

FOCUS

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Contents

Human Rights Institutions in Asia-Pacific: Brief Review

This is a brief introduction of the new national human rights institutions established during the past decades in Asia-Pacific.

- HURIGHTS OSAKA

Page 2

Myanmar National Human Rights Commission

This is a discussion of the mandate and activities of the Myanmar National Human Rights Commission.

- Khin Maung Lay

Page 4

Office of the Ombudsman/National Human Rights Institution of Samoa

This is a presentation on the mandate and activities of the National Human Rights Institutions in Samoa.

- National Human Rights Institution

Page 7

Bonded Labor in India: Persistent and Difficult

This is a discussion on the problem of freeing of bonded laborers in India and the provision of support after such freedom has been regained.

- Human Rights Law Network

Page 10

Orang Rimba: Endangered People in Endangered Forest

This is a report on the work of Butet Manurung and SOKOLA among the Orang Rimba, an indigenous community in Indonesia.

- HURIGHTS OSAKA

Page 12

Editorial

People in Institutions

More than a decade ago, a former Commissioner in a national human rights institution in the Asia-Pacific gave an answer to the question: What makes an institution effective?

His answer: People.

Beyond all the requirements of a supposedly proper national human rights institution upon which it is judged (or accredited), what matters most are the people who run the programs and do the work on the ground.

People who have the commitment to serve those who suffer human rights violations, keen grasp of the situation to be able to map out human rights interventions, and the vision to promote human rights at every possible opportunity are valuable assets of a national human rights institution.

The earnestness of people in national human rights institutions is an indispensable trait that Commissioners/Ombudspersons, officials and staff have to have. They can expand their knowledge on human rights and develop their skills; but they have to have from the beginning the innate trait of commitment and earnestness in the work they have to do.

The country is served best by a national human rights institution that has the right people in place.

Human Rights Institutions in Asia-Pacific: Brief Review

HURIGHTS OSAKA

Asia-Pacific has thirty national human rights institutions (NHRIs) as of 2018, eighteen of them were established from 2000.

Ombudsman

Several of these NHRIs were established as Ombudsman, including the Provedor for Human Rights and Justice of Timor-Leste, Commissioner for Human Rights (Ombudsman) of Kazakhstan, The Human Rights Ombudsman of Tajikistan, The Kyrgyz Republic *Akyikatchy*, the Office of the Ombudsman of Samoa and the Ombudsman of Tuvalu.

The Provedor for Human Rights and Justice of Timor-Leste, a constitutional body, was established by law in 2004. Its mandate included functions to counter corruption and to address human rights issues. In 2009, the anti-corruption function was transferred to a new commission.¹

The Commissioner for Human Rights in the Republic of Kazakhstan (The Ombudsman) has a counterpart agency – the National Centre for Human Rights. Both offices were established by the 2002 Regulation on the Commissioner for Human Rights. They constitute the NHRI structure in the country.

Similar to Kazakhstan, Uzbekistan has a National Human Rights Centre which works with the *Oliy Majlis* Commissioner for Human Rights (Ombudsman). The government of Uzbekistan considers the Ombudsman (a parliamentary oversight office on human rights issues) as a NHRI² but it does not seem to have the protection function.

The Kyrgyz Republic *Akyikatchy* (Ombudsman) was established by law in 2002. The law provides that the *Akyikatchy*³

shall be independent from any bodies of the public administration or officials. Interventions into activities of the Ombudsman (*Akyikatchy*) or any influence upon the Ombudsman (*Akyikatchy*) shall be prohibited and entail responsibility in accordance with the legislation of the Kyrgyz Republic.

The *Akyikatchy* has the power to protect human rights, prevent human rights violations, harmonize national legislations and international human rights standards, and promote legal information to the public. (Article 3)

The Ombudsman offices in Samoa and Tuvalu were given human rights mandate years after they were established. The 1990 Samoan Ombudsman Law was amended in 2013 for this purpose; while the 2006

Leadership Code (which established the Ombudsman) of Tuvalu was amended in 2017 for the same reason.

Strengthening the Commissions

In several cases, laws establishing the NHRIs were amended to ensure that they have independence and sufficient power to perform their functions.

Bahrain established the National Institution for Human Rights (NIHR) in 2009 through Royal Order No. 46. To ensure that the NIHR is “in par with the Paris Principles,” Royal Order No. 46 was amended by Royal Order No. 28 of 2012. The NIHR, however, opined that a new law had to be enacted that would “ensure genuine safeguards to [its] independence...”⁴

On 24 July 2014, the King of Bahrain issued Law No. 26 of 2014 for the “establishment of the National Institution for Human Rights, which was approved by the Shura Council and the Council of Representatives to create a real legal guarantee and provide full independence to the NIHR as well as granting it additional competencies and powers in line with the Paris Principles relating to the status of national human rights institutions for the promotion and protection of human rights.”⁵

