakers. The government always says that since this is an "employer and employee" issue it would not intervene. The truth is that the government is the largest shareholder of these plantation giants. With the power of capital and the power of the State pushing their might, the marginalized plantation communities are left with little option.

## **The legal struggle**

From a legal perspective, the employers or the plantation owners have the upper hand. Once an estate is closed down or converted into other use, the workers are dismissed and their entitlement to the homes withdrawn. If they continue to stay, they will then be labeled as squatters or illegal occupants. The plantation workers who have lived there for more than three generations become illegal squatters overnight upon loss of employment.

Previously, tough actions were carried out by these employers with the aid of police and thugs who use harsh methods to throw out the workers and their dependents from their homes. Though the law is clear that land disputes in private land must be resolved by either party getting a court order to

obtain vacant possession, this is seldom practiced. The police and land authorities take it as given that only those who have land titles (in this case the plantation owners) are the only rightful owners and this legal right cannot be challenged.

Things have changed quite a bit today because everywhere plantation workers and NGOs are fighting back. Cases of workers being thrown out of their homes once they lose their jobs are getting rare. Today, plantation communities are seeking alternative decent permanent relocation homes upon termination. The struggle has been to stay put and stay on until the workers are compensated and provided with alternative homes or given a free piece of land each.

Workers and activists have also used two legal provisions under the *Specific Relief Act* and the *Criminal Procedure Code (CPC)*. Here, the plantation owners are restricted from using means other than legal means to evict the people. In the past, plantation owners disconnected water and electricity supplies to the homes. There were also incidents of poisoning of the water catchment areas supplying water to the homes. Today, using these legal provisions, the plantation owners have to maintain the status quo of the land until the court reaches a verdict. Under the CPC also, there is avenue for lower courts to issue an injunction if there are disputes in the land.

### **Compensation the plantation owners are willing to give**

Plantation owners agree to give termination benefits only in accordance with the *1980 Termination and Lay Off Benefits Act*. A letter of termination is given to the workers along with the date of termination and a clause that reads, "...you will have to hand over vacant possession of the estate quarters (homes) that you are currently occupying to the management by certain date". This is the minimum standard action taken by the plantation owners, and will normally not pay one cent more. The State Labor Department interprets the law to mean that once the plantation owners have paid the minimum termination benefits in the *Labor Act*, they have fulfilled their legal obligation. Under this law, plantation workers with more than 5 years work are entitled to a 20-day wage per year of service. Those who work below 5 years will get less than that. In actual terms, if plantation workers work for around 20 years, they will merely earn RM 6,000 (less than 1,600 US dollars) of termination benefit. This amount definitely cannot purchase a low-cost house which is currently priced in

Malaysia ranging from RM 35,000 to RM 42,000 (9,200 to 11,000 US dollars).

Therefore the plantation communities are put in a latch. All their lives, they face low wages and deplorable living conditions, untreated water, low health and nutrition level, and education standards. They are unable to save money. Now, suddenly they will become jobless as well as homeless.

The plantation owners, after paying the minimum termination benefit possible, obtain an eviction order from the court under a summary proceeding (called Order 89). This is a favorite among the plantation owners.

Another worst case scenario takes place when the government uses the *Land Acquisition Act* to acquire the land from the plantation owners. This happened in the 7 plantations in Sepang and the 4 plantations in Putrajaya that were taken away for the new airport and new administrative township respectively. Here the plantation workers were put in a limbo. The dispute is on the compensation to be paid between the government and the plantation companies. The interest of the plantation workers is of least importance. There has been numerous calls from grassroots movements and plantation workers on the government to use the same *Land Acquisition Act* in obtaining land to build permanent houses for the workers. The government had come on record calling these groups Robin Hood, trying to steal from the rich and give to the poor. The government said it would not abuse the law to deprive any quarters.

### **Results of the legal fight**

In recent years, there were some small successes and defeats in the legal struggle. A lot depends on the kind of judge that sits and decides on the case. In recent months, there were judges who give this logic, "Even we judges, when we retire, have to surrender our homes...why are the plantation workers so special". These judges fail to see the fundamental importance of the right to livelihood - a constitutional right under Article 5 of the Constitution. They also fail to see the human dimension of the cases - three generations of the workers had lived on the land, and they (the fourth generation) are still there.

