



Regional Workshop in Economic, Social and Cultural Rights

Asian Regional Training Program
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Canadian Human Rights Foundation



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Canadian Human Rights Foundation
1425 René-Lévesque Blvd West, Suite 407
Montréal (Québec)
Canada H3G 1T7
Tel: (514) 954-0382
Fax: (514) 954-0659
E-mail: chrf@chrf.ca
Web site: www.chrf.ca

Philippine Commission on Human Rights
State Auditing & Accounting Office Bldg
Commonwealth Avenue
Diliman, Quezon City, Philippines
Tel: (63-2) 631-3019
Fax: (63-2) 631-6449

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Montreal, January 2002

INTRODUCTION

Background

The crucial role of national human rights commissions (NHRCs) in the promotion and protection of economic, social and cultural (ESC) rights has been recognized by the institutions themselves, the UN Office of the High Commissioner for Human Rights, the UN Committee on ESC Rights, as well as NGOs in the region.

In its General Comment No. 10 (December 1998), the UN Committee on ESC Rights noted that:

National institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Unfortunately, this role has too often either not been accorded to the institution or has been neglected or given a low priority by it. It is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions.

The *National Human Rights Institutions at Work* (NHRIW) Regional Program is designed to strengthen the capacity of NHRCs to protect and promote ESC rights in the Asia-Pacific Region by providing specialized training for their staff and their potential partners in government and civil society.

The program was piloted in February 1998 in Tagaytay, the Philippines and was subsequently modified on the basis of this experience and consultations with the members of NHRCs in the region as well as regional human rights education experts. The second NHRIW session took place in Antipolo City, the Philippines from 9-14 May 1999.

The program was developed and delivered by the Canadian Human Rights Foundation (CHRF) and the Philippine Commission on Human Rights (PCHR) with the sponsorship of the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the Southeast Asian Fund for Institutional and Legal Development (SEAFILD) of the Canadian International Development Agency (CIDA).

Through this publication we intend to share with as broad an audience as possible, the results of the most recent NHRIW training experience which took place in Manila, the Philippines, from 5–11 November 2000. Divided into three main parts, this publication includes (i) an overview of the major topics of discussion and the presentations of each of the national groups on ESC rights-based strategies for their NHRC, (ii) the evaluation report at the end of the program, and (iii) the training manual used by the participants during the program. It is our hope that this publication will be a valuable resource for those interested in developing their own training activities, as well as those interested in deepening their understanding of the role and functioning of NHRCs.

The Training Program

This training program was designed to explore the role of HRCs in the promotion and protection of ESC rights. The session was attended by 21 participants from 7 countries in the Asia-Pacific region. In addition, there were 14 resource persons and facilitators who worked with the participants during the program. The organizers recognize that there exists a tremendous amount of experience within the Asia-Pacific region in the area of human rights and national institutions. The NHRIW was designed, therefore, to provide a framework for the participating institutions and organizations to share their experiences effectively.

Training Goals and Objectives

The goal of the NHRIW program is to provide training for the staff of HRCs and their partners in order to strengthen the capacity of HRCs to promote and protect ESC rights. The specific objectives of the training program were:

- To examine the role of NHRCs in the promotion and protection of ESC rights.
- To explore state obligations to respect, protect, promote and fulfill ESC rights.
- To develop practical strategies for NHRCs to employ in the promotion and protection of ESC rights.

The training took place over five days and covered six individual workshops or training modules:

1. The Experience of Human Rights Commissions on ESC Rights
2. Legal Sources of ESC Rights
3. Women and ESC Rights
4. Working with the Concept of State Obligations in Relation to ESC Rights
5. Monitoring ESC Rights
6. Strategies for the Promotion of ESC Rights

In each of the training modules, the participants were encouraged to examine their own role working for a HRC, NGO or government department in the promotion and protection of ESC rights. Within the context of these rights, the participants were also encouraged to examine the extent to which certain groups in society (urban poor, migrants, women, children, etc.) may face greater obstacles in seeing their rights respected, protected and fulfilled. The focus on ESC rights as a common theme throughout did not, however, preclude discussion of other important human rights issues. In fact, the training attempted to emphasize the indivisibility and interdependence of all human rights.

Target Audience

The target groups for this training session were:

1. Staff of existing HRCs;
2. Government officials working with existing HRCs;
3. Representatives of NGOs working with existing HRCs; and
4. Government officials, parliamentarians and representatives of NGOs where HRCs are likely to be established before the end of 2000.

The training was targeted at the management level within the four groups identified above. However, it could also be appropriate for members of HRCs and lower level staff in some cases.

There were 21 participants who represented NHRCs and NGOs in the region. The participants represented the following countries:

- India
- Indonesia
- Malaysia
- Nepal
- Philippines
- Sri Lanka
- Thailand

Participatory Approach

Led by an international team of resource persons as well as expert facilitators from the PCHR, the training program methodology was based on a participatory approach where participants provided much of the content, sharing their analyses and experience. There were a combination of presentations, small group work, case studies and plenary discussions. The resource persons, chosen for their experience working with ESC rights and NHRCs, provided inputs and responded to questions based on their knowledge and perspectives. A gender approach was integrated throughout the program in order to recognize the different impact certain practices may have on men and women and to examine the need to develop gender sensitive strategies to address these differences.

The Training Manual

The manual is the product of extensive consultation and input from international, regional and national bodies, including the UN, HRCs and NGOs. In and of itself, it demonstrates a strong example of the type of collaboration essential for increasing the capacity of HRCs to work on ESC rights.

Evaluation

The evaluation of the training session is a crucial component of this program. The participants completed short daily evaluation questionnaires and a final evaluation form at the end of the week. The training program's follow-up report is reproduced in Part 3 of this publication, together with a copy of the final evaluation form that was distributed to all participants at the end of the program.

ABOUT THE ORGANIZERS

This training session marked the third time that the PCHR and the CHRF have collaborated in the organization of a regional training session for national human rights institutions.

The **Philippine Commission on Human Rights (PCHR)** came into being as a permanent and constitutionally independent body on 5 May 1987 as a result of Executive Order No. 163, fulfilling the vision of the 1987 Constitution. The PCHR is tasked with the protection and promotion of the human rights of all persons in the Philippines, including Filipinos abroad.

The PCHR has been recognized internationally for its work in the field of human rights education. In 1995, the PCHR received the UNESCO prize for the teaching of human rights. The PCHR has also hosted a number of important international conferences and workshops.

The **Canadian Human Rights Foundation (CHRF)** was founded in 1967 as a non-profit NGO dedicated to the defence and promotion of human rights through education and to the support of training and development initiatives in Canada and abroad.

The CHRF has been involved in the design and delivery of support programs for national human rights institutions since 1996. In addition to two previous *National Human Rights Institutions at Work* regional sessions, the CHRF was involved in the efforts of the Indonesian National Commission on Human Rights on a project to strengthen human rights education and training capacities in Indonesia from 1997-1999. In Thailand, the CHRF worked with Thai NGOs to support the involvement of civil society in the creation of the new National Human Rights Commission. In July 2000, the CHRF assisted Malaysian NGOs to deliver a workshop on *The Role of NGOs in the Investigative Function of the Malaysian Human Rights Commission*.

The first *National Human Rights Institutions at Work* regional training took place in Tagaytay, the Philippines from 8-13 February 1998. The second session was held in Antipolo City, the Philippines from 9-14 May 1999.

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LIST OF ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
CHRF	Canadian Human Rights Foundation
CRC	Convention on the Rights of the Child
ESC Rights	Economic, Social and Cultural Rights
FLAG	Free Legal Assistance Group
GO	Governmental Organization
HRC	Human Rights Commission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally Displaced Persons
ILO	International Labour Organization
NGO	Non-governmental Organization
PCHR	Philippine Commission on Human Rights
TNC	Trans-national Corporation
UDHR	Universal Declaration on Human Rights
UN	United Nations

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PART 1 – SUMMARY OF DISCUSSIONS

Presentations

1. Monitoring Economic, Social and Cultural Rights

Presentation by Maria Socorro I. Diokno, Free Legal Assistance Group (FLAG), Philippines

2. Promoting Economic, Social And Cultural Rights

Presentation by Jefferson R. Plantilla, HURIGHTS-Osaka, Japan

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1. Monitoring Economic, Social and Cultural Rights

Presentation by

Maria Socorro I. Diokno, Free Legal Assistance Group (FLAG), Philippines

Monitoring is defined as the process of systematically tracking the activities and actions of institutions, organizations or government bodies. Monitoring involves two interrelated activities: the first is to collect data and the second is to document data.

Monitoring of economic, social and cultural (ESC) rights is generally undertaken in order to:

- identify sources of ESC rights problems
- look for ways to obtain redress for the problems identified
- identify problems and shortcomings in realizing ESC rights
- create networks of GOs and NGOs working together with other groups to come up with a principled policy which identifies processes that incorporate human rights priorities
- facilitate public accountability of those responsible for addressing certain problems or for creating certain conditions that will allow for the realization and enjoyment of ESC rights
- carry out public information and education awareness campaigns using the results of monitoring as part of the promotional aspect of monitoring
- support legislative advocacy and reform, and to formulate policies
- provide a basis for reporting as required by national bodies, i.e. parliament or inter-governmental bodies such as the United Nations and its agencies.

The Process

It is useful to develop a framework in preparation for monitoring. To be able to do this, a few steps should be undertaken. The first is to identify both the specific subject to be monitored and what can be achieved by monitoring it. The second step is to establish a data framework. One must identify the kind of information or data one should look for. Emphasis should be given to data that can be used in ways that are compatible with obligations under both domestic and international human rights law which is also compatible with the nature and content of ESC rights.

Once both the subject matter framework and the data framework are established, then a stock of one's resources should be taken. The next step is to identify the kind of people required to conduct the monitoring. Take a look at what human resources the institution or organization has and what human resources can be tapped from other sources. Find out who can be invited from the government, the non-governmental sector and the

academe, as well as professionals from international bodies, in order to establish a multi-disciplinary task force or working group that will do the monitoring. It is important to have political economists, social anthropologists, psychologists, sociologists, professionals, lawyers and others involved in monitoring.

It is also important that those involved in the multi-disciplinary task force have a human rights framework. NGOs and NHRIs that are serious about monitoring must adopt, through a process of internalizing and advocating with others, a rights perspective. This process was tried in FLAG years ago. Four task forces were created in the areas of health, education, housing and food. There was no problem in housing, as there were engineers, architects, bankers, economist, and others involved. But the education task force did not work very well because many of the educators, teachers and members of the PTA Groups looked at education as a need, not as a right. This has been going on for several years. It is still in the process of engaging with the task force to have a rights framework. It is a long and difficult process but in the long run, it is a necessary process.

After identifying the subject matter, a data framework and a multi-disciplinary group, the current performance of the state in observing ESC rights should be investigated. The *Violations Approach* or *Monitoring Progressive Realization Approach* (see below) can be adopted. Next, the strength of state performance must be gauged. In other words, is the government engaged in a one shot deal, or is it engaged on a continuing basis? Is the state improving its performance? If not, why not? A comprehensive review of laws, policies, administrative rules, decisions of courts, as well as quasi-judicial bodies, etc. should be undertaken to determine whether or not these laws, policies, etc. are in conformance with ESC rights obligations. Monitoring should also focus on proposed bills that are pending before Parliament or Congress. Before these proposed bills become law, comments and suggestions should be submitted to the appropriate Committees.

There is also a need to review data that comes from the government, NGOs, academia, and from international bodies. Statistical reports, research papers and important country situation reports such as World Bank reports and the International Monetary Fund reports that discuss the extent of poverty in a country should be reviewed. It would be interesting to look at reports released by such bodies as the United Nations Development Program (UNDP) and the World Health Organization.

Finally, comparisons should be made based on standards set up by domestic and international bodies. For example the World Health Organization suggests that states devote at least five percent (5%) of their gross national product (GNP) to health care.

Choosing Your Sources of Data

Generally, actual implementation results are found mostly in NGO produced materials. However, there is also a great deal of information in official government data. Using this data makes it easier for human rights advocates to debate with the government, which

cannot argue with its own findings. For example, official government data in the Philippines set the poverty threshold at 220.00 US\$ per year and also stated that 33% of the population do not earn 220.00 US\$ a year. Although NGO figures are likely to be more realistic and closer to the truth, it can be beneficial to use government data when dealing with the government.

Violations Approach vis-à-vis the Monitoring Progressive Realization Approach

Both approaches attempt to hold the state accountable for the enjoyment or non-enjoyment of ESC rights and both approaches stress the substantial obligations of the state. Both also attempt to determine the status of ESC rights.

How do these approaches differ? The Violations Approach looks at the current status and focuses on an act or omission and its impact on ESC rights. Generally it relies on information provided by the victim. When using this approach, the distinction between the unwillingness of a state to comply and the inability of a state to comply must be stressed. If a state is truly unable to comply, it is not a violation. Inability must not be mistaken as unwillingness. Inability is not a violation.

The Monitoring Progressive Realization Approach looks at the current status in relation to the past in order to see whether there have been changes and if so, whether the changes were negative or positive. It looks, not only at today, but also how today relates with yesterday. It takes the whole range of reviews into consideration and relies on different sources of information, not only on that provided by the victim.

Both approaches have their own weaknesses and difficulties. The Violations Approach is a very cumbersome approach. Common sense and analytical skills are necessary to resolve potentially serious legal, social and political dilemmas. It is not a cut-and-dry approach. It is often not easy to distinguish between an inability to comply and an unwillingness to comply. A major weakness of the Violations Approach is that the language is general in the Limburg Principles, the Maastricht Guidelines, and the various General Comments of the ICESCR. These were specifically written in general terms so that they could easily be applied at the domestic, local level. However, this does make it difficult to apply in concrete cases. This is where common sense and analytical skills should be used.

Both approaches produce results. Perhaps a Violations Approach produces results a little faster than the Progressive Realization Approach, but it should be remembered that conditions cannot be created immediately. There is value to either approach. For example, in a case that requires immediate action, the Violations Approach should be applied. It is very important to review the law first, because it has been found in a number of ESC rights problems, the problem is a result of the way the law is written. Therefore, not only should the individual violation be looked into, but also the law examined to see whether changes to the law could prevent further violations.

One approach might be longer and more tedious, but in the long run it might have greater effect on the lives of the people of the state. On the other hand, the other approach may have more of an effect on the community or on a group. Both approaches are equally valid and the decision as to which approach to use will rest with each individual. There is no one correct way to do this task. For many of us, it is a trial and error process and it is hoped that we will learn from any mistakes that are made.

Tools to use in Monitoring

1) **Indicators.** Statistics and tables might seem intimidating and might even, at times, be useless, however, they should be considered as a possible monitoring tool. For example, a table showing the demographic breakdown of a community would indicate the number of and the ages of men and women in the community. This kind of information would show whether the community was young, old or aging, and would therefore help to analyze public policy needs. For example, a younger population would need to invest in education and preventative health care. The information obtained from a simple table can be valuable when it is analyzed with a view to designing programs to fit community needs.

2) **Budget Analysis.** The field of ESC rights is very new. In many countries, groups are analyzing their national budget from a development framework or from some other framework. It is important for rights advocates to begin having budget talks with these groups. A budget states what a government is doing. To find out if a government is serious about a program, it is necessary to find out if funds are being allocated to it. No government policy, no plan of action will be implemented if there is no money for it. That is why the budget is important and that is why groups must seriously look at government budgets and begin to work with them. A framework for conducting a budget analysis from a human rights perspective, particularly focusing on ESC rights, must be created

Generally speaking, a budget is initially written by a department. At that level, there could be a contribution by the national human rights commission of a list of criteria or guidelines that would help these government agencies when they craft the budget. For example, the National Human Rights Commission of India knows the situation of India, It knows India's problems and needs and, consequently, knows where the money should be going. In other words, the Indian Commission should be able to come up with criteria or guidelines that it can then lobby for when talking to the various government agencies. As well, all national institutions should review their own budgets to ensure that there is enough money allocated for service delivery. Each institution should study itself to ensure that it is complying with the criteria that they are proposing be used by others.

National human rights commissions can begin by monitoring and gaining a better understanding of the process by which their own budget is allocated by the government. Who submits to parliament? Who makes the budget of the Commission? Does the

whole ministry consult with the Commission? Does the Commission have a role in preparing their own budget? On that particular level, as far as the budget is concerned, the Commission could intervene. With the other departments, they could lobby parliament to establish a law saying that any budget should meet certain criteria. A Commission could implement this project, perhaps in a way that is not very official. Perhaps it could be done by talking to one or two parliamentarians to generate support.

3) **Benchmarking.** A list of possible benchmarks could be created which could be used to gauge the government's performance against the government's own benchmarks. Specific targets and goals within a specific time frame should be used when setting benchmarks. When creating benchmarks, particularly vulnerable sectors of society, such as women, children, aging groups and the disabled, should be protected.

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2. Promoting Economic, Social and Cultural Rights

Presentation by

Atty. Jefferson R. Plantilla, HURIGHTS-Osaka, Japan

Over the years, the struggle for justice – especially socio-economic justice – has often been a bittersweet experience. There are many incomplete victories.

An Example of Environmental / Livelihood Activism

The Sardar Sarovar Dam was built on the Narmada River in India. Then the government planned to increase its height. The people who had been affected earlier by the building of the large dam have not yet been properly rehabilitated. The proposed increase in height would see millions of hectares of fertile, agricultural land submerged and would displace thousands of people apart from causing immense environmental damage. The Narmada Bachao Andolan (NBA) movement has fought against this proposal over the past decade and have suggested alternatives, but these alternatives have been ignored. Last week (18 Oct 2000) the Supreme Court of India in a split 2-1 judgment ruled against the people.

In the case involving a politician, an appeal was filed against the Supreme Court bench judgment asking for a larger bench, which was granted. The bench then overturned the verdict. In this case however, three problems arise:

- 1) The work to increase the dam's height is to commence on October 31, 2000 - so time is short.
- 2) The people who have not been rehabilitated in the State will be affected the most - the State Government of Madhya Pradesh says it does not have the necessary land.
- 3) This is not an election year. These are poor people who do not have any influence or pull that can be exerted on politicians. The people representing them do not have any pull either.

So how does one handle this kind of human rights violation? Many of the people whose land will be submerged have refused to move and therefore the situation will end up with the police having to forcefully remove them. Some Indians, who were initially sympathetic to the cause, feel the Supreme Court judgment should not be challenged. They are unaware that it has already been done once before.

What the rest of us can do is to protest non-violently. This environmental catastrophe is going to affect not just Indians, but the world in general. How do we make blind,

stubborn politicians and judges see that this will have long-term effects in a democracy?¹

Post Freedom Scenario –The Case of Bonded Labourers in Nepal

Gaining freedom for the *kamaiyas* (bonded labourers) in Nepal has not had as big an impact on their lives as one might expect. They still suffer from the pains accumulated during the several generations of living under the system.

The state has not yet been able to rehabilitate them, nor supply them with basic subsistence needs. Civil society is yet to enter into the domain of its new role. A sense of confusion thus exists.

Kamaiyas have either left or have been forced by their masters to leave their hamlets constructed in the land of the masters. They do not have any belongings, such as utensils, quilts and bedding. They do not even have sufficient food to eat. Mr. Gopilal Chaudhari, freed at the age of 78 along with his family members, is completely dependent upon Backward Society Education, a Dang-based NGO, for food. Mr. Chaudhari says, “Sometimes food is available, sometimes I go to bed hungry.”

Similarly, Mrs. Phul Kumari Chaudhari, a mother of four, has an additional load to shoulder when her husband fell ill. She has only one pot in which to cook and insufficient food for the whole family. She laments, “We do not have basic things in our shelter. How long can we go on this way?” She is happy to have freedom, but worried about the resultant situation. Sheltering in public places, *kamaiyas* have become refugees in their own land, hanging on to the hope that the situation will turn out better some day.

Following the declaration of freedom, the government of Nepal sponsored various study teams to update “the *kamaiya* record and identify... government and public land suitable for distribution to the landless *kamaiyas*” and has come up with data on 20,162 affected families. The *kamaiyas* are classified under the following:

- those having neither a piece of land nor a house,
- those having a house but not a piece of land,
- those having a house and a piece of land less than 334.7 square meters; and
- others.

With this data, the government reportedly approached bilateral agencies and international NGOs to support the rescue and rehabilitation operation. However, the work is yet to materialize. The government also failed to introduce a law in the current session of parliament legally banning the system. This law would specifically address the *kamaiya*, unlike the vague provisions existing in other laws dealing with ‘bondage’.

¹ Dignity-International Forum, North-South Centre – Council of Europe, dignity-international@ncentre.org. Avenida da Liberdade N 229 – 4, 1250 – 142 Lisboa – Portugal.

The law would define ‘bonded labour’ in relation to the *kamaiya* system, and would provide a legal basis for a program to address this particular group of victims.²

China’s Legal Recourse

With China’s change to a socialist market economy, the rule of law has become a major area of interest. A recent newspaper report on China says that many more Chinese are standing up for their legal rights. The report states:

In the past several years, awareness of legal rights and recourse has percolated impressively through the Chinese public, emboldening increasing numbers of people from all segments of society to use the law to call their superiors to account.

Two years ago, a coalition of 2,164 peasant households in inland Sichuan province defied threats from local officials and sued them for levying taxes in excess of the amount allowed by Beijing. The peasants won.

In Hunan province, a man went to court seeking compensation from a precinct police chief who, while driving drunk, ran over and killed the man’s 11-year old child. The police chief was judged responsible and later executed.

Even the *People’s Daily*, the mouthpiece of the Communist Party, could not escape rebuke in a libel lawsuit filed by Xi Hong, a worker who was fired after the paper described her as “weak and incompetent”. Although the newspaper dragged out the case for years, the court ultimately ruled in Xi’s favor and ordered that her job and reputation be restored.

These cases were all possible because of the changes to China’s legal code in 1990 and 1991 that for the first time spelled out procedures for citizens to sue government bodies³.

But the report cautions that the process of getting relief from the courts is not always a short process. It is most likely a long drawn out one and may not ultimately result in favor of the poor litigant.

Indeed, many economic, social and cultural (ESC) rights cannot be fully realized without making the system of government supportive of human rights as a whole. People who may have been given economic benefits do not have the security in maintaining such benefits unless they exercise all their human rights. To keep government actions

² Mukunda Raj Kattel, “A Fight against Kamaiya System: an Experience Review,” *FOCUS Asia-Pacific*, Issue no. 21, June 2000, Osaka.

³ Henry Chu, “In China, Average Citizens Learn to Stand for their Legal Rights,” *Los Angeles Times*, January 10, 2000.

consistent with laws that embody human rights standards, people must have the confidence to protect and assert their rights.

A. Basic Considerations

General Challenges

1. Any promotional / educational work on ESC rights must be geared toward the protection and realization of these rights. Note that there is a difference in the educational work for protection and realization of rights.
2. Such a program must fit the dynamics of society – structure of government (legislative, executive, judiciary), structure of communities (community sectors, business sectors, NGOs, socio-religious groups, academe).
3. It should contain a critique of the national development plan / framework – Does it favor equitable distribution of wealth, opportunities, and other resources? What standards are applied in drafting the development plan? What process was used in finalizing the plan? Is there any participation from the supposed beneficiaries? How will the plans be implemented? Is there any role for the poor? Who will actually and primarily benefit from it?

Specific Challenges

1. The Judiciary

The UN Seminar on National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asian Region held in Colombo in 1982 concluded that courts remain the major mechanism to protect human rights. National human rights institutions or any other national or regional human rights mechanisms were not seen as significant institutions yet. But there are questions: Are the courts ready to take on the public's expectation of human rights protection? Does the public expect protection from the courts?

The judicial system is generally seen as slow, expensive, and unintelligible. It is sometimes accused of having a narrow interpretation of the law, of being politicized, lacking independence and being too legalistic. Judges are criticized for being out of touch with reality (Japan) or mere legal technicians (Thailand). As one report says:

The courts are being criticized due to delays in deciding cases especially those involving the poor - those who have the least means to sustain for years their cases in courts. It has been reported that the judicial system is not able to respond to the expectations of people due to the following:

a. A 'letter of the law approach' - the courts fail to consider human and social conditions relevant to the case and thus decisions are based on simple reading of the law. The other aspect is the intent or spirit of the law, which should guide the courts in its application. There is a need to assess the cases based on the basic principle of doing justice by ensuring that the spirit of the laws (assumed to be fair and meant to provide justice) apply to the conditions that relate to the cases.

b. A majority of the judges and lawyers are basically legal technicians who simply implement legislation from the statute books and play no part in drawing up laws themselves.

c. Outdated laws are particularly serious for disadvantaged groups because they have no bargaining power and are not well organized enough to call public attention to their plight. Many people are exploiting outdated laws to the disadvantage of others. For instance, an employer can always lay off workers and pay compensation as required by the law. Those laid off would be hard-pressed to win a legal battle for additional compensation.⁴

In many cases, courts are far from the people who, due to poverty and other disadvantages, need their services. It is observed that:

The official judicial mechanism is far removed from the rural people and other disadvantaged groups. There are no mobile courts to service the community. Disadvantaged people are also likely to find the judicial system expensive to use and dishearteningly slow, despite some availability of legal aid. In sum, there is, as yet, no sure method to ensure “a day in court” and plenty of scope for subverting proper judicial procedure.⁵

Public perception of the judicial system can determine to a large extent whether such an institution will promote justice or not. As one survey states:

Almost three out of every five Filipinos continued to think, in 1993 as in 1985, that many, if not most, lawyers could be bribed. In 1993, about half thought that many, if not most, judges could be bribed.

Those who say that the number of corrupt lawyers is low are only two or three out of every ten judges and lawyers. Those who say that the number of corrupt judges is low are only three out of every ten lawyers, and only five out of every 20 judges.⁶

⁴ Sompradthana Nawong, “Bending the Law: Ethics’ Tiny Role in the Courtroom,” *The Nation* (January 22, 1995) B3 cited in Jefferson R. Plantilla, *Non-formal Legal Education in Thailand*, Research Report Submitted to National Research Council of Thailand (Osaka: 1998).

⁵ Vitit Muntarbhorn and Charles Taylor, “Roads to Democracy: Human Rights and Democratic Development in Thailand,” manuscript (Bangkok and Montreal: International Centre for Human Rights and Democratic Development, 1994) IV.

⁶ Mahar Mangahas, Antonio la Vina, Steven Road, Athena Lydia Casambre and Dennis Arroyo, *Monitoring the State of the Judiciary and the Legal Profession*, Social Weather Stations, Quezon City, October 1996.

This survey shows that rich and influential people are most likely to get access to legal services. Conversely, the poor and the weak members of society will fail to get such services. A survey made in 1982 reflects this perception of justice and the justice system.⁷

However, this is not to say that the judicial system does not work. A judicial system is inherently necessary in any society. As a retired Supreme Court Justice from the Philippines once wrote:

The greatest danger to liberty lurks in the insidious encroachment by men of zeal, perhaps well-meaning but oftentimes without full understanding of the extent and limitations of their powers and duties. The government, whether national or local, cannot always be depended upon to stem the encroachment on personal liberty and individual rights occasionally committed by national or local officials. In such a situation, the Judiciary is our best and only guardian. The Supreme Court has repeatedly reminded such officials that ours is a government of laws and not of men; that every legislator and all executive and judicial officials do not take an oath to obey a person but rather, an oath to support the Constitution and the laws of the land. The highest loyalty is owed not to an individual, no matter how exalted, but to an idea made into law.⁸

He observes that many significant decisions of the Philippine Supreme Court actually affect the ESC rights of the people. Thus the judiciary has a close link to people's daily lives.

