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Editorial

Human Rights and Migrants

How do you deal with foreigners? When the economy is good, many countries invite people from other countries to come and work for their industries and in some cases homes. When the economy goes down, these same foreigners are told to start packing to go back to their country of origin. In some countries, foreigners are invited to address the critical need of some of their male citizens to have the chance to found a family and have children. At least in Japan, the moment the marriage fails and there is no offspring, the foreigner wives may start packing to go back home. And there are also people who were born, raised and lived in a country of which they are not nationals, and yet they are basically “citizens” of that country as any citizen can be. Their home is really this “other” country.

Foreigners entering another country assume a complicated relationship with the people and society of that country. This relationship is virtually disregarded whenever foreigners are told either to leave the country under archaic immigration laws, or are not given the chance to play a better role in society.

Regardless of the type of “foreignness” of these people, they cannot be treated with less respect for their human rights. They are entitled to the protection and realization of their human rights, and no country should find an excuse to violate them.

Fighting the Insecurity of Foreign Residents

– Possibilities of Cooperation between Japanese and Korean People*

Kinhide Mushakoji

I would like to begin by explaining why I use the word “fighting” in the title of my speech today, “Fighting the insecurity of foreign residents.”

It is important that areas like Osaka and the Chubu region in Japan take on progressive roles toward multicultural co-existence. But these areas are just parts of the state, and therefore, the starting point should be the perspective of the state.

The Constitution of Japan was drafted after the Second World War, reflecting Japan’s history of invasion and colonialism. The preamble of the Constitution states that, “the Japanese people... have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world” and declares that, “[w]e recognize that all peoples of the world have the right to live in peace, free from fear and want.”

The concept of “human security,” advocated in the Final Report of the United Nations Commission of Human Security (2003), was developed based on these constitutional ideas. The Japanese government has persistently claimed that “human security” is at the center of its diplomacy or politics. The idea has been emphasized in Japanese

diplomacy, but today the right of people in Japan to live in security as human beings, in particular that of foreign residents, is being violated. Efforts to fight this situation, and to eliminate it are seen in many areas. The Chubu region and Osaka, in particular, where many foreign residents reside, are the battlegrounds. Therefore, I would like to examine how the countries of Korea and Japan as well as its people can fight this “insecurity.”

The Reality of Ethnocracy and Overcoming Colonialism

Ethnocracy is democracy that places its own ethnic people at its center. I once gave a speech in the Democratic People’s Republic of Korea and found that the participants and I could not agree the issue of ethnocentrism because of their Korea-centric ideas. I explained, that although unfortunately the same way of thinking could also be seen sometimes in the Republic of Korea (ROK), that country is moving towards multicultural co-existence. The participants did not really understand my point. This may not be a serious issue in a country with no foreign residents, but that is not the case in reality.

The problem of ethnocracy is serious in Japan. When I was the

Vice Rector of the United Nations University during the second half of the 1980s, apartheid was still practiced in South Africa. In a conference at the University, Rodolfo Stavenhagen of Mexico, an expert on the rights of indigenous peoples, stated that “ethnocracy must be eliminated.” I agreed, raising the examples of South Africa and Israel, and said, “we should not think only of our own people.” He laughed and responded that he was amazed at what I said because he believed that Japan was the second country after South Africa that practiced democracy centered on its own people.

Since then, although I recognize that democracy may exist in Japan it is ethnocentric. Elections have been conducted only for the Japanese by the Japanese, with no consideration for foreign residents. I have been working with an NGO named IMADR (International Movement against All Forms of Discrimination), which has been called an anti-Japanese intellectual movement by grassroots conservative NGOs. I half-jokingly and half-seriously tell everybody that there is no one who is more patriotic than me. A patriot must do something to correct his/her country, if it is doing something wrong. Japan is right in placing

importance on the right to live in peace, after reflecting on its past invasion and colonization experiences. But it is wrong in protecting the human rights of its own people only.

2010 will be the 100th year since Japan forcefully annexed Korea, and discussions have been ongoing in various organizations on the Japanese-Korean cooperation to protest colonialism. In this context, I believe that fighting the insecurity of foreign residents is fighting a new form of colonialism. In the globalized world today, colonialism takes on new forms, such as intra-state colonization, inter-regional colonization, or discrimination and exploitation of minorities by other residents.

Questioning “Multicultural Co-existence”

A careful examination of migration at the global scale would show that there are families who are unable to live in peace in their own countries unless they migrate. And while voluntary migration that does not fall in this category is probably a good thing, the major motivation for such migration is to decrease the number of mouths to feed, or to improve through foreign remittances the living standards of the families left behind. Creating a world where people do not have to migrate is important in the global fulfillment of the right to live in peace.

There is also the problem of people who were forced to migrate because they could not live in peace and prosperity in

their own country and who in some cases ended up as “illegal” migrants in their destination countries. They are sometimes left with their “illegal” status unresolved and the receiving countries not clearly stating why their migration was not recognized. This is a most insecure situation.

Divorce for Japanese husbands and foreign wives can mean deportation from Japan for the latter if they have no children. Thus the Japanese husbands can threaten their foreign wives with divorce if they are not obeyed. The security of foreign wives is not protected because they are immigrants in the country. The same problem probably occurs in ROK as well.

The number of migrants in Japan increased considerably during the ‘bubble’ economy of the 1980s, and people began talking about multicultural co-existence. ROK also saw an increase of migrants in the 1990s, leading to the development of the idea of multiculturalism. Unlike Japan, ROK enacted a number of laws protecting the human rights of migrants. And the efforts of the Korean citizens at the local level formed the basis of this development. Citizens and local governments in Japan are also making efforts to support the rights of the migrants. Teachers in schools try hard to give education to foreign children similar to the one received by Japanese children, though Japanese schools under the current Basic Law on Education are supposed to enable Japanese children to contribute to Japan as Japanese.