Among notable legal victories was a small breakthrough made in a labor case in Ladang Bangi where the labor court decided that the company cannot hold back the termination benefit. Previously the owners hold the termination money in ransom until the

workers vacate the homes. But now this has been broken. But the plantation owners have appealed against this decision and the matter is pending.

A more significant achievement was the setting aside of Order 89. Before 1981, in the case of Sidek versus Perak State Government, the court ruled, "Squatters have no rights either in law or in equity". Then the developers had a field day in evicting squatters and former plantation workers using this Order. But a breakthrough was made in 1991 in the case of Bohari versus The Director of Land Office. The court decided that the defendant is entitled to a trial in order to have the chance to show that there are "triable" issues. Since then, plantation workers have successfully demolished Order 89 by proving that they have "triable" issues.

Once the court believes there are "triable" issues, Order 89 summary judgment no longer applies and the owners have to go through a long battle to get vacant possession. This has normally enhanced the workers' demand in getting alternative homes and better compensation. Most owners cannot wait that long. It is therefore important to engage the owners into a protracted struggle.

Today the courts recognize the equitable rights of workers. In another landmark case in Lapan Utan, the court decided that the workers have equitable rights and thus the plantation company must compensate the plantation workers.

These court decisions put a break to the plantation owners' drive to evict the plantation workers. The laws in Malaysia do not recognize adverse possession and therefore in the long run the courts finally decide in favor of the owners because they hold the title. The most the workers can gain is some compensation.

There were also some remarkable judgments by a few remarkable judges. In July 2003, Justice Wira from the Appeals Court granted a stay of execution for vacant possession to seven retrenched workers of Changkat Salak Estate.

The Chief Judge, Datuk Wira Hj Mohd Noor, ruled that there is a special circumstance (i.e., the need for shelter until the appeal is heard) to grant a stay of the High Court order. According to the lawyer of Guthrie (the plantation owner), the workers have no such right as they had been offered due compensation and asked to leave the estate. The judge responded, "Leave and go where? Live on trees? Or

cow sheds? Or you've got hotels for them?" Clearly stunned, Guthrie's lawyer pointed out a technical flaw in the plaintiff's affidavit saying that there is no mention of the special circumstance. "That is common sense!" said the judge, adding that the issue is not just buildings, but human beings. As a last ditch attempt, Guthrie's lawyer said that even if the workers win in the end, they will still have to leave the quarters, to which the judge replied, "At the end of the day, if they win they go out 'loaded'; now they go with empty stomachs." The well-paid lawyer of Guthrie sank to his seat, defeated by three judges who chose to be guided by the spirit of the law and natural justice.

In Malaysia, a number of communities fought bravely and made significant achievements. There is a very small minority of lawyers who stood by these workers and their communities during these battles. We salute these few lawyers. Many more lawyers remain non-committed and at times even destructive to the struggle put up by the people.

Since the year 2000, some plantation communities succeeded in getting free alternative land or homes. These communities engaged in long-drawn battles, some taking around 10 years using legal and extra-legal means to fight. They have been successful. In these cases, the owners give up because it is still much cheaper to give the workers what they want rather than prolong their possession.

Today, the Malaysian government has a national policy that plantation companies have to build homes for plantation workers before evicting them. This is a good development. But the workers have launched a national campaign asking that this policy be made into law. In 1973, the government issued a policy known as the *Workers House Ownership Scheme*. But less than 5% of the plantation companies have implemented this policy. Today, the workers are asking for legal safeguard not just toothless policies.