There are also a number of important developments that can serve the goals of justice in general, and human rights in particular.

Judicial activism, as exemplified by the experience of the Indian Supreme Court in the late 1970s and early 1980s, shows how courts respond to the problems facing society as a whole. The idea of epistolary jurisdiction,⁹ also from the Indian Supreme Court, shows the concern of the courts towards the right of the poor to have access to justice.

In a case in Japan, a court cited the Universal Declaration of Human Rights in deciding a complaint involving discrimination of a Brazilian woman. This decision is considered a landmark case.

⁷ See Manuel Flores Bonifacio and Merlin Magallona, *A Survey of the Legal Profession in the Philippines: Focus on Region IV*, UP Law Center, Bocobo Hall, Diliman Quezon City, Philippines, 1982, pp.130-147.

⁸ Jose C. Campos, Jr. "The Judiciary's Role in a Changing World," *Journal of the Integrated Bar of the Philippines*, Vol. XX Nos. 3 & 4 (1992), Vol. XXI Nos. 1 & 2 (1993).

⁹ P.N. Bhagwati, "Judicial Activism and Social Action in Asia" in *Law as Weapon*, Jose V. Aspiras, ed., (Makati:PROCESS, 1990).

Complementing judicial activism (though they did not co-exist in many cases in the past) strategies such as social action litigation, structural legal aid¹⁰ and metalegal tactics¹¹ give hope to many communities at a time when authoritarian governments reign.

Additionally, changes in the laws, especially in the Constitution as experienced in the Philippines (1987), Nepal (1990) and Thailand (1997), provide new ways for obtaining relief from the ESC rights problems of the disadvantaged. The writ of amparo, which is meant to be a means to enforce constitutional rights,¹² is one good example. The creation of national human rights commissions in the Philippines and Thailand is another example.

The use of the Constitution as a basic source of rights follows the idea of “human rights constitutionalism”¹³ proposed by one author. Lawrence Beer observes that:

¹⁰ Structural legal aid consists of a series of programs, aimed at bringing about changes, both through legal means and in other lawful ways, in the relationships which form the bases of social life towards a more parallel and balanced patterns. This is the essential pre-condition for the development of laws which provide justice for the majority of the poor in Indonesia.

At the operational level, structural legal aid must reach out to rural as well as urban areas; it must actively search out those cases to defend or initiate which most involve the public's collective interest, and those cases, undertaken in the interests of the poor, which create the opportunity for providing legal education to that broad public of labourers, peasants and fishermen.

On the societal level, therefore, structural legal aid is a growing power by means of which legal aid activities can positively influence and create conditions for law development fitting the people's needs. For this objective to be met, two conditions have to be fulfilled: 1) legal aid activists must consciously guard against the professional elitism of so many lawyers; and 2) their organizations must not be separate, or insulated, from the clients they are intended to serve.

Buyung Nasution, “The Legal Aid Movement in Indonesia: Towards the Implementation of the Structural Legal Aid Concept,” in Harry M. Scoble and Laurie S. Wiseberg, editors, *Access to Justice*, Zed Books (London: 1985), 36-37.

¹¹ Metalegal tactics were originally coined by the late Philippine Senator, Jose W. Diokno, and later on adopted by many organizations in the Philippines.

¹² This is based on the 1987 Constitution of the Philippines provision which give the Supreme Court the power to make rules “concerning the protection and enforcement of constitutional rights” (Paragraph 5, Section 5, Article VIII). This is said to be a way of getting the courts to support claims to economic and social rights. This is patterned after the Latin American legal recourse called *recurso de amparo*.

¹³ Lawrence W. Beer, editor, *Constitutional Systems in late Twentieth Century Asia*, University of Washington Press (Seattle: 1992). He lists the characteristics of a government of human rights constitutionalism as follows:

1. a constitutional division of governmental power among two or more basic organs or “branches”;
2. some form of independent judicial system, with jurisdiction including cases on civil rights and liberties;
3. regularized limits on the amount of governmental power possessed by anyone and generally, on the length of time power may be legitimately possessed. (A few Asian constitutional monarchies present partial exceptions.) Democratic elections using the secret ballot assure peaceful, routine passage from one national or groups of leaders to the next, and encourage public agreement on the legitimacy and composition of the leadership;
4. government authority and means of coercion under law sufficient to maintain public peace, security of person, and national security, within limits define by the human rights of citizens and those of other countries. Rigorous restraints on military power and military involvement in government politics;
5. government involvement in socioeconomic problem-solving in order to meet citizens; subsistence needs (e.g. food, clothing shelter) and a life compatible with human dignity, insofar as the private

What is remarkable in the late twentieth century is not the continuing failure of governments to adhere to some or most international human rights standards, but the worldwide diffusion of these standards, their trans-cultural acceptance, and their gradually increasing effect on international law and constitutional law of nations.

How can human rights education address the problems as well as opportunities presented by the judiciary?

2. Government Personnel

Many human rights violations stem from action or inaction of government personnel. And yet many of the solutions to human rights problems are drawn from them also. The basic challenge, therefore, is in making human rights part of the administrative processes that affect people – directly or indirectly.

The search for appropriate administrative remedies, policies, program development and implementation are components of the effort to make human rights part of the government bureaucracy.

While ideas for reform of the government bureaucracy should be derived from the demands and proposals from the public, government personnel need to have the appropriate knowledge and skills that can translate such ideas into effective programs and systems.

It should be recognized too that there are government programs that are already supportive of human rights though they are not given a human rights name. Human rights education therefore can help accentuate and reinforce the human rights components of these programs. Government agencies on women, the elderly, indigenous people, minorities, youth, children and other sectors are good candidates for human rights education. The same is true for government agencies that focus on rural and urban development, the environment, and natural resources. The pervasive complaints from rural and urban poor relate very much to the activities and projects of

sector fails to meet these needs. Property rights and economic freedom are protected insofar as they do not result in such inequitable distribution as to deny the socioeconomic rights of other citizens, particularly the least fortunate;

6. legally protected and encouraged freedom of peaceful expression of personal and group beliefs about the meaning of human life and the universe, insofar as such expression is compatible with respectful treatment of other people in the circumstances of the specific society;
7. a system of local autonomy showing the maximum respect for regional desires for self-governance that is compatible with human rights claims in other affected territories;
8. procedural rights in criminal and civil justice for each citizen equal to those of all others within the national community; the standard for treatment of the most privileged members of society is applied to the least fortunate;
9. acceptance of the constitution and human rights as the supreme law of the land by the government and by the general public.

these government agencies. They affect the livelihood, social and cultural well-being of farmers, fisherfolk, indigenous people and urban poor dwellers, to name a few.

3. Civil Society and the General Public

The general public can pose a problem to human rights promotion when it is affected by *tidakapathy* - a Malaysian term that expresses the lack of interest of the general public on issues of public concern. NGOs in Malaysia expressed this problem many years ago in view of the relative difficulty of making people support human rights education. *Tidakapathy* exists in many other societies too in various degree of intensity.

Part of the cause is the fierce competition for attention posed by the business sector. Mass media creates much more impact now than before as a result of better communications technology.

But then, there are also positive sides to our experiences. Given a proper presentation of the issues, people react positively, as in the case of the Stolen Generation issue in Australia.

People have commonly accepted values or principles that help protect or realize their rights. In Indonesia, it is reported that *musyawarah* and *mufakat* have been used by people against actions of government agencies that had adversely affected them. These principles can counter aggressive implementation of government projects. *Musyawarah* and *mufakat* are traditional Indonesian democratic principles (said to be of Javanese origin) that refer to a process of searching for a consensus through compromise and synthesis, and for a reconciliation of opposing views¹⁴.

There are ideas of justice and rights that have existed in our societies long before human rights had become a universal standard of achievement of peoples around the world. As one author writes:

“The Persians have used the Arabic word *hagg*, the Hindu and Bengali have their *adhiakar* and in Sanskrit *svetve*, the Thais their *sitthi*, the Koreans their *kooahri* (or *kwolni*) and the Filipinos their *karapatan* - all mean rights.” (Raul Manglapus, Philippines). The Universal Declaration does not affirm the institutions Westerners often equate with human rights, such as parliaments or supreme courts, but rather allows for various cultural forms by simply setting forth those political, social, and economic rights that contribute to the dignity of the individual person.¹⁵

¹⁴ Krishna Sen, “Human What?”, *Inside Indonesia*, March 1996, Northcore, Australia. See also Christine Drake, *National Integration in Indonesia: Patterns and Policies*, 1989, University of Hawaii Press, Honolulu, Hawaii, USA and Jutta Berninghausen and Birgit Kerstan, *Forging New Paths: Feminist Social Methodology and Rural Women in Java*, 1991, Zed Books Ltd., London, UK.

¹⁵ Traer, Robert, *Faith in Human Rights: Support in Religious Traditions for a Global Struggle*, (Washington, D.C.: Georgetown University Press, 1991) 158 cited in Jefferson R. Plantilla and Sebastia L. Raj, SJ. Eds., *Human Rights in Asian Cultures – Continuity and Change*, (Osaka: HURIGHTS OSAKA, 1997).

Lastly, there are many organizations that facilitate human rights education in many societies in this region. They have been doing this work for some time and they are still determined to do more.

4. The Staff of National Institutions

The greatest challenge is in developing both human resources and institutional programs.

A special institution has the burden of influencing governments as well as society in general. This variety of functions puts pressure on the institutions to fulfill them all properly.

Human rights protection is as important as human rights promotion. Balancing the work to serve both these roles (as well as several other important ones) will not be easy.

How limited resources can be maximized is a big question. Much of it will depend on collaboration with other institutions, be they governmental or not.

B. Human Rights Education

Experiences

In addressing the need for human rights education, a number of initiatives have been undertaken by governments and NGOs through the years. Below are some of these experiences.

1. Private Corporations

Several human rights centres in Japan have developed training programs that cater to personnel of private corporations. One center, the Buraku Liberation and Human Rights Research Institute (BLHRRI) based in Osaka, has been holding seminars and lecture series in many parts of Japan. It has a program developed as a response to an early 1970s incident when lists of people who were supposed to belong to a discriminated group (called Burakumin) were obtained by private corporations and used in checking the background of job applicants. As a way of preventing this incident from happening again, BLHRRI developed a program aimed at the personnel of private corporations found to have committed this discriminatory practice. The program which is called Lecture Course for Buraku Liberation and Human Rights, has been going on since 1974. Four sessions are held each year. Fifty participants attend each course that lasts for 29 days including two stay-in periods. The program has 3,100 graduates so far.

The course has two main parts:

- A comprehensive course on general knowledge relating to Buraku problems; other domestic human rights problems such as those relating to Korean residents, Ainu people, foreign migrant workers; and international human rights issues, and
- An optional course focusing on specific issues (human rights protection, human rights education, as well as Buraku and other human rights issues).

Lectures, field work (visits to Buraku areas and to human right centers) and groups discussions are components of the courses.

Another centre based in Kyoto, the Kyoto Human Rights Research Institute (KHRRI), also started a human rights education program tailored to private corporation personnel.

2. Government

The Osaka prefectural government (Japan) has incorporated human rights education into its staff training system. One of its explicit staff training policies is the development of respect for human rights and the will to solve human rights issues.

HURIGHTS OSAKA's annual Leaders Seminar regularly attracts local government personnel. The personnel are officially tasked to attend the seminars as part of the special training program. The seminars focus on basic human rights standards, major human rights instruments and current issues in Japan and in the region.¹⁶

The Kyoto Human Rights Research Institute also holds seminars for Kyoto local government personnel.

Some local government personnel may also take a study leave as part of career development. A public university (Osaka University) offers a course on human rights. This may be the only university in Japan offering this kind of human rights course. These people later take on assignments that correspond to their studies.

¹⁶ Below are the programs of the Leaders Seminars during the last four years:

1996 – Lectures on human rights and international exchange activities of local governments in Japan, internationalization and business enterprises in Japan, child prostitution in Asia, Asian female labourers' rights, etc.

1997 – Focused on the implementation of UN human rights standards including UN Decade for Human Rights Education; and globalization and the rights of foreign residents in Japanese local communities.

1998 – Focused on the topic "what is a human rights violation?" Participants had group work exchanging opinions with human rights specialists who joined as advisers in the discussions.

1999 – Focused on participatory learning in popular education. A facilitator from a Philippine NGO (Popular Education for People's Empowerment or PEPE) shared the Philippine experience.

2000 – Targeted local government personnel. It had three objectives: to review existing community-based human rights education programs sponsored by local governments; to strengthen existing programs by providing additional knowledge on human rights to local government personnel concerned; and to facilitate the creation of a network among the local government personnel for further activities after the seminar.

The Philippines and Bhutan¹⁷ have experience in training government personnel as paralegals. The UN supported a program on paralegal training in Bhutan (presumably for government personnel) in 1997. Since the late 1980s, the Philippines' Department of Agrarian Reform has been training its own personnel on paralegal work. These people are assigned to assist farmer-beneficiaries of the agrarian reform program in pursuing cases before quasi-judicial bodies under the department. The work of government paralegals complements the work of paralegals from NGOs and people's organizations.¹⁸

These programs are therefore meant to prepare government personnel to perform specific tasks (counseling and other forms of assistance for victims of sexual harassment and child abuse, minorities, community centers, etc.) that relate to human rights.

There are probably some judicial academies and continuing legal education programs which include human rights either as regular or special courses.

3. General Public

Both NGOs and governments have undertaken popularization programs on relevant legal rights (including dissemination of materials, seminars, public forums, campaigns, etc). Television and radio programs and advertisements have been broadcast through the years in many countries. Several of them are in the form of talk shows or "magazine format" (for radio) and public service programs.

In one case in the Philippines, one major television channel put on a campaign against child abuse, advertising the campaign with the title: *The Rights of Every Filipino Child*. This campaign has a special phone number (163) that people can call to get help. Anyone can call. Thus it is called Bantay Bata 163 (Child Watch 163) or BB163. This campaign began as a result of a 1996 report about a child who had died because the mother had beaten her. The mother claimed that the beating was her way of disciplining the child. The program was launched on television (and probably radio) and is now also accessible through the television's website (abs-cbn.com).

Several programs have been developed for the protection and rehabilitation of sick and abused children. There is also an education component presenting the rescue and rehabilitation work through print and video materials, and as television stories. The purpose of the television stories is "to educate and empower other families on how to prevent and eradicate child abuse." It has been successful, and has received recognition from both Philippine and UN agencies.

¹⁷ See *Status Report on Technical Cooperation – Program and Project Activities* (11th Issue) UN Voluntary Fund for Technical Cooperation in the Field of Human Rights, UN Office of the High Commissioner for Human Rights (Geneva, 30 April 1998).

¹⁸ See Mary McClymont and Stephen Golub, editors, *Many Roads to Justice* (New York: The Ford Foundation, 2000) for examples of groups in Asia that provide paralegal training.

Posters, leaflets and other materials have also been used for distribution at public places. Photo and art exhibits by children, disabled people or human rights victims have also become good ways to attract attention to human rights problems. The 1998 art contest of the Asian Regional Resource Center for Human Rights Education (ARRC) attracted several countries in the region. The children were most enthusiastic in drawing their perceptions about human rights. Winning entries came from Mongolia, Burma and Sri Lanka.

For more than a decade, NGOs have conducted a lot of human rights education activities at the grassroots level. These activities range from seminars to paralegal training. NGOs also engage in artistic activities such as the use of puppetry and theater.¹⁹

Many NGOs have combined their community mobilization program with human rights education. This approach has been found to be effective. Community activities become more meaningful when related to rights protection and realization.

Paralegal training is one of the most widespread means for human rights education at the grassroots level. Many NGOs in South and Southeast Asia have paralegal training programs. Paralegals help communities pursue claims before government agencies in cooperation with legal professionals. Paralegals likewise promote a wider range of options in resolving problems – from mediation to meta-legal tactics to court action. What is significant is the lessening of dependence on the courts to obtain relief against violations. This supports the idea – quite popular in the 1970s – of using alternative dispute resolution mechanisms.

¹⁹ NGOs involved in these activities can be classified into the following:

- a. social development agencies, such as those involved in social mobilizing/animation or community organizing activities for social, political, economic and cultural development;
- b. human rights organizations, such as those that document, disseminate information and launch campaigns on human rights issues;
- c. social action groups, such as those that take up social issues and put pressure on the government and other institutions to address the resolution of these issues;
- d. sectoral organizations, such as women's groups, peasant organizations and workers' unions that focus on organizing sectors concerned and taking action on issues affecting them;
- e. law groups, such as those providing legal assistance and education to grassroots communities;
- f. grassroots/popular education groups, such as those providing basic literacy services to communities; and
- g. art/cultural groups, such as those that inform the general public about issues affecting the communities through plays and other art forms.

See Jefferson R. Plantilla "Asian Experiences on Human Rights Education" in *A Survey of On-going Human Rights Education in Asia-Pacific*, Asian Regional Resource Center for Human Rights Education, Bangkok, Thailand, 1995.

C. Developing Human Rights Education Programs

Basic Question: Human Rights Education For What?

A human rights education program cannot have the sole objective of increasing awareness of human rights among the people. As the child watch initiative described above shows, human rights education becomes more effective when it is aimed at a particular action.

For those working in the judiciary, the government and in national institutions, human rights education programs should assist them in their work. Education programs should not be seen as an extra activity that has no relevance to their daily work.

Human rights education programs (especially in relation to ESC rights) must include the following concerns:

- a. system/structural analysis – laws, policies, processes and programs;
- b. making the system work (reinforcement, enrichment of the programs);
- c. development of a framework for analyzing situations; and
- d. learning specific skills – paralegal training, human rights education, monitoring, service provision.

Program Content

The education programs should cover human rights principles as applied to ESC rights issues.

Human rights education programs therefore should not be limited to merely understanding the provisions of the international human rights instruments. Rather, they should focus on a contextual and practice-oriented understanding of human rights principles. There are now a number of materials that can provide a guide in translating international human rights principles into local systems and programs.

These materials can be used in developing a framework for analyzing national development programs. These materials include the:

- UNDP human rights approach
- Rights way to development.

1. UNDP Human Rights Approach

UNDP's human rights approach to sustainable human development focuses on the following rights:

- **Rights of participation.** Fundamental freedoms include rights of people to meet with others, organize assemblies and speak freely. These are universal rights and their

exercise is essential in securing all other rights in development processes, as well as crucial in building civil society in social, economic, political and legal terms.

- **Rights to food, health, habitat and economic security.** It is the legal obligation of all states and of UN agencies such as the Food and Agriculture Organization, the World Health Organization, the International Labour Organization and the UNDP to promote the progressive realization of these rights through development efforts. Since these are human rights as well as government obligations, they empower people.

- **Rights to education.** This covers not only formal schooling, but also access to civic knowledge and training (often provided by NGOs) that facilitate people's awareness and exercise of other rights and their effective participation in development.

- **Rights to work.** This imposes obligations on development planners to promote opportunities for productive employment (through local, self-help efforts, as well as private and public investment), to reduce risks to people from policies (such as structural adjustment) that create unemployment, and to adopt training programs that help people (notably the young) become qualified for productive work in a world of changing technologies and economic activities.

- **Rights of children.** Specifically, these reaffirm the right to life and protection against violence, abuse and neglect; the right to health and social security, education, and rest and leisure; freedom from trafficking in children and protection against child prostitution; and freedom from torture and cruel, inhuman or degrading treatment.

- **Rights of workers.** These include rights to organize and to bargain over terms of employment and rights to adequate remuneration and a safe, nondiscriminatory workplace.

- **Rights of minorities and indigenous peoples.** Among these are rights to maintain languages and cultures and also rights of distinct peoples living in distinct regions to self-determined development and control of ancestral lands that are often the basis of community organization, culture and ways of life.

- **Rights to land.** Notably, these include the protection of the rights of those who depend on their lands for their livelihood. These rights are often grounded in customary law, and special processes may be needed to protect them.

- **Rights to equality.** These ensure freedom from discrimination against enjoying the above rights and empowerment of women and groups to organize and demand the removal of customs and practices that inhibit equal opportunities to realize the benefits of development.

- **Rights to environmental protection.** Rights to food, health, habitat and livelihood depend on environmental protection and the complementary relationships between promoting and protecting human rights and promoting and protecting environments.

- **Rights to administrative due process.** These include, for example, rights of access to officials responsible for designing or administering development activities; rights of access to information and to a fair hearing for people who claim to be threatened or harmed by development projects; and rights to redress and impose accountability on development actors who disregard the rights of affected people.

- **Rights to the rule of law.** These include the rules, procedures and institutions (including courts) that enable people to secure enforcement of all their rights.

This list illustrates the priority issues and the sectors that require greater attention in implementing development programs.

2. Rights Way to Development

There are three essential steps to a human rights approach to development:

1. The formulation of goals and implementation processes in human rights terms;
2. An agreement by all stakeholders on appropriate performance indicators, including the establishment of realistic time frames for achieving objectives and concrete measures of progress; and
3. An evaluation of outcomes based on both human rights and meaningful participation.

Development assistance should support governments – regardless of resource constraints – by:

- ensuring that they satisfy their minimum obligations relating to each right;
- planning strategies and programs for the eventual fulfillment of all their obligations; and
- monitoring both the fulfillment and the obstacles to the fulfillment of these obligations over time.

Both donors and recipients need to agree on a common approach to realize these aims.

The basic essentials are:

- a human rights analysis;
- objective setting with clear time lines;
- programs of action that are the responsibility of all levels of government; and
- effective monitoring of compliance and enforcement that involves all the stakeholders.²⁰

Form

A basic need is the institutionalization of human rights education into the staff development or continuing education programs of the judiciary, government and

²⁰ Andre Frankovits, Background Paper for the Inter-Sessional Workshop on Economic, Social and Cultural Rights and the Right to Development in the Asia-Pacific Region, organized by the UN Office of the High Commissioner for Human Rights, Sana'a, Yemen, 5 – 7 February 2000.

national institutions. Only a regular program will have the chance of developing more appropriate courses for the participants.

Since there exists programs and institutions for government personnel and members of the judiciary, there are opportunities to easily introduce human rights courses.

It is important to avoid making human rights just an added area of study – an added academic study. It should instead bring a new perspective to the work of the participants. Thus it is not just a new course or subject, but a new framework for thinking. The practical aspect of the course will provide the non-academic character of human rights education.

Major Challenges to Human Rights Education

In developing a human rights education program, the following should be taken into account:

1. **Misconceptions.** There are many cases of misunderstanding of human rights that need correction.
2. **Mainstreaming.** Human rights education should be institutionalized in the mainstream educational processes of society without losing its character. It should not remain a project or special program with uncertain funding and personnel support. The question of mainstreaming is important in order to reach more people and be able to address more issues in the society at large.
3. **Sustainability.** This is not just a matter of funding, but of people and of institutional (legal, policy) support as well. Education is a continuing process, not just attendance in a few seminars and workshops. Thus, human rights education needs to be continued over time.
4. **Evaluation/Assessment.** We cannot always prescribe a blueprint for a successful program. We must be conscious of the need to continuously evaluate activities and programs.

There are also certain things that should be avoided, such as:

1. **Isolation.** Human rights education is best if it reaches the greatest number of people in as many places as possible. This cannot be achieved by one institution or organization. This can only happen through cooperation among related institutions.
2. **Uncoordinated programming.** Just as linkage among institutions is important, coordination of programs is a natural need. This applies to programming within and among organizations.

3. **Relationship between method and content.** We may talk about laws, but forget the method – which is a mistake. Then we may emphasize method, but forget the content. The question of balancing method and content is something we always need to consider.
4. **Link between the general principles and the specific issues.** While relevance of human rights education requires a discussion of the specific issues and concerns of the participants, general human rights principles remain relevant subjects. The danger of focusing too much on certain specific rights may prevent the understanding of other rights. There is a value in widening the idea of human rights.
5. **Direction.** What is the strategic goal of the human rights education program or project? In which direction should it head? Should you have many activities? Is that the end goal?
6. **Unrealistic objectives.** We may be able to identify strategic goals, but we must be careful not to make them too ambitious and thus unfeasible.
7. **Rights language.** Sometimes, for political and other reasons, in order to talk or dialogue with people, the use of a different language is needed.

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ESC Rights Strategies

1. National Human Rights Commission of India
2. National Commission on Human Rights of Indonesia (Komnas HAM)
3. Human Rights Commission of Malaysia (SUHAKAM)
4. National Human Rights Commission of Nepal
5. Philippine Commission on Human Rights
6. National Human Rights Commission of Sri Lanka
7. National Human Rights Commission of Thailand
8. Comments on Economic, Social and Cultural Rights Strategies by Resource Persons

Introduction to Country Strategies

During the training program, participants worked in national groups to develop strategies for their NHRC to work with ESC rights. Given the diversity of the countries represented in the program and the differences in the ways each of the commissions operates, participants were encouraged to explore initiatives that responded best to the needs in their country. These initiatives could then form the basis of follow-up efforts after the training. What follows are the presentations made by each of the national groups on the ESC rights strategies for their NHRC.

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1. India: Promoting Economic, Social and Cultural Rights for the Disabled

First let me tell you a little about India. Here is a map of India showing Kerala, the state where I am from, and Bihar, where I worked before joining the National Human Rights Commission. Kerala is a beautiful place with a high human development index and a high literacy rate. In contrast, Bihar is a poor state with a low literacy rate and many human rights violations. To understand our Commission, it is necessary to understand the spirit, contrasts and complications of India, as we are but a microcosm of the whole country.

Mark Twain described India as the “mother of all religions and grandmother of all histories. The country of a hundred languages and one thousand tongues.” Our Human Rights Commission is like a mirror, reflecting all these contradictions and complications.

Assessing Internal and External Environments

Before discussing the strengths and weaknesses of the National Human Rights Commission, I would like to first present a model for evaluating the strengths and weaknesses of any organization. While at a training program at Harvard and MIT, we were taught to apply a triangular model in analyzing organizations. Just as all three sides of the triangle are necessary to form a triangle, so too, are the three following components necessary for forming a successful organization. The first side of the triangle is the mission. Every organization must have a clear mission if it is to succeed. The second side of the model is the authorizing environment, namely a mandate from all actors. For example, a human rights commission should have a mandate from the ministry, from the politicians, from parliament, from NGOs, and so forth. The third side of the triangle is operational capacity. The organization should have the strength and capacity to deal with the mission. If an organization has only a mission with no operational capacity or without an authorizing environment, then it is unable to reach its objectives. In evaluating the strengths and weaknesses of any organization, including national human rights commissions, this triangular model is an important analytic tool.

The National Human Rights Commission of India (NHRC) was established in 1993 with a very clear mission. The legislation governing the NHRC prescribes that the chairperson must be a retired Chief Justice of the Supreme Court of India. Such person’s experience allows him or her to give proper guidance to the Commission. Our present Chairman is very clear about what has to be done. In 1993, the NHRC had just 800 complaints. Now, we have approximately 50,000. This increase in the number of complaints received by the Commission speaks to its credibility and integrity.

While the Commission is independent to a great extent, we are not fully independent. We are, of course, accessible – the poorest of the poor from any corner of India can come and file a complaint with the Commission.

We have a strong Commission. Our Chairman is from the judiciary. Two other Commission members are from the legal profession. One member is a woman. The chairs of other national commissions (such as the National Commission for Women, the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Minorities) are also de-facto members of our Commission. All of us function well together.