While the Japanese government desires to give proper education to foreign children for the sake of human security, the Basic Law on Education does not require it. The hard efforts of teachers in educating foreign children despite lack of official requirement for them to do so are a positive aspect of local activities. But this lack of legal support is a negative aspect of the Japanese state.

There is a considerable difference between multicultural co-existence being discussed at the state level and the various multicultural activities going on at the local level. But the practice of multicultural co-existence based on laws such as the Basic Law on Education would mean a worse form of ethnocentric democracy in the guise of “multicultural co-existence.” Having organized in Japan many study meetings on the importance of multicultural co-existence, I ended up presiding in Seoul in a conference on the citizenship of foreign residents (married migrants in particular) a discussion on “tearing off the mask of multiculturalism.”

Multicultural Co-existence and the Migrants’ Identity

When we speak of multicultural co-existence, we should respect as the starting point how the migrants (in some cases, the women who married their Japanese or Korean husbands) want to live in Japan or Korea, and not emphasize our own ideas on how they should live. The subject of multicultural co-existence is the migrant or foreign resident, and we need to

examine better co-existence on their terms.

The issue of identity is important in this context. Co-existence can presume that everyone speaks Japanese, understands Japanese culture and adapts to Japan, in short, partly adopt a Japanese identity. This idea is meant to promote multicultural co-existence as a softer version of blatant assimilation, and it seems to be prevalent.

I was in the Philippines recently,¹ with the mothers of international couples and their supporting organizations, to discuss with the experts the issue of migrants. These mothers wanted to teach Japanese to their children, but also *Tagalog*. They did not want to lose their original identity, but would also want to become Japanese. They say, however, that in reality, it is difficult to teach *Tagalog*. Some are caught between desiring to forget about the Philippines and finding themselves unable to blend into the Japanese society. Such situation is similar to that of a stateless person, and it can be painful. In some cases, it may lead to mental instability.

There are also people who do not study Japanese at all, and their husbands and children would only speak in *Tagalog* or English. They refuse to become Japanese. Their relationship with their husbands and children may suffer because of it. They would have to have some understanding of Japan.

On the other hand, there are people who study Japanese very hard, blend in with the Japanese, do not allow their

children to speak *Tagalog*, and do not speak *Tagalog* themselves. Two groups of Filipinos in Kasugai City in Aichi Prefecture illustrate this situation. The members in one group talk in *Tagalog* among themselves, but the members of the other group interact only with Japanese people and not with fellow Filipinos. They may attend the same Catholic church, but they act differently. Japan actually promotes these two forms of practice.

Some migrants stick to their own language and plan to return to their own countries after working for a couple of years in Japan, and so they do not have to blend into the Japanese society. In fact, they should not. There was a move within the then ruling party, the Liberal Democratic Party (LDP), to prepare a law for short-term migration. Another group within the LDP, led by Mr. Hidenori Sakanaka, who used to work at the Immigration Bureau, advocates a proposal to have migrants learn the Japanese culture perfectly, and increase their number up to ten percent of the total population in the next fifty years. Since the ruling party changed to the Democratic Party due to the recent 2009 elections, I do not know what will happen next.

Ultimately, sustainable multicultural co-existence from the point of view of the migrants means respecting the identity of their country of origin, as well as trying to adopt that of the receiving country, a move that can be seen recently among foreign residents.

Networking for the Protection of Human Rights of Resident Koreans and “Newcomers”

The same problem can be seen among resident Koreans. Those affiliated with *Soren*, an organization related to the DPRK, emphasize their North Korean identity. Those who originally come from ROK try to adapt to the Japanese culture while maintaining their Korean culture and languages, in the form of sustainable multicultural co-existence. I find sustainable multicultural co-existence as most important. In the end, when we engage in activities at the local level we need to cooperate with the foreign residents, particularly women who migrated because of their marriage to local men.

The discussions on the issue of migration, including state policy for migrants, focused on how to get along with the resident Koreans, the so-called “old-comers.” If we manage to overcome the negative aspect of the Japanese history, the colonialism in the Korean peninsula, we may become a country with sustainable multicultural co-existence. We must also physically experience multicultural co-existence, and maintain our respective identities, because mere theoretical discussion of “multiculturalism” will not be of much use. Although not an issue of race, the anti-discrimination efforts of the discriminated *buraku* people are linked to the migrants’ fight against discrimination while maintaining their identity. Some

(Continued on page 8)

Life as *Dekasseguis*: The Brazilian Community in Japan

Erika Calazans

Brazil experienced one of its worst economic, social and political crises in the 1980s that led to the migration of many Brazilians to other countries. Among them, many Japanese-descent Brazilians decided to work in Japan as *dekkasseguis* or “temporary migrant workers.”¹

Opposite to that of Brazil, Japan was experiencing the height of its bubble economy during the 1980s. And it did not have enough workers to fill the increasing need for labor of its industries. To respond to the country's needs, Japan was forced to allow the entry of foreign workers.

In 1990, Japan amended the Immigration Control Law to allow Japanese-descent foreigners (second generation descendants or *nisei-jin* and third generation descendants or *sansei-jin*) and their spouses to come to the country to work for a long period of time. Their close ties with Japan and affinity by blood made them acceptable foreign workers in the country. Visa for the fourth generation Japanese descendants (*yonsei-jin*) was granted only to those who were accompanied by their third-generation Japanese-descent parents.