*S.Arutchelvan is the Coordinator of the Plantation Workers Support Committee in Malaysia.*

*For further information, please contact: Plantation Workers Support Committee, 26a, Tingkat Jaya 1, Taman Tasik Jaya, 31400 Ipoh, Perak, Malaysia; ph/fax: (603) 8737-4772; e-mail: parti\_sosialis@hotmail.com; www.jerit.org*



# Enforcing Economic, Social and Cultural Rights

## *OP-ICESCR NGO Coalition*

Major human rights instruments have a procedure for examining complaints of unresolved violations. This system has helped human rights violations victims get redress, allowed States Parties to undertake appropriate measures to prevent the recurrence of the violations, and enriched the understanding of the rights themselves. But there is no such system under the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Thus in 1990, the United Nations Committee on Economic, Social, and Cultural Rights (Committee) started discussing the possibility of drafting an Optional Protocol to the ICESCR (OP-ICESCR) that would create this system. This was followed by the 1993 Vienna Declaration and Programme of Action that encourages the continued examination of optional protocols to the ICESCR. In 1997, the Committee submitted a 1996 draft Optional Protocol to the Commission on Human Rights for consideration.<sup>1</sup> In 2002, the Commission created the ICESCR/Optional Protocol Working Group with a mandate to consider options regarding the elaboration of an Optional Protocol and to make specific recommendations on the issue.<sup>2</sup>

### **1996 draft OP-ICESCR**

The 1996 draft Optional Protocol enables the Committee to receive and examine written communications from any individual or group alleging violation of economic, social and cultural rights by States Parties to the Optional Protocol. The State Party concerned is confidentially informed of the complaint and requested to send its explanations on the issue and the remedy, if any, that may have been afforded. The Committee may request to visit the State Party concerned as part of its examination of the communication. If there is a finding of violation, the Committee recommends to the State Party to take specific measures to remedy the violation and to prevent its recurrence. The State Party, within six months of receiving notice of the view of the Committee, or a longer period specified by the Committee, provides the Committee with details of the measures that it has taken. The Committee may invite the State Party concerned to discuss with it the measures that the State Party has taken to give effect to its views or recommendations.

The Committee can request (prior to examination of the complaint) the State Party concerned to take interim measures to avoid irreparable harm, and offer to mediate between the complaining party and the State Party concerned to settle the issue on the basis of respect for the rights and obligations set forth in the ICESCR.

The draft Protocol also provides that the individuals or groups who can send communications to the Committee may either be the victims themselves or their representatives. It also provides that States Parties should undertake not to hinder in any way the effective exercise of the right to submit a communication and to take all steps necessary to prevent any persecution or sanctioning of any person or group submitting or seeking to submit a communication.

### **The need for the OP-ICESCR**

There are existing complaint procedures at the international level dealing with alleged violations of economic, social and cultural rights. They include the following:

- The Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR);
- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- The International Labor Organization (ILO) special procedure with respect to freedom of association;
- The UNESCO Complaints Procedure in the field of any of the rights which fall within UNESCO's field of competence, i.e., education, science, culture and information;
- The International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Protection of Migrant Workers and Members of their Families, and the Convention Against Torture (CAT).

Given their specific focus, access to these procedures is limited either by the rights covered or the qualification of victims who can lodge a complaint.

It is, for example, questionable to what extent the work of the Committee on Freedom of Association at the International Labour Organisation and the

UNESCO procedures can really be defined as complaints procedures open to all victims of violations of human rights. As an example, the ILO procedure is only open to trade union representatives, and the scope of the rights covered by the UNESCO procedure is limited to alleged human rights violations related to education, science, culture and information.

Similarly, the scope of the economic, social and cultural rights covered by the Optional Protocol to the ICCPR is limited to issue related to freedom of association and slavery. Finally, limitations regarding a complaint under the Optional Protocol to the CEDAW... respond[s] ... to the gender ... criteria preventing ... universal[access to this procedure] .<sup>3</sup>

### **Lobby by the NGOs**

NGOs fear that within the current political climate, States opposed to an OP-ICESCR may attempt to subordinate economic, social and cultural rights to civil and political rights. Australia, Canada, India, Ireland, Sweden, the United Kingdom, the United States and other States possess the political resolve to derail a process that has gradually gained momentum within the international community.

