



Editorial

Second Tragedy

When tsunami struck several countries around the Indian Ocean on 26 December 2004, the world was awed by its immense damage to people and properties. Thousands of people were killed, and thousands more were displaced.

But a quiet, second tragedy happened soon after relief and rehabilitation efforts begun. It is a tragedy that flows from the human rights violations already plaguing the affected countries for years, and in some cases generations.

Discrimination against Dalits, foreign migrant workers and hapless children, among other disadvantaged people, continued during the relief and rehabilitation period and further deepened the impact of the tsunami tragedy. While people and governments the world over displayed their empathy for the victims, discrimination against the already disadvantaged and abused people did not recede in affected areas in India, Sri Lanka and Thailand.

There must be vigilance both in times of "normalcy" and disaster against further victimization of discriminated people. The thought that children who lost their parents are now being targeted for sexual, commercial and other forms of exploitation is making the tsunami tragedy a permanent symbol of oppression.

The second tragedy against the Dalits, Burmese/Myanmarese workers, young orphans, and other disadvantaged people reminds us that human rights violations never cease even when the human instinct of helping victims of tragedy is supposed to prevail.

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.

India After the Tsunami - The Rights of Affected People

*Gal Frenkel**

It has been more than two and a half months since tsunami devastated the coastal communities in the south-eastern state of Tamil Nadu, the worst affected state on the mainland. India was the third-worst affected country: nearly 10,000 people died in India alone, most of them women and children, and more than 140,000 people have been displaced from their homes and are currently residing in relief centers. The Indian government has estimated that 985,000 people have been affected, more than 126,000 houses and huts on the coastline damaged, and much property lost. Moreover, based on previous natural disasters it is expected that 50% to 90% of the affected population will experience symptoms such as post-traumatic stress disorder and depression.

The local, national, and international relief efforts have been overwhelming, with activities now shifting from relief to rehabilitation. However not all of the communities affected by the tsunami have had access to relief assistance nor have all communities benefited equally from the rehabilitation operations. Many, especially members of marginalized and vulnerable groups, have not received the same opportunities to restore their lives.

The Tsunami Relief and Rehabilitation Coordination - Tamil Nadu and Pondicherry (TRRC) - was first conceptualized on 31 December 2004 and established on 3 January 2005. The purpose of TRRC is to organize state level consultations on state-civil society partnership, monitoring of human rights, and the status of tsunami-affected children. Its three main objectives are to coordinate the relief stage of the work, coordinate the immediate and long term rehabilitation efforts, and monitor the efforts of the government in this regard. Community participation is a key consideration as is the responsibility to communicate the views and the demands of the communities to the government. TRRC is currently in the process of conducting rapid assessment studies on a range of issues and has led five consultations. This report provides a summary of the issues raised and discussed in the consultations and studies conducted.

Rehabilitation and Restoration of Livelihoods

Concerns have been raised about the scope of relief and rehabilitation, in particular the recognition of all those affected by the tsunami. The rapid assistance to the fisherfolk and assistance in restoring their boats and nets has neglected many other people who have been affected by the tsunami and who depend on the sea, the crippled fishing industry, and the coastal agriculture for their livelihood. These include vendors and labourers, salt pan and lime workers, shrimp farmers, women involved in seaside limestone production, small coastal business, petty traders, Dalit and tribal inland fisherfolk, and farmers whose land has been made uncultivable by the influx of salt water. Restoring this diversity of livelihoods requires more than mending damaged nets and putting catamarans and trawlers back to sea. Moreover, no compensation has been received for loss of livestock.

Discrimination in Relief

A number of affected communities and individuals have not received the relief announced by the state government:

- * Relief has not been provided for the disabled and no special steps have been taken nor compensation given for the physically or mentally disabled.

- * Many widows from affected fish-worker communities have not been given any relief as they do not possess the identity card issued by the fisheries department. This extends to all other single women and women-headed families, leaving a number of the affected communities outside the relief net.

- * To a large extent Dalit people have been discriminated against by the relief workers in the camps, relief and rehabilitation work organized by the government, and other post-tsunami organizations.

- * Muslims, tribals, and scavengers brought for the removal of bodies were also admitted as communities vulnerable to prejudices operating through the official relief machinery.

- * Tenants who were living in rented houses have been completely excluded from any shelter relief.

The situation of the Dalits

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According to the *National Campaign on Dalit Human Rights (NCDHR)* a Dalit is not considered to be part of the human society, but something existing outside it. The Dalits perform the most menial and degrading jobs and are regarded as "untouchables", and for higher caste people Dalits are seen as polluting. This discrimination against Dalits in everyday life in India has intensified in the tsunami aftermath and is rampant within the relief camps.

The Right to the Coast

In 1991 the Central Government declared Coastal Stretches as the Coastal Regulation Zone (CRZ) Notification, and restrictions were imposed on the setting up and expansion of industries and operations within 500-meters of the high tide line. Nevertheless, the CRZ Notification regarded the traditional fishing economy and its land-use patterns as an integral part of the coastal environment. In doing so, the traditional fishing industry and coastal settlements were recognized as bearers of certain customary rights to the lands they have long occupied. It is on this basis that the CRZ Notification provides for explicit exemptions from the 500-meter setback requirement. However, at the present time, fishing settlements are being relocated away from their original seashore location to more than 2 km inland largely due to a false government campaign warning of a future tsunami disaster. This relocation poses a major threat to these coastal communities' livelihoods, where access to the sea is essential. At the same time, tourism and industry infrastructure remains intact.

