



Editorial

Regional Human Rights Mechanism

Regional inter-governmental structures provide ways of addressing human rights issues within the "community." Instead of international bodies dealing with their human rights issues, the members of the community (States) who are bound by common history, culture and other ties can resolve these issues in their "own way," that is, in effective, efficient and appropriate manner using the international human rights standards.

Intergovernmental human rights mechanisms are likely valuable in addressing cross-border issues such as trafficking in human beings and exploitation of migrant labor, but also national issues that require external pressure to prod governments into action, or provide redress for violations resulting from governments' action or omission.

When the Association of Southeast Asian Nations (ASEAN) establishes its human rights body, it has to ensure that it will not be ineffective. It has to prove that it addresses human rights issues by protecting people in the subregion from human rights violations, complementary to the efforts of institutions at the national level.

The human rights problems in Burma/Myanmar are urgent cases waiting for a subregional solution. Will the ASEAN human rights body be able to act on them?

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.

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ASEAN Human Rights Body

*Jefferson R. Plantilla**

An Asia-Pacific human rights mechanism will not see light in the region for many years.

From the discussions in the initial United Nations (UN) regional seminar in 1982 in Colombo¹ to the 2007 regional workshop in Bali, it is clear that governments in the region and the UN have agreed that this system is not yet due. Agreement on a building-block approach in establishing such system² has evolved into undertaking particular projects under the 1998 Tehran Framework.³

The results of the 14th Annual Workshop of the Framework on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region, in the form of Bali Action Points adopted on 12 July 2007, consisted mainly of requests of governments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) to undertake the following:

- 1) Summarize the recommendations of the regional workshops since the 1991 workshop in Manila
- 2) Compile a directory of resource materials and resource persons that can support the activities agreed upon in the workshops
- 3) Compile the outcome documents of the four sub-regional workshops for judges and lawyers on justiciability of economic, social and cultural rights
4. Engage in consultations with Member States, regional organizations, national human rights institutions, civil society and other stakeholders on follow up to activities under the regional framework
5. Hold follow up consultations and dialogue with other United Nations and multilateral development agencies to harness their resources in support of these activities.

The OHCHR, in turn, has identified as regional priorities and strategies under its Human Rights Programme for Asia Pacific (2006-2007) the continuation of its work within the Asia-Pacific Regional Framework, in cooperation with member-states and

Country Teams, focusing on the justiciability of economic, social, and cultural rights and establishing and strengthening national institutions. It will also give "focused attention" to several issues: "discrimination against minorities, including indigenous peoples, trafficking in human beings, especially women and children, migrant workers's rights, economic, social, and cultural rights, and the rule of law."⁴

Another approach

The discussions in the 1982 Colombo meeting touched on the idea of establishing national and sub-regional human rights mechanisms before discussing the regional mechanism. From late 1980s several countries in the region began establishing their respective national human rights institutions. And still much later, the subregions of South and Southeast Asia and the Pacific separately adopted subregional initiatives on human rights.

The South Asian Association for Regional Cooperation (SAARC) has adopted two instruments that created a basis for cooperation in the field of human rights among the member-states. The South Asian Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (January 2002) and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia (January 2002) have now taken effect in South Asia. There is also the Social Charter, adopted in 2004, that has a number of human rights provisions relating to women and children. Its section on principles, goals and objectives states the following:

- xii. Promote universal respect for and observance and protection of human rights and fundamental freedoms for all, in particular the right to development; promote the effective exercise of rights and the discharge of responsibilities in a balanced manner at all levels of society; promote gender equity; promote the welfare

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and interest of children and youth; promote social integration and strengthen civil society.

It seems, however, that SAARC has not discussed the idea of a South Asian human rights mechanism, be it for particular human rights issue(s) or for human rights in general.

The Pacific Islands Forum moved towards a sub-regional system by adopting in 2005 the *Pacific Plan for Strengthening Regional Cooperation and Integration* (Pacific Plan). The Pacific Plan has provisions on human rights. The vision for the Pacific under the Pacific Plan includes the "defense and promotion of human rights," and a few aspects of its Good Governance section relate to human rights. The regional implementation of the *Pacific Plan* lies with the Pacific Islands Forum Secretariat with political oversight and guidance provided by a committee (Pacific Plan Action Committee). The proposal to establish a Pacific human rights mechanism is subject to further study. (See related article for a discussion of the situation in the Pacific.)

The Association of Southeast Asian Nations (ASEAN) has adopted several human rights-related documents and is now at the verge of establishing a subregional human rights body.

These subregional initiatives parallel the regional human rights initiatives of the UN, but there is no indication of link between them.

Southeast Asia

ASEAN member-states believe that they have created a community of Southeast Asian nations at peace with one another and at peace with the world, rapidly achieving prosperity for [their] peoples and steadily improving their lives. [Their] rich diversity has provided the strength and inspiration to [them] to help one another foster a strong sense of community.⁵

They have experienced economic integration through smaller initiatives within the region.⁶

By 2020, ASEAN envisions a much stronger community with the following characteristics:

- 1) A Zone of Peace, Freedom and Neutrality
- 2) Closer economic integration within ASEAN
- 3) An ASEAN community conscious of its ties of history, aware of its cultural heritage and bound by a common regional identity.

These characteristics refer to the three components of the ASEAN *Vision 2020*: peace, economic development and social cohesion.

