



Editorial

Law, Lawyers and Human Rights

Authoritarian governments proliferated in Asia-Pacific during the decade of the 1970s. It was truly a disastrous decade for human rights. Arbitrary detentions, torture, disappearances, extra-judicial killings, among others, were directly attributed to both official policies and secret operations of authoritarian governments.

During this period of massive violations of human rights, law was reduced to a mere instrument of injustice. But there were some lawyers who stood up, at their peril, to tell governments that the violations have to stop. Knowing that they were up against powerful people and institutions, they pursued what they perceived then as the only peaceful option.

Lawyers organized themselves not merely to handle human rights cases in courts but to bring the issue to the people. They were proactive. They saw the need to document human rights violations and inform the public how these violations take away the security of society as a whole. Some helped empower disadvantaged groups to fight for their rights.

Eventually, in many countries, law has been restored almost to the state of majesty where it belongs. But the danger of sliding back to the experience of the 1970s is chillingly present in the current era of "anti-terrorism" policies of governments.

Some lawyers are therefore ever vigilant in preventing this from happening. Ultimately, however, the society as a whole has to make sure that this does not happen.

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.

Indonesian Legal Aid Foundation: Struggling for Democracy and its Own Sustainability

A. Patra M. Zen

Totalitarianism, authoritarianism, militarism and racism are the "isms" that have traditionally been the opponents of legal aid workers. These "isms" contradict the values of democracy and supremacy of just law and human rights. Many legal aid workers and activists often confront agents or actors behind these "isms". In this context, the activists of the Indonesian Legal Aid Foundation (LBH) struggled together with civil society organizations in fighting the "New Order" led by then President Soeharto, who represented the authoritarian government in Indonesia.

LBH, the biggest legal aid organization in Indonesia, has entered the third stage of its historical development. The first stage was the establishment of the first LBH in Jakarta, a pilot project of the Indonesian Advocates Association (Peradin) on 20 October 1970. The establishment of provincial LBHs in major cities nationwide soon followed. The pilot project was started mainly because of the need to provide access to justice to the poor people in the country.

The second phase was marked by the founding of an association of dozens of LBHs. This association was named Indonesian Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum) on 13 March 1980. From then on, LBH turned into an independent non-governmental organization (NGO) and no longer affiliated with Peradin. The third phase was marked by the revision on 26 September 2002 of the organization's statutes, changing an organization that was commonly considered as the '*locomotive of democracy*'¹ by the national media.

Thus far LBH has offices in 14 provinces. It is well-known in the media because of its noted and popular individuals who are multi-awarded (domestically and internationally) human rights fighters.

Approach to legal aid

LBH adopted the structural legal aid approach which requires that the handling of cases must address the root causes of human rights violations and poverty in general.² Therefore, LBH has 2 strategies: litigation (handling of cases before the courts or through other legal processes) and non-litigation, including organizing mass demonstrations and media campaigns. Currently, LBH has 5 core programs (1) advocacy before the court (litigation program); (2) human rights for women and children; (3) economic, social

and cultural rights and civil and political rights; (4) security law reform; and (5) access to justice program. They are implemented by 3 bureaus (advocacy, research, and publication and information) and 2 directorates (publicity and international relations). LBH has identified its mission as follows:

1. Establish, promote and disseminate the values of democratic and just law-based state, and uphold human rights in all social segments without condition;
2. Establish and promote independent and empowered ... marginalized people in such a way that enables them to formulate, articulate and struggle for and sustain their collective and individual interests;
3. Develop systems, institutions and other supporting instruments to increase effectiveness of the efforts to fulfill the rights of the marginalized people;
4. Initiate, encourage, advocate and support law development programs, enforcement of legal justice and national legal reform in line with the viable Constitution and the Universal Declaration of Human Rights; and
5. Promote and develop programs that contain dimension of justice in politics, socio-economics, culture and gender, particularly for the marginalized people.³

The work

Since its establishment, LBH has been handling human rights violation cases and criminal cases in general. Most of the cases handled by LBH are related to violations of civil and political rights such as torture, arbitrary detention, extra-judicial killing or involuntary disappearances. Aside from civil and political rights cases, LBH also handled environmental, land and labor rights cases. Data for the 1995-1999 period show several thousands of cases handled. Since October 2003, LBH classifies cases into civil and political rights cases, and economic, social and cultural rights cases. This division is based on international human rights law standards.

Aside from its role of advocating for the rights of the poor in Indonesia, LBH has been linked to the broader democracy issue in the country.

One wrote that "... at the beginning of 1990s LBH was even named as the locomotive for democracy.... Almost every day many activists ranging from stu -

dents, labor[er]s, urban poor... and the like thronged [the LBH] office..."⁴ The writer asserted that LBH was the source of opposition to the ruling government:

...some Political Parties participating in the 1999 general election were declared in this place including the Democratic People Party (PRD) and Indonesian Democratic Union Party (PUDI). It implies that LBH at the beginning of 1990s was really the central place in which many groups met in their attempts to oppose openly ... the Soeharto's regime. The existing groups were still small in number... From the [LBH] office ..., the schemes of actions to counter ... evictions nationwide were planned.

... in other words, [LBH] was no longer [a] simple place to file a complaint [for] poor civilians but also [a] place for pro democracy activists of various groups to gather...⁵

Challenges

In conjunction with the 25th anniversary of LBH in 1995, Professor Daniel S. Lev, a senior lecturer in Washington University, said that the emergence of LBH in the 1970s was a sort of experiment. But the experiment worked out well. Lev even said that the continuing existence of LBH has encouraged the NGO movement in Indonesia. He said that "*... when LBH was founded in 1970s, many predicted that LBH would only survive for five years at maximum. Thus, it is [an] unpredictable thing to note that LBH has survived for 25 years.*"⁶

LBH has been facing many challenges all throughout its existence.

Implementing the structural legal aid approach has its risks. The addition of non-court activities including organizing and educating clients and poor members of society to its core competence of advocacy in courts posed a problem. This approach decreased the quality of technical and legal skills of some of its legal aid workers in handling cases in court, compared to those of the senior advocates of the 1970s and 1980s.

