



HARMONIOUS DEVELOPMENT AND HUMAN RIGHTS

Edited by
China Society for Human Rights Studies





图书在版编目 (CIP) 数据

和谐发展与人权：英文 / 中国人权研究会编. — 北京：五洲传播出版社，2010.5
ISBN 978-7-5085-1827-5

I. ①和… II. ①中… III. ①人权—中国—文集 IV. ①D621.5-53

中国版本图书馆CIP数据核字 (2010) 第059700号

和谐发展与人权

责任编辑 高 磊
封面设计 田 林
制 作 张 红
出版发行 五洲传播出版社
地 址 北京市海淀区北小马厂6号
邮政编码 100038
电 话 8610-58891281
网 址 www.cicc.org.cn
印 刷 北京画中画印刷有限公司
开 本 787mm * 1092mm 1/16
印 张 34
字 数 480千
版 次 2010年5月第1版
印 次 2010年5月第1次印刷
定 价 138.00元



FOREWORD

The Second Beijing Forum on Human Rights, successfully organized by China Society for Human Rights Studies with “Harmonious Development and Human Rights” as the theme, was held in Beijing between November 2-4, 2009, attended by nearly 100 human rights experts, scholars and high officials from 26 states including China, the United States, Britain, Switzerland, Hungary, Australia, Peru, Ukraine, Belarussia, Indonesia, the Philippines, Iran, Mongolia, Kenya, Liberia, etc., covering Asia, Africa, South America, North America, Europe and Oceania. The Forum is thus extensively representative.

The attendees made extensive, ardent, open and practical discussions focusing on the theme “Harmonious Development and Human Rights,” and commonly recognized that it is very timely and significant to hold this forum, against the background of continuing extension of the international financial crisis constituting unprecedented challenges to global development and a severe threat to human rights. The forum, with “Harmonious Development and Human Rights” as theme, supported by three sub-themes, “Human rights Guarantee against the Background of International Financial Crisis,” “People-oriented Development and Human Rights Guarantee” and “Diminishing Poverty and Human Rights Guarantee,” is of great pertinence, necessity and urgency, as well as practicalness, foresight and attraction. It is a high level experts conference earnestly concerning world future and human destiny, and a grand international gathering uniting intelligence and thoughts of international society and planning together methods for the world human rights development.

The attendees positively appraised the forum, thinking that Beijing Human Rights Forum has gradually evolved as an important platform for international human rights community to exchange ideas, deliberate problems, promote understanding and expand common points.

This book is a compilation of all the 68 papers received by the forum and categorized into five parts. These papers, focused on the forum theme, address and discuss human rights from multiple aspects and different angles of view with profound thoughts and viewpoints.

This book is examined and approved by Chen Zhengong, schemed, edited, compiled and primarily examined by Wang Linxia. Its English version is edited by Ren Danhong.

Opinions expressed in the papers reflect the authors’ personal views and do not reflect the view and attitude of China Society for Human Rights Studies.

China Society for Human Rights Studies
March 3, 2010



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REMARKS AT THE OPENING CEREMONY OF THE SECOND BEIJING FORUM ON HUMAN RIGHTS

Luo Haocai

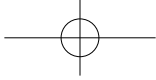
President of the China Society for Human Rights Studies
(November 2, 2009)

Distinguished guests, experts and scholars, ladies and gentlemen:

The second Beijing Forum on Human Rights organized by the China Society for Human Rights Studies opens today. The theme of this year's forum is "harmonious development and human rights," and the three main topics of discussion will be "safeguarding human rights against the background of the international financial crisis," "people-oriented development and safeguarding human rights" and "poverty elimination and safeguarding human rights." First of all, on behalf of the organizers, I would like to heartily thank you for attending and warmly welcome you to the Forum.

We organized the first Beijing Forum on Human Rights on April 21, 2008 with strong support from many quarters. We held intensive discussions on the theme of "Development, Security and Human Rights." The 60th year since the UN adopted the *Universal Declaration of Human Rights* was an excellent time to look back at progress on human rights worldwide, consider current opportunities and challenges, and promote cooperation on development, security and human rights. On December 10, 2008, the China Society for Human Rights Studies held a symposium in Beijing to mark the 60th anniversary of the Declaration. Chinese President Hu Jintao sent a letter of support stating that the Declaration adopted by the UN 60 years ago reflected worldwide popular support for human rights, and that it had made a profound contribution to the human rights progress. Hu said the Chinese people would continue to strengthen international cooperation on human rights issues, and would join hands with other countries to promote human rights and build a peaceful, prosperous and harmonious world.

In the past year we have all pulled together to help each other through the international financial crisis. The crisis forced us to reflect on harmony in economic development and re-examine how to combine safeguarding human rights with harmonious development. In the next two days, we will hold discussions and share insights on the theme of "harmonious development and human rights." In China, we have consistently maintained that the right to development is an inalienable human right. Development is the principal solution to all



problems in present-day society; it is the foundation and precondition of security and human rights. It is both unsafe and undignified to live in a poor, unenlightened society amidst a deteriorating environment. But we also recognize that the kind of development that is capable of supporting human rights must be comprehensive, harmonious and sustainable; not the doomed, unbalanced and false “economic prosperity” of a bubble economy. We will almost certainly fail to reach our goal of safeguarding human rights if we do not pursue harmonious development.

From a theoretical and practical point of view, differences in culture and circumstances mean the methods used to safeguard human rights will differ from country to country. China has a tradition of “harmony and integration.” We aim to build a harmonious society through consultation and collaboration, always looking for win-win solutions when problems arise. We believe that different interest groups can live in harmony and that people with different opinions can shelve their differences and seek common ground. This idea of “harmony” is embedded in China’s scientific concept of development and has had a profound influence on China’s approach to human rights. The “Chinese approach” to human rights protection, aims at building a harmonious society while simultaneously satisfying public needs to the maximum. We can provisionally summarize four characteristics of our approach.

First, human rights protection in China is based on the idea of human-oriented, scientific development which means careful planning, taking all factors into consideration, while concentrating on key targets.

Second, human rights legislation mainly involves balancing two basic relationships: first, the relationship between individuals, which is principally manifested in private law in the relationships between rights and obligations; and second, the relationship between individuals and the government, which is principally manifested in public law in the relationships between rights and power. In dealing with the relationships between rights and obligations, the human rights legislation in China firmly adheres to the principle that they are a dialectical unity; there are no obligations without rights and no rights without obligations. In dealing with the relationships between rights and power, it firmly adheres to the principle that they exert a positive influence on each other, and it protects and extends human rights by standardizing public power.

Third, we hold that human rights are inter-dependent and inseparable. Economic, social and cultural rights are just as important as civil and political rights. We are for the balanced development of individual human rights and collective human rights. We give priority to the right to a decent livelihood and try to guarantee that every member of society can enjoy that right by pursuing rapid economic and social development.

Fourth, we take a global, comprehensive approach to human rights. First, we take

both sovereignty and human rights into consideration. We oppose the use of human rights as an excuse for one country to interfere in the internal affairs of another. We support the principles of sovereignty, equality and non-interference. We believe international cooperation is the best approach to safeguarding human rights. Second, we take domestic as well as international conditions into consideration. We respect the universal principles of human rights, abide by international human rights standards and fulfill our obligations under international law. But our legislative, judicial and administrative practices take account of Chinese conditions. Third, we keep in mind the relationship between human rights and social development. Human rights protection in China is developing in the context of reform and opening-up. It is bound up with and reinforces the process of social transition. On the one hand, the progress of human rights depends on social conditions such as the development of democracy, a market economy, the construction of a harmonious society, and the development of national culture. On the other hand, human rights progress reinforces the process of social transition and scientific development. Fourth, we take both theory and practice into consideration. In addition to tackling immediate human rights problems, drafting legislation and promoting institutional reform, we need to deepen our theoretical understanding. To this end, we have formed a professional research team drawn from universities and colleges and led by the China Society for Human Rights Studies.

In September 2009, I led a delegation of the Society for Human Rights Studies on visits to France, Belgium, Iceland and other European countries. We held many discussions on human rights issues and reached agreement on many points, one of which was that the concept of human rights should advance with the times. The idea of “human rights” put forward during the bourgeois revolutions of the 17th and 18th centuries was directed against theocracy, monarchy and aristocratic privilege. After the experience of Fascism in World War II, the *United Nations Charter* again put the focus on human rights. The *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social and Cultural Rights* were milestones that reflected worldwide support for the concept of human rights. But in the last half century, the world has undergone profound changes, including globalization, the growth of an information society, and rapid economic development in Asia. Despite these changes, the existing concept of human rights still reflects the values of the West far more than those of Asia and the developing world. In this respect, to some extent, it no longer meets the needs of today’s world. The idea of human rights needs to be enlarged to include the right to a decent standard of living, the right to development, and the right to live in a decent environment. Many European officials and experts agreed with me that the concept of human rights should develop with the times. They also agreed that safeguarding human rights should not be an excuse for one civilization to deny the value of another.



They recognized the need to respect Asian civilization and the approaches to human rights protection adopted by developing countries. We need to develop a more comprehensive concept of human rights which is in tune with our era and can command widespread acceptance.

Ladies and gentlemen, this year marks the 60th anniversary of the People's Republic of China. The National Day celebrations on October 1 attracted worldwide attention. The cause of human rights in China has seen many historic developments over the past 60 years, especially since the start of reform and opening-up. Respect for human rights has been enshrined in the Chinese constitution and is an important principle in the management of state affairs. Effective measures to promote human rights have drastically improved people's material and cultural life and guaranteed their political, economic, cultural and social rights. China is party to 25 international agreements on human rights including the *International Covenant on Economic, Social and Cultural Rights*, and has created a domestic legal framework for the protection of human rights consisting of 229 laws, 669 administrative regulations and 8,000 local regulations, with the Constitution as its foundation. Furthermore, in response to an appeal from the UN, the Chinese government recently organized a series of high-level national meetings to draw up a human rights action plan. The State Council Information Office, the Ministry of Foreign Affairs, and 53 other units including the Commission of Legislative Affairs of the Standing Committee of the National People's Congress (NPC), the Commission of Social and Legislative Affairs of the Chinese People's Political Consultative Conference (CPPCC), the Supreme People's Court, the Supreme People's Procuratorate, the National Development and Reform Commission (NDRC) and the China Society for Human Rights Studies held meetings to solicit opinions from social organizations, non-governmental organizations, universities, and other institutions and people from all walks of life. After intensive discussion, the *National Human Rights Action Plan of China (2009-2010)* was issued in April 2009. The action plan prioritizes 22 specific rights in the three categories of social and cultural rights, civil and political rights, and the rights of ethnic minorities, women, children, the elderly and the disabled. It also sets out guidelines on human rights education, international human rights obligations, and international communication and cooperation on human rights. Moreover, it defines more than 160 specific targets and metrics the Chinese government will use to assess its human rights work over the next two years.

The action plan is a program for the development of human rights protection in China, and carries the hopes and expectations of the Chinese people and human rights scholars. Its formulation and implementation has also attracted overseas attention, especially since only 26 countries have formulated similar plans so far. We are happy to report that government departments have been incorporating the action plan into their working practices. They

are drafting, amending, and where necessary repealing, legislation that relates to or affects human rights, as well as improving the enforcement of human rights law. The China Society for Human Rights Studies has urged the government to establish a dedicated supervisory body to supervise the action plan, help government bodies build human rights protection into their working practices, evaluate the goals of government at all levels, and hold departments responsible if they fail to reach their goals.

I can honestly say that, along with other profound changes in Chinese society, human rights have made rapid progress in the 30 years since China's reform and opening-up. Nevertheless, we must recognize that many problems remain, mainly as a consequence of China's historical, cultural, economic and social level of development. Promoting the development of human rights remains a long-term and arduous task for the Chinese government and people. But China will continue to contribute to the international cause of human rights. We are ready to work together with the international community to establish a harmonious world!

Finally, we wish you good health and happiness! We hope the Forum will be a great success!



REMARKS AT THE OPENING CEREMONY OF THE SECOND BEIJING FORUM ON HUMAN RIGHTS

Wang Chen

Minister of the State Council Information Office, PRC

(November 2, 2009)

Distinguished guests, dear friends, ladies and gentlemen,

In the beautiful autumn season in Beijing, China Society for Human Rights Studies holds the Second Beijing Forum on Human Rights, inviting human rights officials, intellectuals and experts around the world to gather here to discuss the important matter of human rights development. It is a very meaningful event, and a grand occasion for world human rights exchanges and cooperation. On behalf of the China State Council Information Office, I would like to congratulate the China Society for Human Rights Studies for holding the forum, and want to extend a warm welcome to all guests participating in the forum.

The impact of the global financial crisis is still being felt worldwide, with the unemployment rate and poverty increasing, and global problems such as unbalanced regional development, climate change, grain and energy crisis becoming more and more obvious, all bringing more obstacles to harmonious development and the enjoyment of human rights in the world. Today, human rights intellectuals and officials from different countries and regions gather together to engage in deep discussions on the important topic of “Harmonious Development and Human Rights,” and it is truly a timely and meaningful event.

Having full human rights and realizing a harmonious development has long been the pursuit of people all over the world, and it is a long-term historical mission of the Chinese people. Over the past 60 years since the founding of the People’s Republic of China, the Chinese Government has always put development as the key issue in solving its various problems. It has adopted effective measures to push forward its social, economic, legislative and cultural constructions, with the aim of building a modern socialistic society with economic prosperity, strength, social democracy and harmony and rich culture. To pursue the ideal of enjoying full human rights, the Chinese Government and people have made ceaseless efforts and gained remarkable achievements. In the past 60 years, China’s GDP has increased at an average annual rate of 8.1 percent, and its gross economic volume increased 77 fold, enabling China to become the world’s third largest economy at present. China’s

average GDP per capita reached RMB 22,698 in 2008, compared with RMB 119 in 1952, it is a 32.4 fold increase, and deducting price-changing factors, the annual increase rate was 6.5 percent. China has developed from a poor and weak country invaded and humiliated by foreign powers into a prosperous and modern nation making great contributions to world peace and development. In recent years, the Chinese government put forward an important idealistic strategy of taking a human-oriented scientific outlook on development and constructing a socialist harmonious society, coordinating its urban and rural development, the progress of different regions, the economic and social development, the harmonious development of human and nature, and China's domestic development and its reform and opening. The development of China relies on its people and brings benefits to its people. By sticking to a peaceful development path to push forward harmonious development as well as its reform and opening, China is now on an all-around, coordinated and sustainable development path.

Since the founding of the People's Republic of China, along with the leaps in China's modernization process, China's human rights development has also realized some historical progress. Since its reform and opening in 1978, the Chinese government has adhered to a people-oriented policy, which integrated human rights principles with China's reality, putting people's rights to existence and development as the priority. The integrity of China's reform, opening and stability have promoted its human rights development, safeguarded the equal participation and development rights of all citizens according to law, and also coordinated their political rights with their economic, social and cultural rights, and the individual rights with collective rights.

The Chinese government attaches great importance to respecting and protecting human rights. In recent years, it has included the respect for and protection of human rights in its scientific outlook on development, and it is assured as an important principle of its governance. In 2004, amendments to the Constitution was passed, which included the human rights concept in it and stated clearly that the state respects and protects human rights, indicating it has become a principle of its national law. After that, respect for and protection of human rights has also been included in the Development Scheme of the Eleventh Five-Year Plan and the CPC Charter. In April this year, the Chinese Central Government formulated and issued its first National Human Rights Action Plan, setting out an all-around plan for human rights development in China in the next two years.

Sixty years have passed, the life of the Chinese people has been changed dramatically, and its human rights condition made historical progress. With only 9 percent of the farmland in the world, China feeds 1.3 billion people, which accounts for 22 percent of the world population, and the living standard of the Chinese people has made two historical leaps from poverty to having enough food and clothing, and then from enough food and clothing



to moderate prosperity. The absolute rural poverty population has dropped from 250 million in 1978 to 14.79 million by the end of 2007, becoming the first country in the world to reach the poverty alleviation goal of the UN Millennium Development Goals.

In the meanwhile, the individual rights and political rights of Chinese citizens have been expanded and effectively guaranteed. The social and political life of its people has become more and more democratized, with democratic elections, decision making, administration and supervision systems becoming more complete. The Chinese democratic politics is becoming more systemized, and people's rights to be informed, to participate, to express and to oversee have been effectively guaranteed. Since the implementation of the reform and opening policy, state affairs in China have been running under the rule of law with the aim of constructing a socialist country governed by law, and a human rights protection legislative system with the Constitution as its core has been formed.

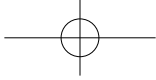
Facing the global recession since last year, the Chinese government has handled the situation properly by pushing forward a series of policies and measures to adjust its industrial structure, to stimulate domestic market demand, to promote economic growth and to improve its people's living standard. More emphasis has been put on employment, healthcare, education, social welfare and the issue of farmers, which are most closely related to people's rights and interests. These measures helped to maintain the stable and quick development in China, and practically protected and guaranteed the various rights of its people.

China also has enhanced its participation in international activities to promote world human rights development. It has always supported the UN's efforts in promoting and protecting human rights. It has actively participated in its various human rights activities, and has made great efforts and contributions to enrich the connotation of the human rights concept, to improve the human rights mechanisms and rules of human rights, and to push forward the development of international human rights practices. China has always advocated promoting world human rights development with dialogues, exchanges and cooperation based on equality and mutual respect, with the aim of learning from each other to seek common prosperity and development. In the future, China will increase its cooperation with world human rights organizations, and will work together with people all over the world to make our contributions to building a harmonious world with long-lasting peace and common prosperity in the interests of human rights in the world.

China is a developing country with a huge population of 1.3 billion with an unbalanced economy and immature social development. As a result, we can see clearly that there are still many difficulties and challenges in human rights development in China, and promoting an all-around human rights development is a long-term and difficult mission of the Chinese government and its people.