Our support and strength also comes from the fact that India is a party to almost all of the international covenants (it has not yet ratified two conventions). Our Commission has its own investigation team, which can be sent anywhere in India and which will report back within 24 hours. We have the active support and trust of the judiciary, who have entrusted bonded labour cases to us. We are now monitoring these cases on behalf of the Supreme Court. We have the power to intervene in court cases. We enjoy wide media support, perhaps because the media is interested in challenging the government and therefore uses us as an instrument to that end. We have established a network with some very good NGOs with whom we have a good rapport.

Despite its strengths, the NHRC does have some weaknesses. We are only a recommendatory body. We have no control over non-state violators. The government assigns a low priority to ESC issues. Because 40% of our population is illiterate, there is a general lack of awareness of human rights issues. There is also a traditional mindset that can favour superstition over scientific inquiry. Other problems include a shortage of staff, infrastructure problems, a slow pace of work, a lack of government commitment, non-completion of guidelines and no central location for guidelines.

We can be trendsetters and whistle-blowers. We can learn from other commissions. We can also learn from the European Charter and African Charter. Human rights commissions can provide an enabling environment. In many cases, the government is at liberty to take action and we can provide moral support to facilitate decision-making, and then use the opportunity to build up capacity within the Commission.

Human rights continue to be a very low priority in all regions in our country. Social bias is a problem, complicated by the presence of caste, creed and religion. There is a lack of political will, a lack of government acceptance of recommendations, as well as a lack of financial resources.

Good governance is required. All of the problems that come before the Commission are due to bad governance. We can help the government move towards good governance. The biggest problem is the financial crisis faced by the country. The government is constantly changing focus and therefore changing priorities. This leads to a problem of finding space in the government's agenda for ESC rights.

Specific Issue of People with Disabilities

It is estimated that 4 to 6% of India's total population is disabled. In a land of over a billion, this means 40 to 60 million people are disabled. According to some beliefs, a

disability is considered to be a sin of a previous birth. This makes implementation of welfare reform programs and rights programs very difficult. In the last two years, groups have been advocating for the rights of the disabled. The Commission is now thinking of going into this area. In January of this year (2000) we proposed that the next census should collect data on the disabled. With information from the census, we would advocate for the ESC rights of disabled people. We would advocate for the government to adopt a policy of reserving 3% of all government jobs for people with disabilities. There are a number of provisions in the ICCPR, ICESCR, CEDAW and ILO that prohibit discrimination against disabled people. In our society, the disabled are invisible.

Goals and Objectives

What needs to be done? In our proposed strategy, we would like to change the attitude of the public, the government, the bureaucracy and the policy makers. With this program of intervention from a human rights perspective, we would hope to change the current mindset. We would like to bring about changes in the behaviour of members of parliament, employers and officials.

We would go further to strengthen enforcement mechanisms. The law is there, but is not being enforced. Therefore we would push the implementing mechanisms. We would also like to analyze policy and suggest improvements. We want to propose changes to the *Disability Act* of 1986. We in the Commission are afraid that the traditional mindset regarding welfare will prevail. We would like to ensure that the new legislation does not suffer again from a lack of human rights intervention.

Target Groups

First and foremost, since we are talking about job reservations in government departments, our primary focus will be government departments and policy makers. We would also inform present employees of their rights, thus empowering them.

Another group to inform would be potential employees. We would need to develop confidence within the ranks of those looking for work. We all know that the media can play a vital role in the dissemination of information and we would enlist their help in carrying our message. We must remember that the percentage of the population that is disabled includes women and therefore we should bring a gender perspective to any initiative. We would target clerical and technical jobs for those in the 20 – 25 age group, including youth and women. We would like to have training facilities to prepare disabled people for employment opportunities. We will also address the lack of data available on the disabled.

Evaluation and Follow-up

As a measure of the progress of this initiative, there should be an evaluation of the following: the number of cases handled by the Commission; the kind of and number of public hearings held and their effect on the issue; the changes in law or policies brought

about due to the Commission's influence and activities; the number of orientation programs undertaken for members of parliament and government people; the number of cases involving women which the Commission handled; and the activities we plan to undertake to further our goals.

Six months into this initiative, we would like to conduct a study on the implementation of laws and policies with regard to the employment of disabled people in government departments. This report would be disseminated at various levels - to parliament, to media, to civil society, to people affected, to people with disabilities and to NGOs, as NGOs can create awareness among people with disabilities better than the Commission. The Commission would be playing a catalytic role by advocating for law reform, writing the law ministry, doing follow-up, increasing accessibility, collecting data, analyzing budgets to ascertain whether the Commission's work is having any impact and conducting training programs. The Commission also would like to provide training for union leaders, because unions are, by and large, very reluctant to promote the rights of disabled. Union leaders seem to feel that if the number of disabled workers increases, it will create unnecessary bother. Training union leaders in order to change this mindset is very important.

Our most serious challenge will be to counter prevailing social attitudes and religious beliefs. Employers need to be educated so that people with disabilities receive better treatment in the workplace. We would also advocate for accessible workplaces. Many buildings, both old and new, are not accessible. Many government departments are not accessible. This is due to the present attitude towards the disabled. The Commission plans to work on this issue of accessibility. We want to issue a directive to the government that all federal government buildings must be accessible to disabled people. How can they be expected to do their jobs if they cannot access their buildings? Public transport must also be improved. There are no places on public buses for people with disabilities and this curtails their mobility. We need to have a public transport system that increases the mobility of the disabled. Also restrooms that serve the needs of the disabled must be created.

Among the challenges we face is a lack of trained people both inside and outside the Commission. We must develop capacity within the Commission. We must develop capacity beyond dealing with this issue solely from a legal perspective. It is more than a legal problem. Another challenge is the lack of clarity regarding financial resources, both in terms of employment and within the Commission. Yet another challenge involves dealing with the mindset of the policy makers and bureaucracy. Cultural and social beliefs are still very strong. Resistance from unions and a lack of data are also challenges to overcome. There is no social priority for this issue. Until it becomes a socially acceptable issue, it will not become a priority.

2. Indonesia: Promoting the Economic, Social and Cultural Rights of Marginalized Groups

Assessing Internal and External Environments

The mandate of the Indonesian National Commission for Human Rights (Komnas HAM) is set out in legislation that was passed in 1999. The Act gives Komnas HAM the power to collect information and influence the government and military.

One of our Commission's weaknesses is a lack of human resources. Given the size of Indonesia, it is extremely difficult for the Commission to distribute information or to be pro-active or responsive to the public in all parts of the country.

In Indonesia, a reformation movement is beginning. However, a strong civil society has not yet been established. For the past year or two, the Commission has involved other stakeholders, such as NGOs, in our activities.

Globalization is seen as both an opportunity and as a threat. As human rights gain importance universally, international support for human rights activities will increase which will hamper the government's ability to ignore rights violations. However, in Indonesia the rule of law has not yet been established. In this context, globalization and the actions of large corporations can have a negative effect on disadvantaged people, such as farmers, the urban poor and factory workers.

The conservatism of certain groups who want to maintain the status quo and who are reluctant to move toward a new paradigm for society could also be regarded as a threat to progress. Indonesia is also experiencing threats from sectarian and fanatic groups.

The focus of our proposed strategy is to address the discrimination experienced by marginalized members of society, specifically indigenous peoples, farmers, the urban poor and labourers, who do not enjoy economic, social and cultural rights. There is a lack of awareness within the government of the problems faced by members of these communities. There is also a negative attitude towards them not only on the part of the government, but of society in general as evidenced by the recent incidents involving pedicab drivers. While there are on-going debates on human rights issues, such as the right of factory workers to organize, there is a lack of consensus on these matters. As a result, the government tends to revert to the old regulations that do not protect the ESC rights of these marginalized members of society.

Target Groups

Marginalized members of society would be the beneficiaries of change resulting from these activities. To bring about this change, the target groups of the Commission's advocacy will be government officials, members of parliament, judicial officials, as well

as conservative, fundamentalist and fanatic groups, and especially influential people within these groups. Other target audiences could include multinational and transnational companies.

Goals and Objectives

Our goals are to have ESC rights incorporated into government policies, and to reform legislation based on the experiences and needs of marginalized members of society.

Evaluation and Follow-up

Our activities would be on-going and include the following:

1. Research – We will study the pattern, structure, and source of violations of ESC rights as experienced by marginalized members of society.
2. Creation of Standards – We will begin to establish standards and indicators of ESC rights that may be useful for legal reform.
3. Monitoring – We will conduct national inquiries on the enhancement of ESC rights.
4. Capacity Building – We will create a team from the three existing sub-commissions and staff. This team would also involve other stakeholders. Studies should be done not only by the Commission, but also in conjunction with NGOs and universities. Human rights courses should be given to Commission staff to provide a basic fundamental foundation for understanding rights.
5. Increasing Public Awareness – Awareness of ESC rights should be increased through activities such as public debates and seminars, parliamentary exhibitions, the publication and dissemination of research and the creation of an information network that includes NGOs and scholars.
6. Advocate for the Ratification of the ICESCR.

3. Malaysia: Impact of Hydro Dam Development

We have decided to deal with an issue relating to the indigenous people's plight in Sarawak. There are a number of indigenous people in peninsular Malaysia and the state of Sarawak. They face many problems, including those involving housing, land displacement, livelihood, clean environment, cultural heritage, health and education. Our plan focuses on the problems faced by indigenous people who have been displaced as a result of logging activities. There are two main problems that the indigenous people face as a result of the Bakun Dam development project – one, displacement and two, not having title to customary land. Economic problems which the indigenous people face include the loss of livelihood, food, income, social, health, displacement and customary land, as well as the destruction of a way of life.

State Obligations

International Obligations:

ICESCR
ICCPR
CRC
CEDAW
ILO Convention on Indigenous Peoples
UDHR

Domestic Obligations:

Environmental law – *Forest Act*
National Land Code

These obligations and laws are a double-edged sword. They are meant to protect people, but they can also cause people to be displaced. We are working hard to ensure that the application of these laws is more just for indigenous people.

The ICESCR has not yet been ratified by Malaysia, nor has it been incorporated into domestic law. In Malaysia, there is both federal law and state law. Land is under the jurisdiction of the states. The federal government has no authority over land. In order to influence the state, the ICESCR must first be ratified by the government of Malaysia. Changes in domestic policies and laws, changes in attitude and increased awareness of human rights issues are also needed.

Assessing Internal and External Environments

The National Human Rights Commission of Malaysia has both strengths and weaknesses, and is faced with both opportunities and threats.

The *Human Rights Act* of 1999 gives us full investigative power. The Commission can compel anyone to come before the Commission. The *Human Rights Act* is based on the UDHR and the Paris Principles.

The Human Rights Commission of Malaysia is a new commission. We have a lack of resources - human, financial, facilities, utilities - and a lack of experience.

There is a growing awareness of human rights in society, as well as opportunities for public consultation on human rights issues. There are NGOs working in specialized areas. The government has formed consultation bodies such as the National Economic Consultative Body to which we can bring these issues. Some laws are unjust and there is a lack of interest by members of parliament/politicians in human rights. Society needs to be sensitized. In Malaysia, there is an upper middle class that is too comfortable. Members of this class need to be shaken up to make them sensitive to human rights issues.

Target Groups

The Forestry Department would be one target group because the *Forest Act* has been amended in a way that gives the department more power to control indigenous people. Another target group would be the Environmental Department which is a federal department.

Other targets include the State Department and the Finance Department in Sarawak. There is a problem with the police regarding the reporting of police brutality and the indifference of the state of Sarawak to the plight of the victims.

Another target group is the Health Department. The forest satisfies many of the indigenous people's needs. The forest is their supermarket and their hospital - they get both their food and medicine from it. When the Forestry Department meddles with the forest, both the nutrition and health of the indigenous people are affected.

It is critical to also get the media involved so that these issues get onto the public agenda. We will also involve some NGOs in Sarawak that specialize in these issues.

We would also involve anthropologists because it is important to re-affirm that indigenous people have been living on the land for thousands of years and the land rightly belongs to them and to their way of life.

Goals and Objectives

One of the objectives of our proposed strategy is the ratification of the ICESCR. If we use the Convention before it is ratified, the government may not want to ratify it.

Our approach is that these are basic needs and basic rights and that it is humane to uphold these rights. We need changes in domestic laws – in forestry law, environmental

law, in laws related to land acquisition and in the land code. The development project is supposed to be sustainable. The government is supposed to conduct environmental impact assessments, especially for logging projects.

Changes in attitude are needed. The state should be more co-operative and non-state actors need to understand the implications and consequences of not co-operating. We should ensure the protection of indigenous people by granting titles and deeds to customary land. It is important to collaborate with NGOs and to sensitize members of parliament at the national level, as well as assemblymen at the state level. All need to be sensitized and all need to be fully informed.

Sarawak will have a state election in April. If we bring up this issue quickly enough, we can utilize the election to our advantage. It is important that the timing is correct. Timing is critical.

Evaluation and Follow-up

It is important to act quickly because we need to send our report to Parliament. Included in our strategy would be an on-going plan to educate all the parties involved, to inform them of the consequences of any actions, as well as the benefits of amicable settlements. The Commission's report would also go to the Forestry Department, to the EAI and even to the Chief Minister of the State.

4. Nepal: Racial Discrimination and Untouchability

We will address the problem of racial discrimination, or “untouchability” as it is generally referred to in most of South Asia. In our plan, we propose a strategy to eliminate it. However, we do not believe that a project or program running over a couple of years will be enough to solve this problem.

Hindu social structure, or the caste system, divides society into basically four levels. The lowest is the untouchable class. All others belong to a higher strata or higher caste. An untouchable, in the strictest sense of the term, means that a person belonging to this caste simply cannot be touched. People belonging to a higher caste would be committing something comparable to sin if they were to physically touch an untouchable. Persons of higher casts do not drink water that an untouchable has touched. They do not share food with untouchables. Untouchables are simply untouchable.

The problem in Nepal, and this applies to the rest of South Asia wherever this issue exists, is not a lack of legal instruments. Nor is it non-acceptance of international human rights instruments against untouchability. Rather it is more a social issue – we must accept this section of the population and not discriminate against them merely because they were born into a particular strata of society.

State Obligations

We have not made an exhaustive list of international obligations. We have referred to Article 2(2) of the ICESCR which refers to discrimination and to the Convention on the Elimination of Racial Discrimination (CERD), which is a separate instrument. Nepal is a party to both these international instruments. In addition, under Nepali domestic law there are criminal, civil and procedural laws which have specific provisions against discrimination based on caste.

Assessing Internal and External Environments

The Constitution of Nepal has an extensive provision prohibiting discrimination of any kind. Several other laws also have provisions stating that discrimination is not allowed and that one could be punished for discriminating. The *Human Rights Act* gives the National Human Rights Commission of Nepal (NHRC) fairly extensive powers to address violations of human rights. We have the powers of a court when it comes to investigating complaints of violations of human rights. We can summon officials. We can demand documents. We can also forward recommendations (which are, in effect, directives) to the government.

The NHRC is an all-inclusive Commission. It has a total of five members representing different sections of society. The members include a former Chief Justice of the Supreme Court, a medical doctor with an extensive public service record, a woman member who is a former senior law officer and two very active human rights activists. It

is a fairly representative body. The secretary of the Commission is a journalist. The combined experience of the members is a valuable asset of the Commission.

Our biggest problem is a lack of resources. We are a new institution that has been in existence for only four months. We have hardly any equipment or materials to run the office, however, we hope to be established in a few months.

There is a difference of opinion between NGOs and the government when it comes to identifying the exact number of people who belong to the untouchable caste. There are claims that say there are as many as four million. Nepal is a country of 21 to 22 million people. Four million untouchables in a country of roughly twenty million means that one person out of every five is an untouchable. The government claims that the number of untouchables is two million. We think it must be somewhere between three and four million, and likely around four million.

In Nepal, there is a lack of sensitivity in the bureaucracy. People tend to behave as if nothing is wrong. Everyone in Nepal and in South Asia knows that people who are designated as untouchables are being discriminated against. Everyone knows that these people are ostracized from the social mainstream, and yet nobody is really keen on pursuing the issue, especially within the government.

Another weakness is the apathy of the general public. By general public, we are referring to the population that is not designated as untouchable. They are not really concerned about doing anything about the problem of untouchability.

Nepal is a party to 18 different human rights instruments including the two Protocols to the Convention on the Rights of the Child. We also have 16 domestic laws passed by the parliament of Nepal.

There is very strong public support for the NHRC, as well as a will, to a certain extent, to eliminate the problem of untouchability. Nepal has a very fast emerging and fairly assertive civil society. There are NGOs working in the area of discrimination and working with untouchables.

Threats include backlash by fundamentalist forces. We are concerned that if we try to force the matter too far, too quickly, there is the possibility of a strong backlash from the dominant sections of society. There could be isolated reactions and civil strife. There could be incidents where people belonging to these different levels of society end up fighting each other because of attempts to assert rights against any kind of discrimination. The dominant sections could react violently, as could the victims of discrimination.

Goals and Objectives

What do we hope to achieve? We want the law amended to make the government the plaintiff in discrimination cases. Presently, victims of discrimination must pursue their

cases in court by themselves. The amendments to the law will ensure that laws are enforced fairly and that people from the untouchable class have access to justice. In Nepal, there are laws that prohibit discrimination based on caste, creed or ethnicity, but these laws are not strictly enforced. Often, victims of discrimination are from the untouchables class. Police officers are usually members of a higher caste, and therefore do not wish to pursue discrimination cases. Prosecutors are almost always from a higher caste and most are also not keen to give justice to untouchables. Also, judges come from a high caste. There is a lack of sensitivity among police officers, prosecutors, judges and the entire government bureaucracy. Victims who belong to the untouchables class are basically fighting against a huge social system and simply cannot pursue their case beyond the police station without great difficulty. We propose a change that will make the government the plaintiff in this matter, just as it is in any other criminal matter, so that victims of discrimination have equal access to justice. Under the proposed change, a victim of discrimination would go to the police, register the complaint, and then the government would take the matter to court.

The problem is not a lack of standards or laws, but rather it is an issue of enforcement and a need for greater “sensitization” of society in general. We need attitudinal changes brought about by education, sensitization and heightened awareness. To implement this, we need increased program and budgetary allocations to address this issue of untouchability.

We want to also sensitize untouchables to make them aware of their rights. Lack of education is a major problem within this group. One of our goals is to help them achieve a better quality of life. Our objectives include untouchables benefiting from basic social services and from the realization of social justice provisions. We want to reduce the apathetic attitude and indifference of law enforcement officials and local development officers towards untouchables. We want to put a special focus on untouchables in development initiatives. This is something that is rarely done.

We also want greater empowerment of this section of society in relation to governance and political participation. Nepal has its last parliamentary election in May 1999. While untouchables constitute about 20% of the population, none of the major political parties had any candidates from the untouchable class for any of the 205 seats in the House of Representatives (which is the People’s House where representatives are directly elected). This illustrates the lack of political participation of this community.

There are programs directed specifically to this community in the government’s annual budget. A working group should be formed to consider the viability of introducing affirmative action programs in Nepal. These programs would reserve a certain number of seats in the government (political positions, as well as government jobs) for people of this section of society. We propose that the figure of four million untouchables be used by the working group in considering the viability of this affirmative action proposal. India has experience in this area. It has an extensive system of reservations for people belonging to various sections of society. A certain number of seats are reserved for scheduled castes, that is, those lower castes listed in the Constitution itself. In India,

there seems to be strong voices from both sides of the affirmative action/reservation issue. There are those who strongly believe that affirmative action programs are doing a great service to society. There are others who argue that they are dividing society. After discussing the issue, we realize that we are not in a position to propose the introduction of affirmative action on a reserved number of seats until we study the matter more. That is why we have proposed a working group to further analyze the issue.

As I mentioned at the outset, the problem cannot be solved through a two or five or ten-year program because untouchability has existed for centuries. Thirty-seven years ago this type of discrimination was made illegal. Still, the present situation is not exactly encouraging although some changes have taken place. Therefore, five years may not be a very realistic time frame to achieve great results on this front. However, the current commissioners at the NHRC have a tenure of five years and therefore, we should look at what we might be able to do in the first five years.

Target Groups

The untouchables themselves are our main target group. Nepal is a country of uneducated people. More than 50% of the population is illiterate, which means every second person in Nepal is illiterate. Within that segment of the population, the untouchables are the most uneducated. They are generally poor and live mostly in rural areas. They are usually isolated from the rest of society because people do not want untouchables sharing a common compound. The untouchables are usually engaged in lowly, low-paying jobs. There is no upward mobility within the social hierarchy. An untouchable may get a Ph.D from Harvard University, but he or she still remains an untouchable. Someone from the upper caste may be illiterate, but will still remain an upper caste person. While there is no way one can be promoted within the social hierarchy, demotion is possible in certain instances.

Another target group includes law enforcement officials and local development officers. These persons are generally educated and mostly male, as women's participation in public life and in government is very low. The law enforcement officials and local development officers are mostly from a higher caste. There are a few from lower castes, but they are disproportionately represented.

We also wish to target traditional agents, especially in the villages. They are not necessarily highly educated, but they are definitely amongst the smartest in the villages. For example, the priestly caste is a high caste. Priests are literate and are fairly influential members of the community. People from higher castes are the ones who perpetuate the circle of untouchability. They are conservative and orthodox.

Evaluation and Follow Up

We would use baseline data indicators available from the government. The figure of four million untouchables does not come from the government. We can get fairly reliable figures from government published statistics that indicate the exact status of these

people. Some of the factors which we may want to consider include level of education attained, employment status, political participation, health status, budget allocation and number of children enrolled in schools. Two or three years later when we compare the original baseline data figures with the new figures, we should be able to see what has been achieved.

The number of complaints filed with law enforcement officials and local developments is also helpful. As mentioned earlier, at present if an untouchable goes to a police station to file a complaint of discrimination, the police would probably frighten him away and not register the complaint. And, even if the police did register the case, they would likely not pursue the matter expeditiously if they pursued it at all. We would look at the numbers of complaints filed, investigated and prosecuted and the figures for the yearly budget allocation that is passed by parliament. This should be a fairly realistic way of assessing the situation. We would do the comparison and monitoring after the first two and a half years and again at the end of this five-year project.

We are proposing the establishment of a committee involving several relevant government departments and offices, for example some of the key ministries such as finance, local development, home office, etc., as well as NGOs and the NHRC for policy formulation, development, implementation of the program, lobbying and monitoring budgetary allocation. This is a very ambitious proposal that we are putting forward. There is no certainty that the government will cooperate to form such a committee in which its representatives would be sitting with NGOs and members of the NHRC to monitor the government's initiatives towards eliminating and ending untouchability.

Some of the challenges we face relate to the capacity and resources of the NHRC. Expectations are very high and, as we are new, we do not exactly have a well-functioning national institution of human rights at present. Therefore capacity and resources will be a major challenge. We plan to be up and operating in a few months and then we should be in a position to undertake projects of this type. Other possible challenges we might face include opposition from traditional agents and people in the government, as well as a possible backlash if we try to push too hard, too far and too fast.

5. Philippines: Monitoring Economic, Social and Cultural Rights to Protect Internally Displaced Persons

The first major issue in the Philippines that we have identified is **poverty**. We hope to tackle the problems and concerns of poor city dwellers and of people displaced as a result of both armed conflict and the implementation of developmental projects. As well, we wish to address issues pertaining to the livelihood concerns of indigenous people.

A second issue concerns **economic, social and cultural rights**. The Philippine Commission on Human Rights (PCHR) has no specific mandate to investigate economic, social and cultural rights. Our limitations were made very clear by three Supreme Court decisions, namely *Simon vs. Commission on Human Rights*, *Carino vs. Commission on Human Rights* and *EPSA vs. Commission on Human Rights*. Therefore we must develop other strategies to pursue ESC rights issues. The best way may be through a multidisciplinary approach.

A related issue that needs addressing is the lack of indicators to monitor government compliance with the ICESCR. There is also a lack of political will to push for these rights. The political situation is such that there could be a change of administration at any time. We do not know who will form the next government or whether or not they will be interested in human rights. We do not know whether there will be amendments to the Constitution. We are not even sure whether the CHR will stay or will have to go.

The one specific problem that we hope the CHR can resolve is the issue of displacement of people due to armed conflict and development projects. The responsibility of non-state actors in these matters needs to be defined.

State Obligations

The state is obliged to respect, protect and fulfill their responsibilities under the human rights instruments to which the Philippines is a state party, as well as under the Constitution and related statutes and jurisprudence.

We would like to see several changes take place which would assist the state in complying with its ESC rights obligations. Firstly, development plans should have a human rights dimension and environmental impact assessment systems should include a human rights perspective. Secondly, development planners and implementers should be human rights friendly. We do not want to use the word “sensitize” because this may elicit negative or indifferent reactions from target participants who, as they may be already aware of human rights issues, might assume that this means that their attitudes need changing.

The Commission staff, starting with the legal and investigation officers, should embrace ESC rights. Again we do not want to use the words “sensitize” or “train”. Indicators

common to all concerned parties should be the standard for monitoring government compliance with the ICESCR. The Commission will have to clarify its mandate regarding ESC rights. This will require strong political will on the part of the Commission's leadership.

Assessing Internal and External Environments

We have the opportunity to effect change by advocating for the inclusion of a human rights perspective to development and also by encouraging a shared concern to respect, protect and fulfill international commitments. An advantage we have at the present time is that we have a Filipino as Chairperson of the UN Committee on ESC rights.

The external threats that we face include the reluctance of development planners and implementers to tackle human rights issues, the non-cooperation of legislators and other government officials, and the above-described political situation.

While for the most part we have a committed and enduring staff, we have lost a number of experienced lawyers who have left the Commission. Commission staff members must possess the patience of a teacher and the rage of an advocate. Our strengths include our institutionalized human rights education programs, as well as the international recognition accorded our Commission when it was awarded the UNESCO award on education. We have already established a network and have recently redefined the functions of the Commission.

Our primary weakness is the lack of a mandate to investigate ESC rights abuses. In our experience representing clients in civil and political rights cases, we have come across some judges who are not sensitive to human rights issues. We have had difficulty in ESC rights cases, for example, in representing clients displaced by demolition projects. Another internal weakness is the uneven distribution of staff. And lastly, the budget allocation is inadequate. Related to the budget is the need for adequate compensation for staff, particularly for those working in hazardous conditions.

Turning to our development plan regarding internal displacement due to armed conflict and development projects, we have identified as a priority the development of standards and indicators in monitoring human rights compliance especially in regard to ESC rights. We have found that most government organizations have limited knowledge on human rights, and usually this knowledge extends to only civil and political rights. There is a need to develop a common understanding of state obligations, as well as common indicators to monitor ESC rights.

In our consultations with development planners, we have discovered that they have somewhat of an indifferent attitude towards human rights. They have indicated we should do the human rights work and that they would do the developmental work. However, we have involved them in our ongoing projects and they have made a commitment to help us solicit funds.

There is no recognition of internally displaced persons (IDPs) as a sector in government programs and activities. It is only in the Human Rights Plan of the Philippine Commission on Human Rights that they are classified or considered as a sector. They are generally categorized as evacuees.

Target Groups

Our target audience includes development planners and implementers, as well as concerned government agencies and sectors.

Goals and Objectives

We want to popularize human rights instruments, especially the ICESCR; integrate a human rights framework in national development plans; and integrate human rights into the training programs of the National Economic Development Authority (NEDA), as well as into the local government academy units. We hope to establish a common standard of indicators in monitoring which would be adopted by the government as the standard of monitoring for government organizations, NGOs and civil society. We also want to develop policies and legislation which would include IDPs within the mandate of environmental impact assessments.

