



Editorial

Stigma and Discrimination

In 2001, Member-States of the United Nations met to discuss actions needed to counter the HIV/AIDS epidemic. At that time, they raised the alarm that if the epidemic was not stopped soon, it might be too late to minimize its disastrous effects. In their 2001 *Declaration of Commitment on HIV/AIDS*, one commitment they assumed was the following:

58. By 2003, enact, strengthen or enforce as appropriate legislation, regulations and other measures to eliminate all forms of discrimination against, and to ensure the full enjoyment of all human rights and fundamental freedoms by people living with HIV/AIDS and members of vulnerable groups; in particular to ensure their access to, inter alia education, inheritance, employment, health care, social and health services, prevention, support, treatment, information and legal protection, while respecting their privacy and confidentiality; and develop strategies to combat stigma and social exclusion connected with the epidemic...

Recent studies show that there is much to be done in terms of government measures needed to eliminate the stigma and discrimination against people living with HIV/AIDS (PHAs) and their family members. The human rights of PHAs and their family members are still violated, particularly by the health professionals.

While health professionals already carry the heavy burden of treating PHAs, their respect for human rights constitutes an important component in protecting the human rights of PHAs as a whole.

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

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

AIDS-related Discrimination in Asia

*Susan Paxton**

AIDS-related discrimination is common throughout Asia. Many overseas immigrants lose employment when they test HIV-positive; women diagnosed positive during pregnancy are denied treatment and care and often face subsequent abuse from spouses and in-laws; children of positive parents are denied access to education.

The Asia Pacific Network of People Living with HIV (APN+) carried out the first regional documentation of AIDS-related discrimination in Asia in 2003. The project was peer-led and is the largest study designed and implemented by people living with HIV. The objectives of the research were:

- to measure the nature, pattern and extent of AIDS-related discrimination in several Asian countries
- to identify issues to be addressed and programs to be implemented to counter discrimination
- to increase the capacity of HIV-positive people to respond to future violations.

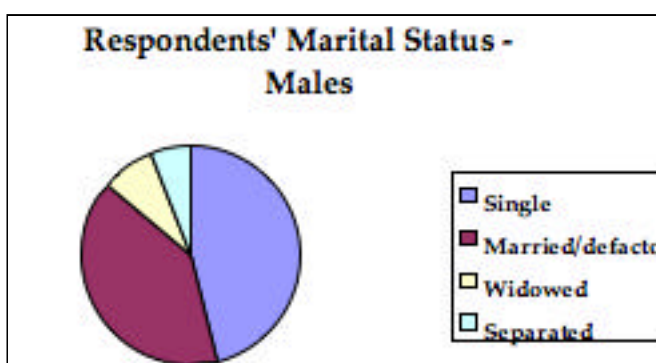
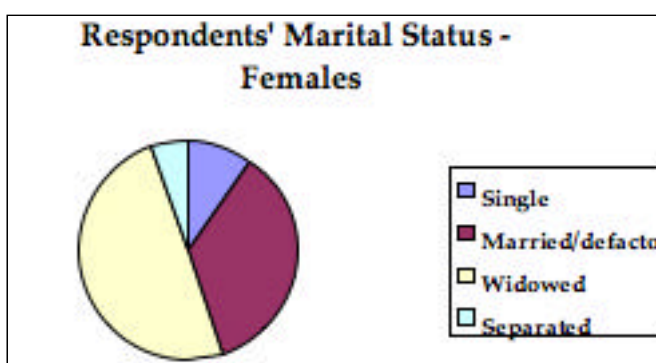
HIV-positive people developed the 133-item questionnaire, based on eight dimensions of discrimination described in the Universal Declaration of Human Rights. In total, 46 positive data collectors were trained to carry out the research in India, Indonesia, the Philippines and Thailand. Countries were selected to participate based on the availability and commitment of HIV-positive activists and local support to carry out the project at the time of the study.

APN+ consulted with 82 key stakeholders - HIV-positive activists, lawyers, academics, ethicists, government officials, workers in non-governmental AIDS organizations and UNAIDS staff to develop the ethical protocol, which was approved by UNAIDS and ethics review committees in all collaborating countries: Pune University (India), Udayana University (Indonesia), HAIN (the Philippines) and Mahidol University (Thailand). The questionnaire, research protocol, informed consent and information sheets were translated into local languages. And legal, medical and social referral services were identified prior to data collection.

Data was collected from 753 positive people (Thailand 338, India 291, the Philippines 82, Indonesia 42). The respondents gave their oral informed consent to the interviews. They did not receive any monetary remuneration. Response rate to the questionnaire was over 95%.

Of the 753 respondents, 348 (46% of sample) were female, 394 (52%) male, 6 (1%) transgender and 5 (1%) sex not recorded; 50% of females and 8% of males were widowed; 10% of females and 46% of males were single; 38% of sample was married/de facto relationship.

The age range of respondents was from 16 to 60 years. (Mean 32.1 years, females 30.6 yrs; males 33.3 yrs; transgender 37.0 yrs).



Time since diagnosis was from a few months to 20 years (mean 4 years). Overall, 69% of respondents said they were diagnosed within the past 5 years.

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Context of HIV testing

The reasons why people go for HIV tests vary greatly. Men are much more likely to be referred for testing because they have HIV-related symptoms or illness (37% v 10%), while women are much more likely to test because their partner tests positive (42% v 11%), or they are pregnant.