Ladies and gentlemen, we come from different corners of the world, but share the same dream to promote world human rights development. This Human Rights Forum provides a good platform for us to get together for frank discussions to reach some common understanding. I sincerely hope that you will take this opportunity to voice your opinions freely, hold your point of views, and contribute your ideas for the harmonious development and the realization of full human rights in the world. I wish the Second Beijing Forum on Human Rights a complete success.



SUMMARY SPEECH AT THE CLOSING CEREMONY OF THE SECOND BEIJING FORUM ON HUMAN RIGHTS

Dong Yunhu

Vice President & Secretary-General of the China Society for Human Rights Studies
(November 3, 2009)

Distinguished guests, ladies and gentlemen:

It falls to me to make a closing speech and contribute some of my own thoughts and views on the discussions of the last two days.

I believe we have held a successful international forum on a very important subject. It has truly been a top-grade, high-level, and very fruitful forum.

The forum was held against the background of the continuing spread of an international financial crisis that challenged global development in an unprecedented way, and threatened the common enjoyment of human rights. The theme of the forum—"Harmonious Development and Human Rights"—was clearly well-targeted, necessary, urgent, practical, and farsighted.

Forum participants came from five continents, from widely differing cultural backgrounds. They are all experts and scholars, representing a broad range of opinion and enormous professional expertise in the field of human rights. Over the past two days they have considered and discussed crucial questions regarding the future development of the world and the fate of humanity, including how to effectively deal with the challenge of the financial crisis, promote harmonious development and realize universal human rights. They have contributed ideas and strategies, expressed their sincere concern, presented their latest research and delivered unique contributions as human rights experts and scholars. It can truly be said that this forum was a high-level expert conference, genuinely concerned with the fate of the world—a grand international gathering that assembled the wisdom and thoughts of international society to seek new ways to promote human rights and development. It has, without exaggeration, been a major event in the field of international human rights.

This forum received over 60 excellent theses addressing each aspect of the problem of human rights. They combined theoretical and practical, historical and contemporary, domestic and international approaches. Their contents were broad and rich in profound thoughts and opinions. In a sense, we can say that these theses represent the latest achievements of international research on development and human rights.

During the two-day forum, participants aired their opinions freely, extending the discussion to far-ranging topics in the human rights field and expressing fresh, unique, thought-provoking and inspirational views. I believe I can say that the serious but lively atmosphere and the positive achievements that it produced made an unforgettable impression on everyone who took part. Through communication and discussion, we reached consensus on many issues, agreed to differ on others, exchanged ideas, learnt from each other and arrived at new understandings. It was an excellent example of respecting cultural variety and holding a successful dialogue between different cultures.

The influence of the international financial crisis on development and human rights was the focus of discussion. A crisis is always an occasion for reflection. This financial crisis has made us reflect on what is wrong with the world, and forced us to re-examine our approach to development and human rights. Reflecting on the painful experience of the crisis, we have realized we need to develop fresh concepts.

Inspired by your contributions, I would like to give you some of my personal opinions on harmonious development and human rights.

I. Human rights and development are inseparable issues. The financial crisis made us realize that the most important human rights are the rights to a dignified life and to free and equal development. Development is the precondition of human advancement and the material basis of prosperity, social harmony and happiness. It is the most important factor in solving social contradictions and problems. Moreover, it is the inalienable human right of the people of all countries. Poverty tramples mercilessly on human dignity, and is the greatest barrier to harmonious social development. Without constant social progress and enrichment of social wealth, mankind will achieve neither dignity nor harmony. If the majority remain in poverty, and their countries remain backward, it will be impossible to establish a harmonious society and realize human rights. As a result of the crisis, we understand better than ever before that development is, and always will be, the most important issue facing the world. And we have been reminded that we are still very far from creating equal opportunities for all countries and all people.

II. The primary task facing the world is to reduce the impact of the financial crisis on human rights. The crisis has resulted in a worldwide recession and aggravated the already unbalanced development of the world economy. It has meant hunger, poverty and a continuous rise in the numbers of jobless. It threatens the livelihood and even basic subsistence of huge numbers of people especially of disadvantaged groups in developing countries. Last year, the number of people going hungry increased by 100 million to over 1 billion—the biggest increase in four decades. One person in six is going hungry; every six seconds a child dies of malnutrition. The international community urgently needs to work together to mitigate the impact of the crisis on human rights and prevent it from developing into a severe



humanitarian disaster. Policies to combat the crisis must prioritize human rights above all else, address the pressing issues of unemployment, poverty and hunger, and protect the basic subsistence and development rights of the disadvantaged. All countries, but especially the more developed countries, must shoulder their responsibilities, maintain levels of foreign aid, avoid protectionism, and strive to reduce the negative impact of the crisis. The international community must also work hand in hand to reform the irrational and unfair world financial system, and establish fairer and more transparent global governance.

III. We should promote people-oriented development not capital-oriented development. The concepts of modernization and human rights were first developed by the bourgeoisie in western countries. The concept of human rights paved the way for capitalist modernization and provided the legal foundation for the development of capitalism. The capitalist model of development and its individualistic concept of human rights overthrew the old feudal order and contributed massively to human civilization and global modernization. But the essential nature of the laissez-faire, profit-seeking system led to tyranny over the working class, the bloody slave trade, colonial rule over other races, and two devastating world wars. The system was fiercely criticized by progressive people around the world. Socialist and anti-colonialist revolutions dealt severe blows to capitalist concepts of development and human rights. Under pressure from developing countries, the UN put forward a new concept of people-first development, and new definitions of human rights. Regrettably, however, these ideas were never effectively implemented. Changes in the international order at the end of cold war meant that, on the contrary, capitalist concepts of development and human rights, of laissez-faire economics and individualism, once more came to dominate the world under the banner of neo-liberalism, which was hailed by some as representing “the end of history.” But the financial crisis has exposed the fraudulent nature of neo-liberalism and demonstrated that the capitalist model of development is neither harmonious nor sustainable, and runs counter to the basic tenets of human rights. Free of restriction and supervision, the nature of capital, its drive to expand, leads to abuse, corruption, and violation of human rights. The global financial crisis was a reminder of the need for a fresh concept of development and human rights that recognizes that accumulation of capital and wealth is not the sole aim of development. We must insist on following a people-oriented concept of development for the people and by the people, and ensure the benefits of development are shared by all the people. We must always give priority to improving people’s livelihood, promoting all-round development and improving people’s dignity and self-esteem. The global financial crisis has taught us that the cause of human rights can be advanced only by putting people first, giving priority to people’s right to live and develop, and devoting as much effort to promoting collective, economic, social, cultural rights as to individual, civil and political rights.

IV. Underdeveloped countries must be involved in deciding issues of development and

human rights. The developed countries of the Western world were the advance guard of modernization and human rights. For a long time, they dictated the rules of the international political and economic order, monopolizing the right to speak on development and human rights issues, and presenting their social system, development model and social values as the sole standard. Underdeveloped countries faced almost insuperable problems. On the one hand, they faced an unfair international economic and political order; on the other hand, they were faced with the task of achieving modernization in decades whereas the West took centuries. Following World War II, underdeveloped countries expended huge efforts experimenting with different models of development and human rights. Fortunately some achieved great success. Since the end of the cold war, some developing countries, while learning from the West have also explored their own home-grown development models based on practical experience, and have achieved remarkable success. They have demonstrated their ability to respond to the financial crisis—and once again demonstrated that it is unfair, undemocratic and dangerous for the world to be governed by a set of rules framed by just a handful of advanced countries. It makes no sense for the whole world to be forced to “dream the American dream.” The unjust international political and economic order is the main obstacle to development and human rights in the underdeveloped world. For development and human rights to progress we not only need efficient economic and social policies, but also a rational and just international political and economic order. The experience and contributions of both developed and underdeveloped countries must be taken into account in framing this order.

In the mean time, underdeveloped countries must continue to speak out, express their demands, and break the West’s monopoly of discourse on development and human rights.

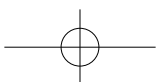
Ladies and gentlemen,

Our combined efforts have produced a highly effective forum in which we have exchanged ideas, discussed problems, and enriched our knowledge. We have also deepened our mutual understanding, and, most importantly, reinforced our friendship. On behalf of the China Society for Human Rights Studies and its President Mr. Luo Haocai, I would like to express my most sincere gratitude and respect to all the participants who have contributed their energy and wisdom to the forum. “Harmonious development and human rights” is, if I may say, an eternal topic, and I am sure we will gather again to discuss it in the future.

Finally, I’d like to quote from the speech delivered by Mr. Luo last night: “We firmly believe that our great efforts have made the Beijing Forum on Human Rights a genuine platform for exchanging ideas, transferring information and sharing experience; a bridge that can lead countries to progress in human rights; a classroom where the culture of human rights is spread; and a sacred hall where we can reflect on our ideas of human rights.”



HUMAN RIGHTS PROTECTION IN THE CONTEXT OF GLOBAL FINANCIAL CRISIS





CHINA'S STATUS AND ROLE IN PROTECTING AND PROMOTING INTERNATIONAL HUMAN RIGHTS IN THE CONTEXT OF THE GLOBAL FINANCIAL CRISIS

Han Zhen & Shi Xuehua
China

The hurricane of the United States sub-prime mortgage crisis has triggered the global financial crisis, which has negatively impacted on the subsistence and development of people around the world, as well as the international human rights protection and promotion. Under such circumstances, the governments of all the countries have promulgated relevant policies one after another to tackle the financial crisis. The Chinese government actively reacted to the crisis by taking various measures to ensure and improve people's livelihood, which has made significant contributions to the protection and development of human rights in China and in the world. The global financial crisis has enhanced China's status and role in protecting and promoting international human rights.

I. The relationship between human rights and rights of people

Human rights and rights of people are two different concepts. According to A. J. M. Milne, human rights, or human rights in a strict sense, are the minimal universal moral rights, and people can enjoy them only because they are human beings.¹ *The Blackwell Encyclopaedia of Political Science* interprets human rights as "the rights enjoyed by people because they are human beings."² The above viewpoints are consistent and accord with what we have understood about human rights: they are the minimal moral rights for the subsistence and development of people. And rights of people are the combination of political, economic, cultural and social rights of people in the special social relations.

There are differences between the contents of human rights and rights of people. Strictly speaking, human rights consist of the right to life³, to justice of equal treatment, to be helped, to freedom without negative arbitrary intervention, to honest treatment, to

1 A.J.M. Milne, *Human Rights and Human Diversity—An Essay in the Philosophy of Human Rights* Translated by Xia Yong & Zhang Zhiming, Beijing: China Encyclopedia Publishing, 1995, P153-189.

2 David Miller & Vernon Bogdanor, *The Blackwell Encyclopedia of Political Science* (revised) Translated by Deng Zhenglai, Beijing: China University of Political Science and Law Publishing, 2002, P356.

3 William A. Schabas, *The Abolition of the Death Penalty in International Law*, Grotius publication Limited, 1993, P7-10.



decency and to child care.¹ Specifically, rights of people include the right to life, to equality, to freedom, to political participation, to labour, to rest, to social security, to property and to education, etc.

On the other hand, there are connections between human rights and rights of people. The realization of human rights lays the constitutional foundation for the realization of rights of people, and the protection and development of rights of people promote effectively those of human rights. The constitutional protection of human rights constitutes the foundation for the existence and development of the political, economic, cultural and social rights of people. Of course, rights of people and their development also ensure and promote human rights. When the political, economic, cultural and social rights of people have witnessed great development, either respectively or collectively, some of the rights could be enhanced into fundamental rights or moral rights, thus promoting the denotation expansion and connotation enrichment of human rights and ushering human rights to a new stage of development. In addition, the contents of human rights and rights of people overlap with each other. For example, the right to life, to equality and to freedom are the contents of human rights as well as those of rights of people.

II. Measures of the Chinese ruling party and government to protect and promote domestic human rights in the circumstances of the global financial crisis.

(1) Increasing the government's public investments and vigorously boosting the domestic demands.

In the global financial crisis, the Chinese ruling party and government are committed to protecting domestic human rights and have taken relevant measures to this end. On November 5th, 2008, Premier Wen Jiabao hosted a meeting of the Standing Committee of the State Council, investigating and deploying measures to further boost domestic demands and promote a steady and rapid economic development. The government has increased 10 million yuan in the central budget to push forward the projects of people's well-being, infrastructure, ecological and environmental construction, and post-disaster relief work, expectedly accelerating a total investment of 400 billion yuan. From the fourth quarter of this year to the end of 2010, China will invest 4000 billion yuan for the implementation of those programs. The meeting formulated 10 measures to further boost domestic demands and promote economic growth, namely: to accelerate the construction of low-income housing; to accelerate the construction of infrastructural facilities in rural areas; to accelerate the construction of significant infrastructural facilities, including railroads, highways and airports; to accelerate the development of medical care and cultural education;

¹ A.J.M. Milne, *Human Rights and Human Diversity—An Essay in the Philosophy of Human Rights* Translated by Xia Yong & Zhang Zhiming, Beijing: China Encyclopedia Publishing, 1995, P171-173.



to strengthen ecological and environmental construction; to accelerate independent innovations and structural adjustments; to accelerate reconstruction of earthquake-stricken areas after the disaster; to increase people's income in urban and rural areas; to fully implement the VAT reform in all sectors and areas of the country, encourage enterprises to carry out technical reforms, and reduce the burden of 120 billion yuan from enterprises; and to increase financial support for economic growth, etc. All the above measures are conducive to protecting and promoting fundamental human rights and rights of people.

(2) Further optimizing the structure of fiscal expenditure to protect and improve people's livelihood.

Since the third quarter of 2008, relevant departments of the State Council have taken a series of measures to solve the housing problem for the mass population, especially for the low-income sector of the population, for instance, lowering taxes and fees of house trading. As a result, taxes on personal house trading are lowered, the contract tax rate of the first purchased ordinary home with a size of 90 square meters or under is lowered to 1%, the stamp tax of personal house trading is suspended, and land VAT of private selling of houses is suspended. Local governments may formulate policies of reducing or exempting fees to encourage housing consumption. At the same time, the rate of commercial personal housing loans has been decreased largely, and financial supports for the first purchased ordinary homes have been strengthened. In order to meet the housing demands of more low-income population, the state has accelerated the construction of low-rent housing, increased supply of rental housing, expanded the coverage of rental subsidy, improved the conditions in shantytowns (dangerous and old houses), and improved the living conditions of residents in a variety of ways. The Ministry of Civil Affairs has jointly with relevant government departments investigated and implemented *the Measures for the Determination of Urban Low-Income Families*,¹ in an attempt to regulate low-rent and affordable housing and determine the qualification of urban low-income families for other social assistance. The implementation of the above-mentioned policies is conducive to improving the policy environment of housing consumption, reducing the burden of mass population in purchasing homes, especially that of the low and medium income people, and further protecting people's rights to subsistence and to be helped.

(3) Implementing a proactive employment policy to reduce the impact of crisis on China's employment situation.

The global financial crisis has exerted severe pressure on China's employment. The Communist Party of China (CPC) Central Committee has attached great importance to the employment problem. The Central Economic Work Conference requires that a

¹ Yu Yabo, *People's Well-Being: Chinese Government's Deep Concern in the Global Financial Crisis, A Friend of Leadership*, 2009 (1)



more proactive employment policy must be implemented to promote employment in an all-round way and ensure the basic stability of the country's employment situation. The Ministry of Social Security, joined by the National Development and Reform Commission, the Ministry of Finance, the State Administration of Taxation and the State Administration for Industry and Commerce, has launched a range of government policies and measures on employment, mainly targeting on university graduates, rural migrant workers returning home, and unemployed population in urban areas. On employment of university graduates, the combined policy solutions suggest graduating students develop and tempt themselves in rural areas, encourage them to start their own businesses, and promulgate preferential policies in the sectors of industry, commerce and taxation. For the rural migrant workers returning home, the state will stabilize the grain and food prices to encourage them to return home for agriculture to increase their incomes. The state will strengthen the re-employment trainings for urban laid-off workers, the technical trainings for rural migrant workers, the business startup trainings for urban and rural labourers, and the trainings for middle and high school graduates in rural areas, so as to cultivate a new generation of industrial workers. For the unemployed population in urban areas, the combined policy solutions suggest strengthening the construction of urban communities, providing communal services, and increasing re-employment to reduce the burden of unemployment. For the small and medium sized enterprises that are capable of absorbing labour forces, the combined policy solutions suggest enhancing support for credit, loan and financing and reducing and exempting relevant taxes and fees. The state will also implement relevant subsidy and inspiration measures to encourage small and medium sized enterprises to accept more labour forces.¹ The Chinese ruling party and government have implemented these policies to protect the Chinese people's rights to justice, to be helped and to development.

III. Measures of the Chinese ruling party to protect and promote domestic human rights in the circumstances of global financial crisis.

(1) Establishing the strategic principle of “To bail out China is to bail out the world.”

At the time when American investment banks and other financial institutions collapsed like dominoes due to the sub-prime mortgage crisis and the US government had to bail out the market, the world is naturally looking to China. As a member of the world family, China has its own rights and corresponding duties and responsibilities. All neighbours in the world village should live in peace and harmony and help with each other. When in difficulties or disasters, we should try our best to provide assistance and overcome the bad

¹ Shi Xuehua & Deng Jiwen, An Analysis of Chinese Government's Strategies and Policies for Market Failure Due to Global Financial Crisis: Choosing between Government and Market, Jilin University Journal, 2009 (3)



times together. As a responsible member of the international community, China has fulfilled its responsibilities without hesitation and actively committed itself to the international coordination and cooperation. As a responsible power, China has established the strategic principle of “To bail out China is to bail out the world.” With priority given to domestic affairs, China has strengthened international coordination and cooperation to deal with the global financial crisis. Since the outbreak of the financial crisis, Chinese ruling party and government leaders have reiterated on many occasions that China will step up its effort participate in the international coordination and cooperation. So far, China has done a lot of positive work in this aspect. And they are important strategic measures adopted by Chinese ruling party and government to protect international human rights.