The NGOs argue for the adoption of an OP-ICESCR because it will:<sup>4</sup>

- (1) Strengthen ESCR at the international level by allowing individuals and groups whose ESCR have been denied, at the national level, to have their claims reviewed by a treaty body;
- (2) Lead to a new and more involved relationship between the Committee and States Parties. Scholars and NGOs have noted that one of the major constraints of the Committee, in the development of its working practices, is derived from the absence of a provision that requires State Party co-operation beyond the submission of periodic reports;
- (3) Contribute to the further clarification of ESCR and State obligations under the ICESCR through the development of international jurisprudence. The experience gained from the Optional Protocol to the ICCPR confirms that a complaints mechanism contributes to the development of a more specific legal content of international norms;
- (4) Contribute, through example, to the further realization of ESCR at the national level by pro-

moting the development of domestic jurisprudence on these issues;

- (5) Place ESCR on the same footing with civil and political rights in terms of their justiciability at the international level. This would be a logical consequence of the fact that these two sets of rights are universally recognized as indivisible, interrelated and interdependent.

The Working Group is scheduled to meet for its inaugural deliberations in Geneva from 23 February to 5 March 2004. The NGO coalition urges human rights organizations to join the Coalition and help lobby governments to support OP-ICESCR.

*Some of the leading organizations in the OP - ICESCR NGO Coalition are Center for Housing Rights and Eviction (COHRE), FIAN-International, International Commission of Jurists (ICJ), International Women's Rights Action Watch (IWRAP) Asia Pacific, World Organisation Against Torture (OMCT) and the Social Rights Advocacy Centre.*

*For more information on how to join the OP - ICESCR NGO Coalition and how to endorse the NGO statement to be presented to the OP-ICESCR working group early next year, please contact: Caroline Lambert (op\_icescr\_group@yahoo.com)*

### **Endnotes**

- 1 E/CN.4/1997/105
- 2 The information in this paragraph are mainly drawn from "Concise Background Document on the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights" (minbyun.jinbo.net/un/inter03/59chr/Background%20Document%20on%20the%20Optional%20Protocol.doc)
- 3 *Report to the Independent Expert on the Question of a draft optional protocol to the International Covenant on Economic Social and Cultural Rights - Submission by Non-Governmental Organizations, pursuant to Article 9(d) of Resolution 2002/24 of the Commission on Human Rights (April 2002).*
- 4 *Strategies Towards the Adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: Request for Donor Assistance (NGO Coalition document, June 2003).*

# 50 Years of Dowa Education

*Kiyonori Konishi*

The National Dowa Educators' Association or ZENDOKYO celebrated its 50th year in 2003 as an organization of teachers fighting against discrimination in Japan. It is known for promoting the principle of "learning from the reality of discrimination, improving lives and ensuring our future."

It held its 55th General Meeting in 2003 in Fukuoka discussing human rights education practices. More than 150 reports from schools and regions were presented.

Fukuoka, the site of the 55th General Meeting, is important as the place where the literacy movement for people from so-called Buraku communities (communities of discriminated Japanese) began. The teachers in Fukuoka started in the early 1960s a program to teach the parents of children who were unable to go to school the basics of reading and writing.

Teachers founded ZENDOKYO in 1953 in response to the poverty and discrimination faced by children in the Buraku communities. They initiated a program to bring the children to school. This started the education against discrimination, or Dowa education.

At its 50th year, ZENDOKYO has member-associations from 35 prefectures. Only 11 prefectures have no members yet. People with different backgrounds from all over Japan come to its General Meetings. 20,000 participants attended its 55th General Meeting.

The history of Dowa education is at the same time a 50-year history of developing the concept and institution of human rights in Japan.

Dowa education led to the free distribution of textbooks for mandatory education (6 years primary school, 3 years in junior high school). This system started in Nagahama, Kochi city in 1963 when children, parents and teachers demanded free textbooks. It also encouraged the children of laid-off mine workers in Kyushu to continue going to school despite economic hardship. Even today, with the economic downturn disrupting the livelihood of many families, the system enables every child to receive textbooks, the most basic educational materials.

In 1973, a common format for job application forms was introduced in high schools to eliminate discrimination in labor recruitment. The idea went a long way in ensuring careers for all high school students, and not just those from the Buraku communities. Through this system the students and the people involved in recruiting them learned the idea and practice of creating a fair and just society.