In this context, the state seems to be taking advantage of the now cleared coasts coupled with the current vulnerability of these coastal communities, whereas there has been no attempt to ascertain the views of the coastal community on the forced relocation. It is believed that tourism and real estate interests together with the presence of large multinational institutions such as the World Bank and the Asian Development Bank - groups that have historically shown little regard for coastal preservation - are driving this relocation initiative.

A State level meeting initiated by TRRC and involving community leaders and representatives confirmed the notion of the coastal communities' right to the coast and agreed to refuse forced relocation.

Community Involvement

Although the government has announced the need to respect the affected communities' right to choose the location, design and materials for the temporary shelters, blatant violations of these orders were identified in the temporary shelters constructed both by the government and NGOs. Moreover, no proper formal assessment of livelihood loss in the coastal economy has been done in consultation with the community. Numerous community representatives have emphasized the urgent need for far greater community involvement in the formulation of the rehabilitation agenda, distribution of funds and materials, and implementation of long-term relief programming. They should be a portal for truly broad-based and inclusive community participation and ownership over the direction of local relief activities, even while soliciting the input and advice of government officials, outside experts, donor agencies, and non-governmental organizations (NGOs).

The Wellbeing of Children and Women

Many children have been orphaned, while others have lost family members and friends. Both schools and communities play considerable roles in the provision of care and support to these children. As an alternative to external adoption "community parenting" by widows, the extended family, or other community members is the preferable and more natural solution for the care of orphans, which would also reduce the risk of child trafficking. At the same time schools should play a new, more complex and comprehensive role in relief and rehabilitation, and provide continuous social and psychological support to their students. In administrative terms an effort should be made to reduce or waive school fees, donate books, replace educational certificates, and provide transportation to school-going children from affected areas. It is important to note that to date no proper and complete assessment in the area of pre-school and unborn children has been completed.

Assuring the good health of children and women is uncertain. These vulnerable groups need special attention and counselling in the areas of health, specifically nutrition, disease prevention, and hygienic conditions. In addition, 15,000 pregnant women affected by the tsunami have been identified as an especially vulnerable group as no importance has been given to women's health and pregnant women have not been persuaded to care for themselves properly. Moreover, an increase in the

prevalence of anemia has been identified (currently estimated to be 85% of the affected population). Combined with the stress of the aftermath of the tsunami, this could lead to an increase in infant and maternal mortality.

The Environment

The tsunami has reemphasized the need to protect the coastal environment and marine ecology, especially from the tourism industry, mining industry, and large industries that release their pollutant waste into the sea. Community leaders have demanded that all these industrial activities along the coast be banned.

Rapid assessment studies conducted by TRRC have shown that when coastal ecosystems were not disturbed by human intervention many lives were saved. Coastal vegetation such as mangroves provided a natural barrier and protected people. Many violations of the CRZ Notification were evident in the most affected areas. Implementing the CRZ Notification and curbing activities such as sand-mining, modification of the coastal landscape, and industrialization are imperative to prevent the destruction of natural reserves and protect those residing in the coastal areas.

Challenges

It is saddening that even at a time of catastrophe and despite ongoing goodwill there are still communities that suffer from discrimination due to religion, caste, occupation, trade, or gender from other tsunami-affected communities as well as government and NGOs. TRRC, together with other community activists and local NGOs, is actively seeking to ensure that all those currently experiencing discrimination in relief and rehabilitation will receive equal treatment and compensation, the latter based on more than simply loss of property. Moreover, social action must be taken to eradicate discrimination within the Indian society, with an emphasis on Dalits.

Another challenge is ensuring the affected communities' source of livelihood. The relocation of coastal communities inland and the distance from the sea will impair the ability of the fisherfolk to ensure their livelihood. While guaranteeing the safety of the coastal communities should be a government priority and responsibility, the government should not

remove settlements under the pretext of protecting the people.

Communities must have a major stake and voice in rebuilding their homes, ensuring their livelihoods, and protecting the environment. The government should act as a facilitator and an agent of accountability, while ensuring local integration in a state-wide rehabilitation program which addresses needs - economic, social, and ecological - that reach across communities.

Assuring the physical and mental health of tsunami-affected children, providing a sense of security, and enabling successful rehabilitation are additional, major challenges. While it is recommended that community social workers monitor the "community parenting" and provide support services to maintain the best interests of the children, these social workers will require compensation. In addition, it is imperative that the government provide a stipend for widows and orphans to make this process easier.

In schools the training of teachers in psycho-social counselling could be one method for the successful rehabilitation of children.

Health challenges include the provision of proper and sufficient food, close surveillance to prevent epidemics, the availability of adequate drinking water and hygienic sanitary facilities, and increased health education and counselling on nutrition and prenatal care.

Another significant challenge concerns the interaction between the environment and the population. While environmental assessments have demonstrated that the less developed regions and the communities residing in those regions were almost unharmed by the impact of the tsunami, marine biospheres and coastal ecosystems should be conserved to protect land and people.

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Invisible Victims of the Tsunami - Burmese Migrant Workers in Thailand

*Tetsu Hakoda**

The tsunami devastation of the beach areas in southern Thailand, causing death to numerous foreign tourists and Thais, and the generosity extended by the Thais to the surviving victims and their relatives are some of the lasting images of the tsunami disaster. Unfortunately, very little is known about the other group of foreign victims, the Burmese¹ migrant workers.

