

ASIA-PACIFIC UPDATE

DECEMBER 2012

TOGETHER FOR JUSTICE

ISSUE 10

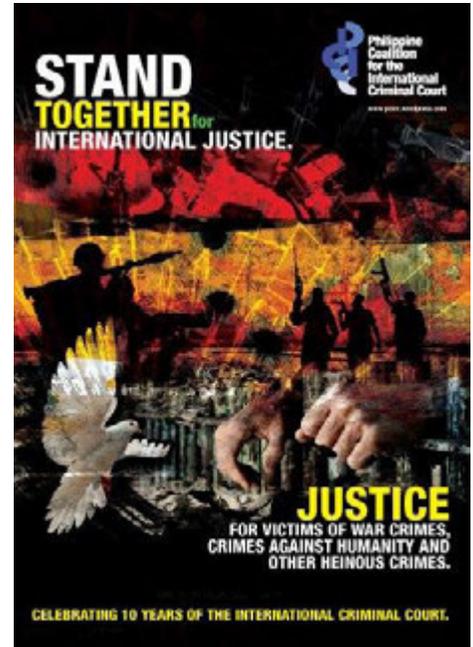
ICC'S 10TH ANNIVERSARY COMMEMORATION IN ASIA

In addition to the major commemoration event hosted by Australia on the International Criminal Court's 10th anniversary in February 2012 in

Sydney, activities were held in other parts of the region throughout the rest of the year.

In the **Philippines**, a flag-raising ceremony held at the Commission on Human Rights (CHR) on 2 July, 2012 kicked off activities in the country. Former Philippine Coalition for the ICC Chair and now CHR Chairperson Loretta Ann P. Rosales reiterated the need to ensure the implementation of the Rome Statute through the review of Republic Act 9851, the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity, enacted on 11 December 2009. She also cited a flagship program of CHR to promote human rights and international humanitarian law in its work on security sector reform as CHR's contribution towards this objective.

Rebecca Desiree E. Lozada, national coordinator of the Philippine Coalition for the ICC (PCICC), said her organization would co-sponsor with CHR, government agencies and civil society organizations various forums and events that would study ways and means to implement the Rome Statute locally and to strengthen cooperation with the ICC. Lozada also called on congress to prioritize the bills on the domestic implementation of the Rome Statute to strengthen international humanitarian law, bills on enforced disappearance and on the conscription and enlistment of children in armed conflict.



10th Anniversary commemorative poster published by the Philippine Coalition for the ICC. Photo: Philippine Coalition for the ICC

Lozada stressed the need to review the Witness Protection Act and Program to include the effective protection of victims and witnesses and ensure their participation in legal proceedings as embodied in Article 68 of the Rome Statute of the ICC.

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Participants to the Commemoration of ICC's 10th Anniversary held in Phnom Penh, Cambodia on 2 July 2012 organized by ADHOC. Photo: CICC-Asia.

LETTER FROM THE COALITION'S REGIONAL COORDINATOR FOR ASIA-PACIFIC, EVELYN BALAIS-SERRANO

This issue of the Asia-Pacific Update covers the second semester of 2012. Commemoration of the ICC's 10th anniversary continued from the major event which took place in Sydney, Australia in February to various kinds of activities from July through December in the Philippines, Indonesia, Nepal, Cambodia, Malaysia, Singapore and Timor Leste.

The first Association of Southeast Asian Nations (ASEAN) Human Rights Declaration was adopted during its summit in November in Phnom Penh, Cambodia. However, civil society in the region rejected it for lack of transparency and participation in the process and for not meeting international human rights standards. They pledged to continue with their advocacy for substantial changes to the declaration. Leadership in the ASEAN's secretariat was passed on from Thailand to Vietnam and chairmanship of the body

from Cambodia to Brunei Darussalam. New members of the ASEAN Inter-Governmental Commission on Human Rights were also appointed during this period. With these changes, we hope there will also be some changes in the ASEAN's dynamics, with civil society actively asserting its role in the region.

The Universal Periodic Review of the UN's Human Rights Council, the Universal Ratification Campaign of the Coalition, the demarches by the European Union and its member states and the national and regional campaigns continue to call for more ratifications and effective implementation of the Rome Statute especially in regions underrepresented at the Court. While no ratification from the region took place in 2012, we hope that 2013 will bring more Asian and Pacific voices to the ICC, in particular Indonesia, followed by several Pacific countries.



Evelyn Balais-Serrano with Dr. Jose Ramos Horta in Dili, Timor Leste (See story on Mission to Timor Leste on page 8) Photo: CICC Asia

For comments and/or suggestions on any of the articles in this issue or for future publications, please send a message to serrano@coalitionfortheicc.org. ■

ICC'S 10TH ANNIVERSARY... CONTINUED FROM PAGE 1

Other activities included: a flag-raising ceremony at the Department of National Defense on 12 August 2012, with PCICC board member Harry Roque as guest speaker; a roundtable discussion on the International humanitarian law (IHL) and the ICC on 14 August 2012; a forum on the Lubanga case verdict on 17 July 2012; and a fun run for IHL and ICC which included the launch of the ICC Jeep. The culminating activity was the holding of the second IHL National Summit held in Malacanang Palace on 11 December 2012. (A separate article on this activity is found on page 7.)

In **Cambodia**, a conference on the commemoration of the ICC's 10th anniversary was held on 2 July 2012. The activity was organized by the Cambodian Human Rights and Development Association (ADHOC), the Coalition's focal point in Cambodia.

Cambodia was the first country in Southeast Asia to sign the Rome Statute on 23 October 2000, ratifying it on 11 April 2002. At the conference, participants called on the Cambodian government, as a founding member of the ICC and as the incumbent ASEAN chair:

- To advocate to other ASEAN countries the ratification of the Rome Statute;
- To fully implement the Rome Statute into domestic legislation and to improve the implementation of provision on crimes against humanity and war crimes;
- To integrate legislation on cooperation with the ICC in the new Criminal Procedural Code or draft and adopt a separate law;
- To ratify the amendment to the Rome Statute dealing with the crime of aggression; and
- To accede to the Agreement on Privileges and Immunities of the Court (APIC) so that the Court's officials can carry out their functions in an effective and independent manner.

In Singapore, Malaysia, Afghanistan, and Cambodia, the Coalition's focal points issued press statements to commemorate the anniversary.

Indonesia

To commemorate the ICC's 10th Anniversary, a national seminar on the ICC was jointly organized on 17 July 2012 in Jakarta by the Indo-

nesian Civil Society Coalition for the ICC and the Commission on Human Rights (Komnas HAM), supported by the European Commission. The keynote address was delivered by Prof. Dr. Moh. Machfud MD, chairman of the Constitutional Court. Other speakers included Ihdhal Kasim, SH, chairman of Komnas HAM; Prof. Dr. Harkristuti Harkrisnowo, directorate general of the Ministry of Law and Human Rights; Anshor Mohammad, Ministry of Foreign Affairs and Mugiyanto, convenor of the Indonesian Civil Society Coalition for the ICC. Representatives from the government, parliament, academics, NGOs, victims groups, journalists and the diplomatic community participated in the seminar.

On 10 December, Human Rights Day, the Indonesian Coalition's article highlighting the ICC's 10th anniversary and why Indonesia should join the Court was published in the *Jakarta Post*, the leading English language newspaper in the country.

Nepal

On 16 July 2012, on the occasion of the International Justice Day, FOHRID released the "Bill Relating to the Prohibition of Impunity" as a

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model for domestication of the Rome Statute once Nepal becomes party to it. After the House of Representatives directed the government to ratify the Rome Statute in 2006, FOHRID conducted research and came up with the initial draft of this model bill for domestication of the Rome Statute. However, it is unfortunate that the ratification has stalled due to political crisis.