On 6 October 2016, Law No. 20 of 2016 amended certain provisions of the Law No. 26 of 2014, to be able to comply with the “recommendations of the Subcommittee on Accreditation (SCA), adopted by the Global Alliance of National Institutions for the Promotion and Protection of Human Rights (GANHRI), with the intent of granting it more powers to achieve the objectives for which the NIHR was established, reflecting the Kingdom's commitment to the protection of human rights.”⁶

Royal Decree no. 124/2008 established the Oman National Human Rights Commission in 2008, while Royal Decree no. 10/2010 “identified the commission’s members that represent various governmental and non-governmental institutions” including members representing the State Council, Shura Council, Oman Chamber of Commerce and Industry, General Federation of Oman Trade Unions, a member from the field of law, three representatives from non-governmental organizations, and representatives from Ministry of Foreign Affairs, Ministry of the Interior, Ministry of Social Development, Ministry of Justice, Ministry of Manpower, and Ministry of Civil Services.⁷

The Human Rights Commission of the Maldives was first established on 10 December 2003 as an independent and autonomous statutory body through a Presidential Decree. But on 18 August 2005, the People's Majlis enacted Law No: 1/2006 (Human Rights Commission's Act) that made

the Human Rights Commission “a constitutionally established autonomous body.”⁸

Complaints Received and Acted Upon

The most recent available reports of some of these NHRIs on the complaints received (and acted upon) involved a diversity of issues and affected people. In 2013, the Oman Human Rights Commission received 146 “civil, political, social, economic, cultural, environmental and developmental complaints.”⁹ In 2015, the Ombudsman of Kazakhstan received complaints “mostly ... about violations caused by law enforcement agencies, the actions and decisions of courts, penitentiary institutions and public administration... and 18.9 percent of violation cases were confirmed and resolved.”¹⁰

In 2017, the NIHR of Bahrain received four hundred eighty-four complaints, with fifty-one complaints related to civil and political rights, and ninety-one complaints related to economic, social and cultural rights. Nineteen complaints “concerning allegations of torture and other ill-treatment” were “communicated with the relevant bodies.” NIHR “found out that in some cases the allegations were inaccurate, whereas for the other cases, the required legal proceedings were taken by referring them to Special Investigation Unit at the Public Prosecutor Office.” It also received cases relating to “right to freedom and personal security (nineteen cases), right to fair trial (six cases), right to citizenship (two cases), and

right to equality before the law (four cases). On the other hand, the ninety-one complaints received were related to right to education (one case), right to health (sixty-six cases), right to appropriate standard of living (ten cases), right to social security (three cases), right to work (six cases) and right to enjoy various rights and freedom (three cases).¹¹

During the 2013-2018 period, the NIHR received 167 complaints of suspected trafficking in persons cases “pertaining to workers of different nationalities, most of which were complaints regarding not getting paid for their work, confiscation of their passports by the employers, or forcing them to work for additional hours in jobs different from what was agreed upon in the contracts.”¹² The NIHR has several hundreds of complaints on social security issues and abuses by companies of workers’ rights.

International Accreditation

Twenty-eight of these Asia-Pacific NHRIs are members of the Global Alliance of National Human Rights Institutions (GANHRI), while twenty-four are members of the Asia-Pacific Forum of National Human Rights Institutions (APF).

For further information, please contact HURIGHTS OSAKA.

(Continued on page 14)

Myanmar National Human Rights Commission

Khin Maung Lay

Myanmar was once known as steeped in history of kingdoms and dynasties, endowed with vast natural resources and an intelligentsia elite base most nations would envy. It is wedged between two of the most populous nations in the world, and a proud nation standing tall among its neighbors up till the mid-1960s. Now it is struggling to get rid of the least developed nation status, but it is not a stranger to human rights.

Myanmar cast one of the earliest affirmative votes in the run up to the adoption of the Universal Declaration of Human Rights in December 1948. After independence from the British in January 1948, a period of democratic rule ensued that was interrupted in 1962 when the military took over power, socialist rule became the order of the day and human rights took a back seat.

From that period onward, human rights never took a forefront status until 2011, when the transition to a democratic government once again ushered in human rights.

Myanmar National Human Rights Commission

Myanmar took heavy criticism from Western countries for its human rights record and the recommendations of the Universal Periodic Review (UPR) report in January 2011

made repeated references to the need to establish a National Human Rights Institution in the country. This led to the establishment of a Myanmar National Human Rights Commission (MNHRC) in 2011.

The MNHRC came into existence by a presidential decree on 5 September 2011. Following the Paris Principles, its fifteen Members represented the principle of plurality and ethnic and gender balance. Its Members constituted representatives from the Rakhine, Chin, Kachin, Karen, Mon, Shan and Bamar ethnic groups. Different religions are represented including Christians, Muslims and Buddhists. For gender parity, the MNHRC has three lady commissioners. Myanmar became the fifth country among the Association of Southeast Asian Nations (ASEAN) member-countries to have established a National Human Rights Institution (NHRI). Other NHRIs in ASEAN are in Thailand, Malaysia, Indonesia and the Philippines.

The MNHRC has the mandate of promoting and safeguarding the fundamental rights of the citizens enshrined in the Constitution of the Republic of the Union of Myanmar.