In addition to this risk, the structural legal aid (BHS) approach made LBH workers the target of Soeharto regime. Often, LBH workers have to support other colleagues whenever the iron-fist Soeharto regime considered them enemies for pleading farmers' or poor workers' interests. Physical and mental harassment or even torture by members of the police and military were part of the daily hazard under the Soeharto regime.

But the post-Soeharto era has not been free of such problems. For instance, in 2001 many LBH activists were the target of violence.⁷ In Medan, LBH Director Irham Buana Nasution was shot with a poisonous arrow by unknown perpetrators on 11 April 2001. He was attacked in his office in Medan. Five years earlier, in April 1996, the LBH Medan office was burned down by unidentified people a day after pro democracy activists staged rallies in response to a general election.

On 12 April 2001, a number of unidentified people attacked the van of LBH Bandung Director Haneda Lastoto near the LBH Bandung office. The perpetrators also stole the documents of Lastoto's clients, the 13 suspects in a bombing case.

On 13 April 2001, members of the Jakarta Police Precinct attacked the LBH office in Jakarta. They hurled stones and used batons to destroy four glass windows. Five of them entered the Adam Malik room where a Legal Aid Training session (Kalabahu) - a training for cadres of LBH Jakarta - was being held. The assault occurred following their attempt to arrest the demonstrators staging anti-military rallies near LBH. Some demonstrators took shelter at LBH. 10 of the student activists were beaten up inside the Adam Malik room. An eyewitness lost consciousness due to the shock of seeing real acts of torture. Demonstrators normally take cover at the LBH whenever they clash with members of the police and military.

On 20 July 2001, a joint team from Aceh Police and Aceh Besar Police Precincts in a truck and three cars attacked the LBH Banda Aceh. They forcibly arrested LBH Banda Aceh Director Rufriadi and his staff (Arie Maulana and Bantam, a student activist). They ordered them to take off their clothes and lie face down at the yard of LBH Banda Aceh office. The assault occurred when human rights activists staged rallies on human rights violations in Aceh. The computer, banner and pictures of victims of violence exhibited at the venue of a rally were confiscated.

On the other hand, support from funding agencies plunged. The traditional donor institutions of LBH including Novib and USAID no longer provide support. The so-called "*block grant*" for NGOs, once a symbol of opposition to the New Order regime, was stopped. The exploration of financial support from domestic sources was belated as focus was directed at challenging the New Order regime. Fortunately, LBH was able to secure support from other sources (such as the Canadian International Development Agency [CIDA], the Partnership Governance Reform in Indonesia [PGRI] and local donations from the public) to implement several programs. Another program will be supported by the Australian Agency for

International Development (AusAid).

A number of staff members who had worked in LBH for years had to put up with dismissals without proper severance pay. They had worked in LBH without regular monthly salary. Thanks to the support of international and domestic NGOs, LBH staff members are able to participate in advocacy and networking programs of such institutions as the Asia-Pacific Regional Resource Center for Human Rights Education (ARRC), the Asian Regional Exchange for New Alternatives (ARENA) and USC Canada.

The survival of the organization as well as advocacy for poor people and for justice seekers free of charge are the challenges facing LBH.

Soeharto's downfall on 21 May 1998 marked more challenges. The event opened new chances and hopes to all Indonesians. Formally, the state has provided new procedures and mechanisms and new state-supported institutions. They are considered requirements of a democratic system and structure. They include direct presidential election, direct election of the governors and regents, establishment of Constitutional Court, Constitutional Commission, National Law Commission, Corruption Eradication Commission, and the like.

But the development of formal structures has yet to guarantee the protection of poor peoples' rights. Corruption goes rampant under the regional autonomy system. Worse still, following Soeharto's downfall, the intensity of communal conflict increased as in the cases of the violence against small ethnic groups, women, and poor communities.⁸

At the beginning of the transition period in 1998, the cases reported by the public to LBH increased significantly. Worse, assault committed by members of the state apparatus and militias, or by unidentified perpetrators, against LBH offices escalated during this period.

The structure of LBH was changed in October 2002 to meet these challenges. In the national workshop of LBH in July 2004 it was asserted that the primary program of all LBH offices now is to encourage the fulfillment and protection of economic, social and cultural rights. Of course, this does not put aside the protection of civil and political rights. Modifying Professor Lev's comment, it was really an incredible fact that LBH could survive for 34 years.

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Endnotes

1 See "Refleksi 25 Tahun YLBHI. Harus Bisa Jawab Tuntutan Masyarakat" (Reflections on 25 Years of YLBHI. It Must Be Able to Respond to Public Demands), *Kompas*, 12 October 1995; "Menemukan Sosok Masyarakat Madani" (Finding an Indonesian Civil Society), *Kompas*, 17 August 2003; Tri Agung Kristianto. "Ornop, Sebuah Citra Ketergantungan" (NGO, an Image of Dependency), *Kompas*, 22 January 2003; "LBH dan Demokrasi" (LBH and Democracy), *GATRA Weekly Magazine*, 16 March 1996 (No. 18/II).

2 See Adnan Buyung Nasution, "The Legal Aid Movement in Indonesia: Towards the Implementation of the Structural Legal Aid Concept", in *ASEAN Perspectives on Human Rights and Democracy in International Relations* (Manila:Center for Integrative and Development Studies and UP Press, 1995), pages 31 - 39; Ross Cranston, "Access to Justice in South and Southeast Asia," Chapter 10 in Julio Faundez, ed., *Good Government and Law: Legal and Institutional Reform in Developing Countries*. (London: St. Martin's Press, 1996) pages 233-257; See also Richard J. Wilson, Jennifer Rasmusen and Scott Codey, *Promoting Justice. A Practical Guide to Strategic Human Rights Lawyering*. International Human Rights Law Group: (Washington, 2001) pages 10-11. Text in www.global-rights.org/site/DocServer/PJ_1-2.pdf?docID=184

3 Based on "Vision and Mission of YLBHI" Text in [/www.yldbhi.or.id/index.php?cx=7&cy=1](http://www.yldbhi.or.id/index.php?cx=7&cy=1)

4 Sharir, Bari Muchtar and Junito Drias, *Perahu Retak Kelompok Pro -Demokrasi* (Rocking the Boat for Pro Democracy Group"), September 25, 2002. Text in www.rnw.nl/ranesi.html/gw_20020926

5 Ibid.

6 "Refleksi 25 Tahun YLBHI. Harus Bisa Jawab Tuntutan Masyarakat", op. cit.

