

# Contents

v	<i>Editorial</i>
1	Human Rights and Social Development <i>Dr Erfried Adam</i>
3	Economic, Social and Cultural Rights in ASEAN: A Survey <i>Simon S.C. Tay and Goh Chien Yen</i>
33	The State of Economic, Social and Cultural Rights in Southeast Asia <i>Tang Lay Lee</i>
51	ILO Conventions and the Covenant on Economic, Social and Cultural Rights: One Goal, Two Systems <i>Lejo Sibbel</i>
67	Executive Summary of the Conference on 'Human Rights and Social Development', Manila 2000 <i>Gisella Dizon-Reyes, Joel Raquedan, Vincent Yambao, Noel Villaroman</i>
78	The Old and the New Periphery of the Islamic World Report on the Conference on 'Asian Islam in the Twenty-first Century', Bangkok 2000 <i>Mathias Diederich</i>

# Friedrich-Ebert-Stiftung in Southeast Asia

Friedrich-Ebert-Stiftung has been present in Southeast Asia for more than 30 years. Its country offices in Bangkok, Jakarta, Manila and Hanoi have been active in implementing national cooperation programmes in partnership with parliaments, civil society groups and non-governmental organisations, academic institutions and 'think-tanks', government departments, political parties, women's groups, trade unions, business associations and the media.

In 1995, the Singapore office was transformed into an Office for Regional Cooperation in Southeast Asia. Its role is to support, in close cooperation with the country offices, ASEAN cooperation and integration, Asia-Europe dialogue and partnership, and country programmes in Cambodia and other ASEAN member states where there are no Friedrich-Ebert-Stiftung offices.

Its activities include dialogue programmes, international and regional conferences (e.g. on human rights, social policy, democratisation, comprehensive security), Asia-Europe exchanges, civil education, scholarship programmes, research (social, economic and labour policies, foreign policy) as well as programmes with trade unions and media institutes.

Director: Dr Erfried Adam

Address: 7500A Beach Road  
#12 - 320/321/322 The Plaza  
Singapore 199591  
Tel: (65) 62976760  
Fax: (65) 62976762

E-mail: [fessing@mbox4.singnet.com.sg](mailto:fessing@mbox4.singnet.com.sg)

Web site: <http://www.fes.de>

# Dialogue + Cooperation: Inaugural Issue

Dear Reader

Welcome to the first issue of *Dialogue + Cooperation – Occasional Papers on Southeast Asia and Europe*.

*Dialogue + Cooperation* is a reflection of the work of the Friedrich Ebert Stiftung Office for Cooperation in Southeast Asia, Singapore: it deals with ASEAN cooperation and integration as well as the Asia Europe dialogue and partnership. Specifically:

- *Dialogue + Cooperation* gives an account of our activities in Southeast Asia by publishing important contributions to our conferences and papers from our own work.
- *Dialogue + Cooperation* contributes to the dialogue between Asia and Europe by systemically covering specific up-to-date topics which are of concern for the two regions.
- *Dialogue + Cooperation* is an instrument for networking by inviting you to make a contribution and use it as a platform for communication.

In this first issue we have included various papers on the topic of human rights, written for the fourth Friedrich Ebert Stiftung conference on 'Human Rights and Development' held in Manila in January 2000. Questions such as 'How far have countries in Southeast Asia supported and implemented economic, social and cultural rights?' and 'What exactly is the report from a German expert on 'The Old and the New Periphery of the Islamic World' follows up on the conference on 'Asian Islam in the Twenty-first Century' held in Bangkok in February 2000.

In future, you will also find *Dialogue + Cooperation* on the homepage of the Singapore regional office. In the meantime, please visit our pages on Asia at <http://www.fes.de>.

The Editors  
Friedrich Ebert Stiftung  
Office for Regional Cooperation in Southeast Asia  
Singapore

# Human Rights and Social Development

Dr Erfried Adam\*

In recent years, Friedrich Ebert Stiftung has regularly organized conferences on human rights questions with participation from the Southeast Asian region and Europe. The supreme objective of these conference is dialogue; not only dialogue between participants from Asia and Europe, but also between renowned representatives of different sectors of society, organizations, experiences, cultures and religions within Southeast Asia. This dialogue is conceived as a dialogue between equals, irrespective of status and position. While there is no intention of reaching any formal conclusions at these conferences as they are not appropriate forums for political decision-making, they are certainly intended to contribute to a better understanding of the issues and between the different actors.

In this issue of *Dialogue + Cooperation*, we focus on the question of economic, social and cultural (ESC) rights and the relationship of ESC rights to the International Labour Organization (ILO) conventions. We have included three papers on this topic which were commissioned for the conference on 'Human Rights and Social Development – Economic, Social and Cultural Rights and the ILO Conventions: Contents, Instruments, Complementarity', held in Manila, the Philippines, 24-25 January 2000.

The title of that conference, 'Human Rights and Social Development', sought to place the debate on human rights in a broader context. The main focus of the conference as well as the papers included here is a

normative approach rather than a detailed and empirical study and discussion of social development in Southeast Asian countries. However, the social effects of the financial and economic crisis in many Asian countries have created a growing awareness of the need to establish social security systems or safety nets. Professor Amartya Sen, Winner of the 1998 Nobel Prize for Economics, pinpointed three main factors contributing to the crisis: (1) Neglect of economic and social security systems, (2) insufficient transparency in financial and economic enterprises, and (3) a lack of genuine democratic structures in some countries.

In Asia, as in Europe or America, the concept of 'social security' or 'social justice' may be answered in many different and sometimes contradictory ways. However, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the conventions of the ILO might contribute to a basic value consensus on social issues within societies or nations, and between states and regional groupings. This would help to avoid growing competition and conflict as a result of an ongoing 'bottom-down' process in the reduction of social standards and social participation. At the same time, it responds to the ASEAN concept of 'caring societies'.

By focusing primarily on economic, social and cultural rights in our selection of papers we do not intend to diminish the importance of civil and political rights. On the contrary, this should be seen as a confirmation of the 'indivisible' and

\* Dr Erfried Adam is the Director of the Friedrich Ebert Stiftung Office for Regional Cooperation in Southeast Asia, located in Singapore

'interdependent' nature of all human rights. At one time, human rights were the political battlefield of the Cold War. While Western states clearly showed a preference for civil and political rights, Socialist states became the sponsors of economic, social and cultural rights. Today, we have moved on from this. There is progress in a number of issues. At the 1993 human rights conference in Vienna the universal nature of all human rights was confirmed and the right to development accepted. China became a signatory of both covenants, whereas the United States has still not ratified the ICESCR.

The following papers take another careful look at the ICESCR, its content, value and practical importance. Whereas the Covenant on Civil and Political Rights established legal protection against arbitrary state action, the ICESCR requires the state to be active 'to the maximum of its available resources'. Adequate social conditions are thus not a mercy, but a right and the 'obligation of States'.

The sometimes harsh controversy on universality and Asian values is declining in importance. Before I came to Southeast Asia in 1999 I was advised by the former German Chancellor, Helmut Schmidt, that we should refrain from being 'missionaries' of human rights in Asia, but remain firm in our own position. Friedrich Ebert Stiftung has always advocated an incremental, step-by-step approach in establishing the fundamental legal and structural conditions for the full application of human rights. But action and progress must be visible.

Asian speakers have often criticized the West's preoccupation with 'liberalism' and 'individualism' in its concept of human rights, as opposed to the Asian emphasis on collective welfare and social harmony and order. The China White Paper on Human Rights (1991) states: 'It is a simple

truth that, for any country or nation, the right to subsistence is the most important of all human rights...'. And Chandra Muzaffar, a Malaysian non-governmental organization leader has criticized what he calls the 'overemphasis' on political and civil rights by the Western and West-inspired human rights community, at the expense of economic, social and cultural rights: '... Amnesty, like most Western governments, emphasizes human rights practices and human rights violations which come within the ambit of political and civil liberties ... Economic and social rights have received much less emphasis than they deserve. The human right to food, to clothing, to shelter, to education, to health, to employment is fundamental to the very survival of the human being ... Of what use is the human right struggle to the poverty-stricken billions of the South if it does not liberate them from hunger, from homelessness, from ignorance, from disease? Human rights interpreted mainly in terms of political and civil rights will not satisfy the quest of the poor for human dignity and social security'.

This should not be understood as a defence of authoritarian and undemocratic rule, but as a more holistic, integrated vision of human rights. Both sides, Asia and Europe, have to take this criticism very seriously, and work together to create an international political and economic environment suitable for balanced economic and social progress in all regions. But there is also a need for state action for social development. With respect to this argument, it is something of a contradiction that only four Southeast Asian countries have signed or acceded to the ICESCR. Experience has shown that the ICESCR and the ILO conventions are sometimes seen as competing or rival instruments. The following three papers show the relationship between the two instruments and their practical possibilities and implications.

# Economic, Social and Cultural Rights in ASEAN: A Survey \*

Simon S.C. Tay and Goh Chien Yen

## *Introduction*

---

The importance of economic, social and cultural (hereafter ESC) rights has been repeatedly and openly declared by governments, especially those in the developing world and the international community. Yet these human rights have been receiving and continue to receive far less attention than civil and political rights. Consequently, many fundamental issues pertaining to ESC rights remain unresolved. These include basic and primary questions as to the scope of these rights; what exactly we consider to be violations of ESC rights; how we are to gauge compliance and whether effective remedies can be provided for breaches. Also unanswered is the persistent and nagging question of whether ESC rights are indeed 'rights'; and whether they are or should be made justiciable. In this context, most states have to date failed to put ESC rights effectively into practice.

Yet many would argue that never have ESC rights been more important and germane to countries in the Association of South East Asian Nations (hereafter ASEAN). The crisis that has swept the region since mid-1997 has denied easy assertions that economic growth and development would automatically be to the benefit of the vast majority. Concerns with 'safety nets' and human security, both immediately and in the longer term, came into focus during the crisis. As a result, the importance of ESC rights has been gaining greater

currency. This is because ESC rights, if properly viewed as rights and entitlements, potentially provide better safeguards and attention to fundamental human needs than if they were dealt with as a result of the 'trickle down' effect of economic growth.

ESC rights have also become more pertinent of late in their connection to the workers of the region. This is because there is continuing and growing controversy about attempts to link trade and labour rights. The argument for a 'social clause' is growing in the World Trade Organization. This would allow and legitimize the use of trade sanctions against countries which fail to observe basic labour rights.

It will not of course be possible to provide a complete and detailed discussion of all these issues in this paper. Questions about ESC rights are complicated as they involve not only the law, but also larger concerns of economics, development and democracy. Issues about ESC rights are not just debates about what a state has promised in a law or treaty, but what it can and has delivered in real life. This paper is instead a more modest attempt to review our understanding of ESC rights and to survey the major challenges confronting the realization of these rights in the region. This survey seeks, in this regard, to serve as a background paper to enable further discussion.

\* This survey was prepared as a background paper for participants at the Friedrich Ebert Stiftung Conference on Human Rights, held in Manila, 24-25 January 2000.

The paper will begin by reviewing the nature of ESC rights and why some, indeed many, believe they are not 'rights' that are on a par with civil and political human rights. It will then examine the challenges in implementing and giving life to ESC rights. The third part of the paper will briefly survey the status of ESC rights in the region and the degree to which they are accepted by states in ASEAN. The 'Asian values'

debate for a different regional approach to human rights will be briefly reviewed as its rhetoric (if not the actual record of state practice) has given considerable emphasis to ESC rights. The fourth and final part of the paper will consider the connections between ESC rights and labour rights and selected examples where labour rights have not been observed, or have been severely constrained by law.

## **Part 1: The Nature and Practice of ESC rights**

### **ESC Rights Compared to Civil and Political Rights**

---

The 1948 Universal Declaration of Human Rights (UDHR) contains both ESC rights and civil and political rights, with no sharp distinction made between them. Indeed, most commentators have emphasized the indivisibility and interdependence of the two categories of rights.

Subsequent practice has, however, differed. Efforts to extend the UDHR's principles into legally binding obligations resulted in the two International Covenants of 1966; one covering civil and political rights<sup>1</sup> and a second and separate covenant on ESC rights.<sup>2</sup>

The decision to have two separate treaties has since been used as evidence of the inherent difference between these two categories of rights. Many commentators speak of and regard civil and political rights as 'first generation' rights and ESC rights as 'second generation' rights. However, this innocuous distinction has unfortunately led to an 'excessively monolithic views of the nature, history, and philosophical conception of each group of rights'.<sup>3</sup>

Once the rights are rigidly bifurcated, the temptation to rank one category superior to the other has not been well resisted. To many, even human rights activists and commentators, ESC rights are second rate as well as second generation.<sup>4</sup> They are not regarded as rights qua rights. This is because, as traditionally understood, rights must accrue to individuals and be backed up by an enforceable legal remedy. This, such commentators contend, cannot be done for ESC 'rights'. Furthermore, they see that efforts to safeguard and promote them would necessarily entail widespread state intervention and this, they fear, would undermine civil and political rights.

On the other hand, others argue that ESC rights should be seen as having priority over civil and political rights. Without ESC rights, these proponents suggest, the enjoyment of civil and political liberties is hollow and vacuous. Civil and political rights are largely procedural and negative rights to defend the individual against interference by the state. ESC rights give

<sup>1</sup> International Covenant on Civil and Political Rights 1966, 999 United Nations Treaty Series 171.

<sup>2</sup> International Covenant on Economic, Social and Cultural Rights 1966, 999 United Nations Treaty Series 3.

<sup>3</sup> Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (1995), p. 9.

<sup>4</sup> G.J.H. Van Hoof, 'The Legal Nature of ESC Rights: A Rebuttal of Some Traditional Views', in *The Right to Food*, ed. by P. Alston and K. Tomasevski (1984), p. 97.

substance to these rights and positively enable the individual to give effect to and enjoy rights.

This debate continues, despite continual emphasis on the equality and indivisibility of both categories of human rights. Asian governments embraced the idea of the unity of all human rights in the Bangkok Declaration.<sup>5</sup> At the 1993 World Conference on Human Rights, the 'universal, indivisible and interdependent' nature of civil, political, economic, social and cultural rights was unequivocally reiterated.<sup>6</sup> Support for both categories of human rights can also be observed from the fact that both covenants have about the same number of ratifications. As of 1 January 2000, there are more than 140 state parties to the International Covenant on Economic, Social and Cultural Rights (hereafter ICESCR) and the International Covenant on Civil and Political Rights (hereafter ICCPR).<sup>7</sup>

Yet efforts dedicated to realize ESC rights lag behind those given to civil and political rights. In part this is due to the different implementation procedures under the two covenants. The ICCPR creates the basic minimum of a reporting system for states, which has opened state parties to more critical questioning and comment on their adherence to these human rights norms. In addition, it offers an optional protocol<sup>8</sup> whereby, in the first instance, states can file inter-state complaints, and in the second instance, individuals can petition against a state. While this system has its own shortcomings, it is relatively strong in

comparison to the ICESCR, which does not provide any form of complaints procedure. Recent attempts to have an option similar to that of the ICCPR have met with much opposition. Instead, the report-based approach used for the ICESCR is felt to be more consistent with the open-ended nature of ESC rights.

The language of the ICESCR also suggests, to some, that these rights are not as absolute or inviolable (as civil and political rights are considered to be). The Covenant provides that states are to fulfil ESC rights to the extent consistent with their available resources.<sup>9</sup> This, many argue, detracts from the 'absolute' nature of human rights, leading to uncertainty in judging when a state has in fact violated its obligations to observe ESC rights.

In this view, the realization of ESC rights is, at best, programmatic and progressive, dependent on the availability of resources, which makes monitoring and enforcement difficult, if not impossible. Hence, ESC rights can only be realized through politics and policies and not by law. In contrast, civil and political rights are better disposed to judicial protection, as they are seen to impose immediate, negative and absolute obligations which cannot invoke the lack of resources as an excuse for non-compliance.

As ESC rights are already vague and open-textured to begin with, and lack the determinacy of civil and political rights, this compounds the problem. Whereas civil and political rights enjoy recourse to judicial

<sup>5</sup> *Asia Pacific Human Rights Documents and Resources*, ed. by Fernand de Varennes (1998), vol. I, p. 89.

<sup>6</sup> World Conference on Human Rights 1993, para 5, A/CONF.157/23. Republished in P.R. Ghandhi, *Blackstone's International Human Rights Documents*, 1<sup>st</sup> edn (1995).

<sup>7</sup> Figures available at [www.unhchr.ch/](http://www.unhchr.ch/)

<sup>8</sup> International Covenant on Civil and Political Rights 1966, 999 United Nations Treaty Series 302.

<sup>9</sup> Article 2(1) of the International Covenant of Economic, Social and Cultural Rights: 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 its available resources, with a view to achieving progressively the full realization of the right recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.



remedies in many legal systems, ESC rights are said to be non-justiciable and are regarded as unsuitable for adjudication.

Hence, even governments that are openly supportive of ESC rights or have signed the relevant covenant, have failed to take substantive measures to entrench these rights within their legal landscape. Many have also failed to adopt any legislative or administrative provisions based explicitly on the recognition of specific economic and social rights as human rights. Almost all do not provide effective means of redress to individuals or groups alleging violations of those rights.

The early history of the committee given the task of supervising member states' reports under the ICESCR was also disappointing. The Committee, established by ECOSOC, was often passive and inactive.<sup>10</sup> Of late, there has been more activity and attention. This is an encouraging beginning. Much remains to be done, however, to redress the last 50 years of neglect. Many issues remain unresolved and the vagueness of the norms continue to frustrate understanding and acceptance. These are but some of the obstacles confronting ESC rights in practice. In working for ESC rights to become as readily accepted and understood as civil and political rights one has to be mindful of these as well as patient.

### Liberal Theory and 'Socialist' ESC Rights

Behind the history and practice described above, there are ideological reasons for the different views and treatment given to the two categories of rights. In general, liberal and libertarian theorists, who emphasize the 'night-watchman' role and warn against the intrusion of the state, favour civil and political rights. They see these as negative rights, consistent with the notion of liberty, which the individual uses to stave off state interference. In contrast, positive ESC rights may legitimize an excessively intrusive, welfarist or socialist state with the mission to provide for such rights.

Why does liberal theory take this view? Human rights have often been seen by liberals to originate from the natural rights philosophy of the eighteenth century, which is indirectly linked to natural law dating back to the philosophy of the Greeks. Certain types of natural rights theories, especially that advanced by Nozick<sup>11</sup>

conceive of rights in purely negative terms.

As pointed out by Louis Henkin, 'individual rights have long been thought of as consisting only of "immunities", as limitations on what the government might do to the individual'.<sup>12</sup> This notion of natural rights is consistent with civil and political rights. In contrast, ESC rights are seen as strictly positive, and hence by this definition not rights. Indeed, ESC rights may require some degree of wealth redistribution which necessarily involves state intervention for its effective fulfilment. To the liberal or libertarian, such an approach is immediately suspect as it is viewed as an encroachment on individual liberty.

It is therefore important to recognize that liberal theory is not the only possible basis for human rights. Indeed, there is no consensus that natural rights theory alone provided the philosophy for the modern

<sup>10</sup> See P. Alston, 'Out of the Abyss: The Challenge Confronting the New UN Committee on Economic, Social and Cultural Rights', *Human Rights Quarterly*, 9 (1987), p. 332 and supra n. 3, pp. 40-41.

<sup>11</sup> Robert Nozick, *Anarchy, State and Utopia* (1974).

<sup>12</sup> Louis Henkin, *The Age of Rights* (1990), p. 2.

notion of human rights. The Universal Declaration tries to be non-ideological.

Human rights can and should be affirmed by other ideologies and philosophies, and not just by liberal theory. Henkin explains that 'those who built international human rights perhaps saw these rights as "natural", but however in a contemporary sense'.<sup>13</sup> This 'contemporary sense' is, first and foremost, that human rights relate to the most basic and fundamental elements of the human person's modern nature as an individual. Craven explains:

In reality, it is likely that the international bill of rights was drafted not because

[states] had agreed on a philosophy, but because they had agreed, despite philosophical differences, on the formulation of a solution to a series of moral and political problems. Human rights, in this sense, is a name given to 'plural and divergent ideologies'.<sup>14</sup>

Even if it is granted that human rights have their seeds sown in the natural rights ideas of the Western world in the seventeenth and eighteenth centuries, the emphasis on individual rights and liberties is a skewed account of that tradition. The natural rights theorists did not confine themselves exclusively to civil liberties. Social welfare was as much a concern and feature of their philosophy.<sup>15</sup>

### **Universality, Absoluteness, Urgency and Immediacy**

There are some specific grounds that commentators use to suggest ESC rights cannot be considered rights *qua* rights. These are briefly reviewed and rebutted below:

**1. 'Primary Features':** In Cranston's view, ESC rights are not sufficiently 'universal, immediate, categorical or of paramount concern'<sup>16</sup> to qualify as human rights. He highlights that ESC rights, for instance the right to paid holidays, cannot be considered as basic or fundamental enough to the preservation of human dignity (unlike civil and political rights).

There are several difficulties with this kind of argument. First of all, this is a misrepresentation of the right in question.

The right, as properly enshrined in the UDHR, to 'rest and leisure including reasonable limitation of working hours and periodic holidays with pay',<sup>17</sup> is targeted at preventing 'one of the most oppressive features of unregulated nineteenth century capitalism',<sup>18</sup> the denial of which would be 'a serious affront to human dignity'.<sup>19</sup> Furthermore, the subsistence rights to food, health care and housing are manifestly as important as any basic civil and political right.

**2. Universality or Socially Determined:** Another argument against ESC rights is that they are not universal, as they are not always applicable to each and every person in society. This is in conflict with the premise that human rights are universal insofar as

<sup>13</sup> *ibid.*, p. 7.

<sup>14</sup> Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (1995), p. 11.

<sup>15</sup> Thomas Paine refers to the rights of employment and social welfare. *The Thomas Paine Reader*, ed. by Michael Foot and Isaac Kramnick (1987), p. 201.

<sup>16</sup> Maurice Cranston, 'Human Rights Real and Supposed', in *Political Theory and the Rights of Man*, ed. by D. Raphael (1967), p. 43.

<sup>17</sup> Article 24, Universal Declaration of Human Rights.

<sup>18</sup> J. Donnelly, *Universal Human Rights in Theory and Practice* (1989), p. 32.

<sup>19</sup> *ibid.*

they are ascribed to every individual by virtue of their humanity, rather than as a result of their position in society. It is argued that ESC rights refer directly only to a particular class of people and not to all human beings. For instance, the right to social security is a right that may be claimed only by those satisfying some criteria of need.

It must be noted that this observation is not unique to ESC rights. The right to vote or the right to a fair trial is only applicable in certain contexts. The point is that these rights are universal in that they are at least potentially available to everyone when they find themselves in those particular circumstances.

**3. Urgent Interests:** Commentators such as Cranston also assert that human rights, properly speaking, must be such urgent interests that they 'must be respected here and now'.<sup>20</sup> This is readily conceivable with civil and political rights which are negative and seemingly not reliant on the availability of resources for their fulfilment. This is not the case with ESC rights. As ESC rights are 'positive' rights, their realization is subject to the limitation of resources, and also dependent upon effective state intervention. This can only be achieved (if at all) over a period of time. In this view:

It is logically possible to treat negative rights as categorical entities ... Positive rights, by contrast, cannot as a logical matter be treated as categorical entities because of the scarcity limitation. ... It is not just that it is too costly to provide a subsistence diet to the whole Indian sub-continent in time of famine – it may simply be impossible.<sup>21</sup>

Such arguments, with respect, are overstated. While some ESC rights may be more dependent on resources, this is certainly not true for all of them. The rights to join and form trade unions are not as reliant upon funds for their implementation as other more traditional civil or political rights. In fact, it is possible to identify duties of forbearance with regards to all ESC rights which do not entail significant resources. As the Committee of the ICESCR has pointed out, some of the obligations under the Covenant are deemed not to be dependent on resources at all.<sup>22</sup>

Furthermore, it would simply be erroneous to suggest that civil and political rights themselves are entirely negative and wholly cost-free. The right to a fair trial, for example, assumes the existence and maintenance of a system of courts. Similarly the protection of civil and political rights at an individual level necessitates the costly operation of a police force and a penal system.<sup>23</sup>

In fact, the effective protection of all human rights, including civil and political rights, requires the proactive involvement of the state. As Shue notes, it would be 'either fatuous or extraordinarily scholastic'<sup>24</sup> to maintain that civil and political rights can be ensured through an increase in restraint. This is especially so where the deprivation of certain ESC rights, such as the right to an adequate standard of living, means that the poor have to sell their vote or have no money to retain lawyers to defend themselves. Instead of maintaining a crude classification between rights as either positive or negative, all rights are more accurately seen as imposing varying layers of obligations.

<sup>20</sup> Maurice Cranston, 'Human Rights Real and Supposed', in *Political Theory and the Rights of Man*, ed. by D. Raphael (1967), p. 53.

<sup>21</sup> C. Fried, *Right and Wrong* (1978), p. 113.

<sup>22</sup> See General Comment No. 3 of the Committee of the ICESCR. Available at [www.unhchr.ch/](http://www.unhchr.ch/)

<sup>23</sup> See Holmes and Sunstein, *The Cost of Rights: Why Liberty Depends on Taxes* (1999).

<sup>24</sup> Henry Shue, 'Rights in the Light of Duties', in *Human Rights and US Foreign Policy*, ed. by P. Brown and D. Maclean (1979), p. 69.