Reason for testing	Female (n = 348)	Male (n = 394)	Total (n = 753)
Employment	5	12	8
Pregnancy	25	5	14
HIV symptoms	10	37	24
Partner tested positive	42	11	26
Just wanted to know	7	24	17
Other	11	11	11

Many violations of human rights happen within the context of HIV testing. Most people who have an HIV test are inadequately prepared for it and do not receive pre-test counseling. This is particularly so for pregnant women and people who test for employment reasons. Women are more likely than men to face coerced HIV testing (14% v 10%). Those who report coerced testing are significantly more likely than others to face subsequent AIDS-related discrimination. Only 52% of respondents surveyed said that they received post-test counseling.

Discrimination in health-care setting

The majority of discrimination occurs within the health sector. Over half of the sample (54%) experienced some form of discrimination within the health sector due to their HIV-positive status, including discrimination by health care worker (26%), refusal of treatment (15%), delay in provision of health care (17%).

Breaches of confidentiality by health-care workers are common. One in three respondents said somebody else was told of their HIV status without their consent.

Almost half of all women, but barely one in five men said they were advised not to have children after diagnosis. In Thailand, 17% of women were coerced into an abortion after diagnosis; in India 10% of women were coerced into an abortion or sterilization.

Discrimination in the community

Women are significantly most likely to bear the brunt of AIDS-related discrimination compared to men. Women were more than twice as likely as men to have been physically assaulted because of their status (7% v 2%). The most frequent form of discrimination is facing ridicule, insult or harassment. This happened to 31% of women and 20% of men.

Married women were significantly less likely than unmarried women to experience ridicule or harassment (22% v 36%). Respondents who reported testing because they "just wanted to know" their HIV status were least likely to report ridicule or harassment due to their HIV status (13% v 28%).

Of the one in ten people forced to change their place of residence because their HIV status became known, many moved residence more than once (up to nine times). Women were twice more likely than men to have changed their residence due to HIV (12% v 6%). In total, 6 % of the sample (30 women, 11 men, 1 transgender) were refused entry to or removed from a public establishment, such as a shop, bar or place of religious worship, due to their HIV status.

The sex of respondents was the strongest indicator of whether a person experienced HIV-related discrimination; women face more discrimination in the community than men do, despite the fact that the majority of women contract HIV from their spouse. Age and education level have no impact on the level of discrimination that people experience.

Discrimination from family

After diagnosis, 16% of the sample experienced discrimination from family members (India 20%; Thailand 10%) including exclusion from usual household activities - cooking, sharing food or eating implements, sleeping in the same room as others, engaging in family functions. Women were more likely to experience discrimination from family than men were (18% v 11%), often from in-laws. Women were also more likely than men to have lost financial support from their spouse (35% v 12%) or other family members (11% v 5%). In total, 18 respondents said their children were involuntarily taken away from them due to their HIV status. Respondents who

reported coerced testing experienced significantly more discrimination in the family (27% v 13%).

Discrimination in Employment

One in five people reported some discrimination within a workplace setting. In total, 16 women and 48 men were tested for HIV in connection with employment; 23 women and 29 men (7% of total) lost their jobs because of their HIV status.

The Philippines cohort experienced the highest proportion of workplace discrimination: people lost their job (33%), their job description or duties changed (44%) or they lost prospects for promotion (21%).

Recommendations

This research highlights shortcomings within the public health sector, including testing that violates normal procedures, and the more severe discrimination that women face. If men choose, of their own volition, to be tested, they subsequently suffer less discrimination. The number of people coerced into testing or are tested without pre- or post-test counseling is disturbing, particularly in light of the current push in most countries to test all pregnant women for HIV. Women are increasingly coerced into testing during a vulnerable period of their lives and then refused treatment or abused. Breaches of confidentiality often have severe consequences such as extreme violations of people's personal security. HIV testing should be done only if and when a person is motivated to find out their HIV status.

Suitably trained HIV-positive people have an obvious role as public educators, particularly among health-care staff. Meeting HIV-positive people breaks down discrimination and significantly alters people's attitudes. We need to harness the unique expertise of HIV-positive people in addressing HIV and AIDS.

Based on this study the following recommendations are offered:

- * Prevention programs must consider the context of women's lives
- * All HIV testing must be accompanied by voluntary, *informed* consent and adequate counseling, requiring governments to prioritize greater resources for training of professional counselors

- * Eliminate policies of mandatory testing in relation to employment and pregnancy
- * Monitor implementation of anti-discrimination legislation and invoke legal sanctions against organizations that breach people's privacy and security
- * Develop in-country strategies to change attitudes, particularly in the health sector
- * Train and employ HIV-positive people as counselors and educators
- * Educate HIV-positive people about their human rights
- * Educate community about the consequences of AIDS-related discrimination
- * Create a climate that stimulates people's desire to learn their HIV status.

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The APN+ report "AIDS discrimination in Asia" is available from: www.gnpplus.net/regions/files/AIDS-asia.pdf

About APN+

APN+, the Asia Pacific Network of People Living With HIV/AIDS, is committed to improving the quality of life of PHAs and to overcoming their isolation in Asia and the Pacific by extending the Network into all countries in the region.

APN+ Aims

- *To provide a strong, proactive voice and advocate on behalf of PHAs in the region
- *To lobby for equal representation of PHAs on all relevant decision making bodies
- *To facilitate communication and the exchange of information between PHAs on a range of issues including medical and social support
- *To provide opportunities for PHAs to develop a range of skills in order to respond to the needs of PHAs within their own countries
- *To give visibility to PHAs in order to overcome the fear, ignorance and prejudice they face and to counter all forms of discrimination against PHAs
- *To lobby for improved access of PHAs to treatment, care and support.