Since the MNHRC was formed under a presidential decree, which is not considered a best practice under the Paris

Principles, it drafted in 2012 a National Human Rights Commission Law and lobbied the *Pyidaungsu Hluttaw* (Union Parliament) for its enactment. The *Pyidaungsu Hluttaw* enacted the law in March 2014.

The MNHRC was reconstituted in September 2014 under the new law with eleven members and the following mandates:

- a. To effectively promote and protect the fundamental rights of the citizens enshrined in the Constitution of the Republic of the Union of Myanmar;
- b. To create a society where human rights are respected and protected in recognition of the Universal Declaration of Human Rights adopted by the United Nations;
- c. To effectively promote and protect human rights contained in the international conventions, decisions, regional agreements and declarations related to human rights accepted by the State; and
- d. To coordinate and cooperate with the international organizations, regional organizations, national statutory institutions, civil society and non-governmental organizations related to human rights.

Activities of MNHRC

The MNHRC endeavors to fulfill its mandates through the five divisions: Promotion and Education Division; Protection Division; International Relations Division; Legal Division; and the Planning and Administration Division.

a. Promotion and Education Division

After a lapse of nearly sixty years, the population at large had very little or no knowledge of human rights and thus it became the primary task of the MNHRC to promote and disseminate human rights knowledge.

From the very inception of the MNHRC, it has strived to disseminate human rights knowledge to all sectors of society including government officials from the union level ministries and organizations; officials in the office of the two houses of the parliament; members of the armed forces and the police forces; officials of the correction department; government agency officials at state, division and township levels. It also organizes training workshops on human rights with the cooperation of international agencies, non-governmental organizations (NGOs) and civil society organizations (CSOs).

The MNHRC holds human rights education activities for people of all walks of life in 108 townships throughout the length and breadth of the country. As a measure of its coverage, the MNHRC reached out to Putao-Ma Chan Baw in the northernmost part, Kawthaung

in the south, Tachileik and Mong Young in the east and Sittwe in the west. It also holds workshops (including focus group discussions) to allow the participation of people at the grassroots level.

It provides human rights lectures in all training courses of the Central Institute of Civil Services (CICS) in lower and upper Myanmar for those at the very basic junior level to the high ranking executive level. To-date, in all seven levels of training conducted by CICS, the MNHRC has imparted human rights knowledge and concept to over ten thousand trainees.

Upon the request of the MNHRC, the Ministry of Defense included a lecture on human rights in the four training courses it regularly holds. The training courses are held at the National Defense University for senior officers with the rank of Colonel, and also at the Staff College under the Ministry of Defense (the second highest educational level) that career military officers with the rank of Lieutenant Colonel are obliged to attend before promotion to higher ranks. Human rights lecture is also provided to majors and captains in the two combat training schools under the Ministry of Defense before taking up the responsibilities of battalion and company commanders.

b. Protection Division

The MNHRC receives communications on complaints of human rights violations, examines them and conveys findings to the relevant government departments and bodies for necessary action.

Through its complaint examination mechanism, the MNHRC uses its advisory function in requesting competent authorities to provide remedy to the human rights violations. Whenever necessary based on the seriousness of the complaints and in cases of systemic violations of human rights, the MNHRC conducts field visits.

In 2017, out of the 1,125 complaints received, the Complaint Division took action on 454 complaints. The rest did not meet the requirements of the MNHRC's established procedures and were put on record.

The MNHRC has the mandate to inspect prisons, jails, detention centers, and places of confinement in order to ensure that persons imprisoned, detained or confined are treated humanely and in accordance with international and national human rights laws. Inspection teams from the Protection Division of the MNHRC visited twenty-six prisons, including the prison in Nay Pyi Taw, and made necessary recommendations mostly on problems related to human rights of prisoners. All visited prisons far exceeded their capacity, prompting the MNHRC to recommend the reduction of the prison population. Among the prison population, 46.53 percent of the prisoners are found to be offenders of narcotic drugs and psychotropic substances law. The MNHRC recommended the construction of buildings or extensions to the existing ones to have enough space, and also adequate budget for the prisons.

The MNHRC also recommended the setting up of rehabilitation centers for drug offenders, instead of putting them in prison. This in the view of the MNHRC will greatly help towards the reduction of overcrowding in the prisons.

The inspection teams also visited labor camps (where prisoners sentenced with hard labor component do agricultural work) twenty-five times, fifty-three police detention centers, forty-five court detention centers and twelve hospital guard wards.

c. International Relations Division

The MNHRC is a full-fledged member of the Southeast Asian National Human Rights Institutions Forum (SEANF), an associate member of Asia-Pacific Forum of the National Human Rights Institutions (APF) and holds a "B" status with Global Alliance of National Human Rights Institutions (GANHRI).