In a press statement released for this occasion, FOHRID called on the government of Nepal to recall the directive resolution and ratify the Rome Statute.

It stated: "We would like to recall commitments

by the eight political parties, and the Government for providing guarantee to good governance, ending impunity, establishing democratic norms and values, and governance based on principles of the rule of law expressed through formal documents like the Comprehensive Peace Accord-2006, Interim Constitution-2007 and the Common Minimum Programme of the Interim Government-2007. For effective implementation of such commitments, Nepal's involvement in the ICC is a must and for which the House of Representatives restored with the mandate of Popular Uprising had unanimously endorsed the resolution. Immediate implement-

tation of that resolution is the way to establish political stance to those commitments. Therefore, we urge the Prime Minister and Ministers to coordinate among ministries, to hold discussion in the meeting of the Council of Ministers and to forward the process for accession to the Rome Statute. Considering that the parliamentary directive to this effect still remains unrealized, we request all the stakeholders to stir and exert more intensive pressure on the executive to accede to the Rome Statute of the ICC. We call on the political parties to prioritize the issue at political level to speed up the accession process." ■

ICC'S 10TH ANNIVERSARY PHOTOS



National seminar on the ICC held in Jakarta on 17 July to commemorate International Justice Day and to highlight ICC's 10th anniversary organized by the Indonesian Coalition for the ICC (ICICC). Photo: ICICC



Rally held in Kathmandu, Nepal to pressure the government to hasten the process of accession to the Rome Statute of the ICC. Photo: FOHRID



Flag raising ceremony at the Philippine Department of National Defense on 12 August 2012 Photo: PCICC



The Philippine Coalition for the ICC's 'Justice Jeep,' that plied Metro Manila's streets during the whole month of July bringing the calls to stop impunity and to stand together for justice to the various ICC stakeholders in the country. Photo: PCICC



Atty. Harry Roque, co-chair of PCICC, delivering the keynote address at the second National IHL Summit held on December 11, 2012 at Malacanang Palace. Photo: PCICC



A toast to the ICC on its 10th year, led by PCICC Co-Chair Prof. Raul Pangalangan at the closing of the roundtable discussion on the ICC organized by the PCICC.

11TH SESSION OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT



At the opening of the 11th Session of the ASP in The Hague.
Photo: Roberta Celi, CICC

The 11th session of the Assembly of States Parties (ASP) of the International Criminal Court was held on 14-21 November 2012 in The Hague. The opening of the session was preceded by the commemoration of the 10th anniversary of the entry into force of the Rome Statute at the Knight's Hall, with the presence of Queen Beatrix of the Netherlands. Remarks were made by Frans Timmermans, Minister of Foreign Affairs of the Netherlands; Tiina Intelmann, president of the ASP; Judge Sang-Hyun Song, president of the ICC; and Kon Kelei, former child soldier. The Assembly adopted eight resolutions: on complementarity, cooperation, the independent oversight mechanism, the permanent premises, victims and reparations, amendments to the Rules of Procedure and Evidence, the "omnibus" resolution and the 2013 budget. It also adopted a recommendation concerning the election of the registrar.

In the resolution on complementarity, the Assembly resolved to strengthen effective domestic implementation of the Rome Statute and enhance the capacity of national jurisdictions to prosecute the most serious crimes of international concern. It also welcomed the international community's engagement in strengthening the capacity of domestic jurisdictions to enable states to genuinely prosecute Rome Statute crimes.

The resolution on cooperation stressed the importance of timely and effective cooperation and assistance from states parties and other states under an obligation or encouraged to cooperate with the Court, as well as of identification, trac-

ing and freezing of assets.

In the resolution on the permanent premises, the Assembly welcomed the completion of the awards stage and the beginning of construction on 1 October 2012. The Assembly also decided to extend the deadline for states parties to select the option of a one-time payment to cover the cost of their contribution to the permanent premises until 31 December 2014.

The resolution on the independent oversight mechanism recognized the importance of a fully operational independent oversight mechanism and decided to continue discussions on the issue.

In the resolution on victims and reparations, the Assembly expressed concern over the continued backlog on processing of victims' participation applications and requested the Court and the Bureau to address the issue in the course of the coming year. It also recalled the need for the Court to ensure that coherent principles relating to reparations continue to be established in accordance with the Rome Statute.

The Assembly also adopted the omnibus resolution, which, inter alia, contained the terms of reference that shall govern the work of the Working Group on Amendments, a subsidiary body of the Assembly mandated to consider amendments to the Rome Statute and to the Rules of Procedure and Evidence.

The amendment to the Rules of Procedure and Evidence added a new rule, 132*bis*, which provides for a Trial Chamber designating one or more of its members for the purposes of ensuring the preparation of the trial.

The Assembly approved, by consensus, appropriations totaling €115,620,300, with €115,120,300 for the budget and €500,000 to replenish the

Contingency Fund. Furthermore, the Assembly approved a staffing level of 766.

The host state made a commitment to pay 50 percent of the rent of the interim premises, an amount of up to €3 million per year from 2013 to 2015. For 2013, in addition to the contribution of the host state, Mexico made a contribution to the cost of the rent. The Court is expected to move to its permanent premises in December 2015.

The Assembly of States Parties will hold its 12th session from 20-28 November 2013 in The Hague, the Netherlands.

Other highlights of ASP 11

The Assembly elected a number of ICC officials. After five rounds of voting, James Stewart of Canada was elected as the Court's deputy prosecutor. He will oversee the prosecution division of the Office of the Prosecutor. States parties elected nine members of the newly established Advisory Committee on Nominations—a standing body of independent experts mandated to facilitate the election of the highest-qualified individuals as ICC judges—and five members of the Board of Directors of the Trust Fund for Victims.

Over 150 NGOs around the world attended the Assembly, making statements during the general debate and participating in side events, including many organized by the Coalition and its members. These allow civil society, governments, ICC officials and others to discuss important issues relevant to the ICC and the Rome Statute system. The Coalition also hosted a meeting with Brigid Inder, executive director of the Women's Initiatives for Gender Justice and the new OTP special gender advisor, as well as with ICC President Judge Sang-Hyun Song and Prosecutor Fatou Bensouda.

An Asia-Pacific government and NGO meeting was also held during the ASP, with representatives from China, Japan, Korea, Indonesia, Laos, Philippines, Australia, Netherlands, Switzerland and Malaysia, as well as international organizations, including Human Rights Watch, Amnesty International, Parliamentarians for Global Action and REDRESS. ICC President Song, his chief of staff and external relation advisor also participated in the discussion. ■

UN GENERAL ASSEMBLY ELECTS 18 COUNTRIES, 3 FROM ASIA, TO SERVE AT THE HUMAN RIGHTS COUNCIL

The United Nations (UN) General Assembly elected 18 countries on 12 November 2012 to serve at the UN Human Rights Council (HRC) for three years beginning on 1 January 2013. The newly elected countries are Argentina, Brazil, Côte d'Ivoire, Estonia, Ethiopia, Gabon, Germany, Ireland, Japan, Kazakhstan, Kenya, Montenegro, Pakistan, Republic of Korea, Sierra Leone, United Arab Emirates, United States and Venezuela. They were elected by secret ballot during elections held at UN Headquarters in New York.

Members of the Council serve for a period of three years and are not eligible for immediate re-election after serving two consecutive terms.

The Council, composed of 47 members, is an

inter-governmental body within the UN system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and making recommendations on them.

All of its members are elected by the world body's General Assembly, and it has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year. It meets at the UN Office in Geneva.