Before the tsunami, more than 120,000 Burmese (men, women and children) were living in the 6 provinces on the western coast of southern Thailand. They comprised 6.4% of the population of 1,860,000 (as of 2000) in this area. It is estimated that 60,000 of the Burmese were affected.² The biggest difference between the plight of the Burmese victims and the Thai and foreign tourist victims was that the former were ignored by their own (Burmese) government, and thus were mainly not counted as victims of the disaster.

Official figures released by the Burmese government³ on 1 February 2005 show 61 dead and 42 injured.⁴ But these figures refer to those within Burma. The military government has yet to refer to the several tens of thousands of Burmese affected by the tsunami in southern Thailand.

The presence of more than a million Burmese migrant workers in Thailand, engaged in low-paid work, is the direct effect of social confusion and economic collapse brought on by the Burmese government's mismanagement. Southern Thailand is no different. The Burmese, working for far below the statutory minimum wage of approximately 5 US dollars per day, support the major local construction, fishing, farming and tourist industries.

The latest estimates put the number of Burmese deaths in Thailand at 2,500 to 3,000, and 5,000 to 7,000 missing. The figures are comparable to the 5,395 dead and 2,991 unaccounted for (including foreigners and those whose nationalities are unknown).⁵ However, awareness and aid from the international community have been insufficient and the Burmese government continues to ignore the plight of these people. The military regime has

impoverished its people to the point of pushing them out to perish in the neighboring country.

Damage within Burma and relief activities

The Burmese government is known for its reluctance to publicize events, particularly natural disasters, within its borders. There was no media coverage of the recent tsunami at the onset.⁶ The damage reported initially by the military government was so insignificant raising doubts from the international community about their veracity. Surveys by the United Nations (UN) agencies and international non-governmental organizations (NGOs) estimated 60 to 80 dead, 10,000 to 15,000 affected for long-term, and of these, 5,000 to 7,000 affected directly.⁷ Even these figures are small compared to those compiled by the foreign media. Since it is not possible to freely conduct surveys within the country, accurate information on the damage is still unavailable.

Damage has been confirmed in the coastal areas of Ayeyawaddy and Tanintharyi divisions as well as Rakkhine state in lower Burma. Most of the residents were small-scale fisherfolk, and suffered economic devastation. The relief activities right after the tsunami consisted mainly of provisions of food, water and other necessities by UN agencies such as UNICEF, and the Myanmar Red Cross. Mid- to long-term support was being planned, including support for full-scale reconstruction.⁸

Burmese migrant workers in Thailand

Burmese workers in Thailand affected by the tsunami suffer from multiple difficulties. They not only suffer from psychological trauma, separation from colleagues, friends and families, destruction of livelihood, and worsening sanitation, but even worst they are beset with unemployment, fear of being arrested

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and deported, and lack of information on how to get back their legal status in Thailand (or get relief goods and services). The Thai authorities insist that relief materials were distributed without discrimination, but few migrant workers went to the distribution centers to receive them. It seems that the Burmese initially received no aid at all.

There were grounds for this fear. 2,000 Burmese were deported within 3 weeks after the tsunami, and cases of members of the police robbing them of money occurred repeatedly. Many Burmese took refuge in the forests, plantations and abandoned buildings. Many others left the area because of lack of work. Due to these reasons the estimated number of Burmese workers in Phuket and Phang Nga provinces dropped to half from 66,000.⁹

Exacerbating their situation were false reports of looting by the Burmese published by Thai tabloids. The deeply rooted anti-Burmese sentiment held by a section of Thai society was fanned and sometimes made relief activities difficult.¹⁰ The sensational media coverage notwithstanding, it should be emphasized that many Thais provided assistance to Burmese victims.¹¹

Assistance for Burmese migrant workers

The Tsunami Action Group (TAG) is the main player in the relief activities for Burmese migrant workers. TAG began its activities in early January 2005. It consists of Human Rights Education Institute of Burma or HREIB (an organization of Burmese exiled in Thailand), organizations of Burmese migrant workers in Thailand, and other organizations working on Burmese issues.

TAG initially surveyed the affected areas, provided material assistance such as food, clean water and other necessities, and paid for funeral costs. But at that time, they were refused identification and return of the bodies of the deceased, let alone hold funerals.

Aung Myo Min of HREIB in an interview for Inter Press Service, comments, "I know we are treated as second or even third class citizens in this country, but this is not the way to treat our dead."¹²

As of February 2005, TAG was moving from emergency relief operations to the next step. An overview

of its activities based on its report dated 14 February 2005 is as follows.

The operations focused on the area extending from Takuapa district to Khao Lak in Phang Nga province, where many Burmese migrants reside. TAG relief teams visited plantations, construction sites and forests, where the Burmese have taken refuge, to distribute food, other necessities and art materials for children. They also informed them that they can apply with the Thai government for the reissuance of lost identification cards, which affect many of them. These assistance activities are seen as provisional measures to fill the gap until the workers find stable work.

Fear of being arrested and deported put physical and mental pressure on the victims and make relief activities difficult. The Thai authorities' decision to halt arrest and deportation of migrants is a step forward. There is also an urgent need to reestablish the legal basis for residing in the country by reissuing identification and health insurance cards in order to ensure the safety and dignity of the migrants. TAG members assisted the Burmese in applying for the reissuance of identification cards at the district offices, but the completion of procedures for all persons concerned is expected to take considerable time.

Meanwhile, the problem of the missing and the dead is huge. The grief of the Burmese families is so great; some of them bring photographs on registration forms, as the only remaining identification materials of the deceased. Even when funeral rites are held, cremation may not be possible. Closer cooperation among related government offices is necessary in identifying the remains.