4. **Justiciability:** Rights have also been traditionally defined as valid claims supported by formal remedies at the disposal of the rights holder. Hence, as Stoljar has argued:

You cannot have a right unless it can be claimed or demanded or insisted upon. ... Rights are thus performative-dependent, their operative reality being their claimability; a right one could not claim, demand or ask or enjoy or exercise would be a vacuous attribute.<sup>25</sup>

This is not necessarily so. Other philosophers have argued that the value of having a right is when one does not have the object of the right. This 'possession paradox' is a significant attribute of all human rights.<sup>26</sup> In many countries, civil and political rights are often denied. Yet, a person typically has direct recourse to human rights claims only where legal or other remedies seem unlikely to work or have already failed. In fact, the special and unique function of human rights virtually

requires that they may be claimed precisely when they are unenforceable by ordinary legal or political means.<sup>27</sup>

Moreover, to use the argument of rights as enforceable claims in order to deny ESC rights their status as human rights is to deny reality. Whatever the merits of this theoretical doubt, the fact is that human rights norms are regarded by governments and the international community as an integral part of international law.

National courts have also tended to dismiss ESC rights as non-justiciable because they see them as encroaching on the administrative sphere of government and interfering with social and economic policies of resource allocation which they are not empowered or competent to do. This is due to a lack of understanding of the nature of ESC rights. In turn, this has stunted the development and clarification of ESC rights and has reinforced the idea that those rights are not capable of legal protection.

## **Part 2: Challenges to Implementation**

### **Progressive Realization**

Other challenges to ESC rights do not directly question their validity as rights, but doubt their effective realization and adherence. The rights as contained in the ICESCR have been criticized as being unhelpfully vague and indeterminate. This problem is compounded by the fact that there is no substantial body of domestic jurisprudence to facilitate their elaboration, unlike civil and political rights.

Furthermore, the task of interpretation is complicated by the notion of progressive realization and the qualification of available

resources. There appears to be a need for large amounts of reliable data in order to sensibly gauge the extent of compliance to these rights, especially given their programmatic nature.

This has led to criticisms that the nature and scope of these obligations are so indeterminate that they are devoid of meaningful content. Anyone could argue that the obligations have not been complied with, and governments could with equal ease claim that they have.

<sup>25</sup> S. Stoljar, *An Analysis of Rights* (1984), pp. 3-4.

<sup>26</sup> This 'possession paradox' of rights is to have and not have a right at the same time. See J. Donnelly, *Universal Human Rights in Theory and Practice* (1989), p. 11.

<sup>27</sup> *ibid*, p. 13.

Laudable attempts have been made by the Committee on ESC rights to spell out the obligations under the ICESCR. A key concept in this regard is understanding the obligation to work in good faith towards the progressive realization of ESC rights. While recognizing 'that the full realization of ESC rights will generally not be able to be achieved in a short period of time',<sup>28</sup> this does not mean that nothing has to be done with regard to complying with the Covenant. The Covenant demands realistic and clear obligations. It thus imposes a duty on state parties to move as expeditiously and effectively as possible<sup>29</sup> towards the realisation of ESC rights. Moreover, any deliberately retrogressive measures in this regard would be immediately suspect.<sup>30</sup>

Once we accept the obligation of 'progressive realization' there is no excuse to do nothing. Backsliding on ESC rights by a state would also require an explanation. Furthermore, while there is no immediate demand or definite deadline for the fulfilment of ESC rights, there are other, broad guidelines. These guidelines include the recognition that (1) steps must be taken toward the goal of progressively realizing these rights within a reasonably short time; (2) all appropriate means, including particularly the adoption of legislative measures, should be taken; (3) subject to resources, a state must show that every effort has been made to satisfy, as a matter of priority, those minimum obligations; (4) a

state has a duty to monitor and devise strategies and programmes that are not reliant on resources; and (5) a state has duties to give priority attention to the most vulnerable.<sup>31</sup>

These do not have the definite and fixed certainties of a commercial contract. They do, however, possess the normative and directional qualities akin to general standards of tort and other common law principles. In this sense, these precepts can be said to move ESC rights beyond rhetoric and into the realm of law, obligations and rights, properly speaking. Progressive realization thus provides the foundation for different approaches towards the implementation of ESC rights.

Recent efforts to bring about more effective implementation of ESC rights have led to basically two alternatives: (1) to compile an extensive database of relevant information in order to develop a set of indicators to gauge state parties' compliance to their obligations under the covenant; and (2) to adopt a 'violations approach'.<sup>32</sup>

The second approach is more concerned with what state parties have done to impede these rights than with what they have not done to have them realised. With this approach, the ESC Committee would spell out situations where minimum obligations are to be expected.

### Part 3: The Status of ESC Rights in Southeast Asia

ASEAN governments have declared their support for ESC rights, partly in response to criticisms that they have neglected and

transgressed human rights norms, and also to challenge the tendency of Western governments to insist upon civil and

<sup>28</sup> General Comment No. 3 of the Committee of the ICESCR, para. 9. Available at [www.unhchr.ch/](http://www.unhchr.ch/)

<sup>29</sup> *ibid.*

<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*

<sup>32</sup> See Audrey Chapman, 'A Violations Approach to Monitoring Economic, Social and Cultural Rights', *Human Rights Quarterly*, 23 (1996); 'The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights', *Human Rights Quarterly*, 9 (1987); 'Maastricht Guidelines on Violations of Economic, Social and Cultural Rights', *Human Rights Quarterly*, 20 (1998).

political rights as the only benchmarks for human rights compliance.

This view may be exemplified by a statement by Singapore Minister George Yeo, who explained that 'it is very difficult ... to sympathize with my Western friends who criticize China for the lack of human rights while, at the same time, choosing to ignore what the present Chinese government has done for a large number of its people'.<sup>33</sup> By this, he meant that the Chinese government has done much to bring about the enjoyment of the objects of certain ESC rights, such as education, housing and health care to the vast majority of its citizens.

Seeing this direct relationship between economic development and the realization of the objects of several ESC rights, has lead ASEAN governments to officially call for greater or equal parity in the treatment of ESC rights.<sup>34</sup>

However, beyond this diplomatic support for ESC rights, most ASEAN countries have failed to implement them effectively as human rights within their respective jurisdictions. At the moment, only Vietnam, Thailand, Cambodia and the Philippines are parties to the ICESCR. Constitutional protection for human rights norms in the ASEAN countries also reveals a similar pattern of placing greater emphasis on civil and political rights.

Various national human rights commissions in ASEAN countries have also not ostensibly engaged themselves with ESC rights. They have instead tried to focus on civil and political rights. It is only in more recent years that the Philippines human rights commission has decided to expand their purview to investigate violations of ESC rights as well. However, their willingness to incorporate ESC rights into

their mandate has since been met with judicial challenge. It is difficult to envisage that courts in the region would be amenable to adjudicate upon alleged transgressions of ESC human rights norms, given the paucity of their legal recognition.

On an optimistic note, ASEAN countries have signed other international treaties that do contain ESC rights. All ASEAN countries are parties to the Convention on the Rights of the Child and the vast majority (bar Brunei) have acceded to the Convention on the Elimination of All Forms of Discrimination Against Women. Under those conventions, states are internationally obliged to safeguard the ESC rights of children and women.

Many of the rights enumerated in the ICESCR are labour rights or bear direct and indirect relation to them. In this regard, the conventions under the International Labour Organization (hereafter ILO) are of great importance to ESC rights.

Most ASEAN countries are members of the ILO and are parties to a number of ILO conventions, including the 'basic human rights' ones. In addition, the majority of them have rather extensive legislation dealing with a myriad of workers' rights and issues such as the right to freedom of association, the right to form unions, the right to strike, health and safety standards and a minimum wage.

However, as often charged by non-government organizations (hereafter NGOs) and several commentators, formal recognition by states often belies a lack of compliance with and even blatant disregard for these human rights norms. Often statutes dealing with labour standards and workers' rights end up either diluting them or curtailing their exercise.

<sup>33</sup> George Yeo, 'Dialogue Between Asians and Europeans on Human Rights' in *Human Rights Perspectives*, ed. By Tan Ngoh Tiong and Kripa Sridharan (1999), p. 143.

<sup>34</sup> As seen in the Bangkok Declaration 1993 and the AIPO Declaration on human rights.

## Civil and Political Rights

Country	Life	Liberty	Equality	Speech	Assembly
Indonesia			Ch. 10	Ch. 10	Ch. 10
Malaysia	Art. 5	Art. 5	Art. 8	Art. 10	Art. 10
Philippines	Art. 3(1)	Art. 3(1)	Art. 3(1)	Art. 3(4)	Art. 3(4)
Singapore	Art. 9	Art. 9	Art. 12	Art. 14	Art. 14
Thailand		s. 29, 30	s. 25	s. 33	s. 34
Vietnam	Art. 71	Art. 52		Art. 69	Art. 69

Source: Simon Tay, *Governance and Human Rights: Southeast Asia* (Asia Society, 1998).

## Economic, Social and Cultural Rights

Country	Property	Work	Education	Health	Family
Indonesia			Ch. 13		
Malaysia	Art. 13				
Philippines	Art. 3(9)	Yes			
Singapore					
Thailand	s. 32		s. 34		s. 41
Vietnam	Art. 58, 60	Art. 55		Art. 61	Art. 64

Source: Simon Tay, *Governance and Human Rights: Southeast Asia* (Asia Society, 1998).

Beneath the surface of diplomatic and official support for ESC rights, it is unclear how these rights are regarded and understood by the various ASEAN governments. While government leaders have espoused them, there has been little elaboration about their exact commitments. What is clearer is that they see ESC rights as being consistent with their national development aspirations and experience.

However, as pointed out by Jack Donnelly,<sup>35</sup> 'this alleged concern for economic and social rights is in fact a concern for growth/development irrespective of its distributional/rights consequence. It is not

clear [therefore] that contemporary Asian societies give unusual emphasis to ESC rights'.

Donnelly's observation suggests that many Asian governments seem willing to support ESC rights as a consequence of national development, but may be willing, and even anxious, to sacrifice ESC rights for the individual in the pursuit of rapid growth.<sup>36</sup>

Donnelly argues that:

A developmental perspective is aggregate and focuses on production. It is concerned with the whole of society, and

<sup>35</sup> J. Donnelly, 'Human Rights and Asian Values: A Defence of "Western Universalism"', in *The East Asian Challenge for Human Rights*, ed. by Joanne R. Bauer and Daniel A. Bell (1999), pp. 74-5.

<sup>36</sup> *ibid.*

only secondarily, if at all, with its individual members. Economic and social rights, by contrast, are concerned with the distribution of goods, services and opportunities, which must be guaranteed to every person even when pursuing the most noble social goals.

There is another significant difference in how some ASEAN governments see ESC rights. In the case of the traditional welfare state, the state is seen to be the main provider of the objects of these rights. Similarly, for human rights as a whole, the more accepted view is that they are rights that govern the relationship between the state and the individual (or group) and not between individuals inter se. They can, and often are, regarded as entitlements. However, in the case of some ASEAN governments, ESC rights are viewed as being benefits, which the state may be under a general duty to provide, but not arising from the notion of individual rights. The idea of ESC rights as 'entitlements' is often absent. Often too, states may emphasize that the enjoyment of ESC rights should be the responsibility of and implemented by, not the state as the main obligor, but the community and other organizations

within it. Citizens provide for citizens, in such a view. According to Chua, this is exemplified in the case of Singapore and its government's policies:

It is the PAP government's policy not to provide direct funds to individuals in its 'welfare' programs. Instead, much is spent on education, public housing, health care and infrastructure build up as human capital investments to enable the individual and the nation as a whole to become economically competitive in a capitalist world. ... for those who fall through the economic net ... public assistance is marginal and difficult to obtain ... the government's position is that 'helping the needy' is a moral responsibility of the community itself and not just that of the state. So construed, the recipients of the moral largesse of the community are to consider themselves privileged and bear the appropriate sense of gratitude.<sup>37</sup>

Whatever the merits of this approach, it clearly does not emphasize economic and social human rights. A system based on 'moral largesse' that sees assistance as a privilege has little to do with human rights.

### **Asian Values and ESC Rights**

Prior to the crisis and perhaps even today, most ASEAN countries were seen as the main supporters of the Asian values argument. Indeed, some are among the most outspoken proponents of this school of thought. The Asian values debate has been quite widely canvassed and need not be substantially repeated for present purposes. In summary, the proponents of

Asian values<sup>38</sup> assert that the concept of human rights has been heavily influenced and coloured by Western thought and experience, hence justifying a different, 'Asian' approach.

This approach has three central tenets. First, that history, development and culture justify differences in the implementation

<sup>37</sup> Chua Beng Huat, 'Australian and Asian Perceptions of Human Rights', in *Australia's Human Rights Diplomacy*, ed. by I. Russell, Peter Van Ness and Chua Beng Huat (1992), p. 95.

<sup>38</sup> For literature on the Asian view, see in particular: The Bangkok Declaration, 2 April 1993, published in *Asia Pacific Human Rights Documents and Resources*, vol. 1, ed. by Fernand de Varennes (1998), in the run up to the Vienna World Conference on Human Rights, 1993; B. Kausikan, 'Asia's Different Standards', *Foreign Policy*, 72/5 (1993); and Kishore Mahbubani, *Can Asians Think?* (1998). For a critical survey of Asian views, see *International Relations and Human Rights in the Asia-Pacific*, ed. by James Tang (1994) and *The East Asian Challenge for Human Rights*, ed. by Joanne R. Bauer and Daniel A. Bell (1999).



of human rights with a greater emphasis on duties to the community as opposed to the primacy of the individual. Second, that economic growth which requires societal stability and discipline means that certain civil and political freedoms have to be 'traded-off'. Third, human rights should not occasion badgering and coercive measures by developed countries, such as sanctions and conditions on aid, but rather mutual respect and cooperative approaches, such as constructive engagement.<sup>39</sup>

In addition, the expression of human rights almost exclusively in civil and political terms<sup>40</sup> is seen as a Western preoccupation. Asian values argue for greater parity in their treatment to include economic and social rights<sup>41</sup> as well.

According to some, the Asian values view of human rights is consistent with the model of economic development adopted by ASEAN countries. The economic backwardness of Asia has been used to justify the primacy of economic development over human rights. The hypothesis is that poverty and want are the greatest obstacles to the enjoyment of human rights. Given this simple causality, economic development and growth would lead to the better protection and realization of human rights.

Poverty makes a mockery of all civil liberties. Poverty is an obscene violation of the most basic of individual rights. Only those who have forgotten the pangs of hunger will think of consoling

the hungry by telling them that they should be free before they can eat.<sup>42</sup>

To many, civil liberties and political rights are deemed meaningless without a decent standard of living. And in many Southeast Asian countries, what is considered the greatest oppression is not necessarily political but economic, social, or cultural. Many Southeast Asian states claim that economic development is the liberating force that can precipitate crucial and beneficial changes in their societies.

This emphasis on the primacy of development and of freedom from hunger and poverty is seen in many regional documents and declarations. The ASEAN Inter-Parliamentary Organization (AIPO) Kuala Lumpur Declaration of Human Rights, for example, states that:

Whereas, the peoples of ASEAN are convinced that human beings have a right to development and freedom from poverty, hunger, illiteracy, ignorance, injustice, diseases and other human miseries

Whereas, the continuing progress of ASEAN in freeing its people from fear and want has enabled them to live in dignity [...]

Each Member State has the right to development based on its own objectives, to set its own priorities, and to decide the ways and means of realising its development without external interference.<sup>43</sup>

<sup>39</sup> This is the declared ASEAN policy towards Myanmar. The practice has been much criticized. The US position on relations with China adopts much the same principle. The practice, however, is said to differ, as there are discussions on human rights issues.

<sup>40</sup> Onuma Yasuaki, 'Towards an Intercivilizational Approach to Human Rights' in *The East Asian Challenge for Human Rights*, ed. by Joanne R. Bauer and Daniel A. Bell (1999).

<sup>41</sup> See The Bangkok Declaration, 2 April 1993: 'reiterating the interdependence and indivisibility of economic, social, cultural, civil and political rights ...', as published in *Asia Pacific Human Rights Documents and Resources*, vol. 1, ed. by Fernand de Varennes (1998), p. 89.

<sup>42</sup> Wong Kan Seng, 'The Real World of Human Rights', statement made at the World Conference on Human Rights, Vienna, 16 June 1993.

<sup>43</sup> *Asia Pacific Human Rights Documents and Resources*, ed. by Fernand de Varennes (1998), vol. I, p. 107.

The Declaration of the ASEAN Concord<sup>44</sup> (1976) is similar. It states that:

ASEAN cooperation shall take into account, among others, the following objectives and principles in the pursuit of political stability:

[Art. 3] The elimination of poverty, hunger, disease and illiteracy is a primary concern of member states. They shall therefore intensify cooperation in economic and social development, with particular emphasis on the promotion of social justice and on the improvement of the living standards of their people.

The 1993 Bangkok Declaration, made by Asian governments in the run-up to the World Conference on Human Rights, also bears this emphasis:

Reiterating the interdependence and indivisibility of ESC, civil and political rights, and the inherent interrelationship

between development, democracy, universal enjoyment of all human rights, and social justice which must be addressed in an integrated and balanced manner

Convinced that economic and social progress facilitates the growing trend towards democracy and the promotion and protection of human rights

[Art. 19] Affirm that poverty is one of the major obstacles hindering the full enjoyment of human rights.

The focus on economic development has led these governments to declare their support for ESC rights and the right to development.<sup>45</sup> The Asian values debate, as such, should lead us to expect that ASEAN states have followed their own call to give attention and substance to ESC rights. The reality is less clear, however, than the rhetoric.

## Development, Not Rights

The East Asian miracle has been noted not only for its rapid and continued rate of economic growth but also for its ability to achieve this in a relatively egalitarian manner. The growth experience in some ASEAN countries, however, differs in certain important respects. Persistent pockets of poverty and rising inequalities accompany the spectacular GDP rates of these 'miracle' economies. The accolade of 'shared growth' as a defining feature of the East Asian miracle cannot be categorically

accepted without serious qualifications in respect of these countries. Some critiques have gone further to characterize the entire growth experience as 'maldevelopment'<sup>46</sup> and to conclude that 'human rights have not fared well by economic globalization in East Asia, [as] benefits of growth have not accrued to all, [and] certainly not to all equally. The market has created large disparities of income and wealth. In the midst of incredible affluence, there is appalling poverty'.<sup>47</sup>

<sup>44</sup> *ibid.*, p. 102.

<sup>45</sup> Singapore Minister George Yeo suggested that China should be awarded the Nobel Prize for Human Rights for bringing material improvement to the lives of millions of human beings. George Yeo, 'Dialogue Between Asians and Europeans on Human Rights' in *Human Rights Perspectives*, ed. by Tan Ngoh Tiong and Kripa Sridharan (1999).

<sup>46</sup> Peter F. Bell, 'Development or Maldevelopment? The Contradictions of Thailand's Economic Growth' in *Uneven Development in Thailand*, ed. by Michael J.G. Parnwell (1996), p. 49. The term 'maldevelopment' was used to describe Thailand's growth experience of 'a pattern of development with strong negative socio-economic consequences in terms of inequality, unevenness, cultural fragmentation, and a negative impact on women and the environment'.

<sup>47</sup> Yash Ghai, 'Rights, Social Justice, and Globalisation in East Asia', in *Human Rights Perspectives*, ed. by Tan Ngoh Tiong and Kripa Sridharan (place: publisher, 1999), pp. 258-9.

Economic growth has also been used disingenuously to justify other aberrations which undermine human rights and human dignity. Poor and perilous working conditions and the unsustainable and avaricious exploitation of the environment have been excused as unavoidable short-term costs of development. Likewise, the suppression of political opposition, the limitations imposed on democratic development and caps on the growth of civil society have been rationalized as necessary trade-offs for economic growth.

As such, we see that even in the pre-crisis days, there were grounds on which to qualify, if not question, the wholeness and sustainability of the 'Asian miracle'.

When we re-examine the rapid growth of the Asian miracle, we see that ASEAN countries emphasized their general economic growth, rather than a specific dedication to ESC rights. For most ASEAN states before the crisis, the tacit assumption was that the delivery of economic growth and development would bring about the enjoyment of the basic amenities, such as housing, food, health care and education. Growth was the sole guarantee of ESC rights.

Prior to the crisis, that guarantee held for many. Many ASEAN countries have done fairly well in alleviating poverty in their respective countries in comparison to many other countries and regions. Even the most critical commentators have observed that while Singapore may be deficient in its respect for civil and political rights, it has been exemplary in guaranteeing economic, social and cultural rights. There is widespread enjoyment of the basic essentials which has enabled Singaporeans to lead a life with self-respect and dignity. This includes salubrious housing conditions, education up to the highest level, a public health care system, some form of social security, access to basic amenities such as clean potable water, sanitation and a healthy

environment, safe and healthy working conditions, and an economy operating at near full employment levels.

However, the ASEAN strategy of growth was really about national economic and social development, rather than ESC rights. Economic growth and development (especially in its sustainable and human aspects, as propounded by different international agencies) does have a lot in common with ESC rights. But while there is a positive and complementary relationship between them, they do remain separate concepts, for economic development is still ultimately interested in the aggregate, macro-picture.

Even if the idea of human development is taken seriously, focusing on certain essential and rudimentary sectors, such as the level of literacy or the provision of public health care, economic development is still more concerned with the broader economic situation. Newer concepts of development may have gone even further to ascertain whether these basic necessities are reaching traditionally vulnerable groups. However, ESC rights as human rights are individual rights. As such, while these macro indicators may show the general, average or total levels of utility, they are not direct and true markers of ESC rights. They do not tell us directly and sufficiently whether these rights are protected or respected as human rights.

For example, while the human right to education is concerned with the number of children in school, this right is not achieved solely by spelling out an education policy. This is the domain of social, education and public policy. The concern for the right to education as a human right is more qualitative and normative in nature. The public provision of education per se will not be sufficient in determining whether the state has adhered to the human right to education.

At the heart of this right,<sup>48</sup> education must be seen as a fundamental requirement for a dignified human existence, to enable the human person to lead a full life, to equip him/her so that he/she may be free, and given the capability to fully exercise his/her personal autonomy. It is this fundamentality and its intrinsic relationship with freedom, that warrants the 'human rights' status of the right to education. It is not enough, in this sense, that national utility is increased by having a better educated workforce, and therefore a government is moved to emphasize education for the people.

The nature of human rights in their totality can also give direction to the way the right is to be exercised. This can be seen again in the example of education. The human right to education also means that the provision of education must be done in a manner that is consistent with human dignity. Hence it must be culturally sensitive<sup>49</sup> and acceptable, and cannot be discriminatory, except on the basis of merit. Furthermore, seeing education as a human right means that it must be for the benefit of the human person and not for the purposes of propagating state ideologies.

In this way, because development uses only the yardstick of the incidence of education provision, it is not sufficient to judge whether the human right to education has been complied with.

Similarly, and more generally, we can say that a growth in economic, social and cultural indicators does not necessarily mean that ESC rights are being progressively realized. Some developmental models and choices are antithetical to the realization of ESC rights. Often mega-projects, structural adjustment policies, and the commercialization and globalization of societies are in tension with ESC rights and

other human rights. Without proper governance, good and effective laws and accountability, these development strategies can be abused to disguise many aberrations, such as the abridgement of health and safety standards, the curtailment of labour rights, forced evictions of traditional land holders, and the irreparable degradation of the environment.

It must be noted, however, that development and ESC rights are not necessarily antithetical. They can play mutually supportive roles. One primary role is for ESC rights to orient the path of development. In the past, economic development put an unhealthy emphasis on economic growth as the main benchmark for development. Hopefully, decades of development experience have exposed the inadequacy and flaws of such a narrow measurement. There were concerns that the costs of development in terms of environmental degradation and the marginalization of people were perhaps too great and that development has been misguided. There were challenges to its sustainability, its costs and its consequences, to the extent that the very notion of development is vitiated by its adverse ramifications.

As a result, many international agencies are paying greater attention to the notion of human and sustainable development. This suggests that economic growth per se is not the ultimate objective for states and the international community. These ideas remind us that human beings should be at the centre of development. Development is then measured not strictly in terms of macro-economic figures, but in real improvement for societies and individuals. Such forms of development are thus better connected to human rights, especially ESC rights, as well as to the rights to development and participation.

<sup>48</sup>. See Committee to the ICESCR General Comment No. 13 on the Right to Education. Available at [www.unhchr.ch/](http://www.unhchr.ch/)

<sup>49</sup>. Article 13(3).

Currently, however, most ASEAN countries have yet to turn certainly and resolutely to forms of development that are better entwined with ESC rights. Commentators point out that most have failed to take particular steps to entrench ESC rights institutionally. Many have also failed to adopt any legislative or administrative provisions based explicitly on the recognition of specific economic and social rights as human rights, or to provide

effective means of redress to individuals or groups alleging violations of those rights.<sup>50</sup>

One of the most significant groups in society that can benefit directly from the better protection of ESC rights are workers. The fourth and final section of this paper will therefore review the connections between labour rights and ESC rights, and the prevailing situation in the region.

## **Part 4: Labour Rights and ESC Rights**

### **Labour Rights are Human Rights**

---

The human rights movement is often criticized for giving little attention to the rights of workers. This is despite the obvious fact that many workers' rights are human rights. Conversely, it can be observed that many labour leaders and trade unions do not enlist the support of human rights groups for the defence of workers' rights.<sup>51</sup>

Workers' rights should be of interest to human rights scholars and activists since they are among the most well-defined rights. They have been elaborated upon and clarified by a host of ILO conventions. The ILO organs which supervise compliance with these standards are long established and predate their human rights counterparts. Moreover, most national legal systems recognize labour rights, even if some may limit their scope and exercise.

Another important aspect of labour rights is that they cut across the traditional division between ESC rights and civil and political rights. Labour rights are found in both treaties. Focusing on labour rights

therefore highlights the often spurious marshalling of human rights into rigid categories. In this regard, it re-affirms the unity of human rights. Labour rights could be an expedient entry point for giving greater prominence to ESC rights. This would help address the lack of association between workers' rights and human rights, and the schism between civil and political rights and ESC rights.