7 See Ucoc Ritonga, "Sejumlah Kasus Menimpa Aktivis LBH dan Kontra" (Some Cases for LBH and Kontra Activists"), *Tempo Weekly Magazine*, 21 August 2001.

8 On the violence and escalating tension in the post-Soeharto era for instance figure out Elizabeth Fuller Collins *Indonesia: A Violent Culture?* Text in www.scripps.ohiou.edu/news/cmdd/artikel_etc.htm#ftn2

India: People's Union for Civil Liberties

Pushkar Raj

The 1976 national emergency imposed in India by Indira Gandhi, the then Prime Minister, was a rude shock to a nation that had thrived on an uninterrupted flow of democracy in its national life since it gained independence in 1947. Detention without trial for a large number of people, news censorship, trespassing without legal sanction of private premises, telephones, and letters, and constitutional amendment curtailing basic rights to life and freedom in the name of national security and crisis all ensued.

Hundreds of thousands of people joined massive rallies to protest against the anti-democratic acts of the government and to mobilize public opinion to safeguard the Indian democracy.

Birth of PUCL

With this background, a national seminar held on 17 October 1976 created the People's Union for Civil Liberties and Democratic Rights (PUCLDR).

With the national emergency lifted in 1977, the elections that followed led to Gandhi's downfall and ushered a new government headed by those who spearheaded the movement against the emergency. Many thought that the repression of the civil liberties of the people has ended. But they were mistaken. Credible reports compiled by a committee comprised of people associated with PUCLDR showed that in certain parts of the country young boys labeled as 'naxalites' (extremists) were being killed. This brought the need for a strong non-partisan civil rights organization to protect the rights of the people that are always under attack irrespective of the type of government in power. As a result, PUCLDR came to be christened People's Union For Civil Liberties (PUCL) in a November 1980 conference.

With expanded membership and branches in almost all the states of India, PUCL mobilizes public opinion in favor of a better climate for the protection of civil liberties in the country; energizes and creatively uses existing institutions like the courts and the press so that they may become more sensitive to the human rights situation in the country; conducts investigations into incidents of violations of human rights reported by victims, the press, PUCL mem-

bers, or any concerned individual; publishes the findings of investigations and releases them to the press, or makes them public by other means such as public meetings (seminars and lectures); raises its voice against various black-laws and lobbies for the enactment of progressive laws in the country and files petitions in court on the basis of these investigations, or even otherwise.

PUCL member-lawyers prepare and argue cases in the local court, High Courts and the Supreme Court. They meet all the expenses in handling cases from their own pocket. PUCL, as a matter of policy, does not accept money from any funding agency, Indian or foreign. Individual contributions however are welcome. The members, the office bearer, and the activists on their own meet all the expenses. For the expenses on the activities of the national office, money is raised from sympathizers and members by the way of donations.

Undertaking the work

PUCL does not simply react. To raise awareness about civil liberties and human rights among the public and to bring to light the dedication and work of young journalists working in the area of human rights, PUCL instituted in 1981 the Journalism for Human Rights Award. It also organizes the annual J. P. memorial lecture on human rights every 23rd of March, the date of the lifting of national emergency in 1977. Prominent human rights academician, or lawyer, or prominent practitioner delivers the lecture.

PUCL publishes a monthly journal, the *PUCL Bulletin*, in English. It is the only journal of its kind in the country and is read in human rights circles all over the world. The bulletin has published its 250th issue.

During the 1980 conference, PUCL requested Justice V. R. Krishna Iyer (Retired) to work on the preparation of a new Prison Act and Jail Manual. It also started a campaign against the National Security Act (NSA) as it was being used against the trade union activists in the state of Madhya Pradesh, then the largest state in India. In the same year PUCL approached the Supreme Court hoping to get a clear-

cut stand on liberalizing *locus standi*. The issue came out in the wake of a journalist buying a woman to demonstrate that trafficking in women is a fact. This was an important step in expanding the sphere of public interest litigation and giving boost to judicial activism in the country.

This set the tone of the work of the organization in the years to follow. In July 1981 the Bombay PUCL approached the Bombay High Court to stay the eviction of pavement dwellers in the midst of heavy rain in the city. PUCL also asked the courts for adoption of rehabilitation scheme and order proper compensation for evictees.

PUCL, along with some other organizations, were in the forefront of the protest against issues related to the 1982 Asian Games in New Delhi including ban on demonstrations, use of Essential Services Maintenance Act, and payment of minimum wages to the workers engaged in construction work.

In 1983 the PUCL took part in a detailed study on child labor in Sivakashi, a district in the southern state of Tamil Nadu, where a large number of children were reportedly employed in the firecracker manufacturing industry. It also made another study in the eastern state of Assam, where ethnic violence erupted and large number of people including children and women were victims of human rights violations by non-state actors as well as security forces.

PUCL and the People's Union for Democratic Rights made a thorough investigation and produced a report (entitled *Who are Guilty?*) on the large scale killing of Sikhs by mobs allegedly supported by political parties (more than 3,000 Sikhs were killed in Delhi alone) during 31 October to 3 November 1984 period after the assassination of Indira Gandhi. In 1987, PUCL investigated the communal riots in Hasimpura, Meerut and other areas near Delhi. In 1988, PUCL took a leading part in the struggle opposing the obnoxious practice of *sati*.¹ It protested against the burning of a woman named Roop Kanwar and has been fighting battle in the courts to get the perpetrator of the crime convicted.

In the 1990s PUCL brought out reports on human rights violations in Jammu and Kashmir, and on communal riots in Aligarh (Uttar Pradesh), Bombay (Maharashtra) and other parts of the country. It

viewed the telephone tapping by the government seriously and subsequently petitioned the Supreme Court against it. It actively campaigned for the setting up of a high-powered and autonomous National Human Rights Commission (NHRC) and formulated pre-conditions for a purposeful commission. PUCL pointed out the lacunas in the mandate, composition and functioning of the NHRC that came into existence. But it decided to co-operate with it while continuing to work for suitable changes in the Protection of Human Rights Act, the law that created the NHRC. In recognition of its services, Vigil India Movement awarded in July 1994 the first M.A. Thomas Human Rights Award to PUCL.