As of the end of 1998, the number of registered Brazilians in Japan reached 222,217 corresponding to 14.7% of the total registered foreigners in that year. (See Table 1)

Table 1: Registered Foreigners in Japan – By Nationality

Nationality	1998	1999	2000	2004	2005	2006	2007	2008
Total	1,512,116	1,556,113	1,686,444	1,973,747	2,011,555	2,084,919	2,152,973	2,217,426
China	272,230	294,201	335,575	487,570	519,561	560,741	606,889	655,377
Korea	638,828	636,548	635,269	607,419	598,687	598,219	593,489	589,239
Brazil	222,217	224,299	254,394	286,557	302,080	312,979	316,967	312,582
Phil	105,308	115,685	144,871	199,394	187,261	193,488	202,592	210,617
Peru	41,317	42,773	46,171	55,750	57,728	58,721	59,696	59,723
US	42,774	42,802	44,856	48,844	49,390	51,321	51,851	52,683
Others	189,442	199,805	225,308	288,213	296,848	309,450	321,489	337,205

Figures for selected years, taken from the original Japanese-language table (www.moj.go.jp/PRESS/090710-1/090710-3.pdf)

In 2008, the number of Brazilians in Japan reached 312,582. Brazilians correspond to the third biggest group of immigrants in Japan after the Koreans and the Chinese. The Brazilian community in Japan is the second biggest Brazilian community in a foreign country, and the biggest Portuguese-speaking community in Asia. Most Brazilians are found in the following prefectures: Aichi (Nagoya city), Shizuoka (Hamamatsu, Shizuoka), Gifu (Gifu), Mie, Saitama (Saitama), Gunma (Oizumi) and Kanagawa.²

These Japanese-descent Brazilians, many with university diplomas, came to Japan searching for better income and better life. But they worked in jobs that were generally refused by the Japanese, and required lower educational qualification. Most of their employers were automobile and electronics companies. One report

describes the situation as follows:³

Close to one-fifth of the entire Brazilian nikkeijin population now lives in Japan. Well-educated and middle-class in Brazil, most of them work as unskilled laborers in small and medium-size firms in the manufacturing and construction sectors. Still, based on the exchange rate, they earn five to ten times their Brazilian incomes. Like their own forebears, most of them arrive in the new country intending to work for just a couple of years and then quickly return to Brazil with their savings. Consequently, they have also become known as *dekasegi*, short for *dekasegi rodosha*, Japanese for “temporary migrant worker.” But many have already brought their families to Japan, and the process of long-term immigrant settlement has begun.

The Brazilian Community and Japan's Economic Crisis

In 2008, Brazil and Japan celebrated the passing of one hundred years since Japanese immigration to Brazil started. In contrast, in 2009, the Brazilian community in Japan has nothing to celebrate due to difficulties caused by the economic crisis. The foreign workers, specially the Brazilian community, heavily felt the economic crisis. Many Brazilians are opting (or somehow forced) to leave Japan and return home to find work.⁴ The situation turned very serious for those who stayed despite the economic crisis. One account expresses the situation:⁵

The crisis shows no signs of improving and because of this there are many Brazilians who used to live here and have returned to Brazil. The ones who stayed, like me, are trying to survive this mad crisis that affects Japan, almost every day I watch the Japanese news reporting on Brazilians living on the streets, people who have nothing to eat and others who live in public shelters, relying on the donations of kind people.

The problems faced by Brazilian *nikkei-jin* (Japanese-descent Brazilians) start with the fact that they look Japanese. But they are culturally Brazilians, and many of them cannot speak the Japanese language and are treated as foreigners. Their children also suffer difficulty because of the language barrier and a significant number of them leave school. Other children who came to Japan while very young forget the

Portuguese language and lose the ability to understand their parents.⁶ Besides this and many other challenges, the Brazilian community is struggling to fit into the Japanese society and stay in Japan.⁷

Many Brazilians who lost their jobs were forced to return to Brazil. But Mr. Sidival Furuzawa Pereira, 36 years old, and some other Brazilians want to stay in Japan despite the difficult situation. Mr. Pereira lost his job in mid-2009, and did not have the money to pay for house rent. He started to live on the streets of Hamamatsu in Shizuoka prefecture. Since then, he has been surviving by collecting discarded metal and electrical goods to sell at recycling centers. Mr. Pereira earned around 350 Yen (around three US dollars) a day. Instead of buying food, he saved the money until he had the minimum amount to send for his wife and children in Brazil. Seeing the harsh situation of Mr. Pereira and his effort to survive, a Japanese gave him an apartment to live in and eventually received food from a non-governmental organization (NGO).

But not getting enough for his needs, he still had to survive on food he would find in garbage bins. He said that he was very grateful for the help being given to him and he loved Japan. Every time he had the opportunity to call his wife, she would ask him why he would not come back to Brazil. Mr. Pereira would tell her that he was determined to live in Japan because he thought that Brazil had no job available for him, and he found it more feasible to

scavenge for recyclable materials and send money to Brazil despite the continuing dire economic situation in Japan.⁸

Job vacancies became increasingly difficult to find even for Japanese workers, and the situation was worse for Brazilians due to the language barrier. Japanese workers are now competing with Brazilians and other foreigners in getting work in factories that used to employ mostly foreigners.

The Japanese government decided to offer Brazilians a chance to go back home by providing free transportation. This scheme has been criticized for a provision that those who availed of the subsidy cannot return to Japan with the same visa status for the "time being."⁹ Many Brazilians were offended, and protested this scheme. Fifty-five-year-old J.P.H. expresses the sentiment of his fellow Brazilians:

We made a life in this country, we worked hard, we paid our taxes and now, the government instead of offering a hand to help is kicking us out of the country. We are not Japanese, but we are still human beings and we deserve different solutions for this crisis. (Interview by the author)

Some local governments¹⁰ offer support to foreigners to enable them to integrate into the Japanese society by helping them learn the Japanese language and by giving them information on daily life. The government employment program (Hello Work) has also been providing help for those

who lost their jobs. Many Hello Work Offices in different parts of Japan have Portuguese-language service.¹¹

Other Problems Faced by the Brazilian Community

The economic difficulties of Japan brought more problems to the members of the Brazilian community. In addition to decreasing number of jobs available to them, Brazilians suffer from a number of problems.