Out of the eight broad rights enumerated in the ICESCR, three of them deal specifically with worker's rights: (1) the right to work; (2) the right to form trade unions and to strike; and (3) the right to just and favourable conditions of work, which include a safe and healthy working environment, a fair wage, non-discrimination and reasonable hours of work and rest.<sup>52</sup>

The remaining ESC rights allude to some aspect of labour standards: (4) the right to social security<sup>53</sup> in the event of unemployment; (5) the right to health which

<sup>50</sup> H. Steiner and P. Alston, *International Human Rights in Context* (1996), p. 257.

<sup>51</sup> See Virginia A. Leary, 'The Paradox of Worker's Rights as Human Rights' in *Labour Rights, Human Rights and International Trade*, ed. by Lance A. Campa and Stephen Diamond (1996).

<sup>52</sup> Articles 6, 8 and 7, respectively.

<sup>53</sup> Article 9.

covers industrial hygiene and the need to prevent and treat occupational diseases;<sup>54</sup> (6) the right to education which is extended to cover vocational training with the view of securing employment;<sup>55</sup> (7) the right to the protection of the family unit which accords special protection for working pregnant mothers, children and young persons from economic exploitation;<sup>56</sup> and (8) the right to an adequate standard of living<sup>57</sup> which could be utilized to determine the amount of 'fair wage' under the Covenant.

As such, practically half the ESC rights enumerated in the Covenant are either workers' rights or allude to some aspect of workers' rights. In this sense, labour rights can be used as platform for greater awareness and the effective advocacy of ESC rights. It is hardly surprising, therefore, that the ILO has often been cited as the forerunner in promoting human rights norms.

Whereas the legal systems in the region may be uninformed and arguably find the whole notion of ESC rights alien, workers' rights and labour standards are more familiar territory. There is substantial legislation dealing with workers' rights in most jurisdictions (whether that leads to better protection of labour standards remains to be seen). Workers' rights, given the extensive coverage and elaboration undertaken by the ILO, are also better defined than ESC rights.

On a practical level, the effective mobilization of workers' rights/human rights would benefit from a joint collaboration between human rights NGOs, civil society and the trade unions. The

relatively larger membership base of trade unions can complement the limitations faced by NGOs. NGOs are sometimes accused of not having a sufficient mandate to act for the interests they represent, as many are not elected or have small memberships of limited reach. The identification of workers' rights with human rights and enlisting the support of trade unions would therefore lend greater resonance to demands for better protection of labour standards. This has the potential to attract a larger base of support.

A closer identification between labour rights and ESC rights would benefit human rights in ASEAN in another way. While the fight for human rights in the region has tended to focus predominantly on civil and political rights, the inclusion of workers' rights into the human rights agenda would pave the way for greater awareness amongst the NGOs of ESC rights.

Trade unions can benefit from the participation of NGOs and civil society by acting as conduits to transmit workers' rights and concerns to a wider public audience. This would help dispel the impression that the campaign for better conditions of work is confined to blue collar workers and officially recognized trade unions. This has tended to cut off labour rights from the concern of two other important classes in ASEAN countries: (1) the elite and intelligensia working in human rights; and just as important, (2) the marginalized and poor who often stand outside the formal work sector and trade unions. Working together, these groups would underscore the fact that such issues are in the interest of the general public.

<sup>54</sup>. Article 12(2)(b), (c).

<sup>55</sup>. Articles 6(2) and 13(2)(b).

<sup>56</sup>. Article 10(3).

<sup>57</sup>. Article 11.

## International Labour Rights and the Social Clause

Of late, there has been greater awareness and interest in the promotion of minimum labour standards, especially in the international arena, as evidenced by the inclusion of the social chapter in the European Union's Maastricht Treaty and the global campaign to introduce a social clause at the World Trade Organization (hereafter WTO). This includes the tying of labour standards to trade and other economic issues, such as the granting of general system of preferences (hereafter GSP) privileges. It also includes the use of unilateral measures to limit or ban trade and investment between countries in view of their alleged human rights and labour rights violations. An example of this in ASEAN is the case of Myanmar.

In these debates, there is widespread acceptance that fundamental labour rights and human rights need better protection. However, questions remain concerning the appropriate institutions and methods employed in protecting labour rights as well as the very definition of core labour rights.

As regards the appropriate institutions, almost all developing countries (including those in ASEAN) take the view that labour rights should properly be within the expertise and ambit of the ILO and not the WTO. This view was strongly captured in the WTO Ministerial Declaration at the 1996 Singapore Meeting. It was reiterated by many developing countries at the 1999 Seattle meeting when the United States government, responding to the protests in the streets, sought to reintroduce the issue into the WTO.

We next turn to the question of defining a core of internationally recognized, minimum labour standards. An obvious starting point would be with the 180-odd conventions adopted by the ILO in establishing labour standards. It is clearly inappropriate and probably unhelpful to

consider all of these standards as constituting 'minimum' labour standards. The ILO itself has prioritized some by listing conventions on a number of subjects as 'basic human rights' conventions. These include freedom of association and collective bargaining, forced labour, child labour, equal remuneration and discrimination in employment.

The rights captured in these ILO conventions coincide with the ones found in the major human rights documents. The catalogue of human rights as found in the UDHR, ICCPR and the ICESCR includes numerous rights relating to work: they enshrine the right to free choice of employment, the right to equal remuneration, the right to just and favourable conditions of work, the right to freedom of association, the right to strike, the prohibitions on forced and child labour; and rights against discrimination.

From this list the following have been selected by the United States government as constituting core labour standards, and these in turn are used as its eligibility criteria in the administration of its GSP for trade:

1. The right of association: Art. 8(1)(a),(b) of the ICESCR and ILO Convention No. 87.
2. The right to organize and bargain collectively: Art. 8(1)(c) of the ICESCR and ILO Convention No. 98.
3. The prohibition of forced labour: Art. 6(1) of the ICESCR and ILO Convention Nos 29 and 105.
4. Minimum age for the employment of children: Art. 10(3) of the ICESCR and ILO Convention No. 138.
5. Acceptable conditions of work with respect to minimum wages, hours of work and occupational health and safety: Art. 7(a)(i),(d)&(b) respectively, and Art. 12(2)(b),(c) of the ICESCR.

Yet differences can be noted even among these five 'core' labour standards. The first three of those listed above – the right of association, the right to organize and bargain collectively and the prohibition of forced labour – have been widely ratified, both world-wide and in ASEAN. Each has over 100 state signatories. The levels of ratification for the remaining two conventions – the minimum age for the employment of children and acceptable conditions of work with respect to minimum wages, hours of work and occupational health and safety – have much lower levels of acceptance.

There are many reasons for this. Primarily, however, they relate to the relative developmental levels and cultural contexts of the states. What may be 'acceptable' conditions of work and safety in one country may be wholly inadequate in another. What is a minimum wage in one country, may be a princely sum in another. What some see as a minimum age for workers may not take into account the practice of poor, agrarian communities where all, including children, have their designated chores.

### **Labour Rights Implementation in ASEAN**

It is beyond the scope of this paper to examine in detail the labour conditions and standards in all the ASEAN countries.<sup>58</sup> The survey must therefore be selective and will focus on some of the problems faced by the workers in the region to illustrate how some of these core labour standards have been transgressed.

Generally, critics of the ASEAN growth experience charge that the economic success of the region before the crisis was achieved to some extent at the expense of its workers.<sup>59</sup> They believe governments subordinated labour and neglected their interests in order to attract foreign investment for economic growth.

In this view, state-imposed labour discipline is essential to the success of export-oriented industrialization. A robust labour movement is therefore a threat. It may

potentially drive the costs of production up in terms of wages and limit the capacity of management to respond swiftly to external shocks by retrenchment or pay reductions. This would in turn impair international competitiveness, which is crucial for the export market. As observed by Deyo, 'foreign and local investors have an especially strong interest in low wages ... in labour peace and a minimum of union interference in managerial autonomy'.<sup>60</sup>

A tame labour movement can be beneficial to the domestic economy as well. Bhagwati, drawing on the experience of the East Asian economies, accepts the point that 'authoritarian methods to keep trade union wage demands under control' can pay substantial dividends in terms of low inflation and general macro-economic stability.<sup>61</sup>

<sup>58</sup> Given the limitation of resources, it is regretted that this paper has given insufficient attention to the situations in the Indo-Chinese countries. Instead, more prominent examples highlighting various aspects of workers' rights and human rights shortcomings in other ASEAN countries have been selected.

<sup>59</sup> F. Deyo, *Beneath the Miracle* (1989) and Ghai Yash, 'Rights, Social Justice and Globalisation in East Asia', in *Human Rights Perspectives*, ed. by Tan Ngoh Tiong and Kripa Sridharan (1999).

<sup>60</sup> F. Deyo, 'State and Labour: Modes of Political Exclusion in East Asian Development' in *The Political Economy of the New Asian Industrialism*, ed. by F. Deyo (1987), p. 46.

<sup>61</sup> Excerpted from Iyanatul Islam and Anis Chowdhury, *Asia Pacific Economies, A Survey* (1997), p. 84.



## Ratification of ILO Conventions in ASEAN

Countries	C87* Association	C98* To Organize/ Collective Bargaining	C29/105* Forced Labour/ Abolition	C138* Minimum Age	C100/111* Discrimination/ Equal Wage
Brunei					
Cambodia	Y	Y	Y/Y		Y/Y
Indonesia	Y	Y	Y/Y	Y	Y/Y
Laos			Y/		
Malaysia		Y	Y/	Y	
Myanmar	Y		Y/		
Philippines	Y	Y	N/Y	Y	Y/Y
Singapore		Y	Y/		
Thailand			Y/Y		Y/N
Vietnam					Y/Y

\* C87: The Convention on Freedom of Association, 1948; C98: Right to Organize and Collective Bargaining Convention, 1949; C29: Forced Labour Convention, 1930; C105: Abolition of Forced Labour Convention, 1957; C138: Minimum Age Convention, 1973; C111: Discrimination (Employment and Occupation) Convention, 1958; C100: Equal Remuneration Convention, 1951.

Consequently, this overarching goal of economic development, has lead governments in the region to control in varying degrees the labour movements in their respective countries. Nonetheless, most ASEAN countries recognize, at least officially, certain core labour standards (see table above) in some measure within their domestic jurisdictions. Almost all of them are parties to some of the ILO 'basic human rights' conventions.

In addition they have legislation safeguarding a range of workers' rights, such as the prohibition of discrimination at the workplace, health and safety standards and mandated minimum wage. Forced labour is legally proscribed, with all of them being parties to either Convention No. 29 or Convention No. 105. To safeguard against the economic exploitation of children most have also statutorily imposed the

requirement of a minimum age with regards to paid employment.

However, the extent to which these standards are actually adhered to and how they have been statutorily circumscribed has been the source of much criticism by various international labour organizations and NGOs. This has led the United States to review its granting of GSP privileges to some ASEAN countries in response to allegations of violations of labour standards. Some illustrations of labour rights violations in ASEAN are noted in the following sections.

### The Right to Strike

*Art. 8(1) The State Parties to the present Covenant undertake to ensure:*

*(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.*

The right to strike is recognized in law. However, its practice is subject to numerous procedural and substantive restrictions in most ASEAN countries. These curtailments may be imposed by the law itself, or by illegal means.

Examples of bullying and intimidation by the state were evident in Indonesia under the Suharto regime, where union leaders were arrested and illegally incarcerated. Labour union activities were also subject to lengthy approval procedures and union leaders were often approached by soldiers making threats and frightening them into not taking part in action, particularly in the Jakarta area.<sup>62</sup>

In May 1993, a female labour activist in East Java, Marsinah, was found murdered after she helped lead a strike at a watch factory. She was tortured, raped, sexually violated and subsequently bled to death. The case of Marsinah became something of a *cause célèbre*, an exemplar of all that is bad in Java's factories and in the government's approach to labour standards and regulation.<sup>63</sup>

Examples of legal restrictions on the right to strike can also be seen in the case of Malaysia. Although the right to strike is formally recognized there, onerous procedures are in place to curtail its effective exercise. The 1980 amendments to the Industrial Relations Act (hereafter IRA) impose a two-thirds majority requirement in favour of a strike resolution, to be determined through a secret ballot. The resolution must clearly set out the issues underlying the strike and must describe the nature of the action that will take place in the course of such a strike. The results of the ballot must be submitted to the registrar

who will determine whether the ballot fulfils these requirements and is valid. This is followed by a seven-day 'cooling off' period before the Union can commence the strike. Moreover, for essential industries, including the banking and the utilities sectors, more rigorous procedures are imposed. The union must give the employer prior notice of no less than 42 days.

The commencement of a strike which fails to adhere to these requirements is illegal and attracts a fine not exceeding \$2000 or imprisonment and a further fine of \$100 for every day the offence continues. Furthermore, a strike which began lawfully can be made unlawful. According to s. 44 of the IRA, a trade union must call off an on-going strike if the dispute is referred by the Minister of Labour to the Industrial Court.<sup>64</sup>

#### **Freedom of Association and the Right to Organize**

*Art. 8(1) The State Parties to the present Covenant undertake to ensure:*

*(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interest. No restriction may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*

*(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organizations.*

As with the right to strike, formal recognition of the right to form an organization is

<sup>62</sup> 'Indonesian textile workers on strike over poor payment', Xinhua News Agency, 1992.

<sup>63</sup> Jonathan Rigg, *Southeast Asia, The Human Landscape of Modernization and Development* (1997), p. 230.

<sup>64</sup> The Regional Council for Human Rights in Asia, *The Worker and the Law in ASEAN Countries* (1992), p. 23.

impeded in practice by stringent requirements. This was seen in the case of Indonesia, under the Suharto regime.

The 1987 regulation on union registration imposed significant organizational prerequisites on unions. In order to be recognized by the Indonesian Department of Manpower, a union was required to have branches in at least 20 provinces, 100 districts and 1000 companies. Although requirements have been lowered since then, the current requirements are still considered onerous by many commentators and fall short of the ILO understanding of the freedom of association standards.

Another 1993 regulation requires that a union be set up 'by and for workers'. The Department of Manpower interprets this clause as denying recognition to groups which include those it considers to be non-workers, such as lawyers, NGOs and human rights activists who are often involved as organizers.<sup>65</sup>

Workers in Malaysia's electronics sector were prohibited from forming and joining unions for more than a decade. The absence of unions to represent the economic interests of the workers in this sector meant they were paid the lowest wages in the manufacturing industry, even though their work earned the greatest export profits. In December 1990, the government lifted this ban to allow in-house unions, although the setting up of industry-wide unions is still prohibited.<sup>66</sup> The approach taken in this particular industry is consistent with the government's policy of attracting foreign investment through low wages and ensuring industrial peace by keeping trade unions small and hence powerless.

### Collective Bargaining

*Art. 8(1) The State Parties to the present Covenant undertake to ensure:*

*(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.*

Again, the formal admission of this right is subject to significant limitations. S.13(3) of the Industrial Relations Act 1967 [Malaysia], precludes the following issues from the purview of trade unions and places them under the prerogatives of the management:

- The promotion of any worker
- Termination, by reason of redundancy or re-organization
- The dismissal and reinstatement of a worker
- The assignment or allocation of duties and specific tasks to a workman that are consistent with the terms of his employment.

These issues that are crucial to an employee were made non-negotiable and placed beyond the ambit of collective bargaining. In addition s. 15(1) of the Act stipulates that collective agreements in certain undertakings cannot contain terms and conditions more favourable than those prescribed by the Employment Act unless the Minister of Labour approves them. This proviso, which applies primarily to pioneer enterprises, has been drafted with an eye to attract foreign investment.<sup>67</sup>

<sup>65</sup> Marvin Levine, *Worker Rights and Labour Standards in Asia's Four New Tigers, A Comparative Perspective* (1997), pp. 191-192.

<sup>66</sup> *ibid.*, pp. 372-3 and 381-4 and Iyanatul Islam and Anis Chowdhury, *Asia Pacific Economies, A Survey* (1997), p. 23.

<sup>67</sup> Iyanatul Islam and Anis Chowdhury, *Asia Pacific Economies, A Survey* (1997), p. 19.

### Health and Safety Standards

*Art. 7 The State Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:*

*(a) safe and healthy working conditions*

*Art. 12(1) The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

*(2) The steps to be taken by the State Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*

*(b) The improvement of all aspects of environmental and industrial hygiene;*

*(c) The prevention, treatment and control of ... occupational and other diseases.*

Most ASEAN countries have relatively comprehensive legislation targeted at raising safety standards at the work place. However, a number of studies show that many factories in the region continually fail to meet the statutory levels of safety. Labour laws promoting workers' interests, aimed at securing minimum wages and better working conditions are routinely flouted.

A World Bank survey revealed that of the firms inspected in ASEAN, 81% of them violated at least one health and safety standard.<sup>68</sup> There were many factors behind this weakness in enforcement.

First, enforcement agencies were generally underfunded and weak. It was estimated in 1993 that the Indonesian Manpower Ministry had only 1,320 inspectors of which only 700-800 were operational while the rest were support staff. This translated into one inspector for almost every 4,000 companies. Given the weak regulatory environment, it is not surprising that there

was little incentive for compliance.

The bribing of factory inspectors to turn a blind eye to transgressions of mandated minimum wage levels and health and safety standards was also not uncommon.

Often there was a lack of political will, as laws were adopted in the first place to appease international critics and to avert the threat of trade reprisals. 'Indeed by their actions, there is ample evidence that governments are not fully committed, certainly to the concept of minimum wage and to some extent other "core labour standards" such as the outlawing of child labour and acceptable safety measures.'<sup>69</sup>

Labour market interventions were seen to raise production costs, which in turn might discourage investors and thereby impede economic growth. It is therefore quite unrealistic to attempt to enforce these labour standards as applied in many developed countries.

Regrettably, it is only when tragedies bring issues of working conditions to the fore that governments feel compelled to act. The Kader Toy Factory incident in Thailand has been seen to be a barometer of the kind of indifference and negligent attitude some employers have to health and safety standards. The tragic fire at the Kader Toy Factory, in which more than 180 workers perished, brought worker safety concerns into sharp focus. Investigations showed that the building was not structurally sound, and there were no fire alarms or other emergency precautions. There were also no accessible fire escapes; in fact they were locked on the basis of preventing theft by the workers. Labour groups charged that they were locked to prevent workers from taking rest breaks between shifts, and highly flammable materials were stored at the workplace.

<sup>68</sup> The World Bank, *World Development Report 1995: Workers in an Integrating World*, p. 77.

<sup>69</sup> F. Deyo, 'State and Labour: Modes of Political Exclusion in East Asian Development' in *The Political Economy of the New Asian Industrialism*, ed. by F. Deyo (1987), p. 227.

Industrial accidents in Malaysia jumped sharply by 45% from 88,117 in 1988 to 128,621 in 1993, justifying the need for more effective enforcement of safety standards. Such incidents can be costly. A study conducted by the ILO in 1992 pointed out that Malaysia had lost RM4 billion due to industrial accidents.

### Forced Labour

*Art. 6(1) The State Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

With the exception of Myanmar, forced adult labour is not a reported problem in ASEAN countries. In Myanmar, reports of forced portering services provided for by the villagers are well documented. This has led to the country being one of the first to receive sanctions by the ILO.

### Child Labour

*Art. 10 The State Parties to the present Covenant recognize that:*

*(3) ... Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.*

Accurate and reliable data is hard to come by because of the illegality of child labour. Various estimates have put the number of children in the workforce in Indonesia to be at between 2.2 and 3.3 million. The United Nations Commission on Human Rights puts the figure at 2.7 million. An

extreme estimate had it at 10 million.

A study undertaken by the Committee for the Creative Education of Indonesian Children in 1991 claimed that children in export-oriented factories in Tangerang, outside Jakarta, were working long hours in dangerous conditions for a paltry wage. Enforcement of laws regarding child labour and penalties for employers who contravened those laws were comparatively meagre. In 1994, the maximum fine was just US\$50, and/or 3 months imprisonment.<sup>70</sup>

This is also a persistent problem in Thailand, with numbers at about 100,000 according to government estimates, although the actual number is thought to be a lot higher. The magnitude of the problem became evident in November 1991 when the authorities discovered and shut down a slave labour factory in Bangkok. They found 32 boys, aged between 13 and 17, who were being forced to work 16 hours a day without a day of rest. They had also been physically abused. Six of the rescued boys were hospitalized for injuries. Following the incident, the Thai Labour Department conducted investigations to ascertain the extent of the problem and stiffer penalties were introduced.<sup>71</sup>

A more sinister problem is the issue of child prostitution. This 'reflects the dark side of development that comes with unbalanced economic growth'.<sup>72</sup> Estimates place the number of child prostitutes in Thailand at between 200,000 and 250,000.

The ILO has cited Thailand for violations of Convention No. 29 on forced labour. The primary focus of the ILO criticism was on forced child labour, especially child prostitution.

<sup>70</sup> F. Deyo, 'State and Labour: Modes of Political Exclusion in East Asian Development' in *The Political Economy of the New Asian Industrialism*, ed. by F. Deyo (1987), p. 225.

<sup>71</sup> Iyanatul Islam and Anis Chowdhury, *Asia Pacific Economies, A Survey* (1997), p. 284.

<sup>72</sup> *ibid.*, p. 286.

## Recognizing the Role of Unions

In part, the legal and other limits on labour rights in a number of ASEAN countries relate to concerns over unions and doubts over their role in promoting development. On the one hand, it has been argued by some, notably the World Bank,<sup>73</sup> that labour market interventions, 'while intended to raise welfare and reduce exploitation ... actually work to reduce the cost of labour ... reduce labour demand ... and labour incomes where most of the poor are found'. On the other hand, the ILO asserts that 'over the long run, suppression of free industrial relations jeopardises prospects for economic development'.<sup>74</sup> The latter view sees 'unions as a source of dynamic efficiency, obliging enterprises to pay efficiency wages rather than market clearing wages and inducing management to raise productivity by technological innovations and cost saving practices rather than reliance on low labour costs'.<sup>75</sup>

Unions can provide a voice through which workers can air grievances. The weakness or absence of unions may induce workers to take the 'exit' option, leading to an increase in labour turnover. This would impede firm productivity.

In a review of the role of unions in economic development, Pencavel concludes that 'unions have the potential to help raise productivity in the workplace by participating with management in search of better ways of organising production. It is important for workers also not to feel alienated from the economic and social system and to believe they have a stake in it. Process matters: even if the outcomes were identical, employees value the fact that they or their agents help to shape their working environment'.<sup>76</sup>

Labour standards and mandated benefits compel employers to overcome any misguided preoccupation with cost cutting and focus attention on the strengthening of productive power (via training, technical innovation, etc.). Such intervention can be seen as producing positive externalities that cannot be 'internalized' by profit-maximizing employers. As such they should be regarded as a response to market failure rather than an undesirable micro-economic distortion.

## A Different Business Perspective

Companies can also take the initiative to secure the protection of labour standards and in this way promote ESC rights. Instead of being blinkered by short term profits and paying little attention to labour standards, companies should realize that such business practices may not be sustainable in the long run. A more active union and workers who

enjoy both labour and ESC rights could in fact benefit the company in a number of ways.

For a start, such an environment is likely to result in a more dedicated workforce, which may engender higher productivity and lower staff turnover. And certain

<sup>73</sup> The World Bank, *World Development Report 1990*, p. 63.

<sup>74</sup> ILO, *Social Protection, Safety Nets and Structural Adjustment* (1991), GB. 25111/CE/4/5, p. 5.

<sup>75</sup> G. Standing, 'Do Unions Impede or Accelerate Structural Adjustment? Industrial vs. Company Unions in an Industrialising Labour Market', *Cambridge Journal of Economics*, 16 (1992), p. 327.

<sup>76</sup> J. Pencavel, 'The Role of Labour Unions in Fostering Economic Development', in World Bank, Working Paper No.1469 (1995), p. 23.

legislative penalties and consumer boycotts can be avoided by companies with good records in labour and ESC rights. This is increasingly important as many NGOs, especially in the West, call for the linking of human rights and labour standards to international business practices.

In response to growing pressure over labour, human rights and environmental issues, some companies have also begun to voluntarily adopt their own corporate codes of conduct that address these concerns. 'Consumers today hold companies accountable for the way products are made, not just the quality of the product itself.'<sup>77</sup>

Transnational corporations (hereafter TNCs) which are heavily consumer dependent, such as Nike and Reebok, are extremely susceptible to public opinion and hence more likely to tow the line. However, most companies would be unable to escape or elude public scrutiny given the tenacity of many NGOs and an increasingly shrinking world brought about by almost instant communications. With the international media only too willing to expose inconsistent and irresponsible

corporate behaviour, companies cannot hope to get away with it for long.

The incidents of the death of Ken Saro Wiwa and the dumping of Brent spar in the North Sea drew strong international reactions against Shell. The TNC's response, while not satisfactory to all, is nonetheless a step in the right direction. Shell has since embraced these concerns and has adopted a corporate code of conduct which includes human rights principles.

The threat of effective consumer boycotts at an international level means that businesses cannot continue to breach these standards with impunity or indifference. In addition, stronger measures have been employed to ensure greater compliance with internationally recognized labour standards. The eligibility criteria of the US GSP, the NAFTA labour side accord, the 'social chapter' of the EU's Maastricht Treaty, and the strong lobby at the WTO mean that gross breaches of workers' rights would attract economic penalties.<sup>78</sup> Increasingly in ASEAN and elsewhere, it is becoming good business sense to respect both labour and ESC rights.