The specific activities we have identified are categorized into capacity building, monitoring, investigation and advocacy. We support the idea that an orientation to ESC rights must be done within the CHR itself. We would like to replicate this very seminar and direct it towards lawyers, investigators and information officers within the CHR, covering ESC rights and the issue of IDPs. We would like to develop a partnership with NGOs in order to produce a handbook on IDPs, which would be distributed to the IDPs themselves. We hope to pilot the use of the UN guidelines on IDPs as a way of monitoring. We also want to pursue a draft policy on IDPs, to strengthen links with NGOs and to design training modules for development planners, as well as conduct public inquiries or investigative monitoring. We want to continue consultation workshops with government agencies and civil society in the development of common standards, and to lobby for strengthening the mandate of the Commission in relation to ESC rights.

6. Sri Lanka: Displacement of Citizens Due to Conflict

The Human Rights Commission of Sri Lanka was created by Act No. 21 of 1996. The original Commission was headed by a Supreme Court Justice and had five members. Since April 2000, we have a new group of commissioners that is continuing to implement the Commission's mandate. Today we are here to speak about ESC rights.

Our development plan concerns the displacement of some citizens of Sri Lanka due to conflicts between the armed forces and the Liberation Tigers of Tamil Eelam (LTTE). Sri Lanka is a beautiful country. It is the pearl of the Indian Ocean. However, at present there are a number of conflicts and problems in Sri Lanka.

One third of the population lives as refugees in India. This prolonged suffering of Sri Lankan civilians is due to continuous conflicts that must be solved immediately in order for displaced people to live normally. Displacement is having a very big effect on the lives of the people of Sri Lanka.

Goals and Objectives

What we want is rehabilitation, resettlement and progress. We want people to be engaged in helping themselves earn a livelihood. We want training for people so that they can develop the ability to solve their own problems. We have support from NGOs in the country.

We would like to help improve the conditions of displaced people in the country; reduce the number of incidents of displacement; make the law-makers more aware of their obligation to respect and fulfill the ESC rights of displaced persons through the creation of legislation; communicate with national law-makers and politicians in order to advocate for programs and services for all displaced persons; and develop partnerships with government organizations, NGOs and communities.

We have a time frame of at least one or two years, but this is only for the presentation of the issues. The problem cannot be solved immediately. But if there is a will, there is a way - and we will do it. If the leaders have the heart to do it, we will begin immediately.

More displaced persons should have access to livelihood training programs. I am very thankful to the Sri Lanka Human Rights Commission which gave me the opportunity to be a legal officer. When I was a displaced person, I did not know what to do with my life, but I knew I had to work to bring up my child. The opportunity to work with the Human Rights Commission gave me a new life.

Adequate education and health programs should be given to all displaced persons. It is important also for displaced persons to organize their own communities, as well as NGOs, and that they together can work on ESC rights issues.

The Human Rights Commission should also inform the government of their ESC rights obligations to displaced communities. The Commission must begin to promote ESC rights even if we are late in starting.

Our legislative objective is to draft a national agenda program for displaced persons, and to conduct an educational program for the armed forces and the police. Public information programs should be conducted and the dissemination of information should be done through the media, as well as through publications.

Assessing Internal and External Environments

Challenges include getting communities, legislatures and local authorities to address common problems and to pursue these problems.

The Commission staff should be trained, but the Commission does not have sufficient funds.

Evaluation and Follow-up

Our success indicators will include funds given to displaced persons for resettlement and rehabilitation.

7. Thailand: Power Plant Construction in Prachuap Kiri Khan Province

Although Thailand has several issues and problems that are equally important, we have chosen to address the matter of national resource management as it is a hot topic in Thailand at the moment. There are many development projects involving pipelines, hydro dams, electric power plants and so on. We have chosen to focus our proposed strategy on addressing human rights concerns related to the construction of power plants in Prachuap Kiri Khan, a southern province of Thailand.

In this province, many people make their living by fishing. These power plants have an impact on the livelihood of the fishermen. Power plants also affect the environment. There is very beautiful coral in the area that might disappear in the future. There are also concerns regarding water and air pollution.

At the moment, some people are protesting against these construction projects. However, there is a reluctance to hold public hearings because often when such meetings are conducted they are not real public hearings at all, but rather just hearings organized by the government and the power company.

State Obligations

We have the 1997 Constitution of Thailand. We have many articles within the Rights of the People. We have information and community rights in Articles 20, 26, 29, 46, 56, 58, 59 and 76. Thailand has also ratified the ICESCR. The provisions of international laws and conventions have been incorporated into the above articles.

The problems we face include lack of effective implementation. We would like government departments to compile ESC rights obligations. We would also like the government to effectively implement the laws that already exist. We have a good Constitution and many good laws and institutions. However, without effective implementation, these laws are useless. This is a very important point. We would like the government and the Commission to work together on the issue of implementation and enforcement of existing laws.

Target Groups

We would like to educate local government officials and to strengthen the community. If the community is not strong enough, then every issue that arises will be sent to the Human Rights Commission. Communities must be strengthened so that they can protect their own rights. A Commission's duties include giving advice and making recommendations to the government. We do not as yet have such a Commission, but in the near future we hope to have an independent Commission that will advise the

government on human rights issues. We hope that this Commission will advise the government to listen to NGOs. NGOs can provide important checks and balances for the government. We would also like human rights education to be incorporated into the formal education curriculum.

Assessing Internal and External Environments

The members of the National Human Rights Commission of Thailand come from different professional groups. People want a legitimate, transparent commission. In Thailand, people are sensitive about appointed commissions. They believe that government appointed commissions are composed of government people who are biased rather than neutral. That is why we should aim to have more elected officials rather than appointed. More elections mean more work, but elections are necessary for a democratic society.

While the enabling legislation has been enacted and some Commissioners appointed, the Commission is not yet fully operational.

One challenge we face is the attitude of people in general. The Commission and human rights NGOs need to tackle and work to improve these attitudinal problems of the middle and upper classes. There is a tendency to look at the poor or at NGOs as troublemakers. People dislike the poor and it is difficult to make the upper classes understand the human rights issues related to poverty.

While we do have the *Information Act*, the information that we use to inform the public is still inadequate. This inadequacy of information is a major impediment to our work.

Thailand has a good Constitution that gives people many chances to exercise their rights under the ICCPR and ICESCR. The environmental movement is getting stronger and, increasingly, the members of this movement are able to fight for environmental and related issues better than the Commission. This is very useful as this group can assist the Commission in the future with environmental issues.

Another opportunity that presents itself is the expansion of civil society. Our Commission is strong. While it is not yet perfect, we are better organized to fulfill our mandate. Human rights issues are more popular now than they once were, which presents us with an opportunity to advance our work for human rights. How we use this current popularity is yet to be determined.

In truth, some professional groups in Thailand that are involved in certain issues are just fighting for their own interests. They do not care much about problems which are not within their area or which do not affect them. We have to work to change this mentality. This mentality also applies to the middle class.

Although some progress has been made, we are also concerned about corruption.

Goals and Objectives

One of the roles of the Commission is as a mediator between the government and the people, to bring them together to talk and to solve problems. We do not want simply to fight the government and to protect the poor. We would like to get these parties to work on these problems together. This would be our first step.

We would then list our objectives and make a plan that will be reviewed by the government and the people. If a power plant construction plan, for example, is not suitable or has the potential to cause damage, then we would review it. The government must set up a process and a method (including getting appropriate expertise and setting up clear measurement indicators) to prevent damage. Information and insurance compensation is important. So is public participation and the issue of construction bonds. The Commission would bring these issues up for discussion.

If the final decision is that construction will continue in Prachuap Province, then consideration and preparations must be made in respect of future compensation for any damage which might occur as a result of the construction. The government must prepare for environmental rehabilitation - water sources and so on. It may be short or long term rehabilitation, but it is necessary to assure the public that the construction will not cause damage or hardship to either the people or the environment.

Our strategy would take at least six months to implement. First of all, there is monitoring to be done. Contracts and documents of all related parties (the government and the company, including transnational corporations) would have to be monitored. Also the report of the Environmental Impact Assessment (EIA), which is directly related to this issue, would have to be monitored.

There are many government departments and parties involved in a project. The government needs to issue a license and sign the contract. The contract is then passed to the Ministry of Industry, Ministry of Environment, Ministry of Culture, and other departments that would be involved depending on the type of project.

Investigation is the next step. The peoples' petition should be examined, the problems identified and other related cases looked at. When this type of project is constructed, sometimes there are issues beyond those relating to land, water and soil that need to be examined. It is necessary to go into the field to actually see the situation and talk to the people. It is necessary to hear expert advice from both sides of the issue, that is from those for and those against the project.

During the process, it is necessary to promote human rights. The Commission could hold a seminar and invite all parties to discuss the relevant issues. The press or media should also be informed of the issues. The press may take an opposing position to that of the Commission that could present us with a problem.

The Commission should undertake a campaign to educate the government about its human rights obligations. The government would have to make and implement regulations to ensure a safe, clean environment and to provide for compensation.

Our strategy is a three-year plan which we believe to be a realistic timeframe.

Evaluation and Follow-up

There are two ways to measure the success of this initiative. If construction continues, the government should first, review the national plan and contracts and organize real public hearings. Second, the government should compensate the villagers who have lost their land or professions as a result of the construction.

Our commissioners believe that because of the many activities and the amount of work involved, it would be better to set up sub-committees to follow-up on whether officials have implemented their duties. The sub-committee would put pressure on the government to pass laws or to hold public hearings.

Public hearings are very important for Thailand, as every democratic country should have public hearings. Obstacles that we might face include a possible lack of cooperation from the government and the company involved. Public opinion is very important. If public opinion favours construction, it could present difficulties for us. But the Commission should try to stay in the middle and not take sides.

There is also potential for other problems. The press could be bribed by the government or the power company to support the project. The government ministry or department might favour the company or the project. If public hearings are not held or if they are delayed, violence could arise from either side.

The Commission might face financial and staffing obstacles. The financial commissioner just now informed me that this year the Commission's budget is 30 million baht which is very little compared to what is spent by the Philippine Commission on Human Rights. The allocated budget is not enough for addressing all the problems which arise in the 76 provinces of Thailand, and for staffing and setting up the office of the Commission, and so on.

8. Comments on Economic, Social and Cultural Rights Strategies by Resource Persons

JUSTICE V.S. MALIMATH

Former Member, National Human Rights Commission, India

The strategies presented have helped to clarify ideas on ESC rights and how to tackle some of the problems. This exercise generated new ideas, new motivations and the realization that each country has its own problems that must be solved in the context of its own ethos and background. The discussions regarding the need to tackle poverty or address systematic discrimination such as untouchability, led to an understanding that patience and tenacity in pursuing solutions will be necessary to find solutions to these problems.

Strategies

Empowerment and enlightenment of people is the answer to problems related to ESC rights. Education is the key. In countries where there is no free nor compulsory education and where illiteracy rates are high, real empowerment of the people will come from attaining a higher level of education that will allow for an improvement in their economic status.

Education leads to empowerment. Therefore this is where efforts must be concentrated. Help must be given to remove obstacles to acquiring an education. Education leads to knowledge of rights and development of the ability to fight for those rights. Education leads to better living conditions which result in higher rates of longevity and lower rates of infant mortality, child labour, and child prostitution.

Educating girls is of prime importance. It has been said that if a girl is educated, a family is educated. This is of crucial importance with regard to the protection of ESC rights, as well as civil and political rights.

Society in general must be educated so that awareness of issues such as child labour and child prostitution is heightened and efforts can be made to counter these societal problems. NGOs and human rights commissions must be involved in educating and enlightening society so that society in general begins to support these causes. Unless civil society is involved, it is unlikely that the government will respond to rights concerns.

Persuasion and dialogue are better strategies for advancing rights than confrontation. Boycotts and threats do not work. Reasoned, logical, factual dialogue works. Human rights commissions and NGOs have to work to sensitize government agencies to these rights issues. Convincing arguments and reasoned dialogue are important tools in this sensitization process. Recommendations for corrective actions must be backed up with

appropriate facts, figures, evidence, expert opinions and research. This method works. Expertise must be developed in order to proceed in this manner.

Sensitization for Various Target Groups

Judiciary

Both an enlightened and sensitive judiciary that is pro-fundamental rights and pro-human rights, and an imaginative interpretation of the law by the judiciary are required to make ESC rights meaningful and to deliver them effectively. Sexual abuse is a big problem in India. This problem is compounded by the modesty of Indian women that prevents them from lodging complaints or describing the abusive behaviour. The Supreme Court noted this situation and the lack of legislation in this area and gave specific directions on dealing with this issue until a law has been passed. The court's broad definition of sexual abuse was indicative of the court's sensitivity to this issue.

This judicial sensitivity must be encouraged by human rights commissions. In some countries, the judiciary is feared or does not inspire confidence. A judiciary must be independent to allow for protecting and promoting human rights. The chief justice and all judges must be independent and honest, or realization of fundamental human rights will be impossible. Human rights commissions must press for an independent judiciary that is sensitive to ESC rights.

The judges of the Supreme Court of India are willing to read ESC rights as a part of the Constitution. These national standards and international standards of good governance must, therefore, be regarded as part of accepted jurisprudence. It is important that the judiciary in every country be sensitized to these rights.

NGOs and Human Rights Commissions

NGOs must specialize – they cannot be all things to all people. They cannot speak for the whole country, but rather should speak for a specific constituency. NGOs must at times coordinate their efforts in order to be more effective. Human rights commissions must cooperate with and support NGOs. These commissions must become more pro-active, pro-people, and sensitize themselves to their responsibilities of protecting and promoting human rights.

JEFFERSON PLANTILLA

Researcher, HURIGHTS - Osaka, Japan

The Importance of Promoting ESC Rights

The ignorance of surrounding populations to problems of indigenous communities can lead to them being part of the problem rather than part of the solution. Their actions may even affect the rights of indigenous people. They may be encroaching on indigenous land without even realizing that it indigenous land. They may not even know that

indigenous communities exist in their province. This lack of knowledge constitutes a major loss because without this information, it is impossible for the surrounding communities to be involved in devising solutions for the problems facing indigenous communities. Because they are not informed, they are not involved and consequently they are not doing anything.

Another group that does nothing to alleviate these problems can be characterized as fence sitters. In some countries, these fence sitters may be from the middle class. They may be comfortable, educated and skillful, but they do not use these advantages to promote human rights. Their attention is turned elsewhere. The question is – should we make the effort to get them involved in human rights issues, problems and programs.

This is the situation faced in the case of untouchability. Untouchability is a human rights problem, as much as it is a social and cultural problem. The challenge is to raise the consciousness of the surrounding communities to rights issues in order that the status quo is examined and put into question. How to go about getting those people off the fence and involved in the process must be examined by keeping a cause and effect perspective in mind. For example, in the case of a national resource management problem, a dam is justified because of a need for electricity. Those fishing in the river do not have this need, but those in the city, in industries, in the middle and working classes, have need of increased electricity. Many policies involve serving one sector at the expense of another sector without this inequity being examined. This cause and effect connectedness, as well as other kinds of situational relationships, such as supply and demand, must be examined. If a sacrifice is demanded from one group by another group, the latter should be prepared to give up something in exchange. While this interconnectedness is not often noted, it is important to focus attention on it. Promoting human rights, including ESC rights, has to be seen in the context of daily life. We have to understand how rights impact on people's daily lives.

Indicators to Determine Success or Effective Implementation

In identifying indicators, cultural and social practices have to be carefully examined to ascertain whether we are promoting the rights we aspire to promote by our own actions, thoughts and attitudes.

Multi-Target Framework

We are dealing with many different groups – affected people such as untouchables, indigenous, internally displaced, refugees, as well as government officials and the human rights advocates. To deal with these different groups a multi-target framework is required. Each target group requires a different approach. Objectives and skills required vary group to group. Yet it is necessary to have a holistic approach and the ability to see the big picture in order to understand the interconnectedness of all the groups including those who are affected and those who are doing the affecting. We have to go back to the cause and effect, the supply and demand framework outline above in order to see this connectedness.

MARIA SOCORRO “COOKIE” DIOKNO

Secretary General, Free Legal Assistance Group (FLAG), Philippines

Adopting a systemic or structural approach to ESC rights recognizes that often it is these very structures and systems that are the cause of human rights problems and these systems and structures must be addressed. It is important to understand that changing laws is not sufficient. Laws must be reformed, implemented and enforced in order for them to make a difference. Reparation should also be seen a fundamental right of all victims.

In developing strategies, human rights commissions should give consideration given to including both litigation and benchmarking as important components of human rights advocacy.

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PART 2 – EVALUATION REPORT

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Evaluation Report of the Training Session

The following evaluation report presents data from 78 participant questionnaires collected over a 5-day period. In addition to improving the NHRIW Program for future participants, this information will be used as a tool to direct future sessions of similar programs held by the CHRF in Asia, South East Asia and other regions.

Methodology

Evaluation of the “National Human Rights Institutions at Work: Regional Workshop in ESC Rights” took the form of four daily questionnaires administered to participants gathering feedback on (a) curriculum, (b) participant satisfaction with the day’s events, and (c) usefulness of program content for future work. A general evaluation questionnaire was administered to participants on the last day of the program and gathered data on course content/process and future directions for the program.

Return Rate of Questionnaires

A total of twenty-one (21) participants attended the Workshop. The average return rate for completed questionnaires over the 5-day session was 80%. The exact number of participants who responded and returned the questionnaires are also included in this report.

Questionnaire Items

In order to gauge the success in accomplishing each Workshop objective, participants were presented with statements and asked to rate their level of agreement by circling the appropriate number. Participants were also asked to respond to open-ended questions and asked to contribute any additional comments.

Questionnaire Rating Scale

The evaluation questionnaires asked participants to circle numbers on a 5 point Likert scale. Three points on the scale (1, 3 and 5) corresponded to the following: Strongly Agree, Agree and Strongly Disagree, respectively. Two points (2 and 4) corresponded to levels between the three previously mentioned categories.

For evaluation purposes, three categories out of the five were considered positive (Points 1, 2 and 3) while two categories were considered negative (Points 4 and 5). As well, points 2 and 3 are collapsed together as “agree” for ease of analysis in the written results below.

Results and Discussion

The following sections present a summary of results gathered from participant questionnaires. In the "Daily Questionnaire Results" section, each table presents an average percentage from 4 Workshop questionnaires. In the "General Questionnaire Results" section, each table presents an average percentage from separate questions. While perhaps not statistically complete, the averaging allows a general overview of Workshop and session results. For specific percentages, please refer to the raw data included in this report.

Daily Questionnaire Results

Daily Objectives

Statement	Strongly Agree (1)	⇔ (2)	Agree (3)	⇔ (4)	Strongly Disagree (5)	No Response
Level of Statement Agreement (%)	39	33	19	3	0	3

In total, nine (9) statements relating to the Workshop's daily objectives were presented and participants were asked for their level of agreement. For example, in Workshop 1: "The Experience of NHRIs on ESC Rights," participants were presented with the following statement:

I increased my awareness of the relative strengths of NHRIs in fulfilling their mandates with respect to ESC rights protection and promotion.

When asked for their level of agreement as to whether the program's daily objectives were met, on average, the majority of participants either agreed (52%) or strongly agreed (40%). More participants strongly agreed that the program met its objectives for Workshops 1 and 4, "The Experience of NHRIs on ESC rights" and "Working with the Concept of State Obligations in Relation to ESC rights," respectively.

Objectives Relevant to Current Work

Statement	Strongly Agree (1)	⇔ (2)	Agree (3)	⇔ (4)	Strongly Disagree (5)	No Response
Level of Statement Agreement (%)	46	28	23	0	0	1

Daily evaluation questionnaires presented participants with the following statement and asked for their level of agreement:

These [daily] objectives are relevant to my current work.

From the first four days, on average, the majority of participants either strongly agreed (46%) or agreed (51%) with this statement. Again, more participants felt the objectives for Workshops 1 and 4 were relevant to their work, "The Experience of NHRIs on ESC rights" and "Working with the Concept of State Obligations in Relation to ESC rights," respectively.

Satisfaction with the Day's Events

Statement	Strongly Agree (1)	⇔ (2)	Agree (3)	⇔ (4)	Strongly Disagree (5)	No Response
Level of Statement Agreement (%)	44	32	19	1	1	1

Daily evaluation questionnaires also presented participants with the following statement and asked for their level of agreement:

I am satisfied with the day's events.

On average, the majority of participants either strongly agreed (44%), or agreed (51%). The few participants who disagreed with the statement did not provide any comments for why they answered as such. More participants strongly agreed that they were satisfied with Day 3's events, Workshop 4 "Working with the Concept of State Obligations in Relation to ESC rights" which involved a human rights commission simulation exercise.

Transferring Workshop Content to Work

When asked how the contents of each workshop could be used in their work, participants provided comments, a sample of which are provided below. All participant comments can be found in this report.

Workshop(s)	Sample Comments
Workshop 1 "The Experience of NHRIs on ESC rights"	<ul style="list-style-type: none"> Appreciated ideas related to designing strategic plans and frameworks
Workshop 2 "Legal Sources of ESC rights" Workshop 3 "Women and ESC rights"	<ul style="list-style-type: none"> Provided important guidelines for work Contents useful as training material Skills helpful with investigative monitoring of ESC rights/women's rights situations
Workshop 4 "Working with the Concept of State Obligations in Relation to ESC rights"	<ul style="list-style-type: none"> Provided useful exercise and method of analysis
Workshop 5 "Monitoring ESC rights" Workshop 6 "Strategies for the Promotion of ESC rights"	<ul style="list-style-type: none"> Provided skills in monitoring and designing training

General Questionnaire Results

Overall Program Objectives

Statement	Strongly Agree (1)	↔ (2)	Agree (3)	↔ (4)	Strongly Disagree (5)	No Response
Level of Statement Agreement (%)	44	42	7	0	0	6

Participants were given the following three statements that reflected the overall session objectives and asked to rate their level of agreement:

I have deepened my understanding of the role of national human rights institutions in the promotion and protection of economic, social and cultural rights.

I have explored state obligations to respect, protect, promote and fulfill economic, social and cultural rights.

I have developed practical strategies for national human rights commissions to employ in the promotion and protection of economic, social and cultural rights.

On average, the majority of participants either strongly agreed (44%), or agreed (49%). Six percent (6%) of participants did not respond to the statements. More participants strongly agreed that Objective 1 – "I have deepened my understanding of the role of national human rights institutions in the promotion and protection of economic, social and cultural rights" – was met when compared to other objectives.

Single Most Important Thing Learned

Participant comments fell into two broad categories. The majority of comments related to an increased knowledge and awareness of ESC rights (e.g. a deeper understanding of rights and state obligations) while a smaller number related to the valuable skills learned during the program (e.g. training methodologies). Some sample comments from participants:

Understanding of the extent of state obligation to meet the requirements of economic, social and cultural rights of the citizens, and how to compare initiatives in the development process with the obligations under the international instruments.

The concepts, approaches and strategies in the promotion and protection of ESC rights including the justiciability of these rights.

How to organize a training workshop on ESC rights.

Participant Needs Met

All participants (100%) stated that their needs had been met. While some participants said their knowledge of ESC rights had increased, others stated that they were able to exchange ideas with others' regarding ESC rights programming.

Methodology

Statement	Strongly Agree (1)	⇔ (2)	Agree (3)	⇔ (4)	Strongly Disagree (5)	No Response
Level of Statement Agreement (%)	28	41	25	4	0	0

Participants were provided with six (6) statements reflecting various aspects of the program methodology. For example, in relation to women's rights issues, participants were presented with the following statement:

There were effective opportunities to explore women's rights issues in this program.

When asked to rate their level of agreement with the various statements, on average, the majority of participants either strongly agreed (28%), or agreed (66%). Four percent (4%) were not in agreement with the statement. Of the six statements provided, more participants strongly agreed that the group discussions were useful.

Documentation

Statement	Strongly Agree (1)	⇔ (2)	Agree (3)	⇔ (4)	Strongly Disagree (5)	No Response
Level of Statement Agreement (%)	41	38	19	0	0	0

Participants were presented with the following two statements regarding the clarity of instructions in the program manual and the usefulness of the readings manual:

The program manual presented instructions clearly.

The reading manual was a useful resource.

When asked to rate their level of agreement with these statements, the majority of participants either strongly agreed (41%) or agreed (57 %). Although responses indicated a general level of satisfaction with the manuals, useful suggestions were made to improve them as well.

ESC Rights Initiative Activity

Statement	Strongly Agree (1)	↔ (2)	Agree (3)	↔ (4)	Strongly Disagree (5)	No Response
Level of Statement Agreement (%)	35	35	25	0	0	2

Participants were presented with the following three statements regarding the ESC rights Initiative planning activity that culminated on the last day of the program:

This activity was effective in allowing me to synthesize all the information learned in the workshops.

This activity allowed me to appreciate the challenges in developing ESC rights programs.

The ESC rights initiative planned during this program is feasible for implementation in my organization.

When asked to rate their level of agreement with these statements, the majority of participants either strongly agreed (35%) or agreed (60%). More participants strongly agreed that the activity allowed them to appreciate the challenges in developing ESC rights programs, while fewer thought that the initiative was feasible for implementation in their organization.

Participant Suggestions

A small number of participants mentioned the shortage of time during the workshops. It was suggested that speakers be firmly monitored in terms of time. Also related to time, one participant wrote:

Had we been told about it [available resources for participants] beforehand we could have come with clean transparencies and slides reducing the [presentation] time at the same time making the presentations more interesting.

In relation to the two short case studies, one participant pointed out that both dealt with (environment issues) and requested that they should be more varied. Regarding the simulation activity, one participant commented that:

The activity is a very good one, but it could be improved if the case study will be tightened a bit with more details and more time perhaps 1/2 day

given to the simulation of the presentation of the work of Commission Staff and Commissioner's meeting.

A small number of participants also stated that more time to visit the Philippine Commission would have been beneficial.

Although comments were made that the facilitators were excellent, one participant wrote "facilitators in country-groups should have better knowledge about ESCR issues in the country."

Throughout the evaluations, participants made various requests regarding their work in ESC rights. One such request related to the translation of some important UN documents, as well as the Maastricht Guidelines and Limburg Principles. Another participant asked for general information about international NGOs for future networking.

Possible Follow-up

Another important aspect of the program involves the issue of follow-up. When asked what type of follow-up activities would be effective to enhance the success of the program, all participants made comments. Some examples:

Helping national institutions to conduct similar programs after adapting it to their context and needs.

There is a need to establish a follow-up network between the participants so that we can exchange our experiences. Please be ready to extend technical support to us, especially the help of resource persons.

Having similar programs take place in each individual country would help train more people in ESCR and act as a way of networking with NGOs.

The putting up of a publication by the participating NHR institutions handled by the CHRF. It may deal particularly in the HR program and updates of the contributing countries. A semi-annual publication is suggested.

Give a small project/programs/assistance to the HRC in information. CHRF should visit the countries with new forming of HRC, then you will know what they need and what problem they are facing.

Network of the present trainees and encouraging to undertake one activity of ESCR and share their outcomes after one year period. Encourage the trainees (and facilitators if possible) to interact with African HRC as they are strong on ESCR.

Conclusion and Recommendations

The data collected from participant evaluations indicates strong satisfaction with the content, design and delivery of the program. In particular, ninety-four percent (94%) of participants responded positively, ranging from agree to strongly agree, that the Workshop program met its objectives to help them: (a) deepen their understanding of the role national human rights commissions play in the promotion and protection of ESC rights, (b) explore state obligations to respect, protect, promote and fulfill ESC rights, and (c) develop practical strategies for national human rights commissions to employ in the promotion and protection of ESC rights.