PUCL has been at the forefront of improving health facilities of the people, especially the vulnerable sections of society. On PUCL's petition, the court instructed the New Delhi Administration to take immediate steps in setting up a mental hospital-cum-medical college in New Delhi with sufficient autonomy to bring quality change in the condition of the inmates. This included changing the name of the hospital from Shahdara Mental Home to Institute of Human Behavior and Neuron Sciences.

PUCL was able to make the government of Manipur pay compensation to the families of the victims of "fake encounters" with the military. It also condemned "liquidation or fake encounters." It made a landmark intervention in the case of widespread starvation deaths while the *godowns* (food stores) of Food Corporation of India were overflowing with grains. It led to the launching of nationwide program to ensure provision of food to stem the deaths, with Supreme Court monitoring. This is a case of violation of right to food, which leads to violation of right to life.

In November 2004, PUCL successfully petitioned the Supreme Court to instruct all the state governments to ensure that all children in primary schools get mid-day meal without interruption. The court also told the state governments that they cannot make the excuse that they have not received the required funds.

Considering the importance of the right to information in a democracy, PUCL was able to make the Supreme Court uphold the citizens' right to know the antecedents of candidates who are contesting Parliament/Legislative Assembly elections to enable

them to make the right choice by declaring amendments to certain sections of the Representation of People's Act 1951 unconstitutional. As a result, all candidates in the 2004 elections for the Parliament filed for the first time affidavits stating the criminal cases filed against them, if any, and the assets that they possess.

Challenges

With growing emphasis on "privatization" in all walks of life, the rights of poor people have come under severe stress. Protests due to rising rural and urban poverty and shrinking employment opportunities are met with laws that limit the scope of protest. The state has not only been showing insensitivity but also a degree of intolerance in this regard. This is a serious challenge for PUCL. The task becomes more daunting because it involves launching systematic campaign to educate those who matter in influencing public opinion and are not adversely affected by these policies.

The state has been dealing with terrorism as a law and order problem without considering the socio-economic factors. Its actions have become more strident after the 2001 September 11 attack in the U.S. Anything in the name of anti-terrorism is condoned such as the Prevention of Terrorism Act (POTA), which has been used against the people selectively. Similarly, the number of cases of "encounter" deaths in various parts of the country has risen, many encounters were allegedly faked.

Much of the civil liberties problems in India revolve around non-adherence to the rule of law. The police lacks autonomy of action as it remains under the influence of politicians. The police investigation process remains problematic in terms of professional standards. Recommendations for police reform by the Police Commission have remained unimplemented. Similarly, millions of cases are pending in courts. As a result, victims do not get justice and culprits go scot-free. The country urgently needs a campaign to reform its criminal justice system so that adherence to the rule of law is ensured and the civil and human rights of the people are protected.

PUCL being a member-based and member-funded organization is facing the problem of resources - material as well as human. There has been a steady

decline in getting new volunteer members. Earlier, people would seek out the organization, become members and devote time and resources voluntarily. Now they have to be asked to become part of the organization. This affected the frequency of its activities. One reason for this situation is the rise of lucrative NGO movement in the country. In order to tackle this problem, PUCL is targeting schools and colleges to reach out to the young students and arouse their interest, awareness and education regarding the human rights situation in the country and how their sensitivity in this field can make a difference.

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Endnote

1 A custom in the western state of Rajasthan encouraging widows to sit on the funeral pyre of their deceased husbands and die.

Lawyering for Human Rights

Jefferson R. Plantilla

The current anti-terrorism campaign raises once more the spectre of law as a tool for human rights violations. Decades earlier, several governments in Asia trumpeted national security as justification for the curtailment of human rights. The "guided democracy" concept of Indonesia and the "constitutional authoritarianism" of the Philippines are examples. Both facilitated the massive violations of human rights in the name of saving the country from the threat of communist take-over. In South Asia, India's "national emergency" led to sudden increase in human rights violations.

National security laws in Singapore, Malaysia and south Korea, enacted in the 1960s, legalized arrest without court warrant and detention without trial. They remain at present.

There are legal changes however. The 1987 Philippine Constitution, the 1992 Thai Constitution and the 1997 Fijian Constitution have provisions aimed at preventing the repeat of their bitter experiences on human rights violations. They also provide the mechanism (mainly in the form of national human rights institution) to protect and promote human rights. Several other governments enacted laws creating national human rights institutions and protecting vulnerable sectors of society especially children and women.

The Advisory Council of Jurists of the Asia-Pacific Forum of National Human Rights Institutions (APF), which advises members on the interpretation and application of international human rights law, is a new development in the field of law and human rights in the Asia-Pacific.

But the problem of human rights violations remains.

Lawyers at the frontline

Lawyers figured prominently in the midst of flagrant violations of human rights in the decade of the 1970s. They were swamped with cases of illegal arrest, arbitrary detention, torture, disappearance, violent dispersal of demonstrations or any form of public assembly, and even media censorship. They had to quickly provide legal aid to cases of arrests to avoid more serious problems of torture, disappear-

ance and extra-judicial execution. This work termed "fire fighting"¹ was a much-needed legal response to massive violations of human rights. Many of the cases they handled were on civil and political rights.

Governments found it convenient to disregard due process in clamping dissent by simply citing national security. It was in this context that lawyers who provided legal aid were exposing themselves to the very problems they were addressing. A number of these lawyers were arrested, detained and even killed.

In Southeast Asia, well-known legal personalities formed the Regional Council on Human Rights in Asia in 1982. The Council elevated national human rights work to the regional level to gain more attention from the international community. It adopted the *Declaration of the Basic Duties of ASEAN Peoples and Governments* in 1983, that describes the general features of the then human rights situation in Southeast Asia, and provides a perspective on how human rights should apply to the subregion.

Widened view

While "fire fighting" was indeed necessary, and continuous to be so up to the present, many lawyers understood that the problem is structural in nature. The approaches developed from the late 1970s therefore went beyond the usual court-centered approach, emphasized much more the collective welfare of people, and covered a wider range of human rights. They are known by different names - legal resources approach, structural legal aid, developmental legal advocacy, and alternative law.