(2) Fulfilling the cooperation agreements with relevant countries and strengthening financial assistance to other countries.

In the circumstances of global financial crisis, we have increased, instead of decreasing, the assistance to some developing countries to enhance cooperation with them. In October 2008, China and Russia signed an agreement on long-term supply of oil, in which China has given 20-25 billion US dollars of export support loans to Russia. Prior to this, China had provided rescues to the Republic of Korea (ROK) by agreeing to expand the currency swap agreement with ROK. On December 12, 2008, the People’s Bank of China signed a bilateral currency swap agreement with the Bank of Korea. This agreement provides liquidity support to the size of 180 billion yuan or 38000 billion won (2.829 billion US dollar).¹ These measures help to protect their citizens’ rights to subsistence and development.

China has strengthened humanitarian aids to developing countries in the global financial crisis, focusing on the construction of public facilities, including hospitals and schools. Some Chinese companies investing in Africa have carried out charitable activities in local regions, including providing supports to orphans. And these companies have tried their best to create employment opportunities for local residents.² These measures have contributed to the protection of the rights to be helped and to child care for the people in developing countries.

(3) Injecting a great amount of capital into the World Bank, the IMF and other international organizations.

The global financial crisis has led 50 million people in the world into absolute poverty. The World Bank announced in April 2009 that it would provide 45 billion US dollars in the following three years to help relevant countries to increase investments in infrastructure. Meanwhile, the World Bank will increase the funds of supporting grain production in

¹ Jin Ge, China in the Financial Storm, Beijing: China Social Sciences Publishing, 2009, P154.

² Sato, China has increased assistance to Africa, P462. <http://www.cetin.net.cn/cetin2/servlet/cetin/action/HtmlDocumentAction?baseid=1&docno=371501>.



developing countries from original 4 billion US dollars to 12 billion. On the 22nd, the World Bank and some other international financial institutions announced to provide 90 billion US dollars of bailout loans to Latin American countries, helping them to combat the financial crisis. China has actively participated in the Global Trade Finance Program launched by the World Bank's International Finance Corporation, helping international financial organizations to increase the financial bailout to the crisis-stricken countries and regions and enhancing the capability of more countries and regions for fighting against crises. In fact, by so doing, China has indirectly helped other countries and regions to protect their human rights, especially the rights to justice of equal treatment and to be helped.

IV. The enhanced status and role of China in protecting and promoting human rights in today's world.

Since 1978, the CPC and the Chinese government have been adhering to the policy of reform and opening up to the outside world all the time, thus promoting the comprehensive economic and social development. While combining the universality of human rights with its own actual conditions, China has made unremitting efforts to promote and protect human rights and developed in a road with Chinese characteristics, accelerating a synchronized and coordinated development of China's human rights with the country's political, economic, social and cultural undertakings. The important status and role of China in the current world human rights protection cannot be neglected.

China fully respects the purposes and principles of the *United Nations Charter*, having actively participated in UN human rights work and the making of international legal documents and made its due contributions to the enrichment of international human rights concept and the development of international human rights practices. Since 1981, China has been member state of UN Human Rights Commission and sent representatives to participate in the drafting workgroups of the *Convention on the Rights of the Child*, the *Convention on the Protection of the Rights of All Migrant Workers and their Families*, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the *Declaration on Rights and Duties of Individuals, Groups and Social Organizations on Promoting and Protecting World Recognized Human Rights and Fundamental Freedom*, the *Declaration of the Rights of People Who Are Minorities in Terms of Nationality, Race, Religion or Language*, and *Declaration on the Right to Development*.

China has actively approved and acceded to relevant international conventions on human rights. So far, China has acceded to 25 international conventions on human rights and has taken effective measures to fulfil its obligations to those conventions, timely submit reports on implementing the conventions to the treaty bodies concerned. China has successively signed, approved and joined the following international conventions on human



rights: the *Convention on the Elimination of All Forms of Discrimination against Women*, the *International Convention on the Elimination of All Forms of Racial Discrimination*, the *Protocol relating to the Status of Refugees*, the *Convention relating to the Status of Refugees*, the *International Convention on the Suppression and Punishment of the Crime of Apartheid*, the *Convention on the Prevention and Punishment of the Crime of Genocide*, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and the *Convention on the Rights of the Child*. Moreover, China has signed successively the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.¹ It is China's consistent maintenance that all countries should promote the healthy development of international human rights through dialogues, cooperation and exchanges on an equal and mutual-respect footing. Up to now, China has conducted over 70 human rights dialogues and exchanges with other countries in the world, enhancing mutual understanding and making positive contributions to cooperation on human rights development.

In today's world, China has been on a unique road and pattern of human rights development. China's opening up to the outside world has promoted the development of human rights, and its participation in world human rights activities and dialogues has constituted an organic component of China's integration into world's overall strategic process. The Chinese ruling party and government have been stressing that China should critically learn, temper and absorb western theories on human rights, comply with the development trend of international human rights, innovate human rights theories in accordance with its actual conditions, provide guidance for China's human rights practices with Chinese human rights theories, and vigorously push forward the protection and development of world's human rights. As a large, responsible developing country, China has assumed corresponding international responsibilities and played an important role in protecting world's human rights. With the outbreak of the global financial crisis, the above-mentioned measures taken by the Chinese ruling party and government have enhanced China's status and role in protecting and promoting human rights in today's world. With the advancement of China's modernization process, the enhancement of overall national strength and the development of concept, laws and policies for human rights protection, China is believed to play an increasingly important role in protecting and promoting world's human rights.

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¹ Chang Jian, *Transition of Contemporary China's Regulation of Rights*, Tianjin, Tianjin People's Publishing, 2000.



CHINESE TRADE UNIONS STRIVE TO PROTECT WORKERS' RIGHTS AND INTERESTS IN COPING WITH THE GLOBAL FINANCIAL CRISIS

Jiang Guangping
China

Protecting the rights and interests of workers and staff members constitutes an important aspect of China's human rights protection. At the time when the country is coping with impacts of the global financial crisis, the All-China Federation of Trade Unions has been working fruitfully and effectively to accelerate economic and social development and safeguard the legitimate rights and interests of workers, therefore making contributions to the protection of the rights and interests of Chinese workers.

Triggered by the US sub-prime mortgage crisis, the current global financial crisis is exacerbating. It has led the world economy into recession. As a result, many financial institutions and enterprises collapsed, the number of unemployment skyrocket, and the growth rate of real economy decreased substantially. The world economy has fallen into the most difficult situation since the Great Depression of the last century. The global financial crisis is causing employment and social crises, seriously undermining the rights and interests of the workers in all countries.

The impact of the global financial crisis on Chinese economy is continuously deepening. Consequently, external demands of Chinese economy have declined sharply, the pressure of economic downturn is increasing, enterprises are troubled with production and operation difficulties, and some industries are obsessed with the problem of production overcapacity. Meanwhile, the pressure of urban employment is obviously felt with increasing number of unemployment, rural migrant workers are returning home, and many enterprises are reducing redundant employees and slashing wages. In such a serious situation, the Chinese government has made its primary task in 2009 to tackle with the global financial crisis and promote a steady and rapid economic development. It has timely adjusted macro-economic policies and resolutely implemented proactive fiscal and employment policies and a moderately easy monetary policy. With a focus on boosting domestic demands, sustaining economic growth, expanding employment and ensuring people's well-being, the government has adopted a series of macro control measures, playing a key role in encouraging the entire



society to withstand the negative impact of the global financial crisis. So far, preliminary progresses have been made with the implementation of the above measures, and the national economy, in which positive changes have taken place, is in a critical stage of stabilising and recovering. Although the global financial crisis continues to get worse with its deepening impact on our national economy, which is under the pressure of slow growth, we are fully confident to realize the target of economic development of the whole year.

The All-China Federation of Trade Unions (ACFTU) was founded on May 1, 1925. It is a mass organization formed by the Chinese working class on a voluntary basis. Except the Hong Kong Special Administrative Region, Macau Special Administrative Region and Taiwan Province, there are 31 provincial trade union federations, 10 national industrial unions and 1.725 million grassroots trade union organizations (in 3.682 million enterprises and institutions) affiliated to the ACFTU. The membership of the ACFTU totals 212 million and the admission rate of workers into trade unions is 73.7%.

The basic duty of Chinese trade unions is to protect the legitimate rights and interests of workers and staff members. Dealing with the impact of the global financial crisis, Chinese trade unions put workers and staff members first and fully support government policies and measures on sustaining economic growth, ensuring people's well-being, maintaining stability, boosting domestic demands and promoting steady and rapid economic development. Because of suspended and limited production, shut-down and bankruptcy, many enterprises reduced their employment. Correspondingly, the society is facing with increasing pressure of employment, the problems of arrears in wages and default in contributions of social insurance fees by enterprises are prominent, and some workers and staff members live a difficult life and have less income. Therefore, Chinese trade unions have implemented effective measures to proactively meet these challenges and conscientiously protect the legitimate rights and interests of the workers and staff members.

First, we have worked hard to sustain economic growth and promote social development. Maintaining steady and rapid economic development is the government's priority to deal with the global financial crisis, and effective protection of workers' rights and interests depends on the development of both national economy and enterprises. Focusing on the goal of maintaining steady and rapid economic development, the ACFTU has launched labor competition campaigns of "pulling together to sustain economic growth and making contributions to promote development" among workers and staff members nation-wide. On the platform of building *Workers Pioneers Title*, Chinese trade unions at all levels have carried out intensive contribution-making competitions among workers and staff members, aiming to tap potential for higher effectiveness and increase revenue while reducing expenditure. We have also launched contribution-making competitions in construction projects, such as major national projects and post-earthquake reconstruction.



Besides, community-based campaigns on technical innovations and “making contributions to energy conservation and emissions reduction” have gained momentum, guiding workers and staff members to play a leading role in promoting steady and rapid economic development. By the end of last June, 23 provincial trade unions had issued documents on the competition campaign of “pulling together to sustain economic growth and making contributions to promote development,” with almost 70% of Chinese enterprises and workers participating in the campaign. Trade unions at all levels have organized more than 88,000 technicians to help 32,000 enterprises with financial difficulties due to the global financial crisis. More than 300,000 voluntary worker supervisors on energy conservation and emissions reduction have been appointed in over 100,000 enterprises.

Second, we have adopted measures to maintain stability and promote social harmony. The ACFTU has concentrated its efforts to implement the *Common Engagement Initiative* among trade unions, enterprises and workers. On the one hand, we have urged enterprises, especially the state-owned ones, to take the lead in fulfilling social responsibilities and try their best to maintain stable jobs with no layoffs or wage-cut, and encouraged them to negotiate wage levels with their employees and pay salaries and contribute to the social insurance in full and on time. We have also urged enterprises running below production capacity to intensify job trainings for workers and staff members when there are no production activities, so as to effectively enhance the employees’ technical capability. On the other hand, we are guiding workers and staff members to proceed from their own jobs with firm confidence, work diligently to make proactive contributions to the production and operation of enterprises, and make it through the difficult times alongside with enterprises. By the end of last June, 17 provincial trade unions had issued documents on the *Common Engagement Initiative* and governments of 14 provinces, autonomous regions and municipalities had issued documents to make deployment on the Initiative through coordinating the three parties in labor relations. With intensified implementation of the Initiative in a wide range of enterprises and workers, good atmosphere has been fostered where incidents of layoffs and wage-cut are becoming less or disappearing, and democratic procedures and collective consultation must be carried out in accordance with law in case there are layoffs and wage-cut.

Third, we have redoubled efforts to ensure people’s well-being and stimulate their employment. In view of the current increasingly severe employment situation and the difficulties for rural migrant workers to find new jobs when returning to their home villages, the ACFTU has implemented the *Initiative for Supporting 10 Million Rural Migrant Workers* among all the trade unions in China and effectively helped rural migrant workers to solve prominent employment and living problems. Emphasizing on providing employment support, the Initiative plans to help more than 10 million rural migrant workers through



providing employment trainings, job aids, guidance on business startups, rights protection services, and everyday living support. More than 5 million workers have been enrolled in the employment support program and over 5 million workers have received rights protection service and everyday life support. At the same time, we have increased efforts to establish new trade unions, and more than 5 million rural migrant workers have become new members. By the end of last June, great progresses have been made in the implementation of the Initiative in all the trade unions across the country. More than 11.9 million rural migrant workers are included in the Initiative with a total aid fund of over 800 million Yuan. More than 1.1148 million rural migrant workers have been and are being trained and more than 1.2167 million have received rights protection service. Besides, trade unions at all levels have implemented the Household Services Promoting Employment Project, helping a number of laid-off and unemployed urban workers and rural migrant workers to participate in household services. We have launched *the Sunlight Employment Initiative for University Graduates from Needy Working Families*, which provides 100% support to the university graduates from working families in difficult situations. In order to accelerate the implementation of proactive employment policy, Chinese trade unions have organized guidance on business startup and career and provided small loans, assisting job seekers, especially laid-off and unemployed workers, rural migrant workers and university graduates from needy working families, to find jobs.

Fourth, special attention has been given to trainings and quality enhancement. We have vigorously strengthened the trainings of workers and staff members, and strived to improve their overall quality and reduce their stress of employment. Playing the role of *a large school*, Chinese trade unions have fully launched the project of improving quality of workers and staff members and encouraged them to carry out technical innovations, communications and trainings to improve their technical level. We have also stimulated enterprises to forge ahead when dealing with the global financial crisis and made efforts to help them organize trainings for rural migrant workers, unemployed workers and workers who are waiting for new assignments. Currently, the ACFTU has determined to establish the first 12 demonstration bases of technical trainings for rural migrant workers and 113 employment training bases in trade unions throughout the country, with an attempt to intensify employment trainings for rural migrant workers and trainings for a number of middle-level and high-level technical workers.

Fifth, we have attached much importance to providing support to workers and helping them overcome difficulties. Chinese trade unions have worked hard to help the industries and workers severely hit by the global financial crisis. We have assisted the government to ensure the basic living of laid-off, unemployed, and rural migrant workers and those who are in difficult situation. So far, 3,096 Support Centers For Needy Workers have been



established in trade unions above county level throughout the country to help needy workers and staff members overcome living difficulties. During the New Year and Spring Festival of 2009, Chinese trade unions at all levels intensified to implement the Warmth Project for destitute workers, including raising a total project fund of 3.32 billion Yuan, visiting 111,000 enterprises in financial difficulties and 6.01 million destitute families, providing training opportunities and job offers for laid-off and unemployed workers impacted by the global financial crisis and rural migrant workers returning home, helping them solve the problems of arrears in wages and social security funds, and providing financial aids to support the education of their children.

Sixth, much attention has been given to the establishment of trade unions and the protection of legitimate rights and interests. The ACFTU has been vigorously promoting the establishment of trade unions in non-public enterprises, absorbing rural migrant workers into trade unions, and better safeguarding through organized forces the legitimate rights of workers and staff members. Since last year, the ACFTU has been focusing on accelerating the multi-national enterprises, including the World Top 500, to establish trade unions in branches in China. As a result, the rate of establishing trade unions in multi-national enterprises has been raised from 43% to 85%. In view of the challenges and problems of establishing trade unions against the current economic background, trade unions at all levels have redoubled their efforts in a steady and sustainable manner to recruit more workers, including rural migrant workers. Currently, 1.046 millions trade unions in non-public enterprises have been established, accounting for 86.2% of the total number of trade unions in enterprises; the number of membership in non-public enterprises reaches 115 million, representing 73.3% of the total number of membership; and 72.166 million rural migrant workers, or more than 50% of the total, have joined trade unions across China.

The above measures taken by Chinese trade unions have played a phenomenal role in reducing the negative impact by the global financial crisis, promoting economic growth and protecting workers' rights, thus winning wide support from workers, enterprises and the government.

Confidence, cooperation and responsibility are indispensable for defeating the global financial crisis, as well as common reactions from every single country in the world and the international community, since this is a challenge to the entire world. In order to better protect the rights and interests of workers who are severely impacted by the global financial crisis, the ACFTU makes the following proposals:

First, accelerate the economic growth and achieve common development. Development is the premise and linchpin for responding to challenges and solving problems. For the time being, it is the priority for all the countries in the world to overcome the financial crisis and promote economic growth. The global financial crisis has brought about severe difficulties



and negative impacts to all the countries, including a great number of laboring people. Therefore, only the economic growth will promote sustainable development, and only the all-round economic and social development will ensure the real protection of legitimate rights and interests of workers. The developed countries should take more active measures to promote economic development, and the relevant measures must not harm the interests of developing countries. The developed countries should take up more responsibilities, including opening market to developing countries, increasing aids and technological transfers, and further promote common development of the world countries, developing countries included.

Second, safeguard the rights and interests of workers and ensure their decent work. Workers and staff members are the major force accelerating economic and social development. The more difficulties we face, the more work we should do to put workers' interests first and the greater attention we should pay to caring for workers and ensuring their wellbeing, so that workers' rights and interests can be earnestly protected in the process of promoting development. Employment is of crucial importance to people's wellbeing, and it is the foundation for safeguarding and developing rights and interests of workers. At a difficult time when crisis-related layoffs and unemployment are increasing, it is more important and pressing than anytime ever to protect the employment right of workers. We will vigorously encourage other countries in the world to take more proactive employment policies and effectively safeguard the employment right of workers. We will work hard to stimulate employment and re-employment and do everything we can to ensure the existing jobs of workers. We will further strengthen to provide employment support and trainings for business startups while reducing unemployment, expanding employment and guiding business startups. As an embodiment of the spirit of times, decent work is part and parcel of respecting and protecting human rights. While stimulating employment, we will work hard to ensure workers' wages, increase social security, improve security and sanitary conditions in working places, protect workers' economic rights and promote to practice decent work. In order to spread decent work among workers and staff members, we will try our best to protect their interests and rights, continuously improve their working conditions, incomes, insurance, and quality of life, so that more workers can share the fruits of economic and social development.