The clustering of Brazilians in particular areas in Japan, attributed partly to special agents who arranged their jobs and accommodation, and their inability to speak the Japanese language lead to the “creation of island communities isolated from the surrounding ones.”¹² Differences in culture likewise created friction between the two communities. There is an expectation from the Japanese that the Brazilians would follow the Japanese culture, which is a problem since the former do not know it in the first place.¹³

If the Brazilian children cannot attend Brazilian schools,¹⁴ they have to attend Japanese schools that are generally not prepared to support them. They do not have teachers who can communicate in the Portuguese language much less have teaching and learning materials in that language. As a result, both the Brazilian children and schools suffer. This and the problems faced by Brazilian families likely cause the low rate of enrollment of Brazilian children in schools.¹⁵

Brazilians who do not have medical insurance coverage

face the problem of getting medical service. This can happen to those who do not have permanent residence visa and do not enroll in the National Health Insurance system, since membership in this system is not obligatory for them.

Brazilians also face discriminatory treatment. Discrimination against foreigners often takes the form of restricted access to housing, education, employment opportunities,¹⁶ entertainment establishments, and even ordinary shops. In 1998, a Brazilian woman was asked to leave a jewelry shop by the owner in Hamamatsu after he found out that she was a Brazilian. The woman filed a lawsuit against the shop owner and justified her action:¹⁷

Actually, my case was just one of many similar incidents that have occurred in this town. But I decided to take legal action because I thought somebody should stand up and let the public know that discrimination does exist in Japan.

The issue of discrimination against foreigners in Japan is highlighted by the comments/suggestions of the Member-States in the Human Rights Council of the United Nations in the recent Universal Periodic Review:¹⁸

[Adopt] national legislation to bring it into line with the principles of equality and non-discrimination. (Slovenia); Consider establishing legislation defining and prohibiting discrimination in all forms (Brazil); Consider

introducing a definition of discrimination in its criminal law (Guatemala); Adopt, as a matter of urgency, a national law against racism, discrimination and xenophobia (Islamic Republic of Iran).

Conclusion

The number of Brazilians in Japan has started to decline in certain areas due to the current economic crisis, while the number of people from other countries (such as China, the Philippines and Vietnam) is still growing due to other employment schemes (such as the trainee system).

The future of the Brazilians in Japan is still unclear, and the Japanese government still faces the problem of securing the needed labor force for industries that depend on foreign workers. But foreign workers will not be able to help much if they do not enjoy a stable life in Japan, including respect for their rights as workers. And for those with families in Japan, such as the Brazilian *nikkei-jin*, it is even more difficult to live as *dekasseguis* in the country.

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For further information please contact HURIGHTS OSAKA.

Endnotes

- ¹ Takeyuki Tsuda, "No place to call home: Japanese Brazilians discover they are foreigners in the country of their ancestors," *Natural History*, Volume 113, Number 3, April 2004, available in http://findarticles.com/p/articles/mi_m1134/l_s_3_113/ai_n5990766/
- ² Akio Kamiko explains that the concentration of Brazilians in particular areas in Japan is partly caused by the arrangements made by "specific agents who not only arrange their flights to Japan but also provide them with accommodation and jobs." As a result, some towns have significant number of Brazilians relative to the total town population. Akio Kamiko *Japan's Experiences with Japanese Brazilians*, downloaded from <http://www.toodoc.com/%E7%AB%8B%E5%91%BD%E9%A4%A8%E5%A4%A7%E5%AD%A6-ebook.html>, page 4
- ³ Tsuda, op. cit.
- ⁴ Tony McNicol, "Mixed results with foreign influx," *The Japan Times*, available in <http://search.japantimes.co.jp/cgi-bin/fl20070116zg.html>
- ⁵ Paula Góes, "Japan, Brazil: Crisis puts an end to the dream of a better life," *Global Voices*, 11 March 2009 in <http://globalvoicesonline.org/2009/03/11/japan-brazil-crisis-puts-an-end-to-the-dream-of-a-better-life/>
- ⁶ Mariko Yasumoto, "Japanese-Brazilian families face serious challenge in communication," *Japan Today* (online news and discussion website) in <http://www.japantoday.com/category/lifestyle/view/japanese-brazilian-families-face-serious-challenge-in-communication>
- ⁷ Góes, op. cit.
- ⁸ "A triste historia de um brasileiro desempregado," 14 January 2009 in <http://igaum.blogspot.com/2009/01/triste-historia-de-um-brasileiro.html>
- ⁹ Yasushi Iguchi, *Impact of Financial Crisis on Migration from the Perspectives of destination for Asian migrant workers in Japan and other OECD countries*, presentation made in Bangkok in May 2009.
- ¹⁰ For examples of local government programs, see the Kobe city program in <http://www.kicc.jp/e/index.html> and Konan city program in <http://www.city.konan.shiga.jp/portugues/>
- ¹¹ See the website of Tokyo Employment Service Center for Foreigners for the list of Hello Work Offices with Portuguese and other languages services, www.tfemploy.go.jp/en/coun/cont_2.html
- ¹² Kamiko, op. cit. page 5.
- ¹³ Ibid.
- ¹⁴ The number of foreign students attending foreign schools declined by 30-50% as of March 2009. A number of schools for non-Japanese children, including Brazilian schools, closed due to bankruptcy. See Iguchi, op. cit.
- ¹⁵ See Chubu Region Multiculturalism and Gender Equality Research Group, "Open Letter to United Nations Special Rapporteur Doudou Diene: Report on Education Issues of Foreign Children in the Chubu Region," 2007, for a discussion on this issue.
- ¹⁶ See 2008 *Human Rights Report: Japan*, United States Department of State, available in www.state.gov/g/drl/rls/hrrpt/2008/eap/119041.htm
- ¹⁷ Toshi Maeda, "Brazilian files discrimination suit," *The Japan Times*, in <http://search.japantimes.co.jp/cgi-bin/nn19980902a9.html>
- ¹⁸ Universal Periodic Review of Japan, *Report of the Working Group on the Universal Periodic Review*, UNGA, 30 May 2008 A/HRC/8/44, page 17.