The legal resources approach is defined as "the development of community knowledge and capacity to make use of the law." Towards this end, the lawyer will have to be:

- a. an advocate of collective demands and group interests, both in courts and in administrative, legislative and other institutions,
- b. an educator helping to develop community awareness and knowledge of relevant laws and helping to train community para-professionals,
- c. a critic of proposed or existing legislation and administrative actions which impinge on the human

- rights of impoverished groups,
- d. a law reformer asserting claims for change in legislation and state structures, and
- e. a jurist developing new jurisprudential concepts needed to realize the right to development.²

Indonesian legal practitioners promoted the concept of structural legal aid. It consists of a series of programs "aimed at bringing about changes, both legal and in other lawful ways, in the relationships which form the bases of social life, towards more parallel and balanced patterns."³

Another concept is developmental legal advocacy which is derived from a "structural perspective on the causes of injustice and an instrumentalist view of the law." It "emerged to address the inadequacies in the existing provision of legal aid by focusing on structural change to remedy injustice and the empowerment of the communities concerned to effect such change."⁴

The concept of alternative law is considered "... part of the alternative structures (national and international) essential to achieving "alternative development," i.e., development which is human and humane, equitable, based on self-reliance, realized through participation, and achieved in a manner that is environmentally sustainable. Alternative law thus represents a clear and uncompromising break from present-day law."⁵

These approaches have generally been used by legal organizations in South and Southeast Asia.

Women's rights advocates of the Asia-Pacific Forum on Women, Law and Development (APWLD) promote "Feminist Legal Theory and Practice" to help women's rights legal advocates and activists in their use of legal strategies to address women's concerns, and enhance their skills to effectively challenge discriminatory laws and practices in their countries by applying international human rights instruments that have contributed to the advancement of women's rights. Environmental law groups also provide an example of new area of work on law focusing on the impact of environmental destruction on the rights of communities dependent on natural resources specifically the indigenous peoples, fisherfolk and upland farmers.

Areas of work

Many legal organizations undertake non-formal legal education programs to help marginalized communities gain both knowledge and skills in using law to protect and assert their rights. They develop paralegals who can assist not just lawyers but their own communities in addressing their problems. The paralegals are trained to provide "legal first aid."⁶ They also use mass media such as local radio programs to reach more people in the rural areas. Seminars and forums are also held along with the publication of legal education materials.⁷

With the same educational effect, legal organizations handle court cases as part of public advocacy. High-profiled court cases record human rights abuses and incite public debate. The case, for example, of a woman who was gang raped upon the order of a traditional village court brought to the Pakistani public the brutal practices against women.⁸

Legal organizations lobby for new legislations that implement international human rights instruments. These efforts relate to indigenous peoples, people with disabilities, children, urban poor, women and other sectors. Some also lobby for the establishment of human rights mechanism at the national⁹ and regional levels.

LAWASIA proposed unsuccessfully in the 1980s through the draft *Pacific Charter on Human Rights* the creation of an appropriate human rights mechanism for the south Pacific states as a whole. In the 1990s, it led the ASEAN Human Rights Mechanism Initiative. LAWASIA and partner organizations are hoping that ASEAN would eventually adopt this mechanism.

Challenges

International human rights law provides human rights lawyers with an important role in translating it into domestic laws. Their experience in human rights lawyering provides a significant perspective on how international human rights standards should be fleshed out in the context of national legal peculiarities. Their advocacy, in courts or outside, can help educate judges as well as fellow lawyers and other legal professionals on the importance and applicability of international human rights standards. They can work with national human rights institutions, where they exist, and/or related institutions on the review of domestic laws based on international human rights standards. While some legal organizations are

already engaged in this process, the challenge lies in maintaining this momentum to cover many more issues and laws, and encouraging law reform in countries where this process has not been started. It may be good to have a regional networking system that would facilitate exchange of information on law reform initiatives in different countries.

Human rights lawyers should also be involved in judicial training (for judges in the lower courts at least). Citing the experience of India, they can point to judicial activism as an important idea to look into.

Law schools have to be brought into the human rights field. The graduate courses on human rights in several Indian law schools, the encouragement to teach human rights courses in Chinese law schools, the elective subjects on human rights in a few law schools in the Philippines, and the development of the law school curriculum in South Asia to incorporate human rights¹⁰ are a few examples of initiatives toward that direction. By and large, however, international human rights law has not been given appropriate space in the legal education curriculum. The lack of emphasis on human rights in the law school is probably a major reason for the lack of support for human rights by lawyers in general.

Human rights lawyers work in partnership with non-governmental institutions, people's organizations, law schools and university centers, and national human rights institutions. Some partner institutions may think that legal action is at least good in delaying the implementation of adverse government decisions¹¹ or that success in resolving problems is not due to lawyers but to the affected peoples' struggle.¹² These views remind lawyers that "structural" human rights issues cannot be solved merely by litigation or other conventional legal measures. "Alternative" legal measures have to be developed in partnership with those deprived of justice, and their supporters.

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For further information, please contact HURIGHTS OSAKA.

Endnotes

¹ See Chitral D. Perera, "What Motivated the MDDR to

Work out a Human Rights Education Program in Schools?" in *Human Rights Education in Asian Schools*, volume one (Osaka: HURIGHTS OSAKA, 1998).

² This definition was drawn up in an International Commission of Jurists seminar held in The Hague in May 1981. See also Clarence J. Dias, "Realizing the Right to Development: The Importance of Legal Resources," in *Development, Human Rights and the Rule of Law* (Oxford: Pergamon, 1982), pages 193-197.

³ Buyung Nasution (1985) "The Legal Aid Movement in Indonesia: Towards the Implementation of the Structural Legal Aid Concept," in H. Scoble and L. Wiseberg, eds., *Access to Justice - The Struggle for Human Rights in Southeast Asia* (London: Zed Books Ltd., 1985) page, 36.

⁴ *Free Legal Assistance Group- 1974-1994*, (Manila: Free Legal Assistance Group [FLAG], 1994), page 8. Jose W. Diokno originally used the name developmental legal aid. But FLAG later on changed the word *aid* to *advocacy*.

⁵ Clarence J. Dias, "Alternative Law for People's Empowerment," in Jose V. Aspiras, ed, *Law as Weapon* (Makati: PROCESS, 1992), page 23.