The Council's membership is based on equitable geographical distribution and seats are distributed as follows: 13 seats for African states, 13 seats for Asian states, eight seats for Latin

American and Caribbean states, seven seats for Western European and other states, and six seats for Eastern European states.

The other members of the Council and the end of their terms are Angola (2013), Austria (2014), Benin (2014), Botswana (2014), Burkina Faso (2014), Chile (2014), Congo (2014), Costa Rica (2014), Czech Republic (2014), Ecuador (2013), Guatemala (2013), India (2014), Indonesia (2014), Italy (2014), Kuwait (2014), Libya (2013), Malaysia (2013), Maldives (2013), Mauritania (2013), Peru (2014), Philippines (2014), Poland (2013), Qatar (2013), Republic of Moldova (2013), Romania (2014), Spain (2013), Switzerland (2013), Thailand (2013) and Uganda (2013). ■

CIVIL SOCIETY ORGANIZATIONS REJECT HUMAN RIGHTS DECLARATION ADOPTED AT THE ASEAN SUMMIT

The ASEAN Human Rights Declaration (AHRD) was adopted at the ASEAN Summit held in Phnom Penh, Cambodia on 18-20 November 2012, despite the fact that civil society organizations in Southeast Asia, international human rights organizations and other human rights experts—including UN High Commissioner for Human Rights Navi Pillay—had urged ASEAN to take more time to develop the document and ensure that it is in keeping with international human rights law and standards.

The civil society joint statement released on 13 September 2012 carried in-depth comments and recommendations. Among others, it cited that “the draft AHRD dated 23 June 2012 contains major flaws that would prevent it from providing robust protection of

human rights for the people of ASEAN.” (*Civil Society Joint Statement, 13 September 2012 – hronlineph.com/2012/09/13/statement-asean-human-rights-declaration-must-not-provide-protections-lower-than-international-human-rights-law-and-standards/*)

In the Philippines, on 9 November 2012, barely a few days prior to the adoption of the AHRD, women from various groups mobilized in front of the Department of Foreign Affairs and the embassy of Cambodia to call on the two governments to take heed and reflect the concerns of women in the Declaration. The group represents Philwomen on the ASEAN, a network of around 80 organizations that work together for women's rights and gender equality in the ASEAN.

While the mobilization was going on,

representatives of the group went to the office of Foreign Affairs Secretary Albert F. Del Rosario to give their position paper on the AHRD, titled, “A Challenge to ASEAN: Be at the Forefront of Human Rights Building in Southeast Asia.” A copy of the same position paper was also handed to the embassy of Cambodia. Philwomen on the ASEAN challenged the Philippine and Cambodian governments to enjoin ASEAN member states in ensuring that the ASEAN Declaration will uphold the standard of universality and non-discrimination of the Universal Declaration of Human Rights.

Right after the adoption of the AHRD at the ASEAN Summit, 55 civil society organizations in Southeast Asian countries released a joint statement rejecting the declaration. ■

21ST ASEAN SUMMIT HELD

The Association of Southeast Asian Nations (ASEAN) Summit held from 15 to 20 November 2012 at the Peace Palace in the western part of Phnom Penh yielded some major results.

ASEAN leaders succeeded in persuading their top trading partners to start negotiations on the Regional Comprehensive Economic Partner-

ship (RCEP) to create the world's largest trading bloc. ASEAN's six major trading partners (China, Japan, India, South Korea, Australia and New Zealand) agreed to create a trading bloc that will comprise more than three billion people with a combined GDP of US\$15 trillion, roughly equal to that of the United States.

During the summit, there was a global dialogue between ASEAN leaders with the heads of world financial institutions, including Asia Development Bank President Haruhiko Kuroda, IMF Managing Director Christine Lagarde, World Bank Managing Director Caroline Anstey, UN Conference on Trade and Development Sec-

ASEAN SUMMIT... CONTINUED FROM PAGE 5

retary General Supachai Panitchpakdi and World Trade Organization Director-General Pascal Lamy. The leaders of financial institutions agreed that ASEAN had shown itself to be resilient amid the global financial crisis, becoming a model for other economic zones. ASEAN leaders adopted the ASEAN Human Rights Declaration (AHRD), despite earlier recommendations from civil society organizations and other stakeholders that a longer time might

be needed to ensure that the document would be in keeping with universal standards of human rights and humanitarian laws.

Towards the end of the closing ceremony, Cambodian Prime Minister Hun Sen presented the gavel to Brunei Darussalam Sultan Hassanal Bolkiah to mark the handover of ASEAN's rotating chair from Cambodia to Brunei, starting on 1 January 2013. Sultan Bolkiah said it would be the fourth

time that Brunei would hold the ASEAN's chair, and that the nation had chosen a motto of "Our People, Our Future Together" for ASEAN for 2013. The term of ASEAN Secretary General Surin Pitsuwan of Thailand also came to an end. He will be replaced by Vietnamese Deputy Foreign Minister Le Luong Minh, who has been endorsed by the ASEAN's member nations. Minh has served as an ambassador to the United Nations. ■

AICHR GETS NEW MEMBERS



Rafendi Djamin, re-elected representative from Indonesia. Photo: UNSW

Some ASEAN member-countries are either selecting or electing their new representatives to the ASEAN Intergovernmental Commission on Human Rights (AICHR).

Thailand selected international law expert Seree Nonthasoot as the new Thai representative to the AICHR for the 2013-2015 term. He was

chosen for his solid background in human rights law, diplomatic sources said.

Indonesia re-elected Rafendi Djamin, a veteran human rights defender and the first AICHR representative. He competed with well-known human rights lawyer Todung Mulya Lubis for the nomination.

Singapore appointed Ambassador-at-Large Chan Heng Chee to replace Richard Magnus as its representative to the AICHR.

Myanmar's representative was also to be replaced, as was Cambodia's but the names of the new representatives have yet to be announced. Malaysia, Brunei and the Philippines were expected

to retain their current representatives. There has been no news about Laos' AICHR replacement.

The AICHR, an overarching institution to promote and protect human rights in the region but with no punitive measures at hand, will face increasing challenges for the next three years as the ASEAN converges into one community and cross-border human rights issues are likely to become more prevalent. There are already several reports of human rights abuses in Burma (Myanmar), particularly in relation to the Rohingya issue and Kachin armed conflict. In Laos, well-known educator Sombath Somphone is missing and issues related to the Mekong dam's construction are becoming notorious. ■

DHAKA CONSENSUS: REGIONAL INITIATIVE FOR SOUTH ASIA HUMAN RIGHTS MECHANISM

A national consultation on a South Asia Human Rights Mechanism was held in Dhaka, Bangladesh on 3-4 December 2012.

This consultation was organized by the Regional Initiative for a South Asian Human Rights Mechanism, a network of individuals and organizations which aims to create an environment conducive to the establishment of a South Asia Human Rights Mechanism. More than a hundred representatives of NGOs, academia, journalists and other professionals from countries in South Asia participated in the meeting.

The consultation was a follow-up to the first meeting held in New Delhi, India on 19-20

July 2012. FORUM-ASIA, a Coalition for the ICC Steering Committee member acts as secretariat of the network.

A task force comprised of six eminent persons from the region is providing leadership to this initiative: Sima Simar (Afghanistan), Mizanur Rahman (Bangladesh), Richen Chopel (Bhutan), Miloon Kothari (India), Subodh Pyakurel (Nepal) and Hina Jilani (Pakistan).