---

### **Conclusion: ESC Rights and The Crisis**

---

Much of the discussion about the current economic and financial crisis in Southeast Asia has focused on the macro-economic picture. Policy-makers and experts have sought to identify the causes of the crisis and assess the economic impact in order to formulate policies that could lead to recovery. The adverse impact on individuals and on vulnerable segments of society has

been vividly captured by the media.<sup>79</sup> But only recently has the human impact received more attention and been the focus of detailed studies by the World Bank and other development agencies.<sup>80</sup> These studies have suggested that the road to recovery should lend greater protection to the poor and vulnerable and that the recovery process should benefit everyone. There is, as such,

<sup>77</sup> Lance A. Campa and Tashia Hinchliffe Darricarrere, 'Private Labour Rights Enforcement Through Corporate Codes of Conduct', in *Human Rights, Labour Rights and International Trade*, ed. by Lance A. Campa and Stephen Diamond (1996).

<sup>78</sup> The linking of labour standards with economic issues such as trade has drawn criticism by some Asian governments that this is a pretext for protectionism.

<sup>79</sup> 'Without a Net', *Far Eastern Economic Review*, 9 July 1998. 'Down and Out', *Far Eastern Economic Review*, 2 April 1998.

<sup>80</sup> The World Bank, *Road to Recovery* (1998).

a search for policies that will link the macro-economic imperatives to the micro-level needs faced by individuals.

This nexus is critical to understanding both the crisis and human development. For the crisis is not about the fall in abstract indicators of growth, balance of trade, share prices or currency value. It is about how these abstracts are translated into harsh realities for the people of the region.

The following points attempt to provide a sketch of the impact of the crisis on ESC rights.

**1. Poverty and Unemployment:** The economic crisis had an immediate effect on income and poverty levels. A rapidly shrinking economy forced many companies either to liquidate or to scale down their operations, leading to massive lay-offs and a decline in real wages. In Thailand, unemployment increased by 50% and was projected to worsen. In the Philippines, 1 million people became jobless between April 1997 and April 1998, raising the unemployment figures to 13.3%. In Indonesia, the numbers are even more startling. With 4.5 million people already jobless in 1996, the number was expected to swell by another 10 million by the end of 1999.<sup>81</sup> Massive unemployment and its impact on poverty bedevil the region with little signs of abatement. Since the financial crisis hit East and Southeast Asia, at least 10 million more people have sunk below the poverty line.<sup>82</sup>

Poverty has many dimensions and will manifest itself as sharp reductions in access

to basic necessities, education and health care. It has led to increased participation in the informal economy, which can take the form of prostitution and child labour. An increase in prostitution, including child prostitution, as a consequence of rising poverty and unemployment has been reported in Indonesia.<sup>83</sup>

Most Southeast Asian social security networks are based on the individual and through familial ties.<sup>84</sup> The steep rise in unemployment levels and the significant reductions in wages imply a large number of people in desperate need of social protection. Yet social security schemes are sorely inadequate in the countries most affected by the crisis,<sup>85</sup> and appear to be incapable of maintaining the welfare gains made over the last three decades of sustained economic growth.

Hence, the skeletal social security systems in the region are particularly worrisome. They are of limited help to the impoverished in re-gaining access to basic necessities. There is also an added and real risk that their inadequacies may further accentuate disparities in income, resulting in higher levels of poverty, and setting in motion a vicious downward spiral.

**2. Health and Health Care:**<sup>86</sup> The provision of health care has also been severely affected because of the dramatic depreciation of many ASEAN currencies. Domestic medical care costs have risen drastically, as most pharmaceuticals are imported. Drug prices are reported to be two to three times higher in Indonesia. Furthermore, with

<sup>81</sup> Figures from The World Bank, *Social Consequences of the East Asian Financial Crisis* (1998). Available at [www.worldbank.org](http://www.worldbank.org)

<sup>82</sup> Asian Development Bank, *Asian Development Outlook 2000* (Oxford University Press, 2000).

<sup>83</sup> Stephany Griffith-Jones, *IDS Discussion Paper 367: The East Asian Financial Crisis: A Reflection on its Causes, Consequences and Policy Implications* (1998).

<sup>84</sup> Gustav Ranis and Frances Stewart, *The Asian Crisis and Human Development* (1998). Available at [www.ids.ac.uk](http://www.ids.ac.uk)

<sup>85</sup> ILO, *The Social Impact of the Asian Financial Crisis*, technical report for discussion at the high level tripartite meeting on social responses to the financial crisis in East and Southeast Asian countries (Bangkok, April 1998). Available at [www.ilo.org](http://www.ilo.org)

<sup>86</sup> *ibid.*



falling incomes and increased unemployment, essential health care is now either less affordable or completely unaffordable.

At the same time, the squeeze in public expenditure means less resources will be allocated to public health care and medical provisions. In addition, there are fears that reduced public spending will also undermine the effective maintenance of priority public health programmes, such as immunization against childhood diseases and tuberculosis control. The Philippines government has lowered its budgetary allocation for immunization programmes by 26%, with budget cuts for preventive care against tuberculosis and malaria of 36% and 27%, respectively. Sadly, the latter will lead to 30,000 unnecessary deaths, according to an Oxfam estimate.<sup>87</sup> There is growing concern that this neglect may reap permanent consequences with children being handicapped and disadvantaged for life.

Another alarming reality of the crisis is that people have not been getting enough to eat. Across the region the incidence of malnourished children has been on the rise. Highlighting the gravity of the problem, Kul Gautam, regional director for UNICEF, was concerned that governments have not been sufficiently and adequately responsive, and argued that much more could be done in the areas of social services and primary healthcare. He stressed that 'if kids are allowed to be chronically malnourished, there is no way you can fix it later. If you don't do it today, you've lost them for good'.<sup>88</sup>

**3. Education:**<sup>89</sup> Education is an integral and vital part of development, yet the provision

of this basic necessity has been significantly frustrated by the crisis. As economies contracted across the region, labour demand fell sharply, leaving households with reduced income as jobs were lost or wages reduced. The diminished purchasing power has been compounded by price increases for basic commodities. One of the common solutions for many households was to pull their children out of school to work. Children have stopped going to school simply because they can no longer afford to do so. The limits on public expenditure imposed by the crisis also mean that there is little governments can do to put children back into the classrooms.

**4. Workers' Rights under Threat:**<sup>90</sup> As articulated briefly above, many workers have been limited in the exercise of or denied their rights, such as the freedom of association, the right to organize themselves and the right to bargain collectively. This leaves much room for workers to be exploited, especially in the context of the crisis. Unconscionable employers may take advantage of trying times by unjustifiably lowering wages and subjecting financially desperate workers to perilous working conditions.

There is also the concern that as economic rebuilding takes centre-stage, all other considerations may be subjugated to achieve this singular objective. Workers fighting to safeguard their interests could face harsher repression and action. Another worrying trend of the crisis is that more people are moving into the informal sector, where, without any union or legislative protection, there is much room for exploitation.

<sup>87</sup>. 'Children of the Crisis', *Asiaweek*, 25/24 (1999).

<sup>88</sup>. *ibid.*

<sup>89</sup>. Henry Shue, 'Rights in the Light of Duties', in *Human Rights and US Foreign Policy*, ed. by P. Brown and D. Maclean (1979), p. 69.

<sup>90</sup>. Human Rights Watch Asian Division, *Bearing the Brunt of the Asian Economic Crisis: The Impact on Labour Rights and Migrant Workers in Asia* (1998). Available at [www.hrw.org](http://www.hrw.org)

Ultimately, it bears reiterating that the Asian financial and economic crisis is a human crisis. More and more children are suffering from mal- and undernourishment with little access to rudimentary necessities, and families are breaking down under the severe strain of poverty. Increasingly, more people are forced by circumstances to work in the informal sector and children are being taken out of schools to help families eke out a living. Hence addressing this social tragedy should be a top priority and constitute an integral part of any rescue package or proposal.

As already noted, the Asian view of human rights put forward by governments in the pre-crisis days doubted the positive contribution of civil and political human rights to economic growth and development. Instead, they saw that such rights might have to be limited or curtailed in order to provide the stability and discipline that they saw as preconditions for growth.<sup>91</sup> In this view, civil and political human rights were to be traded off against development.

The connections between human rights, including ESC rights, and development are much more complicated than this. There have been a number of studies that suggest civil and political rights intertwine and support development, even on basic issues such as the fight against famine.<sup>92</sup> The UNDP has been particularly strong recently in proposing policies that place the human person at the centre of development.<sup>93</sup> Key

to this are the rights of participation.<sup>94</sup> This suggests that human rights have an important place in a nation's development policies.

Human rights are complex and interwoven. Their equality and indivisibility are emphatically reiterated in the Vienna Declaration and Plan of Action. In practice, however, Western governments, NGOs based in the West and United Nations human rights organs have tended to emphasise civil and political rights. There are many who argue that these rights are 'first generation', possessing more definite meanings and capable of legal redress. In contrast, ESC rights are thought to be aspirational and vague,<sup>95</sup> and acutely dependent on the economic wherewithal of the nation concerned. The mechanisms of monitoring and enforcement differ accordingly between the two sets of rights: civil and political rights having greater scope and effectiveness than 'second generation' economic and social rights.

The Asian view of human rights, as expressed both by governments and many NGOs, questions this emphasis. They uphold the need to give equal attention (if not priority) to such economic rights as the right to education, the right to a job and the right to basic housing and healthcare. The strength of this Asian or ASEAN argument, however, disguises a weakness. While rapid growth did lead to more jobs, higher incomes and other attendant benefits for many, there were no rights per se.

<sup>91</sup> Similarly, Singapore's Senior Minister Lee Kuan Yew once opined that the Philippines needed more discipline and less democracy to achieve economic growth.

<sup>92</sup> Amartya Sen, for example, has studied famines in Africa and concluded that where civil and political rights are in existence, the polity is moved to deal earlier and more equitably with the famine to avoid crisis. The opposite is demonstrated in the cases of Ethiopia and, more recently, North Korea.

<sup>93</sup> UNDP, *Integrating Human Rights with Sustainable Human Development: A UNDP Policy Document* (1998).

<sup>94</sup> Art. 25 of the 1948 Universal Declaration [G.A. Resolution 217A(III)] sets out rights of political participation. Declaration of the Right to Development [G.A. Resolution 41/128 (1986)] also talks about the right to free, active and meaningful participation. In the field of sustainable development, the Rio Declaration emphasizes the right of participation, especially for women, the young and indigenous peoples.

<sup>95</sup> See Vierdag, 'The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights', *Netherlands Yearbook of International Law*, 9 (1978). Such ideas still persist: see Steve Charnovitz, 'The Globalisation of Economic Human Rights', *Brooklyn Journal of International Law*, 25/1 (1999).

The crisis has increased poverty and hardship, especially among the weakest. The impact of the crisis on children, women, migrant labour, the rural poor and the urban poor needs attention. To prove their relevance in this crisis, human rights will need to respond to economic and social needs as much as to freedom of speech and rights of political participation. In this respect, the Asian view of human rights (although not the practice of most states) bears re-emphasis: economic and social rights are vital to any response to the crisis.

A good place to begin to improve the human rights record in the region is in and with the response to the present and on-going crisis. Economists, financial experts, central bankers and market analysts continue to dominate the discourse on the search for solutions to restore economic and financial well-being to these crisis-stricken countries. Consequently there is a danger that the social and human impact of the crisis may not be given the attention it deserves.

Conventional wisdom maintains that ASEAN countries need to go about the urgent business of re-starting the growth of the 'miracle', a scenario in which human rights are seen as a secondary issue. Such an assessment of the crisis in terms of standard economic indicators and barometers de-sensitizes people to the human and social dimensions of the economic downturn.

As vital human interests are being profoundly undermined, human rights should be allowed to play their 'natural' and intended role in promoting and protecting them. ASEAN countries should seek to assimilate human rights positively and centrally to economic recovery and

development. In this process, there are good reasons to view human rights beyond their civil and political dimensions and to take into account labour and ESC rights as well.

A rigorous commitment to ESC rights would ensure that limited resources were being channelled to meet the most urgent and basic needs of people. This would also serve as a gauge of whether the recovery process was indeed benefiting the most vulnerable groups and individuals who could easily be obscured by aggregate national statistics. Governments should recognize the need for broad-based dialogue with and participation by the intended beneficiaries in order to determine their needs,<sup>96</sup> so as to design a more sensitive and appropriate social security programme. This captures the very ethos of human rights and arrests the paternalistic treatment of the poor as objects of inquiry in conventional economic development thinking. This approach of holding dialogues and encouraging participation should be extended to civil society organizations and individuals dealing with poverty and other social issues brought about by the crisis.

More generally and fundamentally, ASEAN governments should critically re-examine previous patterns of economic growth with the acknowledgement that benefits do not materialize or trickle down automatically. There must be a conviction that development should not be allowed to be partial, lopsided or at the sacrifice of other vital human interests. Conscious and deliberate attempts must be made to distribute the gains accrued, concentrating on human and social development and paying more than mere lip service to the protection of ESC rights.

<sup>96</sup> Caroline M. Robb, *Directions in Development: Can the Poor Influence Policy? Participatory Poverty Assessments in the Developing World* (1999). Available at [www.worldbank.org](http://www.worldbank.org)

# The State of Economic, Social and Cultural Rights in Southeast Asia\*

Tang Lay Lee

## *Introduction*

---

The financial crisis of 1997 catalysed the development of civil society and democracy in Southeast Asia. However, as the region takes tentative steps towards popular democracy, human rights advocates realize that the task has only just begun. While there is greater press freedom in countries like Thailand and Indonesia, and elections in Cambodia and Indonesia are freer and fairer, suppression and violations of civil and political rights continue as governments attempt to manage the crisis, either with International Monetary Fund (hereafter IMF) loans or capital controls. Economic, social and cultural rights, in general, have taken a back seat in the rush to globalize. The protracted self-determination struggles in Aceh and West Papua as well as those of the ethnic minorities along the Thai-Burmese border are warning signs. Even Southeast Asian countries, which are parties to the International Convention of Economic, Social and Cultural Rights

(hereafter ICESCR) and key International Labour Organization (hereafter ILO) conventions, have failed to protect the economic, social and cultural rights of the majority of their peoples. Unless this lopsided phenomenon is addressed, the region stands to lose a singular opportunity to develop standards for the advancement of the whole range of human rights even as democratic institutions strengthen.

The focus of this paper is on economic, social and cultural rights. We need to understand current economic trends; their impact on farmers, indigenous peoples, workers, women and children; definitions, norms and standards of economic, social and cultural rights; and international instruments and national laws and policies affecting these rights. Only then can we explore ways and means of protecting the economic, social and cultural rights of people in Southeast Asia.

## *Part 1: Economic Trends*

---

Globalization, the East Asian crisis of 1997, the emergence of the World Trade Organization (hereafter WTO), the strengthening of transnational corporations

(hereafter TNCs) in Southeast Asia and uneven economic recovery are the significant economic trends.

## *The Crisis of 1997*

---

Since the end of the Cold War, the 'free market' has become increasingly globalized

across the world. From the early 1980s to the mid-1990s, the economies of the Asian

---

\* This paper was prepared for the Friedrich Ebert Stiftung Conference on 'Human Rights and Social Development - Economic, Social and Cultural Rights and the ILO Conventions: Contents, Instruments, Complementarity', held in Manila, 24-25 January 2000.

Dragons and Tigers boomed. Then came the crash of 1997 when currencies plunged, investors pulled out and companies went bankrupt. Foreign debts piled up. The financial crisis started in Thailand and quickly spread to other countries in Southeast Asia. It turned into an economic crisis before deepening into a social crisis. Unregulated short-term or speculative capital was a major factor. Nepotism, cronyism and corruption did not help. Thailand and Indonesia were forced to turn to the IMF for help. The IMF offered US\$17 billion and US\$43 billion in loans to Thailand and Indonesia, respectively, in exchange for structural adjustment programmes. High interest rates,

deregulation (removal of subsidies, etc.), privatization and liberalization were the conditions. Malaysia belatedly resorted to capital controls. The Malaysian Ringgit was pegged at 3.8 to the US Dollar and trading in Ringgit outside the country was banned. Foreign investments could only be repatriated after a year. The shaky Philippine economy also needed an injection of IMF funds. Vietnam, Cambodia, Burma and Laos suffered delayed shocks to their economies. Among the survivors, Singapore, with its huge foreign reserves and strict financial regulations, got by with a weakened Singapore Dollar, while Brunei had its oil.

---

### **The World Trade Organization**

The WTO has emerged from the shadows in the aftermath of the East Asian economic crisis. Countries hit by the economic crisis are beginning to feel the impact of the 1994 General Agreement on Trade and Tariffs (GATT) Agreement on Agriculture (hereafter AOA), the Agreement on Textiles and Clothing (hereafter ATC) and Trade Related Aspects of Intellectual Property Rights (hereafter TRIPS). Developed countries, headed by the United States and the European Union, have been pushing for lower tariffs and subsidies in developing countries while protecting their own agriculture and manufacturing sectors. Global competition is not free. It is also

weighted against Southeast Asian economies and other developing countries. Patenting of genetically modified organisms (hereafter GMOs) in plants and herbs threaten the livelihood of farmers and indigenous people and the survival of agriculture in developing countries. The impending entry of China into the WTO means keener competition among developing countries and may dampen economic recovery in Southeast Asia. The Seattle Round of WTO talks in December 1999 is scheduled to resume in Geneva in early 2000. The next round of WTO talks could be crucial for developing countries and their poor.

---

### **Transnational Corporations**

TNCs have great influence over the WTO, the IMF, the World Bank and other international institutions. They will benefit from further liberalization in East Asian countries, which are still powerhouses of economic development. Even capital controls will not reverse the trend: the IMF has even acknowledged the efficacy of capital controls. Globalization is here to stay.

Foreign companies are buying banks and other businesses in Thailand as the financial sector is liberalized. IMF prescriptions of privatization and liberalization are being extended to all sectors, benefiting TNCs and the local elite. Limitations on foreign land ownership in Thailand are being lifted, even as Filipinos battle their government over long-term land leases to foreigners.

Despite its much touted capital controls, Malaysia is very much in the global race. Its proposed merger of all its financial institutions into six giant monopolies by

April 2000 is an indication. However, speculative capital is still a threat that could lead to a repeat of the recent crisis and plunge the region deeper into the debt trap.

### **Economic Recovery**

---

In terms of economic recovery, by early 2000 South Korea was leading the pack, followed by Thailand, the Philippines, Singapore and Malaysia. By the end of 1999, each economy had grown domestically between 3% and 6%. In Thailand, Singapore and Malaysia, recovery was mainly in the manufacturing sector, powered by electronics.

Among the laggards, Indonesia continued to stagnate, plagued by secessionist and religious unrest, as well as the Bank Bali scandal in which a US\$80 million IMF loan

ended up in Golkar pockets. Vietnam, Cambodia and Laos faced shrinking domestic economies, and the resultant prospect of forced accelerated liberalization. Vietnam's GDP was expected to fall from 5.8% in 1998 to below 5% in 1999. Cambodia registered no growth in 1998. And while hot money returned to East Asia, enticed by low stock prices, the bulk of it was short-term capital inflows rather than investment in production. Efforts to eradicate corruption and cronyism appeared half-hearted as Marcos and Suharto continued to escape accountability.

### **Part 2: Impact on Economic, Social and Cultural Rights**

---

These economic trends led to the erosion of the economic, social and cultural rights of farmers, indigenous peoples, workers, women and children. Although some argue that economic development before the onset of the economic crisis had led to improvements in health, education, work opportunities and living standards of the population, and that economic recovery would restore the status quo, in fact many countries are now saddled with huge foreign debts which are likely to delay the return to the status quo.

Indonesia's foreign debts amounted to US\$143 billion or about 90% of its GDP in 1999. In 1998, Thailand's foreign debt of US\$86 billion was about 76.8% of its GDP. Philippine foreign debt was about US\$46 billion in 1998. Thailand has been fairly prompt in servicing its debts, but paying the interest involves a tricky balancing of the budget. And the WTO

agreements on reducing subsidies and lowering tariffs also have to be borne in mind. The timing could not have been worse.

The assault on the economic, social and cultural rights of farmers, indigenous people, workers, women and children reveals one important fact: such rights are interdependent even if they are not indivisible. The development of the manufacturing, construction and services sectors in the heyday of the East Asian boom led to the neglect of the agricultural sector. Even before the crash of 1997, farmers' and indigenous peoples' rights were neglected and violated in the name of development. Arable agricultural land was converted to industrial use and used for golf courses and resort developments. Landless farmers migrated to urban areas in search of work and ended up in factories or on construction sites, both at home and overseas. Working

conditions were far from ideal and social security for migrant workers was absent. Women ended up as factory hands, domestic workers and in the sex industry. Even child labour and exploitation,

including sexual exploitation, was on the rise. And now the WTO and the Asian economic crisis has put their economic, social and cultural rights at even greater risk.

### **Peasants and Indigenous Peoples**

---

Southeast Asian countries, with the exception of Singapore and Brunei, are mainly rural populations. For example, 80% of Vietnam's 76 million people rely on small-scale farming. Farmers and indigenous people in Southeast Asia may never recover from the economic crisis. Smallholders face intense pressure from governments committed to the IMF, the World Bank and the WTO. Promises of agrarian reform and sustainable development have been forgotten. The AOA has put both food and cash crops for export under siege. Economic recovery will not translate into food security for peasants and indigenous peoples unless governments act on their promises and collectively resist the unfair terms in the AOA and TRIPS before it is too late. The traditional knowledge of indigenous communities is under great threat from pharmaceutical giants in search of herbs and medicines to monopolize. Vast tracts of land await conversion to luxury projects as development fever takes grip again. Environmental degradation continues apace, depriving farmers, indigenous peoples and whole countries of clean and safe water.

#### **Agreement on Agriculture**

The WTO is pushing Southeast Asian governments to liberalize agriculture. Land ownership is a sticking point. Agricultural subsidies are another. The AOA is the last nail in the coffin. The agreement is complex, with far-reaching consequences even government officials find hard to grasp. Developing countries committed themselves at the 1994 Uruguay Round of GATT to cut tariffs and reduce subsidies.

Over ten years, import tariffs and export subsidies will be cut by 24% each, subsidies to farmers by 13% and subsidized exports by 14% while import quotas will be eventually phased out. Even though developed countries made similar commitments, with higher percentages, critics say that they will enjoy the lion's share of additional income from reduced tariffs and subsidies.

Developed countries continue to heavily subsidize their own farmers while they force developing countries to reduce domestic support for theirs. In developing countries, farming is generally small scale and production is low and less efficient. In the United States and Canada, farming is dominated by agribusiness corporations. While farms in the European Union are smaller, they enjoy high government subsidies. The minimal support farmers in developing countries receive will dwindle by two-thirds under the AOA, while farmers in developed countries will continue to enjoy substantial subsidies at the end of the implementation period. European beef and American and European wheat will be extremely competitive on account of the strong export subsidy based on 1991-2 levels.

Southeast Asian countries optimistically committed themselves to these reduced subsidies when economies were booming. When the crisis broke and agricultural sectors needed support and subsidies, governments were pressed to keep their side of the WTO bargain. Local products could not compete with cheaper subsidized imports and farmers lost their livelihoods.

For example, the Philippine domestic subsidy was 5% of the budget in 1995. Exports were not subsidized. After the Uruguay Round, land for food grains fell from 5 to 1.9 million hectares. Landlords planned large-scale conversions to high value export crops under the Philippine 2000 Plan. The Philippines was supposed to increase its share of global agricultural trade by 20%, earn 11 billion Pesos from agricultural exports, generate a net trade balance of 3.4 billion Pesos per year in agriculture and add 60 billion Pesos to gross value-added in agriculture, as well as create half a million jobs. Instead, agricultural trade fell, the trade balance went down and jobs lost hit 191,000 in 1997. The AOA aggravated monopoly pricing, import dependence and foreign domination, with TNCs controlling food prices and supply.

Farmers did not benefit. In 1998, farm produce prices were up only 5%, eaten up by higher production costs including seed and fertilizer costs. With big American seed exporters dominating the corn trade, the high cost of imported corn feed increased livestock and poultry costs. Minimum access volumes allowed landlords and TNCs to monopolize import allocations. According to *Kilusang Magbubukid ng Pilipinas*, 400,000 rice farmers, 66,000 corn farmers, 200,000 fishermen and 500,000 sugar workers and farmers were affected by imports. The World Bank reported that within the rural economy living standards did not improve, the ranks of the unemployed and underemployed swelled and real wages fell. The government estimated that 72% of the Philippine poor are in the agricultural sector.<sup>1</sup>

#### **Agrarian Reform and Sustainable Development**

AOA requirements and IMF policies have been a serious setback for agrarian reform. The agribusiness model of agriculture is

being pushed. There is a shift from food crops to cash crops, grown on vast tracts of land. Smallholdings are giving way to huge estates or corporate farms. Sophisticated machinery is being introduced at the expense of farmers and farm workers. Trade liberalization has been disastrous for smallholders in developing countries. They are losing out to cheaper imports, and more seriously, they are losing their land and their livelihoods as local landlords drive out tenant farmers in favour of TNC investments.

The Thai government has all but reneged on its word to set aside 25 million rai (10 million acres) of land for a national programme for sustainable agriculture. Foreign ownership of land is now allowed under amended Thai laws. It could signal the beginning of corporate farming, a grave threat to traditional farmers. The Philippine government is trying to force through legislation on foreign ownership of land. Over 9 million hectares of land were earmarked for distribution to sharecroppers, tenants and farmers under the Philippine Comprehensive Agrarian Reform Programme (hereafter CARP). Recently, the Undersecretary of the Department of Agriculture admitted that more than 800,000 hectares of land had been turned into commercial and industrial enclaves in the past seven years. 60,000 hectares of agricultural land has been subdivided or converted to industrial use or golf courses. Land for agricultural and food production fell from 2.1 million hectares in 1992 to 1.3 million hectares in 1999. CARP has been extended to 2004.