Stigma and Discrimination against PHAs: Some Cases

Centre for Policy Alternatives

The Centre for Policy Alternatives (CPA) profiled the stigma and discrimination faced by people living with HIV/AIDS (PHAs) and their family members in Sri Lanka. It interviewed a limited number of people for the study. The Asia Pacific Leadership Forum (APLF) commissioned the 2005 report. Below is an edited excerpt of the report.

Health Care

The findings indicate that many cases of discrimination have occurred in the health sector. However, despite this, many interviewees still had faith in the public health care system. They believed that the services in the Infectious Diseases Hospital (IDH) and Ward 33 of the General Hospital were good, and that they were treated well. A few agreed that free health care provided by government hospitals gave people who could not afford private health care access to treatment they would otherwise be denied. However, there was much consensus that awareness among health staff, in public and private hospitals, must be addressed. They brought up several instances where health staff (including doctors, nurses, attendants and minor staff) had discriminated against people living with HIV/AIDS and their families.

Breach of Confidentiality

According to the interviewees, there were several cases in which confidentiality regarding a patient's HIV status was not respected. A few interviewees mentioned that they lost their jobs as a result of their status being made public. In one case, the lab technician was shocked by test results, it being the first time that such a test turned out positive for HIV. He shared the information with his colleagues at the lab and the rest of the hospital. In the case of a patient who has since passed away due to complications resulting from AIDS, the interviewee was diagnosed with HIV at the General Hospital. A person working in the hospital found out his HIV status and spread this information around their village. This resulted in the stigmatization of both the patient and the family by members of the community.

Unprofessional/Unkind Treatment by Health Staff

Health staff should be educated on, and sensitized towards HIV/AIDS so that they will be able to take proper precautions and treat the patients in a non-discriminatory manner. It is also important that health staff is knowledgeable about the disease, so that they can educate the public and give them accurate information, thereby dispelling fear and misconceptions. At a government hospital, hospital staff operated a patient on without any testing or consultation with the patient's family. After the operation, the patient's mother informed the doctor that the patient was HIV+. Though the doctor behaved respectfully towards the patient and family, the attendants and minor staff treated both the patient and family badly. The mother of the HIV+ person, when interviewed, stated that the health staff was ignorant of HIV/AIDS and this resulted in stigmatization and discrimination. She went on to mention that the hospital staff had even refused to touch the sheets on the patient's bed.

Lack of Informed Consent/Counseling

The majority of the people interviewed stated that they consented to being tested. At the same time, nobody informed them about HIV/AIDS. Many had very little knowledge on what HIV/AIDS is, and some had misconceptions on how it could be transmitted. The majority of interviewees claimed that the doctor present explained HIV/AIDS only after the results came back positive. The doctors then directed the people to institutions such as Salvation Army and Lanka+ to get assistance and support. There were no cases in the study where pre-test counseling was conducted.

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Fighting Stigma and Discrimination against People Living with HIV and AIDS in the Philippines

*Jose Narciso Melchor C. Sescon**

While the Philippines is considered a "low prevalence" country for HIV and AIDS, the presence of risks and vulnerabilities among Filipinos (due to low condom use, liberal view on sexual practices leading to multiple partners, lower sexual debut among youth) made the Philippine civil society and partners more vigilant against a "hidden and growing" HIV epidemic that lurks behind this stark reality.

Table 1. Philippines HIV AIDS Prevalence January 1984 to September 2006 (N = 2,655)

Reported Modes of transmission	January 1984-September 2006 N = 2,655	September 2006 N = 25
Sexual transmission		
Heterosexual	1659	16
Homosexual	497	7
Bisexual	148	2
Blood/blood products	19	0
Injecting drug use	7	0
Needle prick injuries	3	0
Perinatal	37	0
No exposure reported	285	0

Source: HIV / AIDS Registry September 2006. For more updated statistics, please visit: www.doh.gov.ph/nec

HIV prevalence among Filipino adults (15-49 years old) was 0.03% in 2005.¹ What is important to note here is that high risk groups (injecting drug users, men having sex with men, female sex workers (FSWs), male clients of FSWs) only account for 26% of the total HIV prevalence.² Table 2 provides the existing HIV prevalence among them.

Table 2. Population Size and Prevalence Rate by Most-at-risk population (MARP), 2005

Most at risk Populations	Estimates			
	Population size		HIV Prevalence (%)	
	Low	High	Low	High
Injecting Drug users (IDUs)	16,000	30,500	0.10	2.90
Men having sex with men (MSMs)	379,799	804,280	0.00	0.39
Female sex workers (FSWs)	112,354	175,553	0.06	0.34
Male clients of FSWs	280,604	438,444	0.00	0.63
Total	788,757	1,448,777		

Such "low and slow" characterization of the HIV and AIDS epidemic in the Philippines has pushed the issue way down in the development agenda.

The Philippines enacted Republic Act 8504 otherwise known as "AIDS Law" in 1998, one of the first coun-

tries in Asia to do so. But the eight years that passed since then did not show much achievement in terms of enforcement. "Low" HIV prevalence notwithstanding, persistence of stigma and discriminatory practices against persons living with HIV and AIDS (PHAs) and their affected families remains.