As an outcome of the consultation, a core group was created comprised of the following: Prof. Mizanur Rahman, Sultana Kamal (Bangladesh), Hameeda Hussain, Saiduzzaman, Rasheda K. Chowdhury, Mahfuz Anam and Mahiuddin Ahmed. It was tasked to carry

out future advocacy activities of the initiative. It was also agreed that a concept note will be prepared to "foster the national level advocacy and campaign activities in Bangladesh. It will contain the rationale and the urgency of the need to establish a regional mechanism for which interventions at the regional as well as national level have become indispensable; the expectations of the people from the region and from Bangladesh from such mechanism; the potential impact of such an initiative on the practices of states and strengthening of regional cooperation amongst state institutions in resolving human rights issues of common

DHAKA CONSENSUS... CONTINUED FROM PAGE 6

concern and the lessons that can be drawn from other regional human rights mechanisms.”

The concept note will also identify themes such as women and children, including traf-

ficking, rights of migrant workers with a focus on women as migrants, right to food, climate justice, equitable utilization of common natural resources, social exclusion and marginalization of communities, increased people to people mobility and others.

The Dhaka Consensus document was handed over by a delegation from the group to Dipu Moni, the foreign minister of Bangladesh, on 6 December 2012. ■

UNIVERSAL PERIODIC REVIEW SRI LANKA

Background

The Universal Periodic Review (UPR) was established by the United Nations (UN) General Assembly in 2006 as a process through which the human rights records of UN member states could be reviewed and assessed. Conducted through the UN Human Rights Council (HRC), the review is based on human rights obligations and commitments expressed in the UN Charter, the Universal Declaration of Human Rights and human rights instruments to which the state is party. Individual countries are slated for review every four years. UPR sessions take place at the HRC in Geneva and are framed by reports submitted by the governments as well as recommendations made by all states to the state under review. The review is conducted by a troika of three countries. UPR sessions also provide an opportunity for civil society organizations to monitor the compliance of states and present their own submissions.

Sri Lanka reported that it has formulated a National Action Plan for the Promotion and Protection of Human Rights (NHRAP) after the first UPR. The NHRAP addresses eight thematic areas—civil and political and economic, social and cultural rights, women, children, labor, internally displaced persons and migrant workers rights, and the prevention of torture. A working committee was established to respond to cases of disappearances. In May 2012, a task force headed by the secretary to the president was created to monitor the implementation of the Lessons Learnt and Reconciliation Commission (LLRC) and in July, a matrix containing the National Plan of Action to implement the LLRC recommendations was approved setting out the main focus areas for implementation. Accordingly, the implemented areas of the LLRC recommendations include, among others, a centralized database of missing persons, screening detainees to

identify those with special needs, examination of cases of young ex-combatants, establishing a task force to develop and implement a child-tracing program and ensuring freedom of movement for media in the north and east.

The Sri Lanka delegation further reported positive developments in the country. This includes the figures on supposed rehabilitated and reintegrated former Liberation Tigers of Tamil Eelam (LTTE) child soldiers and resettlement of internally displaced persons. In addition, it was reported that military strength has been reduced in the north and that there is no longer an intrusive military presence in Jaffna or the Wannai. In terms of Millenium Development Goals, Sri Lanka said that it is on track to reach most of the indicators and that among its notable achievements are equitable primary education, reduction in child and maternal mortality, access to safe drinking water and literacy.

The states participating in the dialogue posed a series of recommendations to Sri Lanka pertaining to the following issues, among others:

- Implementing fully the recommendations of the LLRC and investigating fully and transparently alleged grave breaches of international humanitarian law during the conflict;
- Strengthening of legislations to ensure transparency and non-impunity on all alleged enforced disappearances;
- Continuing efforts to combat impunity in relation to the past conflict;
- Developing a comprehensive policy with regard to all aspects of internal displacement, and creating a mechanism to address cases of the missing and detained;
- Adopting further measures to prevent torture and ill treatment, particularly in pris-

ons and detention centers, and establishing a central register for all persons missing or in custody accessible to family members and legal representatives;

- Adopting a national policy on the protection of human rights defenders and journalists in order to prevent harassment and intimidation;
- Respecting the independence of the judiciary;
- Intensifying policies and programs to ensure the protection of women and children and ensuring that all acts of violence against women and children and ensuring that all acts of violence against women are criminalized;
- Ensuring that those responsible for crimes against children, including recruitment of child soldiers, are brought to justice;
- Extending an invitation to the Special Procedures;
- Ratification of human rights instruments: the second Optional Protocol to the IC-CPR, the Convention on the Rights of Persons with Disabilities, the Convention on Enforced Disappearances, the Rome Statute of the ICC and the OPCAT.

The 99 countries present made a total of 210 recommendations. Sri Lanka accepted 110 of these recommendations and rejected 100. Included in the rejected recommendations are the ratification of the Rome Statute and crafting of a law on cooperation between the state and the ICC, accession to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signing the International Convention on the Protection of All Persons from Enforced Disappearance and abolishing death penalty. ■

Country Updates

PHILIPPINES

SECOND NATIONAL IHL SUMMIT HELD

The Philippine government through the Presidential Human Rights Committee (PHRC) hosted the second International Humanitarian Law (IHL) Summit in Malacanang Palace on 11 December 2012, co-sponsored by the Commission on Human Rights (CHR), the Philippine Coalition for the International Criminal Court (PCICC) and the E0 134 Ad Hoc Committee (headed jointly by the Department of Foreign Affairs and the Department of National Defense). Other government agencies, non-government organizations, the diplomatic community and civil society organizations participated in the summit. With the theme “Towards a Philippine Program of Action on Effecting International Humanitarian Law”, the discussions focused on how the country can strengthen its commitment to international law. The summit called on the following:

1. On the major parties to the armed conflicts in the Philippines namely the Government of the Republic of the Philippines-Armed Forces of the Philippines (GRP-AFP), the Communist Party of the Philippines-New Peoples' Army- National Democratic Front (CPP-NPA-NDF), the Moro Islamic Liberation Front (MILF) and the Moro National Liberation Front (MNLF)— to bring into force, by means of special agreements in the context of the peace process, those international conventions to the extent appropriate to their respective armed conflicts;
2. On the Commission on Human Rights to seriously consider adopting a policy of accepting, investigating and processing complaints of IHL violations;



Some participants to the second National IHL Summit held on 11 December 2012 at Malacanang Palace.

3. On civil society to continue to play the important role of a neutral and impartial civil society in the promotion, respect and implementation of IHL in the Philippines;
4. On the Philippine government and the Philippine congress to ensure the harmonization of international and domestic legislation on IHL; and
5. On all sectors of Philippine society to work together to achieve the recommendations of this National Summit and work towards the creation of a national action plan for IHL.

Among the developments from the first to the second summit are as follows:

1. The passage of the Philippine IHL Law, Republic Act (RA) No. 9851 - An Act Defining And Penalizing Crimes Against International Humanitarian Law, Genocide And Other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, And For Related Purposes. Enacted in 2009 December, RA 9851 covers war crimes, crimes against humanity and genocide, with the first two including gender-based and sexual crimes, and provides for

- a qualified form of universal jurisdiction;
2. The Philippines ratified the Rome Statute of the ICC and this came into force in 2011 November;
3. The adoption of the Philippine National Action Plan on UN Security Council Resolutions 1325 and 1820 in 2010 to ensure protection of women's rights in situations of armed conflict;
4. The adoption of the Armed Forces of the Philippines of the 2011-2016 Internal Peace and Security Plan called Bayanihan that includes zero tolerance for human rights and IHL violations as a guiding principle; and
5. The newly-signed framework of the peace agreement between the Philippine government and the Moro Islamic Liberation Front (MILF).