To realize this vision of an ASEAN Community, it is necessary that the member-states are bound by an ASEAN Charter that will serve "as a firm foundation in achieving one ASEAN Community by providing an enhanced institutional framework as well as conferring a legal personality to ASEAN." It will "codify all ASEAN norms, rules, and values and reaffirm that ASEAN agreements signed and other instruments adopted before the establishment of the ASEAN Charter shall continue to apply and be legally binding where appropriate."

The 2005 ASEAN Summit's *Kuala Lumpur Declaration on the Establishment of the ASEAN Charter* declared a long list of principles on the interstate relations within ASEAN including "[P]romotion of democracy, human rights and obligations, transparency and good governance and strengthening democratic institutions."

This declaration established the Eminent Persons Group (EPG) on the ASEAN Charter to "examine and provide practical recommendations on the directions and nature of the ASEAN Charter relevant to the ASEAN Community."

The EPG was tasked to recommend a strategy for the ASEAN Charter drafting process including consultations at the national and subregional levels with all relevant stakeholders in ASEAN (especially representatives of the civil society) and public information.

The 2006 ASEAN Summit's *Cebu Declaration on the Blueprint of the ASEAN Charter* endorsed the "Report of the EPG on the ASEAN Charter and agree[d] that the High Level Task Force should commence the drafting of the ASEAN Charter based on our directions given at the 11th and 12th ASEAN Summits, the

relevant ASEAN documents, together with the EPG recommendations, to be completed in time for the 13th ASEAN Summit in Singapore in November 2007."

Human rights and ASEAN

ASEAN adopted a number of documents relating to human rights, namely,

- * *Jakarta Declaration on the Elimination of Violence against Women in ASEAN Region* (Jakarta, 13 June 2004)
- * *ASEAN Declaration Against Trafficking in Persons Particularly Women and Children* (Vientiane, 29 November 2004)
- * *Vientiane Action Programme [VAP]* (29 November 2004)
- * *Declaration on the Establishment of the ASEAN Charter - 11th ASEAN Summit* (December 2005)
- * *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers* (Cebu, 13 January 2007).

The *Jakarta Declaration on the Elimination of Violence against Women in ASEAN Region* provides that member-states shall

strengthen collaboration between and among countries, through bilateral, regional and international cooperation for resource mobilisation and technical exchange programmes, including sharing of best practices and experience in raising awareness, developing advocacy programmes on preventing and tackling violence against women.

The *ASEAN Declaration Against Trafficking in Persons Particularly Women and Children* provides that ASEAN shall

[P]romote regional cooperation for the survival, development, protection and participation of ASEAN children, as an integral part of ASEAN's efforts to improve the lives of peoples in the region.

Under the VAP, ASEAN has identified several areas of human rights work regarding:

- * Education and public awareness on human rights
- * Network of cooperation among existing human rights

mechanisms

- * ASEAN instrument on the protection and promotion of the rights of migrant workers
- * ASEAN commission on the promotion and protection of the rights of women and children.

On 30 July 2007, during the 40th ASEAN Ministerial Meeting in Manila, the ASEAN Foreign Ministers announced the establishment of the *ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*. This is the first human-rights structure established by ASEAN. (See next article on the migrant workers committee.)

During the same meeting, the Foreign Ministers received the report of the High Level Task Force (HLTF) on the first draft ASEAN Charter and agreed on the inclusion of "key provisions, including the establishment of an ASEAN human rights body."⁷

Establishing an ASEAN Human Rights Body

While the ASEAN Foreign Ministers had agreed to include the creation of an ASEAN human rights body in the draft ASEAN Charter, they arrived at this decision amidst much uncertainty.

During the Eighth Meeting of the High Level Task Force on the Drafting of the ASEAN Charter (July 2007), there were reports that one issue that had not gained consensus among the HLTF members was the ASEAN human rights mechanism. The HLTF had to finish its draft ASEAN Charter in July 2007 to be able to submit the same to the ASEAN Foreign Ministers, who were going to hold a meeting at the latter part of the month. Failing to get a consensus among HLTF members on the ASEAN human rights mechanism, the HLTF referred the matter to the Foreign Ministers for them to resolve the issue.

One report said that some ASEAN countries feared that the issue is "being used as a political instrument."⁸ But eventually, according to another report, Malaysia, Indonesia, Singapore, Thailand, the Philippines and Brunei "persuaded Myanmar, Laos, Cambodia and Vietnam to accept the deal in principle."⁹

The Foreign Minister of Malaysia was quoted as saying that¹⁰

At the end of the day, we must be seen not to be allergic or not supportive of human rights... for any reason, the human rights provision is not in the charter, then people will think ASEAN is not pro-human rights and that is nonsense... We are for human rights, we are for civil liberties, we want to see democracy, we want to see rule of law, we want to see good governance.

In Chapter IV on Organizations in the draft ASEAN Charter the following provision appears:¹¹

In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.

But while the Foreign Ministers feared embarrassment before the international community if they failed to agree on a human rights body, they were not able to agree on the details of such a body.¹² There was no agreement yet on the "timeframe, scope of work and other details of a regional human rights body."¹³ They had to instruct the HLTF to draft the terms of reference of the body before the next ASEAN Summit in November 2007.

Issues

The terms of reference for the creation of an ASEAN human rights body will determine the extent of willingness of ASEAN to realize its human rights commitment. There are fears about the possibility of member-states who are "uncomfortable with the idea of a human rights body" or not yet ready for it to ask to be exempted from its operation for several years from its establishment.¹⁴

A number of questions will hopefully have appropriate answers by November 2007 during the 13th ASEAN Summit:

- Will the ASEAN human rights body be given the independence needed to effectively operate?
- What role will the human rights body play?
- Will it monitor the human rights situation in each

of the ASEAN member-states?