#### **TRIPS, GMOs and Food Security**

Before TRIPS, patents were granted for inventions of new mechanical innovations or processes for a period of 15 to 25 years, during which time the owner of an invention under patent would receive

<sup>1</sup> For a full analysis of the impact of the AOA on Philippine agriculture, see Ros-B Guzman, 'The GATT Agreement on Agriculture: Final Blow to Philippine Farms?', *Ibon People's Policy and Advocacy Studies*, 46 (July 1999).



royalties for its use. Now TRIPS allows for the patenting of living things, such as GMOs. For example, a US agricultural conglomerate has come up with Bollgard or Bt cotton, which through a feat of genetic engineering produces its own pesticide. Another company, Monsanto, which has a monopoly over the world seed market, has developed the terminator gene. Seeds with this gene cannot reproduce, so farmers have to buy new seeds for the next crop.

A controversy is raging over GMO ethics in developed countries. Many have introduced regulations on the labelling of GMO products for the benefit of consumers. There is less controversy in developing countries where the greater concern is the threat to farmers' livelihoods. TRIPS is likely to have huge ramifications for them as GMOs begin to dominate the agricultural world. Since the Uruguay Round, 52% of the world's soybeans is genetically modified, followed by corn, cotton and potatoes.

Jasmine rice farmers in Thailand and basmati rice producers in India now have to compete with US rice producers who grow patented Jasmati rice. The Indian and

Thai governments are also ill-prepared to deal with Monsanto's Bt cotton, a threat to India's cotton growers who produce 32% of the world's cotton. Monsanto was given the green light to use Bt cotton for research and testing purposes in Thailand. However, in October 1999 it was reported in the press that Bt cotton seeds had been illegally sold to farmers who paid an exorbitant 300 baht per kilo, compared to the 20-odd baht per kilo the pest-prone local variety goes for.

According to activist scientists, Bt cotton is not pest-resistant but pesticide producing. It is toxic and as such threatens agents of pollination and natural pest control such as birds, bees, butterflies and beetles. But there has been little research, if any, on its effects on human beings. Apart from the questionable ethics of genetic engineering, there is also a threat to biodiversity if Monsanto succeeds in capturing the cotton market. Moreover, despite the claim that genetic engineering means an end to pesticides, Monsanto is being sued by 25 Texas cotton farmers for cotton boreworm damage to 18,000 acres of Bt cotton. It seems pesticides may still be necessary after all.

---

## **Workers**

Although the crisis-hit countries in Southeast Asia are recovering, unemployment and poverty continue to plague the region. According to official statistics, about 3 million were jobless in the Philippines in 1999. More women than men were affected among the 8.4% unemployed, according to the World Bank. Malaysia's jobless rate rose to 3.2% in 1998 from 2.7 % in 1997. 1.76 million or 5.6% were jobless in Thailand in May 1999. The official jobless rate in Indonesia for 1998 was 5.5%, but the Food and Agriculture Organization (hereafter FAO) estimated that at least 20 million were out of work in 1999 and over 100 million fell below the poverty

line. Unemployment rose in Vietnam from 6% in 1997 to 6.9% in 1998. And as IT giants relocate to cheaper destinations in the region and elsewhere, more workers in Singapore stand to lose their jobs. Although trade unions in Thailand and Indonesia continue protests to protect the right to work, little headway has been made to institutionalize adequate social safety nets for workers in most Southeast Asian countries. Caught up in the race to globalize, governments seem to lack political will and have failed to devise any strategies to deal with transnational corporations in the matter of workers' rights.

**The Right to Job Security and the Right to Organize**

Malaysia's much-vaunted capital controls may not translate into job security for workers. Although unemployment stabilized at 3%, 20,000 workers are expected to lose their jobs when the merger of all Malaysia's financial institutions into six giants takes place. Indonesia's political turbulence has overshadowed its economic woes. Companies are also implementing longer work hours. In December 1999, the Malaysia Trade Union Congress accused a Selangor electronics company of making workers work 12-hour shifts, including Muslims fasting during Ramadan. They claimed that the aim was to force workers to quit so they could be replaced with cheaper foreign workers. Another practice was to close down and then re-open under another name to avoid accountability to employees. Lotus Footwear, the sole producer of Nike and Reebok shoes in the Philippines, laid off 1,500 workers without benefits. When workers assembled outside the factory in Bataan Economic Zone to protest the lay-offs in March 1999, 55 workers were hurt in a police attack on the picket lines. Observers expect the company to resurface after the dust has settled.

According to the Vietnam Women's Union, thousands of Vietnamese workers were laid off as the economic crisis in East and Southeast Asia deepened. And for those who managed to keep their jobs, conditions were harsh despite labour laws. Strikes against exploitation and violation of workers' rights were common.

Workers in South Korean and Taiwanese garment and footwear companies were the worst hit. In Thailand, economic recovery has fuelled the informal sector as companies are now opting for cheap subcontracts rather than maintaining a larger workforce. Textile and clothing companies affected by the ATC, use women homeworkers to

compete with rivals in China, Bangladesh and other countries.

**Migrant Workers, Non-Discrimination and the Right to Equal Treatment and Protection**

At the beginning of 1999, 6 million migrant workers, many illegal, were working in East and Southeast Asia under tough conditions. Half a million left or were deported from South Korea, about 100,000 each from Hong Kong and Japan, and 30,000 from Singapore. Estimates for Malaysia vary from 400,000 to a million, according to human rights activists. Before the crackdown, Malaysia authorities admitted to having 2 million foreign workers, although NGOs put the figure at around 3 million, including illegal workers. Figures for Thailand are equally controversial. At least 300,000 foreign workers, mainly Burmese and without papers, were deported. In the wake of the hostage crisis at the Myanmar (Burma) Embassy in Bangkok in early October 1999, the Thai government cracked down more harshly on Burmese workers still in Thailand. Many were deported at gunpoint at border crossings only to be forced back by gunfire from troops on the Burmese side. By late November 1999, there were tens of thousands of Burmese hiding in the border towns. Factories using cheap Burmese labour suspended operations in the wake of the government crackdown. At one time about 100 factories in the garment-making industry, fruit orchards and canneries employed 70,000 Burmese workers illegally.

Even as migrant workers, especially illegal ones, are being forced to leave their host countries, others are driven by poverty and unemployment to try their luck in foreign lands. Despite the high risks to life and limb, and the burden of huge loans, many illegal workers slip across borders by boat, or in the boots of cars or concealed in trucks to pursue their dreams of a better life.

The value of migrant workers' remittances home is not lost on governments. In late 1998, Vietnam announced plans to send 1 million workers overseas to boost the country's flagging economy and manage unemployment and poverty. Subsequently, a pilot plan emerged to send 100 domestic workers to Taiwan. Similarly, in early

November 1999, Jakarta announced plans to send 230,000 workers overseas. While governments are keen to benefit from the income of migrant workers, concern for their rights in host countries is lagging behind. Host countries such as Singapore and Malaysia also impose levies on companies using migrant workers.

---

## **Women**

There are many issues concerning women's economic, social and cultural rights. However, in Southeast Asia, women workers, homeworkers and trafficked women are of particular concern.

### **Women Workers and Discrimination**

In Vietnam, many women work in the growing export-processing zones (hereafter EPZs). Usually in their early twenties, these women work long hours for low pay. Working through the night and weekend is common when there are rush orders to fulfil. Yet, at US\$2 a day, their wages are still higher than those in antiquated state enterprises, although, as a rule, they are only paid about 72% of men's wages. Laid off by the thousands in the wake of the economic crisis, the Vietnam Women's Union says that many are wiser now and opt for more stable jobs and lower pay. But with unemployment close to 7%, it is not surprising that higher pay still draws many young women into the EPZ. About 18% of 800,000 employed women work in manufacturing industries. Two thirds are found in private companies while the rest are in domestic and joint venture companies. Women's health has been affected and is likely to become an issue as the private sector expands and the number of EPZs. Social protection for women is becoming imperative as Vietnam opens up its economy with future ASEAN Free Trade Association (hereafter AFTA) and WTO membership.

### **Homeworkers and the Right to Social Protection**

Women are the backbone of the burgeoning informal sector in countries recovering from the recent economic crisis. According to ILO estimates, 500 million work in the informal sector throughout the world. In Thailand, 25-50% of workers work from home, and the majority of them are women. Retrenched women working from home sew uniforms at 15 baht per set. In order to earn 165 baht, the minimum wage for a day in Bangkok, they have to sew 11 sets of uniforms. In Malaysia, they snip threads off Barbie doll dresses at one Malaysian cent per dress or fill pencil boxes with coloured pencils for an equally tiny sum of money. TNCs that farm out unskilled or low-skilled repetitive work are not accountable to these invisible workers. Often a subcontractor is sandwiched between them and made to abide by the company's code of conduct. Subcontractors are usually men. TNCs do not regard subcontractors or homeworkers as employees and often provide nothing more than the materials to be assembled or worked on. Thus these homeworkers do not enjoy any form of welfare, medical benefits or social protection. Regular workers and trade unionists regard them as competitors for dwindling jobs.

Although the economic crisis did not create the informal sector, it accelerated its expansion in most Southeast Asian countries, as TNCs seized the opportunity

to downsize, cut costs and increase profits. This has the effect of forcing women to stay at home and accept low paid work. Their burden has doubled and their status has taken another beating.

#### **Trafficking of Women**

The trafficking of women and children is so lucrative that no place is too remote for traffickers to seek new victims. Traffickers from Taiwan go directly to targeted hill tribe villages to entice young girls with promises of a good job and comfortable life. While Thailand is still the conduit for trafficking in the Mekong region, the trade has spread to other countries that are in the process of opening up. Women and girls, some as young as 13, are being trafficked from Vietnam to China, from Mongolia to the north and from Cambodia to the west. Women are taken from the Vietnamese countryside near the border with Guangdong, and smuggled into China where they are forced to marry Chinese men in rural areas. One woman found herself 'married' to four brothers. Others are forced into prostitution or domestic service in the cities. Traffickers also prey on young Vietnamese women in the southern provinces of Tay Ninh and Kien Giang. According to the Youth Research Institute, 70% of traffickers are women who are

themselves victims of trafficking. The lucky ones are repatriated and are helped to reintegrate.

#### **Women's Health and HIV/AIDS and Drugs**

AIDS and drug use pose the worst threat yet to the lives of women and children as more and more are driven into the sex trade. In Asia Pacific, 7 million people are said to be HIV positive: 400,000 in China, 180,000 in Cambodia and by 2000, 135,000 in Vietnam. They join the half a million in Thailand and 250,000 in Burma. About 2% of the population in two Indian states are also HIV positive. HIV/AIDS and drugs often go hand in hand. According to UNAIDS, 700,000 young people will be infected every year. Although Thailand has managed to maintain its AIDS programme despite cutbacks on social spending, other countries cannot afford any kind of programme. Many people are unaware of the risks. Women and children involved in the sex trade are at the mercy of customers who do not want to use condoms. Drug addicts also run the risk of contracting the virus through used needles. In fact, drug addiction may turn out to be the main obstacle to the success of AIDS prevention programmes.

### **Children**

The economic crisis gave rise to fears for the health and education of children and increasing child labour in Southeast Asia. World-wide, there are about 250 million child labourers, of which 150 million are in Asia. Over half of these are in South Asia.

#### **Health and Education**

According to UNICEF, 40% of children under a year old in Indonesia are malnourished. Before the crisis, Cambodia's infant mortality was 170 per 1,000 live

births, the worst in Southeast Asia. This is expected to increase as the government cuts its budget for basic social services in line with stringent IMF fiscal policies. In the Philippines, tuberculosis cases were expected to rise by 90,000 due to a 36% cut in budget allocation, while half a million children aged between 1 and 5 years would not receive Vitamin A supplements.

The Southeast Asian crisis was expected to force 1.6 million Indonesian children to drop out of primary and junior secondary

schools. And in Thailand, 150,000 out of 1 million children were expected to drop out after one or two years of secondary education. Not only can parents no longer afford school fees and uniforms, but they also need the additional income children can bring in. Cuts in government spending mean fewer textbooks for schools. The World Bank's 5-year programme to keep Indonesian children in school was expected to affect only one-third of school dropouts. NGOs say that the effectiveness of such programmes needs to be monitored, especially the distribution of funds and scholarships to schools with the highest drop-out rates.

#### **Child Labour**

The numbers of child labourers in Southeast Asia are increasing. Even before the crisis, 13% or 3.77 million Philippine children between the ages of 5 and 17 were working and 16% of Cambodian children were involved in child labour. Child labour is also rising in Vietnam with the transition from a planned to a market economy. According to the 1992-3 Vietnam Living Standards Survey, about 75% of the poorest children aged 13-14 were economically active. Although no distinction was made between child work and child labour (i.e. between children who work but are not exploited, and those who are), child labourers are included. About 50,000 children are at risk in Ho Chi Minh city, including between 7,000 and 15,000 street children, child sex workers, orphans, disabled children and drug-addicted children. Since the economic crisis, street children have reappeared on the streets of Jakarta and other cities. In Jakarta alone there are an estimated 20,000. Phnom Penh has between 6,000 and 8,000 street children. With the economic crisis and fewer jobs to go around, children are being forced to take on more risky work, or work longer hours, reportedly up to 15 hours a day in Thailand. Others are forced into prostitution and the cross-border sex trade.

#### **Child Prostitution and Trafficking**

NGOs report that child prostitution is on the rise and there are also more child domestic workers. ILO studies reveal a pattern: as economies decline, there is a rise in the numbers of children being forced to work, or trafficked or abused in other ways. Customers now pay 300 Baht for sex with a child in Bangkok instead of the 800-1,000 Baht paid before the crisis. NGO workers say that prostitution has become culturally accepted in Thailand because children are expected to help support the family. Others are forced into prostitution by abusive step-parents or because their parents have died from AIDS and they have to fend for themselves. Alcoholism, gambling and domestic fighting have also driven children into prostitution. Families are also tricked into sending their children to the big cities with promises of jobs, or families in dire financial straits sell their children into prostitution.

More disturbing is the observation that the trafficking of children within and across borders is on the increase. Children as well as women are being trafficked from Vietnam to China and Cambodia, signalling the expansion of the lucrative international trade in persons for sex and other purposes, legal or otherwise. One of the main factors fuelling the trafficking of children into China is the preference for boys and the one-child policy. Organized networks appear to be involved. Boys are smuggled from Vietnam to China for adoption while girls are forced into marriages or the sex trade. Since 1990, 3,000 Vietnamese girls have been smuggled into Cambodia for the sex trade. Of these, 15% were under the age of 15. In Phnom Penh brothels, Vietnamese girls aged between 15 and 18 earn about US\$2-3 per customer after paying off debts. Brothel owners take the lion's share before the girls are paid. As more and more children get drawn into the sex trade, AIDS and drug use pose the greatest threat to their lives.

Drug use has become a major problem in Ho Chi Minh city, where some observe it has driven both boys and girls into the expanding sex trade. Children are also being

trafficked for begging. At least 500 children from Cambodia are begging in Thailand. Others are found on construction sites or in factories.

### ***Part 3: Obstacles to the Implementation of Economic, Social and Cultural Rights***

---

Economic, social and cultural rights have been badly neglected. Standards, norms and definitions lag behind those for civil and political rights. Workers' rights are the most comprehensive at both international and national levels. However, fewer countries have ratified the ICESCR, the Migrant Workers' Convention and the numerous ILO conventions than have the Convention on the Elimination of All Forms of Discrimination Against Women and the

Convention on the Rights of the Child. Enforcement of rights or performance of obligations also pose difficulties. One problem is who, apart from governments, should be obliged to protect these rights. National laws and policies are weak or inadequate for dealing with some issues, such as migrant workers' and homeworkers' rights. The enforcement of national laws is also patchy.

#### **Standards, Norms and Definitions**

---

In general terms, all people have rights to food, clothing, shelter, health, education and work. Standards and norms to protect the right to work are better developed than those for other rights. This has a lot to do with industrialization and the emergence of the working class in the nineteenth century. The workers' rights we take for granted today were fought for and hard won. Standards of the right to work include a minimum living wage, equal pay for equal work for men and women, safe and healthy working conditions, reasonable working hours and sufficient rest and holidays.<sup>2</sup> Workers also realized that it was more effective to protect the right to work collectively than individually, so they fought for the right to form trade unions and to strike.<sup>3</sup> The right to social security and social insurance<sup>4</sup> was included to protect workers' rights to an adequate standard of living if

jobs were lost. These standards have become rights enshrined in the ICESCR. But these standards or rights are not comprehensive. Workers have to develop other standards to protect their rights in ever-changing circumstances. Today, workers seek to protect their right to job security by proposing alternatives to lay-offs, such as reduced working hours and job-sharing. You could say standards are developing in terms of the right to job security. There are also numerous ILO conventions that set standards for protecting people's rights in relation to work.

Standards and norms for rights to food, shelter, health and education do not match those for the right to work but they are being developed. Take for example the right to food. Standards and norms are those that accord with human dignity, including the

<sup>2</sup> ICESCR, Art. 6 and 7.

<sup>3</sup> *ibid.*, Art. 8.

<sup>4</sup> *ibid.*, Art. 9.

right to adequate food, to quantity and quality, safety and taste, availability and cultural preference. Another is the right to the resource base to ensure availability and accessibility. Nutritional well-being and social justice are additional standards in relation to the right to food. As far as the right to shelter is concerned, is there a right

not to be evicted to make way for development? Or are there standards such as the right not to be evicted unless alternative accommodation or adequate compensation is provided? This is just the tip of the iceberg of standards for enforcing economic, social and cultural rights.

### International Covenant on Economic, Social and Cultural Rights

Although the ICESCR does not comprehensively cover economic social and cultural rights, the general principles and broad rights set out are useful. The first principle that all people have the right to self-determination, not just politically but also in terms of their economic, social and cultural development holds true in Southeast Asia and elsewhere today. To enjoy human life, all peoples have a right to self-determination, to dispose of their natural wealth and resources and not to be deprived of their own means of subsistence.<sup>5</sup> Flowing from this right, individuals and communities can protect their right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions.<sup>6</sup> This right to self-determination has special significance in relation to current conflicts in Southeast Asia and also to economic sovereignty in this age of globalization.<sup>7</sup>

The ICESCR also protects the right to family life and freedom of marriage and

paid maternity leave.<sup>8</sup> Children have a right to be protected from exploitative work harmful to their morals, health, life or normal development and not to work below a certain age.<sup>9</sup> Article 15 of the ICESCR protects the right to cultural life, the right to enjoy the benefits of scientific progress and intellectual property rights.

The ICESCR came into force on 3 January 1976 and as at 31 December 1999, 61 states had signed and 144 had ratified or acceded. However, only 12 Asian countries had signed and/or acceded.<sup>10</sup> In Southeast Asia, only Cambodia, the Philippines, Vietnam and Thailand had acceded. Thailand expressly endorsed 'self-determination' as defined in the 1993 Vienna Declaration on Human Rights. So far, only the Philippines has submitted a report to the ECOSOC Council in accordance with its obligations under the Covenant. The other six Southeast Asian countries have not given any indication whether they will accede to the Covenant in the near future.

<sup>5</sup> *ibid.*, Art. 1.

<sup>6</sup> *ibid.*, Art. 11.

<sup>7</sup> For a thorough discussion on economic sovereignty and globalization, including the place of capital controls, see the conference papers of 'Economic Sovereignty in a Globalizing World: Creating People Centred Economies for the 21st Century', 23-26 March 1999, Chulalongkorn University, Bangkok, Thailand. Co-sponsors of the conference were Focus on the Global South, DAWN (Development Alternatives for Women in a New Era) and SAPRIN (Structural Adjustment Participatory Review Initiative Network).

<sup>8</sup> ICESCR, Art. 10(1) & 10(2).

<sup>9</sup> *ibid.*, Art. 10(3). The standards were later set in ILO Convention No. 138 on Minimum Age in 1973.

<sup>10</sup> Asian countries other than those in Southeast Asia who signed or acceded are as follows: Afghanistan acceded 24/1/83, Bangladesh acceded 5/10/98, China signed 27/10/97, India acceded 10/4/79, Japan signed 30/5/78 and 21/6/79, Nepal acceded 14/5/91, the Republic of Korea acceded 10/4/90, and Sri Lanka acceded 11/6/80.

### Ratification of ICESCR by Southeast Asian Countries

Country	Date Signed	Date Ratified or Acceded
Cambodia	17/10/80	26/5/92
Philippines	15/12/66	7/6/74
Thailand		5/9/99
Vietnam		24/9/82

Source: Simon Tay, *Governance and Human Rights: Southeast Asia* (Asia Society, 1998).

### ILO Conventions

The ILO sets international standards on workers' rights. However, the ratification of ILO conventions is not a priority for countries in Southeast Asia. Out of these, the Philippines has signed the most. The 1973 Convention No. 138 on Minimum Age has been ratified in recent years by only three countries, namely the Philippines, Malaysia and Indonesia. Art. 2(3) sets 15 as the minimum age, although developing countries may opt under Art. 2(4) for the minimum working age of 14. According to Art. 3(1), no child under 18 should be made to take on work harmful to health, safety and morals. Burma, Cambodia, Malaysia, Indonesia, Laos, Singapore and Thailand ratified the 1930 Convention No. 29 on Forced Labour. Cambodia, Indonesia, the Philippines and Thailand ratified the 1957 Convention No. 105 on the Abolition of Forced Labour. Forced labour was denounced by Malaysia (13 October 1958) and Singapore (25 October 1965). Burma, Cambodia, Indonesia and the Philippines ratified the 1948 Convention No. 87 on the Freedom of Association and the Protection of the Right to Organize. Singapore, Cambodia and the Philippines ratified the 1949 Convention No. 98 on the Right to Organize and Collective Bargaining. In Southeast Asia, Malaysia was the only

country to ratify the 1949 Migration for Employment (Revised) Convention No. 97, while only the Philippines ratified the 1982 Convention No. 157 on the Maintenance of Social Security Rights and the 1995 Convention No. 176 on Safety and Health in Mines. The 1951 Equal Remuneration Convention No. 100 was ratified by Cambodia, Malaysia, the Philippines, Thailand and Vietnam.

No Southeast Asian country has signed the Homeworkers Convention 1996 (No. 177) which will come into effect in April 2000. In fact, Finland and Ireland are the only two signatories. The Convention defines homework as work carried out at home or in a place other than the workplace of the employer for remuneration and which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used. However, national laws, regulations or court decisions may determine that such a person is an independent worker.<sup>11</sup> The employer is defined as a natural or legal person who directly or through an intermediary gives out homework in the course of his business.<sup>12</sup> Article 4 of the Convention provides for equal treatment of homeworkers and other wage earners.

<sup>11</sup>. See Homeworkers Convention 1996, Art. 1.

<sup>12</sup>. Ibid., Art. 2.



Forming or joining unions, non-discrimination for jobs, health and safety, pay, social security protection, minimum age and maternity protection are covered.

No Southeast Asian country has signed the Convention banning the Worst Forms of

Child Labour 1999 (No. 182). Nor, with the exception of the Philippines, have any signed the UN Convention on the Protection of the Rights of Migrant Workers and Members of their Families, 1990.

### **Ratification of ILO Conventions Nos 29, 105, 87, 98, 97 & 157\* by Southeast Asian Countries**

	Date of Ratification					
	No. 29	No. 105	No. 87	No. 98	No. 97	No. 157
<b>Burma</b>	4/3/55		4/3/55			
<b>Cambodia</b>	24/4/99	23/8/99	23/8/99	23/8/99		
<b>Indonesia</b>	12/6/50	7/6/99	9/6/98			
<b>Malaysia</b>	11/11/57				3/3/64	
<b>Laos</b>	23/1/64					
<b>Philippines</b>		17/11/60	29/12/53	29/12/53		26/4/94
<b>Singapore</b>	25/10/65			25/10/65		
<b>Thailand</b>	26/2/69	2/12/69				

\* Convention No. 29 - Forced Labour, 1930, Convention No. 105 - Abolition of Forced Labour, 1957, Convention No. 87 - Freedom of Association and Protection of the Right to Organize, 1948, Convention No. 98 - Right to Organize and Collective Bargaining, 1949, Convention No. 97 - Migration for Employment (Revised), 1949 and Convention No. 157 - Maintenance of Social Security Rights, 1982.

### **Ratification of ILO Conventions Nos 138, 182, 100, 176 & 177\* by Southeast Asian Countries**

	Date of Ratification				
	No. 138	No. 182	No. 100	No. 176	No. 177
<b>Burma</b>					
<b>Cambodia</b>			23/8/99		
<b>Indonesia</b>	7/6/99				
<b>Malaysia</b>	9/9/97		9/9/97		
<b>Philippines</b>	4/6/98		29/12/53	27/4/98	
<b>Thailand</b>			8/2/99		
<b>Vietnam</b>			7/10/97		

\* Convention No. 138 - Minimum Age, 1973, Convention No. 182 - Worst Forms of Child Labour, 1999, Convention No. 100 - Equal Remuneration, 1951, Convention No. 176 - Safety and Health in Mines, 1995 and Convention No. 177 - Homeworkers, 1996.

## National Laws and Policies

There are various national laws and policies in Southeast Asian countries which affect the rights of farmers, indigenous people, migrant workers, homeworkers, women and children.

The Philippines passed the Indigenous Peoples Rights Act in 1997. The Act protects the rights of indigenous peoples to ancestral domains and lands, to be proved by sworn statements of elders and documents such as tax receipts. However, an earlier law, the Mining Act of 1995, grants mining permits to foreign corporations to extract precious metals and minerals, most of which are in these ancestral lands and domains. In addition, the Philippine agrarian reform programme, CARP, aims to distribute about 9 million hectares of agricultural land to sharecroppers, tenants and farm workers. The rights to food and food security are the main concerns.