The above developments pave the way for ending impunity and for a new culture of accountability in the Philippines. But there are still many gaps and limitations in IHL compliance. For one, a national program of action which will unite and invigorate the efforts of all stakeholders has yet to be crafted. ■

INDONESIA

TO RATIFY ROME STATUTE IN 2013

Indonesia has stated its commitment to ratify the Rome Statute of the International Criminal Court (ICC) since 1998, but has yet to do so.

Indonesia sent its delegation to participate in the Diplomatic Conference in Rome in July 1998 where H. E. Muladi, then the minister of Justice and head of the delegation, stated the country's

support for the adoption of the Rome Statute and the establishment of the ICC. During the conference, Muladi stated:

“By way of conclusion, I wish to express that the participation of Indonesia in this conference is to fulfill its obligation as mandated by its 1945 Constitution. The preamble of the Constitu-

tion clearly stipulated that acts which are not in conformity with humanity and justice should be abolished, and Indonesia should contribute to the establishment of a world order based on freedom, genuine peace and social justice. Accordingly, I wish to pledge the unwavering support and cooperation of the Indonesian government to make the International Court a reality.”

INDONESIA..... CONTINUED FROM PAGE 8

However, Indonesia did not fulfill its pledge to ratify the Statute as part of its 2004-2009 National Action Plan on Human Rights (RANHAM). In 2004, then President Megawati Sukarnoputri officiated the RANHAM from 2004-2009, where it was declared that Indonesia would ratify the Rome Statute in 2008. A national committee assigned to implement the RANHAM was established. The government in several occasions claimed that the Statute was still under review and that national legislation in cooperation with the ICC had to be drafted prior to ratification. When 2009 came to a close without ICC ratification, NGOs and other stakeholders successfully advocated that ICC ratification once again be included in its RANHAM for 2010-2015.

Based on the "Progress Report" prepared by the Indonesian Civil Society Coalition for the ICC and which came out in 2012 November "...the plan for ratification did not take place for many reasons, for instance, the misconception or exaggerated apprehension about the Court. Some groups (e.g. the Indonesian National Defense Forces) believe that the Court is going to prosecute past human rights violations cases; there were also concerns over the implementation of the complementarity principle, the power of the UN Security Council in the ICC, as well as the Court's jurisdiction on the crimes of aggression. All of these were also viewed by some to jeop-

ardize the US-Indonesia relationship. Thus, it is better for Indonesia to ratify the Statute once all domestic legal instruments are in place."

The above mentioned document further cites that lead government agencies continue to be disunited on the matter. The Ministry of Defense and the Indonesian National Defense Forces are persistently against while the Ministry of Law and Human Rights and the Ministry of Foreign Affairs expressed their support and agreement in favor of ratification.

In the meantime, the Ministry of Law and Human Rights have prepared an academic paper and draft bill but these are still under review and open for revision. Once again, the ratification of the Statute has been pushed to 2013. The Ministry of Defense, the agency which opposes the ratification most, has never come out with its official stand. Minister Purnomo Yusgiantoro, the Minister of Defense, stated that the Ministry will support the ratification if this is the government's official stand.

In mid-July 2012, the Ministry of Foreign Affairs and the Ministry of Law and Human Rights revealed that it was necessary to revisit the academic paper and the draft bill for ratification. The Civil Society Coalition for the ICC was informed that "due to the changes in the Indo-

nesian legislation structure, the academic paper and draft bill prepared earlier had to be revised."

On the other hand, many government agencies support the ratification of the Statute. Aside from those mentioned above are the National Commission on Human Rights (Komnas HAM) which has been supportive from the beginning, Commission 1 of the parliament, which is responsible for international relations and ratification of international agreements and the Constitutional Court. A number of scholars and professors are also supportive of the ratification.

International support for Indonesia to ratify the Rome Statute continues. During the second cycle of the Universal Periodic Review (UPR) in 2012 May, 14 countries recommended that Indonesia ratify the Statute. Indonesia responded that it will continue to implement its RANHAM.

Despite the years of postponement, the Indonesian Civil Society Coalition for the ICC is confident that Indonesia will ratify the Rome Statute in 2013 or before the end of President Susilo Bambang Yudhoyono's term in 2014. The Coalition for the ICC believes that with the intensified lobbying and campaign within the country coupled with international support, Indonesia will finally fulfill its long-drawn out commitment to ratifying the Rome Statute of the ICC. ■

MALAYSIA

MALAYSIA MOVES TO ABOLISH DEATH PENALTY

In its 2009 Universal Periodic Review report to the United Nations (UN) Human Rights Council, Malaysia declared that it was proposing to amend "existing anti-drug trafficking legislation to reduce the maximum sentence to life imprisonment" from a mandatory death penalty which is currently practiced in the country. A couple of months ago, Datuk Seri Nazri Aziz, minister in the prime minister's department said that Malaysia is considering the withdrawal of the mandatory death sentence for drug offenses and replacing it with jail terms. He also said he will be moving the Malaysian Cabinet to defer the death sentences passed on 675 convicted drug traffickers while the government reviews the death penalty for drug offences.

Similarly, Attorney General Tan Sri Abdul Gani Patail said that his chamber was working towards proposing an amendment to the Dangerous Drugs Act 1952 to give judges the discretion of not imposing death sentences on couriers.

In March 2012, Home Minister Hishammuddin Hussein reported to the parliament that the mandatory death penalty failed to act as a deterrent. Police statistics on the arrest of drug dealers under Section 39B of the Dangerous Drugs Act 1952, which carries the mandatory death penalty, showed an increase for the past three years (2009-2011): 2,955 were arrested in 2009, 3,700 in 2010 and 3,845 in 2011. Presently, there are about 900 people on death row in Malaysia.

The Malaysian Human Rights Commission (SUHAKAM) has called on Malaysia to join the other 140 UN member states to completely abolish the death penalty. The UN General Assembly has adopted Resolutions 2007, 2008 and 2010 calling for a moratorium on executions, with a view to eventually abolishing the death penalty.

Early this year, Malaysia began commuting death sentences. Five Filipinos on death row had their sentences commuted to prison terms. This may prove to be an initial step towards the commutation of the sentences of all persons currently on death row and eventually, towards the complete abolition of death penalty in the country. ■

BURMA

ROUGH ROAD ON TRANSITION TO DEMOCRACY

With the ascendancy of President Thein Sein in 2011 and the overwhelming victory of the National League for Democracy (NLD) during the national elections in April 2012, raising NLD officers and members to the parliament, including the Nobel Laureate Aung San Suu Kyi—the world started to eagerly watch Burma on its expected transition toward democracy. However, the country continues to be extremely challenged as it faces historically entrenched problems.

Conflict between government and Kachin Independence Army (KIA)

The KIA continues to fight “for their basic rights and for greater autonomy” in a bloody war against the government’s army after the ceasefire between the two groups broke down in June 2011. Tens of thousands of internally displaced persons have sought refuge near Laiza since then.

The Kachin remains the only major ethnic rebel group which has not reached a ceasefire agreement with President Thein Sein’s government. Fighting erupted in Kachin state in June 2011 after the KIA refused to abandon a strategic base near a hydropower plant. From time to time, the KIA and government troops have been fighting since then. Their battleground is a remote, inaccessible area. With the still powerful military, it is believed that President Sein’s order to stop offensive operations towards the end of 2011 was not obeyed.

“The military has given assurances that they are not launching an offensive against the KIA headquarters at Laiza,” Zaw Htay told the Associated Press. “The aircraft activities are mainly to send supplies to troops in Lajayang military camp, which has run out of food supplies.”

Lajayang is about 10 kilometers (six miles) from Laiza, near the border with China.