It coordinates and cooperates with international organizations, regional organizations, national statutory institutions, civil society and non-governmental organizations related to human rights. Its International Relations Division undertakes the following activities:

- Preparation for the participation of the Chairperson and a Commissioner in international meetings such as the following:
 - Special Meeting of SEANF held in Quezon City in November 2017;

- The fourteenth Annual Meeting of SEANF in Quezon City also in 2017 where the rules of procedure of the SEANF were adopted;
- The GANHRI 2017 annual meeting in Geneva where representatives from more than one hundred member-NHRIs adopted a statement on protecting and preserving the independence of NHRIs including the risks they face, among others;

- Organization of workshops (such as on communications strategy in cooperation with Raoul Wallenberg Institute on 21-22 February 2017);
- Cooperation with civil society organizations (CSOs) (such as the workshop entitled "MNHRC and CSOs - Paths toward cooperation," 28 July 2017 at Green Hill Hotel, Yangon, jointly organized by the MNHRC and the Democracy Reporting International [DRI]);
- Participation in the visiting programs for national human rights institutions in Southeast Asia (such as the visiting program to European human rights institutions in June 2017 held in Brussels and Berlin).

d. Legal Division

In October 2017, MNHRC organized a workshop in Nay Pyi Taw with the support of the APF on moratorium on the application of death penalty. Thirty-three participants

including parliamentarians, senior government officials from different relevant government departments, members of CSOs and media attended the workshop. The workshop participants issued an outcome statement with recommendations to the government to consider a moratorium on the application of the death penalty pending its abolition since Myanmar is considered abolitionist in practice.

Nature of Human Rights Violations Attended To

About 30 percent of the total number of complaints received by MNHRC refer to land confiscation cases. Complaints about the members of the police force rank second in number; while complaints about the judiciary are the third most numerous.

An investigation team of the MNHRC visited Budidaung Maungdaw in Rakhine State twice in 2017 to check the prison where persons who were arrested in relation to the violence that took place in August 2017 were incarcerated, and the camps for the internally-displaced people and Muslim community. MNHRC recommended that the prisoners be allowed access to their lawyers, and have family visit and health care.

Conclusion

The establishment of the MNHRC is part of the political, economic and social reforms

(Continued on page 15)

Office of the Ombudsman/National Human Rights Institution of Samoa

National Human Rights Institution

The Office of the Ombudsman was established in 1990 by virtue of law to investigate complaints about decisions,¹ actions or inaction of government agencies² in matters of administration. The good governance core function of the Office promotes transparency, accountability, integrity and fairness in public administration.

Based on the findings³ of investigations, the Ombudsman makes recommendations to the government agencies where appropriate to either cancel or vary decisions, rectify omissions, amend law or practices upon which action/inaction was based. The Ombudsman cannot compel the government agencies to implement his recommendations but may report the situation to the Parliament should they fail to do so.

The Samoan Parliament repealed the Office's founding law in 2013⁴ and replaced it with the Ombudsman (Komesina o Sulufaiga) Act 2013. This new Act re-establishes the original good governance function and mandates of the Office with two additional core functions:

1. Promotion and protection of human rights; and
2. Investigation of complaints concerning officers of a disciplined force.

The law includes new provisions on Special Investigation Unit (SIU) that provides the Ombudsman the mandate to function, when necessary, as independent mechanism to investigate and to determine complaints about a police officer, prison officer or officer of a prescribed disciplined force. The purpose of this function is to ensure that complaints against personnel of the disciplined forces are properly investigated and to enhance public confidence in the operations of the agencies exercising the coercive powers of the State. The Office is still growing, with some way to go yet, into this very important new role.

The SIU cannot investigate a matter that is being investigated by a Law Enforcement Force under its own Act unless the Ombudsman has reasons to believe that:

- there is an abuse of process by the Force; or
- there has been an unreasonable delay in the investigation; or
- the matter has not been appropriately investigated.

National Human Rights Institution (NHRI) of Samoa

The Act gives the Office wide-ranging duties and powers to promote and advocate for the protection of human rights in Samoa, qualifying it as a national human rights institution (NHRI). In discharging this duty, the Office carries out the following activities among others:

- conducting a national inquiry into systemic patterns which violates human rights;⁵
- promotion of public awareness through education, outreach programs and dissemination of information;⁶
- monitoring and promotion of compliance with international and domestic human rights laws;⁷
- participation (with the approval of the Court) in Court proceedings as a friend of the court;⁸
- conducting periodic visits to places of voluntary and involuntary confinement or detention (prisons); and
- reporting annually to the Parliament on the status of human rights with a greater impact on the enjoyment and exercising of basic human rights.

Human Rights Advisory Council

An Advisory Council was established following the establishment of the NHRI in 2013. It consists of a body of individuals who are knowledgeable in various areas relating to human rights. They include representatives of groups and organizations of persons with disabilities (PWDs), persons with diverse sexual orientation and gender identity (*Fa'afafine and Fa'atama*),⁹ youth, women, church and community leaders and others. It was established to assist the NHRI in raising awareness on human rights issues in Samoa and to provide feedback on human rights initiatives and work.