Dowa education nurtures scientific understanding of the problems faced by children in their daily lives, and practical skills to solve human rights issues in society. It fosters the independence of, and career opportunities for, children in the discriminated Buraku communities. Its 50-year experience is being harnessed to face today's problems.

New human rights issues resulting from globalization and rapid societal changes are adversely affecting vulnerable communities. Many initiatives under Dowa education are being undertaken to promote education as a venue for human rights-based community-building.

Dowa education will be further enhanced and developed by disseminating and verifying the experiences of these initiatives at the national level.

It is most appropriate to use the experiences of the past 50 years in further improving Dowa education (which is part of human rights education), extending its reach to more areas, and progressing towards the institutionalization of human rights education in Japan.

*Kiyonori Konishi is the Chairperson of the National Dowa Educators' Association (Zendokyo).*

*For further information, please contact: National Dowa Educators' Association (Zendokyo) at [office@zendokyo.com](mailto:office@zendokyo.com); <http://www.zendokyo.com> (Japanese)*

# Challenges and Strategies for Human Rights Education in Asia-Pacific

The workshop entitled “Human Rights Education in Asia-Pacific: Defining Challenges and Strategies” held in Bangkok, Thailand on November 10-12, 2003 discussed the state of human rights education in the region.

The Workshop focused on a number of issues covered by human rights education programs in the region. There were presentations on programs for women, children, youth, indigenous peoples, refugees, ethnic minority groups, migrant workers, plantation workers, peasants and the urban poor.

One aim of human rights education that was highlighted is the need to adopt sustainable strategies that enlarge the community of human rights educators as well as the constituencies for human rights education. This has implication on the reach of current programs, as well as the capability of these programs to continue and expand.

The Workshop noted the importance of giving human rights educators the chance to reflect on, review and rethink their work, to further develop their skills and acquire more knowledge on human rights principles, to adopt holistic approach to human rights education (going beyond one’s issue or sector), to increase their links with each other, and to reach out to more marginalized groups.

The Workshop suggested to engage the government in general, and to treat government people as strategic partners in human rights education. At the same time, the Workshop saw the need to have more human rights education programs for those in government, and to lobby the ministries of education for human rights-friendly school environment. The Workshops noted the important role of national human rights commissions and the need to strengthen their human rights education programs.

In relation to regional forums and meetings, the Workshop suggested the development of strategic partnerships with regional bodies, e.g., the Association of Southeast Asian Nations (ASEAN), ASEAN Inter-Parliamentary Organization (AIPO), South Asian Association for Regional Cooperation

(SAARC), Pacific Islands Forum (PIF), and to use the avenues made available by them. It also emphasized the importance of regional resource centers in collecting and disseminating information and materials, and in mobilizing resource persons.

Finally, with regard to the United Nations, the Workshop called for the use of the United Nations Decade for Human Rights Education (1995-2004) as a lobbying tool with governments, and for the adoption of a second Decade on human rights education.

The Workshop noted the need to utilize the resources and opportunities offered by the UN such as their rapporteurs and experts, their reporting mechanisms, and their programs for technical cooperation with governments. UN rapporteurs and experts from the region can be invited as resource persons in human rights education programs so that they can share information on their respective fields of competence. Human rights education should be used to lobby governments to ratify UN human rights instruments.

The three-day workshop was attended by 60 participants representing various institutions (non-governmental, UN specialized agencies and a national human rights commission). It was organized by the Asia-Pacific Centre of Education for International Understanding (APCEIU), the Asia-Pacific Regional Resource Center for Human Rights Education (ARRC), and the Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA).