Zaw Htay said that the problems can be resolved through dialogue, and the immediate tension can be lifted if the KIA removes its blockade of the army ground supply route. “The best solution is to hold a dialogue between the government and the Kachin. Government peace committee leaders have asked the KIA for a dialogue but there is no reply yet from them,” said Zaw Htay.

KIA spokesman La Nan said, “...what the Kachin regarded as a new government offensive was apparently meant to force the Kachin to accept the



Described by the UN as being amongst the most persecuted people in the world, over 80,000 Rohingya people have been left without shelter and protection from the recent violence in Burma. Photo: www.muslimaid.org

government’s terms for peace.” He charged that the supplies being sent to government troops on the front lines include ammunition as well as rice.

“We will obstruct any army convoy that carries arms and ammunition that will be used against us,” he said. “This is the nature of war.”

Burma’s Rohingya Muslims: One of the world’s most persecuted minorities according to the UN

More than a million Rohingya Muslims are caught in a cycle of violence, poverty and instability. They were living in Burma for around a century now. Yet, they have no country to call their own having been denied citizenship under Burma’s 1982 Citizenship Law passed in 1982. Thus, they possess no civil rights or government representation. They are generally subjected to “forced labor, land confiscations, restrictions on travel and very limited access to jobs, education and healthcare.”

In June 2012, dozens of people were killed in ethnic clashes sparked by reports of a Buddhist Rakhine woman allegedly raped and murdered by three Rohingya Muslim men the previous month. Caught in the midst of undeterred violence, some 80,000 Rohingyas were forced to

leave their homes.

President Sein declared a state of emergency in Rakhine on 10 June 2012, warning that “vengeance and anarchy” could derail Myanmar’s transition to democracy. Since then, the Nasaka, particularly the army and police, massively surrounded areas which are heavily populated by Rohingyas. They abducted and detained hundreds of mostly men and boys, holding them incommunicado or subjecting them to ill treatment.

Tens of thousands Rohingyas, mostly Muslims, are now living in makeshift camps in Myanmar after clashes with Buddhist locals while an estimated 30,000 registered Rohingya refugees are living in UN camps in Bangladesh. Thousands more have fled to neighboring countries like Bangladesh, Malaysia, India and Thailand. Unfortunately, they are not accepted wherever they go. While some are placed in detention camps, others are ordered to travel back to Myanmar with hardly any provisions, so that many die along the way.

Observers say that the recent clashes appear to have deepened long-held prejudices against the Rohingya.

BURMA..... CONTINUED FROM PAGE 10

“This (Rohingya persecution) is truly systemic. It’s part of Myanmar’s legal and social system to discriminate against the Rohingya on the basis of their ethnicity... all the facets of life are affected by a system that codifies and makes lawful their persecution and discrimination,” Benjamin Zawacki, a Burmese researcher for Amnesty International said.

The Amnesty International researcher added further, “In six weeks, Myanmar has not only added to a long litany of human rights violations against the Rohingya, but has also done an about-turn on

the situation of political imprisonment.”

Surin Pitsuwan, former ASEAN secretary general, had spoken time and again on the ethnic violence in the country, particularly the discrimination and persecution of the Rohingya.

In a conference in Kuala Lumpur in October 2012 he said, “Myanmar believes it [the Rohingya issue] is their internal matter...but your internal matter could be ours the next day if you are not careful.”

He also warned that if sectarian violence in

Burma is not curbed, the country’s persecuted minority Rohingya Muslims “could become radicalized and the entire region could become destabilized.”

Meanwhile, Amnesty International and other human rights and humanitarian organizations, as a way to root out the problem, are calling on Burma’s parliament to amend or repeal the 1982 Citizenship Law and ensure that Rohingyas acquire citizenship so they will finally have a country they can call their own. ■

TIMOR LESTE

COALITION’S COORDINATOR FOR ASIA PACIFIC GOES ON TIMOR LESTE MISSION

From 3-8 December 2012, the Coalition’s coordinator for Asia-Pacific was on mission to Timor Leste to participate in two events—a national workshop on the ICC and a lawyers’ training on the ICC, and to meet with concerned officials of the government to explore initiatives on ICC implementation.

Organized on 3 December by the *Avocats sans Frontières* in cooperation with the *Aso-siasoun Advogados Timor Lorosaè* (AATL), the national workshop brought together representatives from non-governmental organizations, government and UN agencies, and public and private law practitioners. With the theme “Promoting the Rome Statute System and the Effectivity of the International Criminal Court,” the participants discussed various aspects of the ICC—its nature, functions and developments, as well as issues related to implementation at the national level.

From 4-7 December, a training on the ICC and international criminal law was conducted by invited trainers from the UN, former staff of the ICC and from the Coalition. Around 50 lawyers



Participants to the lawyers’ training on the ICC organized by ATTL and Avocats Sans Frontières held in Dili, Timor Leste on 4-7 December 2012. Photo: CICC Asia

from different parts of Timor Leste participated, representing UN and government agencies, human rights and humanitarian organizations, and public and private law offices.

The Coalition’s coordinator also met with members of the parliament, Ministry of Justice and Jose Ramos Horta, former foreign minister and president of Timor Leste and Nobel Peace Prize laureate. She also met with the UN senior human rights officer, with the Philippine ambassador and the Filipino community in Dili, the

capital of the country.

While in Dili, she attended the interactive dialogue of the government of Timor Leste with ASEAN Secretary General Surin Pitsuwan and a reception in his honor, where she had the opportunity to meet with the secretary general, Timor Leste’s minister for the ASEAN, the minister of foreign affairs, minister of education and delegates to the CEDAW meeting from China, Japan, Indonesia, Philippines and Timor Leste. ■

INTERVIEW:**MOTOO NOGUCHI, NEWLY ELECTED MEMBER OF THE BOARD OF DIRECTORS OF ICC'S TRUST FUND FOR VICTIMS**

Motoo Noguchi has been director of the International Cooperation Department, the Research and Training Institute of the Ministry of Justice of Japan since June 2012, directing the provision of Official Development Aid legal technical assistance for Asian countries in transitional justice, while advising the Ministry of Foreign Affairs, International Legal Affairs Division on international criminal justice since 2004. Noguchi was elected to be a member of the Board of Directors of the ICC's Trust Fund for Victims (TFV) for a term of three years beginning in 1 December 2012.

Noguchi started his career as a public prosecutor at the Ministry of Justice in Japan in 1985. He has also been engaged in the provision of legal technical assistance and capacity building for developing countries since 1996, both as a Government attorney and as a counsel at the office of the General Counsel of Asian Development Bank (ADB) in Manila where he was seconded from 2000 to 2004. He was then a professor at UNAFEI (United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders) from 2004 to June 2012, concurrently served as an international judge of the Supreme Court Chamber at the Extraordinary Chambers in the Courts of Cambodia (ECCC or Khmer Rouge Trials) from May 2006 - July 2012.

Noguchi graduated from the University of Tokyo, faculty of law (1983) and the Legal Research and Training Institute of the Supreme Court of Japan (1985). He was a visiting scholar at University of Washington, School of Law (1992-93), a visiting professional at the ICC (2005), and a visiting fellow at Yale Law School, Schell Center for International Human Rights (2006-07). He has been a visiting professor at the University of Tokyo, Graduate School of Arts and Sciences, Human Security Programs since 2009.



Victim Trust Fund Board Member-elect
Motoo Noguchi

How do you see your new position as member of the board of the Trust Fund for Victims (TFV) representing the Asia-Pacific region?

It is my great honor to be a new member of the Board of Directors at this critical timing when the principles concerning victims' reparations and the first reparation order were recently issued in the Lubanga case.

How do you assess the work of the TFV during the past period? How did TFV's work impact on the over-all work of the Court?