Activities

◦ *State of Human Rights Report*

Since its establishment, the NHRI has submitted three *State of Human Rights Reports* (SHRRs) covering the period from its inception up to June 2017. The first report (2015) was the first ever attempt at a comprehensive appraisal of human rights in Samoa, the actualities, the issues and the attitudes. The report highlighted the solid foundation for advances in human rights provided for Samoa by the international human rights instruments and conventions, the Constitution of Samoa (1960) and the *faa-Samoa* or the indigenous cultural practices of the Samoan people. The first SHRR report draws attention also to the pressing human rights issues faced by Samoa's most vulnerable populations including women and children.

The report was informed by discussions in rural consultations carried out in traditional village settings. Participants in these consultations comprised of 47 percent male and 53 percent female.

The second SHRR submitted to Parliament in June 2016 focused on the rights of persons with disabilities (PWDs). The village consultations had 45 percent male and 55 percent female participants. The report covers many aspects of the protection and promotion of the rights of PWDs and points to the most critical issues. The report, tabled in Parliament in September 2016, formed part of the push for the ratification of the Convention on the Rights of Persons with Disabilities (CRPD), which was done in December of the same year.

In June 2017, the NHRI submitted its third SHRR to Parliament on the issues of: (a) Climate Change affecting human rights in Samoa, and (b) Family Violence. With regards to Climate Change, the report looked at the impact of climate change on the full enjoyment of fundamental human rights particularly the rights to life, health, food, water and sanitation, housing, self-determination, meaningful participation, and the right to take part in or participate in cultural practices. The NHRI believes that these rights are extra-territorial, and that nations are bound by treaty and customary law to protect the human rights of people around the world from the effects of climate change.

The 2017 SHRR provided the Parliament with an overview of NHRI National Inquiry into family violence that began in January 2017. The results of the inquiry were reported to the Parliament in June 2018.

◦ *'A' status*

In January 2016, the NHRI submitted its application to the Global Alliance of National Human Rights Institutions (GANHRI) for accreditation as a "Paris Principles"¹⁰ compliant institution. It was graded as "A Status" NHRI in May 2016. Samoa is the first small island state in the region to be awarded "A status" enabling its NHRI to engage with various human rights bodies and to participate in its own right in the proceedings of the United Nations Human Rights Council and its subsidiary bodies.

◦ *Communication and Awareness:*

a. Friendly School

The NHRI implemented its Friendly School Program in 2016 as a direct result of the discoveries of the first SHRR in 2015. An important revelation was confusion among children of their rights and misunderstanding/misinterpretation of the rights of the child by adults. The program aims firstly to increase awareness and understanding of human rights in schools as a first step towards dispelling misconceptions surrounding children's rights. It hopes that increased knowledge on human rights would foster better understanding and instill positive attitudes and respect for

the rights of the child and their application. The program has covered eight schools including private and public primary and secondary schools.

The program extended to the establishment of partnership between the NHRI and the National University of Samoa's Faculty of Education. The partnership targets pre-service and in-service teachers and aims to foster and deepen their understanding of human rights and to better equip them as teachers to generate awareness and appreciation for human rights.

b. Law Enforcement Training

Since 2016, the Office has engaged the Ministry of Police (MOP) and the Samoa Prison Services in ongoing programs such as the Basic Human Rights Trainings for Law Enforcement and Outpost Refresher programs on human rights. The NHRI works closely also with the Community Engagement Unit of Police on community awareness programs conducted for villages.

c. National Inquiry into Family Violence

An important function of the NHRI is to inquire into widespread, systemic or entrenched situations or practices that violate human rights.¹¹ This can take the form of a "National Public Inquiry" which enables the employment of a broad human rights approach and the examination of a large and complex situation where the general public is invited to participate.

Consultations undertaken in 2014 for the first SHRR,¹² and information obtained in preparing ordinary news reports, showed convincingly that violence was the most urgent systemic and widespread violation of human rights among the Samoan population. The NHRI decided to organize an Inquiry in the form of a "national dialogue" on all aspects of the worsening family violence situation in Samoa. The objective was to understand the gravity of the problem and to formulate a strategy and activities in which the people of Samoa could help under the leadership of their national government to combat violence in the Samoan family. The exercise called for extensive public consultations because remedial activities would need to rely heavily on the effective utilization of traditional institutions.

Family violence for purposes of the Inquiry was taken to mean any form of violence a person in a Samoan family setting (small or extended communal unit) experiences from another family member in the form of emotional/physiological, physical and sexual abuse, among others. It includes in addition "any other controlling or abusive behaviour where such conduct harms or may cause imminent harm to the safety, health or wellbeing of a person" as defined in Section 2 of the *Family Safety Act 2013*.

A report on the Inquiry was submitted to the Parliament at the end of June 2018. The report set out the evidence received, analysis of the situation, and recommendations addressed to government, non-governmental

organizations (NGOs), other relevant stakeholders and institutions that exercise power and influence within the community.

A significant educational and awareness-raising component intended to flow from the Inquiry will be rolled out very shortly following submission of the Inquiry report to Parliament.