- Will it have the power to require member-states to submit reports on their human rights situation?
- Will it receive complaints on human rights violations from member-states?
- Will it cover all human rights, or a particular set of rights?
- Will the international human rights standards be the main reference point, considering that most of the international human rights instruments have not been ratified by ASEAN member-states?¹⁵
- If there are findings of human rights violation in particular member-states, will the body have the power to require these member-states to remedy the problems?

There is also a proposal to create an ASEAN Commission on Women's and Child Rights under the VAP. Will this still be created, similar to the creation of a committee to implement the declaration on migrant workers' rights?

Indeed, with the positive development of having an ASEAN human rights body, the challenge lies on the powers and functions that it will assume to effectively address the human rights situation in the subregion.

For further information please contact HURIGHTS OSAKA.

Endnotes

1. See UN General Assembly resolution 37/171 of 17 December 1982 on the report of the Seminar on National, Local and Regional Arrangements for the Protection of Human Rights in the Asian Region, held at Colombo from 21 June to 2 July 1982.
2. See "UN Workshops on Regional Arrangement for Human Rights in the Asia-Pacific," *FOCUS Asia-Pacific*, issue no. 7, in www.hurights.or.jp/asia-pacific/no_07/07unworkshops.htm
3. Annex II, Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, including the Question of the Programme and Methods of Work of the Commission (E/CN.4/1998/50 - 12 March 1998).
4. See OHCHR Human Rights Programme for Asia Pacific (2006-2007) in www.ohchr.org/english/countries/regional/asia/programme.htm
5. *ASEAN Vision 2020*, adopted by ASEAN in Kuala Lumpur on 15 December 1997.
6. The Brunei, Indonesia, Malaysia, Philippines – East ASEAN Growth Area (BIMP-EAGA), Indonesia, Malaysia, Thailand-Growth Triangle (IMT-GT), Indonesia, Malaysia, Singapore-Growth Triangle (IMS-GT), ASEAN Mekong Basin Development Cooperation (AMBDC), Greater Mekong Sub-region (GMS), the Ayeyawady-Chao Phraya-Mekong Economic Cooperation Strategy (ACMECS), and Cambodia–Lao–Vietnam Development Triangle (CLV-DT) are economic integration initiatives existing within Southeast Asia.
7. Statement of H.E. Alberto G. Romulo, Secretary of Foreign Affairs at the Closing Ceremony of the 40th AMM and the Handing-over of the ASC Chairmanship, Thursday, 2 August 2007, in www.40amm.org.ph/main_showdocuments.asp?category=docs&docid=16
8. "ASEAN's human rights plan hits snag," The Bangkok Post in www.bangkokpost.net/breaking_news/breakingnews.php?id=120562
9. Manny Mogato, "Myanmar withdraws objections to SE Asia rights body" in www.reuters.com/article/worldNews/idUSSP28331120070730
10. See "Philippine HLTF Member Bares ASEAN Human Rights Body in the Draft ASEAN Charter; Consults with Philippine Civil Society Groups and Government Agencies" in Working Group for an ASEAN Human

Rights Mechanism in

- www.aseanhrmech.org/news/philippine-HLTF-member-bares-draft.html
11. "ASEAN's human rights plan hits snag," op. cit.
 12. "Asean breaks deadlock on human rights," *The Straits Times* in www.straitstimes.com:80/Latest%2BNews/Asia/STISStory_143859.html
 13. "ASEAN's human rights plan hits snag," op. cit.
 14. So far only the Convention on the Rights of the Child and the Convention on The Elimination of All Forms of Discrimination Against Women have been ratified by all the ASEAN member-states.
 15. The "ASEAN Minus X Formula," which is supposed to have worked in the ASEAN economic and trade agreements, may be employed in this case. See Obstacles to ASEAN Charter, www.eraconsumer.org/news.php?id=16. ASEAN explains the "ASEAN Minus X Formula" as follows: "Under this approach, two or more countries may proceed with an agreed services sector liberalisation without having to extend the concessions to non-participating countries. Others may join at a later stage or whenever ready." ASEAN Integration in Services, ASEAN Public Information Series (2007) <http://72.14.235.104/search?q=cache:PaFFBehTV0UJ:www.aseansec.org/20661.pdf+ASEAN+minus+x&hl=en&ct=clnk&cd=2&client=safari>

ASEAN Committee on Migrants Workers

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Southeast Asia is confronted with many challenges regarding migrant workers. Within the subregion, there are countries of origin and destination, with some countries playing both roles. The migrant workers of Southeast Asia constitute an important component of the social, political and economic conditions of the countries in the subregion. Yet they face serious problems.

Undocumented / Irregular Migration

Undocumented migrant workers suffer from arrest/detention/deportation/punishment, exploitation by employers (including non-payment and underpayment of wages), inability to join or form associations and trade unions, and restricted access to social services (health and reproductive health care, among others).

Malaysia, among the major countries of destination for migrant workers in Southeast Asia, holds regular crackdowns on undocumented migrant workers. It initiated an annual crackdown or deportation of undocumented migrant workers in 2002. In 2005 it announced that it would crack down on around 800,000 undocumented migrant workers¹ to enable them to return home and register as documented workers.

Thailand, both a country of origin and destination, also holds regular deportation of undocumented migrant workers, who come mostly from other Mekong countries such as Burma/Myanmar, Laos, Cambodia and Vietnam.