TAG's activities are financially supported by Burmese around the world, including Japan, and US Campaign for Burma (USCB), with cooperation from Burmese students in Thailand, NGOs in Thailand, French Catholic Committee against Hunger and for Development (CCFD), Novib (Oxfam Netherlands), among others. From Japan, Ayus Buddhist International Cooperation Network, People's Forum on Burma, Burma Office Japan and Burmese Relief Center-Japan sent funds to TAG.

Lastly, I extend my heartfelt condolences to those that have lost their loved ones in the tsunami, and

wish swift recovery to those who were injured.

*For further information please visit
www.burmainfo.org*

Endnotes

1. "Burmese" in this article refers to all persons from Burma and not to an ethnic group.

2. Tsunami Action Group, *A Khao Lak Diary*, 4th-15th January 2005,
<http://www.saydanatsunami.org/khaolak.pdf>

3. The current military regime (it was previously named State Law and Order Restoration Council [SLORC] and changed to State Peace and Development Council [SPDC] in 1997) changed the name of the country from Burma to Myanmar. The author uses the name Burma as the current regime has no legitimacy, therefore the name change cannot be recognized. For more details, see Yuzo Uda, "*Biruma ka miyanma- ka* (Burma or Myanmar) ," http://www.uzo.net/notice/quo/b_m.htm .

4. "Press conference on National Convention, relief works for victims of Tsunami, subversive acts committed by internal and external destructive elements," *New Light of Myanmar*, 2 February 2005,
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5. Sosuke Yamamoto, *Sumatora-oki Dai-shinsai- o-tsunami ni yoru Biruma (jin) ni kansuru higai ni tsuite* [Tsunami off coast of Sumatra - on damages suffered by Burma (Burmese) by the tsunami], (material for People's Forum on Burma, 12 February 2005),
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6. Burma Office Japan, "Biruma seifu wa naze tsunami jouhou no jijitsu o kouhyou shinainoka" [Why doesn't the Burmese government publish the facts about the damages by the tsunami?] *Biruma Ja-naru* (Burma Journal), (Burma Japan Office January 2005), <http://www.burmaoffice-jp.org>

7. World Health Organization, "Myanmar Tsunami Situation Report," op. cit.

8. Ibid.

9. Tsunami Action Group, "Situation Report 2," 8 January 2005,
<http://www.saydanatsunami.org/report.php?#report2>

10. Sonny Ibaraj, "Thai Compassion for Burmese Migrants Wears Thin," Inter Press Service, 13 January 2005,
<http://www.ipsnews.org/interna.asp?idnews=27021>

11. Tsunami Action Group, "Situation Report 3: An update on the situation of Burmese migrant workers affected by the tsunami in Phang Nga, southern Thailand," 31 January 2005,
<http://www.saydanatsunami.org/report.php?#report3>;

Tsunami Action Group, "Situation Report 4: TAG (Tsunami Action Group) Update - An update on the activities of TAG and the situation of Burmese migrant workers affected by the tsunami in Phang Nga, southern Thailand," 4 February 2005,
<http://www.saydanatsunami.org/report.php?#report4>

12. Sonny Ibaraj, op.cit.

13. Tsunami Action Group, "Situation Report 4" op.cit.

Proposed Human Rights Commission in Japan: A Critique

*Koshi Yamazaki**

After setting aside in 2003 a draft bill that would create a national human rights institution in Japan, the government and the ruling Liberal Democratic Party (LDP) agreed in principle to resubmit it, after some modifications, during the 2005 Diet (Parliament) session. The 2005 draft Human Rights Protection Bill (draft Bill) (1) "freezes" provisions that place human rights violations by the media within the scope of "special remedies" procedures; and (2) provides for the revision of the law if necessary after a certain period of time from enactment.

Human rights organizations and the media reacted strongly to the move to resubmit the draft Bill. They argued that (1) the independence and ability of the "Human Rights Commission" ("Commission") to respond appropriately to violations occurring in government institutions such as prisons and immigration detention facilities would be undermined if set up under the Ministry of Justice; and (2) there are provisions in the draft Bill which might deter investigation and reporting by the media.

At the same time, members of the Research Commissions (including those on human rights) of the LDP Judicial Affairs Division, during its 10 March 2005 meeting, argued against the draft Bill by saying that (1) the definition of human rights violation under the draft Bill is vague and would infringe other rights protected by the Constitution, such as freedom of expression; and (2) the selection process of the Civil Liberties Volunteers, who would engage in providing remedies under the "Commission", is unclear. They also regret the deletion of the nationality clause. This situation jeopardizes the party decision to resubmit the draft Bill.

The draft Bill establishes a "Human Rights Commission" that provides accessible, swift and no-cost remedies to people who have been discriminated, abused or whose human rights have been otherwise violated. Aside from the 5-member, Tokyo-based "Commission", the draft Bill also provides for the appointment of "Civil Liberties Volunteers" all over the country who will be attached to it ("Commission"). The "Civil Liberties Volunteers" will deal with issues in their respective local areas.

The recent discussions on the draft Bill are going off-course from the main issues involved. Bearing the current situation in mind, why a new human rights remedies body is necessary and the shortcomings in the draft Bill should be pointed out.

Current situation in Japan

In Japan today, human rights violations occur between private persons in cases of discrimination in employment, marriage, etc., against people of Buraku origin, Ainu people, and foreign residents; xenophobia; child abuse; domestic violence and discrimination based on disabilities. Violations by public authorities occur as abuses in prisons, immigration detention facilities and police cells. Violations by public authority rarely attract public attention, unless they involve major court decisions.