Moreover, participants reported that their expectations were met by the program and were vocal about their enthusiasm for the session. At the same time, participants and resource persons alike commented that there is room for improvement in some areas of the program as well as a need for follow-up on transfer of learning, networking and future training opportunities.

Program Design and Implementation

Overall, program activities worked well although adjustments to schedules were necessary along the way, underlying the importance to be flexible.

The small group activities prior to resource person presentations were an effective way of levelling people's experience and bringing out issues that needed further clarification.

However, there were suggestions from some resource persons that "levelling off" and providing more overview before Workshop 1 would have been helpful for those participants who did not have enough general knowledge of NHRIs and the Paris Principles.

Workshop 1, which involved the experience of NHRIs on ESC rights, could be improved, as the reporting of the country contexts was very long even though participants were asked to prepare in advance. Some of the information was also repeated in the presentations on the last day.

Workshop 6 "Strategies for the Promotion of ESC rights" allowed participants to demonstrate what they had gained from the Workshop and provided a way of focusing their attention on follow-up. CHRF needs to keep in touch with participants to monitor follow-up activities.

On the general evaluation questionnaire, when asked about whether the program methodology was effective, while sixty-three percent (63%) of participants agreed, only twenty-eight percent (28%) strongly agreed. Referring to the statements, there seems to be room for improvement in two specific areas: (a) opportunities for discussing women's rights issues and (b) allotted time for activities.

Though a majority of participants agreed that there were effective opportunities to explore women's rights issues in this program, only five (5%) strongly agreed. An analysis of these responses did not show any significant differences between genders. One participant commented that the "...emphasis on gender based issues are sufficient but there were lack of activities and information during workshop to really analyze the matter." This may address the fact that Workshop 3, "Women and ESC Rights," was shorter in comparison to other workshops in the program. Consideration might be given to lengthening the Workshop or better integrating women's human rights issues into other activities of the program.

Results also indicate that the simulation activity involving a human rights commission meeting addressing an ESC rights complaint was both relevant to participant work and satisfying to take part in. However, the simulation case may have contained too many details and too much ambiguity to deal with in the allotted time period. With some editing, the case could be used again. This type of activity has many advantages for learning: Teamwork is necessary in solving a complex problem and participants must engage in discussion, make responses, and take action. This method allows a deep involvement with issues, with similar stress and pressures that would take place in reality. Based on these results, it seems beneficial to consider inclusion of simulation exercises in other program designs of the CHRF in order to maximize participant learning and involvement.

Only sixteen percent (16%) of participants felt that there was sufficient time for activities to be carried out, an issue that appears in many CHRF programs. Although CHRF programs are designed to be flexible, everyone should be mindful of program time constraints and the wish of other participants to speak. Facilitators should remind participants to be brief and concise when group discussions take place.

Participants also commented that the program manuals need to be designed with easier access in mind. Suggested changes include providing a program overview at the beginning of the manual with session dates and times; numbering pages and corresponding table of contents in the readings manual; simplifying instructions; grouping worksheets; making use of tabs and colored paper; and ensuring standard and quality reproduction of the manuals.

Learning Transfer and Networking

The CHRF views the third main program objective to develop practical strategies for NHRIs to employ in the promotion and protection of ESC rights as one of the most important outcomes of the program. The degree to which participants' organizations integrate and apply what has been learned will be the final measure of success of the Workshop.

The importance of learning transfer and impact evaluation is strongly promoted by the CHRF. That is to say, program assessment does not end on the last day of the program, but necessarily continues in order to gauge long-term effects. Participant

suggestions indicate their shared belief in the importance of learning transfer and impact evaluation, including the possibility that participants will design and deliver training of their own, accept the responsibility of conducting impact assessment and sharing results.

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PART 3 – TRAINING MANUAL

Introduction

Day 1

Opening Program
Workshop 1: The Experience of Human Rights Commissions on
Economic, Social and Cultural (ESC) Rights
ESC Rights Initiative Workbook: Introduction and Step 1

Day 2

Workshop 2: Legal Sources of ESC Rights
Workshop 3: Women and ESC Rights
Workshop 4: Working with the Concept of State Obligations in Relation to
ESC Rights

Day 3

Workshop 4 (cont'd)
ESC Rights Initiative Workbook: Step 2

Day 4

Workshop 5: Monitoring ESC Rights
Workshop 6: Strategies for the Promotion of ESC Rights

Day 5

Workshop 6 (cont'd)
ESC Rights Initiative Workbook: Steps 3 and 4

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National Institutions Training Series

**NATIONAL HUMAN RIGHTS INSTITUTIONS
AT WORK:
REGIONAL WORKSHOP IN
ECONOMIC, SOCIAL AND CULTURAL (ESC) RIGHTS**

**Manila Philippines
November 5 - 11, 2000**

TRAINING MANUAL

**CANADIAN HUMAN RIGHTS FOUNDATION
AND
PHILIPPINE COMMISSION ON HUMAN RIGHTS**

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INTRODUCTION

Background

The crucial role of national human rights commissions (NHRCs) in the promotion and protection of economic, social and cultural (ESC) rights has been recognized by the institutions themselves, the UN Office of the High Commissioner for Human Rights, the UN Committee on ESC Rights, as well as NGOs in the region.

In its General Comment No. 10 (December 1998), the UN Committee on ESC Rights noted that:

National institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Unfortunately, this role has too often either not been accorded to the institution or has been neglected or given a low priority by it. It is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions.

The *National Human Rights Institutions at Work* (NHRIW) Regional Program is designed to strengthen the capacity of NHRCs to protect and promote ESC rights in the Asia-Pacific Region by providing specialized training for their staff and their potential partners in government and civil society.

The program was piloted in February 1998 in Tagaytay, the Philippines and was subsequently modified on the basis of this experience and consultations with the members of NHRCs in the region as well as regional human rights education experts. The second NHRIW session took place in Antipolo City, the Philippines from 9-14 May 1999.

The program was developed and delivered by the Canadian Human Rights Foundation (CHRF) and the Philippine Commission on Human Rights (PCHR) with the sponsorship of the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the Southeast Asian Fund for Institutional and Legal Development (SEAFILD) of the Canadian International Development Agency (CIDA).

Through this publication we intend to share with as broad an audience as possible, the results of the most recent NHRIW training experience which took place in Manila, the Philippines, from 5–11 November 2000. Divided into three main parts, this publication includes (i) an overview of the major topics of discussion and the presentations of each of the national groups on ESC rights-based strategies for their NHRC, (ii) the evaluation report at the end of the program, and (iii) the training manual used by the participants during the program. It is our hope that this publication will be a valuable resource for those interested in developing their own training activities, as well as those interested in deepening their understanding of the role and functioning of NHRCs.

Training Goals and Objectives

The goal of the NHRIW program is to provide training for the staff of HRCs and their partners in order to strengthen the capacity of HRCs to promote and protect ESC rights. The specific objectives of the training program were:

- To examine the role of NHRCs in the promotion and protection of ESC rights.
- To explore state obligations to respect, protect, promote and fulfill ESC rights.
- To develop practical strategies for NHRCs to employ in the promotion and protection of ESC rights.

Target Audience

The target groups for this training session were:

1. Staff of existing HRCs;
2. Government officials working with existing HRCs;
3. Representatives of NGOs working with existing HRCs; and
4. Government officials, parliamentarians and representatives of NGOs where HRCs are likely to be established before the end of 2000.

The training was targeted at the management level within the four groups identified above. However, it could also be appropriate for members of HRCs and lower level staff in some cases.

There were 21 participants who represented NHRCs and NGOs in the region. The participants represented the following countries:

- India
- Indonesia
- Malaysia
- Nepal
- Philippines
- Sri Lanka
- Thailand

Participatory Training Approach

Underlying Beliefs

People learn more effectively when:

- Their own capacity and knowledge is valued.
- They are able to share and analyze their experiences in a safe and collective environment.
- They are active participants in the learning process.

Some Assumptions About a Learning Event (program, workshop, activity)

1. Much of the content comes from the participants - the agenda and program provide the framework for drawing out this content
2. Participants bring analysis and experience to the program
3. Participants will take responsibility for their own learning and interaction with other participants
4. Everyone will participate fully in the sessions
5. There will be tolerance of differences in approaches and strategies

Some Assumptions About Ourselves as Educators

1. We know less than the participants to our programs about their particular social context
2. Who we are has been shaped by our particular knowledge, experience, and perspectives
3. We bring a knowledge of theory and practice of participatory education and will contribute as appropriate

The Curriculum Design Model

What we understand about education is reflected in how we carry out our work. The "design model", which we use in planning our programs, incorporates what we know about effective adult education. This model suggests that:

1. Learning begins with the experience and knowledge of the participants
2. After the participants have shared their experience, they look for patterns or analyze that experience (What are the commonalities? What are the patterns?)
3. To avoid being limited to the knowledge and experience of the people in the room, we also add (from outside sources) or create new information or theory
4. Participants need to practice what they have learned, to practice new skills, to strategize and plan for action
5. Afterwards (usually when participants are back in their organizations and daily work) they apply in action what they have learned
6. Reflection and evaluation are built into the program design, and are carried out continually throughout the entire program, not just at the end.

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Schedule

Day 1

Morning	Opening Program Panel Presentation Program Overview Presentation of Participants
13:00 - 13:15	<u>Workshop 1</u> The Experience of HRCs on ESC rights Activity 1 Introduction to Workshop 1
13:15 - 15:15	Activity 2 The Experience of Human Rights Commissions on ESC rights
15:15- 15:45	Break
15:45 - 16:15	Activity 2 (cont'd)
16:15 - 16:45	<i>ESC Rights Initiative Workbook</i> : Introduction and Step 1
16:45 - 17:00	Evaluation

Day 2

08:45 - 09:00	<u>Workshop 2</u> Legal Sources of ESC rights Activity 1 Introduction to Workshop 2
09:00 - 10:30	Activity 2 Familiarizing Yourself with ESC rights Concepts
10:30 - 11:00	Break
11:00 - 12:30	Activity 3 Presentation “ESC rights - International Standards and Mechanisms”
12:30 - 14:00	Lunch
14:00 - 14:10	<u>Workshop 3</u> Women and ESC rights Activity 1 Introduction to Workshop 3
14:10 - 16:10	Activity 2 Examining the Impact of Women’s Inequality on the Enjoyment of ESC rights
16:10 - 16:30	Break

Schedule (cont'd)

16:30 - 17:15 **Workshop 4**
**Working with the Concept of State Obligations in
Relation to ESC rights**
Activity 1 Preparation for Workshop 4

17:15 - 17:30 Evaluation

Day 3

08:45 - 09:30 **Activity 2** Presentation: “State Obligations”

09:30 - 11:00 **Activity 3** Simulation - Preparation of Roles

11:00 - 11:30 **Break**

11:30 - 12:30 **Activity 4** Simulation - Commissioners’ Meeting

12:30 - 14:00 **Lunch**

14:00 - 15:00 **Activity 5** Simulation - Debriefing

15:00 - 15:30 **Break**

15:30 - 17:30 *ESC rights Initiative Workbook: Step 2*

17:30 - 17:45 Evaluation

Day 4

08:45 - 09:00 **Workshop 5**
Monitoring ESC Rights
Activity 1 Introduction to Workshop 5

09:00 - 10:30 **Activity 2** Challenges Associated with Monitoring ESC
rights

10:30 - 11:00 **Break**

11:00 - 12:15 **Activity 3** A Framework for Monitoring Progressive
Realization

12:15 - 14:00 **Lunch**

14:00 - 14:30 **Activity 3** (cont'd)

Schedule (cont'd)

14:30 - 14:45	<u>Workshop 6</u> Strategies for the Promotion of ESC rights Activity 1 Introduction to Workshop 6
14:45 - 15:45	Activity 2 Challenges Involved in the promotion of ESC Rights
15:45 - 16:15	Break
16:15 - 17:15	Activity 3 Promoting ESC Rights
17:15 - 17:30	Evaluation

Day 5

09:00 - 10:00	Activity 3 (cont'd)
10:00 - 10:30	Break
10:30 - 12:30	<i>ESC Rights Initiative Workbook: Step 3</i>
12:30 - 14:00	Lunch
14:00 - 16:00	<i>ESC Rights Initiative Workbook: Step 4</i>
16:00 - 16:30	Break
16:30 - 17:00	Program Wrap-up
17:00 - 17:30	Evaluation

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DAY 1

Opening Program

Workshop 1

The Experience of HRCs in Working with ESC Rights

ESC Rights Initiative Workbook: Introduction and Step 1

Opening Program

9:00 - 9:15	Invocation
9:15 - 9:45	Welcome Messages
9:45 - 10:30	Panel Presentation “Economic, Social & Cultural Rights in the Region” “The Role of Human Rights Commissions in the Promotion & Protection of Economic, Social and Cultural Rights” “The Importance of Regional and International Cooperation”
10:30 - 10:45	Question Period
11:15 - 11:45	Program Overview
11:45 - 12:00	Presentation of Participants

DAY 1

Workshop 1 Overview

The Experience of HRCs on ESC Rights

- Objectives:**
- To analyze the role of human rights commissions and their work on ESC rights
 - To identify the relative strengths and weaknesses of HRCs in fulfilling their mandates with respect to ESC rights protection and promotion

Time: 2 hrs. 45 mins.

Activities:

Activity 1 Introduction to Workshop 115 mins.

Activity 2 The Experience of Human Rights Commissions
on ESC rights 2 hrs. 15 mins.

Break30 mins.

Activity 2 (cont'd)

Designing an ESC Rights Initiative: Introduction and Step 130 mins.

Workshop 1

Activities

Activity 1 13:00 - 13:15	<i>Introduction to Workshop 1</i>
Duration	15 mins. total
Description	The workshop leader will introduce the learning objectives and activities for the workshop.
Activity 2 13:15 - 16:15	<i>Presentations and Discussions</i> “The Experience of Human Rights Commissions on ESC Rights”
Resource Person	Justice V.S. Malimath Former Member, National Human Rights Commission of India
Duration	2 hrs. 30 mins. total
Description	This is a three-part activity. In Part A you will work in a group to prepare a presentation. In Part B you will present the results of your discussion to the larger group. In Part C the resource person will synthesize the group reports.
13:15 - 13:45	Part A Working in small groups. (30 mins.) The workshop leader will divide participants into country-specific groups. Together with the members of your group, prepare a 10-minute presentation on the mandate of the HRC in your country and its experience in working with ESC rights. Refer back to the questions you answered as part of the pre-workshop questionnaire. The questions are provided for you in a suggested reporting format on <i>Worksheet 1</i> .

DAY 1**Worksheet 1***Workshop 1 - Activity 2***Suggested Reporting Format****Issues**

1. Please list the types of ESC rights issues in your country. Who are the groups affected? Who is responsible?

Promotion and Protection Mechanisms

2. Identify institutions and organizations involved in the promotion and protection of ESC rights in your country. Briefly define their roles and the similarities and differences of these roles.

Worksheet 1: Suggested Reporting Format cont'd...

Legal Sources

3. What are the legal sources (constitution, domestic legislation, international law) that provide the basis for your country's commission to address ESC rights?

Your Commission and ESC Rights Activities

4. What activities have been undertaken or are being planned by your organization to promote and protect ESC rights? What lessons can be learned from this experience?

DAY 1

Workshop 1

Activities

13:45 - 15:15	<p>Part B Group Presentations. (90 mins.)</p> <p>Each group will have approximately 10 minutes to present their report.</p>
15:15 - 15:45	Break
15:45 - 16:15	<p>Part C Synthesis and Discussion. (30 mins.)</p> <p>The resource person will present a synthesis of the group reports and share his own analysis of the challenges facing HRCs when working with ESC rights. (20 mins.)</p> <p>The commentary will be followed by a question and answer period. (10 mins.)</p>
16:15 - 16:45	Proceed to the "Introduction" of the <i>ESC Rights Initiative Workbook</i> , Step 1 found.
16:45 - 17:00	Evaluation

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DAY 2

Workshop 2 ***Legal Sources of ESC Rights***

Workshop 3 ***Women and ESC Rights***

Workshop 4 ***Working with the Concept of State Obligations in Relation to ESC Rights***

Workshop 2 Overview

Legal Sources of ESC Rights

Objective:

- To deepen our understanding of ESC rights and the related international framework

Time: 3 hrs. 15 mins.

Activities:

Activity 1 Introduction to Workshop 215 mins.

Activity 2 Familiarizing Yourself with ESC Rights Concepts1 hr. 30 mins.

Break30 mins.

Activity 3 Presentation
“ESC Rights - International Standards and Mechanisms”1 hr. 30 mins.

Lunch1 hr. 30 mins.

DAY 2

Workshop 2

Activities

Activity 1
08:45 - 09:00

Introduction to Workshop 2

Duration

15 mins. total

Description

The workshop leader will introduce the learning objectives and activities for the workshop.

Activity 2
09:00 - 10:30

Familiarizing Yourself with ESC Rights Concepts

Duration

1 hr. 30 mins. total

Description

This is a three-part activity.
In **Part A** you will share your analysis of ESC rights.
In **Part B** you will apply this analysis to case studies.
In **Part C** you will prepare for Activity 3.

9:00 - 9:30

Part A Working in Small Groups. (30 mins.)

The workshop leader will divide participants into small groups and assign a facilitator to each group.

Begin by reading the text on *Reference sheet 1* ("Economic, Social and Cultural Rights - An Overview") and consider the following questions with your group members.

Questions to consider:

- What are some of the key concepts related to ESC rights?
- What are the most important challenges faced in implementing ESC rights?
- What are a State's obligations according to the ICESCR?
- What other international HR standards are important to ESC rights?

Reference sheet 1
 Workshop 2 - Activity 2

Economic, Social and Cultural Rights - An Overview

When grappling with ESC rights, it is important to remember that everyone is in a similar position. We are all looking for solutions as we tackle very difficult issues. In contrast to civil and political rights which have been the subject of decades of examination, discussion and elaboration, economic, social and cultural rights have been largely ignored by the human rights movement until recently. Consequently, our understanding of these rights is more limited.

Working with ESC rights may also require a change in approach. In the traditional human rights movement, human rights were seen as a means to curtail state action. These days human rights and economic, social and cultural rights are increasingly being viewed as means for change and social transformation.

ESC rights are often ignored because they are seen to involve substantial resource allocations beyond the capacity of many states. For example, when considering the right to health, one must determine the extent of this right. Should everyone have a right to receive treatment in a hospital after a serious accident? Probably. Should everyone be entitled to an expensive kidney dialysis treatment? Maybe not. There are no easy answers to these questions. One must consider inequalities in the distribution of wealth and availability of resources within countries as well as globally. Nonetheless, we should be asking ourselves whether essential levels of these rights can be established.

The wording of the International Covenant on Economic, Social and Cultural Rights (ICESCR) also leaves room for the interpretation of State obligations. In particular, the Covenant states that States should seek the progressive realization of ESC rights. Furthermore, this is to be done in the context of available resources. Article 2 of the ICESCR states:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate measures, including particularly the adoption of legislative measures

(Continued on next page.)

DAY 2**Reference sheet 1: ESC Rights - An Overview (cont'd)**

The idea of progressive realization contained in the ICESCR is very different from the wording of the International Covenant on Civil and Political Rights (ICCPR) which dictates immediate obligation. Consequently ESC rights have been viewed by many as a statement of aspirations or goals rather than binding obligations like civil and political rights. Given that this school of thought prevailed for many years, it is important to be aware of the work of the UN Committee on Economic, Social and Cultural Rights which is helping to provide an authoritative interpretation of the state obligations under the ICESCR through its General Comments. In particular the Committee has argued that many provisions of the ICESCR can be implemented immediately, particularly the anti-discrimination provisions contained in Article 2.

At the same time, there has been considerable work done by NGOs and academics to establish the “core content” of some of the ESC rights. The concept of “core content” remains controversial, but nonetheless has helped to demonstrate that there are essential levels of rights that States have an obligation to implement immediately. As a result of these efforts, people are coming to understand that ESC rights are indeed justiciable (i.e., enforceable through the courts).

While the main source of international standards on ESC rights is obviously the ICESCR, it should be remembered that ESC rights are also protected in a number of other international instruments, most notably the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Even within the ICCPR, we find in Article 17 protection from unlawful interference in one’s home. In fact, the international Conventions should be seen as interdependent. The UN Committee on Economic, Social and Cultural Rights argues that in the case of forced eviction, provisions of the ICCPR complement the right to an adequate standard of living including housing included in the ICESCR. In practical terms, it should also be remembered that violations of ESC rights are often accompanied by violations of civil and political rights and vice versa.

Traditionally, the international human rights framework has been used to hold States accountable. In an era of economic globalization, however, non-state actors (particularly corporations) are often responsible for abuses of ESC rights. There is a need, therefore, to deepen our analysis to find ways to hold these non-state actors accountable.

There are indeed many challenges for the human rights community in efforts to extend greater protection and promotion of ESC rights.

Notes from Presentation given during the “National Institutions at Work; Regional Training Program”, Antipolo, Philippines, May 9-14, 1999 by: Dr. Mario Gomez, Faculty of Law, University of Colombo, Sri Lanka.

Workshop 2

Activities

Activity 2
cont'd
9:30 - 10:10

Part B Small Group Work. (40 mins.)

Read the case studies on *Reference sheet 2*.

With the members of your group, consider the questions below. Write down your thoughts in the spaces provided.

1. What are the relevant HR standards in this case?
2. From the case study, does it appear that the state is fulfilling its international obligations on ESC rights?
3. What obligations, if any, are not being met?
4. What challenges might a HRC face in addressing this case?

DAY 2**Reference sheet 2**
*Workshop 2 - Activity 2***Case Studies****Case 1 - The Bakun Hydro-electric Project (Malaysia)**

The Bakun Hydro-Electric Project (BHEP) in the State of Sarawak, was first proposed in the 1980s and touted to be the biggest dam in South-East Asia upon completion. It was put on hold in 1990 due to opposition from the local people and non-governmental organizations on human and environmental grounds. In 1993, however, the program was revived.

The BHEP would displace around 10,000 indigenous peoples and flood an area the size of Singapore island. Residents in the region stood in danger of losing their land, crops, houses and ancestral burial sites.

In 1995, these residents took the issue to Court on the grounds that their entitlement to a copy of the Environmental Impact Assessment (EIA) was not fulfilled, thus leaving them without a voice in the matter. The defendants in this case were the project proponent of the BHEP, the Director General of Environmental Quality, the Government of Malaysia, the Natural Resources and Environment Board and the Sarawak State Government.

The residents claimed that there had been no proper consultation process with all the members of the affected communities. They argued that their lives would be uprooted by the project and that they would suffer far more greatly and directly than other members of the public as their land and forest were not just a source of livelihood but constituted life itself, fundamental to their social, cultural and spiritual survival as native peoples.

In 1996, the Court ruled that the people did indeed have a right to make representations and be heard before the EIA was approved and that this right had not been accorded to them.

In late 1996, the Bakun Region People's Committee (BRPC) met to discuss related issues arising from the BHEP that had not yet been resolved. First, in relation to resettlement matters, they were unhappy with the size of the land and the area of the resettlement area as it would not support their means of survival. The offer appeared to be as low as 3 acres per family, lower than the earlier offer of 7 acres and significantly lower than the demanded size of 30 acres per family.

(Continued on next page.)

Reference sheet 2: Case Studies (cont'd)

Secondly, compensation had not been settled at all. The BRPC regarded the government's decision to give compensation only after resettlement as a tactic to trap them. The terms and demands that the indigenous peoples had submitted to the government through the Bakun Development Committee had not yet elicited any response. Full resettlement details had not been disclosed, resulting in worry over the uncertainties of the future. The indigenous people of the area reiterated that they chose to remain in the present area as they have an historically strong attachment to it.

Sources: "Kajubg Tubek & Ors v Ekran Bhd & Ors" *Malaysian Law Journal*, 1996, 2; *Malaysian Rights Report*, Suaram Komunikasi, 1998, pp.143-144. HotLine Asia, Urgent Appeals

DAY 2**Reference sheet 2: Case Studies (cont'd)****Case 2 - Forced Evictions by Police (Prakash Nagar)**

It was reported that on February 12, 1999, from 11:00 a.m. to 4:00 p.m., the houses of 200 households in Prakash Nagar in Mahim were destroyed to make way for the construction of a bridge. Three bulldozers with a hundred police and municipal officials systematically razed houses made of plastic, cardboard and packing paper. People allege that in the process of eviction, no prior notice of the demolition was issued.

Sources claimed that 12 men and 16 women were injured by the police who beat them with lathis (cane sticks used by police) and who threw stones. Mallika (aged 35) had her hand fractured, Bibi Bashir Sheikh (aged 22), who was two months pregnant, had a miscarriage following the police beatings. Another woman, Anjamani Padyachi (aged 23) had to have six stitches on her head.

The settlement of Prakash Nagar lies between the Police Colony and the railway tracks between Mahim and Bandra. Most of the inhabitants are construction workers, domestic workers and waste recyclers coming from Maharashtra, Tamil Nadu, Karnataka, Uttar Pradesh and other regions, who have been living there for the last 15-20 years. Basic amenities are lacking in the settlement.

According to sources, about 55 people have proof of residence since January 1, 1995, in the form of ration cards or names on the electoral roll. This made them eligible for the State Government free housing scheme. The Prakash Nagar demolition is believed to be the first in a series of another 'clean up' drive in the city. Meanwhile, there is no government policy for those who are unable to show proof of residence as of January 1, 1995.

Source: HotLine Asia, Urgent Appeals

Workshop 2

Activities

Activity 2
cont'd
10:10 - 10:30

Part C Synthesis and Discussion. (20 mins.)

You have now had the opportunity to discuss some of the main concepts related to ESC rights and their application in a specific context.

As a group, identify any specific questions you would like the resource person to address or areas where your group would appreciate clarification. List these on a flip chart and post them at the front. The resource person will address your questions in Activity 3.

10:30 - 11:00

Break

DAY 2

Workshop 2

Activities

Activity 3
11:00 - 12:30

Presentation and Discussion

“ESC Rights - International Standards and Mechanisms”

Resource person

Ms Virginia Bonoan-Dandan
Chairperson, UN Committee on ESC rights

Duration

1 hr. 30 mins. total

Description

The resource person will review some of the important concepts related to the promotion and protection of ESC rights. In her remarks she will address the questions arising from Activity 2. (60 mins.)

The Presentation will review:

- Sources of ESC Rights Standards
- Key concepts related to the ICESCR
- Obligation to take steps
- Progressive Realization
- Maximum use of available resources
- Justiciability of ESC Rights
- Non-Discrimination and Gender Equality

The resource person will also share information on:

- The role of the UN Committee on ESC Rights
- General Comments and Concluding Observations
- Reporting Process
- Optional Protocol to ICESCR

This will be followed by a discussion period. (30 mins.)

12:30-14:00

Lunch

Workshop 3 Overview

Women and ESC Rights

- Objectives:**
- To analyze the consequences of women's inequality from an ESC rights perspective
 - To examine the role of HRCs in promoting and protecting women's ESC rights and in fighting gender inequality

Time: 2 hrs. 15 mins.

Activities:

Activity 1 Introduction to Workshop 315 mins.

Activity 2 Examining the Impact of
Women's Inequality on the Enjoyment of ESC Rights2 hrs.

Break15 mins.

DAY 2

Workshop 3

Activities

Activity 1
 14:00 - 14:15

Introduction to Workshop 3
Duration

10 mins. total

Description

The workshop leader will introduce the learning objectives and activities for the workshop.

Activity 2
 14:15 - 16:15

Examining the Impact of Women's Inequality on the Enjoyment of ESC Rights
Duration

2 hrs. total

Description

This is a three-part activity.
 In **Part A** you will work in small groups.
 In **Part B** you will report to the larger group.
 In **part C** you will carry out a discussion.