Deportations and crackdowns on undocumented migrant workers have not proved to be viable solutions to the issue of undocumented migration. The workers being deported are needed in the various countries of destination.

Lack of recognition of domestic workers as workers

Domestic workers constitute one of the bigger sectors of migrant workers in Southeast Asia.

In most countries of destination in Southeast Asia, domestic workers are not recognized under the labor laws and thus afforded with little or no rights. In some countries, domestic workers are not given holidays or rest days. There are also cases where the passports of foreign domestic workers are withheld or kept by their employers.

Trafficking

A large number of women migrants are vulnerable to trafficking. Some of them end up being trafficked through a host of deceptive, coercive, violent and exploitative acts. Women are deceived about job type, terms and condition of work, and treated as forced labor, when they are placed in slavery-like work conditions.

Feminization of labor

Due to changes in the demands of the international labor market, there has been an increase in the type of jobs traditionally awarded to women. This is particularly true in the service sector (domestic work, caregiving, nursing and entertainment). This is also identifiable in the increasing number of women seeking work independently outside their country of origin.

ASEAN and Migrant Workers

The 1990 United Nations Convention on the Protection of the Rights of Migrant Workers and Members of their Family (UNMWC) came into force in July 2003. Among the member-states of the Association of Southeast Asian Nations (ASEAN), only one country (the Philippines) has ratified UNMWC while two countries (Indonesia and

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Cambodia) signed it. ASEAN does not yet have a legal instrument on migrant workers in the subregion.

ASEAN undertook through the years several initiatives related to the migrant workers issue including the following:

- * ASEAN Declaration on Transnational Crime (1997)
- * ASEAN Vision 2020 (1997) - promotes the evolution of rules of behavior and cooperative measures to deal with problems that can be met only on a regional scale, including trafficking in women and children
- * Hanoi Plan of Action (1998) - stresses the use of the ASEAN Foundation to support activities and social development programs aimed at addressing issues of unequal economic development, poverty and socio-economic disparities and the strengthening of ASEAN collaboration in combating the trafficking in women and children
- * Bangkok Declaration on Irregular Migration (1999) - declares that migration, particularly irregular migration, should be addressed in a comprehensive and balanced manner, considering its causes, manifestations and effects, both positive and negative, in the countries of origin, transit and destination
- * ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004) - establishes, among others, a regional focal network to prevent and combat trafficking in persons, particularly women and children, in the ASEAN region
- * Bali Concord II (2003) - provides for the full utilization of the existing institutions and mechanisms within ASEAN with a view to strengthening national and regional capacities to counter transnational crime including trafficking in persons
- * Vientiane Action Programme (2004) - includes the plan to elaborate an ASEAN instrument on the protection and promotion of the rights of migrant workers.

At the 12th ASEAN summit in Cebu in January 2007 the ASEAN Heads of State adopted the *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*.² Though non-binding, the Declaration is considered a milestone in the struggle for the rights of migrant workers in the region. The Declaration came after years of struggle and active lobbying by Civil Society Organizations [CSOs]

(migrants organizations, grassroots organizations and human rights networks). The Declaration aims to

1. Promote decent, humane, productive, dignified and remunerative employment for migrant workers;
2. Establish and implement human resource development programmes and reintegration programmes for migrant workers in their countries of origin;
3. Take concrete measures to prevent or curb the smuggling and trafficking in persons by, among others, introducing stiffer penalties for those who are involved in these activities;
4. Facilitate data-sharing on matters related to migrant workers, for the purpose of enhancing policies and programmes concerning migrant workers in both sending and receiving states;
5. Promote capacity building by sharing of information, best practices as well as opportunities and challenges encountered by ASEAN Member Countries in relation to protection and promotion of migrant workers' rights and welfare;
6. Extend assistance to migrant workers of ASEAN Member Countries who are caught in conflict or crisis situations outside ASEAN in the event of need and based on the capacities and resources of the Embassies and Consular Offices of the relevant ASEAN Member Countries, based on bilateral consultations and arrangements;
7. Encourage international organisations, ASEAN dialogue partners and other countries to respect the principles and extend support and assistance to the implementation of the measures contained in this Declaration; and
8. Task the relevant ASEAN bodies to follow up on the Declaration and to develop an ASEAN instrument on the protection and promotion of the rights of migrant workers, consistent with ASEAN's vision of a caring and sharing Community, and direct the Secretary-General of ASEAN to submit annually a report on the progress of the implementation of the Declaration to the Summit through the ASEAN Ministerial Meeting.

Despite being a non-binding instrument, the civil society in Southeast Asia welcomed the Declaration as it recognizes the responsibilities of both countries of origin and destination in protecting the rights of migrant workers in the region. Furthermore the Declaration

calls for clear commitment to protect the rights, dignity and welfare of migrant workers entering countries of destination, by among other things, providing access to services, fair and just employment and conditions of work, access to legal justice, and promoting tolerance between migrant communities and populations of the receiving state.

Migrant CSOs felt that the 2006 ASEAN Declaration on migrant workers is an important first step in terms of achieving the goal of protecting the rights and well-being of migrants in the region. However there is still a need to call on the member-states of ASEAN to put the declaration into action.