Working in Collaboration with Key Stakeholders

Networking and partnership plays an important role in the work of the NHRI. It seeks to ensure that its stakeholders which include government ministries, NGOs, and development partners are consulted and given the opportunity to participate in its work. The NHRI is still in its early stages and looks forward to exploring more avenues and opportunities to promote the protection of human rights in Samoa. The NHRI is committed to implementing its three core functions as they are bound by law to do so.

For further information, please contact: Office of the Ombudsman, Central Bank Building L5, Apia, Samoa; ph: + (685)25394/23318; fax: + (685)2186; e-mail: [HYPERLINK "mailto:info@ombudsman.gov.ws"](mailto:info@ombudsman.gov.ws) info@ombudsman.gov.ws; www.ombudsman.gov.ws; Facebook: [facebook.com/NHRIOmbudsmanSAMOA](https://www.facebook.com/NHRIOmbudsmanSAMOA) .

(Continued on page 15)

Bonded Labor in India: Persistent and Difficult

Human Rights Law Network

Bonded labor, a traditional labor system widely practiced in India, was abolished by The Bonded Labour System (Abolition) Act of 1976¹ by declaring that “every bonded labourer shall ... stand freed and discharged from any obligation to render any bonded labour.” (Article 4, Chapter II)

Bonded labor is defined as “service arising out of loan/debt/advance,” in which the “debtor undertakes to mortgage his services or the services of any of his family members to the creditor for a specified or unspecified period with or without wages accompanied by denial of choice of alternative avenues of employment, or [denial of] freedom of [movement].”²

The freedom of the bonded laborer under the 1976 law means extinguishment of liability to repay bonded debt, non-eviction from “homesteads or other residential premises which he was occupying as part of consideration” for the bonded labor, provision of rehabilitation grant, and provision of government support for rehabilitation.³

The law also declared void and inoperative “any custom or tradition or any contract, agreement or other instrument (whether entered into or executed before or after the commencement of this Act),

by virtue of which any person, or any member of the family or dependant of such person, is required to do any work or render any service as a bonded labourer.” (Article 5, Chapter II)

The law has penal provisions for its violation (“imprisonment for a term which may extend to three years and also with a fine which may extend to two thousand rupees”). (Article 16, Chapter XVI)

It obliges both Union and State and governments to take measures to free the bonded laborers and support their rehabilitation. The state government is obliged to “confer such powers and impose such duties on a District Magistrate as may be necessary to ensure that the provisions of this Act are properly carried out.” (Article 10, Chapter IV)

The District Magistrate and officers authorized by him shall inquire on the existence of any bonded labor system and take immediate action to extinguish it, and “promote the welfare of the freed bonded labourer by securing and protecting the economic interests of such bonded labourer so that he may not have any occasion or reason to contract any further bonded debt.” (Article 11, Chapter IV)

The law has important provisions on extinguishing the

bonded labor system and rehabilitating the victims of the system. More than forty years later, however, the bonded labor system has remained part of traditional industries in India including brick kiln factories. Rescue of bonded laborers continues to occur every now and then.

Raj Kumara Sahoo and Bonded Laborers of Jammu-Kashmir⁴

Raj Kumari Sahoo and Niranjana Sahoo married in 2010 and lived together in Jammu while working as bonded laborers in a brick kiln factory. Raj Kumari and Niranjana were kept in captivity as bonded workers in the brick kiln factory for two and a half years, while Niranjana’s “entire family had served as a bonded labour for 10 years” in Jammu.

On 16 June 2012, when they told the owner of the factory of their intention to go home to Chattisgarh the contractor demanded the payment of “three lakhs rupees [300,000 rupees, almost 4,500 US dollars]” and beat them up. Niranjana ran away to seek help. The contractor forced Raj Kumari to go to the house of her son-in-law and later to her house where she was repeatedly raped. She was pregnant at that time. She was beaten up after the rape, causing her to have a miscarriage three days later.

Niranjan reported to the police the physical abuse suffered by Raj Kumari and his son while they were held captive by the contractor. Initial visit by the police (and staff of Child Line, Jammu) at the house of the contractor found Raj Kumari refusing to leave the house and even told them that she went to the place on her own free will. The police raided the house on 17 August 2012 and succeeded in taking her and her son to Neha Ghar, a rehabilitation home under the supervision of the Juvenile Welfare Board. With the help of counseling by Child Line, Jammu, Raj Kumari subsequently told the police that she was threatened by the contractor and her principal employer, her husband was also beaten up and fled Jammu afterward, and she wanted to join her husband.

Raj Kumari filed a first information report (FIR) with the police in New Delhi on 27 August 2012 on the abuse she suffered but was refused.

On 2 September 2012, fifty one bonded laborers were found by the police being transported to an unidentified place and pointed to the contractor and the owner of a brick kiln factory of abusing them as bonded labor. The office of the District Magistrate, Jammu, ordered their freedom and instructed the police to file a case against the contractor and brick kiln factory owner for violating the law.