Third, enhance social dialogues and collaborate to overcome difficulties. Harmonious labor relations constitute the foundation for handling the current crisis and protecting rights and interests of workers. Trade unions need to strengthen coordination and cooperation with relevant social partners, in that it is an important measure to protect workers' interests and an important way to accelerate harmonious labor relations. Trade unions at all levels should actively carry out the *Common Engagement Initiative* with enterprises and workers,



supervising and urging enterprises to stabilize existing jobs, timely pay salaries and social insurance premiums for their workers, and increase efforts to provide job trainings. A good atmosphere will therefore be formed where enterprises and workers care about each other and discuss with each other the future development of enterprises. Trade unions should actively accelerate the establishment of a series of sound systems, including three-party consultation, collective negotiation and workers' participation in democratic management, etc., and conduct multi-level dialogues in diverse forms with relevant organizations, especially strengthening communication and coordination with enterprises so as to work out effective plans to get through difficult situations and be reenergized to forge ahead. Social partners from all the countries in the world should continuously increase their efforts to promote social dialogues, solve labor-related problems through consultation on equal footing, build harmonious and stable labor relations and work hard and collaboratively to overcome difficulties for a win-win situation.

Fourth, intensify exchanges and cooperation and achieve mutual benefits and win-win progress. No country can stay immune from the current global financial crisis and all parties, including trade union organizations, should further strengthen coordination and communication in concerted efforts to tide over bad times. We should effectively enhance the right of participation and the right to speak of developing countries and their trade unions when responding to the global financial crisis. We need to exchange with each other good practices and new experience, including those of protecting rights and interests of workers. All countries in the world should uphold the values of openness, cooperation and mutual benefits while opposing any form of protectionism, and turn pressure into motivation and challenges into opportunities, thus creating a favorable condition for world economy to recover from difficult situations.

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ON CHALLENGES IN HUMAN RIGHTS PROTECTION AGAINST THE BACKGROUND OF INTERNATIONAL FINANCIAL CRISIS

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The financial crisis starting from August 2008 has led to severe economic recession worldwide, resulting in many serious problems such as the sharp reduction in trade, increase of unemployment rate, decrease in investment and decline of people's income. Facing the severe economic situation, people are paying a good deal of attention to economic recovery. However, with the spread of the financial crisis, its negative influences in other areas also began to emerge, including its influence upon human rights, which is gradually attracting people's attention. Then, what challenges are faced by human rights protection against the background of the international financial crisis? This is a key issue I am going to talk about in this article.

I. The international financial crisis' influences upon human rights have aroused attention from the world community

The international crisis has exerted and is exerting influences upon the human rights situation worldwide, which has aroused attention from various aspects of the world community.

First, the United Nations convened a special session of the Human Rights Council and the UN Conference at the Highest Level on the World Financial and Economic Crisis in February and June 2009 respectively. Both conferences showed high concerns about the issue.

The UN Human Rights Council held a special session on February 20, 2009 to specially discuss the influences of the global economic and financial crises upon human rights. The session was proposed by Egypt on behalf of Africa and Brazil and jointly supported by most member states of UN Human Rights Council. Martin Uhomoibhi, President of the United Nations Human Rights Council and Nigeria's Permanent Representative to the United Nations Office in Geneva pointed out at the session that during the economic and financial crises, human rights will face great challenges; at the same time, a solution centered with human rights will be a long-lasting and stable solution of the crises. Uhomoibhi specially



reminded various countries that human rights protection is the fundamental basis of the tactics of coping with the global economic and financial crises¹. On February 23, the special session adopted a resolution, appealing various countries to make efforts to alleviate the negative influences of the financial crisis upon human rights. At the UN Conference at the Highest Level on the World Financial and Economic Crises held on June 25, 2009, the impacts of the financial crisis upon human rights also attracted participants' attention. The UN High Commissioner for Human Rights and some special rapporteurs on human rights appealed participants of the conference to give priority to human rights in constituting policies of coping with the global financial crisis². Navanethem Pillay, High Commissioner for Human Rights, pointed out that the economic crisis is not only the crisis of development, but of human rights as well³. Meanwhile, some UN organizations of protecting the rights of disadvantaged groups also expressed their concerns for the issue from their angle. For instance, the UN Committee on the Elimination of Discrimination against Women expressed its concern on the effects of the current international financial and economic crises and its impacts upon the full realization of human rights of women and girls worldwide. It insisted that gender perspectives should be taken into account in relation to the impacts of the crisis on both a long and short-term basis, including in relation to education, health, security and livelihoods⁴.

Second, international non-governmental organizations (NGO) also attach great importance to the issue. In recent years, international NGOs are very active in the international human rights field with their international influences increasing gradually. International NGOs are critical and are often exposed in the world stage as critics. After the financial crisis, international NGOs are also very active, timely expressing their concerns to the financial crisis from human rights aspect.

After the breakout of the international financial crisis, leaders of six NGOs⁵ jointly published a joint declaration, pointing out that the financial crisis not only leads to economic recession, but also sharply deteriorates human rights situations. People's economic and social rights (including right of habitation, right of health and education right) are facing increasingly greater pressure; moreover, an increasing number of cases of violating human rights have emerged. With the recession of the economy, the governments began to reduce

1 UN Human Rights Council Special Session Focusing on Influence of Financial Crisis upon Human Rights

2 UN Human Rights Council Special Session Focusing on Influence of Financial Crisis upon Human Rights

3 "Human rights must figure prominently in tackling financial crisis, UN summit told," <http://www.un.org/apps/news/story.asp?NewsID=31265&Cr=financial+crisis&Cr1>.

4 "UN committee concerned by impact of financial crisis on rights of women and girls," <http://www.elanso.com/ArticleModule/sourcearticle.aspx?idx=KzRRNiSsHINiJXKzW6UKVcli>.

5 The six NGOs are: Greenpeace, Amnesty International, Oxfam International, World Vision International, PLAN International and CARE International.



their expenditures, leading to the fact that immigrants and refugees again cannot support themselves. The increasingly tense social situation may stimulate the governments, under great pressure, to suppress dissidence, carry out stricter security measures and restrain citizens' freedom¹. On May 28, 2009, Amnesty International released its annual report with a warning that the world is sitting on a "powder keg" of social unrest. The 400-page report, compiled in 157 countries, said that human rights were being relegated to the back seat in pursuit of global economic recovery. "The underlying global economic crisis is an explosive human rights crisis: a combination of social, economic and political problems has created a time-bomb of human rights abuses," said Amnesty's Secretary General, Irene Khan².

Third, while pursuing economic recovery, various countries also have voices and measures of dealing with the financial crisis from human rights angle. For instance, the Chinese government representatives pointed out that those economic and financial issues are closely related to human rights issue, and the impact brought by the crisis has direct influence upon various aspects of human rights³. On the governmental level, governments of some countries, while focusing on economic recovery and development, also adopt active measures to ensure the realization of particular human rights. For example, the Chinese government actively creates employment opportunities and gives priority to the employment rights of university graduates and migrant workers. In the United States, some scholars also review the outbreak of the crisis and U.S. government's countermeasures against the crisis from the human rights angle, saying that the financial crisis and the U.S. government's countermeasures infringed the human rights of Americans. They stressed that any short and long-term solution should take human rights into account. The U.S. government was responsible for the emergence of the financial crisis. It deregulated the financial sector, failing to provide adequate protection for Americans against violations of their human rights by financial institutions. They pointed out that better regulation, control and oversight of banks is not a curtailment of rights and freedoms⁴.

II. The international financial crisis mostly impacts the human rights situations of developing countries

The biggest international financial and economic crises of the century started from developed countries, but it is mostly damaging developing countries and the most

1 Joint Declaration of Six International NGOs: Developed Countries Saving the Markets, not People. <http://www.greenpeace.org/china/zh/news/gerd-feature/financial-crisis-comment>.

2 "Global crisis 'hits human rights'," <http://news.bbc.co.uk/2/hi/africa/8071347.stm>.

3 Speech of Ambassador Li Baodong at the special session of the Human Rights Council, <http://www.fmprc.gov.cn/ce/cegv/chn/xnyfgk/t539193.htm>.

4 Prof Radhika Balakrishnan and Prof. Diane Elson, "The U.S. financial crisis is a human rights issue," <http://www.globalresearch.ca/index.php?context=va&aid=10736>.



impoverished population in the world. It is a consensus of the international community that the international financial crisis mostly influences the human rights situations of developing countries.

The resolution of the special session of the UN Human Rights Council also pointed out that the global economic and financial crises are damaging the capability of development of various countries, especially the developing countries. All countries should make efforts to alleviate the negative influences of the crisis on human rights¹. Most participating countries believed that the crisis has directly impacted the basic human rights such as right to development, social right and culture right of all countries, especially developing countries². Representative from China pointed out that people in developing countries are facing greater difficulties in the crisis as their economic, social and cultural rights and right to development, including right to food, right to habitation, health right and education right are impacted³. Martin Uhomoibhi, President of the United Nations Human Rights Council noted that all the developing countries are the biggest losers of the crisis. He noted that no corner of the planet has yet escaped the dire consequences of the current crisis, and it is a fact that the weaker economies of the developing world will be the most adversely affected⁴.

His views were echoed by international NGOs. For instance, expert panel of the Committee on the Status of Women pointed out that currently, the developing countries, even those with complete macro-economic policies, could hardly control the influences of the cross-national spread of the financial crisis, which was originated from other places⁵. The joint declaration of the leaders of six NGOs also pointed out that it is still too early to precisely predict what abomination the most impoverished countries will encounter with during the economic recession following the financial crisis. But obviously, the reduced demands from developed countries have led to export decline and decrease in foreign revenues. All these mean that the economic growth of impoverished countries will slow down and the governments will also reduce their investments. The vulnerable social security and service systems will be in imminent danger⁶.

1 UN Human Rights Council to Discuss Influences of Financial Crisis on Human Rights, <http://www.chinanews.com.cn/gj/gjzj/news/2009/02-18/1567989.shtml>.

2 UN Human Rights Council Discusses the Influences of Financial Crisis on Impoverished Group, <http://epaper.xplus.com/papers/dyrb/20090223/n74.shtml>.

3 Speech of Ambassador Li Baodong at the special session of the Human Rights Council, <http://www.fmprc.gov.cn/ce/cegv/chn/xnyfgk/t539193.htm>.

4 Weaker economies most adversely affected by global financial crisis: Rights Council, <http://www.unmultimedia.org/radio/english/detail/69880.html>.

5 Viewing the Financial Crisis from Gender Angle, <http://www.feminist.cn/mos/content/view/2511/14554/>.

6 Joint Declaration of Six International NGOs: Developed Countries Saving the Markets, not People. <http://www.greenpeace.org/china/zh/news/gerd-feature/financial-crisis-comment>.



III. Challenges to human rights protection against the background of the financial crisis

So far, the international community has a clear vision on the negative influences of the financial crisis on the human rights, especially its impacts on developing countries. However, divergences still exist in terms of how to protect human rights against the background of the financial crisis. Human rights protection is beset with difficulties against the background of the financial crisis.

1. The North-South contradiction in human rights protection against the background of the financial crisis

The contradictions and divergences between developing countries and developed countries were clearly revealed at the special session of the UN Human Rights Council on February 20, 2009. For the influences of the financial crisis on the human rights, developing countries were very active, as the special session of the UN Human Rights Council was initiated by developing countries in Africa and Latin America. The resolution of the session also fully reflected the opinions of developing countries. For the resolution, developed countries in the UN Human Rights Council such as EU members, Japan and Canada voted abstention. German and Canada explained that Human Rights Council should focus on its own work of protecting and developing human rights, and leave economic and financial crises to competent international organizations and institutes to deal with. On the surface, this only indicated the different opinions between developed countries and developing countries on the functions of the UN Human Rights Council. But actually, it reflected the different considerations of developed countries and developing countries on their own interests.

The resolution of special session of the UN Human Rights Council showed great concerns to the crisis that is threatening the realization of the Millennium Development Goals and called for various countries not to cut the Official Development Assistance (ODA) or adopt protectionism measures so as to ensure the funds for development. The stipulation in the resolution also reflected the universal concerns of the international community to the practice that the developed countries cut down their development assistance to developing countries.

On this issue, international NGOs hit the nail on the head when they criticize developed countries. According to the joint declaration issued by the six international NGOs, the U.S. Government has granted loans of nearly \$123 billion to assist the insurance giant AIG. These assistance loans were \$18 billion higher than the amount the U.S. Government uses to assist impoverished countries every year, as well as twice of the amount needed to realize the UN Millennium Development Goals¹. The developed countries compete with

¹ The Millennium Development Goals are the global goals for the international community to alleviate poverty.



the time in coping with the global financial crisis; in contrast, they are dilatory in providing assistances to impoverished countries, alleviating poverty, resolving human rights problems and dealing with global warming; meanwhile, they often make indiscreet promises. In late September 2008, the High-Level Event on the Millennium Development Goals was held at the UN headquarters in Manhattan. According to the event, almost no country can realize the Millennium Development Goals based on the current situation. The Millennium Development Goals are committed to reduce hunger and poverty by half by 2015. However, the soaring grain and energy prices have eaten up most of the fruits achieved previously. If developed countries cut down their assistances and trade volumes on the occasion of financial crisis, the future will be severer. History shows that the worry is not baseless. In history, when economic recession occurred, the assistance volumes were largely reduced. If this phenomenon repeats in 2009, it will be a disaster for developing countries that are still in poverty. The decrease of assistances and decline of trade volumes mean that people in impoverished countries will have to pay high costs for the credit bubbles created rampantly in north America and European countries¹.

The expert panel of the Committee on the Status of Women also expressed its concerns in this regard, saying that many developing countries do not have necessary financial space to execute various economic incentive plans. The reduction and delay of ODA will exert negative influences upon the national budget of developing countries, especially those in Africa. Specially, it will influence the social departments that rely heavily on ODA. Participants called for OECD countries to implement their commitment of earmarking 0.7 percent of their GDP for ODA. They also stressed that the assistance effect should be improved due to the current financial crisis².

For this purpose, governments of some countries also voiced clear appeals. For instance, the representative of the Chinese government pointed out at the special session against financial crisis of the UN Human Rights Council that developing countries are in disadvantageous position in the financial crisis. China calls for the international community to show concerns and make efforts to reduce the damages brought by the crisis on developing countries, especially on those most underdeveloped countries. Developed countries should undertake their bounden responsibilities and obligations to continue their commitments of providing assistances and reducing debts so as to maintain and increase assistances to developing countries, help developing countries maintain financial stability and economic growth and prevent trade protectionism³.

1 Joint Declaration of Six International NGOs: Developed Countries Saving the Markets, not People. <http://www.greenpeace.org/china/zh/news/gerd-feature/financial-crisis-comment>.

2 Viewing the Financial Crisis from Gender Angle, <http://www.feminist.cn/mos/content/view/2511/14554/>.

3 Speech of Ambassador Li Baodong at the special session of the Human Rights Council, <http://www.fmprc.gov.cn/ce/cegv/chn/xnyfgk/t539193.htm>.



2. The difficulties facing disadvantaged groups in human rights protection against the background of the financial crisis

The outbreak of the global financial crisis has brought larger challenges to the protection of the rights of some disadvantaged groups. The issue of how to resolve the problems in rights protection of disadvantaged groups should be settled down urgently. According to Human Rights High Commissioner Pillay, the crisis has severely influenced the existence of the most disadvantaged groups of the society in opportunities of employment, food, housing, drinkable water, medical care and education¹. The special session of the UN Human Rights Council held on February 20, 2009 urged countries to fully protect the rights of impoverished and disadvantaged population in formulating economic incentive plans. The disadvantaged groups influenced by the financial crisis include children, immigrants, refugees, aboriginals, minorities, and the disabled. Among them, the following groups should be given more concerns:

(1) Rights protection of impoverished population

The outbreak of the financial crisis is another disaster to the world impoverished population and is continuing to generate new impoverished population. Estimation from the World Bank shows that since last year when the financial crisis broke out, a total of 53 million people have been put into poverty². The rights protection of impoverished population, the most disadvantaged group, should attract attentions from various parties.

Human Rights High Commissioner Pillay urged all states not to damage the interests of impoverished people while adjusting their policies³. Magdalena Sepulveda, Independent Expert on the Question of Human Rights and Extreme Poverty also specially issued a declaration, reminding governments of various countries not to neglect their obligations of eliminating poverty even in economic difficulties. He pointed out that the most conservative estimation shows that a total of 1.4 billion people are currently living in extreme poverty even excluding the factor of the recent growth of grain price. One fifth of the population lack of basic living guarantee and are living in indignity. He noted in his declaration that the current financial crisis and the possible trend of economic recession have influenced everyone, but mostly those who are living in poverty. At this very moment, the international community should not forget its obligation of eliminating poverty than any time else. Sepulveda pointed out that poverty elimination is not alms. Protecting the basic rights of the impoverished people is a basic legal obligation and should not be neglected under any

1 UN Human Rights Council Discusses Impacts of the Financial Crisis on Impoverished Group, <http://epaper.xplus.com/papers/dyrb/20090223/n74.shtml>.

2 Special Session of Human Rights Council Focuses on the Impacts of the Financial Crisis on Human Rights, <http://www.unmultimedia.org/radio/chinese/detail/122670.html>.

3 Special Session of Human Rights Council Focuses on the Impacts of the Financial Crisis on Human Rights, <http://www.unmultimedia.org/radio/chinese/detail/122670.html>.



circumstance. Even in economic difficulties, we should not regard it as the luxuries and abandon it¹.