⁶ See D.J. Ravindran ed., *A Handbook on Training Paralegals*, (Geneva: International Commission of Jurists, 1989).

⁷ See Golub, S. and McQuay K., 2001, 'Legal Empowerment: Advancing Good Governance and Poverty Reduction,' in *Law and Policy Reform at the Asian Development Bank*, 2001 Edition, -available at www.adb.org/Documents/Others/Law_ADB/lpr_2001.asp?p=lawdevt

⁸ See Asma Jahangir, "Mukhtar Mai- Challenging Tribal Code of Honor," *Time Magazine*, 11 October 2004, page 43.

⁹ The lobbying being done by The Japan Federation of Bar Associations for the establishment of a national human rights institution in Japan is an example, visit www.nichibenren.or.jp/en/about/justice.html

¹⁰ See the Kathmandu School of Law website (www.kslnep.org) for more details on this initiative.

¹¹ See Ted Anana, "Struggling for Housing Rights in Asian Cities," volume 34, *FOCUS Asia-Pacific* (Osaka: 2003).

¹² See S. Arutchelvan, "Malaysian Plantation Workers and Judicial Resources," volume 34, *FOCUS Asia-Pacific* (Osaka:2003).

ODA for the People's Right to Live in Peace

Kiyokazu Koshida

It is said that Japan was able to rebuild the country after the second world war with the help of World Bank (WB) loans.¹ The loans helped build the Tokaido Shinkansen (Express Train) Railway as well as the Tomei Expressway. And Japan paid back all its loans. Regarding countries receiving Yen loans, such as the Philippines and India, the Japanese government emphasizes that efforts to repay borrowed funds would help them in their "economic development" just as they did to Japan. This idea of "self-help" is not limited to the Japanese Ministry of Foreign Affairs (MFA). The brochure issued by the Tokyo Office of the WB touts Japan as an example of its success, with a photo of the shinkansen. Academics in the field of official development assistance (ODA) also emphasize this concept.

According to one scholar, Japan's concept of "self-help" arose from the confidence it gained in having achieved economic development after the second world war. Japan became a member of the World Bank in August 1952, and borrowed funds for post-war reconstruction. In the 1950s those funds were used for steel and automobile industries, shipbuilding and dam constructions. Later in the 1960s, the major beneficiaries of the loans were the road and transport sector, for such projects as the construction of the Meishin Expressway and the Tokaido Shinkansen. Based on this experience, Japan emphasizes "self-help" as one of the concepts of ODA.²

What the development aid achieved

The shinkansen and the expressways no doubt benefited the people of Japan. But from another point of view, did these projects bring about democratic politics, just prosperity or social equality?

Japan continued with big public construction projects including more shinkansen and expressways. This led to a government deficit of over 700 trillion Yen, including government bonds and loans, an amount most people deem impossible to repay. Thus while the Japanese government insists that ODA recipient countries pay back their loans, it has already given up on paying its own loans. The Japan Highway Public Corporation, in particular, is the target of harsh criticism for continuing to borrow money to build superfluous expressways. But because of the existing structure of vested interests among the politicians, business people, and govern-

ment ministries and agencies, the road construction projects have not ceased. WB is not solely to blame for this situation, but it is the WB loans that created the groundwork for post-war public works using large amounts of borrowed funds. The loans provided "speed" and "convenience" into the lives of the Japanese. But at the same time, they brought about an undemocratic system of dubious flow of funds, centralization of power to the bureaucrats, and decision-making behind closed doors. This aspect of the development needs to be paid closer attention.

Unique features of Japan's ODA

The 50-year history of Japanese ODA started in 1954 when Japan participated in the Colombo Plan³, an international organization for economic development of Asian and Pacific countries. War reparations to the Philippines, Vietnam, Burma and Indonesia also started that year. For countries which did not claim war reparations, such as Laos and Cambodia, Japan began to extend aid grants as a form of quasi-reparation. These were not paid in cash, but in (Japanese) products and development projects. It in effect built footholds for later operations by Japanese companies abroad, for their exports and participation in economic infrastructure construction projects. These reparations were the starting point of Japanese ODA. The prevalence of economic infrastructure construction projects, such as dams and roads, is a unique feature of Japanese ODA.

The concept of "self-help" emphasized by the MFA and others is in reality loan being offered to Asian and other countries to undertake public works projects.

Out of the total Japanese ODA fund, the grant ratio is extremely low, while the ratio for aid in the form of loans with interest is high. Most of donor countries have more than 90% grant ratio, while Japan trails at 55.3%. Spain, which has the next lowest rate, has 78.1%. The difference between Japan and other donor countries in the ratio of grants to total ODA fund is striking.

Japanese ODA is funded from both the national general account budget and public investment and loans. It uses money borrowed from postal savings and pension funds. This leads to the low grant ratio and requires payment with interest for loans to enable the

Japanese government (Japan Bank of International Cooperation as the actual implementing agency) to repay the postal savings and other funds. That is why the government urges repayment using the concept of "self-help".

ODA reform on the 50th anniversary

At the October 2004 Tokyo symposium on ODA, participants from Indonesia and the Philippines highlighted the destruction of the environment and people's lives as well as forced evictions brought about by dam construction projects funded by Japanese ODA (Yen loans in particular). The construction of a huge bridge in Bangladesh caused similar problems.

These problems have been pointed out more than 20 years ago, and yet they repeatedly occur in many countries. The call for a fundamental review of the ODA has been made around the world based on the view that it does not respond to the really urgent situations and needs of the people.

The low grant ratio and emphasis on economic infrastructure projects in Japanese ODA should be changed. Assistance should eliminate inequality in the world, specifically eradicate poverty and create peace. For that purpose, Japan must increase grants on direct services for poverty eradication.

This is not a novel idea.

This idea has been globally agreed upon at the UN Millennium Assembly in September 2000. Countries around the world including Japan adopted the Millennium Declaration, and committed themselves to eliminating poverty, promoting the dignity and equality of human beings, and working towards achieving peace, democracy as well as sustainable development. The Millennium Development Goals that came out of the Declaration set forth specific targets, such as reducing by half the number of people suffering from extreme poverty and starvation by 2015, and required countries to strive further to eradicate poverty around the world. Japan should join these efforts and explicitly include poverty eradication as the target for aid. The 50th anniversary of Japanese ODA should provide an excellent opportunity to do this.