A response

Remedios AIDS Foundation, Incorporated (RAF) was founded in 1991 as a pioneer non-profit, non-governmental organization (NGO) that provides quality information and services on sexual and reproductive health (SRH) primarily to the "most at risk" (sex workers, men having sex with men, drug users) and "vulnerable" (youth, migrant workers, and family members of PHAs) populations. RAF developed various programs over a decade in pursuit of its mission.

The RAF programs adhere to all international guidelines provided by the 1994 Cairo Consensus of the International Conference on Population and Development (ICPD), the 2001 Declaration of Commitment on HIV/AIDS of the United Nations General Assembly Twenty-sixth Special Session (UNGASS), and the United Nations Millennium Development Goals (MDGs). Furthermore, RAF applies rights-based, gender-responsive, and culturally-appropriate principles to its programs, and ensures meaningful participation of PHAs and the civil society at all times.

RAF's capacity-building initiatives among PHAs and affected families involve several stages. At the first stage they are provided basic information about HIV and AIDS and the impact of the virus on them and society. PHAs are sensitized to these crucial issues until they eventually recognize that the issues relate to their human rights. As one PHA said,

Just like anyone, I am also a human being who experi-

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ences pain, and with heart and mind. I don't need sympathy from anyone...As HIV positive, what we ask is your understanding and acceptance...What we were in the past and what we are now have no difference...Being accepted by society is what matters most...Having only a few more years to live in this world, we hope to experience the love and care from anyone...who is always there to support us. Cynthia a 26 year-old HIV positive.

The next stage includes provision of information about agencies/networks that provide services for their needs. This proved to be an effective and vital way in advocating for PHAs' needs.

These stages are employed in HIV Counseling, HIV Care and Support, and HIV Treatment Literacy workshops. PHAs and their family members learn about the basic principles of treating HIV/AIDS, clarify what their needs are, and get to know where to go for HIV services in these workshops. Most PHAs and their family members have been empowered and honed to become advocates of their rights through various workshops and experiences gained locally and abroad. Having been empowered, Filipino PHAs realized the need to further strengthen their advocacy efforts and thus formed the Pinoy Plus Association, Incorporated. It is the only national organization of PHAs in the Philippines.

RAF has another program on "follow through" counseling for PHAs and their family members. Counseling has various forms: partner/ couple counseling (how to cope and live productively with HIV), counseling on how to handle HIV status disclosure to their partners, family members and relatives, family counseling (to settle disputes), anti-retroviral (ARV) adherence counseling for PHAs on ARV treatment, and grief, loss and bereavement counseling (for cases involving late stages of the disease).

Counseling sessions alleviate fears, guilt, and shame and help resolve unfinished businesses among PHAs.

Under the HIV care support treatment program, RAF provides voluntary counseling and testing (VCT), home based/ community care and support services, access to ARV, and Opportunistic Illnesses (OI) services.

Research on stigma and discrimination against PHAs

RAF, in partnership with Pinoy Plus Association and Deakin University in Australia, published in 2003 a report on the situational analysis of HIV/AIDS-related stigma and discrimination in the Philippines. The report focused on institutional forms of discriminatory practices in Metro Manila. One significant finding shows that most of the discriminatory practices occur in the health care setting as compared to incidents in other areas of social life (housing, welfare, justice system, finance and insurance, livelihood, prison, reproductive health and family, and public accommodation). This is probably due to the fact that most of the PHAs access the health services more often than the other areas. The research was very enriching and needed to be followed up to ensure that stigma and discrimination issues related to HIV are addressed accordingly.

In summary, the current RAF programs are geared toward the empowerment of PHAs and their family members as well as service provision. These programs will continue to evolve and expand according to the current PHA needs. RAF has paved the way towards ensuring that a more enabling and supportive environment for PHAs and their families is realizable. Hopefully, other stakeholders - local governments for example - will be able emulate these programs and ensure that they are implemented. RAF remains determined in pursuing the tasks at hand as it continues with the journey!

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Endnotes

1. 2005 HIV Estimates in the Philippines, Department of Health.
2. Ibid.

Converging Currents: Custom and Human Rights in the Pacific

*New Zealand Law Commission**

The interface between custom and human rights has frequently been raised within New Zealand and in the wider Pacific. In particular, there have been calls for an in-depth study to enhance understanding of the interaction between traditional and cultural practices and human rights, and how the two can inform each other.¹ An understanding of how custom and human rights relate to Maori and Pacific communities in New Zealand requires a broader understanding of how these issues arise elsewhere in the Pacific and how they are affected by national laws and international conventions. This will in turn inform New Zealand's role in this area within the Pacific region.

In this context, the New Zealand Law Commission aims to contribute its legal expertise by articulating some of the issues arising from the interaction between custom and human rights in the Pacific, and exploring ways in which the two can work together. Ultimately, the Commission aims to make a New Zealand contribution to a regional understanding of human rights grounded in Pacific values. It hopes that its study paper will be of practical assistance to lawyers and judges applying existing laws, and to government policy makers and other agencies involved in the development of human rights mechanisms. However, it will be for individual Pacific Islands communities and states to decide for themselves how best to move forward.

Consultation process

The Commission produced a summary document setting out some preliminary ideas as to ways in which custom and human rights might be better harmonized in the Pacific. This document was circulated widely and was available on the Commission's website, and the Commission received a number of submissions on the ideas put forward in the document. The Commission held a regional workshop on custom and human rights in Fiji (May 2006), attended by people from a range of backgrounds from across the Pacific, and held two

consultation workshops in Wellington and Auckland (June 2006). The Commission also established an External Reference Group of Pacific people and others with expertise in this area, and benefited greatly from their input.