(Continued from page 4)

people in Okinawa argue that they belong to an indigenous people. The people of Ainu are of course indigenous. It is necessary to try and achieve sustainable multicultural co-existence in the real sense involving all minority groups. Sustainable multicultural co-existence can be achieved when recent migrants, the so-called "new comers," as well as "old comers" create their own communities around themselves, create networks and live side by side. It would not create stateless cosmopolitanism, but a global

democracy, in which the identities of each person are valued. I hope that the realization of such a world would be one of the issues in the Japan-Korean cooperation.

Kinhide Mushakoji is the Director of the Centre for Asia Pacific Partnership, and Chairperson of HURIGHTS OSAKA.

For further information, please contact HURIGHTS OSAKA.

* This is the keynote speech delivered by Kinhide Mushakoji during the Korea-Japan

Exchange Symposium: "Considering a Region with Foreign Residents" that was held on 24 October 2009 at the International House, Osaka in Osaka City and jointly organized by HURIGHTS OSAKA and the Kansai NPO Alliance. See page 15 for more information on this event.

Endnote

- ¹ The meeting on the migrants issue was held on the occasion of the Asia Pacific NGO Forum on Beijing + 15 "Weaving Wisdom, Confronting Crises, Forging the Future" (21 - 24 October 2009, Miriam College, Quezon City, Philippines).

Developments on the ASEAN Intergovernmental Commission on Human Rights

Ray Paolo J. Santiago

During the 26th ASEAN Ministerial Meeting (AMM) in 1993, the ASEAN foreign ministers “agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights” in support of the 1993 Vienna Declaration and Programme of Action of the United Nations World Conference on Human Rights.

Based on this ASEAN ministerial declaration, like-minded individuals, spearheaded by members of LAWASIA,¹ started discussions on pursuing the possibility of having a regional human rights mechanism in Southeast Asia. Thus, the civil society Working Group for an ASEAN Human Rights Mechanism,² or Working Group for short, was established sometime in 1995.

In 1996, the Working Group started meeting with ASEAN through its foreign ministers and, later on, its senior officials. As early as 1999, ASEAN urged the Working Group to present a proposal on what was an appropriate regional human rights mechanism.

After a series of expert meetings and consultations, the Working Group recommended the establishment of a regional human rights commission to ASEAN as the appropriate mechanism. Thus, in 2000, the

Working Group submitted a working document entitled *Draft Agreement for the Establishment of the ASEAN Human Rights Commission* (Draft Agreement) for ASEAN’s consideration.

During the meeting with the ASEAN Senior Officials in Thailand in 2000, ASEAN referred the Draft Agreement to its think-tank, the ASEAN-Institute for Strategic and International Studies (ASEAN-ISIS) for its comments and suggestions. No further action was taken on that matter since then. It was apparent that ASEAN was not prepared at that time to venture into such kind of regional human rights mechanism.

Since 2001, the Working Group has been undertaking annual workshops on the ASEAN regional human rights mechanism, together with a host ASEAN government and its national human rights commission, if it has one. Each workshop’s conclusions are then submitted and presented to the ASEAN Senior Officials on the occasion of the ASEAN Ministerial Meeting. These workshops have harvested concrete proposals on progressing towards the establishment of an ASEAN regional human rights mechanism. In fact, some of the human rights provisions in

ASEAN’s Vientiane Action Programme are culled verbatim from these workshops such as the “establishment of an ASEAN commission on the promotion and protection of the rights of women and children” and the “elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers.”³

Initial ASEAN Move

During the meeting of the Working Group with the ASEAN Senior Officials in Vientiane on 25 July 2005, ASEAN engaged the Working Group to help in the implementation of the following human-rights-related programs in the VAP:

- The establishment of a commission on the promotion and protection of the rights of women and children
- Elaboration of an ASEAN instrument on the promotion and protection of the rights of migrant workers
- Promoting education and public awareness on human rights in the region; and
- Networking among existing national human rights institutions in the region.

It also bears noting that all ASEAN countries have ratified the Convention on the Elimination of All Forms of Discrimination Against Women

and the Convention on the Rights of the Child.

Pursuant to this mandate given by ASEAN, the Working Group has organized several activities on the human rights program areas, to wit:

- Five Roundtable Discussions among ASEAN governments, national human rights institutions, and civil society groups from 2005 up to the present;
- A “Roundtable Discussion on Engaging ASEAN Governments on Human Rights Education” among ASEAN regional organizations and national human rights institutions in Bangkok in 2006;
- An ongoing research on the elaboration of an ASEAN instrument on migrant workers;
- A research on the establishment of an ASEAN commission on women and children;
- An experts meeting and a regional consultation to discuss the establishment of the ASEAN commission on women and children have also been separately organized in Bangkok to complement the research on the same topic; and
- Regarding the networking among existing human rights mechanisms, the existing national human rights institutions in ASEAN countries formalized in 2008 their cooperation and identified human rights issues of common concern. They are planning to come up with activities and projects that will address these human rights issues.