International NGOs also noted the problem and issued a declaration, pointing out that for dozen millions of population in poverty globally, the financial crisis is closely related to their survival. Under the pressure of the international financial institutes, the social security systems in many countries are beginning to be disintegrated, which push the disadvantaged groups to the position without any protection².

(2) Protection of Women's Rights

Woman is another disadvantaged group that should be concerned with against the background of the financial crisis. The financial crisis has seriously impacted women's human rights, bringing greater challenges to women's rights protection. Human Rights High Commissioner Pillay stressed the difficulties of women and girls in the economic and financial crises at the special session of the UN Human Rights Council. She pointed out that the economic recession has led to economic difficulties in the society and many families, and women and girls are thus facing more behaviors that infringe their social and economic rights³. UN Committee on the Elimination of Discrimination against Women also pointed out that while the scale of the current crisis is still largely unmeasured, it is expected that women and girls in both developed and developing countries will be particularly affected by the potential social and economic consequences, such as unemployment, increase of responsibilities both at work and at home, decrease of income and potential increase in social and domestic violence⁴.

Expert panel of the Committee on the Status of Women further pointed out that financial and economic crises have different influences on men and women, and unproportionately increase women's burden, especially women in poverty, women immigrants and women of minority ethnic groups. Though both men and women are facing the influences of unemployment, women are more likely to be fired as men are traditionally regarded as the main force to support the families. The reduction of the social public expenditures has exerted negative influences on the "economy of care," which also increases women's responsibilities of doing housework and caring about other family members. They worried that if the current crisis cannot be controlled, some countries are not likely

1 Human Rights Expert: Financial Crisis Should Not Weaken the Obligation of Poverty Elimination, <http://www.unmultimedia.org/radio/chinese/detail/80783.html>.

2 Joint Declaration of Six International NGOs: Developed Countries Saving the Markets, not People. <http://www.greenpeace.org/china/zh/news/gerd-feature/financial-crisis-comment>.

3 Special Session of Human Rights Council Focuses on the Impacts of the Financial Crisis on Human Rights, <http://www.unmultimedia.org/radio/chinese/detail/122670.html>.

4 "UN committee concerned by impact of financial crisis on rights of women and girls," <http://www.elanso.com/ArticleModule/sourcearticle.aspx?idx=KzRRNiSsHINiJXKzW6UKVclj>.



to realize the Millennium Development Goals, especially the goals related to reducing the mortality of children, reducing the mortality of lying-in women, promoting gender equality and empowering women¹.

3. The way forward for the international community

Facing the above-mentioned new challenges in human rights protection against the background of the international financial crisis, what should the international community do to better cope with all these challenges?

(1) Though the negative influences of the financial crisis on human rights have attracted the world's attention, the international community still does not have a systematic evaluation to the negative influences, nor does it earnestly discuss ways and methods to resolve the problem. Even in the UN Human Rights Council, an organization specializing in human rights affairs, divergences still exist. Thus, the most pressing matter at the moment for the international community is to entrust an authoritative institute (such as UN Human Rights Council or UN High Commissioner of Human Rights) to research and evaluate the detailed influences brought by the financial crisis on the human rights, and deliver research reports and policy suggestions so that the international community and governments of various countries can learn about the real situations of the influences and adopt corresponding countermeasures.

(2) The international community should be united and cooperative in eliminating the negative influences of the financial crisis on human rights. After the outbreak of the financial crisis, the international community has conducted extensive cooperation in economic sector and has achieved sound effects. It should also strengthen cooperation in dealing with the challenges of the financial crisis on human rights through discussing measures and taking joint actions. Developed countries should earnestly implement their previous commitment of providing ODA so as to reduce the negative influences of the financial crisis on the developing countries.

(3) Governments of all nations should strictly abide by the international human rights obligation they have committed while coping with the financial crisis so as to adopt comprehensive measures to deal with challenges brought by the crisis. Expert panel of the Committee on the Status of Women pointed out that all the anti-financial crisis policies should abide by the obligations stipulated by international human rights documents for all nations. Governments of all nations should not purely or mainly rely on macro-economic policies in reversing the global financial crisis; they should adopt comprehensive measures based on human rights and people's welfare². Hence, the UN Human Rights Council should play its role of supervision and help various countries eliminate negative influences

¹ Viewing the Financial Crisis from Gender Angle, <http://www.feminist.cn/mos/content/view/2511/14554/>.

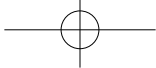
² Ibid



of the current crisis on human rights through its Universal Periodical Review (UPR) and independent expert system.

(4) Governments of all nations should take into full consideration the interests of disadvantaged groups while making detailed policies to eliminate the negative influences of the crisis on human rights and properly support disadvantaged groups. For instance, the economic measures should be made on the basis of recognizing gender differences and non-discrimination, and the government should invest more to support the livelihood of the impoverished population.

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HUMAN RIGHTS PROTECTION UNDER THE BACKGROUND OF GLOBAL FINANCIAL CRISIS

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The worst disaster brought about by the global financial recession is the survival crisis which is mainly reflected in the difficulty in maintaining the basic livelihood. From the perspective of human rights, no crisis is worse than survival crisis, nor is any right more significant than the basic livelihood. Therefore, this issue should be considered institutionally and globally.

From an institutional standpoint, every country should improve its social insurance, medical insurance and other insurances in order to maintain the basic conditions of survival and livelihood.

From a global standpoint, international monitoring mechanisms should be established by the UN to coordinate the human rights issues, in order to realize the promotion and protection of human rights internationally. Only in this way can the survival crisis brought about by the global financial crisis be thoroughly resolved.

Although there are various social insurances in developed countries, they are not perfect enough to guarantee the survival rights of the disadvantaged groups in an international financial crisis. For example, after the financial crisis broke out, the unemployment dramatically increased in the US which sunk the disadvantaged groups into survival crisis due to the lack of adequate medical insurance. Indeed, the US government worked out a series of bailout schemes to overcome the impact of the global financial crisis, but most of the schemes aim to cope with the crisis in the financial sector and recover US economy instead of safeguarding the basic livelihood of the low income groups in the society. Thus, the survival crisis in US society is still not resolved.

When promoting his 200 million “medical reform policies” in a town meeting in the state of Virginia on July 1st, 2009, US president Obama was greatly embarrassed by a middle-aged woman named Debbie who queried the president and told him her miserable experience which reflected the survival crisis the disadvantaged group is facing in the global financial crisis.

Debbie contracted renal-cell carcinoma in 1998, after receiving radioactive therapy,



the tumor was removed, but she couldn't work normally ever since. According to related regulations, medical insurance in the US are based on employment, thus Debbie couldn't enjoy medical insurance after losing her job. Now the tumor returned, she cannot pay the expensive medical expenses. What's worse, she cannot meet the requirements of any relief program or welfare service in the current US insurance system, thus she is only qualified for the basic food subsidy. Debbie said that she was almost reduced to despair and there was only death awaiting her.

According to US official statistics, around 46 million people in the US are not covered by any medical insurance. Undoubtedly¹, the US government has to reform and improve the current social insurance and medical insurance system and establish related security systems to guarantee the interests of the disadvantaged groups in order to settle their survival crisis.

This issue is even more serious in developing countries. The human rights protection system in developing countries is rudimentary for historical reasons, even the citizen's right to subsistence is not guaranteed in some countries. The main human rights issue in the most underdeveloped countries is the right to subsistence due to disease and lack of food. These countries are economically backward, so the survival crisis looms larger under the shock of the global financial crisis. Some developed countries once promised to help these underdeveloped countries out of their food crisis for various reasons. But after the global financial crisis broke out, these developed countries reduced or suspended their aid for the underdeveloped countries, which aggravated the food crisis to a new high and compounded people's suffering.

Before the outbreak of the global financial crisis, about 1 billion people on earth were in starvation or on the verge of starvation. Due to the adverse impact of the financial crisis, the food price in many countries keeps rising while personal income decreased considerably, which increase the starved population by roughly 100 million from 2008 to 2009. Therefore, the human rights situation is deteriorated by the food crisis. Most of the starved population in the world is concentrated in developing countries and regions, among which 642 million live in the Asia-Pacific region and 265 million live in sub-Saharan Africa.

According to a report by UN Food and Agriculture Organization, the world is seriously threatened by a food crisis due to natural and man-made calamities. 40 countries are in urgent need of international food aid, which include 26 African countries such as Angola and Ethiopia, 10 Asian countries such as Afghanistan and Indonesia, 3 Latin-American countries such as Colombia and Haiti, and Republic of Chechnya in Russia.²

Just as Jacques Diouf, director general of the UN Food and Agriculture Organization

¹ Wang Wei, "An America Tirade: Who Pays for the Medical Reform," *China Economic Information*, 2009, Vol. 18, pp20.

² Huang Liang, "The World Food Crisis is Aggravated," *Decision and Information*, 2009, Vol.10, pp5.



said, developed countries spent billions of dollars to cope with the financial crisis, but relatively little was contributed to assist the poor countries in their struggle against starvation. He called on the developed countries to live up to their commitments towards the developing countries, even in the face of the financial crisis.¹ Because the developed countries tend to break their commitment with the developing countries, there is need for the establishment of an international monitoring mechanism to urge the developed countries to deliver their promises. Therefore, in order to settle the survival crisis brought about by the international financial crisis, an international supervision mechanism is necessary as a systematic guarantee.

China has made marked progress in the construction of related system to guarantee the disadvantaged groups their right to subsistence. Chinese State Council issued the Act for Guarantee of Subsistence Allowances for Urban Residents back in 1998 and established the social relief system for low-income groups. The evolvement of the system from the past governmental relief to the present guarantee of the citizens' interests realized transformation from elastic relief to institutionalized mechanism in terms of system, from temporary relief to permanent guarantee in terms of function, from urban-rural separated and graded system to a uniform and equal system. Thus, the relief system benefited millions of urban and rural citizens.²

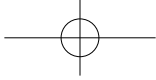
After the outbreak of the financial crisis, the social relief work in China met new challenges. The number of participators of the basic pension system increased only 370,000 from last year, and insurance in other areas also shrank. But the party and government took effective measures and pursued prudent and flexible fiscal and monetary policies. Meanwhile, Chinese government implemented a series of concrete measures to settle all these problems gradually and effectively.

The Central Committee of CPC and the State Council formulated and promulgated the "New Healthcare Reform" plan in March this year. The Ministry of Finance arranged 42.9 billion yuan to help the workers and retirees of bankrupt enterprises participate in the medical insurance which is a longstanding problem for China.

The Political Bureau of the CPC Central Committee organized collective study under the theme of "the social security system of major countries around the world and the construction of Chinese social security system." During the collective study, President Hu Jintao clearly demonstrated: "Social security is closely related to the livelihood of the people, and related work is concerned with the cause of socialist reform, opening up and modernization." This instruction boosted the development of social security in China.

1 Lu Dajun, "A Billion People in the World Are Confronting Starvation," *Decision and Information*, 2009, Vol.10, pp5.

2 Zheng Gongcheng, "Fundamental Safeguard System to Maintain the Fairness of the Baseline of Subsistence Right," *China Social Security*. Sept. 9th, 2009, pp24.



On June 22nd, the 201st executive meeting of the state council adopted the Opinions on Launching the Pilot Program of the New Rural Insurance and central finance allocated funds to subsidize the basic pension program.¹ With these efforts, the social security system in China progressed further towards a comprehensive social relief system. The Chinese government expended large sums of funds to guarantee the livelihood of the minimum-income families in urban and rural areas, and continued to reform the all-people medical system.

Due to the effectiveness of the above mentioned measures, the overall economy of China is becoming stabilized and the employment in urban areas recovers. Up to June, 2009, the social insurance in China rebounded after its previous slowdown and decline, and the number of the participators of the basic pension program reached 224.13 million, which over fulfilled the task of 223 million in the “eleventh five-year plan” a year ahead of schedule. The number of participators in the pension fund went up by 2.4% and reached 220,000, the number of participating employees and retirees reached 216 million and 55.01 million, which went up by 350,000 and 1.97 million respectively.

The basic medical insurance, industrial injury insurance and maternity insurance involved 336.71 million, 1,407.43 million, 97.94 million respectively, which went up by 18.75 million, 2.87 million and 5.40 million respectively compared with the end of last year.

Chinese government mobilized 0.9% of its public financial resources and saved the 58 million minimum income urban and rural residents out of their survival crisis and guaranteed their basic livelihood, which is a great success.²

China's experience proves that when coping with financial crisis and solving the survival crisis, we should start from the related system and employ the force of policies and laws to guarantee the right to subsistence of the minimum income groups. When coping with the right to subsistence of the disadvantaged group in a financial crisis, short-term, medium-term and long-term plans are all necessary. At the same time, we should change the ideas and transform the aid for disadvantaged groups from charity and relief to institutionalized arrangements. China's experience provides a new mode for human rights protection and proves that developing countries and emerging markets are capable to participate in the construction of international human rights protection system.

A vast number of developing countries strongly require the establishment of international human rights protection system. At the recent Southeast Asia Summit, Thai prime minister discussed with Chinese leaders and proposed the construction of an

¹ Chen Lei, “Confronting the Crisis, Social Security is to Meet a Opportunity Period,” *China Social Security*. Sept. 9th, 2009, pp20.

² Zheng Gongcheng, “Fundamental Safeguard System to Maintain the Fairness of the Baseline of Subsistence Right,” *China Social Security*. Sept. 9th, 2009, pp24.



ASEAN exchange reserve fund and a food reserve. Although the proposal is regional, the foundation of the two organizations is bound to effectively contribute to the safeguard of the right to subsistence of local disadvantaged groups and provide valuable experience for the construction of the international human rights protection system.

The construction of the international human rights protection system requires the cooperation of all the countries around the globe instead of the control of just a few countries. On the issue of reforming the Bretton Woods system, Chinese vice premier Wang Qishan wrote on April 1st, 2009 in *The Times*: “We should intensify the efforts to adjust the structure of international financial organizations and increase the representativeness and voice of the developing countries.”¹ His article serves as overall, specific and strategic guidance for the construction of an international human rights system. This point can be realized reflecting on the establishment and collapse of the post-war Bretton Woods system.

The Bretton Woods system established after World War II is essentially a US-centered capitalist international monetary system. It is a product of the contention and compromise between England and the US to maximize their respective interests.

Around World War II, the relative power of major imperialist countries changed dramatically. The British and French economies were greatly torn and devastated by the war and greatly shrank, while the US amassed fabulous wealth during the war. In 1948 the US industrial output accounted for 53.9% of the sum of all the capitalist states, and the US gold reserve made up 74.5% of the world. The US became the largest creditor country in the world, achieved overwhelming economic, political and military superiority and became mistress of the capitalist world, which paved the way for the dominance of the US dollar, therefore, US was well-equipped to organize an international monetary system advantageous to the development of US economy.

However, it's no easy task to build a new dollar-centered international monetary system. Although Britain was on the decline, it was still relatively powerful. Although the foreign trade of the US made up 36.2% of the total volume of the world, Britain and Commonwealth made up even more at 40%. Economic activities in Sterling zone played an important role in world economy, pound was still a major international reserve currency in the capitalist world and London was still an important international financial hub. Britain didn't want to obey the US and operate under a dollar-centered international monetary system, instead, Britain wanted to retain the Sterling zone and build a new international monetary system advantageous to itself.² Accordingly, in September, 1941, British Treasury adviser and notable economist John Keynes proposed the famous “international payment union plan” or “Keynes plan.”

1 Jin Weiwen, “Another Request for International Monetary Reform,” *Jiefang Daily*. Mar. 27th, 2009.

2 Wang Lizhong, *World Currency and International Economy*. Academic Books Press, 1989.



The essence of “Keynes plan” was not only the construction of an international monetary system advantageous to Britain, but also the recovery of the Sterling zone through the system. This plan was in conflict with the dollar-centered international monetary system. Therefore, the US attacked the plan as soon as it was proposed.

In March, 1942, US assistant secretary of state from the treasury department Harry White drafted “the draft plan of allied nations stabilization funds and allied nations reconstruction bank.” The stabilization funds part of the plan was issued by the US government on April 7th, 1943, and was named “allied nations foreign exchange stabilization currency,” or “White Plan” for short. The main content of “White plan” is the establishment of a new international currency directly proportional with gold and closely related to US dollars. In this way, the US would be in control of any post war international monetary system.

“White Plan” was tit for tat with “Keynes Plan,” so Britain couldn’t accept it. To strike a compromise, Britain and the US held a conference discussing the post war international currency system in Washington D.C. from September 15th, 1943 to October 9th. The conference was filled with conflict and strife. Finally, with the both sides’ concession, they arrived at a compromise. The Washington conference ended in 1944 with Britain and the US signing the “tentative agreement.” This agreement laid the foundation for the Bretton Woods system. Later, Britain and the US established a panel of experts and drew out “experts’ joint declaration on the construction of an international monetary fund” for the reference of various governments.

From July 1st to 20th, 1944, 730 representatives from 44 countries discussed the construction of the post war international monetary system in the international monetary conference at Bretton Woods, New Hampshire in the US. The representatives mainly studied how to implement the contents of Washington conference. The conference adopted Final Resolution of the Allied Nations’ Monetary Conference and two annexes, namely Articles of Agreement of the International Monetary Fund and Agreement of the International Bank for Reconstruction and Development, jointly called the Bretton Woods System. On December 27th, 1944, the International Monetary Fund was founded and based in Washington D.C.

The Soviet Union and other east European countries didn’t participate in the Bretton Woods System, and some developing countries such as India, Mexico and Brazil attended the conference, but without their proposals adopted.

The establishment of Bretton Woods System has its historical significance in that it promoted the recovery and development of the world’s economy and international trade after the war. However, Bretton Woods System is a dollar-centered capitalist monetary system which stands for the interests of western countries but neglects the interests of developing countries. Therefore, in international institutions such as IMF and the World Bank which



are organized under the Bretton Woods System developing countries are underrepresented and their voices can not duly be heard. Thus, this system cannot guarantee the equitable developments of various economies and contribute to the present international financial crisis. The current financial crisis indicates that when crisis in US economy undermines the stability of dollars, it'll trigger financial crisis in the whole world.