The study paper

The New Zealand Law Commission study paper *Converging Currents: Custom and Human Rights in the Pacific* deals with a perceived conflict that lies at the heart of Pacific legal systems. Custom is recognized as a source of law in most Pacific countries, and human rights are also protected in most Pacific constitutions as well as through ratification of international treaties by Pacific states.

This raises the question of whether custom and human rights can live comfortably together. It is often assumed that they cannot. Some see human rights, with their perceived individualist bias, as a threat to custom. Others see custom as undermining individual rights, particularly those of disadvantaged or vulnerable groups such as women and young people.

The central thesis of *Converging Currents* is that, despite apparent areas of tension and conflict, custom and human rights can be harmonized in many cases by looking at the underlying values of each.

The study paper provides an overview of issues arising from the interface between custom and human rights in the Pacific region, including the Pacific Island countries, New Zealand and Australia. This is an area of tremendous cultural diversity, but there are also significant commonalities across the region.

Not least among these commonalities is the important place of custom law in most Pacific societies. In many places, custom predominates in resolving disputes at the local level. Certain values are also common to Pacific cultures, and it is these values that form the basis of custom. Respect for the indi-

vidual dignity of all persons is perhaps the primary value underlying Pacific custom. From this flow other values such as the demonstration of love and care for others, consensus-based decision-making, and the maintenance of balance in relationships.

Such values are generally consistent with the values underlying human rights, which are also based on respect for individual human dignity. However, customary practices - what people actually *do* - do not always reflect customary values, or underlying beliefs about what is right. The Commission believes that much of the apparent conflict between custom and human rights is due not to the underlying values but to customary practices, and to resistance to calls for change to such practices by those in power within Pacific societies.

Conflicts between customary practices and human rights are particularly apparent in relation to certain issues examined in the study paper: the rights of women, children and minorities, and freedom of religion, speech and movement. For example, custom plays a part in restricting women from taking on leadership roles, perpetuating violence and sexual offences against women, and denying women equality in marriage and other family law matters.

However, there are also traditions of respect for women in Pacific custom. Some customary practices need to change to accommodate human rights, and to bring practice more into line with underlying customary values, but this does not require the wholesale repudiation of custom. Indeed, by looking for common ground between custom and human rights, both may be enhanced. Human rights will be strengthened in the Pacific if they can be expressed in terms of local culture and customary values.

This approach is reinforced by the Commission's suggestion that courts in Pacific states should develop an indigenous common law or a "Pacific jurisprudence" rooted in the values underlying custom law and human rights, as well as in the legal traditions inherited through colonization.

When confronted with cases involving an apparent conflict between custom and human rights, judges are able to consider the values underlying the custom, and whether these are consistent with or could be made to

align with human rights. Equally, they may consider how human rights or other general legal principles could be explained in terms of customary values. For example, a judge who finds that mismanagement of community or state funds is inconsistent with fiduciary obligations might go on to observe that this is also inconsistent with customary notions of stewardship of resources and the responsibilities of leaders to their communities.

The Commission sees an important role for both higher-level courts and community-level justice bodies such as village courts and councils in harmonizing custom and human rights. Courts and community justice bodies should work more closely together, as in many respects their roles are complementary.

Community justice bodies resolve the majority of disputes in most Pacific countries. They are accessible, and usually seek solutions aimed at restoring relationships disrupted by conflict. However, they are also frequently male-dominated, often depart from principles of natural justice, and may be unfair to women, young people and other vulnerable groups. They are generally familiar with local custom, but often require assistance with understanding and applying human rights.

On the other hand, judges and magistrates are likely to be more aware of human rights but often need assistance with understanding and accessing local custom law. The Commission therefore suggests that the development of custom law commentaries, rather than prescriptive codes, should be a priority for Pacific states. Such commentaries would assist judges, officials and others to understand local custom and to better integrate it both with human rights and with the state legal system.

Courts can help to harmonize custom and human rights by applying human rights in ways that take account of the local context. The Commission prefers an approach that looks for common ground between custom and human rights to one in which either human rights or custom "trumps" the other.

As a summary, the following are some of the suggestions offered by the Commission:

- * Make community justice bodies and courts more

accessible to women and more responsive to their views and rights.

* Give women a genuine choice about whether crimes of violence against them are dealt with through customary processes, courts, or both.

* Give greater recognition to community justice bodies, while also providing them with appropriate training, particularly in human rights.

* Build stronger relations between community justice bodies and courts.

* Develop an indigenous common law rooted in the values underlying custom, human rights and the legal traditions inherited from colonization. In cases involving an apparent conflict between custom and human rights, judges could consider the values underlying the custom and how these might align with human rights.

* Apply human rights in the courts in ways that take account of the local cultural and customary context.

* Develop custom law commentaries to assist judges, officials and others to understand the nature and content of local custom law. Other forms of specialist assistance to the courts, such as expert witnesses, and relaxation of some procedural and evidentiary requirements may also help in cases involving custom.

Issues of the interface between custom and human rights are likely to remain of concern in Pacific states for some time to come, and may have to be addressed at a regional level if there were to be any move towards a regional human rights mechanism. The Law Commission study paper does not attempt to provide definitive answers to the questions it raises, and the Commission hopes that the paper will stimulate further research and discussion on these issues by Pacific people.