During the 40th ASEAN Ministerial Meeting (Manila, 21 July - 2 August 2007), the ASEAN Ministers adopted the *Statement for the Establishment of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*.³ The Committee is tasked to ensure the effective implementation of the commitments made by ASEAN member-states under the Declaration and to facilitate the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers. Part of the Committee's functions include the following:

Promote bilateral and regional cooperation and assistance on matters involving the rights of migrant workers;

Facilitate data sharing on matters related to migrant workers, for the purpose of enhancing policies and programmes to protect and promote the rights of migrant workers in both sending and receiving countries;

Encourage international organisations, ASEAN Dialogue Partners and other countries to respect the principles and extend support and assistance to the implementation of the measures contained in the Declaration;

Promote harmonisation of mechanisms between both sending and receiving countries that promote and protect the rights of migrant workers to implement the ASEAN commitment reflected in paragraph 17 of the Declaration.

The setting up of the Committee is a step towards the adoption of a binding ASEAN instrument for the protection of the human rights of migrants, as stated in the VAP and the Declaration. There are reports that despite the agreement to establish the Committee, some ASEAN member-states have reservations on the purposes and functions of the Committee. But the Philippine government asserted that there was strong consensus within ASEAN on the establishment of this very important structure.⁴

The development of a binding instrument for the protection and promotion of the rights of migrant workers becomes the major output expected from the Committee. It is thus necessary that the ASEAN member-states and the civil society in the subregion work earnestly to ensure that this instrument has the proper provisions for migrant workers particularly those with irregular or undocumented status and includes fundamental human and labor rights standards based on the seven core international human rights instruments particularly the 1990 UN MWC and the core International Labour Organisation standards.

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Endnotes

1. Lawrence Bartlet, Massive crackdown on migrants sparks rights fears. Alliance France Press (AFP) January 31, 2005.

2. For the full text of the declaration please see the following link:
<http://www.12thaseansummit.org.ph/innertemplate3.asp?category=docs&docid=23>

3 For the full text of the declaration please see the following link: <http://www.aseansec.org/20768.htm>

4. Please see: http://globalnation.inquirer.net/news/breakingnews/view_article.php?article_id=80085

Pacific Regionalism

Jefferson R. Plantilla*

The thirty-seven-year-old Pacific Islands Forum¹ has undertaken steps toward regional integration. The Forum is composed of the Cook Islands, Australia, New Zealand, Fiji, the Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, Papua New Guinea, the Marshall Islands, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu.

It adopted in 2004 the following vision for the Pacific:²

Leaders believe the Pacific can, should and will be a region of peace, harmony, security and economic prosperity, so that all of its people can lead free and worthwhile lives. We treasure the diversity of the Pacific and seek a future in which its cultures and traditions are valued, honoured and developed. We seek a Pacific region that is respected for the quality of its governance, the sustainable management of its resources, the full observance of democratic values, and for its defence and promotion of human rights. We seek partnerships with our neighbours and beyond to develop our knowledge, to improve our communications and to ensure a sustainable economic existence for all.

This vision can be achieved through, among others, the³

recognition that the Forum has to exist for the practical benefit of Pacific people, and of the importance of cultural identity, regional inclusiveness, sub-regional representation, human rights, women and gender, youth, and civil society and invited the Secretary General, in preparing the Pacific Plan, to consult, assess and make proposals on how cultural identity could be best strengthened through the work of the Forum and [Council of Regional Organisations of the Pacific] CROP agencies, in particular the Secretariat of the Pacific Community (SPC).

This vision for the Pacific was incorporated in the *Pacific Plan for Strengthening Regional Cooperation and Integration* (Pacific Plan), which aims to "... create stronger and deeper links between the sovereign countries of the region and identify the sectors where the region could gain the most from sharing resources of governance and aligning policies." The Pacific Plan was drafted through "broad-based national and regional consultations," and was endorsed initially in the

October 2005 meeting of the Leaders at the Pacific Islands Forum, and amended in the Leaders Meeting in the following year.

The goal of the Pacific Plan is to "enhance and stimulate economic growth, sustainable development, good governance and security for Pacific countries through regionalism." It has four main pillars: Economic Growth, Sustainable Development, Good Governance, and Security.

Good Governance is defined as

the transparent, accountable and equitable management of all resources. Good governance is a prerequisite for sustainable development and economic growth.

Under Good Governance, the activities for immediate implementation are the:

- * Regional support to the Forum Principles of Good Leadership and Accountability
- * Enhancement of governance mechanisms, including in resource management; and in the harmonisation of traditional and modern values and structures
- * Where appropriate, ratification and implementation of international and regional human rights conventions, covenants and agreements and support for reporting and other requirements
- * Development of a strategy to support participatory democracy and consultative decision-making (including NSAs [Non-State Actors], youth, women and disabled), and electoral processes.⁴

For the ratification and implementation of international and regional human rights conventions, covenants and agreements and support for reporting and other requirements, the Plan aims to establish by 2007 a regional support mechanism that include the

drafting, harmonisation and promotion of awareness of rights-based domestic legislation within the Pacific, including: CEDAW [Convention on the Elimination of All Forms of Discrimination Against Women] on gender; CRC [Convention on the Rights of the Child] on children; CERD [International Convention on the Elimination of All Forms of Racial Discrimination] on racial discrimination; ILO Convention 169 on rights of

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indigenous peoples; Article 50 of the Cotonou Agreement on labour rights; 1990 International Convention on the Rights of Migrant Workers and their Families; the Biwako Millennium Framework for people with disabilities; UNSCR1325 involving men and women in conflict resolution; human rights; and reciprocal enforcement.

These efforts are expected to intensify for "full implementation by end of 2008."