In 2008, the ASEAN Member-States ratified the ASEAN Charter, transforming what was once a loose organization into a more rules-based one. One of the more prominent changes that the Charter has introduced is the establishment of an ASEAN Human Rights Body based on terms of reference (ToR) that was to be adopted by the ASEAN Foreign Ministers Meeting. This was a significant development considering the cautious stand that the ASEAN Member-States consistently took on human rights matters. But including a provision of such an institution in the Charter is not a walk in the park. In fact, of all the provisions in the Charter, the establishment of a human rights body was the one that was most discussed, debated upon, and even, at times, the source of heated disagreements that even threatened the realization of the Charter itself. In the end, however, the ASEAN Foreign Ministers agreed that the establishment of a regional human rights mechanism was essential in building the credibility of ASEAN as a rules-based organization. As such, the human rights body was even given the status of an “organ” of ASEAN, just to stress the importance of its establishment.

Shortly after the adoption of the Charter, and even before it was ratified by all the ASEAN Member-States, ASEAN created the High Level Panel (HLP) on an ASEAN Human Rights Body which was tasked to draft the terms of reference (ToR) that would establish such a body. After a year of deliberation, the HLP came up with the draft ToR that would establish an ASEAN Intergovernmental Commission

on Human Rights (AICHR). The ASEAN Foreign Ministers subsequently approved the ToR in July 2009 and the ASEAN Summit formally launched the AICHR in October of the same year.

A Different Type of Mechanism

Compared to regional human rights mechanisms existing in Europe, the Inter-Americas and Africa which are composed of experts, the AICHR is an intergovernmental body whose ten representatives are appointed in behalf of the ASEAN Member-States. Many human rights advocates see this as a challenge given ASEAN’s notoriety in invoking its principles of sovereignty and non-interference in the internal affairs of its members when it comes to human rights concerns.

Furthermore, the AICHR is a consultative body that will adopt an evolutionary approach in fulfilling its mandate and functions of promoting and protecting human rights in the ASEAN region. And just like the decision-making process in ASEAN, it can only decide on matters through consultation and consensus.

These characteristics of AICHR have been seen as the main stumbling blocks for the operation of the mechanism. Despite these, however, the establishment of the AICHR is itself a step forward. In fact, even ASEAN and its member-states agree that it is a breakthrough.

Some may be discouraged by the manner by which the AICHR will progress. And yet, it still is as an opportunity for

human rights promotion and protection to develop within ASEAN; and the burden falls on the more human-rights-progressive Member-States to push the other Member-States to allow the AICHR to progress if they want ASEAN to be truly credible and responsive to the times.

Taking an optimistic and advocate's point of view on the matter, the reality is that there must be a starting point for the AICHR to progress. What that starting point should be is definitely debatable. But what is imperative is that all ASEAN Member-States are onboard and committed to the success of a regional human rights mechanism.

An environmental scan demonstrates that the evolution of the systems of promotion and protection of human rights of the United Nations human rights organs and the other regional human rights mechanisms in Europe, Inter-Americas and Africa did not happen overnight. It took time for them to develop and reach their current status.

Work for AICHR

The common point towards full protection of human rights in the region is through promotion. Now does that mean that all the AICHR should do is to promote human rights? This, obviously, will be contrary to its very mandate under the ToR and the ASEAN Charter since "protection" is mentioned in the same breath as promotion. As such, in the evolutionary sense of things, promotion must be seen as a

starting point towards protection of human rights.

The AICHR and human rights must be felt by the people. Its visibility must be on top of its priority at the moment. How can we expect the peoples of ASEAN to access the AICHR if they do not even know what it is all about? Worse, we cannot expect the people to actually access the AICHR if they do not know what human rights are all about and which of their rights have been compromised. This is where the civil society groups can help in speeding up the evolution of the AICHR. They must ensure that this new human rights institution of ASEAN is known to the people. They cannot leave this to ASEAN and AICHR itself, lest it proceeds only at a pace that they are comfortable with. For the AICHR's presence to be felt in the region, there is a need to push for its "visibility" to be a priority in its work plan. And this must be supplemented, if not complemented, by civil society groups that are interested in seeing the development of the AICHR into a more progressive mechanism.

In making sure that the AICHR is visible and felt by the ASEAN peoples, there is a necessity for its Representatives to travel to each ASEAN Member-State. Civil society groups can take this opportunity to organize and get every opportunity for the people to meet with the AICHR Representatives and bring their concerns to them. Although the AICHR does not have investigative functions, it does not discount the fact that it can obtain information on the

human rights situation of ASEAN Member-States.

Another possibility for the AICHR is the setting-up of an experts group or sub-body similar to the arrangement before of the now defunct United Nations Commission on Human Rights. Although the Commission was seen as a political body, it established experts groups or bodies which later on developed into special procedures.

The AICHR is a political body. It will set the direction for human rights promotion and protection in Southeast Asia based on the information that it may have. But the AICHR meets only at least twice a year. There is therefore a need to make sure that proper information are gathered and processed for the AICHR's consideration and action. Setting-up an experts group will ensure the quality and accurateness of the factual information that it may gather. And as mentioned earlier, while country visits and investigation are not mentioned in the ToR of the AICHR, such are not, however, directly proscribed. The ToR allows the gathering of information from member states on the promotion and protection of human rights. And since the AICHR is envisioned to meet, not only in its headquarters, but also in the different ASEAN countries, it will also be an opportunity to meet stakeholders other than governments, still as part of its consultative and dialogue functions.

Furthermore, the AICHR is mandated to conduct "studies on thematic issues of human rights in ASEAN." There are

already accepted common human rights commitments and agreements in ASEAN, more particularly on issues of women and children, for example. A study on these issues will definitely be desirable if only to give a "situational analysis" of its present condition in the region. And such a study, though country data may be needed, is actually not country-specific but thematic. Again, this can best be done, not by the political personalities in ASEAN but by experts who have the capacity to submit credible reports for the AICHR's consideration.