For further information, please contact: Ewan Morris, The Law Commission, PO Box 2590, Wellington, New Zealand, ph (64-4-)914-4821; fax (64-4-)471-0959; e-mail: EMorris@lawcom.govt.nz. The report can be downloaded from the Law Commission website www.lawcom.govt.nz, or hard copies are available for NZ\$20 from publications@lawcom.govt.nz

Endnote

1. See for example the Concluding Statement and Recommendations from the Pacific Islands Human Rights Consultation (Suva, Fiji) June 2004 at para. 29.

The New Zealand Law Commission

The Law Commission is an independent, government-funded organization, which reviews areas of the law that need updating, reforming or developing. It makes recommendations to Parliament, and these recommendations are published in our report series. The Law Commission helps ensure that the law provides effectively for the current and future needs of our rapidly changing society. Its goal is to achieve laws that are just, principled, accessible, and that reflect the heritage and aspirations of the peoples of New Zealand.

It investigates and reports to Parliament on how New Zealand laws can be improved. It reviews the law and processes in specific areas selected by it or referred to it by the Minister Responsible for the Law Commission. The Commission also assists government departments and Crown entities in reviews of the law and is regularly called on to assist Parliamentary select committees.

The objectives of the Law Commission are to improve:

- * the content of the law
- * the law-making process
- * the administration of the law
- * access to justice
- * dispute resolution between individuals
- * dispute resolution between individuals and the State.

All Reports published by the Commission are tabled in Parliament. Within six months after tabling, the Government provides its response to the recommendations in the report.

(source: www.lawcom.govt.nz)

Human Rights Defenders' Forum 2006

HURIGHTS OSAKA

The 2nd Regional Human Rights Defenders' Forum (HRDF) with the United Nations (UN) Special Representative of the Secretary General on Human Rights Defenders (SRSG on HRDs) was held in Bangkok on 28-29 November 2006. Human rights defenders (HRDs) from a number of Asian countries attended the forum along with representatives of governments and national human rights institutions in Asia, regional and international human rights organizations, and UN agencies.

The forum, organized by FORUM Asia and the Asia-Pacific Forum on Women, Law and Development (APWLD), had the theme "Towards Full Implementation of the UN Declaration on HRDs in Asia - Strengthening the Role of HRDs."

Main speakers

The wives of prominent HRDs who either disappeared or died in Thailand (Ms. Angkana Neelaphajit) and Indonesia (Ms. Suciwati) respectively spoke at the forum.

Ms. Hina Jilani, the current SRSG on HRDs, in addressing the forum said that every work being done by HRDs directly and indirectly constitutes a tribute to those who died working for human rights. She said that leadership, which could bring about a reconciliation of ideologies and could organize the work of the different HRDs, is needed. She stressed that diversity in the work of HRDs must and would exist - and must be supported not eliminated. She also called for the creation of strong national and regional networks of HRDs as proposed by many HRDs themselves. These networks could facilitate discussions and debates at regional level on concrete ideas toward global thinking.

She emphasized that the legitimacy of the human rights community comes from its rootedness in social movements. She urged mutual reinforcement between social movements and human rights work.

She stressed the need to broaden the conception of HRDs to include all those who work for human rights - be they civil and political, or economic, social and cultural rights. She lamented that people who work among indigenous peoples, peasant and rural poor, lesbians, gays, bisexuals and transgenders are still largely not

recognized as part of the human rights community.

She also pointed out that the UN Declaration on HRDs is fast becoming a "soft law" which contains universal principles. She argued that the role of the civil society to protect human rights cannot be derogated or suspended even in cases of emergency. Civil society must also be recognized as member of the international community, in addition to states. Its exclusion weakens human rights, and the human rights instruments and standards.

Others speakers (Ms. Sunila Abeysekera of INFORM in Sri Lanka, Mr. Kieren Fitzpatrick of the Asia-Pacific Forum of National Human Rights Institutions, Mr. Park Kyeong Seoh, Korean Ambassador for Human Rights, and Mr. Guillaume Pfeiffle of the Office of the UN High Commissioner for Human Rights) spoke on women HRDs, and the role of governments, national human rights institutions and the UN respectively.

Working groups

The participants broke into working groups to discuss the role of national human rights institutions, governments and the international agencies in protecting HRDs, as well as the practical experiences of protecting HRDs within and outside the country.

FORUM Asia facilitated the adoption of the Bangkok Commitment which states the concerns and ideas for the promotion and protection of HRDs in Asia.

The final activity of the forum was the launching of the first International Women Human Rights Defenders Day in Asia. APWLD organized the presentation of a documentary on Asian women HRDs. Several women HRDs gave testimonies on their experiences. The special program also paid tribute to the work of Ms. Jilani.

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Workshop on NGO-NHRI Cooperation

HURIGHTS OSAKA

A regional workshop on cooperation between national human rights institutions (NHRIs) and non-governmental organizations (NGOs) in Asia was held on 30 November to 1 December 2006 in Bangkok. Organized by FORUM Asia, the workshop was attended by representatives of national and regional NGOs, NHRIs and United Nations (UN) agencies.

The workshop started with a session on the "Challenges, Limitations and Opportunities of NHRIs in Asia" and "Updates on the Asia Pacific Forum of National Human Rights Institutions (APF), the International Coordinating Committee (ICC) of the NHRIs and the 8th International Conference for NHRIs (Bolivia, 24-27 October 2006): Platform for NGO engagement." Mr. Brian Burdekin of Raoul Wallenberg Institute (RWI) was the main speaker on the first topic, while Ms. Suraina Pasha, Training Manager of APF, spoke on the second topic.