It lists as subject to further analysis the establishment of a "regional ombudsman and human rights mechanisms to support [the] implementation of Forum Principles of Good Leadership and Accountability, etc."⁵

The Task Force,⁶ created to draft the Plan, listed as an identified regional initiative under the Good Governance pillar, the creation of a "Pacific Charter of Human Rights under a regional human rights commissioner, and national human rights mechanisms with associated education and training links."⁷ This suggestion was not completely included in the Pacific Plan since the Forum Leaders decided to do further study on the issue of regional human rights mechanisms.

Under Security (defined as the stable and safe social [or human] and political conditions necessary for, and reflective of, good governance and sustainable development for the achievement of economic growth), there are also human-rights-related activities in relation to the aim to

13.3 Strengthen law enforcement training (e.g. regional policing initiative), coordination and attachments.

This covers "[R]egional training courses, coordination initiatives and attachments [to be] upgraded by the end of 2008" on issues such as

customs; immigration; intelligence; family, domestic, gender and sexual violence; human rights; juvenile justice; drug control; exclusive economic zone (EEZ) patrol programmes; accountability mechanisms; and military police.)

The Pacific Plan states that "[P]olitical oversight and guidance to the Secretariat is provided, during the year, by a Pacific Plan Action Committee (PPAC), chaired by the Forum Chair and comprising representatives of all Pacific Island Forum Countries and

Pacific territories."

Eminent Persons Group

The Pacific Plan was first recommended by an Eminent Persons Group (EPG), which was established upon the agreement of the Leaders during their 34th meeting in Auckland. The Forum Leaders wanted the EPG to review the Forum and its Secretariat.

The EPG consisted of former Kiribati President Teburoro Tito, former PNG Prime Minister Sir Julius Chan, Samoan Ombudsman Maiava Iulai Toma, University of the South Pacific pro-Chancellor Dr. Langi Kavaliku, and retired Australian diplomat Bob Cotton. A larger Reflection Group, chaired by a Prime Minister and made up of other experts from the Pacific, acted as the sounding board for the EPG in the review process.⁸

The EPG while acknowledging that the Pacific Islands Forum is "a cohesive regional force and an effective means of projecting the region's concerns to the wider world" observed that "...there are clear signs that the Forum needs re-interpreting and updating to meet changing needs, and a growing array of global and regional challenges."

Of the four major suggestions of the EPG on human rights, three were adopted for immediate implementation (ratification and implementation of international and regional human rights instruments, harmonization of traditional and modern values and structures, and development of strategy for participatory democracy and consultative decision-making), while the fourth one (regional human rights mechanism) was tabled for further analysis.

Relevance to ASEAN

The reinterpretation of the role of existing regional mechanism to meet present challenges provides an opportunity for the establishment of a mechanism for human rights. Both ASEAN and the Forum face the challenge of agreeing to a subregional human rights mechanism.

Both ASEAN and the Forum have agreed on concrete steps related to human rights. ASEAN has its Vientiane Action Programme (VAP). The Forum has a set of activities for immediate implementation during the 2007-2008 period under the Pacific Plan.

The Forum Leaders agreed to accelerate the integration of trade in services, including "temporary movement of labour" in the trade agreements. This is under the Economic Growth pillar.⁹ They are also studying the issue of "labour mobility" under the future regional economic integration scheme.¹⁰ Under the Good Governance pillar the Forum Leaders urged the ratification and implementation, "where appropriate," several international human rights instruments including that on the migrant workers rights. The ASEAN has agreed to form a committee on migrant workers to implement the *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*.¹¹

One major issue that has been considered by ASEAN, but not included in the Pacific Plan, is the role of the national human rights institutions. ASEAN has recognized under the VAP human rights section the need to strengthen the networking among the four existing national human rights institutions in Southeast Asia.¹² With the planned ASEAN human rights body, these national human rights institutions may play a role also.

Finally, it is worth noting that both ASEAN and the Forum employed the services of an Eminent Persons Group to collect suggestions from various sectors of society and draft a set of proposals on a subregional document. ASEAN and the Forum have a special body that drafted the final document - the Task Force for the Forum, and the High Level Task Force for ASEAN. Both task forces, in varying ways, solicited suggestions from civil society in preparing their draft documents.

The July 2007 decision of the foreign ministers of ASEAN member-states to create a human rights body as well as a committee on migrant workers puts ASEAN in a better light than the Pacific Islands Forum in the field human rights. Much is to be seen however on how this headway will translate into an effective ASEAN machinery in the future.

Endnotes

1. This is formerly the South Pacific Forum until 2000.
2. *The Auckland Declaration*, The Pacific Islands Forum Special Leaders Retreat, April 2004, Auckland in www.forumsec.org/_resources/article/files/A%20Pacific%20Plan.pdf
3. Ibid.
4. The Forum Leaders further narrowed the activities for

immediate implementation to encouraging participatory democracy and implementation of international human rights instruments, Nadi Decisions on the Pacific Plan (October 2006) in www.forumsec.org/_resources/article/files/Nadi%20Decisions%20on%20the%20Pacific%20Plan,%20%20Annex%20A%20to%20the%202006%20Forum%20Communique.pdf

5. *The Principles of Good Leadership*, defined during the Leaders Meeting, have several human rights provisions:

PRINCIPLE 1

- i) Respect for and upholding of democratic processes and institutions, the rule of law and the independence of the judiciary and the legislature.
- iii) Protection of fundamental human rights.

PRINCIPLE 2

Respect for cultural values, customs, traditions and indigenous rights and observation of traditional protocols in the exercise of power.