The Japanese Constitution provides that everyone shall be respected as individuals, are equal under the law, and will not be discriminated on grounds of race, creed, sex, social status or family origin (Articles 13 and 14). Japan is also party to the International Covenant on Civil and Political Rights, whose Article 2 makes Japan commit itself to respecting and ensuring those rights to all people in Japan without discrimination.

Merely providing for rights in the Constitution and international treaties do not make these rights a reality, however. When rights are violated, people will not reach out to help unless the person involved seeks remedies by him/herself.

The current human rights remedies system

A person whose rights are violated can seek the help of the civil liberties administration section of the Ministry of Justice and the complementing system of civil liberties volunteers, comprised of approximately 14,000 volunteers nationwide. If they do not provide adequate remedies, judicial remedies can be sought. There are also private initiatives, such as the Appeal for Human Rights Relief system by the Bar

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Associations.

But the civil liberties administration and volunteers have so far not enjoyed much public trust. Recourse to court takes time and money, and requires the victim to speak in public about the violations and discriminations suffered. These burdens forced many people to give up seeking judicial remedies. Meanwhile, the Bar Associations have no investigative authority in their human rights relief activities and their recommendations and warnings do not have legal binding force. As a result, many victims of violations continue to suffer, abandoning the pursuit for remedies.

Shortcomings in the draft Bill

The 2003 draft bill prohibits human rights violations such as discrimination and abuse, provides measures to prevent such violations, and provides for remedies. Since Japan does not yet have a general and comprehensive human rights remedies law, the fact that such a draft bill was prepared is a welcome development. The proposed "Human Rights Commission" under the 2003 draft Bill has the appearance of a national human rights institution.

The current draft Bill, which has not been submitted to the Diet as of 23 March 2005, however has several shortcomings and needs fundamental change, as follows:

a. Unclear definition of human rights

Article 2 of the draft Bill defines "human rights violations" but not human rights. An unambiguous definition of human rights is necessary in order to provide a clear judgement standard for the "Commission," and to prevent the scope of human rights from being arbitrarily diminished. An unambiguous definition of human rights can be stated as follows, "for the purpose of this Bill, the term "human rights" shall mean rights stipulated in the Constitution as well as treaties concerning human rights which Japan has ratified or acceded to."

b. Minimized seriousness of human rights violations by public authority

Article 3 of the draft Bill lists discrimination, ill treatment, and violation by the media as the three types of human rights violations. This provision cov-

ers violations by public authority. But in order to clearly make the violations by public authority subject to remedies, they should be treated as another type of violations. Treating human rights violations by public authority, which relates to the exercise of state power that has a high degree of intransparency, on the same level as those by private persons in effect relatively minimizes their seriousness.

Special procedures for investigating allegations of human rights violations by administrative organs and civil servants, and providing remedies for them, are necessary. It can also be provided that concerned administrative organs are duty-bound to cooperate with the "Commission" in cases of violations by them.

c. "Human rights violations by the media" and the competence of the "Commission"

The draft Bill allows persons, who suffer infringement of privacy or defamation, or excessive media attention, to apply for remedies. On receiving the application, the "Commission" may initiate special remedies procedures including issuance of recommendations and their publication. The standards and requirements for deciding whether an infringement of privacy or excessive media activities has occurred is unclear, however, and arbitrary decision by the "Commission" may place undue pressure on the mass media.

To ensure that the media freely investigate and make reports, remedies for their human rights violations should be taken care of by their own self-regulatory body. Provisions placing them within the scope of the special procedures should be deleted and not "frozen." No national human rights institutions in other countries take up violations by the media as a separate category.

d. The independence of the "Commission"

The Paris Principles attaches great importance to the organizational independence of national human rights institutions. The "Commission" foreseen by the draft Bill is under the jurisdiction of the Minister of Justice (Article 5), based on Article 3 of the National Government Organization Law. But effective remedies for cases of violations by public authority cannot be expected from a "Commission" that is under the jurisdiction of the Ministry of Justice since they actually occur in institutions with-

in the Ministry such as the prisons and immigration detention facilities. In a system, where the "Commission" is under the jurisdiction of the Minister of Justice and its secretariat staffed by officers of the Ministry, the independence of the "Commission" cannot be effectively guaranteed and it will face difficulty in gaining public trust.

The "Commission," therefore should appropriately be established under the Cabinet Office, which oversees and coordinates the administrative organs from a higher vantage point (or under the Cabinet, as in the case of the National Personnel Authority).

e. "Civil Liberties Volunteers"

The "Civil Liberties Volunteers" system under the draft bill will not be much different from the current Civil Liberties Volunteers system, except that it will be placed under the "Commission." There will be no nationality requirement, however, to reflect social diversity in the composition of the "Volunteers". But still there is a controversial call within the LDP for "Volunteers" to be holders of Japanese nationality, causing a lot of debate.