Along with Swami Agnivesh of the Bandhua Mukti Morcha (Bonded Labour Liberation Front), Raj Kumari filed with the Supreme Court of India on 3 September 2012 a criminal writ petition against the State of

Jammu-Kashmir and the Union of India under Article 32 of the Constitution of India (W.P. [Crl.] No. 000128 / 2012). They pleaded for the “issuance of a writ of mandamus or any other writ, order or directions for conducting an investigation into the case of bonded labour, physical and sexual abuse.” The petition also asked for an order to investigate any other cases of bonded labor in Jammu-Kashmir and for the release and rehabilitation of bonded laborers.

The petition included the allegation that bonded labor had not been addressed by the Union and State governments, and support for those who had been liberated from bonded labor had not been provided to many of them.

They asked the court to order both Union and State governments to fully implement the Bonded Labour System (Abolition) Act, 1976 as amended. The petition remains pending with the Supreme Court.

Persistent Traditional Labor Exploitation System

Eliminating the bonded labor system in India, a very old tradition of labor exploitation, has been very difficult.

The government of India reportedly announced in 2016 a plan to rescue and help all bonded laborers by 2030. However, full compensation to the victims of bonded labor can only be obtained after a criminal conviction of the exploiter. At the current slow and low conviction rate, the supposed millions of bonded

laborers of India have less hope of gaining support after gaining freedom from bonded labor.

As one report states:⁵

Lawyers attribute the low rates of reporting, prosecution and conviction [of bonded labor exploiters] to a lack of awareness of the bonded labour law and policies on rehabilitation, as well as a poorly resourced and under-funded police and judicial system.

Today, many are still working as bonded laborers, while those freed from the system are not guaranteed of support for their rehabilitation. Without rehabilitation, the freedom gained by former bonded laborers may not have much meaning.

This article was prepared in collaboration with Jefferson R. Plantilla of HURIGHTS OSAKA.

The Human Rights Law Network works on access to justice for marginalized individuals and communities, training in human rights law, law reform, monitoring and investigation into human rights abuse and 'know-your-rights' publications.

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(Continued on page 15)

Orang Rimba: Endangered People in Endangered Forest

HURIGHTS OSAKA

In 2014, an Indonesian photographer described the Orang Rimba in the following manner:¹

Orang Rimba is one of the tribe groups living in the depth of forests in Jambi Province (Sumatra, Indonesia). They lead what to some may seem a unique lifestyle owing much to the values and traditions they espouse, which are traced back many centuries ago. The uniqueness in value systems they hold is reflected in their traditions, food they eat, shelters they use to serve as housing, and methods they employ in cultivation. What is most outstanding in their livelihood is the importance they attach to forests, which is the provider of everything to sustain their lives. To them life follows the cycle of nature, mutually beneficial to all elements, humankind, animate and inanimate alike.

It is believed that around 3,500 members of the Orang Rimba live in the Bukit Dua Belas National Park in Jambi province.² But the continuing destruction of the forest in the park to give way to palm plantations and other agricultural activities has endangered the livelihood, culture and social organization of the Orang Rimba.

Forest Laws

The Aliansi Masyarakat Adat Nusantara (AMAN) or Indigenous Peoples Alliance of the Archipelago reported in 2017 to the Human Rights Council³ that the 1999 Indonesian Forestry Law legalized land-grabbing and converted customary forests into state forests. Under this law, the Indonesian government granted concessions to “private companies for mining, logging and plantations in indigenous peoples’ traditional lands in violation of their rights.” The 2014 Law on the Prevention and Eradication of Forest Destruction, on the other hand, “criminalized indigenous peoples living within national parks, protected forests and wild life reservation.”

AMAN pointed out that the Indonesian Constitutional Court⁴ declared in 2012 that these two laws violated the indigenous peoples’ rights. However, these laws have not yet been “amended in order to ensure [the protection of] the rights of indigenous peoples.”⁵

An Educational Response: Pencil as Evil

Saur Marlina Manurung (popularly known as Butet) started to support the Orang Rimba in 1999, as a member of a conservation group (WARSI),⁶ by teaching the indigenous

children how to read and write. She narrated how the Orang Rimba would see the pencil as “evil with spiked eyes” since they “had been cheated out of their land when they were made to sign contracts under false terms.” Her effort to teach the children on how to read and write was rejected by the community. But she persisted and in the⁷

seventh month, her efforts reached a turning point. Three boys went to her. They were 7, 10, and 14 years old and they wanted her to teach them. Seven year old Pendengum Tampung, when he succeeded in reading the word “buku” which means “book” in Bahasa Indonesia, climbed a tree and started screaming to the whole forest, “I can read!” Ten years later, she would witness Pendengum, now a young man, addressing a crowd of hundreds about the human rights of forest people.

She was not confident at the beginning about the wisdom of her educational initiative:⁸

When she started her literacy campaign, she had to ask herself whether the Orang Rimba really needed change and whether this change would preserve or destroy their culture. She realized that her first task was to make them feel proud of themselves, to help them realize that what they have in the jungle is

complete and is of value. She believes she has succeeded in this because none of her students leave their home.