PRINCIPLE 3

Respect for religious belief and practice.

6. *Pacific Plan Background Papers*, October 2005, pages 2-3, for the terms of reference of the Task Force. It was composed of senior officials representatives from all Forum countries and representatives of regional organizations.

7. See *Pacific Plan Background Papers*, page 14.

8. See *Group named to review Pacific Forum issues* in www.beehive.govt.nz/ViewDocument.aspx?DocumentID=18248

9. See Attachment A: Implementation Strategy: Initiatives for the First Three Years (2006-2008), *Pacific Plan*, page 11.

10. *Pacific Plan*, page 8. The "labour mobility" is a crucial issue particularly for Australia which is being challenged to show its commitment to "free and open labour markets." Hugh White, "Pacific Plan puts Howard to the test" (October 10, 2005) in www.theage.com.au/news/hugh-white/pacific-plan-puts-howard-to-the-test/2005/10/09/1128796408094.html

11. See *Statement to Establish the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*, 31 of July 2007.

12. They exist in Indonesia, Malaysia, the Philippines and Thailand. In the Pacific, Australia, Fiji and New Zealand have national human rights institutions.

Asia and Pacific Cities against Discrimination

*Nobuki Fujimoto**

The coalition of cities in Asia and the Pacific against discrimination has changed its name in order to attract more cities to become members. In the first meeting of the Interim Steering Committee of the Coalition of Cities against Racism and Discrimination in Asia and the Pacific (Coalition), held in Phnom Penh on 5-6 June 2007, the representatives of cities that signed the Statement of Intent¹ to become members of the Coalition, in addition to representatives from other local governments, non-governmental organizations (NGOs) and experts, agreed by consensus to change the name of the Coalition from "Coalition of Cities against Racism and Discrimination in Asia and the Pacific" to "Towards an Inclusive Society: Coalition of Cities against Discrimination in Asia and the Pacific."

They noted that the word "racism" was not well understood and in some cases local and national governments officials in several parts of Asia and the Pacific denied the existence of racism. They believed that one of the major reasons why many cities in the region have not yet joined the Coalition is the negative image of the Coalition with the word "racism" in its name.

The Coalition retains its original ten-point *Commitment for Asia and the Pacific*.

The participants agreed to expand the membership of the Coalition by taking advantage of various opportunities, especially the Second World Congress of United Cities and Local Governments (2nd UCLG World Congress), to be held in Jeju, South Korea in October 2007, where more than two thousand local leaders from one hundred-fifty countries will participate. They will debate on many issues related to local government. The Coalition will be officially launched on this occasion in close cooperation with UCLG-Asia-Pacific Regional Section (UCLG-ASPAC).

Experience sharing

The participants discussed several possibilities for thematic work that could be jointly carried out within the framework of the Coalition. They agreed to share experiences in, and ideas for, creating inclusive urban society.

Mr. Josefa Gavidi, Deputy Mayor of Suva, Mr. Takashi Hashimoto from Sakai City (Japan) and Mr. Trac Thai Sieng, Vice Governor of Phnom Penh, presented the respective experiences and programs of their cities as part of the experience-sharing exercise.

Mr. Gavidi presented a report² on the program of the City of Suva against racial discrimination. He explained that Fiji has 51% Fijians and 43% Indian-descent Fijians. In terms of labor force, Fijians constitute 53%, while Indian-Fijians comprise 40%. The City of Suva faces several challenges regarding housing, discrimination, employment; and involving immigrants, faith minorities, sexual minorities, and people with disabilities. The City of Suva adopted an approach to diversity affecting five key categories: civic leader/policy maker, employer, provider of services, purchaser of goods, grant-giving agency. It adopted a policy requiring City and town divisions to integrate access, equity and diversity in their respective policies, services and programs. For the political leadership, it adopted several policies regarding recipients of City services, human rights and harassment, employment equity, community access, immigration and settlement, accessibility and racial profiling. He also explained how the City government implements its commitment to provide equal opportunity.

The Human Rights Promotion Division of Sakai City presented a report on the human rights measures of the city.³ The measures included the 2004 "The Sakai City Human Rights Promotion Basic Policy," the 2005 "Human Rights Promotion Plan" and the 2006

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city ordinance entitled "City Development with Respect for Peace and Human Rights." The city ordinance aims

to clarify the responsibilities of the city and the roles of the citizens for the actualization of a city which promotes peace and human rights. This ordinance explicitly states that it is necessary for the city administration and citizens to work together with global perspectives for the realization of human security with regard to the international issues of peace and human rights. In addition, this ordinance requires the city to establish as an external body, a Human Rights Promotion Committee convening researchers to investigate and discuss the human rights policies of the city.

In 2002, Sakai City adopted the "Ordinance for the Promotion of a Gender Equal Society" which resulted in the creation of the Gender Equal Promotion Committee, and the adoption of the Sakai Gender Equal Participation Plan.

Sakai City has approximately 12,000 registered foreign residents with Koreans comprising roughly half of the foreign population. Chinese and Brazilians are the other major groups among them.

The city provides concrete support (such as livelihood, education, welfare projects), awareness (television program and printed materials) and protection (consultation) measures to address human rights problems.

Interim Steering Committee of the Coalition

The Phnom Penh meeting was the first one held by the Interim Steering Committee of the Coalition, ten months after the creation of the Coalition in August 2006 with Bangkok as the Lead City.⁴ UNESCO and the City of Phnom Penh organized the meeting. It was opened by H.E. Kep Chuk Tema, Governor of the City of Phnom Penh.