*For further information please contact:*

*a) Asia-Pacific Centre of Education for International Understanding (APCEIU), #604, 50-14, Myongdong 2 ga, Chung-gu, Seoul, Korea; ph (822) 774-3936; fax (822) 774-3957; e-mail: [sungpark@unesco.or.kr](mailto:sungpark@unesco.or.kr); [aceiu.unesco.or.kr/english/aceiu/aceiu.html](http://aceiu.unesco.or.kr/english/aceiu/aceiu.html)*

*b) Asian Regional Resource Center for Human Rights Education (ARRC), 2738 Ladprao 128/3, Klongchan, Bangkok, Bangkok 10240; ph/fax: (662)3775641; e-mail: [arrc@ksc.th.com](mailto:arrc@ksc.th.com); [www.rrc-hre.com](http://www.rrc-hre.com)*

# Japan-Korea Exchange on Gender-Equal Society

*Park Koonae*

The Korean WomenLink and the Graduate School of Education of Hanshin University and HURIGHTS OSAKA organized a Japan-Korea Seminar on Gender-Equal Society on 26-30 August 2003. 14 educators from Japan took part in the event.

The Seminar, the second in the series that started in Osaka in 2002, had two activities. The first, co-organized with Korean WomenLink, focused on comparisons and exchanges of opinion on the current situation of women in Korea and Japan. The second, co-organized with the Graduate School of Education of Hanshin University, focused on gender education in schools.

The first activity was held on 27 August 2003 with Ms. Jung Kang-ja, Joint Representative of the Korean WomenLink as coordinator and 4 speakers, including Ms. Choi Myun Sook of the Korean WomenLink and Ms. Chiyomi Wakimoto of the Japanese Trade Union Confederation (RENGO) Osaka chapter.

The discussions reveal the similarities in the situation of women in Korea and Japan. They include the low participation of women in politics, the “M curve” (women in their 30s stopping work due to marriage, pregnancy and child-care, and re-entering the labor market afterwards), less pay (about 60% of men’s wages even for full-time job), the seriousness of sexual harassment, and the prevalence of indirect discrimination. Both countries have been introducing legislation to achieve gender equality. While Korea has enacted a law prohibiting discrimination, the majority of Korean men do not understand what is meant by “gender.” In Japan, there is a strong “backlash” or reactionary tendencies against what has been achieved so far in this field. But since this trend is not confined to Japan, the speakers stressed the importance of establishing solidarity among women in Asia. A representative of Korean WomenLink spoke about the struggle against labor discrimination, while other Korean speakers introduced the women’s movement in Korea in general. Korea is experiencing an extremely rapid decline in the birthrate, and an aging population. Its birthrate has been lower than that of Japan recently, but with increasing divorce rate. The Japanese participants

noticed the energy of the Korean women striving towards change in the midst of rapid social transformation.

The second activity, held on 28 August 2003, was coordinated by Dr. Kang Soon-won, Dean of the Graduate School of Education of Hanshin University. There were two speakers: Ms. Kim Jung-Yeon, in charge of education policies for women in the Ministry of Education and Human Resources Development of Korea, and Ms. Yumiko Yamamoto of Osaka Prefecture Human Rights Education Research Association.

Ms. Kim spoke about the Korean government’s policies and program on human resource development for women. She spoke on the improvement of the status of the female teachers and the strengthening of academic and career counseling for girls. These issues have great relevance in Japan. The Korean participants, in turn, introduced the designation of model schools for the promotion of gender equality education, visual image festival, essay contests and awards as well as the efforts to curb sexual harassment in schools. The Japanese speaker talked about the new teaching material (*Jibun o ikiru* - Living your life) a collection of practices on gender equality and human relationship compiled by her association. She also cited the need to develop the communication skills of boys to achieve gender equality.

Questions and comments from the floor were mostly from the Korean participants addressed to the Korean government representative. Many of them were critical, since the policies and initiatives explained by the speaker were not actually realized in schools. There were further questions regarding the “hidden curriculum” as well as comments on sex education in Japan.

*Park Koonae is a staff member of HURIGHTS OSAKA.*

*For further information, please contact HURIGHTS OSAKA.*

# The 55th Anniversary of the Universal Declaration of Human Rights

The Osaka Liaison Conference for the Universal Declaration of Human Rights celebrated the 55th anniversary of the Universal Declaration of Human Rights on 10-11 December 2003 in Osaka city.