The human rights experts may also be tapped to help the AICHR "develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community" and "to develop common approaches and positions on human rights matters of interest to ASEAN."

There is also a need to have proper and responsive rules of procedure for the AICHR. While its ToR define the structure of the AICHR, the details of implementation are yet to be settled. The ToR of the AICHR must be translated into action through its procedures.

The drafting of an ASEAN Human Rights Declaration is another perfect opportunity to push for the concrete evolution of the AICHR into something that will be more meaningful to the ASEAN peoples. There is a need, however, to be vigilant that this opportunity is also not used to espouse cultural relativism. Such must not be so since the core principles of the

AICHR itself states that it must "uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties."

And lastly, one of the more important avenues for evolution is the Representatives of the AICHR themselves. Although the Representatives are accountable to their respective governments, the ToR itself calls on them to act impartially. And acting impartially means not favoring any individual member-state; rather, the Representatives must think proactively to promote and protect the human rights of all ASEAN peoples. They should be engaged by civil society groups for them to be forward-looking on human rights.

Conclusion

In sum, the creation of a new regional human rights mechanism in the form of the AICHR is not the end all and be all of human rights in ASEAN. There are other different opportunities in ASEAN at the moment, such as the imminent establishment of an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children. As such, we must maximize these opportunities and create an environment for human rights in ASEAN. And the creation of these mechanisms should be seen as aids in creating this environment. In the mean time, the advocacy continues to reap more positive developments in

the field of human rights in Southeast Asia.

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Endnotes

- ¹ Lawasia is an "international organisation of lawyers' associations, individual lawyers, judges, legal academics, and others which focuses on the interests and concerns of the legal profession in the Asia Pacific region." It has LAWASIA Human Rights Committee and Secretariat that have "overseen a good deal of research into and development of human rights mechanisms, the most notable being the ASEAN Human Rights Mechanism, which has gone on to develop its own life." For more information on LAWASIA visit <http://lawasia.asn.au>
- ² The Working Group is a coalition of national working groups from ASEAN states which are composed of representatives of government institutions, parliamentary human rights committees, the academe, and NGOs. Visit www.aseanhrmech.org for more information.
- ³ See 1.1.4, Political Development, Asean Security Community, *Vientiane Action Programme, Annex 1* (Jakarta: ASEAN Secretariat, 2004).

Human Rights Events in the Asia-Pacific

ASEAN Human Rights Mechanism

ASEAN Leaders inaugurated on 23 October 2009 in Cha-am Hua Hin the ASEAN Intergovernmental Commission on Human Rights (AICHR). The AIHRC was established under Article 14 of the ASEAN Charter,¹ and based on ASEAN's "commitment to the promotion and protection of human rights and fundamental freedoms," and also its commitment to "pursue forward-looking strategies to strengthen regional cooperation on human rights." The AIHRC will operate under the terms of reference (ToR) that was approved by ASEAN Foreign Ministers in July 2009.

The ASEAN leaders see AICHR as a "historic milestone in ASEAN community-building process, and as a vehicle for progressive social development and justice, the full realization of human dignity and the attainment of a higher quality of life for ASEAN peoples." They also recognize that the "TOR of the AICHR shall be reviewed every five years after its entry into force to strengthen the mandate and functions of the AICHR in order to further develop mechanisms on both the protection and promotion of human rights."² The ASEAN member-states have appointed their respective AIHRC members.

It was also made known that another human rights body focusing on women and children, the ASEAN Commission on the Rights of Women and Children, will be set up next year [2010].³ The Prime Minister of Thailand, H.E. Abhisit Vejjajiv, remarked at inaugural ceremony of the AICHR that this "and other regional mechanisms shall be part and parcel of the ASEAN human rights regime under the single umbrella of the AICHR." The work of this Commission "will be in line with the principles of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, of which, all ASEAN Member States are parties to."

Fifth Roundtable Discussion on Human Rights in ASEAN

The Fifth Roundtable Discussion on Human Rights in ASEAN – Towards an ASEAN Human Rights System: Role of Institutions and Related Activities was held in Bangkok on 15-16 December 2009. The Roundtable was co-organized and co-hosted by the Ministry of Foreign Affairs of the Kingdom of Thailand, the National Human Rights Commission of Thailand, and the Working Group for an ASEAN Human Rights Mechanism (Working Group).

The Roundtable was attended by participants representing governments (the Foreign Ministry and agencies responsible for ASEAN cooperation on the rights of women, children and migrant workers); National Human Rights Institutions (NHRIs); and members of the Working Group - from Brunei Darussalam, Cambodia, Indonesia, Lao P.D.R., Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam. Also in attendance were Representatives to the ASEAN Intergovernmental Commission on Human Rights (AICHR) from Malaysia, Philippines and Thailand and observers from the United Nations (UN) and funding organizations.

The Roundtable was divided into six sessions covering the following topics: (a) System-Building for the Promotion and Protection of Human Rights at the Regional Level; (b) Mandate of the AICHR: Challenges of Implementation in a Contemporary Setting; (c) The Three Pillars of the ASEAN Community: Commitment to the Human Rights Process; (d) Women's Rights, Children's Rights and Migrant Workers' Rights: Alignment with the AICHR as the Overarching Institution; (e) Moving Forward: Lessons for the Future; and (f) Conclusions and Recommendations.

Several recommendations were agreed upon including the following:

23. The Roundtable reiterates that the AICHR has to be seen in the context of the ASEAN Charter. Although the AICHR is the main venue for asserting human rights, stakeholders should make use of other platforms within ASEAN including interaction with ASEAN leaders, the Committee of Permanent Representatives, human rights bodies in ASEAN, relevant sectoral bodies, and the ASEAN Secretariat, for the purpose of human rights promotion and protection. Given the existence of national structures and the international system, the Roundtable recommends strengthening the complementary role of the AICHR.

