

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

Executive Summary

by

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# Executive Summary\*

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

### *Introduction*

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*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**

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*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**

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*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.

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

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*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.

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

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*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 Grimsmann 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 Grimsmann 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***

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*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 Grismann*

Senior International Labour Standards Specialist, ILO-EASMAT, Thailand

Mr Grismann 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 Grismann argued that there is complementarity (not conflict) between ILO conventions and other human rights instruments.

With respect to the first, Mr Grismann 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 Yacob***

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

Ms Yacob 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 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.

The role of governments, having recognized

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**

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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.