In terms of the rights of migrant workers and homeworkers, there are few national laws. The Philippines passed the Migrant Workers and Overseas Filipinos Act in 1995 and its 1974 Labour Code covers the rights of homeworkers. The Act provides that workers be sent to countries with labour and social laws protecting migrant workers' rights, or countries that have signed international instruments protecting migrant workers, or those with which the Philippines has bilateral agreements protecting the rights of Filipino migrant workers, or countries that are taking positive steps to protect migrant workers'

rights.<sup>13</sup> Counselling, welfare, legal assistance and other services are also featured in the Act.<sup>14</sup> As for homeworkers, the Secretary of Labour and Employment has the power to regulate industrial homeworkers to ensure their general welfare and protection. The term 'employer' is also widely defined to cover every possible situation whereby corporations subcontract the work directly to homeworkers or through intermediaries.<sup>15</sup> It seems to go further than the Homeworkers Convention.

The Philippine Migrant Workers and Overseas Filipinos Act 1995 was designed to protect migrant domestic workers. The Anti-Sexual Harassment Act 1995 was another innovation, primarily in response to the sexual harassment of women workers. Interestingly, there is a ban on women doing night work between 10 p.m. and 6 a.m.,<sup>16</sup> except where the work requires the manual skill and dexterity of female workers where the same cannot be performed, with equal efficiency, by male workers.<sup>17</sup> The Labour Code also applies to ecozones and EPZs. Vietnam also has a Labour Code (1994) which applies to workers in the growing number of EPZs. Vietnam has the most generous provisions for maternity leave, followed by Laos and Thailand. Maternity leave in the former varies from four to six months, depending on the government's assessment of the conditions of work: whether the nature of the work is hard or harmful to women or the place of work is in a remote location.<sup>18</sup> The Laos Labour Act 1994 stipulates a 90-day maternity leave

<sup>13</sup> Philippine Migrant Workers and Overseas Filipinos Act 1995, s. 4.

<sup>14</sup> *ibid.*, s. 19 provides for the setting up of resource centres with services such as counselling, welfare, information, registration of undocumented workers, monitoring and orientation for returning migrants. S. 24 provides for legal assistance to migrant workers in distress.

<sup>15</sup> For powers of Secretary of Labour and Employment see Art. 153 and for definition of 'employer' see Art. 155 of the Philippine Labour Code 1974.

<sup>16</sup> Philippine Labour Code 1974, Art. 130.

<sup>17</sup> *ibid.*, Art. 131.

<sup>18</sup> Vietnam Labour Code 1994, s. 114(1).

including 42 days post-natal.<sup>19</sup> The Thai Labour Protection Act 1998 provides for three months maternity leave, but only 45 days of this is paid leave.<sup>20</sup> Pregnant women are also banned from undertaking night work between 10 p.m. and 6 a.m. under s. 39 of the same Act. There is a ban on women working underground, in either mining or construction, and they are also banned from doing hazardous work in section 38 of the 1998 Act. Section 33 of the Laos Labour Act 1994 bans night work between 10 p.m. and 5 a.m. and heavy work for women.

In the Philippines, children between 15 and 18 may be employed but no child below 18 should do hazardous work.<sup>21</sup> Children should not be discriminated against in terms and conditions of work.<sup>22</sup> There is a ban on child labour below 15 in Thailand and similar provisions on working children between 15 and 18 in Thailand and Laos.<sup>23</sup> In Malaysia, children below 14 are allowed to do light work within the family, or in public enterprises, or take up apprenticeships in government-approved work. However, night and underground work are not allowed.<sup>24</sup> Vietnam bans child labour below 15 except in certain categories of occupation and work determined by the Ministry of Labour, War Disabled and Social Affairs.<sup>25</sup> According to the Singapore Employment Act 1968, children aged 12

and above may undertake light work suited to their capacity and in non-industrial undertakings. Since most national laws on child labour are similar to the ILO Minimum Age Convention, enforcement may need to be strengthened.

Thailand also prohibits the sexual abuse of children through the Prevention and Suppression of Prostitution Act 1996. Anyone who has sex with a child between 15 and 18 will be jailed for one to three years and fined 20,000 to 60,000 Baht. If the victim is below 15, the jail term is increased to between two and six years and the fine to between 40,000 and 100,000 Baht.<sup>26</sup> The trafficking of children for prostitution in or beyond the borders of Thailand invites jail terms of between one and ten years and a fine of 20,000 to 200,000 Baht. If the victim is below 15, the jail term is between 10 and 20 years and the fine 200,000 to 400,000 Baht.<sup>27</sup>

There are many initiatives, national and regional, to combat the trafficking of women and children for prostitution, begging and other purposes. It reflects a growing awareness of the violations, but sadly too, the escalating numbers of women and children being forced into an obscenely lucrative industry. Child labour, too, has given rise to great concern in the wake of the economic crisis.

<sup>19</sup> Laos Labour Code 1994, s. 35.

<sup>20</sup> See s. 41 for period of maternity leave and s. 59 for paid maternity leave in the Thai Labour Protection Act 1998.

<sup>21</sup> Philippine Labour Code 1974, Art. 139.

<sup>22</sup> *ibid.*, Art. 140.

<sup>23</sup> See s. 44 of the Thai Labour Protection Act 1998 for the ban on child labour below the age of 15. S. 45 provides for child workers between 15 and 18, s. 47 prohibits night work between 10 p.m. and 6 a.m. and s. 49 outlaws hazardous work for them. See s. 37 of the Laos Labour Act which provides that children between 15 and 18 may work 6 hours a day or 36 hours a week but not hazardous work or night work between 10 p.m. and 5 a.m.

<sup>24</sup> See Children and Young Persons (Employment) Act 1966, Revised 1988. Cf. Art. 2(4) of ILO Convention No. 138, to which Malaysia is a party, which provides 14 as the minimum age for children in developing countries.

<sup>25</sup> Vietnam Labour Code 1994, s. 120.

<sup>26</sup> Thailand Prevention and Suppression of Prostitution Act 1996, s. 8.

<sup>27</sup> *ibid.*, s. 9.

#### **Part 4: Protection of Economic, Social and Cultural Rights in Southeast Asia**

---

Globalization will accelerate with economic recovery in East and Southeast Asia. The impact on people's lives will be incalculable. Governments must rise to the challenge of their responsibility for farmers, workers, minorities, women and children and our natural heritage. Governments are the guardians of people's sovereignty, a trust not to be abused.

States should ratify the ICESCR, the 1990 UN Migrant Workers' Convention and the 1996 Homeworkers' Convention. States should support the initiative to adopt a Protocol to the ICESCR similar to the First Protocol to the ICCPR. Such an international mechanism or complaints procedure will ensure international protection of peoples' economic, social and cultural rights. The Protocol should consider how to make non-state actors comply with international standards of economic, social and cultural rights. International corporations are the obvious targets. Ratification of the ILO Conventions on Minimum Age and the Worst Forms of Child Labour is a natural consequence to ratifying the Convention on the Rights of the Child for states in Southeast Asia.

Initiatives should also be developed at the regional level because there are some crucial

issues that now transcend borders. The Thai government's initiative on migrant workers should move quickly to the next step of setting up a regional mechanism. The time is ripe for ASEAN to work out common policies and guidelines on joint responsibility for migrant workers within the region. It is also time to work out a regional human rights mechanism following the ASEAN Foreign Ministers' Meeting in 1993. Such a mechanism must include powers to monitor and protect economic, social and cultural rights.

The mandate of national human rights commissions in the Philippines, Malaysia and Indonesia should be expanded to include economic, social and cultural rights. National legislation and policies should support agrarian reform and sustainable development and protection of the traditional knowledge of farmers and indigenous people. Labour laws should be revised to extend protection to homeworkers in the expanding informal sector. Not only should the minimum age be raised and/or enforced to discourage child labour, a minimum family wage should be set to ensure an adequate standard of living.

## Sources

FAO website: <http://www.fao.org>  
ILO website: <http://www.ilo.org>  
IMF website: <http://www.imf.org>  
UNDP website: <http://www.undp.org>  
UNICEF website: <http://www.unicef.org>  
UNHCHR website: <http://www.unhchr.ch>  
World Bank website: <http://www.worldbank.org>  
World Trade Organization website: <http://www.wto.org>  
Scalabrini Migration Centre website: <http://www.scalabrini.org>  
Child Workers of Asia website <http://www.cwa.tnet.co.th>  
GAAT website: <http://www.inet.co.th/org/gaatw>

Forum-Asia, including Human Rights Report 1998  
Focus on the Global South: Focus Papers & Updated, etc.  
Third World Network, including 'Third World Resurgence' Publications on WTO, Food Security & Genetic Resources  
Ibon People's Policy & Advocacy Studies  
Philippine Alliance of Human Rights Advocates (PAHRA)  
Task Force Detainees of the Philippines (TFDP)  
SUARAM, Malaysia  
Homenet, Thailand  
ALTSEAN, Burma  
SCF (UK), Vietnam  
IOM, Vietnam  
Radda Barnen, Vietnam  
Youth Research Institute, Vietnam  
Vietnam Women's Union

# ILO Conventions and the Covenant on Economic, Social and Cultural Rights: One Goal, Two Systems

Lejo Sibbel\*

## Introduction

---

*“There is no single model of democracy, or of human rights or of cultural expression for all the world. But for all the world, there must be democracy, human rights, and free cultural expression. Human ingenuity will ensure that each society, within its own traditions and history, will enshrine and promote these values.”*

Kofi Annan, Secretary-General of the United Nations

The history of mankind is marked by efforts to ensure respect for the inherent dignity of human beings. These efforts include the establishment in 1919 of the International Labour Organization (hereafter ILO) and the establishment in 1920 of the League of Nations, followed in 1945 by the United Nations (hereafter UN). Although it was created before the UN, the ILO became a specialized agency of the UN system in 1946 and has a close and long-standing relationship with the UN. When looking at the basic documents of both organizations, this is hardly surprising. The Preamble of the ILO Constitution begins with the statement that ‘universal and lasting peace can be established only if it is based upon social justice’, while the Preamble of the Charter of the UN states that one of its aims is ‘to promote social progress and better standards of life in larger freedom’. In other words, the two organizations share, at least partly, common goals. Other reasons for this close relationship are that membership of the two organizations is almost identical and, as standard-setting organizations, both function similarly.

It is fair to say that nowhere is the relationship between the ILO and the UN as strong and visible as it is in the area of human rights. Instruments, or parts thereof, adopted by the respective organizations have mutually reinforced each other, the supervisory mechanisms functioning within the two organizations have drawn upon each other’s findings, and the ILO and the UN have often cooperated on human rights matters through the exchange of information, meetings, conferences and technical and advisory assistance. Considering the mandate of the ILO, this link is probably strongest in the area of economic and social rights, an area also covered by the International Covenant on Economic, Social and Cultural Rights (hereafter ICESCR).

The relationship between economic, social and cultural rights and civil and political rights has been widely debated over the years. However, as early as 1950, the General Assembly declared, in Resolution 421(V), s. E, that ‘the enjoyment of civic and political freedoms and of economic, social and cultural rights are

\* The author is an Associate Expert on International Labour Standards, ILO Southeast Asia and Pacific Multidisciplinary Team, Manila, the Philippines.

interconnected and interdependent'. The third preambular paragraph of both international covenants reiterates this declaration in treaty form, and on 25 June 1993, representatives of 171 states adopted by consensus the Vienna Declaration and Programme of Action of the World Conference on Human Rights, which in paragraph 5 states that 'all human rights are universal, indivisible and interdependent and interrelated'.

However, whereas it appears that the 'Asian view' on human rights places more emphasis on economic, social and cultural rights (simply put, collective rights), than on civil and political rights (again simply put, individual rights), one would expect a broad acceptance of the former set of rights. Nevertheless, when looking at the ten ASEAN member countries,<sup>1</sup> only Cambodia, the Philippines, Thailand and

Vietnam have ratified the ICESCR. On the other hand, all but one ASEAN member countries are also member states of the ILO and have ratified a number of ILO conventions which cover subjects related to the Covenant.<sup>2</sup> In this paper, an attempt will be made to illustrate the relationship between certain ILO conventions and the ICESCR, and the way in which the bodies charged with supervising their application interact. An overview of the progress made and obstacles encountered by some ASEAN member states in implementing the ILO conventions ratified by them gives some indication of how certain economic and social rights have been applied. It is clear that although ILO conventions and the ICESCR operate within two different, albeit related, systems, they have a common goal: to promote social progress and better standards of life in larger freedom.

---

### ***Social Justice and Human Rights***

---

The term 'human rights' had not yet firmly found its way into the international public law dictionary when the ILO was founded. Consequently, the Constitution of the ILO and even the Declaration of Philadelphia do not mention the term. Instead, they identify 'social justice' as the basis for the organization's work.

Article II(a) of the Declaration of Philadelphia states that 'all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity'. This is the basic premise for action by the ILO. The principal right of all human beings to pursue both their material well-being and spiritual development is placed within a

framework of broad concepts of human rights (non-discrimination, freedom, dignity, etc.). The Declaration continues by specifying in Article III how the ILO envisages working towards the realization of this objective. It mentions, inter alia, measures to be taken in the areas of training, labour migration, conditions of work, collective bargaining, social security and occupational safety and health. When one takes Articles II and III of the Declaration together one can conclude that the concept of social justice encompasses certain human rights but goes beyond these rights in terms of detail and application. This can be illustrated by the call made on all states by the 1995 United Nations Social Development Summit to ratify and implement the ILO's fundamental human rights conventions, identified as the seven

<sup>1</sup> ASEAN (Association of Southeast Asian Nations) member countries are Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

<sup>2</sup> Only Brunei Darussalam is not a member state of the ILO.

conventions which cover the areas of freedom of association, discrimination and forced labour and child labour.<sup>3</sup> To date, the ILO has adopted 182 conventions, some of which go into detail with regard to subjects covered by the fundamental conventions while the remainder deal with other subjects altogether. Another such illustration is the 1998 ILO Declaration on Fundamental Principles and Rights at Work, which declares that all members of the ILO, even if they have not ratified the fundamental human rights conventions of the ILO, have an obligation, arising from the very fact of membership, to respect, to promote and to realize the principles concerning freedom of association and the

effective recognition of the right to collective bargaining, the elimination of all forms of forced labour or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation.

The conclusion is thus that the concept of social justice does not coincide precisely, but overlaps with the concept of human rights. The question then would be how these two concepts relate to each other in practice. A review of the relationship between certain ILO Conventions and the ICESCR should shed some light on this question.

### ***The Relationship between ILO Conventions and the ICESCR***

The International Bill of Human Rights consists of the Universal Declaration of Human Rights (hereafter UDHR), the ICESCR and the International Covenant on Civil and Political Rights (hereafter ICCPR). When the Universal Declaration was adopted by the General Assembly on 10 December 1948, the ILO had already effected 90 conventions, some of which deal with issues also covered by the Universal Declaration. One example of how the standard-setting efforts of the UN's predecessor, the League of Nations, and the ILO influenced the contents of the Universal Declaration concerns the issues of slavery and forced labour. Article 4 of the Universal Declaration states that 'no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms'. The League of Nations had already adopted the Slavery Convention in 1926. It then turned to the ILO and asked

that it develop a more labour-oriented version of the same principle. In 1930, the ILO adopted the Forced Labour Convention (No. 29). These two international conventions were, in turn, the principal sources for Article 4 of the Universal Declaration.<sup>4</sup>

What holds true for the relationship between Article 4 of the Universal Declaration and ILO Convention No. 29, does so even more for the relationship between Articles 6-10 and 13 of the ICESCR and ILO conventions on the same subjects. When the Covenant was adopted in 1966, the ILO had already adopted all but one (the Minimum Age Convention, 1973 [No. 138]) of the fundamental human rights conventions referred to in Copenhagen. Consequently, when comparing Articles 6-10 and 13 of the Covenant with ILO conventions covering the same subjects, one

<sup>3</sup> These are the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Minimum Age Convention, 1973 (No. 138).

<sup>4</sup> L. Swepston, 'The Universal Declaration of Human Rights and ILO Standards; A Comparative Analysis on the Occasion of the 50th Anniversary of the Declaration's Adoption', (Geneva: International Labour Office, 1998), p. 8.



can see that they are basically summaries of the ILO Conventions that were already in existence.

The most telling example of the relationship between the Covenant and ILO conventions can be found in Article 8 of the Covenant that deals with freedom of association. Some of the phrases found in this article are taken directly from the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98). For instance, whereas Article 8(1)(a) stipulates that state parties undertake to ensure 'the right of everyone to form trade unions and join the trade union of his choice, *subject only to the rules of the organization concerned ...*', Article 2 of ILO Convention No. 87 guarantees that 'workers and employers, without distinction whatsoever, shall have the right to establish and, *subject only to the rules of the organization concerned*, to join organizations of their own choosing without previous authorization' (emphasis added). Moreover, a clear recognition of the need for consistency, but probably more an acknowledgement of the fact that ILO Convention No. 87 provides more guarantees of protection than Article 8 of the Covenant, can be found in Article 8(3), which stipulates that Article 8 of the

Covenant does not authorize states that have ratified ILO Convention No. 87 'to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention'. Since, under international law, there is no difference in rank between the Covenant and ILO conventions, consistency is an important issue. It is generally considered that such consistency exists between the Covenant and the relevant ILO conventions.<sup>5</sup> The difference is that, whereas the Covenant contains relatively broad statements of principles, ILO conventions on the same subjects are considerably more detailed and contain more guidance on means of implementation. This is a natural result of the 'division of labour' between the UN and the ILO. As a technical specialized agency of the UN system, it is the ILO's job to define in detail the requirements necessary for the realization of its mandate of achieving social justice, whereas it is the UN's job to define the general principles of human rights across the entire spectrum of concepts, such as health, education, housing, etc. Thus, as has also been shown above, when one talks about the relationship between the ICESCR and the relevant ILO conventions, it is clearly one of complementarity and definitely not one of conflict.

### ***The Interaction between the Committee on Economic, Social and Cultural Rights and the ILO's Supervisory Bodies***

Whereas compliance by states parties to the Covenant is monitored through only one supervisory mechanism, the Committee on Economic, Social and Cultural Rights, compliance of ILO standards is monitored through a number of different supervisory

mechanisms that mutually reinforce one another. It goes beyond the scope of this paper to discuss all these mechanisms in detail, and this paper will therefore focus on the regular supervisory mechanism of the ILO.<sup>6</sup> States which have ratified a

<sup>5</sup> An exception is Article 7(a) of the ICESCR, which provides for 'equal pay for equal work' for women, a notion which does not correspond with the 'equal pay for work of equal value' requirement contained in the Equal Remuneration Convention, 1951 (No. 100) of the ILO.

<sup>6</sup> For a detailed account of the supervisory mechanism, see the *Handbook of Procedures relating to International Labour Conventions and Recommendations*, (Geneva: International Labour Office, 1998), Rev.2/1998.

particular convention are bound by Article 22 of the ILO Constitution to submit regular reports on their law and practice in the field covered by the convention. For the fundamental human rights conventions, the regular reporting period is every two years (whereas it is every five years for most other conventions). If necessary, reports can also be requested outside the regular cycle. Governments must communicate their reports to the most representative organizations of workers and employers in the country, which may provide their own comments on the application of the convention. Government reports and comments from employers' and workers' organizations are examined by the Committee of Experts on the Application of Conventions and Recommendations, which provides individual comments to governments on their efforts in applying ratified conventions. This Committee is made up of 20 independent experts in law and social policy from different regions in the world and meets annually in November/December. The Committee's general comments and its individual observations to countries are published every year in a report which is reviewed by the Committee on the Application of Standards of the International Labour Conference. This is a standing committee of the International Labour Conference, which takes place in June each year, and consists of representatives of governments, workers and employers. It also discusses in detail a number of cases of particular concern, often those which involve serious failures to apply one of the fundamental human rights conventions. The regular supervisory system creates a dialogue between the country and the ILO supervisory bodies which, in the vast majority of cases, leads

to step-by-step improvements in the area covered by a convention.<sup>7</sup>

Although there are obvious similarities between the supervisory mechanisms of the Covenant and the ILO in that both work on the basis of a reporting obligation and review by a committee, there are also some striking differences. The first, of course, is the two-stage review of compliance within the ILO system by two different committees, and the second is the ILO's option of requesting reports outside the regular cycle. Both these features, not available with the supervisory system of the Covenant, enhance the thoroughness and, to a certain degree, the speediness of the ILO regular supervisory mechanism.

There are also other differences that have nothing to do with the formal set-up of the two different systems but rather with institutional arrangements that affect the functioning of the two systems. The Committee of Experts of the ILO reviews some 2,000 reports each year, which cover all ILO Conventions. The only reason why it is able to do so is because the International Labour Office, the secretariat of the ILO, has an entire department devoted to preparing the review of these reports. In addition, whenever the supervisory mechanisms of the ILO identify that a country has difficulties in complying with a convention, the ILO offers assistance to the country concerned in order to solve these difficulties.<sup>8</sup> In contrast, the Committee on Economic, Social and Cultural Rights cannot, unfortunately, avail itself of such institutional back-up.

Cooperation between the two mechanisms is basically one of exchange of information

<sup>7</sup> This description of the functioning of the regular supervisory mechanism of the ILO was taken almost word for word from a brochure developed by Mr. T. de Meyer, Specialist on International Labour Standards and Labour Law of the ILO's South Asia Multidisciplinary Advisory Team in New Delhi, India.

<sup>8</sup> In this regard it should be noted that ILO technical assistance in all fields is based on its standards and that, since 1964, more than 2,000 cases of improvement in labour legislation and social policy have been noted by the Committee of Experts.

mostly through their respective secretariats, although there are also cases where countries submitting reports, either to the Committee on ESCR or the Committee of Experts, refer specifically to reports submitted to the other organization.

The ILO provides the Committee on Economic, Social and Cultural Rights with a report before each session. This contains an indicative listing concerning the principal ILO conventions relevant to Articles 6-10 and 13 of the Covenant, information concerning the ratification of these conventions and comments made by the ILO supervisory bodies with regard to the application of these conventions by states that will be considered by the Committee at any particular session. The provision of such a report is based upon arrangements approved by the Governing Body of the ILO to give effect to resolution 1988 (LX) of 11 May 1976 of the United Nations Economic and Social Council, requesting that specialized agencies submit reports in accordance with Article 18 of the ICESCR on the progress made in achieving the observance of the provisions of the Covenant falling within the scope of their activities.

The information provided is subsequently used by members of the Committee on Economic, Social and Cultural Rights in their discussions with government representatives or to cross-reference against information provided in the government report and, when appropriate, they can request further information from the government. In addition to the written information provided, the Committee organizes a meeting prior to its substantive sittings at which all specialized agencies and UN bodies are invited to provide oral information concerning general developments within the respective

organizations that may be of interest to the Committee, as well as specific information concerning the countries under consideration, that may be of interest to the Committee but is not incorporated in the report (for instance, information on ILO technical assistance projects in the country).

Examples of cross-references to the ILO are scarce in the case of the four ASEAN members that have ratified the Covenant, since one (Thailand) only recently ratified the Covenant and has therefore not yet had to report, and the other three have either a partial (Philippines and Vietnam) or total (Cambodia) backlog in reporting. As a result, the Committee has so far discussed only the initial reports of the Philippines, which covered Articles 10-12 of the Covenant, and Vietnam, which covered Articles 1-15 of the Covenant. One available example, however, is that a member of the Committee asked the Philippines to clarify why it had not ratified the ILO Minimum Age Convention, 1973 (No. 138), to which the representative replied that this would probably be a matter of time.<sup>9</sup> In another example, the Vietnamese representative, in reply to written questions put forward by the Committee, made reference to having benefited from the services of ILO experts in the preparation of a new labour code.<sup>10</sup>

For its part, the Committee of Experts of the ILO cross-references the information available within the government report and information provided by employers' and workers' organizations against information available in official reports of the different UN human rights supervisory mechanisms, including the Committee on Economic, Social and Cultural Rights. Unfortunately, there are no examples of such cross-references for the ASEAN members that have ratified the Covenant. Considering

<sup>9</sup> UN Doc. E/C.12/1995/SR.12, paras. 6, 20 and 22. NB: the Philippines ratified ILO Convention No. 138 on 4/6/98.

<sup>10</sup> UN Doc. E/C.12/1993/SR.9, para. 32.

that these four members have so far only submitted two reports this is not surprising. Although not ideal, one therefore has to look to other countries for examples. Thus, when discussing the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in the Islamic Republic of Iran,<sup>11</sup> the Committee of Experts referred to a range of UN documents, including a Summary Record and the Concluding Observations of the Committee on Economic, Social and Cultural Rights.<sup>12</sup> In an example showing the dynamics that exist between different

human rights instruments, the Committee of Experts, discussing the application of Convention No. 111 in Bulgaria, noted from a Constitutional Court ruling that a certain legislative provision had been found contrary to ILO Convention No. 111, as well as the ICESCR and the ICCPR.<sup>13</sup>

From the above, one can conclude that, not only do ILO conventions and the ICESCR complement each other, but, in addition, a certain level of cooperation exists between the mechanisms entrusted with the supervision of their application.

### ***The Application of ILO Conventions by ASEAN Member Countries***

In the following section, the status of application of ILO conventions by ASEAN member countries<sup>14</sup> is shown. This has been based on observations made by the Committee of Experts and is limited to the fundamental human rights conventions of the ILO. Considering the relationship between ILO conventions and the ICESCR, this can also be viewed as an indication of the status of application by the different ASEAN members of those parts of the ICESCR that correspond with the ILO conventions they have ratified. To this end, Annexes I and II contain a list of the principal ILO conventions relevant to Articles 6-10 and 13 and a list of those ILO conventions relevant to the ICESCR that have been ratified by one or more ASEAN member countries, respectively.

The section covers comments made by the Committee of Experts up to and including its 1998 session, published in 1998. The

report of the Committee's 1999 session is due to be published in March 2000.