14:15 - 15:15

Part A Working in Small Groups. (60 mins.)

You will work in a small group to analyze the previous two case studies on *Reference sheet 2* from a gendered perspective. You will consider the following questions and record your answers on *Worksheet 2*.

Discussion questions:

- In what ways might women and men experience the incident described in the case differently?
- What human rights standards can be applied? Are the existing standards adequate to address any differences that may exist?
- What actions should a HRC undertake if it is looking into this case to ensure that equal weight is given to the effects of the incident on both men and women.

Workshop 3

Activities

15:15 - 15:45	Part B Report to the Larger Group. (30 mins.) Reconvene and share the results of your small-group work with the larger group.
15:45 - 16:15	Part C Discussion. (30 mins.) Your facilitator will lead a discussion concerning the challenges HRCs face in adequately responding to women's ESC rights.
16:15 - 16:30	Break

DAY 2

Worksheet 2

Workshop 3 - Activity 2

Questions on Gender Inequality on the Enjoyment of ESC Rights

1. In what ways might women experience the incident described in the case differently than men?
2. Are the existing standards adequate to address any differences that may exist?
3. What actions should a HRC undertake if it is looking into this case to ensure that equal weight is given to the effects of the incident on both men and women?

Workshop 4 Overview

Working with the Concept of State Obligations in Relation to ESC Rights

Objective:

- To explore state obligations to promote and protect ESC rights

Time: 5 hrs.

Activities:

Activity 1 Preparation for Workshop 4 45 mins.

Day 3

Activity 2 Presentation “State Obligations”45 mins.

Activity 3 Simulation - Preparation of Roles.....1 hr. 30 mins.

Break 30 mins.

Activity 4 Simulation - Commissioners' Meeting.....1hr.

Lunch 1 hr. 30 mins.

Activity 5 Simulation - Debriefing.....1hr.

Designing an ESC Rights Initiative: Step 2.....2 hrs.

DAY 2

Workshop 4

Activities

Activity 1 16:30 - 17:15

Preparation for Workshop 4

Duration

45 mins. total

Description

The workshop leader will:

- explain the simulation activity that is planned for Workshop 4
- assign the roles and explain the tasks

A complete description of this activity is provided on *Reference sheet 7*.

To prepare for the simulation you will need to:

1. Read carefully the "Orientation to Workshop 4, Activity 4: Simulation – Commissioner's Meeting".
2. Familiarize yourself with the text of the following documents:
 - International Covenant on Economic, Social and Cultural Rights (see *Reference sheet 3*)
 - The Limburg Principles (see *Reference sheet 4*)
 - The Maastricht Guidelines (see *Reference sheet 5*)
 - The ICESCR General Comment on Health (see *Readings Manual*)
3. Read carefully the "Case Analysis Report" on *Reference sheet 6*.

17:15 - 17:30

Evaluation

Orientation to Workshop 4, Activity 4
“Simulation – Commissioner’s Meeting”

In order to prepare for Activity 4, the "Simulation - Commissioner's Meeting," Ms Ma. Socorro Diokno presented the following orientation to participants.

Introduction

The case is entitled "Organization of Residents in a Community Against or Versus a Mining Industry, the Ministry of Natural Resources and the Ministry of Health." It is a case where mine tailings were disposed of in a river and in adjacent agricultural lands. Mine tailings are pulverized rocks and other by-products of the mining industry. The problem with mine tailings is that they contain natural substances which are unfortunately harmful to all kinds of life. [Mine tailings are] toxic, as they generate acid, arsenic and some other chemicals which are part of the mining process. If mine tailings fall into a river, then the river will become polluted and when they [mine tailings] happen to seep into agricultural lands, the fertility of the land is adversely affected.

Parties

The *complainant* is the organization of residents while the three *respondents* are the Mining Company, Ministry of Natural Resources and the Ministry of Health.

Complainant's Allegations

The complainant alleged that the Mining Company intentionally dumped mine tailings into the river. Because of the dumping, ten persons died and one third of the community suffered from different kinds of diseases. The complainant also claimed that mine tailings seeped into the land and killed all the crops, [making it impossible to] plant anymore. The community claimed that the Ministry of Natural Resources did not monitor the disposal of mine tailings, that the Ministry did not take any preventive measures to guard against the dumping and that the Ministry did not take any corrective measures after the dumping. The complainant also said that the Ministry of Health did not provide any treatment to the residents after the accident and it did not provide health warnings like "Do not use the water in the river because if you do, you will get sick". The complainants also claimed that the Ministry of Health did not give them and their children the necessary medicines and equipment to treat the diseases, causing more susceptibility to these kinds of diseases.

(Continued on next page.)

DAY 2
Orientation to Workshop 4, Activity 4
“Simulation – Commissioner’s Meeting” (cont’d)
Respondents’ Allegations

The Mining Company said that the dumping was an accident caused by an earthquake and that their operations comply with all the environmental, health and safety laws and regulations of that country. The Ministry of Natural Resources said it allowed the company to operate only after it was sure that the company's operations were safe. It also said that it took action after the leakage or the dumping was found. The Ministry of Health said that it has no money that is why it was not able to do these things but claimed that they issued warnings three days after the leakage.

Background

After the allegations of the respondent, there are six pages of background containing information on the mining industry and on the mine itself. This background gives information and data on the community, a little about the health of the community, [including] budget allocations. This information is very broad and very wide but may help participants in dealing with ESC rights cases. All data should be looked into as related to each other. Incidents cannot be taken in isolation. Take into consideration all the various factors and highlight the fact that ESC rights cases are extremely complicated in reality. Not simple cut and dried cases but complex, bringing out a load of issues and raising a lot of questions and dilemmas which have to be confronted.

Evidence

Right after the background is the section entitled "Evidence" which consists of medical evidence from blood and urine samples, autopsies of the dead and physical examinations of the living, scientific evidence such as water and soil samples, documentary evidence such as the "Permit to Operate" of the mining company, report from the country's volcanologists, etc.

To assist the participants in understanding scientific and medical terms, there is a section where the scientific and medical evidence is analyzed. In effect, what the evidence shows is that only some diseases could be traced to the dumping. Only two of the ten deaths can be directly attributed to the exposure to mine tailings. The scientific evidence proves that there were mine tailings found in the river and in the soil samples, showing that the agricultural land became infertile.

(Continued on next page.)

Orientation to Workshop 4, Activity 4
“Simulation – Commissioner’s Meeting” (cont’d)**Action Taken by Respondents**

Following this analysis are the different actions taken by the respondents. After the incident, the mining company rehabilitated the damaged tunnel, established an environmental guarantee fund, implemented a health care program for the community and did many other things. The Ministry of Natural Resources issued a "Cease and Desist Order" or a stop order, imposed a fine against the mining company and began proceedings to cancel the permit of the mining company. The Ministry of Health issued health warnings and assigned additional medical/health personnel and provided medical supplies.

Overview of Activity

The participants will be divided into two groups. Each group will have Commissioners and Commission's staff. Some will act as Commissioners while the rest will act as staff members of a commission. The Commission's staff will discuss the case and analyze it according to some guiding questions and come up with conclusions and recommendations. Then the Commission staff will choose among themselves one person to present the case to their commissioners. While the Commission staff is working as a group, those acting as Commissioners will have to review and study their documents separately. The Commission will then conduct a public meeting. It sits *en banc* (in full court; with full judiciary authority). During the meeting, the spokesperson shall present the case while the Commissioners will discuss the case publicly. However, the Commission's staff cannot intervene except when the Commissioners ask questions or to clarify some issues.

The Commission's staff will be provided with an observation sheet where they can note down their comments. They are allowed to disagree with their Commissioners. This will be capped by debriefing in the afternoon where reports will be made on what happened in each committee meeting.

DAY 2

Reference sheet 3
 Workshop 4 - Activity 1

**International Covenant on ESC Rights (ICESCR) -
A Summary**
Introduction

This text provides an explanation of the core elements of the rights enshrined in the Covenant. It is mainly based on General Comments made by the Committee on Economic, Social and Cultural Rights. The Committee's Guidelines to State Parties have also been used for explaining provisions of the Covenant. These Guidelines are intended to provide guidance for State Parties in the submission of their reports. They indicate the scope of the respective articles of the Covenant.

1. Non-Discrimination

Article 2(2) and **Article 3** of the ICESCR deal with the non-discrimination aspect. Article 2(2) is similar to other instruments in stating that the rights should be enjoyed without discrimination on the grounds of *'race, color, sex, language, religion, political, or other opinion, national, social origin, property, birth, or other status.'*

Article 3, is more specific. It provides for the *'equal right of men and women to enjoy the rights...set forth in the Covenant.'*

The concept of *'progressive realization'* is not applicable to the non-discrimination clause nor to the obligation to ensure equal rights of men and women. A State is obliged to ensure the non-discrimination and equality clause immediately rather than progressively.

The obligation to ensure equal rights of men and women includes affirmative action to eliminate conditions that contribute to discrimination.

The Committee has followed the practice that discrimination is not restricted to those grounds identified under the Covenant and includes discrimination based on age, health, status, or disability.

2. Obligation of States

Article 2(1) of the Covenant deals with the obligations of State Parties under the Covenant. According to the Committee on Economic, Social and Cultural Rights, *'Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant. It describes the nature of the general legal obligations undertaken by State Parties to the Covenant.'*

(Continued on next page.)

Reference sheet 3: ICESC Rights - A Summary (cont'd)**Article 2(1) of the Covenant states that:**

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all the appropriate means, including particularly the adoption of legal measures.'

Thus, the obligations of State Parties are expressed through the use of the terms:

'undertakes to take steps', 'to the maximum of available resources', 'achieving progressively the full realization', and 'by all the appropriate means, including particularly the adoption of legal measures.'

Obligation of Conduct and Obligation of Result

The Committee on Social, Economic and Cultural Rights has made it clear that the obligations of State Parties include both '*obligation of conduct*' and '*obligation of result*.'

Obligation of conduct means that, a State has to undertake a specific step (act or omission), for example, prohibiting forced labour is an act of conduct.

Obligation of result means attaining a particular outcome through active implementation of policies and programs.

Conduct and **result**, however, cannot be separated. The concept of conduct and result provides an effective tool for monitoring the implementation of economic, social and cultural rights. It also shows that realization of economic, social and cultural rights is a dynamic process involving both immediate and long-term intervention.

Meaning of 'Undertakes to Take Steps'

The Committee on Economic, Social and Cultural Rights has clarified that, 'while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete, and targeted as clearly as possible toward meeting the obligations recognized in the Covenant.'

(Continued on next page.)

DAY 2

Reference sheet 3: ICESC Rights - A Summary (cont'd)**Meaning of 'By all Appropriate Means, Including Particularly the Adoption of Legislative Measures'**

The Committee on Economic, Social and Cultural Rights has recognized that States must decide the appropriate means, and it may depend on the right that is being implemented. However, the Committee has stated that, *'State Party reports should indicate not only the measures that have been taken but also the basis on which they are considered the most appropriate under the circumstances.'*

A State Party cannot avoid its obligations by merely saying that its policies are aimed at economic development and that poverty or illiteracy will be eradicated eventually.

As for the term *'adoption of legislative measures'*, the Committee has stated that adopting legislation by no means exhausts the obligation of the State. A mere existence of a law is not sufficient to prove that a State Party is carrying out its obligation under the Covenant. In addition to laws, the Committee has stressed the need for *'provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable.'*

Meaning of 'Achieving Progressively'

It is normally assumed that due to the resources required for the realization of economic, social and cultural rights, they are incapable of immediate implementation.

However, the overall objective of the Covenant is to establish clear obligations for State Parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as quickly and effectively as possible towards that goal.

The Committee has concluded that *'progressive realization'* includes not only the continuous improvement but also the obligation to ensure that there are no regressive developments.

Meaning of 'To the Maximum of Its Available Resources'

The notion that economic resources are essential for the implementation of economic, social and cultural rights has been the major justification for considering it secondary to civil and political rights. The Committee has acknowledged the importance of resources in fulfilling the rights but does not consider resource availability as an escape clause. For example, it has stated that *'in cases where significant numbers of people live in poverty and hunger, it is for the State to show that a failure to provide for persons concerned was beyond its control.'*

(Continued on next page.)

Reference sheet 3: ICESC Rights - A Summary (cont'd)

The Committee has developed the idea of '*minimum core obligations*' to refute the argument that lack of resources hinders fulfillment of obligations. The Committee has observed that every State has a minimum core obligation to satisfy minimum essential levels of each of the rights in the Covenant.

The Committee has made it clear that '*even where the available resources are demonstrably inadequate, the obligation remains for a State Party to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.*' In addition, the Committee has stated that '*even in times of severe economic constraints...vulnerable members of the society can and indeed must be protected by the adoption of relatively low-cost targeted programs*'

The above text was adapted from: Ravindran, D.J. *Human Rights Praxis: A resource book for Study, Action and Reflection*. Bangkok, Thailand: The Asian Forum for Human Rights and Development, 1998.

See Reading Manual for the complete text of the International Covenant on Economic, Social, and Cultural Rights.

DAY 2

Reference sheet 4*Workshop 4 - Activity 1***The Limburg Principles (1986)**

The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights were developed by a group of experts in international law that met in Maastricht, the Netherlands from June 2-6, 1986, to consider:

- the nature and scope of State Party obligations under the ICESCR
- the consideration of State Party reports by the then newly constituted UN Committee on Economic, Social and Cultural Rights
- International cooperation under Part IV of the Covenant

The participants agreed on a set of principles regarding the implementation of the Covenant.

1. Regarding violations of economic, social and cultural rights these principles state:

- a) A failure by a State party to comply with an obligation contained in the Covenant is, under international law, a violation of the Covenant. (#70)*
- b) In determining what amounts to a failure to comply, it must be borne in mind that the Covenant affords to a State Party a margin of discretion in selecting the means for carrying out its objects, and that factors beyond its reasonable control may adversely affect its capacity to implement particular rights. (#71)*
- c) A State Party will be in violation of the Covenant, *inter alia*, if:
 - it fails to take a step which it is required to take by the Covenant
 - it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfillment of a right
 - it fails to implement without delay a right which it is required by the Covenant to provide immediately
 - it willfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet
 - it applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant
 - it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*
 - it fails to submit reports as required under the Covenant (#72)*

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Reference sheet 4: The Limburg Principles (cont'd)

- d) In accordance with international law each State Party to the Covenant has the right to express the view that another State Party is not complying with its obligations under the Covenant and to bring this to the attention of that State Party. Any dispute that may thus arise shall be settled in accordance with the relevant rules of international law relating to the peaceful settlement of disputes. (#73)*

*From “Section D” of the Limburg Principles

See Reading Manual for the complete text of the Limburg Principles.

DAY 2

Reference sheet 5

Workshop 4 - Activity 1

The Maastricht Guidelines (1997)

The Maastricht Guidelines are an important document in any discussion of ESC rights. The Guidelines were prepared during a workshop of international lawyers in Maastricht, The Netherlands, in January 1997. While the Guidelines are not technically a legally binding text, they do offer a set of practical principles based on international law that help us to understand State obligations in relation to ESC rights. The Guidelines include a very useful list of acts of commission and omission by States that can result in violations of ESC rights.

1. Regarding violations through act of commission the Guidelines state:

Violations of economic, social and cultural rights can occur through the **direct action** of States or other entities insufficiently regulated by States. Examples of such violations include:

- a) The formal removal or suspension of legislation necessary for the continued enjoyment of an ESC right that is currently enjoyed
- b) The active denial of such rights to particular individuals or groups, whether through legislated or enforced discrimination
- c) The active support for measures adopted by third parties which are inconsistent with ESC rights
- d) The adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to these rights, unless it is done with the purpose and effect of increasing equality and improving the realization of ESC rights for the most vulnerable groups
- e) The adoption of any deliberately retrogressive measure that reduces the extent to which any such right is guaranteed
- f) The calculated obstruction of, or halt to, the progressive realization of a right protected by the Covenant, unless the State is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*
- g) The reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone. **(MG14)***

(Continued on next page.)

Reference sheet 5: The Maastricht Guidelines (cont'd)

2. Regarding violations through **act of omission** the Guidelines state:

Violations of ESC rights can also occur through the **failure** of States **to take necessary measures** stemming from legal obligations. Examples of such violations include:

- a) The failure to take appropriate steps as required under the Covenant
- b) The failure to reform or repeal legislation which is manifestly inconsistent with an obligation of the Covenant
- c) The failure to enforce legislation or put into effect policies designed to implement provisions of the Covenant
- d) The failure to regulate activities of individuals or groups so as to prevent them from violating ESC rights
- e) The failure to utilize the maximum of available resources towards the full realization of the Covenant
- f) The failure to monitor the realization of ESC rights, including the development and application of criteria and indicators for assessing compliance
- g) The failure to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfillment of a right guaranteed by the Covenant
- h) The failure to implement without delay a right which it is required by the Covenant to provide immediately
- i) The failure to meet a generally accepted international minimum standard of achievement, which is within its powers to meet
- j) The failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations. **(MG15)***

State policies:

A violation of economic, social and cultural rights occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result. Furthermore, any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant. **(MG11)***

(Continued on next page.)

DAY 2***Reference sheet 5: The Maastricht Guidelines (cont'd)***

2. Regarding violations through **act of omission** the Guidelines state:

Inability to comply:

In determining which actions or omissions amount to a violation of an economic, social or cultural right, it is important to distinguish the inability from the unwillingness of a State to comply with its treaty obligations. A State claiming that it is unable to carry out its obligation for reasons beyond its control has the burden of proving that this is the case. A temporary closure of an educational institution due to an earthquake, for instance, would be a circumstance beyond the control of the State, while the elimination of a social security scheme without an adequate replacement program could be an example of unwillingness by the State to fulfill its obligations. **(MG13)***

* From the text of the Maastricht Guidelines

See Reading Manual for the complete text of the Maastricht Guidelines.

Reference sheet 6
Workshop 4 - Activity 1

**Organization of Residents in the Community v. the
Mining Company, Ministry of Natural Resources and
Ministry of Health**

Case Title: Organization of Residents in the Community v. the Mining Company,
Ministry of Natural Resources and Ministry of Health

Commission Case No. 2000-xxxx

I. Parties

1. **Complainant is the Organization of Residents in the Community**, an organization composed of 335 fishing and farming families living along the riverbanks in the province. Complainant is represented by the officers of the organization.
2. Respondents are the following:
 - a. **The Mining Company**, a corporation sixty-percent owned by citizens of the country, and forty-percent owned by a foreign corporation. It operates under a financial or technical assistance agreement with the national government, which allows it to explore and develop large-scale mining activities. In 1990, the Ministry of Natural Resources granted it a 15-year license to undertake gold and copper explorations in the province. It also received a private sector loan from the Asian Development Bank for its mining activities in the province.
 - b. **Ministry of Natural Resources**, a cabinet department of the national government that is primarily responsible for maintaining a sound ecological balance and protecting and enhancing the quality of the environment. It is mandated to ensure the full exploration and development, and judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, water, fisheries, wildlife, off-shore areas and other natural resources. Its objective is to make the exploration, development and utilization of such natural resources equitably accessible to different segments of the present and future generations.

(Continued on next page.)

DAY 2**Reference sheet 6: Case Analysis Report (cont'd)**

Specific responsibilities of the Ministry of Natural Resources include:

- Promote proper and mutual consultation with the private sector on matters involving natural resources exploration, development, use and conservation;
- Promulgate rules and regulations necessary to expedite mineral resources surveys, promote the production of metallic and non-metallic minerals and encourage mineral marketing;
- Regulate the development, disposition, extraction, exploration and use of the country's forest, land, water and mineral resources;
- Assume responsibility for the assessment, development, protection, licensing and regulation of all energy and natural resources; the regulation and monitoring of service contractors, licensees, lessees, and permits for the extraction, exploration, development and use of natural resources products; the implementation of programs and measures to promote close collaboration between government and the private sector; the effective and efficient classification and sub-classification of lands of public domain; and the enforcement of natural resources and environmental laws, rules and regulations;
- Promulgate rules and regulations for the control of water, air and land pollution;
- Promulgate ambient and effluent standards for water and air quality including allowable levels of other pollutants and radiation;
- Perform such other functions as may be provided by law.

c. **Ministry of Health**, a cabinet department of the national government that is primarily responsible for the formulation, planning, implementation and coordination of policies and programs in the field of health. The primary function of the Ministry is the promotion, protection, preservation or restoration of the health of the people through the provision and delivery of health services and through the regulation and encouragement of providers of health goods and services.

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Reference sheet 6: Case Analysis Report (cont'd)

Specific responsibilities of the Ministry of Health include:

- Define the national health policy and formulate and implement a national health plan;
- Provide for health programs, services, facilities and other requirements as may be needed, subject to availability of funds and administrative rules and regulations;
- Coordinate or collaborate with, and assist, local communities, agencies and interested groups including international organizations in activities related to health;
- Administer all laws, rules and regulations in the field of health;
- Propagate health information and educate the population on important health, medical and environmental matters which have health implications;
- Regulate the operation of and issue licenses and permits to government and private hospitals, clinics and dispensaries, laboratories, blood banks, drugstores and such other establishments which by the nature of their functions are required to be regulated by the Ministry;
- Issue orders and regulations concerning the implementation of established health policies; and
- Perform such other functions as may be provided by law.

(Continued on next page.)

DAY 2**Reference sheet 6: Case Analysis Report (cont'd)****II. Complainant's Allegations**

1. Complainant alleges that respondent mining company had intentionally disposed of mine tailings by dumping them into the River. Complainant claims that 1.5 million cubic meters of tailings were dumped into the 25-kilometer river that triggered the formation of a 4.7-kilometer causeway that now divides the entire area.
2. Complainant alleges that as a result of dumping, ten persons, including two babies, died, and one third of the entire community population (about 550 persons, including women and children) now suffer from various diseases such as lead poisoning, anemia, skin diseases, and respiratory diseases.
3. Complainant alleges that mine tailings also seeped into adjacent agricultural lands, killing their crops, and rendering their soil infertile.
4. Complainant alleges that dumping caused the death of the River, the primary source of livelihood of fishermen; as a result, fish and marine resources were destroyed.
5. Complainant alleges that respondent Ministry of Natural Resources failed to monitor the disposal of mine tailings or the level of toxicity in the River and its tributaries, and failed to take any preventive measures when it allowed respondent mining company to operate in the area. Complainant further alleges that respondent Ministry failed to take corrective measures against respondent mining company after the dumping incident.
6. Complainant alleges that respondent Ministry of Health also failed to provide curative treatment for the residents after the dumping was discovered because the rural health clinic did not possess the necessary medicines and equipment to treat the various diseases. Complainant finally alleges that respondent Ministry failed to provide warnings to the affected residents about using water (for drinking, bathing, washing, sanitation) from the River and its tributaries.

(Continued on next page.)

Reference sheet 6: Case Analysis Report (cont'd)

7. Complainant further alleges that respondent Ministry of Health failed to provide preventive treatment for the residents because it did not provide immunization to the children of the community. In particular, complainant alleges that because the community did not receive immunization against tuberculosis, the residents became more susceptible to respiratory tract infections as a result of chronic exposure to mine tailings that affected the oxygen-carrying capacity of their bodies. Complainant alleges that if the residents were provided with the necessary immunization during childhood, their susceptibility to respiratory tract infections would be minimized

III. Respondents' Allegations

1. Respondent mining company alleges that it did not intentionally dump mine tailings into the River and that the dumping was accidental, triggered by an earthquake that destroyed a tunnel under the reservoir where the tailings were stored. Respondent mining company further alleges that it complies with all environmental, health and safety laws and regulations and that its operations are based on sustainable development standards.
2. Respondent Ministry of Natural Resources alleges that the grant of a license to respondent mining company was issued after respondent ministry conducted a rigorous and thorough process, where it found that the operations of respondent mining company were environmentally sound and safe. Respondent Ministry further alleges that it took corrective action as soon as it noticed the leakage by requiring respondent mining company to immediately plug the source of the leakage. Respondent Ministry finally alleges that it has taken every conceivable step possible to monitor the disposal of mine wastes produced by the operations of respondent mining company.
3. Respondent Ministry of Health alleges that budgetary constraints prevent it from providing rural health clinics with laboratory equipment and advanced medicines needed to treat affected residents and with basic medicines needed for immunization campaigns. Respondent Ministry further alleges that it issued health warnings three days after the dumping incident.

(Continued on next page.)

DAY 2**Reference sheet 6: Case Analysis Report (cont'd)****IV. Background**

1. The national government has ratified the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all forms of Discrimination against Women, and the Convention on the Rights of the Child.

The Mining Industry

2. The mining industry in the country was afflicted with soft metal prices, crippling taxes and high production costs to the extent that it is no longer one of the country's top export earners. To attract investments, the national government liberalized the mining industry and introduced incentives to encourage foreign firms to explore and develop large-scale mining activities in the form of reduced taxes.
3. Mining operations will always have an impact particularly because of the waste these activities produce. Mine tailings are pulverized rocks and other by-products of a mining operation. Tailings and rock from metal and coalmines generate acid, which is toxic to life. Tailings also contain other substances that are found naturally in rock, such as arsenic. Tailings also contain other dissolved metals from a mining operation, such as cadmium, lead, copper, zinc, etc. Should tailings continue to seep into a river, eventually the river will become silted and polluted. Should tailings continue to seep into agricultural lands, its chemical components are extremely harmful to plant and animal life, being poisonous. The level of fertility of affected lands is reduced considerably, vegetation and crop cover could be adversely affected and land will eventually become silted.
4. Many corporations view the mining industry as a risky enterprise. However, if these companies believe there is a potential for large deposits regardless of the risk, they will continue their mining activities. Generally speaking, corporations make the most money in the most risky areas.

The Mine

5. Respondent mining company had long been eyeing the province for mining activities, believing it contains a huge deposit of copper and gold. In 1990, the Mining Company applied for and was granted a 15-year license to operate a copper mine in the Province by respondent Ministry of Natural Resources.

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Reference sheet 6: Case Analysis Report (cont'd)

6. For the past ten years, respondent company has been engaged in mining operations in the Province. In 1995, cash flow problems compelled respondent mining company to seek a private sector loan from the Asian Development Bank; after negotiations, the Bank extended a 10-year loan to respondent company.
7. In 1999, respondent mining company posted a consolidated net income of 1.4 billion, after having produced 90,083 ounces of gold at a cash cost of US \$ 199 per ounce, making it a leading primary gold mine in the country. Production for the following years is expected to be substantially higher than 1999. For the same year, respondent mining company paid taxes to the national government amounting to 200 million; because of tax incentives, respondent company claimed and received a tax refund of 89 million in 2000 for fiscal year 1999.

The Community

8. The Community welcomed the entry of respondent mining company, believing that its activities would spur development in their locality. The Community is largely composed of subsistence farmers and fishermen, living along the riverbanks, and relying on the River for food, drinking water, sanitation, bathing and washing.

(Continued on next page.)