Proper Pedagogy

Butet started her “school for life,” a school that benefits ... the Orang Rimba directly,” adopts their perspective and deals with real situations in life. She learned to respect the views of her “students” who once told her not to stop them from killing a baby bear caught in a trap. They explained:

Ma’am, please don’t say that. If God heard you, he would not send food anymore. What’s in our trap, what’s in front of us, that is food sent by God.

She describes the “school for life”:⁹

My school is not like a regular school. Whenever you have a problem, you make a school for that. If you have a problem with logging, you learn how to chase them away. If you have a problem with diarrhea, you find the sources of information so you can combat diarrhea and teach the community.

The effectiveness of her pedagogy is seen in the following report:¹⁰

The children influence Butet and teach her invaluable pedagogic skills. She starts where they are. She [...] keeps it simple and fun. Far from a rigidly prescribed curriculum, she adopts an organic non-judgmental approach, inventing her own teaching techniques in the field. Realizing that kids learn the sounds of letters first and then



their shapes, she develops a practical reading-writing-counting syllabic method. Butet eventually lets her students teach one another. Surprising results follow. After three months, she takes her best students to other locations to become teachers. When asked what they want to be, many children reply, “a teacher trainee.”

SOKOLA

In 2003, Butet started with several like-minded people a non-governmental organization named Sokola which developed “literacy programs that are responsive to the strict customs, traditions, lifestyles, and development challenges of indigenous and marginalized communities.” Through the years, Sokola expanded by establishing fourteen schools with “eighteen teachers, and thirty volunteers” serving indigenous communities in “ten provinces across Indonesia, including Nanggroe Aceh Darussalam, Jambi, West Sumatra, Java, Sulawesi, Flores, the Mollucas, and Papua [and

involving] ten thousand children and adults.”¹¹

Butet noted that “many of her former students are now community leaders and teachers themselves, including Pengendum, the boy who celebrated reading his first word by climbing a tree.”¹²

Butet was the recipient of the 2014 Ramon Magsaysay Awards for her “ennobling passion to protect and improve the lives of Indonesia’s forest people, and her energizing leadership of volunteers in Sokola’s customized education program that is sensitive to the lifeways of indigenous communities and the development challenges they face.”¹³

For further information, please contact HURIGHTS OSAKA.

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- www.cifor.org/forestsasia/?contestants=orang-rimba-forest-dependent-people-jambi.
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Human Rights Institutions in Asia-Pacific: Brief Review

(Continued from page 3)

Endnotes

- 1 History, Provedor for Human Rights and Justice of Timor-Leste, <http://pdhj.tl/?lang=en>.
- 2 A45, National human rights institutions, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 - Uzbekistan, A/HRC/WG.6/30/UZB/1, 26 February 2018, page 5, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/050/12/PDF/G1805012.pdf?OpenElement>.
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- 11 Fifth Annual Report of the National Institution for Human Rights on the Progress Achieved in the Human Rights Situation in the Kingdom of Bahrain, 2017, page 55, http://www.nihr.org.bh/en/MediaHandler/GenericHandler/documents/download/NIHR_2017_En.pdf.
- 12 Parallel Report submitted by the National Institution for Human Rights, op. cit., page 37.

Myanmar National Human Rights Commission

(Continued from page 6)

that have taken place in the country during the last few years. It also fulfills one of the recommendations under the Universal Periodic Review for Myanmar. In its capacity as an independent national-level

body on human rights, the MNHRC is determined to contribute to that process by taking initiatives and acting proactively to improve the human rights situation in the country.

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Office of the Ombudsman/ National Human Rights Institution of Samoa

(Continued from page 9)

Endnotes

- 1 Including recommendation made to a Minister of Cabinet.
- 2 Officers, employees or members exercising a function or power under a legislation are included in the investigation.
- 3 Section 19 (1) of the Komesina o Sulufaiga (Ombudsman) Act 1989 sets out the conclusions which can be made by the

Ombudsman whether it was wrong in law; or unreasonable, unjust or not in accordance with the rule of law; or mistake of law or was wrong. The corresponding section in the new Ombudsman (Komesina o Sulufaiga) Act 2013 is section 28.

- 4 The new Act commenced on 6 June 2013.
- 5 Section 34 of the Ombudsman (Komesina o Sulufaiga) Act 2013.
- 6 Section 33 (a), *ibid.*
- 7 Section 33 (c), *ibid.*
- 8 Section 33 (d), *ibid.*
- 9 These are preferable cultural identities given to

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- 10 Principles relating to the Status of National Institutions (The Paris Principles), General Assembly resolution 48/134, 20 December 1993, <https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>.
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Bonded Labor in India: Persistent and Difficult

(Continued from page 11)

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- 1 Text of The Bonded Labour System (Abolition) Act, 1976 (ACT NO. 19 OF 1976) taken from [www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_300625.pdf)

[wcms_300625.pdf](http://www.ilo.org/wcms_300625.pdf). All provisions of the law are taken from this source unless indicated otherwise.

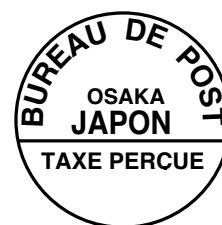
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HURIGHTS OSAKA Calendar

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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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