I would point out a few aspects. First, the creation of the TFV was one of the most innovative features of the Rome Statute system and there was no precedent in the field of international criminal justice to look at. Therefore, the TFV naturally needed a certain lead time to start actual operation. Second, the ICC issued neither a principle on reparations nor a judgment on a concrete case until 2012. Meanwhile the TFV developed projects under the general assistance mandate during the last several years. Now we are about to enter the next stage now that reparations orders are to be implemented. As the TFV has accumulated considerable experience and formed a broad network of national and international partners under its assistance mandate, I trust that it can move forward to the new stage without the feeling of being lost. During

the first 10 years of the ICC, the TFV continued to keep voicing that victims should be given a main role in the ICC's pursuit of justice.

What do you think are the challenges facing the TFV 10 years after the ICC initially operated?

The challenges facing the TFV in the second decade of the ICC can be summarized as, in my view, how to provide victims, their families, and affected communities with real and meaningful remedies and assistance which the Rome Statute envisaged. With respect to the reparations mandate, the TFV will closely follow judicial decisions by the Chambers on the legal principles and practical modality of reparations, contributing as necessary to the process of their formation.

In my experience at the ECCC, one of the most difficult questions is the scope of victims who benefit from reparation orders. If this is too narrow by definition or implementation, only a handful of victims within a much larger group of similarly affected individuals can benefit from reparations orders. It may make many others feel that the system has failed to meet their fair expectations.

There is a relevant question as to whether to limit the scope of beneficiaries to those who have participated in criminal proceedings or not. In

the case of the ECCC, a victim who wishes to request reparations as a civil party has to participate in criminal proceedings in one way or another. And a victim cannot participate in criminal proceedings without requesting reparations. So there is a clear linkage between participation and reparations. Under the ICC system, they are theoretically distinct and there is no statutory linkage between them. The difference between the ECCC and the ICC mainly comes from the fact that victims at the ECCC exercise their rights as a party to the proceedings in a strict sense of the word.

These issues also have a direct and significant impact on the resources of the Court that is required to determine the scope of beneficiaries and address them.

What are TFV's thrusts for the coming years?

The next three years of my term as a Board member will be a very important period for the Court and the TFV in establishing legal principles and practical modality of the reparations mandate. How they are developed will inevitably affect how many resources the TFV can allocate to the assistance mandate. The Board will need to have a bird's eye view on the overall mandate and activities of the TFV.

NOGUCHI..... CONTINUED FROM PAGE 12

The TFV is currently operating under very limited human and financial resources. Recent decisions in the Lubanga case indicate that the TFV will be given even greater role and responsibility than one could have imagined from the plain language of the Rome Statute. It may not be a remote future that the present resources of the TFV prove insufficient to meet the needs and expectations of victims before the ICC's jurisdiction and those of the international community.

To secure its financial basis, the TFV would need to continue enhancing voluntary contributions, seeking at the same time innovative ways to form a firm funding foundation on a multiple-year basis. It would also need to further encourage the international community to strengthen its political will and practical capacity to freeze, seize and forfeit assets of perpetrators as a main source of the implementation of reparation orders.

In your view, what can Asia-Pacific contribute to the work of the TFV, if anything?

Although most situations currently before the ICC are in other regions of the world, the Asia-Pacific region is an important player of the ICC system and shares the burden in achieving its goals. Concretely, the region can contribute to the TFV in awareness-raising for the ICC in general and the TFV in particular, or through financial contributions. I would expect that the Coalition for the ICC plays a pivotal role in these areas. For example, the CICC may wish to enhance high-level dialogue among stakeholders in the region or hold seminars on relevant

subjects for awareness-raising. It may also wish to play a bridging role between States interested in earmarked contribution and Board members/ Executive Director of the TFV.

How do you see the work of civil society contributing to your work at the TFV and at the ICC?

The work of the ICC and TFV would not be sufficiently meaningful without various kinds of support from local and international civil society. I experienced it firsthand as a judge of the ECCC through the work of establishing, revising, and applying victims' participation and reparations systems. To bring justice to victims is never possible by the work of international criminal tribunals alone, as there is an inherent limit in the nature and reach of their activities as judicial organs. Here again, I would expect that the Coalition plays a leadership role in bringing together the power of civil society.

One of the good examples is civil society's work in the area of sexual and gender based violence (SGBV). The recent tendency to mainstream a gender perspective in the area of international criminal justice has been greatly enhanced by persistent efforts of many local and international civil society groups. ■

There is a relevant question as to whether to limit the scope of beneficiaries to those who have participated in criminal proceedings or not. In the case of the ECCC, a victim who wishes to request reparations as a civil party has to participate in criminal proceedings in one way or another. And a victim cannot participate in criminal proceedings without requesting reparations. So there is a clear linkage between participation and reparations. Under the ICC system, they are theoretically distinct and there is no statutory linkage between them. The difference between the ECCC and the ICC mainly comes from the fact that victims at the ECCC exercise their rights as a party to the proceedings in a strict sense of the word.

PHOTOS FROM THE 11TH ASSEMBLY OF STATES PARTIES



ASP President Tiina Intelmann with Asian NGO participants Photo: CICC Asia



Prof. Raul Pangalangan speaks at the NGO Global Strategy Meeting. Photo: CICC/Roberta



Judge Sang Hyun Song and his adviser attend The Asia-Pacific Regional Meeting. Photo: CICC

STATEMENT ON THE ASEAN HUMAN RIGHTS DECLARATION CIVIL SOCIETY DENOUNCES ADOPTION OF FLAWED ASEAN HUMAN RIGHTS DECLARATION: AHRD FALLS FAR BELOW INTERNATIONAL STANDARDS

Disregarding the deep concerns expressed by senior United Nations officials, human rights experts and hundreds of civil society and grassroots organizations at national, regional and international levels, ASEAN leaders nonetheless adopted an “ASEAN Human Rights Declaration” that undermines, rather than affirms, international human rights law and standards. The document is a declaration of government powers disguised as a declaration of human rights.

It is deplorable that the governments of the ASEAN have insisted on making a Declaration that implies that their people are less deserving of human rights than the people of Europe, Africa or the Americas. The people of the ASEAN should never accept a lower level of protection of their human rights than the rest of the world.

The ASEAN Human Rights Declaration should have reflected the universally held conviction that respecting human rights necessarily means imposing limitations on the powers of government. Instead, the Declaration that was adopted, through some of its deeply flawed “General Principles”, will serve to provide ready-made justifications for human rights violations of people within the jurisdiction of ASEAN governments. These include balancing the enjoyment of fundamental rights with government-imposed duties on

individuals, subjecting the realization of human rights to regional and national contexts, and broad and all-encompassing limitations on rights in the Declaration, including rights that should never be restricted. In many of its articles, the enjoyment of rights is made subject to national laws, instead of requiring that the laws be consistent with the rights.

The Declaration fails to include several key basic rights and fundamental freedoms, including the right to freedom of association and the right to be free from enforced disappearance.

The last-minute addition made to the leaders’ statement upon adopting the declaration, reaffirming ASEAN member governments’ commitment to the Universal Declaration of Human Rights and other human rights instruments in the implementation of the ASEAN Human Rights Declaration, does little to address the fundamental problem. As long as the Declaration’s General Principles and the loopholes they provide remain, a wrong signal will be sent to governments that international human rights obligations may be circumvented.

It is highly regrettable that governments in the ASEAN who are more democratic and open to human rights succumbed to the pressure of human rights-hostile governments into adopt-

ing a deeply flawed instrument.