#### **Cambodia**

##### *Committee of Experts*

In a 1998 observation on the Forced Labour Convention, 1930 (No. 29), the Committee of Experts noted a government report which referred to s. 15 and 16 of the new Labour Law, Ch. 1, s. V, which prohibits forced or compulsory labour and the hiring of people for work to pay off debts. It recalled, however, that a Sub-Decree establishing a Workday for Irrigation and Agriculture provides that all people, including armed forces, officials and public servants, have an obligation to perform irrigation work for 15 days a year, and students for seven days a year. The Committee noted that the provisions of this sub-decree did not meet the exemptions of 'minor communal services' or 'emergency' applicable to the general prohibition of forced labour.

<sup>11</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 83rd Session, 1996, p. 289.

<sup>12</sup> UN Doc. E/C.12/1993/SR.8, and United Nations Doc. E/C.12/1993/7.

<sup>13</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 80th Session, 1993, p. 323.

<sup>14</sup> This includes ASEAN member countries that are also state members of the ILO and were present at the Manila Conference, i.e. Brunei Darussalam and Myanmar are excluded.

*Complementary Information*<sup>15</sup>

More recently ILO officials were informed that the Sub-Decree establishing a Workday for Irrigation and Agriculture was about to be withdrawn.

In 1999, Cambodia ratified all six previously unratified fundamental ILO conventions. The ILO has embarked on an intensive cooperation programme to implement these instruments in law and in practice, beginning with a series of seminars on the ratified conventions. This cooperation includes the dissemination and actual implementation of the Labour Code, assistance to trade unions, improvement of labour inspection and the setting up of a tripartite national Labour Advisory Committee. Furthermore, assistance is being provided in the drafting of a Labour Court Bill, to install a labour court system which can speedily follow up on individual and collective labour disputes. Cambodia is presently looking into the possibility of ratifying the Worst Forms of Child Labour Convention (No. 182).

**Indonesia**

*Committee of Experts*

In a 1998 observation on the Forced Labour Convention, 1930 (No. 29), the Committee of Experts continued its discussion on the situation of the Dayak people in East Kalimantan who, according to information submitted by the World Confederation of Labour, were being subject to conditions of debt bondage. It also discussed the impact on local communities, in relation to the risk of creating debt-incurred labour, of certain practices in commercial logging concessions, related company-designed community development projects and industrial forest plantations, as well as the conditions surrounding the transmigration programme.

In a 1997 observation on the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Committee of Experts discussed the need to strengthen the protection of workers so as to cover acts of anti-union discrimination, the need to adopt specific legislative provisions to protect workers' and employers' organizations against acts of interference by each other, and the restrictions imposed on the right to bargain collectively in the public and private sectors.

*Complementary Information*

Over the past two years, Indonesia has made considerable progress in the area of labour standards. It ratified ILO Convention No. 87 in June 1998 and accepted an ILO Direct Contacts Mission in August of that same year. In line with the recommendations of the Mission, a labour law reform programme was developed and implemented on the basis of a tripartite drafting process. In addition, in December 1998, a Letter of Intent was signed between the government and the ILO which formalized the government's intention to ratify the three fundamental human rights conventions it had not yet ratified, as well as the ILO's pledge to provide technical assistance. Within the framework of the above-mentioned processes, registration of trade unions has been widened, several pieces of labour legislation which have benefited from ILO inputs and been drafted through a tripartite consultation process will be considered by parliament, several labour activists have been released from imprisonment, an extensive series of awareness-raising workshops concerning the fundamental human rights conventions of the ILO has been held throughout Indonesia, and Indonesia ratified Convention Nos 105, 111 and 138. Indonesia is also expected to ratify Convention No. 182 in 2000.

<sup>15</sup> The complementary information for all countries, except Indonesia and the Philippines, was provided by Mr. J. Grimsman, Senior Specialist on International Labour Standards and Labour Law of the ILO's East Asia Multidisciplinary Advisory Team in Bangkok, Thailand.

## **Lao People's Democratic Republic**

### *Committee of Experts*

There are no pending observations with regard to the four conventions ratified by Laos.

### *Complementary Information*

Laos is cooperating with the ILO's International Programme for the Elimination of Child Labour (hereafter IPEC) and is looking to ratify the Worst Forms of Child Labour Convention (No. 182). The government also intends to submit the fundamental ILO conventions so far not ratified (i.e. all except the ratified Forced Labour Convention, No. 29) to parliament for ratification.

## **Malaysia**

### *Committee of Experts*

In a 1998 observation on the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Committee noted that s. 15 of the Industrial Relations Act (hereafter IRA), which limits the scope of collective agreements for companies granted 'pioneer status', was in the process of being amended. It also referred to the restrictions on collective bargaining contained in s. 13(3) of the IRA, with regard to matters indicated as internal management prerogatives (i.e. promotion, transfer, employment, termination, dismissal and reinstatement). The Committee also commented on s. 52 of the IRA which contains certain restrictions on the right to bargain collectively for public servants other than those engaged in the administration of the state.

### *Complementary Information*

In the last four years, interest in the ILO's conventions (especially the fundamental ones) has risen considerably. A first concrete step was the ratification of the Equal Remuneration Convention (No. 100) and the Minimum Age Convention (No. 138) in 1997. Since then, a number of tripartite national and provincial seminars

and workshops have been held to disseminate knowledge of the ILO's fundamental conventions. Discussions with the government on the ratification of the Freedom of Association and Protection of the Right to Organize Convention (No. 87) are continuing. However, the problems raised in the Committee of Experts' Observation have not yet been fully overcome. The government intends to ratify the Worst Forms of Child Labour Convention (No. 182). Furthermore, the ILO and the Malaysian Trades Union Congress have held a series of workshops on ILO conventions and trade union rights, to assist unions in positioning themselves in the national context. The government has also approached the ILO for assistance in ratifying the Chemicals Convention (No. 170).

## **The Philippines**

### *Committee of Experts*

In a 1998 observation on the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Committee of Experts discussed certain discrepancies between national legislation (mostly the Labour Code) and the requirements of the Convention. These included compulsory arbitration in industries 'indispensable to the national interest', disproportionate sanctions for participation in illegal strikes, the registration requirement that at least 20% of workers in a bargaining unit are members of a union, and the requirement of ten unions to establish a federation.

In a 1998 observation on the Abolition of Forced Labour Convention, 1957 (No. 105), the Committee pointed out that national legislation contained provisions that allowed for compulsory arbitration enforceable with penalties involving compulsory labour beyond services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

In a 1998 observation on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee noted with interest the initiatives of the government to integrate gender concerns in the enforcement of labour standards. It proposed to do this by incorporating violations of an Act strengthening prohibition on discrimination against women on inspection lists, as well as by prescribing women workers as one of the inspection priorities in 1997. It also discussed issues related to progress made in implementing the Anti-Sexual Harassment Act.

*Complementary Information*

The Philippines is currently undertaking a review of the Labour Code, which includes ensuring that it is in line with ratified ILO Conventions. It is also considering the ratification of Conventions No. 29 and 182, and has had technical discussions with the International Labour Office on steps required to move closer to full implementation of all ratified conventions. The Philippines also cooperates with IPEC.

**Thailand**

*Committee of Experts*

In a 1998 observation on the Forced Labour Convention, 1930 (No. 29), the Committee of Experts noted with interest that a new constitution had been adopted in 1997 which provides for the prohibition of forced labour, and that the Labour Protection Act of 1998 prohibits the employment of children under the age of 15. It also discussed issues related to the implementation of the Prevention and Suppression of Prostitution Act of 1996, the Labour Protection Act, the number and nature of inspections carried out and sanctions and prosecutions imposed, and pointed out in this respect that the Convention requires that the illegal exaction of forced labour should be punishable as penal offence.

In a 1998 observation on the Abolition of Forced Labour Convention, 1957 (No. 105), the Committee discussed legislation, the provisions of which may be used to impose forced labour as a means of political coercion or as a punishment for holding or expressing, even peacefully, certain political views. It also discussed the scope of certain sections of the Labour Relations Act and the State Enterprise Labour Relations Act insofar as the scope of sanctions under these acts involving compulsory prison labour is not limited to essential services. In addition, the Committee discussed the issue of the application of a section of the Criminal Code under which participation in any strike with the purpose of changing the laws of the state, coercing the government or intimidating the people was punishable with imprisonment involving compulsory labour. Finally, it discussed the use of forced labour as a means of labour discipline in relation to seafarers.

*Complementary Information*

Thailand is closely cooperating with the ILO and IPEC. It intends to ratify the Minimum Age Convention (No. 138). Ratification of the Worst Forms of Child Labour Convention (No. 182) is also envisaged. A new State Enterprise Labour Relations Act and a new Labour Relations Act are before parliament, and the ILO has given some input in the formulation of this legislation. However, the parliamentary process has taken an unduly long time and is not yet in its final stage. Furthermore, the draft legislation still contains a number of discrepancies with the requirements of the ILO's fundamental conventions, especially the ones on freedom of association.

**Singapore**

*Committee of Experts*

In a 1998 observation on the Forced Labour Convention, 1930 (No. 29), the Committee of Experts discussed the application of the Destitute Persons Act under which compulsory work can be imposed.

In a 1997 observation on the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Committee referred to the prohibition under section 17(2) of the Industrial Relations Act of negotiations relative to transfer and dismissal, as management prerogatives. It also discussed the discretion of the Industrial Arbitration Court to refuse to register collective agreements concluded in newly established enterprises.

No complementary information is available.

**Vietnam***Committee of Experts*

There are no pending observations with

regard to the conventions ratified by Vietnam.

*Complementary Information*

Vietnam's Labour Code has been drafted with strong input from the ILO. However, the country still has a communist political system, and the single trade union is very much in this tradition. On the other hand, in 1997 Vietnam ratified the Equal Remuneration Convention (No. 100) and the Discrimination (Employment and Occupation) Convention (No. 111). Most recently the government approached the ILO for assistance in ratifying the remaining fundamental conventions.

---

**Conclusion**

It is clear that the relationship between the ILO conventions and the ICESCR is one of complementarity, with no element of conflict. This shows that the functional relationship between the UN and the ILO as a specialized agency is working as it should. What this means to individual governments in terms of ratification and application of the different instruments is their decision. One minimal conclusion can be drawn nevertheless; the ratification and implementation of one does not impede ratification and implementation of the other. In fact it probably facilitates it.

The social consequences of the Asian financial crisis brought home in a very unpleasant manner the message that, as it is phrased in the ILO Declaration on Fundamental Principles and Rights at Work, economic progress is essential but not sufficient to ensure equity, social progress and the eradication of poverty. As a consequence, there is growing awareness in most Asian countries that they need to be more socially responsible. When measured by progress made in the area of

labour standards, a number of ASEAN member countries are trying to be more socially responsible. A greater commitment by all ASEAN member countries to the application of economic and social rights, with the ratification of ILO conventions and the ICESCR as a possible first step, would send out a positive message in this respect.

However, the universality of human rights is a question that continues to be debated, and mostly so in the Asian region. In my view, the above-mentioned Article 5 of the Vienna Declaration ends that debate rather eloquently. It states that 'all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms'.



## Annex I

Principal ILO conventions relevant to Articles 6-10 and 13 of the ICESCR:

### Article 6 of the ICESCR

Unemployment Convention, 1919 (No. 2)  
Forced Labour Convention, 1930 (No. 29)  
Fee-Charging Employment Agencies Convention, 1933 (No. 34)  
Employment Service Convention, 1948 (No. 88)  
Fee-Charging Employment Agencies Convention, 1949 (No. 96)  
Abolition of Forced Labour Convention, 1957 (No. 105)  
Indigenous and Tribal Populations Convention, 1957 (No. 107)  
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)  
Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)  
Employment Policy Convention, 1964 (No. 122)  
Paid Educational Leave Convention, 1974 (No. 140)  
Human Resources Development Convention, 1975 (No. 142)  
Workers with Family Responsibilities Convention, 1981 (No. 156)  
Termination of Employment Convention, 1982 (No. 158)  
Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)  
Employment Promotion and Protection Against Unemployment Convention, 1988 (No. 168), Part II.  
Indigenous and Tribal Peoples Convention, 1989 (No. 169)

### Article 7 of the ICESCR

#### *Remuneration*

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)  
Minimum Wage-Fixing Machinery (Agriculture) Convention, 1951 (No. 99)  
Minimum Wage-Fixing Machinery Convention, 1970 (No. 131)

#### *Equal remuneration*

Equal Remuneration Convention, 1951 (No. 100)

#### *Safe and healthy working conditions*

White Lead (Painting) Convention, 1921 (No. 13)  
Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)  
Protection Against Accidents (Dockers) Convention, 1929 (No. 28)  
Protection Against Accidents (Dockers) Convention, 1932 (No. 32)

Safety Provisions (Building) Convention, 1937 (No. 62)

Labour Inspection Convention, 1947 (No. 81)  
Radiation Protection Convention, 1960 (No. 115)  
Guarding of Machinery Convention, 1963 (No. 119)  
Hygiene (Commerce and Offices) Convention, 1964 (No. 120)

Maximum Weight Convention, 1967 (No. 127)  
Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Benzene Convention, 1971 (No. 136)  
Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)

Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)

Occupational Safety and Health Convention, 1981 (No. 155)

Occupational Health Services Convention, 1985 (No. 161)

Asbestos Convention, 1986 (No. 162)

Safety and Health in Construction Convention, 1988 (No. 167)

Chemicals Convention, 1990 (No. 170)

Night Work Convention, 1990 (No. 171)

#### *Rest, limitation of working hours and holidays with pay*

Hours of Work (Industry) Convention, 1919 (No. 1)  
Weekly Rest (Industry) Convention, 1921 (No. 14)  
Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)

Forty-Hour Week Convention, 1935 (No. 47)

Holidays with Pay Convention, 1936 (No. 52)

Holidays with Pay (Agriculture) Convention, 1957 (No. 101)

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)

Holidays with Pay Convention (Revised), 1970 (No. 132)

Part-time Work Convention, 1994 (No. 175)

Homework Convention, 1996 (No. 177)

### Article 8 of the ICESCR

Right of Association (Agriculture) Convention, 1921 (No. 11)

Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)

Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

Workers' Representatives Convention, 1971 (No. 135)

Rural Workers' Organizations Convention, 1975 (No. 141)

Labour Relations (Public Service) Convention, 1978 (No. 151)

Collective Bargaining Convention, 1981 (No. 154)

Article 9 of the ICESCR

Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)  
 Workmen's Compensation (Accidents) Convention, 1925 (No. 17)  
 Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)  
 Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)  
 Sickness Insurance (Industry) Convention, 1927 (No. 24)  
 Sickness Insurance (Agriculture) Convention, 1927 (No. 25)  
 Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)  
 Old-Age Insurance (Agriculture) Convention, 1933 (No. 36)  
 Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)  
 Invalidity Insurance (Agriculture) Convention, 1933 (No. 38)  
 Survivor's Insurance (Industry, etc.) Convention, 1933 (No. 39)  
 Survivor's Insurance (Agriculture) Convention, 1933 (No. 40)  
 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)  
 Unemployment Provisions Convention, 1934 (No. 44)  
 Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48)  
 Social Security (Minimum Standards) Convention, 1952 (No. 102)  
 Equality of Treatment (Social Security) Convention, 1962 (No. 118)  
 Employment Injury Benefits Convention, 1964 (No. 121)  
 Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)  
 Medical Care and Sickness Benefits Convention, 1969 (No. 130)  
 Maintenance of Social Security Rights Convention, 1982 (No. 157)  
 Employment Promotion and Protection Against Unemployment, 1988 (No. 168)

Article 10 of the ICESCR

*(a) Maternity protection (re paragraph 2)*

Maternity Protection Convention, 1919 (No. 3)  
 Maternity Protection Convention (Revised), 1952 (No. 103)

*(b) Protection of children and young persons in relation to employment and work (re paragraph 3)*

Minimum Age (Industry) Convention, 1919 (No. 5)  
 Minimum Age (Sea) Convention, 1920 (No. 7)

Minimum Age (Agriculture) Convention, 1921 (No. 10)  
 Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)  
 Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33)  
 Minimum Age (Sea) Convention (Revised), 1936 (No. 58)  
 Minimum Age (Industry) Convention (Revised), 1937 (No. 59)  
 Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60)  
 Minimum Age (Fisherman) Convention, 1959 (No. 112)  
 Social Policy (Basic Aims and Standards) Convention, 1952 (No. 117)  
 Minimum Age (Underground Work) Convention, 1965 (No. 123)  
 Minimum Age Convention, 1973 (No. 138)  
 Night Work of Young Persons (Industry) Convention, 1919 (No. 6)  
 Night Work (Bakeries) Convention, 1925 (No. 20)  
 Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79)  
 Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)  
 White Lead (Painting) Convention, 1921 (No. 13), Art. 3  
 Radiation Protection Convention, 1960 (No. 115), Art. 7  
 Maximum Weight Convention, 1967 (No. 127), Art. 7  
 Benzene Convention, 1971 (No. 136), Art. 11  
 Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)  
 Medical Examination (Seafarers) Convention, 1946 (No. 73)  
 Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)  
 Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)  
 Medical Examination (Fishermen) Convention, 1959 (No. 113)  
 Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)

Article 13 of the ICESCR

Human Resources Development Convention, 1975 (No. 142)

## Annex II

### Ratification Lists

Conventions	Cam	Indo	Laos	Mal	Myan	Sing	Phil	Thai	Viet
<i>Dialogue + Cooperation 1/2001</i>									
<b>1. Fundamental Human Rights Conventions</b>									
Forced Labour, 1930 (No. 29)	X	X	X	X	X	X	X	X	X
Freedom of Association & Protection of the Right to Organize, 1948 (No. 87)	X	X		X			X		
Right to Organize & Collective Bargaining, 1949 (No. 98)	X			X	X	X	X	X	
Equal Remuneration, 1951 (No. 100)	X	X		X		X	X	X	
Abolition of Forced Labour, 1957 (No. 105)	X	X		X		X	X	X	
Discrimination (Employment and Occupation), 1958 (No. 111)	X	X					X		
Minimum Age, 1973 (No. 138)	X	X		X			X		
<b>2. Others</b>									
Hours of Work (Industry), 1919 (No. 1)					X				
Unemployment, 1919 (No. 2)					X				
Minimum Age (Industry), 1919 (No. 5)									
Night Work for Young Persons (Industry), 1919 (No. 6)	X		X	X		X			X
Minimum Age (Sea), 1920 (No. 7)				X		X			
Right of Association (Agriculture), 1921 (No. 11)				X		X			
Workmen's Compensation (Agriculture), 1921, (No. 12)				X		X			
White Lead (Painting), 1921 (No. 13)	X		X	X		X			

Conventions	Cam	Indo	Laos	Mal	Myan	Sing	Phil	Thai	Viet
Weekly Rest (Industry), 1921 (No. 14)				X	X			X	X
Minimum Age (Trimmers and Stokers), 1921 (No. 15)				X	X	X			
Medical Examination of Young Persons (Sea), 1921 (No. 16)				X	X	X			
Workmen's Compensation (Accidents), 1925 (No. 17)				X	X	X			
Equality of Treatment (Accident Compensation), 1925 (No. 19)									
Minimum Wage-Fixing Machinery, 1928 (No. 26)					X				X
Marking of Weight (Packages Transported by Vessels), 1929 (No. 27)					X				X
Protection against Accidents (Dockers) (Revised), 1932 (No. 32)		X			X	X			
Workmen's Compensation (Occupational Diseases) (Revised), 1934 (No. 42)					X				
Holidays with Pay, 1936 (No. 52)					X				
Minimum Age (Industry) (Revised), 1937 (No. 59)							X		
Medical Examination of Young Persons (Industry), 1946 (No. 77)				X		X			X
Labour Inspection, 1947 (No. 81)				X		X	X	X	
Employment Service, 1948 (No. 88)							X		
Night Work of Young Persons (Industry) (Revised), 1948 (No. 90)									
Minimum Wage Fixing Machinery (Agriculture), 1951 (No. 99)		X							

Conventions	Cam	Indo	Laos	Mal	Myan	Sing	Phil	Thai	Viet
Weekly Rest (Commerce and Offices), 1957 (No. 106)							X		
Equality of Treatment (Social Security), 1962 (No. 118)				X					X
Guarding of Machinery, 1963 (No. 119)		X							X
Hygiene (Commerce and Offices), 1964 (No. 120)									X
Minimum Age (Underground Work), 1965 (No. 123)									
Medical Examination of Young Persons (Underground work), 1965 (No. 124)							X		
Maximum Weight, 1967 (No. 127)							X		
Rural Workers' Organizations, 1975 (No. 141)									
Occupational Safety and Health, 1981 (No. 155)							X		
Vocational Rehabilitation and Employment (Disabled Persons), 1983 (No. 159)									X

Key: Cam - Cambodia; Indo - Indonesia; Laos - Lao People's Democratic Republic; Mal - Malaysia; Myan - Myanmar; Sing - Singapore; Phil - Philippines; Thai - Thailand

# Executive Summary\*

## Conference on Human Rights and Social Development – Economic, Social and Cultural Rights and the ILO Conventions: Contents, Instruments, Complementarity

### *Introduction*

---

*Dr Erfried Adam*

Director, Friedrich Ebert Stiftung Office for Regional Co-operation in Southeast Asia, Singapore

Dr Adam stated that this is the fourth conference that the Friedrich Ebert Stiftung (hereafter FES) has organized in Manila with the aim of contributing to the debate on human rights in Asia and between Europe and Asia. He noted that this is a dialogue between different sectors of society, organizations, experiences, cultures and religions from Southeast Asian countries. While there was no intention to discriminate between the governments and employees' organizations invited to participate, more room was given to representatives of unions and NGOs in the hope that it would enhance the discussions and contribute to a better understanding of issues between the different actors.

Dr Adam pointed out that the main title of the conference was designed to place the debate on human rights in a broader context. The conference presents a normative approach to the subject of human rights. The recent financial crisis

has given birth to an awareness of the importance of human rights, especially in the area of social security where it has become apparent that social security safety nets are necessary in the existing economic order.

The focus given to the Covenant on Economic, Social and Cultural Rights (hereafter ICESCR) does not mean a diminution of the importance of civil and political rights but rather a confirmation of the 'indivisible' and 'interdependent' nature of human rights. Recent events have placed economic and social rights in the limelight, and this calls for a re-examination of these rights in order to appreciate their content, value and practical importance.

Dr Adam expressed hope that Asia and the West could work together in creating an international political environment suitable for balanced economic and social progress in all regions.

\* This summary of the papers presented and the proceedings of the Friedrich Ebert Stiftung Conference on Human Rights, held in Manila, 24-25 January 2000, was compiled by the documentation team consisting of Gisella Dizon-Reyes, Joel Raquedan, Vincent Yambao and Noel Villaroman.

## **Opening Address**

---

*Secretary Bienvenido Laguesma*

Department of Labor and Employment, the Philippines

In his opening address Secretary Laguesma stressed that social development is associated with the continuing process of growth with equity that leads to wealth creation, prosperity and the rise in standards of living for all. He stated that the present conference is auspicious because of the renewed international resolve to promote social development founded on human rights.

He stated that the pursuit of human rights has assumed a deeper dimension because of the fall of autocratic regimes and the growth of democracy, the consequences of economic, social and cultural rights, labour rights and globalization.

Elaborating on labour issues as central concerns of both the United Nations (hereafter UN) Convention on Economic, Social and Cultural Rights and the International Labour Organization (hereafter ILO) Declaration of Fundamental Principles, he went on to discuss the implementation of these principles and the status of their application in the Philippines.

He concluded that the fundamental rights of work are valuable because they provide the benchmark in the treatment of workers. These can be simplified into a single principle that all sectors must respect the human rights of workers if social development is to advance.

## **The ICESCR: Importance and Implementation Process**

---

*Professor Virginia Bonoan-Dandan*

Chairperson, Committee on Economic, Social and Cultural Rights, the Philippines

Professor Dandan discussed the main instruments collectively known as the International Bill of Human Rights which the UN employs in the promotion, protection and monitoring of human rights.

She also discussed the concept of state accountability which, according to her, can be understood by considering the legal obligation of state parties to submit periodical reports to the UN Committee on Economic, Social and Cultural Rights. These reports are meant to gauge their

ability or inability to realize what is set forth in the human rights instruments.

Professor Dandan concluded that the obligation of state parties to report what they have accomplished in their respective countries plays a pivotal role in the eventual realization of the rights enshrined in the ICESCR. According to her, the Covenant does not expect perfection immediately but it does assert that states parties must devote their existing resources to progressively realize these rights.

---

## ***ILO Conventions and Human Rights: Common Goals or Competing Principles?***

---

***Ms Mitsuko Horiuchi***

Assistant Director-General/Regional Director Asia Pacific Region, International Labour Organization, Thailand

Ms Horiuchi gave the history of the ILO and the roles it has played in the promotion and protection of human rights in the international arena. She emphasized that the ILO has already been a powerful advocate of human rights for eight decades. According to her, the tripartite structure of government, employers and employees is the great strength which underpins the success of this organization.

Ms Horiuchi went on to discuss globalization and its ramifications for human rights. She lamented that the emerging global economy built upon openness of the market is not benefiting enough people. The economic growth it entails is not the real goal; it is the promotion of equity.

In addition, the ‘centrality of employment to development’ is another principle that must be emphasized. This principle means that the real aim of development is for people to have meaningful and freely chosen jobs.

The ILO has called for new multilateral initiatives to address the social implications of globalization. This aims to reduce inequality of opportunity within and between nations, and to ensure that globalization benefits workers and their families. The attainment of these aims, according to her, is development in the real sense of the word.

---

## ***Workers’ Rights, Social Rights: An Asian Union Perspective***

---

***Senator Zainal Rampak***

President, Malaysian Trades Union Congress (MTUC), Malaysia; ILO Governing Body Member

Senator Rampak presented the views of organized labour on workers’ rights and social rights from an Asian perspective. The presentation focused on these ‘twin areas’ using several other areas of concern as take-off points, including International Policy Instruments, Core Issues Pertaining to Worker’s Rights and Social Rights, Multilateral Trading Blocs and Trade Agreements, National Legislative Provisions and Implementation Levels. According to him, there are core issues pertaining to workers and workers’ rights which include the basic freedoms guaranteed under the major human rights instruments.