24. The Roundtable believes that the drafting of an ASEAN Declaration on Human Rights [should] be given priority as this may be a perfect opportunity to demonstrate the evolution of the AICHR into something more concrete and meaningful to the ASEAN peoples.

Asia Pacific Conference on Reproductive and Sexual Health and Rights

The 5th Asia Pacific Conference on Reproductive and Sexual Health and Rights (APCRSHR), held from 18 to 20 October 2009 in Beijing, is a follow-up to the *International Conference on Population and Development (ICPD)* in 1994,

the *World Conference on Women* in 1995 and the *United Nations Millennium Summit* in 2000. It provided a space for stakeholders to exchange experiences and discuss strategies in the reproductive health fields in the Asia-Pacific. It was also meant to "further arouse the attention from the international community to reproductive health issues, and facilitate the attainment of MDGs in the Asia and Pacific Region on schedule."⁴ One of the working themes of the conference was on "Working for Universal Reproductive and Sexual Health and Rights: Building on the ICPD PoA and the MDGs." Under this theme, the participants reviewed the progress of Asia-Pacific countries in implementing the 1994 International Conference on Population and Development (ICPD) Program of Action (PoA), and "exchanged experiences thereof, reiterate government commitments, and defined Asia-Pacific regional strategies for achieving "universal access to reproductive health by 2015" together with the existing problems and challenges." The youth participants issued their Youth Declaration, and stated that "[D]enying young people accessible sexual and reproductive health services and education is a violation of young people's human rights and their right to development, as affirmed by the ICPD and the Beijing Platform for Action." They also urged the national governments and the civil society to "fulfill sexual and reproductive health and rights, as they are an inalienable aspect of young people's right

to health." The human rights of the youth were also discussed in the other themes of the conference.⁵

Endnotes

¹ Get the full document at www.aseansec.org/ASEAN-Charter.pdf

² *Cha-Am Hua Hin Declaration on the Intergovernmental Commission on Human Rights*, available in http://www.15thaseansummit-th.org/outcome_document.php

³ "ASEAN Commission on the Promotion and Protection of the Rights of Women and Children to be Established," www.aseansec.org/23112.htm#Article-20

⁴ Conference Background of the 15th APCRSRHR, in www.5apcrshr.org/en/detail.aspx?articleid=090609084712591215

⁵ See the conference themes at www.5apcrshr.org/en/articlelist.aspx?categorycode=2302

HURIGHTS OSAKA Activities

Korea-Japan Exchange Symposium: "Considering a Region with Foreign Residents"

Japan and South Korea, with an increasing number of foreign residents due to international marriage and demand for their work, are facing the common challenge of creating a multi-ethnic, multicultural society in the region. Knowing the problems faced by foreign residents in Japan and Korea is a requirement in order to act for the realization of the human rights of the foreign residents.

In both countries, local governments and civil society groups have been making efforts to address this issue creatively but also on a trial-and-error basis. The symposium exchanged lessons learned from the experiences and discussed ways to overcome the challenges together.

The symposium opened with a keynote speech by Professor Kinhide Mushakoji entitled "Fighting the Insecurity of Foreign Residents - Possibilities of Cooperation between Japanese and Korean People." This was followed by a presentation by Professor Kyung Seok Oh of the Multicultural Research Institute, Hanyang University, in Korea who discussed the different ways of facilitating coexistence with the foreign communities in Ansan City.

Associate Professor Yamamoto Kaori of the School of Education and Welfare, Department of Welfare Science, Aichi Prefectural University talked about citizens and residents and the role of foreign policy in the Tokai region. Mr. Hirai Masatsugu, Director for foreign residents policy of the Human Rights Office of the Osaka City government, talked about local government policies for foreign residents.

The symposium was held on 24 October 2009 at the International House, Osaka in Osaka City. It was jointly organized by HURIGHTS OSAKA and the Kansai NPO Alliance.

Movie Showing on Migrant Workers: *Caregiver*

A Philippine movie on the life of a Filipina caregiver in London entitled *Caregiver* was shown in Osaka on 19 November 2009. The film portrays the story of a schoolteacher who decided to quit her teaching post to join her Filipino husband working in a hospital in London. The film presents the work of Filipino caregivers in a British home for the aged, and the complexity of their personal lives. The movie is one of the series of films on the lives of the so-called Overseas Filipino Workers (OFWs) in recent years.

The movie showing was followed by a presentation of Ms. Sachi Takahata, of Hiroshima Kokusai Gakuin University, on the training of Filipino caregivers and nurses who came to Japan under the Japan-Philippine Economic Partnership Agreement (JPEPA). The presentation focused on Filipino caregivers and nurses who are undergoing language training before getting assigned to nursing homes and hospitals in Hiroshima area. The Filipino caregivers and nurses comprise the new batch of foreign workers in Japan under the economic partnership agreements with other countries. Indonesian caregivers and nurses have also arrived in Japan under a Japan-Indonesia economic partnership agreement.

The movie showing was jointly organized by HURIGHTS OSAKA, Rights of Immigrants Network in Kansai and Center for Multicultural Society (non-governmental organizations working on the rights of migrants). It was held at the DAWN Center, an institution focusing on women and gender issues.

HURIGHTS OSAKA Calendar

HURIGHTS OSAKA will be launching in March 2010 the expanded version of its annual publication *Human Rights Education in Asian Schools*. The new publication will cover all types and forms of human rights education and will include the experiences in Asia and the Pacific. It will be entitled *Human Rights Education in the Asia-Pacific*. This new coverage of the human rights education publication supports the Asia-Pacific focus of HURIGHTS OSAKA.

HURIGHTS OSAKA is renewing its website (Japanese and English sections) and a newly-designed version will be launched at the end of March 2010.



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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.

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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