The construction of a successful human rights protection system should draw from the experience of the Bretton Woods System and fully take into account the voice and representativeness of developing countries. Only this can break the monopoly of major powers and guarantee a fairness, equity and competence of the future international human rights protection system.

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CHINA'S LABOUR AND SOCIAL SECURITY PROTECTION AMID THE INTERNATIONAL FINANCIAL CRISIS

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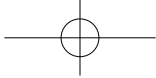
In the context of the economic globalization, many countries will be inevitably affected by the financial crisis, with the only difference in the extent of such impact. The direct or indirect impact on China, one of the leading countries in globalization, can be imagined. The Chinese government has adopted a series of measures to deal with the financial crisis. These measures in general have made a significant result.

China has always adhered to respecting and protecting human rights as one of the basic principles of governing the nation, and its specific security systems vary from time to time, and have respective characteristics. The negative influences posed by the current financial crisis originating from some countries have created a few challenges for the human rights protection worldwide. What has borne the full brunt is the realization of citizens' economic rights. The key issue is how to protect the citizens' right of employment and social security, because the right of employment is a prerequisite for the realization of economic rights, while the right of social security is also an important component of the economic rights and social rights.

The financial crisis is a misfortune, but it is a fortune that the current guideline of the Chinese government is to build a harmonious society, and is people oriented. Under this framework of the country governing principle, the Chinese government has taken the proactive measures to guide the establishment of harmonious and stable labor relations in order to protect the right of employment right and social security. This will be detailed below.

I. Adopt the policy oriented to stable employment to secure the right of employment

Employment, one of the macro-control targets of the market economy countries, is always an important working target of various national governments. The right of employment, as one of the basic economic and social rights, plays an irreplaceable important role for the human right status. The negative influence caused by the financial crisis on different countries is principally reflected by the increased unemployment and the reduced employment in the labor field. Some of China's small and medium enterprises,



particularly those labor-intensive ones with the heavy dependence on foreign trade, encountered the sharp decline in labor demand at the beginning of the financial crisis, which cost the jobs of many workers. To curb such situation, the Chinese governments at all levels have implemented the policy of stabilizing employment while expanding employment. At the same time, the Chinese government has made the unemployment insurance fund play a role in preventing the unemployment, and provided enterprises with supports in stabilizing employment and minimize job cuts while ensuring the security of the fund. These actions have paid off. The government statistical data show that in the first quarter of 2009, employment continued rising 52% over the fourth quarter of 2008, but still declined 11% from the same period in 2008. The basic judgment from the government department is that the employment status of migrant workers, the group that have suffered a considerable impact from the financial crisis, has become basically stable.¹

In order to stabilize employment, the Chinese government's policy adjustments also include reducing the burden on enterprises. Enterprises, as the concrete organization generating the labor demand, need to perform their social responsibility. However, it must be admitted that if enterprises can't sustain their operation, there will be no jobs. Thus, to moderately alleviate the burden on enterprises is also a need to keep more jobs. To this end, on December 20, 2008, the Ministry of Human Resources and Social Security and other departments and commissions of the State Council jointly issued the Notice on Relevant Issues Concerning Taking Active Measures to Reduce the Burden on Enterprises and Stabilize the Employment Situation. Based on the principle of helping the crisis-hit enterprises go through the difficulties and encouraging them not to lay off workers or minimize the job cuts, the policy allows troubled enterprises to suspend the payment of social insurance premiums for no more than six months in 2009. At the same time, under the preconditions of not lowering the social insurance benefits of the covered persons, guaranteeing the stable operation of the social insurance system and not causing any shortage to the funds, the premium rates on the basic medical insurance, unemployment insurance, work-related injury insurance and maternity insurance for urban staff may be reduced to the extent of no more than 12 months. However, no region is allowed to the premium rate on the pension insurance, unless otherwise approved.

II. Provide the special protection of labor right for the vulnerable groups in the labor market

There are two vulnerable groups in China's labor market at present—migrant workers, and newly graduating university students. These two groups have more difficulties in

¹ See fax documents of the Ministries and Commissions. *China's Labor*, 2009, 5, Page 5.



finding jobs due to the reduced labor demand as result of the financial crisis. The failure to resolve their employment issue will both harm their rights of employment, and threaten the security and stability of the entire society. To this end, the Chinese governments at all levels have taken relatively timely measures.

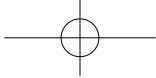
1. The central government has taken a series of actions to protect the labor rights of migrant workers

These actions mainly involve the following six aspects. (1) The government provides service for migrant workers to seek jobs or start business; (2) carrying out the extensive training for migrant workers in order to improve their ability to cope with the job problem caused by the international financial crisis; (3) applying the “simple labor contract text” to better implement the Labor Contract Law and adapt to the characteristics of migrant workers; (4) establishing the wage security as the focus to effectively resolve the wages in arrears payable to migrant workers under the current situation; (5) conducting the special inspection on the safety training for migrant workers working in high-risk industries to protect the rights and interests of migrant workers in occupational safety and health; (6) and improving the public services for migrant workers mainly by promoting the equal opportunity of compulsory education for the children of migrant workers and improve the living conditions of migrant workers.

In addition to these initiatives, the Government has also energetically advocated the employment promotion through entrepreneurship. This move is particularly reflected by the Guiding Opinions on Promoting Employment through Entrepreneurship formulated by the Ministry of Human Resources Social Security and forwarded by the General Affairs Office of the State Council. People who can enjoy the preferential policies including laid-off workers, university graduates, retired soldiers and urban residents with disabilities.

2. Mobilize social forces for promoting the employment of university graduates

Influenced by the financial crisis, not only migrant workers but also university graduates have encountered difficulties in finding jobs. In order to fully develop these valuable human resources, and make this group gain full employment, the sponsoring authorities of the Chinese government and other relevant departments have jointly formulated many guiding and preferential policies to promote the employment of university graduates. For example, on April 2, 2009, the Ministry of Human Resources and Social Security, the Ministry of Education, the Ministry of Industry and Information Technology, the State-owned Assets Supervision and Administration Commission of the State Council, the State Administration for Industry & Commerce Administration, the All-China Federation of Industry & Commerce, the Central Committee of the Communist Youth League jointly issued the Notice on Printing and Distributing the Employment Probation Plan for 1 Million University Graduates in Three Years (Ren She Bu Fa [2009] No. 38).



The Notice is intended to carry out the requirements specified by the Notice of the General Affairs Office of the State Council on Strengthening the Employment Work for Graduates from Common Universities and Colleges earlier published by the State Council. The basic principles for formulating these documents are to place the employment of university graduates on the top priority of the current employment work, take good advantage of the capacity of all walks of the society, to improve the employment ability of university students leaving the campus but having no jobs through the employment probation program, and realize the employment at a fast speed. The concrete objective is to organize 1 million university graduates without jobs to participate in the employment probation for a period of 3-12 months from 2009 to 2011. During this period, the graduates will be provided with basic living subsidies and personal accidental injury insurance. The basic living subsidies will be borne by the employers and local governments together.

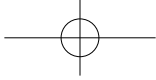
In addition to the joint action with multiple relevant departments, the employment department has also united with the educational department and the fiscal department to issue documents for the purpose of employment promotion. For example, on June 29, 2009, the Ministry of Human Resources and Social Security, the Ministry of Education and the Ministry of Finance jointly issued the Notice on Carrying Out the Employment Promotion Plan for University Graduates. The document identifies the objective to enable most of the university graduates registered for jobs to be employed before the end of 2009, and ensure university graduates from poor families employed within the year.

III. To build a social safety net through the social security system

From the aspect of social security, the social security system in the Chinese Mainland is characterized in that upon many years of practice and reform, a multilevel social security system has formed that consists of the social insurance, social relief and social welfare as the foundation; the basic pension insurance system, the basic medical insurance system and the minimum subsistence security system as the key; and the charity cause and commercial insurance as the supplement. Among them, the social security has the extremely outstanding feature in resisting economic risks for both employees and other citizens. The social security plays an eminent role in protecting the human rights of citizens in the economic downturn caused by the financial crisis. Over the past year, the Chinese government has formulated a number of policies to improve the social security system, mainly focused on the pension insurance and medical insurance and benefited almost all the citizens.

1. Pension insurance

First of all, to protect the social security rights of vulnerable groups in the labor market amid the plight of the financial crisis, the Chinese government has actively implemented the policies to promote the employment of migrant workers, and also spared no effort to resolve



the social security problem for migrant workers, especially exploring the ways of pension insurance suited to migrant workers.

Secondly, considering the income of enterprises retirees is lower than that of the employees from government organs and nonprofit organizations, the State Council has decided to increase the basic pension for enterprise retirees within three years from 2008 to guarantee retirees will have a decent life in their later years.

2. Medical insurance

In order to solve the long-term problem existing in the medical insurance such as expensive medical services, the Chinese government has taken three measures in the construction of the medical security system. Firstly, expand the coverage of the existing basic medical insurance system. At present, China's basic medical insurance system consists of the basic medical insurance for urban employees, the basic medical insurance for urban residents and the new rural cooperative medical system. Statistics show that in the Chinese Mainland, about 200 million people have participated in the basic medical insurance for urban employees, 117 million people have participated in the basic medical insurance for urban residents and 814 million people have participated in the new rural cooperative medical system.¹ Such medical insurance system covering almost all the residents appears more important amid the impact of the financial crisis. Secondly, raise the standard of the three existing basic medical security systems. The specific content is to increase the maximum payment limits and increase the reimbursement ratio. According to medical reform scheme, medical insurance for urban employees, urban residents and the new rural cooperative medical system policy, the hospitalization maximum reimbursement could reach 6 times the annual average disposable incomes of local employees or residents or the per capita net income of farmers. The last measure is to increase the overall supply of basic medical security funds.

Apart from the above three basic systems, the government has constantly improved the urban and rural medical relief systems. For example, on June 15, 2009, the Ministry of Civil Affairs and the Ministry of Finance, the Ministry of Health, the Ministry of Human Resources and Social Security jointly issued the Notice on Further Improving the Urban and Rural Medical Relief System. According to the document, the objective of the medical relief is to within three years basically build a national medical relief system that has the stable funding sources, the regular management and operation and the obvious relief effects and can provide convenient and quick services for financially tight citizens. The scope of medical relief recipients will expand from previous rural-urban families of minimum life standard and "five guarantees" households to other economically disadvantaged families.

¹ See also: *China's Labor*, 2009, 5



The other economically disadvantaged families refer primarily to economic low-income families, seriously ill patients as well as special troubled group designated in government regulations. The modes of relief include providing financial aids for these people to participate in the basic medical insurance for urban residents or the new rural cooperative medical insurance system and subsidizing the medical expenses payable by these people but beyond their affordability.

Besides, the medical insurance system for university students varies against regions and universities, and the universities in some regions have a very low level of the medical insurance for university students. In order to solve this problem, on October 25, 2008, the State Council issued a policy document, and officially included university students into the pilot program for the basic medical insurance system for urban resident (see Guo Ban Fa [2008] 119). According to the stipulation, the inpatient and outpatient medical care for students is treated equally with the local standard, and students pay the same medical expense as local residents and receive the equal medical treatment not lower than them.

In addition, China has increased the unemployment insurance and work injury insurance standards in line with the price level change and the fund balance.¹

IV. Conclusion

As a fundamental human right of citizens, the right of employment is related to the extent to which the right of subsistence is realized. Like the international community, the Chinese Mainland has attached great importance to the right of employment, made constant efforts in this regard and input extensive resources. The rights of employment and social security right are the constitutional rights of Chinese and primary right conferred by the basic labor laws and the social security laws. The government, as the subject accountable for the right of employment, should play an active role in the intervention. The author thinks that in the fight against the financial crisis, the Chinese government has quickly responded, properly intervened and achieved fairly good results. The right of social security, first and foremost, is an economic right, and also the basic social right. Like many other countries, China is also constantly exploring the social security system. However, the Chinese government is providing their citizens with a basic safety net via the social security system. Since 2008, the Chinese government has sped up the reform of the social security system by expanding the coverage and then improving the level of security so as to achieve the long strides of the pension insurance system and the medical system that concern the basic subsistence of the people.

However, when evaluating these achievements, we must also see that there are still

¹ See: *Historic Achievement of China's Human Resources and Social Security*, Yin Weimin, *Human Rights*. 2009, 2, Page 3.



some problems facing China in realizing the right of employment and social security. For example, the connotation of the right of employment includes the equal right of employment. However, how to solve sexual discrimination in the employment field is still a problem. Another example is how to include the employees taking flexible jobs into the social insurance system to improve their quality of employment. In this regard, some technical issues still need profound research.

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FINANCIAL CRISIS AND HUMAN RIGHTS GUARANTEE

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Since the second half of 2008, a financial crisis originating from the USA has impacted the whole world rapidly. After the eruption of this crisis, especially after the financial crisis turning into a social one, people have been trying to find out how the crisis is going on, what consequences the crisis will incur, whether the crisis will result in a great depression like that in the 1930s or not, and whether the financial crisis will invite a crisis of human rights. This essay is to explain the connection between the financial crisis and human rights guarantee from the point of principles of human rights.

1. Evolution of Crisis: From a Financial Crisis to a Human Rights One

Theoretically, a whole crisis goes through three stages.

The first is the evolution from a financial crisis to an economic one. In America, the financial crisis started in the spring of 2007, and it evolved into an economic one in the autumn of 2008. In other words, it took almost one and half a year for the financial crisis to develop into an economic one. On Oct. 3rd, 2008, the Capitol Hill approved a US\$700 billion market intervention solution, which suggested that people had already realized the possibility that the financial crisis might develop into a crisis of entity economy. At the end of November the same year, Robert B. Zoellick, president of the World Bank, declared that the financial crisis had worsened into an economic one. Soon after that, three American automobile magnates announced their impending bankruptcy, which further indicated the process of the impact. Afterwards, there would be a course of apparent economic decline.

The second stage is the development from an economic crisis to a social one. A financial crisis incurs social problems, and it may evolve into a social crisis in the end after it turns into an economic one. A real social crisis will arise when a financial one evolves into an economic crisis and the sign of an economic decline is evident. An economic crisis means a process of the re-organization of a social structure, for it is a war that ruins wealth. During such a war, both the poor and the rich are losers, or in other words, both the poor and the rich suffer the disaster together. But a careful analysis indicates that the actual impacts on people of different classes in the crisis differ. In general, the rich lose more possessions than others, the middle class undergo the heaviest strike on their self-confidence, and the



poor face the most severe problems.

The third step is the worsening from a social crisis to human rights problems. It is almost inevitable that social conflicts will increase in numbers or even sharpen to a more critical degree in an economic crisis. Consequently, in the previous economic crises in the history, there had always been social conflicts and even turbulences of different scales. People's rights to subsistence and development were seriously damaged, which thus affected the exercise of their civil and political rights.

During the Great Depression in the 1930s, social contradictions in America and even other major Western countries were constantly sharpened due to the crumbling of enormous wealth, widespread unemployment, the worsening hardship in life, and increasing despair, and the society began to turn into a powder barrel. At the end of 2001, Argentina was hit by a financial crisis in debt problems, which was viewed as the worst one since 1981. The severe financial crisis finally evolved into a social turbulence and a political crisis. Consequently, Dec. 19th, 2001 witnessed the largest turbulence in Argentina since the last decade. The government was compelled to enforce a martial law, and the Minister of Economy and the President had to resign in succession. In the two weeks after that, five presidents were dismissed in sequence.

America, the original place of this financial crisis, has largely remained in peace after its eruption, but several serious social conflicts have broken out in Europe. In December 2008, a Greek policeman abused his power when he patrolled slums—He shot at a group of “problem youngsters” and killed one child at the age of 15. This accident resulted in a street demonstration of thousands of Greek students. The “death of a youngster” was a direct cause of the Greek riot, but the financial crisis was the more profound one. In the past ten years, Greece had kept a 4% rate of average economic growth every year despite the slow economic development of EU. Struck by the global financial crisis, however, the sea transport, which used to be a lifeline to Greece, now confronts with serious difficulties, the unemployment all over the country has mounted up to 7%, and the populace has been increasingly pauperized. After the large-scaled social turbulence in Greece, strikes and anti-government riots happened one after another in Iceland, Bulgaria, Latvia, Lithuania, France, UK and so on.

Developing countries have undergone more impacts by far in the financial crisis if compared with developed ones, although social turbulences mainly happened in some European countries. Developing countries, marked with their poor social development foundation and incomplete social security system, have been seriously pauperized. During the financial crisis and economic depression, protectionism has risen up in the West, and the western countries are active in shifting off responsibilities and risks. In addition to the economic and financial burdens shifted off by the West, developing countries have to face



other difficulties including credit crunch, decreased foreign direct investment, reduced official development aid and falling resource product prices. As it is shown in a survey report by the Central American Bank for Economic Integration in December 2008, all the Central American countries have undergone an obvious decrease of export volumes and overseas remittances. The report forecasts that the fragile employment market will continue to wither. Consequently, there will emerge large groups of unemployed people and irregular employees; the number of impoverished people will zoom up; the number of illegal immigrants to North America will become larger; and social order will continue to be worsening.