"Civil Liberties Volunteers" will give advice and conduct general inquiries, but will not have any powerful authority for special investigations. These "Volunteers", around 14,000 of whom will be active nationwide, will be in a position to understand the human rights issues of the local area, and it is necessary to have people with diverse backgrounds in these positions. Considering the fact that the number of foreign residents is increasing, and facing various human rights violations, people of foreign nationality should also be able to become "Civil Liberties Volunteers."

f. The need for local human rights commissions

It will make no sense to have a "Commission," unless it is accessible to the people. Only one central "Commission" will be established under the draft Bill, and its members are expected to address and decide on human rights issues from all over the country. Human rights issues often arise out of normal every day lives of the people, in the context of the local features, customs and history. To solve these problems effectively, and in a manner compatible with the local situation, a "Commission" must exist at prefectural level as an independent office with power to provide remedies.

g. Strengthening the views/recommendations, their publication, and policy proposal functions of the "Commission"

The "Commission" may submit its views to the Prime Minister, the Diet, etc. according to the draft Bill. In order to achieve not just solutions to individual cases, but radical solutions to human rights issues, it should be able to submit not just "views", but "policy proposals."

The "Commission" is expected to play a role in (1) the formulation of human rights education and awareness-raising policies; (2) legislation, amendment and abolition of laws that implement human rights policies; (3) changing administrative practices on human rights policies; (4) ratification of, and accession to, human rights treaties; (5) cooperation with the human rights offices of the UN and other countries; and (6) preparation of national reports required by human rights treaties.

Conclusion

Many people in the Japanese society suffer from human rights violations and discrimination. To recover the innate rights of these people and to maintain a just society, it is the duty of the Diet and the Cabinet as well as a national concern to improve the human rights remedies system, including the establishment of a national human rights institution. The draft Bill is expected to be a part of this endeavor. It should not be buried in political and ideological conflicts.

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Human Rights Behind Bars: The Manila City Jail Experience

*Ma. Rita Arce Alfaro**

Perhaps the most inhuman act that society commits against prisoners is the blatant disregard for their rights. The thought that prisoners have human rights escapes most people. While part of a prisoner's punishment is deprivation of certain civil rights, every prisoner has rights mandated and protected by the United Nations Standard Minimum Rules for the Treatment of Prisoners,¹ the International Covenant on Civil and Political Rights, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, in the face of all these international instruments, society persists in violating the human rights of prisoners by omission and apathy - neglecting to do what ought to be done and turning a blind eye on what needs to be addressed. The Philippine Jail System, particularly the Manila City Jail, exemplifies this situation.

Within prison walls

The Manila City Jail currently accommodates close to 5,000 prisoners who are classified by law as detention prisoners, city prisoners and youth offenders. Within its walls are men, women, minors, people with mental illness, and those with health problems. Prisoners, both undergoing trial and convicted, are mixed together in this prison.

Surrounded by a shopping mall and stores, railway stations, major streets and a university, the Manila City Jail seems incongruous to the idea of sequestering criminals away from society for the purpose of rehabilitation and reformation. Inmates are hardly removed from society when they are placed in the midst of the hustle and bustle of city life.

While the Philippine government continues to initiate various projects and schemes on appropriate jail relocation such goal remains buried under the bureaucracy and suffers from lack of funding. Prison population increases as new laws provide for new offenses. The new Dangerous Drugs Act, which took effect in 2002 and provided for stricter penalties and lowered the threshold of offense necessary for arrest, caused the recent upsurge of prison population.

The jail structure

The Manila City Jail has four main compounds housing four groups divided along ethnic and gender

lines. While men and women are housed in separate compounds, the juvenile delinquents are mixed with the adult prisoners, prisoners with mental illness are mixed with those who are mentally healthy, and the physically ill with the able-bodied. This is in direct contravention of the United Nations Standard for Minimum Rules for the Treatment of Prisoners (UN Minimum Rules), which provides:

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

(d) Young prisoners shall be kept separate from adults.

82. (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.

(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

Each compound has one main hall and one main dormitory. It is segregated from the other compounds by walls and fences. A dormitory, housing all the prisoners of the compound, has sparse facilities. Affluent inmates can pay for a space (called "condominium") that separates them from other inmates by wooden walls, and for 90 US dollars a spartan cot. The less affluent may avail of the "apartment," a space shared by 2-4 people. Destitute inmates usually sleep on the *sahig* or floor with hardly any bedding. Rice or flour sacks, even newspapers, are utilized as bedding while pillows and blankets are rare. Again this situation violates the UN Minimum Rules which state clearly that:

9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the

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central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

The typical dormitory is cramped, poorly lit and with hardly any ventilation. It stinks even if cleaned and scrubbed with the harshest of disinfectants. The dormitory is blistering hot at most times of the year. Inmates fall easy prey to outbreaks of skin diseases such as boils, infections, and various allergies. Tuberculosis proliferates inside the prison walls.

The Manila City Jail was originally built to accommodate 1,000 inmates, and yet it currently houses approximately 5,000 inmates. Inmates take "shifts" in sleeping on the bare floors. During daytime, inmates could not slump or sit on the floor for lack of space. They are forced to stand all day long.

Food and sanitation

The daily budget allocated per inmate is merely 35 pesos (less than 1 US dollar). This amount covers three meals a day in addition to the budget for drinking water. The UN Minimum Rules state that:

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

The harsh reality is that the meal allowance cannot possibly be stretched to sustain a prisoner. Moreover, the Bureau of Jail Management and Penology admits that with the increasing number of prisoners and detainees, the budget allocation would often be too thinly stretched in light of severe budgetary constraints in the government coffers.

Prison food is usually comprised of rice, a basic staple, and viands (usually canned sardines). On lucky days when donations arrive, a variety of canned meats may be served along with vegetable stew. Variance in viands often depends on donations from

family visitors or charitable organizations. Most donations pour in only during Christmas holidays.