The two-day program reviewed the activities in Japan organized in accordance with the United Nations Decade for Human Rights Education (1995-2004), and discussed the need for a second Decade. The discussions dealt with the relationship between human rights education and corporate social responsibility, community organizing, local government programs, and school education. Japanese and foreign guests presented experiences on each issue.

The first day had a plenary session with a presentation on the Decade by Mr. Kenzo Tomonaga, Secretary General of the Osaka Liaison Conference. He stressed the need to further develop human rights education in Japan, and to further promote it globally through the second Decade. He also presented the *Osaka Appeal* which requests “all governments, along with the United Nations, [to] review the progress made during the Decade since January 1995 and begin deliberations on launching a second Decade as soon as possible.”

Separate meetings were subsequently held with presentations from the European Union (Dr. Michael Reiterer, Deputy Head/Minister, Delegation of the European Commission in Japan), Germany (Dr. Hans Hesselmann, Director of Nuremberg City’s Human Rights Office), and the Philippines (Ms. Jane Austria, an NGO community organizer).

On the second day, a symposium was held with a panel discussion by the foreign and Japanese resource persons. The symposium discussed the role of human rights education in the 21st century based on the Decade. The presentations focused on the challenges facing human rights education at the global, regional and national levels, and the role of the corporate sector, the government (national and local), the schools, and the local communities.

The presentations stressed the following:

- a. The UN is now at the stage of reviewing the achievements made under the Decade and discussing further steps to take. The proposal to have a second Decade will facilitate the continuation of efforts to develop government human rights education programs;
- b. National human rights education programs (such as the one in Japan) need to stress human rights concept as it is and not to interpret it merely as moral principle. The idea of “right” has to be clarified and better understood by the society as a whole;
- c. Corporate social responsibility is in fact a good way of doing business. Nevertheless, practical difficulties brought by the tight competition in the market (that often leads to exploitation of workers and environment in countries offering cheap labor to attract foreign investments) must be overcome;
- d. Children have to strengthen their self-esteem as a basis for understanding their human rights. This is especially true for children who suffer from human rights violations such as discrimination; and
- e. People empowerment is a key component for realizing human rights. It should be a basic objective of human rights education programs.

The two-day program was mainly attended by member-organizations of the Osaka Liaison Conference (Osaka Prefectural government, Osaka City government, Buraku Liberation League Osaka Branch, Industrial Federation for Dowa and Human Rights Issues (Osaka), Osaka Dowa Association of Religious Organizations, educational organizations, and community associations), citizens and students.

*For further information, please contact: Mr. Kenzo Tomonaga, Secretary -General of the Osaka Liaison Conference for the Universal Declaration of Human Rights, Director, Buraku Liberation and Human Rights Research Institute, 1-6-12 Kuboyoshi Naniwa-ku, Osaka 556-0028 Japan, ph (816) 6568-7337; fax (816) 6568-0714; e-mail: [udhr@blhrri.org](mailto:udhr@blhrri.org); [blhrri.org/index\\_e.htm](http://blhrri.org/index_e.htm)*

# Events

## Recently-Held Events

A training workshop on human rights investigation and fact-finding techniques was held on 24-25 November 2003 in New Delhi. The two-day training workshop gave an orientation on investigation techniques, and on skills and capacity to conduct fact-finding systematically.

*For more information please contact: Human Rights Unit, Indian Social Institute, 10 Institutional Area, Lodi Road, New Delhi - 110 003, India, ph (9111) 24622379/ 24625015; fax (9111) 24690660; e-mail: hru@unv.ernet.in; www.isidelhi.org*

An international conference on the theme "The Implications of Global Economic Restructuring for Women in China and Southeast Asia" was held in the Chinese University of Hong Kong on 27-29 November 2003. There were presentations on various issues relating to women workers such as the impact of globalization, women empowerment, religion and cultural transformation, and the changing role of women in the family. This was jointly organized by the Gender Research Centre (The Chinese University of Hong Kong), Gender Studies Programme (Chinese University of Hong Kong) and Women's Studies Centre (Peking University).