DAY 2**Reference sheet 6: Case Analysis Report (cont'd)**

9. The total population of the Community is 1,784 persons, distributed by age group and sex as follows:

Age Group	Total	Male	Female
Under 1	49	25	24
1 to 4	195	100	94
5 to 9	231	119	113
10 to 14	209	106	103
15 to 19	194	97	97
20 to 24	163	81	82
25 to 29	149	75	75
30 to 34	126	64	63
35 to 39	112	57	55
40 to 44	88	45	44
45 to 49	71	36	35
50 to 54	54	27	27
55 to 59	45	22	23
60 to 64	34	17	18
65 to 69	25	12	13
70 to 74	17	8	9
75 to 79	11	5	6
80 to 84	7	3	4
85 and Over	4	1	2
Total	1,784	899	885

Population Distribution of Community, by Age Group and Sex

10. Water sources for residents from the Community are largely drawn from a community water system established by the local government and from the River and its tributaries. Sanitation is generally poor, with many households lacking access to any septic system. Residents of the Community use kerosene as their fuel for lighting.
11. Residents from Community earn only US \$8,258 per family per annum, below the poverty threshold of US \$11,250 identified by the national government. The province ranked third, among all provinces of the country, for having the greatest incidence of poverty (72.1 % of all families in the province earn below the poverty threshold).

(Continued on next page.)

Reference sheet 6: Case Analysis Report (cont'd)

12. The human development index for the Province is 0.384, below the human development index for the country (0.660). The human development index is computed from three types of data: life expectancy, functional literacy and income per capita. In the province, life expectancy is 52.8, compared to the national life expectancy of 66.9; functional literacy for the province was only 52.7 % compared to the national functional literacy rate of 83.8 %. Real average income per capita for the province was estimated at only US \$5,457 compared to the national real average income per capita of US \$9,040.

The Health of the Community

13. The closest rural health center is roughly ten kilometers away from the community, while the nearest hospital is located in the provincial capital, some 159 kilometers away from the community.
14. The Province has a total population of 199,910 residents and boasts of 30 medical doctors, 206 dentists, 50 registered nurses and 1,919 midwives. The ratios of health professionals to the population are: one medical doctor for every 6,664 residents; one dentist for every 11,106 residents; one registered nurse for every 3,998 residents; and one midwife for every 335 fertile women. These ratios fall short of the national averages (one medical doctor for every 3,894 residents; 1 dentist for every 8,471 residents; and one midwife for every 204 fertile women).
15. Communicable but preventable diseases still dominate the list of the ten leading causes of morbidity and mortality in the country. From 1989 to 1994, the ten leading causes of morbidity included diarrheal diseases, bronchitis, influenza, pneumonia, tuberculosis, measles and malaria. The ten leading causes of mortality included pneumonia, all forms of tuberculosis, chronic obstructive pulmonary diseases and allied conditions, diarrheal diseases, and other diseases of the respiratory system.
16. The health situation of children in the country is deplorable. 28 babies die of tetanus daily. Half of the children's deaths in the country are caused by diarrhea. The prevalence of iron deficiency anemia among infants registered at 46.4 %. Seven out of 100 children aged 0-5 years suffer from acute malnutrition. Eight out of every 100 children aged 6-10 are underweight, six are stunted and nine are wasted. Twelve infants out of the total births die every hour despite the decline in infant mortality (48.9 per 1,000 live births). One child dies of measles every day. Seventeen children go blind daily due to Vitamin A deficiency.

(Continued on next page.)

DAY 2**Reference sheet 6: Case Analysis Report (cont'd)**

17. The country's maternal mortality rate was recorded at 280 per 100,000 live births. The most common cause of death is normal delivery and other complications related to pregnancy occurring in the course of labor, delivery and puerperium. These include hemorrhage, eclampsia, sepsis, abortion and obstructed labor. Close to half of these deliveries were not attended by a trained health professional. There is also the absence or lack of prenatal care for many of these women. The low level of education, poor nutritional status and lack of access to family planning services are some of the aggravating factors contributing to the state of poor health of most women. This condition affects the health status of the family because of women's traditional role as care givers or providers.
18. The rural health clinic is generally staffed by one registered nurse and one midwife. A medical doctor visits the rural health clinic once a month; the medical doctor spends roughly three days of every month in the rural health clinic. The most common forms of service extended by the rural health clinic are free consultation/check-up and the issuance of prescriptions for drug requirements. In most cases, drugs prescribed are not bought because of lack of economic resources. Most rural health facilities, including that closest to Community X, lack medicines and medical supplies like cotton, alcohol, syringes and needles.
19. The rural health clinic is responsible for implementing the Expanded Program of Immunization, a program that provides free immunization for children. The program consists of three vaccines: BCG (Bacille Camille Guerin) against tuberculosis; oral polio vaccine; and vaccine against diphtheria, pertussis and tetanus. Immunization campaigns are necessary to provide the population with sufficient protection against infectious diseases.
20. The rural health clinic is also responsible for implementing on the local level government's health education, maternal and child health care and nutrition programs.
21. The increasing costs of medicines and medical services have been greatly responsible for the growing inability of the people to respond to their health needs. The price of drugs and medicines in the country is one of the highest in Asia (250 % to 1,600% higher than neighboring Asian countries).

(Continued on next page.)

Reference sheet 6: Case Analysis Report (cont'd)

22. The high cost of medicines and medical services is one reason why many resort to harmful self-medication methods. Others resort to traditional medicine as an alternative method to respond to health needs and problems. The use of herbal medicines, accupressure, changes in diet and eating habits, are among its components.

Budget Allocations

23. The country's national budget for the year 2000, classified by right and function, highlights four state priorities: other state (executive) functions, debt service, allocations for the right to education, and national defense and security.

Budgetary Allocations	Total Allocations In Local Currency	Per Capita Allocations	Percent of Total (%)
Allocations for the Right to Food	22,905,227,000.00	304.75	3.95
Allocations for the Right to Education	112,356,004,000.00	1,494.89	19.39
Allocations for the Right to Health	18,711,604,000.00	248.95	3.23
Allocations for the Right to Housing	2,586,370,000.00	34.42	0.45
<i>Allocations that Obstruct ESC rights</i>	93,663,000.00	1.26	0.02
National Defense and Security	77,048,972,000.00	1,025.13	13.30
Judiciary	6,684,193,000.00	88.93	1.15
Parliament	3,097,236,000.00	41.20	0.53
Debt Service (Interest Payments)	120,719,000,000.00	1,606.16	20.83
Other State (Executive) Functions	215,278,731,000.00	2,864.27	37.15
Total	579,481,000,000.00	7,709.96	100.00

2000 National Budget Classified by Right and Function

(Continued on next page.)

DAY 2**Reference sheet 6: Case Analysis Report (cont'd)**

24. Top priority is extended to other state (executive) functions, which are allocated more than one-third (37.15 %) of the national budget. Debt service is the second priority, having been allocated one-fifth (20.83 %) of the national budget. A little less than one-fifth (19.39 %) of the national budget has been allocated for the realization of the right to education. National defense and security was allocated 13.3 % of the state budget.
25. The national budget contains allocations that obstruct ESC rights (0.02 % of the national budget). This refers to the amount allocated for the support and development of the tobacco industry – an industry recognized by the international ESC rights community as impacting negatively on the right to health.
26. Other ESC rights (food, health, and housing) were allocated only 7.63 % of the total national budget. Allocations for ESC rights are defined as allocations for policies, programs, projects, cabinet departments, etc., that contribute to the creation of conditions that facilitate the realization of ESC rights, based on the right's content and accompanying state obligations.
27. The right to health was allocated only 3.23 % of the total budget, among the least funded items in the 2000 national budget.
28. Total ESC rights allocations in the 2000 national budget, net of allocations which obstruct ESC rights, amounts to 156 billion, slightly less than one-third (17 %) of the total budget.
29. The 2000 health allocations amounted to 18.7 billion. Health allocations were almost evenly distributed between rural (56.20 % or 10.4 billion) and urban areas (42.99 % or 8 billion). Only fourteen percent of the population is located in urban centers, while the majority of the population (86 %) is located in rural areas.
30. Only 1.3 billion (7.46 %) of the health budget is devoted to primary health care services. This represents only a quarter of one percent (0.23 %) of the total budget of the country.
31. The World Health Organization has suggested that states spend five percent of their Gross National Product (GNP) on health. However, the national budget allocations for health amount to only 18.711 billion or 1.99 % of the country's GNP.

(Continued on next page.)

Reference sheet 6: Case Analysis Report (cont'd)**V. Evidence**

1. Blood and urine samples from the residents were taken and analyzed by a non-governmental organization called Physicians for Social Responsibility. These samples revealed that
 - a. 128 persons suffer from two types of anemia, pernicious anemia and aplastic anemia. Pernicious anemia is a disease resulting from poor absorption of vitamin B-12, due to a stomach disorder, while aplastic anemia is a disease where red marrow becomes fatty and yellow, and fails to produce enough red cells, white cells and platelets. Aplastic anemia often occurs after exposure to organic chemicals such as benzol, insecticide and prolonged exposure to ionizing radiation.
 - b. Sulfhemoglobin, a substance that reduces blood cells and the lowers the oxygen-carrying capacity of a person's circulation system, was found in 368 residents.
 - c. Two out of three residents had blood tainted with a substance normally not present in the human body.
2. The Physicians for Social Responsibility also conducted physical examinations on the residents. Physical examinations revealed that respiratory tract infections (such as pneumonia, tuberculosis, influenza, etc.) and skin diseases (such as contact allergies, parasites, bacterial infections) are prevalent among those examined.
3. The bodies of the ten deceased persons were autopsied, also by the Physicians for Social Responsibility. Autopsy results show various causes of death, some of which may be traceable to chronic or prolonged exposure to toxic matter.
 - a. The autopsy on the two babies showed that the baby girl (aged 4 months) died due to diarrheal disease while the baby boy (aged 11 months) died of pneumonia.

(Continued on next page.)

DAY 2**Reference sheet 6: Case Analysis Report (cont'd)**

b. The autopsy on eight adult deceased persons listed the following causes of death:

- (1) Tuberculosis (2 male, one female)
- (2) Cardiac Arrest (2 female)
- (3) Malignant neoplasm (1 male)
- (4) Asphyxia secondary to aplastic anemia (1 female)
- (5) Pneumonia with an underlying cause of aplastic anemia (1 male)

4. Water samples from the River were taken and examined by scientists from the national university. Their examination established the presence of chemicals such as copper, zinc phosphates, lead, cadmium, arsenic and other sulfates that are lethal, especially if taken in large doses.
5. Soil samples were also taken from the adjacent agricultural lands and were tested by scientists from the national university. Tests detected the presence of cadmium, lead, mercury and cyanide. Test results indicate that the soil has become infertile and that there is massive siltation.
6. In a written report, an engineer from the national university warned that the highly erosive nature of the mine tailings may induce the collapse of riverbanks and occurrences of small landslides.
7. The permit to operate the copper mine in the Province, granted by respondent Ministry of Natural Resources to respondent company, listed the terms and conditions under which respondent company could operate. Among the terms and conditions was the requirement for safe disposal of mine waste. The permit was supported by documents verifying respondent company's compliance with environmental standards, rules and regulations. Not a single document, however, contained any assessment that a dumping incident could possibly occur. Neither did any document contain any drainage tunnel for the disposal of mine waste.
8. A report from the country's volcanologists indicate that an earthquake, of low magnitude (intensity 2), did indeed occur in the Province.

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Reference sheet 6: Case Analysis Report (cont'd)**Analysis of Medical and Scientific Evidence**

9. The medical evidence from blood and urine samples (prevalence of two types of anemia, presence of sulfhemoglobin and substance not normally present in the human body) support complainant's allegations that their health conditions were adversely affected by chronic exposure to organic chemicals contained in mine tailings.
10. Prevalence of respiratory tract infections could have been caused by chronic exposure to water and soil polluted by mine tailings, or by poor health practices and lack of immunization, among others. Prevalence of skin diseases could also have been caused by exposure to toxic matter in water and soil caused by mine tailings or by unsanitary conditions or practices.
11. Not all deaths are directly traceable to exposure to mine tailings. Two deaths can be directly attributable to chronic exposure to mine tailings (asphyxia secondary to aplastic anemia and pneumonia with an underlying cause of aplastic anemia).
12. The deaths of the infants could be traced to unsanitary conditions and poor maternal care during pregnancy.
13. The deaths caused by tuberculosis could be traced to lack of immunization in childhood.
14. Evidence from water samples support complainant's allegations that mine tailings were found in the River samples.
15. Evidence from soil samples also support complainant's allegations that agricultural lands have become infertile.

(Continued on next page.)

DAY 2***Reference sheet 6: Case Analysis Report (cont'd)*****Action Taken by Respondents**

16. A report submitted by respondent company indicates that since the accident it had:

- a. Rehabilitated the damaged tunnel;
- b. Established an environmental guarantee fund to address compensation claims of affected residents;
- c. Built all-weather shelters for residents displaced by the spill;
- d. Constructed 22 kilometers of levee banks for flood control;
- e. Implemented a health care program and distributed household supplies and food; and
- f. Presented a plan to respondent Ministry of Natural Resources to dredge the River and its tributaries.

17. Orders issued by respondent Ministry of Natural Resources against respondent company after the incident include:

- a. Cease and Desist Order, ordering it to stop all mining activities, pending the repair of the drainage tunnel and the dredging of the River;
- b. Fine, for dumping mine tailings in the River; and
- c. Order to explain, in writing, why its license should not be revoked and cancelled.

18. Orders issued by respondent Ministry of Health after the incident include:

- a. Health warnings issued three days after the incident against the use of water from the River for whatever purpose;
- b. Assignment of additional medical and health personnel to the rural health center to provide medical treatment to affected residents; and
- c. Provision of medical supplies to the rural health center.

(Continued on next page.)

Reference sheet 6: Case Analysis Report (cont'd)**VI. Case Analysis**

The Analysis section should be set out as a framework or formula for evaluating the allegations made by the complainant(s) with respect to the evidence from the commission's investigation. The analysis should be based on and measure the applicable human rights standard(s) and be within the jurisdiction of the commission.

1. Are any facts in dispute in this? If so, which ones? Does this case involve a dispute over the interpretation of the law, policy or jurisdiction?
2. What human rights standards (international treaties or national laws) are applicable?
3. Did respondents engage in a direct violation of human rights standards? Did respondents observe their obligations to respect, protect and fulfill ESC rights?
4. What is the degree of responsibility of non-state actors involved in this case? Explain what laws or standards can be used to hold them accountable.
5. What is respondents' defense?
6. Apart from the named respondents, are there other parties who share responsibility for upholding and not violating the rights of the complainant?

VII. Conclusions/Recommendations

1. Is there sufficient evidence to support all or part of the allegations? Did the state observe all its human rights obligations in this case? If not, which obligations were not observed? Who was affected? Who was responsible?
2. Can it be said that any rights were violated? If so, identify the right(s) violated. Who violated the right? How was the right violated (through an act of omission or act of commission)? Briefly restate the nature of the violation(s) and the right(s) violated.
3. What steps, if any, should the Commission take in relation to this case?
4. If the state did not observe its obligations, what forms of remedies are available for the victims? Which form of remedy does the Commission recommend to the complainant?

(Continued on next page.)

DAY 2

Reference sheet 6: Case Analysis Report (cont'd)

VII. Decision/Reasons (Commissioners only)

What is the Commission's ruling? What is the basis (human rights, legal, administrative, etc.) for the ruling? Why did the Commission rule in this manner?

The Commission may decide to support or reverse the staff recommendation.

DAY 3

Workshop 4 (cont'd)

Working with the Concept of State Obligations and ESC Rights

ESC Rights Initiative Workbook: Step 2

DAY 3

Workshop 4

Activities

Activity 2

08:45 - 09:30

Presentation and Discussion
“State Obligations”**Duration**

45 mins. total

Description

The resource person will introduce the case and review important ideas for working with the concept of State Obligations:

- Obligations to respect, protect and fulfill
- Non-state actors
- Act of omission vs. commission

Activity 3

09:30 -11:00

Simulation - Preparation of Roles

Commissioners’ Meeting on the “Organization of Residents in the Community v. Mining Company, Ministry of Natural Resources and Ministry of Health Case”

Duration

1 hr. 30 mins. total

Description

As mentioned in the previous activity, you will participate in an activity that involves simulating a meeting of the Commissioners of an HRC to make recommendations on a case that has been brought before them.

You will work in the groups you were assigned to in the previous workshop in order to prepare for your role for the “Commissioners’ Meeting” simulation. Refer to *Reference sheet 7*.

Read the case report on *Reference sheet 6* and complete the tasks assigned to you.

11:00 - 11:30

Break

Reference sheet 7
Workshop 4 - Activity 3
Commissioners' Meeting Simulation
Description

You will participate in an activity that involves simulating a meeting of an HRC that is deciding a case that has been brought before them.

In order to facilitate maximum participation two meeting groups will be set up (i.e., two groups of 12 to 15 participants).

Each meeting group will discuss the same case and carry out the same tasks.

A resource person, together with two facilitators will work with each group.

Roles of participants in EACH meeting group:
1. Commissioners:

Five (5) participants will be assigned the role of Commissioners.

Their task will be to read the Case Report and together carry out an analysis of the case according to certain guidelines that will be provided. Working individually, Commissioners will examine the case and read relevant texts.

2. Commission Staff

The other members of the meeting group will assume the role of Commission staff.

Their task will involve reading the Case Report and working together to analyze the case using the questions provided.

The staff will then be required to present the case and make recommendations for submission to the Commissioners.

Participants in this group will choose a spokesperson to present the case at the Commissioners' meeting.

The Commission Meetings

1. The spokesperson for the Commission staff will present his/her group's analysis of the case and their recommendations. The Commissioners will have the opportunity to ask questions.
2. The Commissioners will then deliberate on the case. The other participants will observe the Commissioners' meeting and will be provided with an observation sheet to record their comments and ideas as they listen to the proceedings. They cannot intervene, but may be asked to respond to any questions of the commission.

(Continued on next page.)

DAY 3

Reference sheet 7: Commissioners' Meeting Simulation (cont'd)

Debriefing the Activity

The resource person and facilitators will debrief the activity within each meeting group.

Then the two meeting groups will join together and the resource persons will comment on their respective meetings highlighting issues of importance and raising issues that may not have been addressed by the participants.

Workshop 4

Activities

Activity 4 11:30 - 12:30	<i>Simulation - Commissioners' Meeting</i>
Duration	1 hr. total
Description	A spokesperson from the Commission staff will present the case at the Commissioners' meeting. The Commissioners will deliberate on the case while other participants observe. The observers will fill out the "Observation sheet" found on <i>Worksheet 3</i> . They cannot intervene, but may be asked to respond to any questions of the Commission.
12:30 - 14:00	Lunch
Activity 5 14:00 - 15:00	<i>Simulation - Debriefing</i>
Duration	1 hr. total
Resource persons	Ms Virginia Bonoan-Dandan and Ms Maria I. Socorro Diokno
Description	<p>This is a two-part activity.</p> <p>In Part A you will work in a group.</p> <p>In Part B you will present your work to the larger group.</p> <p>Part A Small Group Discussion. (30 mins.)</p> <p>Small groups will discuss their perspectives on the process and outcome of their work. Observers may refer back to their notes on <i>Worksheet 3</i> to address salient points from the deliberation process.</p> <p>Part B Synthesis and Discussion. (30 mins.)</p> <p>One reporter will present their group's work to the larger group.</p>
15:00 - 15:30	Break
15:30 - 17:30	Proceed to Step 2 in the <i>ESC Rights Initiative Workbook</i> .
17:30 - 17:45	Evaluation

Commission Staff Observation Sheet

1. What aspects of the evidence and the analysis did the Commissioners focus on in making their decision?

2. Do you agree with the reasoning of the Commissioners' decision and recommendation(s)?

3. Are there any issues that were not addressed?

DAY 4

Workshop 5 ***Monitoring ESC Rights***

Workshop 6 ***Strategies for the Promotion of ESC Rights***

DAY 4

Workshop 5 Overview

Monitoring ESC Rights

Objective: • To strengthen skills related to monitoring ESC rights

Time: 1/2 day

Activities:

Activity 1 Introduction to Workshop 515 mins.

Activity 2 Challenges Associated with Monitoring ESC rights...1 hr. 30 mins.

Break 30 mins.

Activity 3 A Framework for Monitoring
Progressive Realization1 hr. 45 mins.

Lunch 1 hr. 30 mins.

Activity 3 (cont'd)

Workshop 5

Activities

Activity 1

8:45 - 9:00

Introduction to Workshop 5

Duration

15 mins. total

Description

The workshop leader will introduce the learning objectives and activities for the workshop.

Activity 2

Challenges Associated with Monitoring ESC Rights

Duration

1 hr. 30 mins. total

Description

This is a three-part activity.

In **Part A** there will be a presentation by the resource person.

In **Part B** you will work in “buzz groups”.

In **Part C** you will carry out a discussion.

9:00 - 9:40

Part A Presentation. (40 mins.)

“Challenges Associated with Monitoring ESC Rights”

In her presentation, the resource person will address the following issues:

- Differences between a violations approach to monitoring and progressive realization
- Challenges related to the recognition of ESC rights and justiciability
- The importance of systematic approaches
- Tools for monitoring progressive realization: benchmarks, indicators, budget analysis, reporting

Workshop 5

Activities

Activity 2 Cont'd	<p>Questions to consider during the presentation and discussion:</p>
	<ol style="list-style-type: none"> 1. In what ways might monitoring ESC rights be different from monitoring civil and political rights? 2. What challenges does a NHRC face when monitoring ESC rights?
9:40 - 10:10	<p>Part B “Buzz” Groups. (30 mins.) You will form a “buzz group” with the people sitting next to you to discuss the presentation and identify two questions for the resource person to answer.</p>
10:10 - 10:30	<p>Part C Discussion. (30 mins.) There will be a discussion of the questions presented by the “buzz groups” and the resource person will respond to the questions raised.</p>
10:30 - 11:00	<p>Break</p>
Activity 3 11:00 - 14:30	<p><i>A Framework for Monitoring Progressive Realization</i></p>
Duration	<p>1 hr. 45 mins. total</p>
Description	<p>This is a two-part activity.</p> <p>In Part A you will work in small groups. In Part B you will report to the larger group.</p>

Workshop 5

Activities

Activity 3
Cont'd
11:00 -12:15

Part A Working in Small Groups. (75 mins.)

For this Activity, participants will use the same case analysis study used for the simulation activity.

Your facilitator will divide you into groups. Each group will be assigned one obligation identified from the simulation exercise and complete the exercise on *Worksheet 4*. For additional information on monitoring progressive realization refer to *Reference sheet 11*.

12:15 - 14:00

Lunch

14:00 - 14:30

Part B Reporting to the Group. (30 mins.)

The facilitator will then reconvene the groups and take up the framework.

Worksheet 4

Workshop 5 - Activity 3

A Framework for Monitoring Progressive Realization

Develop a plan for Progressive Realization of a State ESC rights obligation.

1. Work with your assigned State's obligations from the case study used in the simulation.
2. Use the framework provided below to outline a plan for monitoring the State obligation you selected. Consider how this plan would address gender issues related to ESC rights.
3. Refer to the information provided on *Reference sheet 11* to help you.
4. In the space below, write your plan for monitoring progressive realization of the State obligation you selected.

STATE OBLIGATION: _____

1. SET BENCHMARKS

- Explain the process you would follow to set benchmarks for monitoring in this case.
- Assess if the information from your source (in this case, the information provided in the case study) is sufficient.
- If the information is NOT sufficient, determine how to obtain the additional necessary information.
- Determine who should be involved in this process of information gathering and explain why.
- Ensure that gender issues are considered.

Worksheet 4: Framework for Monitoring (cont'd)

2. DEVELOP INDICATORS

- Describe indicators that could be used to monitor progressive realization.
- Determine who should be involved in developing the indicators. Explain why.
- Ensure that gender issues are considered.

3. COLLECT DATA

- Identify some of the important steps in the data collection process.
- Determine who should be involved and why.

DAY 4

Worksheet 4: Framework for Monitoring (cont'd)

4. FORMULATE POLICY OBJECTIVES

- Examine how NGOs can use monitoring to promote legislative and policy change.
- Determine who should be involved and why.

5. What challenges might you face in putting your plan into practice?

Reference sheet 11
Workshop 5 - Activity 3

**Monitoring Progressive Realization of ESC Rights
Through the Use of Benchmarks and Indicators**

Benchmarks

The UN Committee has stressed the importance of providing "a basis on which the State Party itself, as well as the Committee, can effectively evaluate the extent to which progress has been made towards the realization of the obligations contained in the Covenant."

For this purpose, it may be useful to identify specific **benchmarks** or goals against which their performance in a given area can be assessed. Thus, for example, it is generally agreed that it is important to set specific goals with respect to the reduction of infant mortality, the extent of vaccination of children, the intake of calories per person, the number of persons per health-care provider, etc. In many of these areas, global benchmarks are of limited use, whereas national or other more specific benchmarks can provide an extremely valuable indication of progress.

It is important, therefore, to find out what specific benchmarks have been established by the State, and to determine whether the State meets the benchmarks it has set itself.

To determine the progressive realization of ESC rights through benchmarks, one may need to answer the following questions:

- Has the State set benchmarks or targets towards the realization of ESC rights? If so, what benchmarks or targets has the State set? Are the benchmarks set by the State appropriate?
- If the State has not established benchmarks, why has it failed to do so? What can be done to pressure the State into establishing these benchmarks?
- Has the State actually met the benchmarks/targets/goals it has established?
- If the State has established benchmarks but has failed to meet them, why has the State been unable to meet its benchmarks? What can be done to pressure the State into meeting its benchmarks?

(Continued on next page.)

Reference sheet 11: Monitoring progressive realization (cont'd)**Indicators**

The enjoyment and guarantee of ESC rights, and the level of compliance by government of its obligations, must be periodically monitored to assess progress in the realization of these rights. The assessment often takes the form of qualitative and quantitative measurements, called **indicators**.

Indicators are defined as "statistical data which attempts to provide or 'indicate' the prevailing circumstance at a given place at a given point in time (usually based on some form of numerical qualifications)." Indicators are not necessarily direct and full measures of what they are intended to show but are, rather, often indirect or incomplete measures. This is perhaps especially true of social development indicators.

An indicator is not simply a statistical series but involves a set of assumptions; thus it requires careful examination and testing before use. Despite their limitations (i.e., they do not always reflect the human condition in a meaningful way) indicators are valuable tools that have the potential to adequately and accurately measure not only the existence of ESC rights - or any derogations therefrom - but also any advances that may develop.

What is essential, therefore, is to adopt a central approach towards the use of indicators that emphasizes the use of those indicators that are to a substantial degree compatible with the legal duties of States under existing domestic and international human rights law.

Examples of Indicators:

Indicators relating to the right to health, for example, may be subdivided into five classes:

1. Information on physical infrastructure, by geographic location, such as the number and type of hospitals, number and type of health clinics, use rate for hospitals and clinics, etc.
2. Information on human resources, by age, gender, social class, ethnicity and geographic location, such as the number and type of doctors, doctor-patient ratio, number and type of nurses, number of midwives, number and type of other health professionals, doctor-nurse ratio, shifts and working hours, standards for professional development, recruitment and promotion, wage levels and benefits provided to health workers, etc.

(Continued on next page.)

Reference sheet 11: Monitoring progressive realization (cont'd)

3. Information on the population, by age, gender, social class, ethnicity and geographic location, such as the infant mortality rate, under-five mortality rate, incidence of drug abuse and de-addiction, incidence of alcohol and other substance abuse and de-addiction, proportion of youth population already immunized and type of immunization, mortality rate, morbidity rate, life expectancy, causes of mortality and morbidity, prevalence of AIDS cases, prevalence of population with mental health problems, prevalence of teen and youth pregnancy, population growth, etc.
4. Information on materials and equipment, such as the number and type of facilities by geographic location, patient-bed ratio, affordability of drugs, medicines, laboratory examinations, number and type of drugs, medicines, etc.
5. Information on the extent of access to natural resources, by geographic location, such as the proportion of households with access to safe and clean potable water, types of access to safe and clean potable water, proportion of households with access to sanitation facilities, types of access to sanitation facilities, etc.