Another important area of concern is the existence of multilateral trading blocs and trade agreements. These trading arrangements have presented problems because they do not take into account national social structures, economic disparities and peoples’ aspirations. A specific result of this increasing awareness is the move to re-examine the present economic order and the possibility of establishing a new one that would be responsive to the needs of the people.

National legislative provisions are also important in the promotion of workers’ rights. These national legislative provisions



are determined by the regulation and enforcement of employment conditions, the registration and administration of trade unions, industrial relations and social security.

The passage of important national legislation is but one of the levels at which workers' rights can be implemented. This level of implementation is lacking in Asian countries due to several factors such as

inadequate enforcement, lack of funds, reluctance of governments and the existence of labour contracting.

Finally, trade unions are also important factors in the implementation of workers' rights. Amidst the tide of employer opposition, labour unions perform important roles as facilitators and mobilizers of solidarity support.

### ***ILO Core Conventions, the ICESCR and the UN Summit for Social Development: The Workers' Role in the Struggle for their Implementation***

*Dr Ursula Engelen-Kefer*

Deputy President, Confederation of German Trade Union Confederation (DGB), Germany; ILO Governing Body Member

Dr Kefer discussed the interrelationship of civil and social rights and how the ILO Declaration of 1998 has overcome the fruitless and harmful international debates on which set of rights is more important.

She began her presentation by outlining the three main human aspirations contained in the UN Charter, i.e. (1) the maintenance of peace; (2) the realization of human rights; and (3) social progress and better living conditions. All three elements must be supported by workers, although it is particularly within the field of social development that workers have a special role to play.

According to Dr Kefer, the adoption of the core labour rights conventions by the International Labour Conference is a milestone on the way to a universally accepted system of social rights. Furthermore, the adoption in June 1998 of the ILO declaration on the fundamental principles and rights at work made them inalienable human rights and incorporated these rights into public international law. However, states have to implement these in national law and in turn, national law

has to be transformed into a living practice. To accelerate these vital movements, Dr Kefer proposed the use of the supervisory mechanism of the ILO.

A good control mechanism for the other fundamental rights depends on the ratification of the individual convention. The follow-up to the declaration itself is a rather weak mechanism, the purpose of which is described as promotional rather than complaint-based. This makes it easy for states to evade their responsibilities and to disregard their promises. Thus, Dr Kefer urged workers and trade unions to take an active role in informing all workers of their rights. She further urged civil society and its organizations to demand consultations from their respective governments on the implementation of commitments they had undertaken. She encouraged them to require their governments to seek the advice of the ILO on how to shape a labour law that guarantees freedom of association and on how to construct institutions for social security which do not only serve a small range of privileged civil servants, but also those who have been pushed out to the margins of society.

Finally, Dr Kefer pressed for the ratification by highly industrialized states of a larger number of ILO conventions which fix a level of social protection that is adequate

and cannot be done away with. This, she hoped, would stop the race characterizing prevailing global competition.

---

### ***Civil Society, Human Rights and the Social Crisis: Do Rights Matter?***

---

***Mr Somchai Homlaor***

Secretary General, Forum-Asia/Asian Forum for Human Rights and Development, Thailand

Mr Homlaor started his presentation by stating that East Asia has indeed been the centre of major economic development and the experiences of some countries have become models of economic development. However, although this has been achieved through years of hard work, the gains have been wiped out overnight by the Asian financial crisis. The resulting situation has presented the real face of the kind of development that Asian countries have experienced. According to him, society has been unhealthy. Efforts from international institutions such as the IMF have not aided social recovery, but instead only made society 'used to the flu'.

Mr Homlaor stated that the modern economy has destroyed Asian society. The

economic system of today, which has copied Western models, showcases negative aspects such as cronyism and authoritarian rule. However, the crisis has also brought positive effects – it has led people to better understand themselves. Hence, in the transitional period, several areas of concern must be addressed.

He suggested that people must succeed in making society healthy and independent from the state and the ruling class. Asians must also allow NGOs to speak on their behalf. Furthermore, human rights must be integrated into all aspects of development. Finally, social security must be provided, but to be fully effective its implementation must be within the context of civil society and human rights.

---

### **Discussions: All Presentations**

---

The discussion opened with a question from Mr Rod Ellis (ICFTU-APRO, Singapore) regarding the issue of social security. Paper presenter Mr Somchai Homlaor (Forum-Asia, Thailand) replied by stating the case of Thailand. According to him, social security has been established in his country but the government has not been able to implement the system effectively. He concluded that the implementation of such a system should not be left to the government alone.

The discussion shifted to the relationship between workers' rights and the

environment. This came from a comment from Mr Max de Mesa (TFD, Philippines) regarding the conflict between workers who work in factories which are potentially harmful to the environment and who are asserting their rights against local communities who are also asserting their rights to the natural resources. The premise of this argument is the existence of a common provision in the two international covenants which provides that 'no people may be deprived of their means of subsistence'. The response by Mr Joachim Grimsman expanded the discussion by including Indigenous Peoples. He said that

Indigenous Peoples and the issue of the environment had been taken into account in ILO Convention Nos 107 and 169. The Philippines has been paying attention to these rights. Other countries are also looking into this, for example, Cambodia and Thailand. Finally, according to him, human rights education is important and progress is being made in this area.

On the other hand, Dr Ursula Engelen-Kefer (DGB, Germany) stated that it is very difficult to integrate issues of the environment. It is a constant quarrel and debate in developed countries. This is being looked into by the ILO. The aim should be to have better and more practical cooperation between different organizations. There will be a need for constant balancing of the issues and conflicts.

The discussion was then directed to the issue of rights of employers by Mr Liew Shou Kong (Malaysian Employers Federation, Malaysia). According to him, human rights are norms of accepted conduct of people and should not impinge upon the rights of other people. He posed

a question regarding the rights of employers – those, according to him, who are responsible for the creation of employment and enterprise. Mr Simon Tay (Singapore Institute of International Affairs, Singapore) countered this by saying that human rights have been attributed to the powerless. When globalization is mentioned, people are not saying that businessmen are bad, but workers do not have the same power that globalization embodies. Dr Ursula Engelen-Kefer added that employers should think twice. In the long-term it is better to have workers who are given rights, who are well-fed and have social-security benefits.

Finally, the topic shifted to labour migration and the issue of migrant workers. Ms Niza Concepcion (PAHRA, Philippines) asked about the protection given to migrant workers under the ILO conventions and other ILO mechanisms. Mr Grimsman answered by saying that the ILO has an international labour convention designed to protect migrant labour. However, there have been changes in the attitudes of both labour-receiving and labour-sending countries. At present, labour-receiving countries show little interest in regulating the flow of these workers.

## **Presentation of Surveys**

### ***The ICESCR and the ILO Conventions in a Regional Perspective: Ratification, Implementation, Problems***

---

*Ms Tang Lay Lee*

Post Graduate Faculty of Law, New South Wales University, Australia; Forum-Asia

Ms Tang Lay Lee delivered a paper on the state of economic, social and cultural rights in Southeast Asia. First of all, she cited the current trends among the different countries of Southeast Asia in terms of economic recovery. The focus of this part of her presentation was on the tide of globalization that is sweeping the region.

Ms Lee then went on to discuss the impact of these economic trends on economic,

social and cultural rights by presenting the effects on specific sectors and by highlighting particular areas of concern which merit attention from both policy makers and members of civil society. Ms Lee also pointed out several obstacles to the implementation of economic, social and cultural rights. She stated that some areas in this category of rights have a more developed set of standards while others have only minimal standards.

***Mr Goh Chien Yen***

Faculty of Law, National University of Singapore; Institute of International Affairs, Singapore

Mr Goh Chien Yen discussed the implementation of economic, social and cultural rights in the ASEAN region. He tackled the debates in the supposed dichotomy between civil political rights and social rights. Although he emphasized the interrelatedness and indivisibility of these rights, Mr Goh observed that the covenants seemed to differ in the appreciation of those rights. While civil political rights are absolute and inviolable, economic, social and cultural rights are at best programmatic and progressive, making them dependent upon the availability of resources.

Mr Goh observed that in the ASEAN region, governments have generally declared their support for economic, social and cultural rights. However, beyond diplomatic support, most ASEAN countries have failed to effectively implement these rights as human rights within their respective jurisdictions.

Finally, according to him, 'constitutional protection for human rights norms in ASEAN countries also reveals a similar pattern of placing greater emphasis on civil and political rights'.

***Mr Joachim Grimsmann***

Senior International Labour Standards Specialist, ILO-EASMAT, Thailand

Mr Grimsmann discussed two important aspects of ILO conventions: (1) the relationship between the conventions and the ICESCR, and (2) the implementation of the conventions by ASEAN countries.

directly lifted from ILO conventions. Mr Grimsmann argued that there is complementarity (not conflict) between ILO conventions and other human rights instruments.

With respect to the first, Mr Grimsmann said that the ILO conventions influenced the ICESCR, the Slavery Convention and even the Universal Declaration of Human Rights. ILO conventions also preceded these other human rights instruments. In fact, some provisions on the ICESCR were

ASEAN countries have various degrees of compliance with ILO conventions. The Philippines, for example, has ratified most of the instruments while others have only signed Letters of Intent which signify their interest in being part of the ILO.

**Panel Discussion**

***Human Rights – Social Rights: Governments, Trade Unions and NGOs – Common Goals, Co-operation, Competition, Conflicts?***

***CHAIR***

***Dr Gert Gust***

Visiting Professor, University of the Philippines School of Labor and Industrial Relations, the Philippines

## PANELISTS

### *Mr Praphad Phodhivorakhun*

Vice Chairperson, Federation of Thai Industries, Thailand

Mr Praphad started by saying that it is well recognized that the human resource is the key factor in the success of national development. He stated that the main strategy needed for upgrading the industrial sector is education. High technology is the cornerstone of the industrial sector in the new millennium.

He stressed that the new world order of globalization urges the movement of capital and labour. In this respect, government and the private sector should cooperate to enhance the capability of the labour force to cope with the change.

He noted that there is a growing awareness of human rights. In the past, the national economic and social development concept was largely based on the exaggeration of the economic goal. However, the mechanism for solving the problems of labour and social welfare has been slowly decaying.

To address these issues, Mr Praphad presented the following recommendations: (1) enhance training and skill development; (2) enhance the labour relations system; (3) enhance the role and functions of women in national development; (4) advocate and provide professional skills to women as well as people in the rural areas; and (5) effect a system in which women and children can work legally and be treated fairly.

On the other hand, manufacturers must abide by labour laws and ILO declarations. Manufacturers should put employees in jobs compatible with their capabilities, provide appropriate training to develop relevant skills and knowledge, ensure job security and provide career opportunities in line with the capability and capacity of their employees. Manufacturers also have to comply with legal provisions concerning health, safety standards and practices in the workplace, as well as ensure that their employees use safety equipment in the appropriate manner when circumstances call upon them to do so.

### *Mrs Hamilah Jacob*

Assistant Secretary General, National Trades Union Congress (NTUC); Director, Singapore Institute of Labour Studies, Singapore

Ms Jacob dealt with the issue of whether the three critical parties in the industrial relations system, namely the government, the employers and the trade unions, are in a relationship of conflict or one of cooperation. She stressed that in an ideal situation there should be no conflict in the roles of government, trade unions and NGOs on the issues of human rights and social rights.

The role of governments, having recognized

the fundamental human and social rights of people, would be to put in place appropriate legislation, infrastructure and systems to support the exercise of these rights. This would enable trade unions and NGOs to work as partners to complement and strengthen the whole process. Trade unions and NGOs, being grassroots organizations closest to workers and ordinary citizens, can provide valuable feedback and input on the observance of these rights.

In reality, however, conflicts arise between government on the one hand and trade unions and NGOs on the other. She emphasized that each of these parties has a role to play in order to foster a working partnership. The effects of globalization further highlight the need for the three sectors to cooperate.

***Mr Le Luong Minh***

Deputy Head, Department for International Organizations, Ministry of Foreign Affairs, Vietnam

Mr Minh started by saying that we cannot deny that human rights has been a very sensitive issue, especially in relations between the West and the developing world, as well as between the government, the unions and the NGOs of a country. He then turned the focus of his presentation to the case of Vietnam.

He outlined the social rights in the legal system of Vietnam, including those contained in the Constitution, the Labour Code, the law on the protection, care and education of children, the law on education, the ordinance on disabled persons and the aged, specific policies and those arising from the development of the multi-sectoral economy.

He noted that there had also been changes in economic programmes, emphasizing that these programmes were formulated and implemented in cooperation with UN agencies in Vietnam. He also talked about documents that have been drawn up to define the relationship between the government and the trade unions and their activities, including economic organizations and social organizations that take care of and defend the interests of working people. The law provides for network unions to take part in the control and supervision of the activities of the state and economic

Finally, Ms Yacob said that in resolving these issues, the guiding principles set forth by the ILO conventions should be a top priority. In their actions trade unions must be guided by the fundamental principles of the social right to work.

organizations. There are other specific provisions on the right of trade unions to participate in meetings of the government as representatives not only of state employees but also of working people, including those in the private sector.

The trade unions are represented in the process of implementation of laws on labour contract and other policies directly relating to the rights, obligations and interests of working people. The trade unions are accountable to the workers.

Finally, Mr Minh spoke about the position and place of human rights in the legal system of Vietnam and the programmes and laws providing for the implementation and role of trade unions in Vietnam.

Mr Minh noted that it is generally believed that these mechanisms are only in place theoretically in Vietnam. He reaffirmed the fact that Vietnam has gone through difficult periods of national construction and development over the years. But he stressed that development or sustained high economic growth and the ability to overcome the effects of the regional crisis could not have been accomplished without the cooperation and participation of trade union organizations.

***Professor Alberto Muyot***

Executive Director, Institute of Human Rights, University of the Philippines, the Philippines

Professor Muyot began by responding to three questions raised. First, what are the priorities for human rights promotion in the ASEAN region? Second, what can civil society do to ensure human rights enforcement in times of globalization? And third, which problems and conflicts must we overcome to ensure human rights protection for all in ASEAN?

On the first question, he picked out five important points for the promotion of human rights in the ASEAN region: (1) human rights education; (2) the establishment of a preparatory mechanism; (3) the establishment of formal structures on human rights; (4) encouraging governments to ratify the different human rights conventions or instruments; and (5) an independent human rights mechanism for the region which is treaty-based.

Professor Muyot answered the second question by stating that globalization heightens the need to promote and protect human rights, unlike simple civil and political rights violations which are very obvious to all. He pointed out that the effects of globalization cut across different

sectors and that it was time for some serious studies to be done to look into its effects in relation to economic, social and cultural rights. This is a matter that can be taken up by NGOs as well as academia.

In reply to the third question, Professor Muyot stated that there should be no conflict between human rights and development, even as perceived by government. Another problem area is when development aid is tied up to human rights. When development aid is conditional, suspicions are created in the minds of leaders in the region and these create resistance. Perhaps a way can be found whereby human rights are not presented as part of a carrot and stick approach in the context of giving development aid.

In conclusion he said that the winds of democratic change have provided a window of opportunity for the promotion of human rights in the ASEAN region. Democratic change in the region has brought about a greater awareness on the part of everyone and with that awareness comes the realization of the importance of human rights.

---

## **Plenary Discussion**

The Chair, Dr Gust, began the plenary discussion by summarizing the concerns about the partnership between the government, employers, workers and NGOs, and the concerns all parties have about having to re-think their roles in the context of the present situation of globalization. His main focus was on what the priorities for human rights promotion in the ASEAN region are.

Mr Liew Shou Kong focused on consensus building for all parties concerned, rather than setting a definite priority for all.

Dr Gust agreed and added that we could begin with the core conventions already adopted world-wide.

Mr Homlaor and Senator Rampak discussed their priorities, which Dr Gust

summarized as meaning that the ASEAN region is clamouring to be allowed to do things their own way rather than merely copying Western models.

Dr Engelen-Kefer discussed the differing views in ASEAN as well as in Western countries. She stressed that ASEAN has one big advantage, and that is having strong family ties. A strong institution of the family has an important role to play in the fulfilment of social rights. She advised ASEAN countries to be very careful when considering different systems and to try to adopt that which complements already existing structures.

Ms Horiuchi spoke about East Asia facing the issues of human rights. She said the ILO intended to meet this challenge in accordance with the conditions in each country. With regard to the implementation of rights, there is a need to strengthen social

institutions that facilitate the implementation of human rights in the world. She added that dialogues or forums are very important to better understand the issues confronting us.

Ms Contreras of the Philippine Commission on Human Rights highlighted the proliferation of human rights commissions in the Asia-Pacific region. She discussed the experiences of the Philippines and the need for complementarity. She also discussed issues of actual monitoring and reporting, and the need to learn from the ILO system and the whole UN system. The question of monitoring and reporting at the national level is not very well developed and this is a possible area of cooperation.

At this point the Chair directed the panellists to give their final views and round up the discussions.



# The Old and the New Periphery of the Islamic World: Report on the Conference on 'Asian Islam in the Twenty-first Century', Bangkok 2000\*

**Mathias Diederich**

Islam came to Cambodia early in the ninth century and it was the government of Japan that decisively contributed to its revival in Cambodia after the repression of the Pol Pot regime. These were some of the pieces of information that astonished some of the 50 participants at the conference on 'Asian Islam in the Twenty-first Century', and contributed to the intense interchange between scientists from Asia, the United States and Europe.

The term 'Asian' was consciously used in the title of the conference so as to exclude the main area of Islam – the Middle East – although this area is technically western Asia according to the United Nations.

Several organizers and sponsors of the conference deserve special mention: the Georgetown University Centre for Muslim-Christian Understanding (established in 1993), the Thai Ministry of Foreign Affairs, the prestigious Thammasat University in Bangkok and Friedrich Ebert Stiftung. In fact, German foundations have long sought dialogues with different religions, and have given particular regard to Islam as a social and political factor outside the Arabic world.

Thailand was perhaps a surprising choice as a venue for such a conference. However, the Thai government showed remarkable interest and gave its support to the conference, as well as being keen to showcase Thailand's own Muslim minority

and its integration into society. Dr Surin Pitsuwan, the Thai Minister of Foreign Affairs, spared no effort in finding an appropriate venue for the event, and even attended the opening of the congress personally. As a member of the Muslim minority of Thailand himself, his interest is self-explanatory, and in fact his Harvard dissertation was about the Muslim minority in the south of the country. Dr Surin Pitsuwan – who is himself a shining example – proudly spoke about the profound amelioration in the position of Muslims and other religious minorities in Thailand over the last few decades. He also noted that Theravada Buddhism is no longer a state-run religion in Thailand.

Naturally, his quite positive representation provoked a reaction from other Thai Muslims who thought differently. However, this and other diverse opinions expressed during the conference testify to the frankness of the debate in Bangkok.

Malaysia had originally been proposed as a conference venue, but this plan was shelved when Malaysia's former deputy prime minister, Anwar Ibrahim, was put on trial. For many in Southeast Asia, Anwar Ibrahim embodies Islam, being dynamic and at the same time tolerant. He also advocates the peaceful co-existence of different religions and stands for democracy.

\* The conference took place on 23-24 February, 2000 in Bangkok, Thailand

## ***Issues and Challenges in the Old Periphery***

The Muslims of the periphery see themselves as able to cope with the challenges of globalization because of the contact they have with different religions as well as culturally rich and diverse environments. The Muslims of Southeast Asia in particular attribute their ability to get on in the world to their flexibility, ongoing dialogues and reasonable compromises. Many of them insist their fellow believers in the main area of Islam are isolated from the rest of the world because they are not compelled to adapt in the same way.

Nevertheless, it was evident to the predominantly Asian participants of the conference that it is impossible to paint a truly untroubled picture of the Muslims outside the main area. Within Southeast Asia, the latest armed conflict between Christians and Muslims on the Moluccas has shown how problematic the co-existence of religions can be. And the economic crisis in Southeast Asia has also had far-reaching effects, such as preventing a proposed coorganization of the pilgrimage to Mekka and Medina by Southeast Asian Muslims, which was expected to be better and more efficient than in previous years.

Tensions also exist in areas where Asian Muslims are in the minority. In the Philippines, where there is a significant non-Muslim majority, Muslims are often faced with discrimination in everyday life. Outside their Mindanao stronghold they are disparaged as being terrorists and undemocratic. In Myanmar (Burma) the government is hardly subtle in the way it undermines the Muslim minority. Muslims have not been allowed to build new mosques since 1962, and the existing ones are inaccessible for most of the day and are not shown on official maps. The Muslims of Myanmar are also forced to bear Burmese names and enjoy even less political rights than other citizens. In India, conflicts

between the Muslim minority and the Hindu majority often make the headlines.

Apart from disputes with other religions, the existence of a 'secular fundamentalism' was also lamented, i.e. the intolerance many people show vis-à-vis religions in general.

Nevertheless, Muslims in Asia are gaining self-confidence. Although their economic contribution to South and Southeast Asia is acknowledged, their contributions to Islamic culture and scripts have long been underestimated, or falsely attributed to authors of the Islamic heartlands, and there were hints at the Bangkok conference of a growing dissatisfaction with this.

Moreover, there is an increasing interest in Asian Islam in the Muslim world. In particular, Cairo, a centre of Islamic scholarship, is paying more attention to its Southeast Asian counterparts. This interest is likely to be fuelled by the fact that Indonesia now has a democratically elected president, Abdurrahman Wahid, who is equally respected by both Muslims and non-Muslims in his country, in part because of his rejection of an Islamic State. Although this does not distinguish him from his predecessors, some, particularly former president Suharto in the final period of his tenure, tried to render Islam a vehicle of their power.

Many Southeast Asian Muslims live very well with religious and political pluralism. One participant of the conference expressed it as follows: 'If God had wanted it, he would have created a monolithic denomination, or one single nation. But he did not do it, particularly in order to test our behaviour'. The Thai Minister of Foreign Affairs, Dr Surin Pisuwan, expanded on Aristotle's saying that every human being has to be a human being and at the same time also a good citizen, by adding that a Muslim also has to meet the requirement of being a good Muslim.

From the point of view of Muslims, Islam has a better chance of developing in a democracy. Living as a Muslim in a pluralistic society is a challenge for those who understand Islam as a canon which has to be interpreted wisely in order to remain relevant even in times of unprecedented globalization. One example of this is contact with other religions. An Indian participant said that it is natural and intended by Islam for Muslims to peacefully co-exist with Buddhists and Hindus, even though the latter do not have scriptures (*ahl al-kitab*) like the Jews and the Christians.

The attitude towards the nation state is another example. At the Bangkok

conference nation states were not questioned explicitly nor were any proposals made for their 'Islamism', a term which is often generalized to be a strict interpretation of the Islamic law. Instead, a large number of participants seemed to support a form of government that does not restrict Islam in any way, but at the same times does not allow rulers to manipulate it for their own ends. However, the process of democratization in Asia does not preclude the misuse of religion. In order to increase their votes, political groups in different parts of the region promise the realization of an idealized Islamic society in the run-up to elections.

### ***The Rise of the New Periphery***

Islam in central Asia and China was also discussed at the conference. This region, known as the 'new periphery' is likely to gain importance in the Islamic world. Central Asia has had contact with Islam since the seventh century, and since the collapse of the Soviet Union, its potential to trigger new impulses in the Islamic world has increased. One of the notable characteristics of this region is an identification with Islam which is stronger than any national identity, even during the period of its closest affiliation with the Soviet Union. Inhabitants see themselves first as Muslims, and then as Uzbeks, Azerbaijanis, etc.

Admittedly, the political situation in Central Asia has to be regarded as provisional. Out of the five states that have emerged in Central Asia, presently only Azerbaijan sees itself as an Islamic republic. The further development of the region could produce tensions, particularly as neighbouring states as well as the United States vie for a stake in existing oil reserves. This may be the reason why the Uigurs, who are the second largest Muslim ethnic group in China, resist articulating their opposition to the Chinese central government by demanding national

independence. The Uigur-Muslims also occupy areas where there are considerable oil reservoirs, but as the example of Central Asia demonstrates clearly, this wealth is not only a source of income, but also has the potential of becoming a point of conflict between powerful states. For the time being therefore, the Uigurs have chosen to stay as part of China, opting instead to defend their right of freedom to worship as Muslims. They have covert support from sources in Turkey, Iran and Saudi Arabia. Furthermore, the Uigurs have refused to accept the systematic settlement of other Chinese people in their area.

Historically, it was the conquests of Genghis Khan that led to the existence of Muslim communities in China. Genghis Khan incorporated the present day area of the Uigurs into the Chinese empire, and it remained a part of China when the Mongol forces withdrew. The approximately 22 million Muslims of China are not exclusively found in Western China, but live in different regions throughout China, particularly Muslims of the Hui clan, who constitute the largest group of 8.4 million.

## ***In Review***

---

In reviewing the conference it can be said that the discussions focused mainly on political and economic development. This was partly due to the organizers' request for short lectures on countries or specific regions. Comprehensive topics were only scheduled for the afternoon of the second day. Gender issues in predominantly Muslim societies were touched on, but unfortunately no time was left for a discussion of different views, even though the various forms of Asian Islam represented at the conference and the high number of participants were a real incentive for an intensified dialogue.

It is hoped that this dialogue will continue with the involvement of representatives of

the Islamic heartlands. At this particular conference their only representation came from a few diplomats of Arab countries who limited their participation to the opening session and parts of the overall programme. One of the Thai participants focused on this in his closing words: the 'other side' (i.e. the Muslims of the heartlands and the West/occident) ought to become more familiar with Asian Islam and learn to understand its expressions and terminology. At present there are only two forums for international discussions about Islam as a social phenomenon. As these are centred in knowledge of Islam in the heartland and in western-dominated social sciences, they can only be of limited value for Asia.