Just before the October 2004 Tokyo symposium, the Reality of Aid-Asia Pacific³ issued a statement after a 3-day conference calling for an ODA "worthy of

public trust and support." The statement refers to the Preamble and Article 9 of the Japanese Constitution and proposes "peace and harmony," "prosperity for all" and "just and democratic society" as the visions of future ODA. It also proposes "people-centeredness," "focus on the poorest," "addressing universal human concerns and issues," "preventing injustice" and "aid as an entitlement to the poor" as specific principles.

The statement reflects the critical view of people from other countries in Asia on Japanese ODA. There is a strong concern about the increasing influence of national-interest arguments (i.e., ODA should contribute to securing security and prosperity of Japan) as well as the militarization of aid (such as prioritizing reconstruction assistance to Iraq in the "war against terror").

One of the proposed principles in the statement, "aid as an entitlement to the poor," can be related directly to the right of the people to live in peace, mentioned in the Preamble of the Japanese Constitution. The 50th anniversary of Japanese ODA should be an opportunity to work further for an ODA that contributes to the realization of the people's right to live in peace.

Mr. Kiyokazu Koshida is a Board Member of the Pacific Asia Resource Center (PARC).

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Endnotes

1 Speech of a Japanese Ministry of Foreign Affairs (MFA) representative, Mr. Mitsuhiro Wada, Director, First Country Assistance Planning Division, Economic Cooperation Bureau, in an international symposium on Japanese Official Development Assistance (ODA) held in Tokyo on 9 October 2004.

2 Toshio Watanabe, Yuji Miura, *ODA: Nihon ni nani ga dekiru ka (What Japan can do)*, (Tokyo: Chuko Shinsho, 2003) page 46.

3 See <http://www.colombo-plan.org> for more details about Colombo Plan.

4 This network publishes the semi-annual report *The Reality of Aid*.

7th International Conference for National Human Rights Institutions

Makoto Kondo

The 7th International Conference for National Human Rights Institutions (ICNI) was held on 14-17 September 2004 in Seoul. The main topic of the conference was "Upholding Human Rights during Conflict and while Countering Terrorism." Discussions essentially focused on the role of national human rights institutions in such circumstances. There were 5 working groups focusing on "Conflict and Countering Terrorism: Economic, Social and Cultural Rights," "Conflict and Countering Terrorism: Civil and Political Rights and the Rule of Law," "The Role of National Institutions in Conflict Situations," "Migration in the Context of Conflict and Terrorism" and "Women's Rights in the Context of Conflict."

The Seoul Declaration

The discussions at the 7th ICNI are summarized in the Seoul Declaration, adopted on the final day of the conference.¹ The preamble of the Declaration expresses the basic idea regarding human rights and terrorism. It provides that while recognizing terrorist acts themselves as serious human rights violations, measures to fight terrorist acts must be taken within the framework of respect for human rights, fundamental freedoms and the rule of law. It further provides that:

Terrorism has a devastating impact on the full range of human rights, most directly the right to life and personal security. Respect for human rights and the rule of law are essential tools to combat terrorism. National security and the protection of the rights of the individual must be seen as interdependent and interrelated. Counter-terrorism measures adopted by the States should therefore be in accordance with international human rights, refugee, and humanitarian law.

The general principles section of the Declaration set forth the following roles for national human rights institutions: commenting on the human rights aspects of security legislation, developing early warning mechanisms and related operational guidelines,

examining violations of human rights committed by States, providing human rights and humanitarian law related advice to the parties in conflict, playing a certain role in the plans, strategies and mechanisms for the peaceful and negotiated resolution of conflicts, placing human rights concerns in a broader societal context and focus also on the underlying causes of the conflicts, and promoting a human rights culture, equality and diversity, and reflecting these principles by having a fair and equitable representation of women.

Relationship to Japan

There are already more than 10 treaties in addition to UN General Assembly and the Security Council resolutions regarding the fight against terrorism. However, terrorism and human rights have not been a topic of serious discussions in Japan. And unfortunately, there is as yet no national human rights institution in this country that can take part in such discussions of international concern. Even if such an institution is established in the near future, there is a strong concern on whether it will satisfy the Paris Principles, and be eligible for recognition (and thus have the right to vote) in the ICNI meetings. Active participation in an international conference such as the ICNI would also be a form of international cooperation by Japan regarding terrorism.

The ICNI

The first ICNI was held in Paris in 1991 to respond to the increasing need for cooperation among national human rights institutions. The objectives of ICNI are (1) to develop and strengthen cooperation among national human rights institutions, (2) to build and strengthen friendship and solidarity among participants, (3) to discuss issues and (4) to ensure follow-up at the national level. ICNI has been held every two years as a general rule. All national human rights institutions are invited to attend. However, those that do not comply with the Paris Principles,² including provisions on their independence, are not

recognized as official national human rights institutions, and do not have the right to vote at the Conference. In this sense, the Japanese national human rights institution, which is currently under debate, may be able to participate in future ICNI but will not be able to vote unless it complies with the requirements under the Paris Principles.

The 7th ICNI was attended by participants from 39 national human rights institutions officially recognized by the International Coordinating Committee for National Human Rights Institutions, observers from 20 other national human rights institutions, representatives from 28 non-governmental organizations from 16 countries and 8 other organizations from 7 countries, and representatives of the Office of the High Commissioner for Human Rights and the Asia-Pacific Forum for National Human Rights Institutions.

The National Human Rights Commission of Korea hosted the conference.

Mr. Makoto Kondo is a lawyer, and a member of the Japan Federation of Bar Associations.