Adapted from: Diokno, Maria I. Socorro, "Monitoring the Progressive Realization of ESC Rights." Focus Asia-Pacific, Newsletter of the Asia-Pacific Human Rights Center, Vol. 16, June 1999.

Note: Regarding gender indicators, they should involve more than just gender disaggregated statistics.

DAY 4

Workshop 6 Overview

Strategies for the Promotion of ESC Rights

- Objectives:**
- To strengthen skills related to analyzing state obligations
 - To explore practical strategies NHRCs could adopt to promote the recognition of ESC rights

Time: 3 hrs. 15 mins.

Activities:

Activity 1 Introduction to Workshop 615 mins.

Activity 2 Challenges Involved in the Promotion of ESC rights15 mins.

Break30 mins.

Activity 3 Promoting ESC rights15 mins.

Day 5

Activity 3 (cont'd)

Workshop 6

Activities

Activity 1 14:30 - 14:45

Introduction to Workshop 6

Duration

15 mins. total

Description

The workshop leader will introduce the learning objectives and activities for the workshop.

Activity 2 14:45 - 15:45

Challenges Involved in the Promotion of ESC Rights

Resource Person

Atty. Jefferson Plantilla, Researcher at Hurights-Osaka

Duration

1 hr. total

Description

The resource person will discuss some of the challenges involved in the promotion of ESC rights with respect to each of the following four categories:

- the judiciary
- government officials
- the public and civil society in particular
- HRCs

In doing so, he will provide examples of strategies which have been used by NHRCs or NGOs to meet these challenges.

15:45 - 16:15

Break

DAY 4

Workshop 6

Activities

Activity 3**16:15 - 17:15 (Th)****9:00 - 10:00 (Fr)*****Promoting ESC Rights*****Duration**

2 hrs. total

Description

This is a two-part activity.

In **Part A** you will work in small groups.In **Part B** you will report back to the rest of the group.**16:15 - 17:15****Part A Working in Small Groups. (60 mins.)**

The facilitator will divide you into four groups focusing on each of the sectors highlighted in the previous activity:

- the judiciary
- government officials
- the public and civil society in particular
- HRCs

In your small groups, examine how you would go about promoting one ESC rights identified during the scenario presented in the Simulation exercise from Workshop 4.

Questions to Consider:

What is the message to be promoted and for whom?

How should the message be delivered so that it is effective?

How can proportion strategies support monitoring and vice versa?

17:15 - 17:30**Evaluation**

DAY 5

Workshop 6 (Cont'd) ***Strategies for the Promotion of ESC Rights***

ESC Rights Initiative Workbook: Step 3

ESC Rights Initiative Workbook: Step 4

Program Wrap-up

Evaluation

DAY 5

Workshop 6

Activities

Activity 3
Cont'd
9:00 - 10:00

Part B Presentation and Discussion. (60 mins.)

Each group will be given 10 minutes to report their findings to the larger group.

The resource person will synthesize the presentations and suggest any alternative ways of looking at the same problems

10:00 - 10:30

Break

10:30 - 12:30

Proceed to the *ESC Rights Initiative Workbook*, Step 3.

12:30 - 14:00

Lunch

14:00 - 16:00

Proceed to the *ESC Rights Initiative Workbook*, Step 4.

16:00 - 16:30

Break

16:30-17:00

Program Wrap-up

17:00-17:30

Evaluation

Appendix

ESC Rights Initiative Workbook Strategies for the Promotion of ESC Rights

Introduction

One of the expected outcomes of this program is that participants will implement an ESC rights initiative in their context.

We will be working towards this outcome throughout the training session by developing the plan for this initiative.

The content covered in the program aims to provide the necessary information and tools as well as the skills in order for you to address ESC rights issues through a variety of approaches and types of activities. Challenges and constraints will also be discussed in order to enable you to select an activity that will have a degree of success. In order to do this, you will need to draw from all the knowledge and skills you have brought with you as well as those acquired and developed throughout the program.

A basic activity design model is provided below. As we move through the program you will have the opportunity to develop and better define the design for your initiative or activity. A series of worksheets have also been provided to help you record the relevant information from each workshop.

As you move through the different workshops, you will add information, make adjustments, perhaps change the focus and objectives as you further develop the activity.

The basic premise is to select an initiative that is feasible and will produce measurable results given the challenges and constraints of your particular context.

For this activity, you will be divided into small groups with the other participants from your country. You will bring together your different areas of experience and expertise to develop an initiative for the promotion and the protection of a particular ESC rights relevant to the Commission and context of your country.

Important Considerations in Designing Your Initiative

Your initiative must be appropriate for your particular target audience and for the goals you have set.

Determining Outcome

Possible outcomes of your initiatives can be **changes** in:

- **knowledge**
- **attitudes**
- **professional practice or behaviour**
- **level of commitment**
- **policy and legislation**

For example:

If the aim of the initiative is to change **knowledge** you should consider:

- What changes do/can you expect?
- How many people will realistically gain new knowledge (if relevant)?
- How do you expect the people will use the knowledge acquired through your initiative?

If the aim of the initiative is to **change attitudes, professional practice or behaviour, the level of commitment to an issue or in policy and legislation**:

- How will the change affect the problem or issue you are working on?
- In what ways will the results be expressed?
- How will the change affect the behaviour of the target audience of the initiative?
- How many people will be affected by this change?
- How soon do you realistically expect the change to occur?
- What changes in policy or legislation will result?

Evaluating Outcomes

When designing your initiative, think about how the success of the program will be measured.

Things you should consider:

- Can concrete results be achieved within a reasonable time frame?
- Is the initiative technically feasible?
- Is it politically feasible?
- How will success be measured? What instruments will you use to measure the success of your initiative?

Procedure for Designing Your Initiative

Duration This activity will be take place over the course of the full five day session and end with Workshop 6, Activity 3 on Friday.

Objective To develop a plan for an initiative to be implemented by the Commission aimed at enhancing the promotion and protection of ESC rights.

Description The design process will take place in four steps.

Step 1: (On-going.)

You will record information relevant to the development of an ESC rights initiative after each workshop. (Worksheets are provided to record the information, see below)

Step 2: (Thursday, 2 hrs.)

You will examine the state obligations in relation to ESC rights.

Step 3: (Friday, 2 hrs.)

You will design an ESC rights initiative.

Step 4: (Friday 2.5 hrs.)

You will present your ESC rights initiative and discuss the initiatives of the other groups.

Step 1- Recording the Main Points of the Workshop

Procedure In preparation for the design of the ESC rights initiative, after each workshop jot down:

- the main points of the workshop, and
- important ideas relevant to the design of an ESC rights initiative.

We have provided you with the following worksheets to assist in this process.

Step 1 - Worksheets

Workshop 1: The Experience of HRCs on ESC Rights

Strengths and weaknesses of HRCs in fulfilling their mandates with respect to ESC rights:

Other ideas relevant to the design of an ESC rights initiative:

Workshop 2: Legal Sources of ESC Rights

Challenges faced in implementing ESC rights:

Other ideas relevant to the design of an ESC rights initiative:

Workshop 3: Women and ESC Rights

Role of HRCs in relation to women's ESC rights:

Other ideas relevant to the design of an ESC rights initiative:

Workshop 4: Working with the Concept of State Obligations in Relation to ESC Rights

State obligations to ESC rights:

Other ideas relevant to the design of an ESC rights initiative:

Workshop 5: Monitoring ESC Rights

Challenges NHRCs face when monitoring ESC rights:

Other ideas relevant for designing an ESC rights initiative:

Workshop 6: Strategies for the Promotion of ESC Rights

Challenges NHRCs face when monitoring ESC rights

Other ideas relevant for designing an ESC rights initiative:

Step 2 - Examining State Obligations in Relation to ESC Rights

Time 2 hrs.

- Procedure**
1. Together with the members of your country group determine the issues and identify the problem you want to address in the initiative you will design (Worksheet 1).
 2. You will then complete the SWOT (strengths, weaknesses, opportunities, threats) Analysis (Worksheet 2).

Worksheet 1 Analysis of the problem

1. What is the general issue to be addressed (e.g., women's ESC rights)?

2. What is one specific problem to be resolved (e.g., right to safe work place)?

3. What are the relevant state obligations based on international and national law?

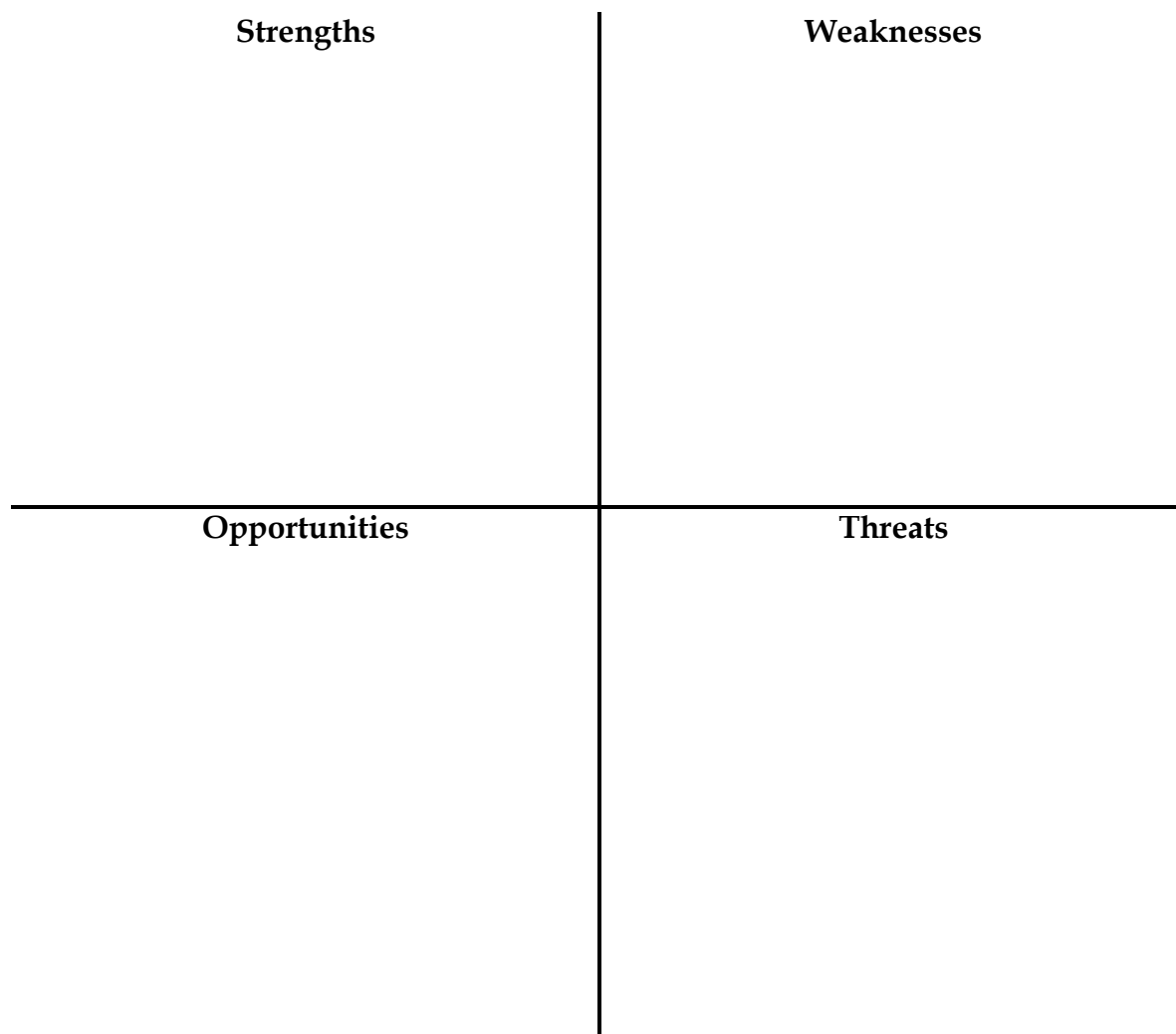
4. What changes would you like to see take place which would help the state comply with these ESC rights obligations?

Worksheet 2 SWOT (strengths, weaknesses, opportunities, threats) Analysis

In addressing the problem to be resolved by your Commission:

1. What major external opportunities do you have?
2. What major external threats do you face?
3. What are your major internal strengths?
4. What are your major internal weaknesses?

SWOT Analysis Chart



Adapted from Suzanne Williams, The Oxfam Gender Training Manual, Oxfam, 1994.

Step 3 - Initiative Development Plan

Together with the facilitator review the Introduction. Also review the information you have recorded on the worksheets as you worked through the program. Then prepare a draft plan for your initiative using the "Initiative Development Plan" that follows.

Step 4 - Present Plan

You will present your ESC rights initiative and discuss the initiatives of the other groups.

Initiative Development Plan

GUIDING POINTS			YOUR INITIATIVE DEVELOPMENT PLAN
FOCUS	What is the specific ESC rights issue you want to address?		
WHY is the ESC rights initiative needed?	Needs? <ul style="list-style-type: none"> Change(s) required in: <ul style="list-style-type: none"> - knowledge - attitude/motivation - professional practice/behaviour - policy/legislation - others 		
Description of Target Audience			
WHO is the target audience?	Profile: <ul style="list-style-type: none"> - Occupation - Average age - Gender - Educational level - others 	<ul style="list-style-type: none"> - Related issues/problems - other important facts 	

Initiative Development Plan (cont'd)

GUIDING POINTS		YOUR INITIATIVE DEVELOPMENT PLAN
WHAT FOR? What changes do you expect to achieve with this initiative?	<div style="text-align: center;"> ↑↑ ↓↓ GOAL & OBJECTIVES ↑↑ ↓↓ </div>	
WHEN? & HOW LONG?	TIME FRAME <ol style="list-style-type: none"> 1. Determine time frame of your initiative 2. Is the time frame realistic considering the objectives you want to achieve? 	
HOW will success be measured?	EVALUATION & FOLLOW-UP <ol style="list-style-type: none"> 1. Determine appropriate evaluation mechanisms 2. Determine mechanisms for promoting follow-up activities. 	

Initiative Development Plan (cont'd)

<p>WHAT type of activities will be required to achieve your goal and objectives?</p>	<p style="text-align: center;">ACTIVITIES</p> <p style="text-align: center;">↓</p> <p>e.g., campaign for governmental recognition of the right of national NGOs to submit complaints under the ICESCR; develop a training program on ESC rights.</p>	
<p>Challenges</p>	<p>What obstacles might you face in achieving your goals and objectives?</p>	

PART 4 – LIST OF PARTICIPANTS AND RESOURCE PERSONS

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India

Mrs. Subramonia Jalaja
Joint Secretary
National Human Rights Commission
Sardar Patel Bhawan, Sansad Marg
New Delhi - 110001, India

Tel.: (91-11) 334-0891 or 334-7065
Fax: (91-11) 334-0016
Website: www.nhrc.nic.in
Email: nhrc@ren.nic.in

Mr. Joseph Gathia
Executive Director
Centre of Concern for Child Labour
P-40/A, First Floor, Pandav Nagar
Mayur Vihar 1
New Delhi – 110091, India

Fax: (91 11) 225 6042
E-mail: ccfcl@giasdl01.vsnl.net.in

Indonesia

Mr. Saafroedin Bahar
Acting Vice-Chairperson
National Commission on Human Rights
(Komnas HAM)
Jl. Latuharhary No. 4B
Menteng - Jakarta 10310
Indonesia

Tel.: (62-21) 392-5230
Fax: (62-21) 392-5227
E-mail: info@komnas.go.id

Mr. Antonio Pradjasto Hardojo, Head of
Bureau of Research/Examination of
Human Rights
National Commission on Human Rights
(Komnas HAM)
Jl. Latuharhary No. 4B
Menteng - Jakarta 10310
Indonesia

E-mail: pراها_cheko@usa.net or
info@komnas.go.id

Mr. Sentot Setyosiswanto
Database Development and Investigation
Institute for Policy Research and
Advocacy (ELSAM)
Jl. Siaga ii No. 31, Pejaten Barat
Jarkata 12510
Indonesia

Fax: (62-21) 791-92519
E-mail: elsama@nusa.or.id;
sentot@elsam.or.id

Sri Lanka

Ms. S. Thambydurai Surendran (Rupa),
Legal Officer
National Human Rights Commission
of Sri Lanka
No. 50, Dr N M Perera Mawatha
Borella, Colombo 8
Sri Lanka

Tel.: (94-1) 696-610
Fax: (94-1) 694-924

Mr. Weerasinghe Hettige Sumanalal
(Lal), Investigation Officer
National Human Rights Commission
of Sri Lanka
No. 50, Dr N M Perera Mawatha
Borella, Colombo 8
Sri Lanka

Tel.: (94-1) 696-610
Fax: (94-1) 694-924

Malaysia

Prof. Mohd. Hamdan Adnan
Commissioner
Human Rights Commission of Malaysia
Wisma Putra
50602 Kuala Lumpur
Malaysia

Tel.: (60-3) 247-4240
Fax: (60-3) 248-0159
Website: www.suhakam.org.my
Email: humanrights@humanrights.com.my

Mr. Simon Karunagaram
Manager of Human Rights Desk
ERA Consumer Malaysia
No. 24, Jalan SS1/22A
47300 Petaling Jaya
Selango Darul Ehsan
Malaysia

Tel.: (60-3) 787-64648 / 787-74741
Fax: (60-3) 787-30636
Website: www.eraconsumer.org
E-mail: erahrs@po.jaring.my;
eracons@po.jaring.my;
eracons@tm.net.my

Nepal

Dr. Gouri Shankar Lal Das, Member
National Human Rights Commission of
Nepal
P.O. Box 9182
Marimar Bhawan
Lalitpur, Pulchowk
Kathmandu, Nepal

Tel.: (977-1) 523-200 / 525-920 /
525-659 / 547-976
Fax: (977-1) 523-991 / 547-973
E-mail: nhrc@ntc.net.np

Mr. Jogendra Keshari Ghimire
Secretary
National Human Rights Commission of
Nepal
P.O. Box 9182
Marimar Bhawan
Lalitpur, Pulchowk
Kathmandu, Nepal

E-mail: nhrc@ntc.net.np or
himirejk@hotmail.com

Mr. Devika Nanda Timilsina
Program Director
INSEC
Syuchatar-4, Kalanki
P.O. Box 2726
Syuchatar-4, Kalanki
Kathmandu, Nepal

Tel.: (977-1) 270-770 / 278-770
Fax: (977-1) 270-551
E-mail: insecc@wlink.com.np
devika_nanda@hotmail.com

Thailand

Mr. Jaran Ditapichai
Commissioner
National Human Rights Commission
109 Suthisarnwinitchai Rd.
Huaykwang, Bangkok
Thailand

Tel.: (66-2) 275-4231 / 276-9846
Fax: (66-2) 275-4320
E-mail: ucl@loxinfo.co.th

Mr. Vasant Panich
Commissioner
National Human Rights Commission
87/1 Yasoop 1, Vipawadee-rangsit Rd.
Jatuchak District, Bangkok 10900
Thailand

Tel.: (66-2) 272-1660 / 272-1661
Fax: (66-2) 272-1660

Ms. Somsri Hananuntasuk Berger
Asian Network for Free Elections
(ANFREL)
109 Suthisarnwinitchai Rd.
Ratchada Huaykwang, Bangkok
Thailand

Tel.: (66-2) 276-9846-7 ext. 3
Fax: (66-2) 276-2183
Tel. (H): (66-2) 694-3480-2 ext.810
E-mail: anfrel@forumasia.org

Thailand (cont'd)

Mr. Sarawut Pratoomraj
Campaign Coordinator
Coordinating Committee of Human
Rights Organization of Thailand
(CCHROT)
109 Suthisarnwinitchai Rd.
Huaykwang, Bangkok 10320
Thailand

Tel.: (66-2) 693-4683 / 275-4231-3
Fax: (66-2) 693-4683
E-Mail : cchrot@ksc15.th.com

Philippines

Ms. Flora C. Atilano VI (Chief)
Investigation Office
Philippine Commission on Human
Rights (PCHR) - SAAC Bldg.
Commonwealth Avenue, U.P. Diliman
Quezon City, Metro Manila
1104 Philippines

Tel.: (63-2) 929-0102
Fax: (63-2) 925-3882
E-mail: apnr@chr.gov.ph

Ma. Victoria E. Repuyan-Banez,
Attorney VI (Chief) Human Rights
Instruments Division,
Philippine Commission on Human
Rights (PCHR) - SAAC Bldg.
Commonwealth Avenue, U.P. Diliman
Quezon City, Metro Manila
1104 Philippines

Tel.: (63-2) 929-0102
Fax: (63-2) 927-5790
E-mail: apnr@chr.gov.ph

Mr. Gilbert D. Boiser, Attorney VI
(Chief) Legislative and Special
Studies Division
Philippine Commission on Human
Rights (PCHR) - SAAC Bldg.
Commonwealth Avenue, U.P. Diliman
Quezon City, Metro Manila
1104 Philippines

Tel.: (63-2) 929-0102
Fax: (63-2) 927-5790
E-mail: attygdb@edsamail.com.ph

Philippines (cont'd)

Caroliza T. Peteros, Information and
Publications Coordinator
Phil-Human Rights Information Center
Rm. 508, FMSG Bldg.
9 Balete Drive cor. 3rd St.
New Manila, Quezon City
1112 Philippines

Tel.: (63-2) 727-3886 ext.
141/130/144
Fax: (63-2) 721-3482
E-mail: prights@skyinet.net

Ms. Denise Monina F. Uy
Associate Director
U.P. Institute of Human Rights
U.P. Law Center
Bocobo Hall, Diliman
Diliman, Quezon City
1101 Philippines

Tel.: (63-2) 434-9525 / 925-5301
ext.5549
Fax: (63-2) 434-9525
E-mail: denise@claw.upd.edu.ph

Amparo Tomas
Program Officer
United Nations Development Program
NEDA sa Makati Bldg.
106 Amorsolo Street
Legaspi Village, Makati City
Philippines

Tel.: (63-2) 810-2497
Fax: (63-2) 816-4061 / 893-9598
E-mail: amparo.tomas@undp.org

Resource Persons

Justice V.S. Malimath
Former Member
National Human Rights Commission of
India
Shantiniketan, Palace Loop Road
Vasanthnagar, Bangalore 560 052
India

Fax: (91-80) 228-5222

Mr. Jefferson R. Plantilla
Researcher
HURIGHTS - Osaka
2-1-2500 Benten, Minato-Ku
Osaka 552-0007
Japan

Tel.: (81-6) 6557-3578
Fax: (81-6) 6557-3583
E-mail: jeff@hurights.or.jp

Maria Socorro "Cookie" Diokno
Secretary General
Free Legal Assistance Group (FLAG)
c/o MDDR Law
6th Floor Strata 200 Bldg., Emerald Ave.
Ortigas Center, Pasig City
1605 Philippines

Tel.: (63-2) 631-7563
Fax: (632) 636-0986
E-mail: flag@flag.com.ph

Resource Persons (cont'd)

Ms. Resurrecion Lao-Manalo
Coordinator
ESCR-ASIA
No.20 Rockwell Drive, Rockwell Center
1200 Makati City
Philippines

Tel.: (63-2) 899-7691 ext.2109 /
2112
Fax: (6-32) 899-4342
E-mail: escasia@acc.aiti.admu.edu.ph

Mr. Orest Nowosad
National Institutions Team
Office of the High Commissioner for
Human Rights
UNOG-OHCHR
CH-1211 Geneva 10
Switzerland

Tel.: (41-22) 917-9223
Fax: (41-22) 917-9021
E-mail: onowosad.hchr@unog.ch

Ms. Virginia Bonoan-Dandan
Chairperson
UN Committee on Economic, Social and
Cultural Rights
Office PW-1-025
Office of the High Commissioner for
Human Rights
Palais des Nations
8-14 avenue de la Paix
1211 Genève
Switzerland

Tel.: (41-22) 917-9321
Fax: (41-22) 917-9022
Tel.: (41-22) 434-6981, 920-5301,
434-8212

Judge Aurora P. Navarrete-Reciña
Chairperson
Philippine Commission on Human
Rights (PCHR)
SAAC Bldg.
Commonwealth Avenue, U.P. Diliman
Quezon City, Metro Manila
1104 Philippines

Tel.: (63-2) 929-0102
Fax: (63-2) 928-8610
E-mail: apnr@chr.gov.ph

Ms. Mercedes V. Contreras-Danenberg
Commissioner
Philippine Commission on Human
Rights (PCHR)
SAAC Bldg.
Commonwealth Avenue, U.P. Diliman
Quezon City, Metro Manila
1104 Philippines

Tel.: (63-2) 926-6188
Fax: (63-2) 928-8610
E-mail: merton@pacific.net.ph

Resource Persons (cont'd)

Atty. Jacqueline V. Mejia
Executive Director
Philippine Commission on Human
Rights (PCHR) - SAAC Bldg.
Commonwealth Avenue, U.P. Diliman
Quezon City, Metro Manila
1104 Philippines

Tel.: (63-2) 928-7240
Fax: (63-2) 928-7240
E-mail: jvmejia@chr.gov.ph or
jake_mejia@rocketmail.com

Atty. Homero Matthew P. Rusiana
Commission Secretary
Philippine Commission on Human
Rights (PCHR) - SAAC Bldg.
Commonwealth Avenue, U.P. Diliman
Quezon City, Metro Manila
1104 Philippines

Tel.: (63-2) 927-0172
Fax: (63-2) 928-8610
E-mail: comsec@chr.gov.ph

Ms. Ana Elzy E. Ofreneo
Director IV-HERO
Philippine Commission on Human
Rights (PCHR) - SAAC Bldg.
Commonwealth Avenue, U.P. Diliman
Quezon City, Metro Manila
1104 Philippines

Tel.: (63-2) 928-3879
Fax: (63-2) 928-8610
E-mail: ofreneo@compass.com.ph

Ms. Rosette Librea
Director-PMS
Philippine Commission on Human
Rights (PCHR) - SAAC Bldg.
Commonwealth Avenue, U.P. Diliman
Quezon City, Metro Manila
1104 Philippines

Tel.: (63-2) 925-3884
Fax: (63-2) 928-8610
E-mail: rosvjar@hotmail.com

Ma. Ellen G. Julian
Division Chief, ETD-HERO
Philippine Commission on Human
Rights (PCHR) - SAAC Bldg.
Commonwealth Avenue, U.P. Diliman
Quezon City, Metro Manila
1104 Philippines

Tel.: (63-2) 927-6225
Fax: (63-2) 925-3878
E-mail: ellen@compass.com.ph

Ms. Nerissa M. Navarro-Piamonte
Division Chief
Philippine Commission on Human
Rights (PCHR)
SAAC Bldg.
Commonwealth Avenue, U.P. Diliman
Quezon City, Metro Manila
1104 Philippines

Tel.: (632) 921-2799
Fax: (632) 928-8610
E-mail: nerpia99@hotmail.com
ppd@chr.gov.ph

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Canadian Human Rights Foundation
1425 René-Lévesque Blvd West, Suite 407
Montréal (Québec)
Canada 3G 1T7
Tel: (514) 954-0382 Fax: (514) 954-0659
E-mail: chrf@chrf.ca Web site: www.chrf.ca



Philippine Commission on Human Rights
State Auditing & Accounting Office Bldg
Commonwealth Avenue
Diliman, Quezon City, Philippines
Tel: (63-2) 631-3019 Fax: (63-2) 631-6449