2. Forms of Human Rights Realization: From Economic and Social Rights to Civil and Political Rights

As it is mentioned above, unemployment is an important factor in the transition from a financial crisis to a human rights one. The semiyearly World Economic Outlook issued in October 2008 by the International Monetary Fund reported that the contemporary economic conditions of major developed economies “have fallen into or are close to depression.” This report forecast that the growth of global economy in 2008 would continue to slow down, with a growth rate of only 3.9%; and that in 2009, it would fall to 3%, which would be the lowest annual growth rate since 2002. As the data from the International Labor Organization shows, meanwhile, the global unemployment rate was 6.0% in 2007, and in 2008 it will be 6.1%, and by the end of 2009, the whole unemployed populace in the world would have mounted up to 210 million. That would be “the first time for the global unemployed populace to break through the 210 million warning line in the history,” and also the first time for the global unemployed populace to exceed 200 million since the last decade. If the present market intervention measures of various countries fail to take effect rapidly, possibly the number of unemployment people will increase further.

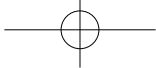
Hence, first of all, the financial crisis has a major impact on people’s economic and social rights, especially their rights to subsistence. In the intellectual history of human rights and the history of human rights movements, the right to subsistence is a sign that indicates the generational progress of human rights. The right to subsistence conceptually started with the “the right to subsistence as a right in maximum poverty,” went through the announcement of the right to life as a form of a natural right in the early human rights documents during bourgeoisie revolutions, witnessed state’s obligation to the right of labor and the right of remedies in early bourgeoisie constitutional codes, and was finally definitized in the Weimar Constitution in 1919. The establishment of criterion of the right to subsistence marked that the focus of human rights value began to transit from the human rights centered on the right of liberty to those centered on the right to subsistence, and also



it indicated the inevitability of the progress of relationship between human rights and state power from a negative state to a positive one. The right to subsistence was soon improved after its emergence, from the level of domestic legislation to that of international law. The Charter of the United Nations formulated in 1945 takes the promotion of the economic and social development and improvement of the living standards as one of the goals of the UN. The Universal Declaration of Human Rights adopted in 1948 stipulates that citizens have the rights to enjoy social security, to maintain and guarantee sufficient living standards, and have the rights to labor, education and cultural life. And in 1966, the UN General Assembly went further to adopt the International Covenant on Economic, Social and Cultural Rights, stipulating comprehensively the right to subsistence and other related ones.

The subjects of the right to subsistence are different from those of the first generation of human rights. The subjects of human rights of the first generation, including the rights to liberty, equality and property, are abstract human beings in general, while the subjects of the right to subsistence are disadvantaged groups in life, including the impoverished and the unemployed, so the right to subsistence is known as the right of the socially disadvantaged. Therefore, the subjects of the right to subsistence are concrete particular persons. Of course, the “concreteness” and “particularity” here do not mean that some people in the society are always the advantaged, and some others are always the disadvantaged; Advantages and disadvantages are not unchangeable—the advantaged today may be disadvantaged tomorrow, and vice versa. In this sense, the subjects of the right to subsistence are also universal, only that some of them are reality ones, and some are potential. The qualities of the right to subsistence are also different from those of the rights to liberty, equality and property. The right to liberty is essentially the self-determination and self-government of individuals, the right against a state’s interferences. In contrast, the right to subsistence is to guarantee a minimum living standard for every individual, which demands a state to actively perform its duty to guarantee. Or in other words, the right to liberty suggests a delimited sphere against a state’s interference, but the right to subsistence is a field where the state has to perform its duties. The right to equality is a pro forma one, and the right to property is an essential one; in contrast, the right to subsistence contains both formal and essential contents.

Today, the right to subsistence mainly contains two mutually related aspects: the material respect and the spiritual one; and the right to subsistence has developed from its single economic content in its initial stage into multiple social and cultural ones at the present, forming its most noticeable characteristic of the times. In view of this epochal characteristic of the right to subsistence, we have to take into account both the material and spiritual aspects of the right to subsistence when we try to apprehend it. The right to subsistence in its initial stage was only unfolded at the first level, that is to say, the right to subsistence at that time only or mainly meant the right of being physiologically free of



hunger or homelessness. But today, the right of being spiritually free of hunger has become an integral part of the right to subsistence.

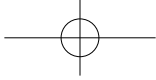
Financial crises impact not only people's right to subsistence, but also their citizen's right and political right. In the 1990s, a serious financial crisis broke out in South Korea—this crisis has not only caused a zooming pauperized population, but resulted in a steep decrease of people's political involvement. The 1992 South Korean general election before the crisis witnessed an 82% vote rate, but in the 2002 general election afterwards, the vote rate accounted to only 71%. The lower vote rate during the crisis suggested a relatively decreased inclination of political involvement among South Korean citizens. Besides, the climbing suicide rate has been another striking social phenomenon in South Korea during the financial crisis. In 1997, 14.1 South Korean people committed suicide among every population of 100,000, in 1998 after the financial crisis, this amount climbed up to 19.9, and in 2005, it increased to 26.1. Evidently, financial crises impact profoundly on the guarantee of human rights, and must be dealt with very carefully.

3. Models of Human Rights Guarantee: From “Washington Consensus” to “Beijing Consensus”

There have been various opinions on the origin of this contemporary crisis. Some people impute it to the greed and fraud in the Wall Street. Some attribute it to financial derivatives. Some denounce the absence of financial supervision. But there are also some people who argue that the chief criminal in this crisis is the new liberalism that the USA has actively performed for the recent 30 years.

In brief, the new liberalism pursues “big market and small government.” It admires the strength of the “invisible hand,” holding that the automatic adjustment of the market is the most superior and the most perfect mechanism, and the free competition in the market can help realize the optimized configuration of resources and full employment. It opposes state power's interference in economic activities, arguing that the planning management and adjusting distribution in economic activities by a state will hinder economic liberty and strangle people's enthusiasm. It maintains privatization, thinking that privatization is a basis to guarantee the full play of market mechanism, that private enterprises are the most efficient businesses, and that the present public resources should be privatized. And As for international economy and financial orders, it advocates free trade and free capital flows. The new liberalism temporarily reconciled the internal contradictions in the capitalist system to a certain degree, driving the world economy to a period of unprecedented prosperity; therefore it gradually gained a firm stand in the whole capitalist world.

The USA had also engaged itself in making use of its enormous national power and great influence in international affairs to energetically promote a new liberalist economic



system. A conference about the economic adjustment and reform in Latin America was held in Washington in 1990. After heated discussion, the conference put forward its so-called “Washington Consensus,” which brought forward ten policy suggestions for the debt crisis of Latin American countries. In essence, the kernel concepts in the “Washington Consensus” are liberalization, marketization and privatization. As an economic declaration of new liberalism, the “Washington Consensus” turned the liberalist thought from an academic theory into an economic model and a political creed of international capitalism, enabling it to be popularized and exercised in a full scale in the US and world economic systems. In the 1990s, new liberalism prevailed in the world economic system; it strengthened the relationships between America and other economies accelerated the liberalization and opening of global economy, and enhanced connectivity and interactivity within the global financial system. As a result, both the speed and scales of free capital flows constantly increased. After it overflowed out of its source in America, this crisis fused into the world financial system in an unnoticed way, and investors of each country fled from the market in succession; that incurred global credit crunch, credit freeze and liquidity drying up. In a financial market, all monetary systems are based on credits; once this credit system collapses, the foundation of such monetary systems will be exposed to threats.

Ever since the Age of Renaissance, freedom and equality have been dominant social values, and people’s pursuit of these two have never stopped. But as for a market, more liberty does not necessarily mean a better result. Monetary derivatives were allowed to expand boundlessly; financial tools were transacted excessively; high leverage operation was performed, and people pursued interests irrationally. Once the crisis was triggered off at last, the whole market confronted the danger of collapse and a domino effect. After the eruption of the international financial crisis, many scholars begin to re-consider liberalism, and some countries are reflecting their models of development, too.

Since Joshua Ramo, a senior consultant of the US Goldman Sachs, published his *Beijing Consensus*, the discussion of “Chinese model” has attracted special attention from international media and academia. The modernization in the background of globalization is a new topic for many countries, which are all trying to find out a suitable model of development; China insists on the model of development conforming to the reality of itself, and the “Chinese model” has attracted worldwide attention. The Chinese model contains abundant components, among which the Chinese model of human rights guarantee is highly characteristic. To enjoy human rights has been a long-cherished ideal for all people in the world, and thus highly universal. But on the other hand, human rights have their particularity, and the concrete model for each country to exercise human rights have to adapt to its particular conditions—the historical and cultural tradition or the level of economic and social development, for instance. After the founding of new China in 1949, especially after



the reform and opening up to the outside world in 1978, China has combined the universal ideal of human rights with its particular conditions on the basis of historical experiences and lessons, finding a way of human rights development with Chinese characteristics.

China puts the right to subsistence and right to development at the first place, pushing forwards human rights in full scales under the condition of reform, development and stability. In the basic direction towards the development of human rights, it persists in the development of productivity and the principle of common prosperity, aiming at improving the living standard and facilitating the development of human rights of all people in the country; as for the order of priority among human rights, and gives priority to the rights both to subsistence and development; meanwhile it takes into account the full-scaled development of citizens' political, economic, social and cultural rights and individual and collective rights. With respect to the forms and methods to boost and guarantee human rights, it stresses stability, development, reform and rule by law simultaneously, and insists on the unity of rights and duties, taking a more complete and more balanced standpoint for the relationship between rights and duties. And with regard to the policies and theoretical construction concerning human rights, it has confirmed the important position of human rights in national political life. In 1991, China published its white paper *Human Rights in China*, declaring clearly to the world the acceptance and understanding of human rights by the socialist China; in 1997, the expression "to respect and guarantee human rights" was written into the report of the 15th Conference of CPC Central Committee; in 2002, as an important goal of socialist political civilization, to "respect and guarantee human rights" was included into the report of the 16th Conference of CPC Central Committee; and in 2004, the same expression was incorporated into the Constitution and became a state will, thus obtaining a supreme constitutional status. In the international exchanges and cooperation on human rights, China pays much attention to the position and role of sovereignty in the development of human rights, firmly opposing any interference in the domestic affairs of other countries under the pretext of human rights. In this way, it has efficiently safeguarded its sovereignty, and thus provided suitable conditions for the full development of human rights.

Over the last three decades, China has insisted on this correct road of development. In this way, it has not only greatly improved the living and spiritual conditions of all people in the country, but has developed a complete set of political institutions and legal systems to guarantee people's democratic rights. As a result, the human rights situation in China has been constantly improved. In this financial crisis, particularly, China has adhered to its own road of human rights development, guaranteeing well the human rights of the Chinese people while it successfully copes with the crisis.

(The author is Division Director of the Overseas Chinese Affairs Office of the State Council,
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PROTECTION AND PROMOTION OF HUMAN RIGHTS IN UZBEKISTAN IN THE ERA OF GLOBAL ECONOMIC AND FINANCIAL CRISIS

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Fundamental human rights and freedoms can not be realized without creation of necessary conditions for their harmonious physical, psychological, intellectual and cultural development. State and society, being in harmonious relations between each other and with individuals, must create necessary political and legal, social and economic, as well as spiritual and moral basis for the development of human abilities, given to him by nature. In this regard, the theme of the Forum, dedicated to harmonious development and human rights, has been timely chosen and actual indeed, given the conditions of financial and economic crisis, influencing the most of world countries, and which has directly affected the human rights and freedoms.

The economic crisis in many countries has shown that one of its reasons, was caused by the break of harmony between the state and individuals, and the human right for good, and quality state governance. Peter Ducker said that “there are no poor or rich countries, there are poor and good governed countries.” The state is obliged to create harmonious governance mechanism, which would secure human rights.

The famous ancient Greek thinker Aristotle wrote that the state, as a body, consists of a number of parts and none of them should develop without harmony with others. The state is a unique macro-system, all the components of which are in balance with each other, which guarantee its maximum durability, stability and survival. We think that financial and economic crisis will assist many countries to find those defects, which exists in the state machine and eliminate them for the sake of securing fundamental human rights and freedoms.

Global financial and economic crisis and human rights. In Uzbekistan in conditions of global financial and economic crisis, which had started in 2008 and which is getting more scale and depth as evaluated by many international experts and specialists, the state policy is directed at maintenance of living standards and not allowing them to fall down, protecting from negative influence of financial crisis, provision of normal life as basis of human rights.

Within the framework of fulfilment of its obligations under the International Covenant



on Economic, Social and Cultural Rights, Uzbekistan is giving a priority attention to the economic well-being of its citizens. For instance, at present the state has been accomplishing active measures to protect the population from negative influence of global economic and financial crisis. Within the framework of the Anti-Crisis Programme on Prevention and Neutralization of outcomes of Global Economic Crisis in 2009-2012, adopted by the Uzbek Government, special steps has being taken on protection of the rights of owners, entrepreneurship and small business, increasing the level of employment of population, decreasing prizes of main food products for citizens and of wide-spectrum goods.

The year 2009 was proclaimed in Uzbekistan as the Year of Development and Improvement of Villages. This has a deep meaning. The main part of the Uzbek population (more than 50%) lives in villages and further development of the country depends on future of those villages. In the State Programme, dedicated to the Year of Development and Improvement of Villages, which was approved by the Government of the country, concrete measures are foreseen on improvement and strengthening of the legal basis for provision of rights and interests of those, who live in villages, creation of necessary conditions for the development of financial and economical means of village development, improvement of healthcare system in villages, raising the quality of education of the youth in villages, etc.

In his book, titled “The global financial-economic crisis, ways and measures to overcome it in the conditions of Uzbekistan” published in 2009, the Uzbek President Islam Karimov noted that the total assets of commercial banks are about 2.4 times more than the volume of deposits of both citizens and economic entities.

Taking into consideration the significant growth of volume of banking assets in the country, today the state gives 100-percent guarantee on all banking deposits of population.

In 2008, the gross domestic product grew and accounted for 109 percent, the growth rates in industry made up 112.7 percent, including in production of consumer goods—117.7 percent, and the sphere of services grew by 21.3 percent.

The state budget has been over-executed. Instead of envisaged deficit we have gained a surplus in the amount of 1.5 percent towards GDP.

In 2008 the average salary in budget organizations grew for more than 1.5 times and as a whole in the economy—1.4 times.

Despite the crisis, in 2008 we have given a priority attention to the construction and commissioning of sites of social sphere which had allowed of reconstructing and newly building 169 professional colleges for 113.2 thousand students and 23 academic lyceums for 14.7 thousand students. Uzbekistan has newly built 69 schools and completely overhauled 582 schools, 184 children’s sports sites, 26 rural medical stations and 7,240 thousand square meters of housing, and others.

Measures were undertaken to further decrease the tax burden on economic entities. In



2008, about 661 thousand new jobs have been created.

Today we have all grounds to state that the model of transition to a socially-oriented free market economy, which we have adopted and is based on the well-known five principles, with year to year of our onward advancement, justifies its accuracy and consistency.

Main direction of human rights protection in Uzbekistan. The first international document, which Uzbekistan joined, is the Universal Declaration of Human Rights. This act has demonstrated Uzbekistan's adherence to the ideals and values of human rights in its state policy. The declaration has totally been reflected in the text of the Uzbek Constitution, as well as in the national legislation.

Today, Uzbekistan is member to over 70 international documents in the sphere of human rights, including the 6 UN human rights instruments. Uzbekistan has been timely fulfilling its international obligations and is realizing concrete measures on protection and promotion of human rights.

Uzbekistan pays a great attention to securing all the categories of human rights.

The Uzbek policy in the sphere of human rights is being realized in the following directions:

The system of legislation on human rights. The Uzbek Parliament has adopted more than 300 laws, which regulate fundamental human rights and freedoms. Within the framework of liberalization of judicial and legal systems, legislative acts, directed at abolition of the death penalty, habeas corpus, there were adopted such laws as the Law "On social protection of disabled people," "On the guarantees of the rights of the child," "On counteraction against human trafficking," the Constitutional Law "On Strengthening the role of political parties in renewing and further democratization of state governance and modernization of the country," etc.

State system of human rights protection. The state system of human rights protection is made of legislative, executive and judicial branches of power, as well as of special state bodies, which carry out control over provision and observance of human rights according to the Constitution and the Laws of the Republic of Uzbekistan, as well as the legislation, which regulates social relations in the sphere of realization of human rights and freedoms.

In realization of provisions of the Vienna Declaration and the Programme of Actions, the system of national human rights institutions was created. Thus, there national human rights institutions functioning in Uzbekistan: Parliamentary Ombudsman, National Human Rights Centre, Institute for monitoring the acting legislation under the President of the Republic of Uzbekistan, special structures on human rights protection, established in the structure of the Ministry of Justice, Office of Prosecutor General, and Ministry of Internal Affairs.

Educational system. Within the framework of the UN Decade for Human Rights Education, a human rights education system was created in Uzbekistan. The study course of “Human Rights” is being taught at all the schools and universities. Study-books and study manual on human rights have been elaborated for the educational establishment.

Themes on human rights protection are being introduced into the programmes of raising the qualification of personnel of law-enforcement bodies (judges, advocates, militia, prosecutors). The national programme for raising the legal culture of the society, which was adopted by the Parliament, is being successfully realized.

Informational system. Within the UN world Campaign on Public Information in the sphere of human rights, freedoms and legal interests wide-spectrum activities are being realized in the sphere of human rights. Thus, more than 120 main international legal documents have been translated into the State language (Uzbek) in close collaboration with such international partners as the UNDP, UNICEF, OSCE, ICRC and others. More than 20 juridical periodicals are being published in the country. All the mass-media pays a special attention to the issues of protection and promotion of human rights, freedoms and legal interests.

Judicial and legal reforms. Uzbekistan is carrying out judicial and legal reforms, which are based on the concept of protection of human rights.