This session was followed by the launching of FORUM Asia's *Assessment of the NHRIs Performance including their Cooperation with NGOs Report 2006*. Participants from India, Maldives, Nepal, Sri Lanka, Indonesia, Malaysia, Philippines, Thailand, Timor Leste, Mongolia, and South Korea presented experiences on NGO-NHRI cooperation in their respective countries, as well as assessment of their own NHRIs. Participants from Bangladesh, Pakistan, Cambodia, Singapore, Japan, and Taiwan reported on the lack of progress on the plan to establish NHRIs.

The second day sessions were devoted to presentations on particular issues affecting NGO-NHRI cooperation. Mr. Jefferson Plantilla of HURIGHTS OSAKA spoke about human rights education, Mr. Ruki Fernando of FORUM-ASIA spoke about protection for human rights defenders by NHRIs, and Ms. Sneh Aurora of Equitas (formerly Canadian Human Rights Foundation) spoke about women's issues and NHRIs.

Some issues

The discussions dwelt on a number of important issues affecting the cooperation between NGOs and the NHRIs, and the performance of the NHRIs.

It was clarified that APF has a membership review process that determines whether or not the member-NHRIs continue to subscribe to the Paris Principles particularly on independence and capacity to respond to human

rights violations cases. A member-NHRI found unable to maintain subscription to the Paris Principles may be downgraded to an associate member status.

Many participants viewed the NHRIs as lacking in political will to pursue significant cases involving government officials, and members of the police and the military. They were criticized for slow, if not insufficient, investigation of complaints.

The participants conceded however that the NHRIs suffer from weak cooperation of government agencies including the police and the military in investigating cases. The participants also noted that NHRIs had no choice but to wait for the government to act on their recommendations on the prosecution of cases - a result of their lack of prosecutory power. They also noted that a number of NHRIs are suffering from inadequate financial resources as well as insufficiently trained staff.

The participants noted the problem of non-transparent process of appointing members of NHRIs, and the appointment of people who were considered lacking in human rights work experience. This probably explains the presence of inactive NHRI members.

Many participants thought that NHRIs are generally weak in cooperating with NGOs especially in relation to the investigation of cases. Their cooperation seemed to be hindered by suspicion of each other's motives. There is better cooperation, however, between them in human rights promotion activities.

The workshop ended with a discussion on how to improve the process of assessing NHRIs as well as the effective use of the assessment reports. APF was identified as a significant institution to lobby for more effective NHRIs. In view of this, a network was formed tentatively named Asian Network on NHRIs or ANNI.

*For the full report on the workshop, please contact:
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Osaka Conference on Human Rights Education - Dialogue among Asian Educators *HURIGHTS OSAKA*

One hundred fifty educators, local government officials and graduate students gathered in the 2006 Osaka Conference on Human Rights Education held on 18 November 2006 in Osaka city. The conference was organized by HURIGHTS OSAKA in line with its objective of promoting human rights in Japan and the Asia-Pacific region. There were participants from Bangladesh, Hong Kong, India, South Korea, Laos, Mongolia, Nepal, Pakistan, Sri Lanka, and Vietnam, and a keynote speaker from Australia.

The conference was preceded by school visits held on 17 November 2006 for the foreign participants. The school visits covered primary and secondary schools in the cities of Izumi, Matsubara and Osaka, one non-governmental organization, and the Osaka Education Center (a teacher training center of Osaka prefecture). The visits included class observation, interaction with students, and dialogue with school officials.

The conference proper formally started with the opening remarks by Mr. Osamu Shiraishi, Director of HURIGHTS OSAKA. A speech by Mr. Kenzo Tomonaga, Director of Buraku Liberation and Human Rights Research Institute, followed. He highlighted the international human rights education frameworks (the United Nations Decade for Human Rights Education, and the World Programme for Human Rights Education). Mr. John Pace of the Australian Human Rights Centre, and an international advisor of HURIGHTS OSAKA, delivered the keynote speech. He gave a short presentation on the situation in Iraq where he worked for some time under the United Nations program. He emphasized the necessity of human rights education even in difficult situations such as Iraq's.

Panel discussion

A panel discussion followed the speeches. Panel speakers stressed the current contexts of the school system and the developments on human rights education. The panelists from Malaysia (Ms. Chiam Heng Keng, Commissioner of the Human Rights Commission of Malaysia) and South Korea (Ms. Kwak Sookhee, Training Division Chief of the Asia-Pacific Center of Education for International Understanding) pointed out the problem of competi-

tive education, which adversely affects the development of children. The panelist from Pakistan (Mr. Aurangzeb Rehman of the Pakistani Ministry of Education) presented the experience in implementing a national action plan on human rights education. The two Japanese panelists (Mr. Yasumasa Hirasawa of Osaka University, and Mr. Hideaki Koji of the Osaka Prefectural Education Board) spoke about the recent developments in human rights education in Japanese schools. Mr. Hirasawa explained the recent report of a national advisory body on education, which incorporated the experiences of the Dowa educators. Mr. Koji explained the whole education system concept in human rights education that is being implemented in the Osaka prefecture.

Due to lack of time, a brief question-and-answer portion followed the panel presentations. A few questions were raised. One participant questioned the focus of human rights education efforts on schools. Another participant raised the situation of teachers and the need for "democracy" within the school system.

Small discussion groups

The dialogue between the foreign participants and their Japanese counterparts technically begun in small discussion groups. The whole afternoon of 18 November 2006 was devoted to discussion among the participants. They discussed several issues, categorized into the following: Curriculum for human rights education, Human rights education materials, Teacher training, and the Role of the community (civil society).