Due to limited food supply, the inmates are served rice mixed with sardines (or any other viand) from a cauldron. The inmates liken this to the way cows are fed in ranches, calling meal time as "ranch time" (*oras ng rancho*). The food has little nutritional value and prepared in unsanitary way. What is fed to the prisoner in the end would look like a feed, mush, or worse, slop.

With limited water supply due to non-functioning pipelines, personal hygiene and sanitation are highly compromised.

Human rights behind bars

A prison system facilitates punishment, retribution or retaliation, expiation, deterrence, and reformation, as well as the protection of society. But in many cases, these aims are not served. The prison system is constrained to punishment and retribution per se; with little regard for the reformation and rehabilitation of the offender. With the indifference to the plight of the prisoners, society yet creates more monsters out of them. The main thrust of present day prison system has not evolved from the time of the guillotine. But if urgent needs are to be addressed, reform in the prison system is a must.

The Manila City Jail experience symbolizes the present-day problems of the prison system.

What are placed behind bars are not just the physical bodies but the fundamental human rights of prisoners as well. Prisoners, while viewed as sinners against society, are human beings too, something neglected by many.

As Fyodor Dostoevsky opined, "A society should be judged not by how it treats its outstanding citizens but by how it treats its criminals."² Let this be our guide.

Endnotes

1. Approved by the Economic and Social Council (resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.
2. Taken from his novel *Memoirs of the House of the Dead* (1860).

Nepal Under Military Rule: The Undermining of Democracy and the Constitution

6th Appeal from the Nepalese Human Rights Community

March 28, 2005

1. **Appeal.** On behalf of Nepal's beleaguered civil society, we urge the member States assembled at the 61st Session of the UN Commission on Human Rights (CHR) to assist in establishing human rights as a verifiable precondition for peace in Nepal.

2. **Lack of Improvement in Human Rights Situation.** Previous CHRs have issued strong statements regarding persistent impunity in the face of ongoing gross and systematic violations of human rights and humanitarian law by both the Royal Nepalese Army (RNA) and the Maoist insurgency. Yet, the human rights situation has continued to deteriorate. We have been victims and witnesses of arbitrary arrests and detentions, direct and indirect threats through surveillance and harassment, censorship of the media, as well as restrictions on freedom of movement, assembly, and association. *Civic space has been deliberately eliminated. We are unable to investigate or report on human rights violations without putting our own security at risk.*

3. **Collapse of the State.** Since 1 February 2005, Nepalese society has endured its third State of Emergency since the RNA was given unified command of security forces in 2001. An already failing State now points towards collapse with the suspension of the Constitution, the absence of the rule of law, and the total failure of public institutions. *Security forces operate with impunity under the arbitrary control of a Monarchy that is constitutionally unaccountable to the judiciary.*

4. **National Human Rights Commission (NHRC).** The NHRC mandate is limited by both formal and self-imposed restrictions resulting from the climate of intimidation and control. Formal restrictions have included travel prohibitions against Commission members and the requirement to seek permission from military authorities before visiting detainees in civilian facilities. Self-imposed restrictions limit the extent to which these impositions are challenged, in addition to limiting reporting and follow-up on serious cases, including cases involving direct threats against NHRC officials. The recent formation of an executive High-Level Human Rights Committee with an ambiguous mandate to "assist" the NHRC further demonstrates Cabinet intentions to limit the independence of the NHRC.

5. **Creation of Armed Militia.** During the last two years, State-sponsored militias have been created in districts across Nepal, including Sarlahi, Ilam, Nawalparasi, and Dailekh. In February 2005, the Home Minister led a delegation of three Cabinet Ministers to Kapilbastu, where they encouraged the retaliation of civilian militias against suspected Maoist sympathizers. During the same month, vigilante groups burned and looted entire villages in Kapilbastu. Revenge killings began immediately thereafter. The restrictions on monitoring and reporting resulted in delay of over one month before evidence of these violations of human rights and international humanitarian law began to emerge.

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Events

Events Held

The Canadian Human Rights Foundation, the Canadian Human Rights Commission, and the National Human Rights Commission of Nepal held the "Workshop on Human Rights Education and Promotion of Economic, Social and Cultural Rights" on 7-11 March 2005 in Kathmandu. The workshop was designed to build the capacity of the National Human Rights Commission to conduct human rights education and promotion activities. The workshop was implemented in the context of furthering economic, social and cultural rights in Nepal as well as in the context of the ongoing internal armed conflict and the emergency situation that the country is currently faced with.

For further information, please contact: Canadian Human Rights Foundation, 1425, boul. Rene-Levesque O., Bureau 407 Montreal, QC H3G 1T7 Canada; ph (1-514) 954-0382; fax (1-514) 954-0659; e-mail: chrf@chrf.ca or saurora@chrf.ca; www.chrf.ca

The Asia-Pacific Learning Institute for Human Rights Education (PDHRE Asia-Pacific) with PDHRE International Peoples Movement for Human Rights Learning, Kaohsiung Human Rights Association and the Taiwan Foundation for Democracy held the "Asia-Pacific Training Workshop on Human Rights Learning." The workshop was meant to develop human rights educators, equipped to undertake human rights learning at the community level, in support of social, economic and cultural transformation and development. The training workshop was held from 28 March - 6 April 2005 in Kaohsiung, Taiwan. There were participants from non-governmental and volunteer organizations working in grassroots communities of countries in the Asia-Pacific region.