UNESCO, through its Social and Human Sciences Division, has been pursuing the establishment of an International Coalition of Cities against Racism as a

global platform for a common struggle against racism since 2004. The Asia-Pacific Coalition is the fourth regional structure (in addition to European, African, and Latin American and the Caribbean coalitions, the Arab region is under preparation and one national coalition in Canada [Canadian Coalition of Municipalities]) that will comprise the International Coalition in 2008 during the 3rd World Forum on Human Rights to be held in Nantes, France (July 2008).

For more information, please visit UNESCO webpage at http://portal.unesco.org/shs/en/ev.php-URL_ID=1376&URL_DO=DO_TOPIC&URL_SECTION=201.html

Endnotes

1. The following cities and organizations are signatories to the Statement of Intent: Bangkok (Thailand), Phnom Penh (Cambodia), Suva (Fiji), Makati (Philippines), Matale and Kurunegala (Sri Lanka), Incheon (Korea), United Cities and Local Governments - Asia Pacific Regional Section (UCLG-ASPAC), League of Municipalities of the Philippines, and All India Association of Local Bodies.
2. See this webpage for the full powerpoint presentation of Mr. Gavidi http://portal.unesco.org/shs/en/file_download.php/48e5c900e8fd854abc376725f0965b14Presentation+on+the+City+of+Suva+Fiji+Islands.pdf
3. See this webpage for the full presentation on Sakai City program at http://portal.unesco.org/shs/en/file_download.php/14ad3d5dd11e1d87a4fd5c8a3389d63cSakai+City+Presentation_EN.pdf
4. See Nobuki Fujimoto, "Coalition of Cities against Racism and Discrimination in Asia and the Pacific," in *FOCUS Asia-Pacific* 45:2006 for a report on the Bangkok meeting of the Coalition (www.hurights.or.jp/asia-pacific/045/06.html).

Japan's Initial Report to the Committee against Torture

*Kayoung Lee**

The Buraku Liberation and Human Rights Research Institute and HURIGHTS OSAKA jointly organized on 30 July 2007 a meeting on the initial report of Japan to the United Nations Committee Against Torture, under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ms. Aya Kuwayama of the Center for Prisoners' Rights made a report on the matter.

The Convention entered into force on 26 June 1987, but Japan ratified it only in 1999. It also submitted its initial report late, or only in 2005. Moreover, it remains reluctant to ratify the Optional Protocol.¹ While there have been very little discussion within the country about this Convention, it may help in implementing the provisions of the International Covenant on Civil and Political Rights related to torture, cruel and inhuman treatment, etc.

Japanese Government Report

As required under the Convention, Japan as State Party submitted its initial report to the Committee Against Torture though five years late. Under the "constructive dialogue" scheme of the Committee, the presentation of the report was made on 9 May 2007 and lasted for a total of six hours. The Japanese Government representative gave an oral presentation, followed by questions from the Committee Members. On the following day, the Japanese Government representative responded to the Committee Members' questions, which were followed by further questions and answers from both sides respectively. The Committee had introduced a formal session for non-governmental organizations (NGOs), for which they should find ways to fully utilize. Ms. Kuwayama participated in this session, and lobbied the Committee Members as a member of a coalition of Japanese NGOs called the CAT-Network, consisting of the Center for Prisoners' Rights Japan, Immigration Review Task Force, and the Tokyo Center for Mental Health and Human Rights.

The Japanese Ministry of Foreign Affairs organized a hearing on 20 April 2007 prior to the Committee session, but it was more of a briefing from the NGOs than an exchange of information. The results of the hearing were not reflected in the Government report, which was limited to a presentation of relevant provisions in the

domestic laws. During the Committee session, there was a discussion on the complaint procedures in places of detention, but the Japanese Government representative's response did not go beyond what was written in the report.

The results of the NGO lobby could be seen in the Concluding Observations, such as in the reference to victims of trafficking and gender issues. Meanwhile, the issue of the refugee recognition process and that of treatment within immigration facilities were put together under the heading of prohibition of non-refoulement, which is probably problematic. As final recommendations, the Committee requested the Japanese Government to provide follow-up information within a year on issues of particular importance (non-refoulement, substitute prisons, confessions, trafficking in human beings).

Ms. Kuwayama stressed that the Concluding Observations of the Committee must be properly utilized. It can be used as material in legislative deliberations. Using the document to raise questions to the government during Diet sessions, as was done by Mr. Nobuto Hosaka of the Social Democratic Party regarding the Concluding Observations and its views on the treaty monitoring process of the UN, is an example.

Lastly, she pointed out that the NGOs emphasize their criticisms on the responses of the Japanese Government to questions about its report. But in order to maximize the effect of the Concluding Observations, they need to be aware that they are also actors in implementing the Convention.

(Translated by Kimiko Okada)

For further information please contact HURIGHTS OSAKA.

Endnote

¹ The Optional Protocol is meant to "establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment." Article 1.

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HURIGHTS OSAKA CALENDAR

GLOCOL (Osaka University) and HURIGHTS OSAKA will jointly host a Discussion Forum on 30 October 2007 with Ms. Sriprapha Petcharamesree, PhD, of the Office of Human Rights Studies, Mahidol University (Thailand) as the speaker. She will speak on the plight of the children of Burmese migrants in Thailand. The forum will be held in OSAKA UNIVERSITY Nakanoshima Center in Osaka City from 6 pm till 8 pm.



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



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