For further information, please contact: HURIGHTS OSAKA, or please visit <http://www.icni.org/index.jsp>

Endnotes

- 1 See <http://www.nhri.net.default.asp?PID=247>
- 2 Principles relating to the status and functioning of national institutions for protection and promotion of human rights (1993 General Assembly Resolution, A/RES/48/134)

Events

Recently Held Events

A meeting on "Cross-border Migration, Security, and Human Rights in South Asia: Conceptual and Policy Considerations" was held on 28 October 2004 in New Delhi. Mr. Sujata Ramachandran, Department of Geography, Queen's University, Kingston, Ontario, Canada gave a presentation. He pointed out that the understanding of cross-border population movements in many geographical contexts remains weak and fragmentary. South Asia is a good example where documentation on current population flows across national borders is virtually absent and outdated government policies on migrants and refugees continue to be applied, often in an arbitrary and ad hoc manner. The politicization of these migrations as a threat to national security, especially in the case of undocumented Bangladeshis, and growing vulnerability of migrants to the social forces of exploitation, present additional challenges for South Asian states, scholars and human rights activists.

For further information, please contact: Human Rights Documentation, Indian Social Institute, 10, Institutional Area, Lodhi Road, New Delhi - 110003 India; ph (9111) 24622379/ 24625015; fax (9111) 24690660; e-mail: hru@unv.ernet.in

A meeting on "Global Human Rights and Ethnic Social Movements: International Trends and Ethnic Minorities in Japan" was held on 10 November 2004 in Tokyo. Dr. Kiyoteru Tsutsui (Assistant Professor, State University of New York at Stony Brook) presented cross-national quantitative data analyses and qualitative case studies on ethnic minority groups in Japan. He examined how the diffusion of global human rights ideas, intensification of international activist networks, and the growth of international instruments may have empowered ethnic minorities and facilitated their political mobilization and how the government has responded to these developments. Several discussants gave comments on the presentation. The colloquium was jointly sponsored by the Social Science Research Council Tokyo Office and the Japan Foundation Center for Global Partnership.

For further information, please contact: SSRC Tokyo Office, ph (813) 5562-3506; www.jpff.go.jp/j/cgp_j/intel/abe/index.html; www.ssrc.org/fellowships/abe

The Asian Consultation on "Impact of Terrorism and Anti-Terrorism Measures in Asia" was held in Bangkok from 19 to 20 November 2004. The consultation reviewed and analyzed the development of people's security situation since the previous Consultation held in Nakhorn Nayok, Thailand in

November 2002; shared information on existing campaigns, advocacy work and the current situation in each country in Asia; jointly developed a platform of discussion on Asian advocacy plan; and provided a networking opportunity on key issues for campaign and advocacy. The consultation was jointly organized by SUARAM and FORUM-ASIA.

For further information, please contact: Forum Asia, 111 Suthisanwinijchai, Samsen-Nok, Huaykwang, Bangkok 10320 Thailand; ph (662) 276-9846 to 47, 693-4940; fax (662) 693 4939; e-mail: info@forumasia.org; www.forumasia.org

The Office of the United Nations High Commissioner for Human Rights (OHCHR) organized an inter-sessional experts meeting on national human rights plans of action and human rights education in the Asia-Pacific region in Bangkok, Thailand from 20 - 22 October 2004. The meeting assessed the usefulness of a national plan of action for the promotion and protection of human rights at the national level; identified key steps and components of a national plan of action, with a particular emphasis on human rights education as a potential priority component of national human rights action plan; shared and discussed practices in the Asia-Pacific region concerning national human rights plans of action (NHRAPs). The meeting examined experiences from the region on national human rights plans of action, including obstacles to their implementation and lessons learned.

For further information, please contact: The Regional Representative for Asia-Pacific, UN Office of the High Commissioner for Human Rights, Room 601, 6th Floor, United Nations Building, Rajadamnern Road, Bangkok, 10200, Thailand, ph (662) 288 1235; fax (662) 288 3009; e-mail: OHCHR-Bangkok@un.org; www.un.or.th/ohchr

A workshop on pressing communication rights issues in the Asian region--including attacks on freedom of expression and independent media--was held in Manila on 4-6 August 2004. The workshop was entitled "Communication Rights: Asian Solidarity Towards a Regional Agenda for Articulation and Action.", and brought together almost 40 participants from 11 countries in Asia-Pacific (including Japan, Korea, India, Nepal, Australia, Thailand, Cambodia, Indonesia, Malaysia, East Timor, and the Philippines).

The workshop focused on several areas: freedom of expression and media freedom; cultural diversity and plurality; so-called "intellectual property rights" and the public domain of global knowledge; and, access and finance issues in information and communications. Also discussed were community media (including community radio), Gender & ICTs, and Internet Governance. Reports were presented on the state of communication rights in each country. The participants also issued a statement in support of a Thai colleague (Supinya Klangnarong of Thailand who also attended) who returned home to face a million-dollar lawsuit for speaking out in the press against government control of Thai media.

The workshop was organized by the Foundation for Media Alternatives (FMA) in the Philippines, with support from the Campaign for Communication Rights in the Information Society (CRIS Campaign), Bread for All (Switzerland), and the World Alliance on Christian Communication (WACC).

For further information, please contact: FMA, #12 Xavierville Avenue cor. Pajo St., Loyola Heights, Quezon City, Philippines, ph (632) 435-6684; ph/fax (63-2) 433-2192; www.fma.ph; www.apc.org/english/news/index.shtml?x=26285

The 10th International Women & Health Meeting (IWHM) was held on 21-25 Dec 2004 in New Delhi. The meeting tried to emphasize women's health as a fundamental right. The discussions were organized around five focal themes: public health, health sector reforms and gender; reproductive and sexual health rights; the politics and resurgence of population technologies; women's rights and medical technologies; and violence (from state, militarism, family and 'development') and women's health.

For further information, please contact: Secretariat, 10 IWHM, India, c/o Sama Resource Group for Women and Health, G-19, 2nd Floor, Saket, New Delhi 110 017, India, ph (9111) 55637632,55637633; ph/fax (9111) 26562401; e-mail: coordinator@10iwhmindia.org; convenorsecretariat@10iwhmindia.org; www.10iwhmindia.org

HURIGHTS OSAKA ACTIVITIES

On 19 January 2005, HURIGHTS OSAKA held a seminar on the World Programme for Human Rights Education, which was proclaimed to begin on 1 January, 2005 at the UN General Assembly last December 2004. Speaking at the seminar was Mr. Kazunari Fujii, Representative of Soka Gakkai International (SGI) Geneva Office. He was one of the experts who participated in finalizing the draft Plan of Action for the First Phase of the Programme.



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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.



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