*For more information please contact: Ms Lin Chew, Gender Research Centre, The Chinese University of Hong Kong, ph (852)2609-6745; fax (852) 2603 5215; e-mail: grcentre@cuhk.edu.hk; linchew@cuhk.edu.hk; www.cuhk.edu.hk/hkiaps/grc*

The First Tamil Nadu State Conference of Human Rights Defenders was held on 28 November 2003 in Madurai, Tamil Nadu, India. Delegates from all over Tamil Nadu, mainly comprising human rights defenders and victims of human rights violations, attended the conference. They called on the Indian government including the State government in Tamil Nadu to "take all necessary steps to protect, promote and implement all human rights and fundamental freedoms and undertake to guarantee that all persons under its jurisdiction individually and in association with others are able to enjoy all these rights and freedoms in practice as mandated in Article 2 of the United Nations Declaration on Human Rights Defenders."

*For more information please contact: People's Watch - Tamil Nadu, No. 7, P.T. Rajan Road, 2nd Street, Madurai, Tamil Nadu 625002 India, ph (91452) 532-432; 531-874 ; fax (91452) 531-874; e-mail: Henri Tiphagne (henritiphagne@eth.net)*

The "Asian Consultation on Vienna + 10" was held on 15-16

December 2003 in Bangkok. The consultation discussed a) the progress in the situation of human rights in the region five years after Vienna plus five (1998) meeting, b) the performance of States in meeting their obligations under the Vienna Declaration and Programme of Action (VDPA), c) more active role for the United Nations in the promotion and protection of human rights as recommended by the VDPA, and d) civil society's strategic response to the increasing threats on the universal human rights agenda in the current international politics.

*For further information, please contact: Mr. Rashid Kang, Program Coordinator at the secretariat of Forum Asia, 109 Suthisarnwinichai Rd, Samsennok Huay Kwang, Bangkok, 10320, Thailand, ph (662) 276 9846 to 47; fax (662) 693 4939; e-mail: hrd@forumasia.org*

## Events to be Held

The Asia Pacific Judicial Educators Forum will hold a workshop in Sydney from 28 January - 3 February 2004. The workshop will focus on 'Designing Effective Judicial Education Programs' and will be conducted by senior facilitators led by Professor Neil Gold, Professor of Law, University of Windsor, Ontario, Canada. The workshop is an initiative of the Centre For Democratic Institutions and the NSW Judicial Commission. Countries invited include Cambodia, Indonesia, Laos, the Philippines, Papua New Guinea, Thailand, and Vietnam.

*For more information, please contact: Centre for Democratic Institutions, Research School of Social Sciences, Australian National University, Canberra ACT 0200 Australia; ph (612) 6125 0605; fax (612) 6125 9726; e-mail: cdi@anu.edu.au; www.cdi.anu.edu.au*

The Diplomacy Training Program (DTP) in partnership with the Asia-Pacific Regional Resource Center for Human Rights Education (ARRC) and Forum Asia, will hold the 14th Annual Training Course for Human Rights Defenders from the Asia-Pacific and Indigenous Australia (Human Rights and Peoples' Diplomacy) from 2-20 February 2004 in Bangkok. The forthcoming sessions will cover corporate accountability and human rights, economic, social and cultural rights; the human rights-based approach to development, working with United Nations treaty bodies and special mechanisms, child rights; and women's rights.

*For more information and an application form please visit www.law.unsw.edu.au/centres/dtp or e-mail DTP at dtp@unsw.edu.au*

# HURIGHTS OSAKA ACTIVITIES

Hurights Osaka, in partnership with educators and institutions in Southeast Asia, has published a set of human rights lesson plans. The publication *Human Rights Lesson Plans for Southeast Asian Schools* was printed in Bangkok.



**PRINTED MATTER**

**AIR MAIL**

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.



**HURIGHTS OSAKA**

**HURIGHTS OSAKA**

**(Asia-Pacific Human Rights Information Center)**

1-2-1-1500, Benten, Minato-ku, Osaka 552-0007 Japan

Phone: (816) 6577-3578 Fax: (816) 6577-3583

E-mail: [webmail@hurights.or.jp](mailto:webmail@hurights.or.jp)

Web site: <http://www.hurights.or.jp>