Teacher training meeting

The third day (19 November 2006) was devoted to a small meeting on teacher training. The meeting started with a review of the regional program of HURIGHTS OSAKA over the last ten years, and the presentation of a proposed framework on a teacher training on human rights education, which was drawn from the results of HURIGHTS OSAKA'S past activities.

The meeting included the discussion among participants from South Asia on the contents of a planned

South Asian material on teacher training on human rights education.

Some issues

1. Globalization and competitive education system

It is ironic that some children who are already enjoying education are suffering from human rights violations. It is frightening to know that the current problems in schools such as truancy, bullying, and suicide may have been caused by bad experiences at home or in school. The presentations from Malaysia and South Korea, which dealt with these problems in relation to competitive education and the problems it brings are relevant to other Asian countries including Japan.

Education is considered an important part of the growth of children in every society, and it is not expected to lead to the stifling of the children's creativity and initiative - or the loss of interest in life itself. While knowledge-based, exam-oriented, stressful education might provide good examination results, it might also affect the development of social and other skills of the students. If not given attention, they may become violent later in life, withdraw from society, or suffer mental disorder. This is what the "culture of fear of losing out" (known as *kiasu* in Singapore and Malaysia) is all about.

What then should be done to protect the children?
What can human rights education do to help?

2. Child rights

The panel discussions referred to child rights and related them to the problems that children at present face. The discussions raised the point that children's issues (be they minor or serious) have human rights implications.

This is the role that human rights education plays. The presentation of human rights (or child rights) must be in the context of its audience. For schools, it must relate to the actual situation of children.

In the context of competitive education, it is important to be reminded that children have the right to rest and recreation, and that there are many other interests the children should pay attention to other than academic activities to help them develop holistically.

In light of the renewed public concern about bullying and suicide among students in Japan, the right of students to personal safety has become a major concern.

The effort to find alternative channels for students to express their problems, as shown by an experience in Vietnam, provides the means to protect human rights (especially right to life or personal security) within the school premises. The idea is that the school must be sensitive to the situation of the students by giving them as many channels as possible, such as having a place or box to put messages about the problems they face or getting a network of social workers outside the school who can be trusted by students to communicate their problems to.

Human rights education in schools, as presented in the conference, does not mean learning about international documents. Rather, it is looking at ordinary life from the perspective of child rights and development.

3. Role of the teachers

While human rights education is the responsibility of many institutions and people in society (starting with the parents), teachers play a very crucial role in it. They generally need training to effectively facilitate the learning of human rights.

The teacher training being done in Nepal that focuses on child rights is a good example of direct involvement of the Ministry of Education in human rights education. It is also a good example of collaboration between the government and the non-government sector. As part of the project, the Ministry of Education officials, university professors, and members of the Teachers Union jointly developed a teacher-training manual on child-friendly school. This collaboration brought different perspectives (especially those of the teachers) into the development of the material.

Some Japanese teachers considered the government-supported teacher-training program for human rights education in Osaka inadequate. This is probably due to the non-compulsory nature of the available training program, leading to the small number of teachers getting involved.

For more information, please contact HURIGHTS OSAKA

HURIGHTS OSAKA Award 2006

Three materials from Japan won the HURIGHTS OSAKA Award 2006 on International Human Rights Education Materials. The materials were selected among twenty materials from Japan and several other countries. As in the past, the submitted materials were in varied forms - textbooks, worksheets, picture story books, training materials, documentaries and reports. The documentaries and reports were in video/vcd/dvd formats.

Each winning entry was awarded with 200,000 Yen and an award certificate in a ceremony held on 8 December 2006 in Osaka.

The winning materials

Following are short descriptions of the winning materials.

1. SAFE Program (Survival and Fairness through Empowerment)



SAFE Program

This is a collection of drawings aimed at enabling children in the lower grades of primary schools gain skills to protect themselves. The drawings present various rights provided in the Convention on the Rights of the Child. This 60-page publication includes a users' guide.

ECPAT Japan Kansai (Osaka, Japan) produced this material.

2. Ganbare! Hwangsaewool (Hurray! Hwangsaewool)

This is a short documentary on the struggle of Korean villagers and their peace-activist supporters against the forced expropriation of farmlands and a former primary school for the expansion of the U. S. military base in Pyeontaek, Gyonggi-do, South Korea.



Ganbare! Hwangsaewool

Shinsuke Nakai, a video journalist who is affiliated with the Paenseong Residents Committee in Pyeontaek, Gyonggi-do produced this documentary. It runs for eight minutes in dvd format.

3. Osaka hatsu Manabisuto Sengen (From Osaka, a Declaration of Learners)



Osaka hatsu Manabisuto Sengen

This is a collection of human rights education materials for integrated studies in senior secondary schools. The materials consist of several topics named "multi-cultural education team," "night school, long-distance school education team," "Buraku issue team" and "disabled people's education team."

The Osaka Prefectural Human Rights Education Study Group (Osaka, Japan) prepared this material. It has 118 pages.

The three materials are in Japanese language.

For more information, please contact HURIGHTS OSAKA.

HURIGHTS OSAKA ACTIVITIES

The report on the four-country research on education policies and human rights awareness will be printed in January 2007 in Delhi. A separate country report from the Philippines has been printed in Manila in December 2006 while its Indian counterpart is being readied for printing in Delhi.



PRINTED MATTER

AIR MAIL

May be opened for inspection by the postal service.

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



HURIGHTS OSAKA

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