For further information please contact: The Secretariat, PDHRE Asia-Pacific, #15 A. Bautista St., University of the Philippines, Diliman, Quezon City 1101, Philippines; ph/fax (632) 926 2199; e-mail: pdhre_ap@vasia.com

Events to be Held

The Diplomacy Training Program, in partnership with Batchelor Institute of Indigenous Tertiary Education, is organizing a training program for Indigenous com-

munity advocates working in Australia and the Asia-Pacific region. The program entitled "Indigenous Peoples, Human Rights and Advocacy - A Human Rights Training Program for Indigenous Advocates in the Asia-Pacific Region" will be held on 20 - 29 June 2005 in Darwin, Northern Territory, Australia. The training provides: Knowledge of international human rights law and the United Nations system, with particular emphasis on Indigenous Peoples' rights; Understanding of how international standards relate to issues such as intellectual property, the environment, community development and corporate accountability; Practical training in strategic advocacy and peoples' diplomacy including skills in working with the media and using the internet for advocacy.

For further information, please contact: Diplomacy Training Program, Faculty of Law, University of New South Wales, Sydney, NSW 2052, Australia; ph (612) 9385-2277; fax (612) 9385-1778; e-mail: actiondtp@unsw.edu.au; www.dtp.unsw.edu.au

The New Tactics in Human Rights Project and regional partner, Asian Forum for Human Rights and Development (FORUM-ASIA), will hold the Asia Regional Training Workshop on 5-11 August 2005 in Chiang Mai, Thailand. The objectives of the workshop are: to bring together a diverse group of practitioners; to exchange valuable tactical and strategic experiences; to learn new ideas and expand networks of collaboration; to develop skills, including those of tactical and strategic thinking; and to utilize tactical training materials to facilitate the sharing of tactics and, ultimately, help practitioners more effectively advance human rights.

For further information, please contact: New Tactics Asia Regional Training Workshop, Center for Victims of Torture, 717 East River Road, Minneapolis, MN 55455 USA; fax (1-612) 436-2606; e-mail: newtactics@cvt.org

Asian Forum for Human Rights and Development (FORUM-ASIA), the Center for Social Development Studies (of Chulalongkorn University) and Asian Institute for Human Rights (AIHR) will hold the 9th Asian Training and Study Session on Human Rights on 9-29 October 2005 in Chulalongkorn University,

Bangkok. The study session aims to facilitate the examination by the participants of the basic knowledge, skills and values for undertaking human rights work in their respective countries. In addition the session aims to encourage the participants to reflect upon human rights situation in their respective countries and the region, and develop links and solidarity among themselves.

For further information, please contact: Asian Forum for Human Rights and Development (FORUM-ASIA), 111 Suthisarnwinichai Road, Samsennok, Huaykwang, Bangkok 10320 Thailand; ph (662) 276-9846 to 47 ext. 155; fax (662) 693-4939; e-mail: angkana@forumasia.org; www.forumasia.org

The Rights & Democracy, in collaboration with the Shirkat Gah Women's Resource Centre and Women Living Under Muslim Laws will hold its second workshop for women's rights leaders in late 2005. This workshop entitled "Capacity-building for Women's Civil Society" will bring together highly-qualified trainers with expertise in specific areas of women's

non-governmental organization (NGO) capacity-building, including: knowledge management, professional development, accessing resources, outreach and publicity, sustaining growth, fundraising, networking, communications, results-based management, internal structure and evaluation. Participants will have a follow-up opportunity to continue building cooperative alliances among women leaders from the region. There will be an emphasis on team-building, and on obtaining and distributing women's rights resources in local languages, and organizers will aim to meet the resource needs of participating organizations. Participants in the previous training from Afghanistan, Iran, Pakistan and Uzbekistan are expected to attend.

For further information, please contact: Lauryn Oates, Project Associate - Women's Rights in Afghanistan Fund, Rights & Democracy; 1001 de Maisonneuve Est, Bureau 1100, Montreal, Quebec, H2J 2W6 Canada; ph (514) 283-6073, ext.251; fax (514) 283-3792; e-mail: loates@dd-rd.ca; www.dd-rd.ca

Nepal, continued from page 13.

Recommendations

6. We urge the member States to directly address the following three recommendations:

6.1. **Special Rapporteur.** Adopt a resolution strongly condemning ongoing violations of human rights and humanitarian law by both Maoist and Government forces, establishing benchmarks for the return to the rule of law and respect for human rights, and appointing a Special Rapporteur on the human rights situation in Nepal;

6.1.2. **International Human Rights Monitoring.** Urge the Government to accept an independent United Nations human rights monitoring, investigation, and reporting mandate throughout the territory of Nepal to ensure compliance with existing human rights and humanitarian law commitments (including HMG's Commitment Paper of 26 March 2004). This mandate will be aimed at strengthening the capacity of national institutions for the administration of justice and for the defence and protection of human rights; and

6.3. **Human Rights Agreement.** Urge and facilitate a human rights agreement between the Government and the Maoist insurgency as a confidence-building mechanism and foundation for an eventual peace process.

This appeal has been submitted on behalf of 25 leading Human Rights Organizations in Nepal. Due to the current threat to human rights defenders, the names of the organizations have been kept confidential.

Urgent Appeal, March 28, 2005.

HURIGHTS OSAKA ACTIVITIES

HURIGHTS OSAKA is calling for entrants for the HURIGHTS OSAKA Award 2005 for International Human Rights Education Materials. The contest is open to any individual, group or organization in the Asia-Pacific region. Three outstanding works will be presented with the Award. Deadline for submission is August 1, 2005. For details, please refer to our website: www.hurights.or.jp/index_e.html



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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.



HURIGHTS OSAKA

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