We again raise our objections to the ASEAN’s “consultation and consensus” decision-making system, which has failed its people again. This reveals that the ASEAN human rights agenda is dictated by its member states with little meaningful consultation with the vast array of civil society and grassroots organizations that are working each day for the human rights of the people of the ASEAN region.

This Declaration is not worthy of its name. We therefore reject it. We will not use it in our work as groups engaged in the protection of human rights in the region. We will not invoke it in addressing the ASEAN or ASEAN member states, except to condemn it as an anti-human rights instrument. We will continue to rely on international human rights law and standards, which, unlike the ASEAN Human Rights Declaration, provide all individuals, groups and peoples in the ASEAN with the freedoms and protections to which they are entitled. We remind ASEAN member states that their obligations under international law supersede any conflicting provisions in this Declaration. This Declaration should never be the basis to excuse the failure of a state to meet its international human rights obligations. ■

FINALLY, A LAW AGAINST ENFORCED DISAPPEARANCE

After six congresses over a span of two decades, the Philippines finally enacted a law against enforced disappearance, making it the first country in Asia to have crafted such a law.

According to the law, enforced or involuntary disappearance is defined as “the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law.” Imposing criminal sanctions, the law

guarantees the right of all persons not to be subjected to enforced disappearance and it provides reparation and rehabilitation to surfaced victims and families of the disappeared.

Human rights advocates in the Philippines, and in particular the families of victims and surfaced victims, are hopeful that the much-awaited law against enforced disappearance will be strictly implemented in the country. With this, the Philippine experience will hopefully inspire other countries to craft and enact their own law on enforced disappearance, one of the cruelest forms of human rights violations global society has ever known. ■



Campaign poster used by the Asian Federation Against Involuntary Disappearances. Photo: AFAD

ICC - HUMAN RIGHTS RESOURCES

ELLA Learning Alliances

Learning Alliance on Human Rights Promoting, Protecting, Defending and Guaranteeing Human Rights

- an exploration of good practices and policy examples from Latin America, and an exchange of experiences from other countries, on advancing human rights to improve governance and social justice.

An ELLA Learning Alliance:

- Brings together experts and interested individuals from Latin America, Africa, Asia and other regions, to engage in a programme of two-way exchange and learning
- Promotes networking between individuals and organizations facing common development challenges, encouraging the initiation of collaborative efforts
- Works through an interactive platform, email updates, meetings in several countries and first-hand visits for a small group of participants. The Learning Alliance on Human Rights will be led and moderated by Fundar, based in Mexico City, Mexico. Fundar is pluralistic, independent, and dedicated to influencing and monitoring policies and public institutions through applied research, constructive criticism, experimentation and by forming links with actors from both civil society and government. (www.fundar.org.mx)

Engaging the 'New' ASEAN

The 60-page resource kit produced by the Asia Pacific Alliance for Sexual and Reproductive Health and Rights (APA), provides an over-

view of Sexual and reproductive health and rights (SRHR) in ASEAN member states and the key ASEAN structures and stakeholders; and tools and frameworks with recommendations of opportunities for civil society engagement with ASEAN.

Launched on 13 November 2012 in Chiang Mai, Thailand, "Engaging the 'New'ASEAN" highlights the urgency for wide collaboration among civil society to assist ASEAN member states to fulfill their commitments. Reducing maternal and child mortality and HIV and improving health outcomes for young people will contribute to the social, economic and environmental sustainability across the region.

www.asiapacificalliance.org

Briefing Paper on the Development of the ASEAN Human Rights Mechanism

Author: Prof. Vitit Muntarbhorn, Faculty of Law, Chulalongkorn University, Bangkok, Thailand. Published by the Policy Department of the Directorate General for External Policies of the European Union. The paper examines developments concerning human rights mechanism(s) in the Southeast Asian region, in the space known as the ASEAN, with a view to strengthening relations between the European Union and the region. The study thus makes a number of recommendations to European institutions to help strengthen the mechanisms, while building also other checks and balances, including national human rights institutions.

You may request a paper copy by e-mail: poldep-expo@ep.europa.eu Available on the internet: <http://www.europa.eu/activities/committees/studies.do?languages=EN>

No Safe Heavens Series 8

VANUATU

End Impunity Through Universal Jurisdiction
Published in 2012 by Amnesty International

This paper is the eighth in the 'No Safe Haven' series aimed at ensuring that no safe haven exists for those responsible for the worst imaginable crimes prohibited under international law. The other 'No Safe Haven' papers include Bulgaria, Germany, Solomon Islands, Spain, Sweden, Trinidad and Tobago, Venezuela, Ghana, Sierra Leone and Burkina Faso.

The paper is designed to help lawyers and victims and their families and supporters identify where people suspected of committing crimes under international law might be effectively prosecuted and required to provide full reparations. The papers are intended to be an essential tool for justice and can be used by police, prosecutors and judges, as well as by defense lawyers and scholars.

Each one also provides clear recommendations on how the government concerned can bring its national law in line with international law. The series aims to ensure that no safe haven exists for those responsible for the worst imaginable crimes.

For more information on Amnesty International's Campaign for International Justice, see www.demandjusticenow.org. The electronic version of the report can be found at www.amnesty.org by searching for Index No. ASA 44/001/2012. ■



URC FOCUS COUNTRIES IN ASIA-PACIFIC FOR 2013

February	-	Thailand
May	-	Pacific countries (Tonga, Tuvalu, Palau, Micronesia, Papua New Guinea and Kiribati)
July	-	Indonesia
August	-	Malaysia
September	-	Laos
October	-	Vietnam

COALITION FOR THE
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Together for Justice: Civil society
in 150 countries advocating for a fair,
effective and independent ICC.

The Coalition for the International Criminal Court includes 2,500 organizations around the world working in partnership to strengthen international cooperation with the ICC; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide.

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The Coalition is deeply appreciative of the generous support provided by all of our many partners and donors from around the globe. Major funding has been provided by the European Union, the Ford Foundation, Humanity United, the John D. and Catherine T. MacArthur Foundation, the Open Society Institute and the Sigrid Rausing Trust, as well as by the governments of Australia, Austria, Belgium, Denmark, Finland, Ireland, Liechtenstein, Luxembourg, the Netherlands, New Zealand, Norway, Sweden and Switzerland, and a number of individual donors. Such support has been essential to the Coalition's effort to secure a future in which justice is accessible to all. If you would like more information about how you can join in this effort, please visit our website at www.coalitionfortheicc.org or contact us by phone at +1.646.465.8527 or via email at development@coalitionfortheicc.org.

The contents of this publication are the sole responsibility of the Coalition for the International Criminal Court and should in no way be taken to reflect the views of the European Union, Irish Aid or any other donor.

CALENDAR OF EVENTS

8-13 April 2013

International Women's Human Rights and Governance Course for public servants, NGO workers and activists, educators and other professionals. For more information, contact Women and Gender Institute, Miriam College, tel. 632-4359229/5805400 local 3590; email wagi@mc.edu.ph

8-12 April 2013

SOS- Torture Network Complaints Training for jurists and lawyers on how to prepare and effectively litigate individual complaints involving violations of the prohibition of torture and other forms of ill-treatment before UN Treaty Bodies.

Send applications to trainings@omct.org

18-22 April 2013 (tentative)

Training on International Justice and the International Criminal Court for Francophone representatives of governments, legal profession and civil society supported by the French Ministry of Foreign Affairs and the International Organization of La Francophonie. It will be organized by the Cambodian Ministry of Justice in Phnom Penh, Cambodia. Countries involved include Laos, Vietnam, Thailand, Vanuatu and Cambodia.

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20-28 November 2013

12th Session of Assembly of States Parties, The Hague The Netherlands.