In the sphere of criminal judiciary the following measures have been accomplished, which are directed at provision of the real independence of judges:

- specialization of courts on criminal, civil and economic cases has been established;
- institutions of appellation and cassation have been introduced;
- terms of investigation and arrest have been reduced by the Law, and strict terms for court hearings have been set;
- a democratic legal mechanism for selection and approval of judges has been created;
- Department on execution of court decisions is functioning, and courts have been freed from accomplishment of irrelevant functions;
- the principle of competition is being secured during the court hearings, i.e. equality of prosecutors and advocates;
- a Law has been adopted, according to which, sanctions for arrest are being issued by the courts (Habeas Corpus Act);
- in September of 2008 a Chamber of Advocates was established, and relevant amendments have been inserted into the Laws, directed at raising the status and role of advocates as of an institution of a civil society;
- the Research Centre was established under the Supreme Court of the Republic of Uzbekistan, which is to deal with democratization and liberalization of judicial legislation and provision of independence of the judicial system. Main directions of activities of the



Centre are to analyse the legal and judicial practice, state of provision of independence of the judiciary, elaboration of suggestions on further improvement of legislation.

In the sphere of criminal and criminal-executive legislation:

-classification of crimes has been totally changed, which resulted in decrease in the number of imprisoned persons;

-prison conditions have been considerably improved, colony regimes and conditions been softened;

-number of articles, which enable freeing in advance, has been increased. Today Uzbekistan ranks the best among the CIS-sates on the number of imprisoned persons (39 thousand imprisoned persons, which makes 158 imprisoned persons per 100 thousand people);

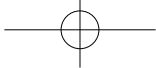
-the reconciliation institution has been introduced into the legislation, as a form of justice. Using this institution gave an opportunity to free more than 26 thousand of people from criminal responsibility.

Development of civil society institutions. The principle of “from strong state to strong civil society” is being gradually realized in Uzbekistan, which is directly linked to the development level of civil society institutions. The state, by realizing the policy of social partnership, promotes development of non-governmental organizations. There are a certain number of those organizations, which deal with protection of human rights. NGOs provide a significant assistance to the development of society and state, by realizing important socially useful functions: educational services, care about disabled people, social support to those in need, etc. there is a National Association of NGOs and the Fund for the support of NGOs functioning in the country.

The Public Fund for the Support of NGOs was established according to the joint resolution of both the Chambers of the Uzbek Parliament—the Oliy Majlis. There is a Parliamentary Commission which carries out management over the means of the Fund. Thus, the state financial support of NGOs is accomplished by the supreme legislative body.

There are National Association of Electronic Mass-Media, Creative Union of Journalists, Public Fund for the Support and Development of Published mass-media and Information Agencies.

For the first time, according to the Presidential Decree, devoted to the 60th anniversary of adoption of the Universal Declaration of Human Rights, a public control was accomplished over the work of the structures for human rights protection at the Ministry of Justice, Ministry of Internal Affairs, and Office of the Prosecutor General. The public control was carried out in collaboration with the Association of Advocates, national human



rights institutions, and NGOs. Result of critical analysis of the work of those structures was widely covered by mass-media and concrete suggestions on improvement of their activities were submitted to the heads of those ministries and agencies.

There are more than 1000 non-state newspapers and journals, as well as 42 TV-stations, 4 information agencies and numerous web-sites.

International cooperation in the sphere of human rights. The Republic of Uzbekistan pays a priority attention to fulfilment of its international obligations in the sphere of human rights. Protection and promotion of human rights, support and provision of human rights are priority directions of the state policy of the Republic of Uzbekistan starting from the moment of gaining the state independence.

The state policy in the sphere of human rights is being realized in line with main principles and measures, elaborated by the UN. Based on them, Uzbekistan established close relations with UN Charter bodies, as well as with treaty bodies and special mechanisms.

During the years of independence, the Republic of Uzbekistan submitted more than 20 national reports on implementation of international treaties to the UN treaty bodies.

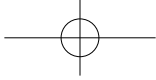
In 2008, three national reports were submitted by Uzbekistan according to the new rules. In 2010 it is expected to submit the Third National Report on implementation of the Convention on the Rights of the Child to the UN Committee on the Rights of the Child.

In 2008, Uzbekistan submitted its first National Report within the Universal Periodic Review. As you know, the Universal Periodic Review is a new mechanism to review human rights situations in the UN member-states. The Report was considered on 12 December 2008 on the Third Session of the Working Group of the UN Human Rights Council. 55 states participated in discussion of the National Report of Uzbekistan and most of them admitted that significant progress in the sphere of human rights was achieved in Uzbekistan. They highly evaluated the quality of submitted Report.

Within the framework of established practice of adoption of national plans of actions in Uzbekistan on results of consideration of each national report, in 2009 the National Plan of Activities on implementation of recommendations of the UN Human Rights Council on results of the Universal Periodic Review on Uzbekistan has been adopted. More than 40 state bodies and NGOs participated in the process of its elaboration. In August 2009, the Plan has been approved by relevant Inter-governmental Working Group.

The National Plan of Activities consists of important measures on further improvement of legislation, concerning the juvenile justice, protection of human rights in extra-ordinary situations, struggle against crime and terrorism, provision of eco-safety, etc.

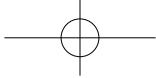
In 2008 the Uzbek Parliament ratified the ILO Convention No. 138 and No. 182, concerning the minimum age for admission to employment and liquidation of the worst forms of child labour. Basing on that, the Uzbek Government has approved the National



Plan of Activities on realization of provisions of those Conventions, which contain measures on improvement of legislative basis and monitoring of accomplishment of international obligations. Two Optional Protocols to the Convention on the Rights of the Child have been ratified by Uzbekistan recently.

On 1 May 2008 the Uzbek President issued Decree on the Programme of Activities to commemorate the 60th anniversary of the Universal Declaration of Human Rights. All the state bodies, civil society institutions, mass-media, educational establishments, and citizens participated in the activities to commemorate the 60th anniversary of the Universal Declaration of Human Rights. Realization of those activities gave a wide opportunity to familiarize every person with the ideals and values of the Declaration.

(The author is Director of National Human Rights Centre of Uzbekistan)



THE GLOBAL FINANCIAL CRISIS, POVERTY AND HUMAN RIGHTS

David Kinley
Australia

A recent report by the *Economist* on the world economy argued that, “when you are falling, you do not look up. Only when you hit bottom can you stop and contemplate the cliff you must now climb.” If the climb back up is tough for the rich states, it is certainly much, much tougher for poorer states which do not have as much to cushion the fall.

Certainly, all economies have, and continue to, suffer in the global financial crisis. A World Bank report projects that in 2009,¹ for the first time since the Second World War, global GDP will decline and the drop in world trade will be the steepest in 80 years. Most of the OECD states have suffered stagnated growth or recessionary losses, even in the emerging (BRIC) economies of Brazil, Russia, India and China, growth has slowed significantly.² But, as is the case, with any fall, it is those who are already vulnerable that have suffered the most, simply because they have less to lose. For the poor, finance is always about much more than economics. In practical as well as philosophical terms it is a matter of basic human rights.

The poor have most to lose

On top of the sharp price increases in staple foods and fuel in 2008, least developed nations are especially vulnerable to reductions in foreign direct investment in their economies, in export trade, in the levels of remittances (which have been predicted by the World Bank to fall by at least 5% in 2009 (from \$305 billion in 2008 to an amount closer to \$290 billion in 2009),³ or in the quantities of economic aid they receive (legitimate fears of aid reductions are well founded, given the estimated 25% drop that followed the Asian financial crisis last decade).

1 World Bank, *World Bank Report: Swimming Against the Tide: How Developing Countries are Coping with the Global Crisis*, March 2009.

2 The IMF predicts that growth will contract by 1.3% in Brazil and 6% in Russia. Growth in India is predicted to drop from 7.3% in 2008 to 4.5% and in China from 9.0% in 2008 to 6.5%: IMF, *World Economic Outlook: Crisis and Recovery*, April 2009, page 20.

3 World Bank, ‘World Bank Lowers Remittances Forecast for 2009 as Financial Crisis Deepens’, March 24, 2009: <http://go.worldbank.org/QECJQ3IFU0>.



Stark warnings have been voiced from within the UN about the imperilled prospects of achieving the Millennium Development Goals (of halving world poverty, instituting universal primary education for boys and girls, substantially reducing infant and maternal mortality rates, halting the spread of HIV/Aids, arresting environmental degradation, and promoting economic development in the poorest states) by the scheduled 2015. Though short on detail, UN Secretary-General Ban Ki-moon has been long on pessimistic rhetoric, warning that the turmoil in global financial markets could have “a very serious negative impact” on the ability (or more likely, enthusiasm) of rich nations to meet the goals. That is despite the sums required to do so being considerably less than the \$1.3 trillion bailout packages put together to rescue ailing Wall Street banks (the annual aid budget of the US is currently around \$25 billion, while that of the World Bank stands at approximately \$38 billion; according to the OECD, the total aid commitment from all the world’s major Western donors in 2007 was just over \$100 billion (this figure then excludes China which clearly does provide substantial aid and investment, especially in Africa, but does not publish its overseas development assistance statistics).

The plight of the developing countries in the wake of the crisis has been on the minds of global leaders and global institutions in the lead up to the G20 Summits this year. In April, World Bank President, Bob Zoellick, put the plight in sharp perspective, arguing, “in London, Washington and Paris people talk of bonuses or no bonuses. In parts of Africa, South Asia, and Latin America, the struggle is for food or no food.” This concern echoes the statement of UK Secretary of State for International Development, Douglas Alexander, at last year’s World Bank AGM that “in this interdependent world, co-ordinated action from governments, the IMF and the World Bank is not only a moral imperative, but in our self interest.”

The fundamentalist undertones of such an exhortation flow from the circumstances faced by nearly one billion people every day. For without the means to secure adequate housing, health care, education, and enough to eat and drink, and lacking protection against exploitation, discrimination, and (perhaps worst of all) disdainful disregard, the poorest of the poor will live, if they manage to stay alive at all, only barely. Poverty does not cause human rights abuse. It is, primarily, the actions or inactions of governments that cause human rights abuse. However, the incidence of poverty is a reliable sign of attendant human rights problems, and an indicator that states are not fulfilling their obligations under international human rights laws.

One year on

A year on from the panic of September 2008, Mr Zoellick has pronounced that immediate measures put in place have “broken the fall of the financial crisis.” He added,



however, that it is “too early to declare success.”¹ In particular, debate is far from being resolved on the question of repairing the global financial system for the long-term. In these discussions, considerations of how to help the rich help the poor should be front and centre. This is not just because their social and economic development needs are so desperate, but, more broadly, because such a focus reminds us what the economy is really for. Economic prosperity, still less the generation of capital, is not an end in itself. Rather, it is merely a means necessary to achieve ends such as greater individual wealth, social welfare, national stability and global peace.

The notion of the economy as an instrument is hardly new, even if it is too often forgotten. John Stuart Mill and Adam Smith, the intellectual titans of liberalism who laid the philosophical foundations of modern economic thought and practice, were clear about this. For Mill, “the economical advantages of commerce are surpassed in importance by those of its effects which are intellectual and moral,” while Smith was adamant that while the benefits that commerce can bestow on individual freedom may be the “least observed advantage of commerce,” they are “by far the most important of all its effects.” These are clarion calls that must now be heard and heeded above the din of the market.

As a matter of principle, economic globalisation is indispensable to the prosperity, welfare and rights-protection of rich and poor alike. But markets in practice—whether in the surreal, paper world of global finance or in the real economy of commodities and services—must be managed if such goals are to be reached. Even the now much-maligned, so-called “deregulated” capital markets, ushered in under the *laissez-faire* banners of Reaganomics and Thatcherism (and duly embraced by all economies in the West (and globally)) were in fact sustained by mountains of regulations. Substantial legal regimes have been needed to keep at bay the protectionist and discriminatory tendencies of states, the anti-trust and anti-competitive behaviour of corporations, and the insider-dealing and collusion inclinations of financiers.

In the wake of the two G20 Summits of 2009, there appears now to be a consensus that regulation (or rather *re*-regulation) of the global capital markets, at least, is paramount. As it was strongly put in the Leader’s Statement from the recent Pittsburgh Summit: “we will not allow a return to banking as usual.” These fighting words have been accepted, it seems, even among the former so-called “masters of the (free market) universe,” as vividly illustrated by the reports of the then Treasury Secretary, Hank Paulson’s bended-knee appeal to House Speaker, Nancy Pelosi, to secure the passage of the initial \$700 billion rescue bid, pretty much regardless of whatever regulatory strings were to be attached.

¹ Mr Zoellick’s Opening Address Remarks of the Opening Press Conference of World Bank AGM in Istanbul, October 2, 2009: <http://go.worldbank.org/RWMPPP2180>.



The brave new regulatory world?

Although the precise details of the new regulatory framework are still being worked out, initial steps can be seen in the establishment of the Financial Stability Board at the April London Summit, and there has been broad agreement that there should be some increase in the ratios of Banks' capital reserves as against the amounts they lend or invest, as well as an acceptance in principle of the need to increase the voting rights of developing and transition countries in the IMF and World Bank governance structures¹. Still, it remains to be seen if—some ten years after the Asian financial crisis and five years after the crashes in South American economies—the heady days of “hot money” flowing in and out of economies at (literally) electric speed are really to be curtailed, or if instead, global capital will quickly return to business as usual.

Received wisdom has it that Wall Street must be saved in order to save Main Street; and that the City of London must be saved to save the cities of the developing world. Money—the lifeblood of the economy—is first being pumped into the global financial system by the only solvent bankers left standing, reserve banks, fulfilling their ultimate roles as lenders of last resort. The regulatory “pound of flesh” that states will demand for such extraordinary measures will certainly be that the system must subject itself to greater government intervention generally, and increased levels of transparency and accountability, more specifically.

Whatever the exact format of the new architecture of global finance, it will certainly have to be different from the last major effort to restructure the rules. Just over ten years ago, in the face of widespread and fierce criticism, the plug was finally pulled on the OECD's Multilateral Agreement on Investments (MAI). The MAI had sought to liberalise international investment flows so that states—especially developing states—would no longer be able to place restrictions or conditions on foreign investments intended to insulate themselves against the extremes of capital flight. It was an initiative that indisputably, and knowingly (it was negotiated in secret), greatly favoured rich-state financial institutions.

With the benefit of hindsight afforded by the global financial crisis, the episode was a close shave for both poor and rich states, as the impacts of what George Soros has labelled the “unleashed and unhinged” financial industry, would surely have been magnified. The thought hardly bears contemplation.

The sobering message that bears repeating is that the naïve belief that unregulated capital markets will always deliver desirable results, even for their most powerful participants, has now been categorically refuted. This is not just a matter of accepting that markets fail. No one seriously denies that. Rather, it is to see the Emperor's nakedness for

¹ That is, a shift to these countries of at least 3% additional voting power in respect of the World Bank and at least 5% in respect of the IMF; see G20 Communiqué; 25 September 2009, paras 20-21.



what it really is. The market is not a self-regulating mechanism, but one that ultimately requires exogenous intervention to right itself. The “invisible hand” is not somehow subliminally guiding the economy to nirvana, but is operating randomly, driven by whims and just as likely to lose the jackpot as to win it. Economic historian Karl Polanyi said all of this more than 60 years ago (when reflecting on the lessons learnt from the banking crisis of 1907 and Great Depression in the 1920s), but his caveats about the massive social and economic dislocations that are the inexorable consequences of free market capitalism have been slowly buried over the intervening years; at least until now. It is no surprise that in the past year; much more has been heard of the champions of state interventionist, supply-side economics, Polanyi and John Maynard Keynes, than of their neoliberal opposites, Fredrick Hayek and Milton Friedman.

A multitude of political, social and economic claims have been, and will continue to be, made during this design phase of the new architecture of global finance. To be sure, the golden economic goose of the established economies must be resuscitated, cared for and better supervised to ensure that it keeps laying its golden eggs. Nonetheless the plight of those living in the developing, and even the emerging, economies (the vast majority of whom have so far not shared in the golden global wealth to any significant degree), must comprise a key part of that process of renewal.

Change or “Back to the Future” again?

Over the past year a number of measures have been put into place. Initially, stop-gap measures were instigated by international organisations. In response to the global food crisis in May 2008, the World Bank established a \$1.2 billion rapid financing facility for poor countries to help them combat rising food and fuel prices. In October 2008, and the International Finance Corporation, the Multilateral Investments Guarantee Agency (both part of the World Bank Group), and the WTO pronounced their intentions to promote their support for foreign direct investments and trade financing.¹ In early 2009, as part of its response to the global financial crisis, the IFC established the Global Trade Liquidity Pool Program, a funded trade finance program of up to \$8 billion. More promises were made at the G20 Summit in London, at which leaders pledged, among other things, an additional \$500 billion in funding for the IMF, \$250 billion in IMF Special Drawing Rights available to all IMF members and at least \$100 billion of additional lending by the multilateral

¹ See, for example, IFC Issue Brief, IFC Response to the Global Crisis, April 2009: [http://www.ifc.org/ifcext/media.nsf/AttachmentsByTitle/SM09_CrisisResponse_IssueBrief/\\$FILE/SM09_CrisisResponse_IssueBrief.pdf](http://www.ifc.org/ifcext/media.nsf/AttachmentsByTitle/SM09_CrisisResponse_IssueBrief/$FILE/SM09_CrisisResponse_IssueBrief.pdf); WTO News Items, *Lamy Creates General Task Force on Financial Crisis*, 14 October 2009: http://www.wto.org/english/news_e/news08_e/tnc_chair_report_oct08_e.htm.



development banks, including to Low Income Countries.¹ In July 2009, heads of states, and of international and regional organisations launched the L'Aquila Food Security Initiative. Each of these measures was endorsed, though not always backed by specific financial commitments, at the most recent G20 Summit in Pittsburgh.

What is essential, however, is that beyond these bandaid responses, there is a concerted effort to recognise and respond to the economic and social needs of the poor on a sustainable long-term basis. In the case of individuals these needs are expressed as human rights in international (and domestic) laws, laws which also stipulate the obligations of public authorities (and through them, of private entities, including corporations and financial institutions) to respect, protect and promote such rights. Economics may typically view human rights concerns as externalities, unamenable to meaningful calculation, and therefore irrelevant to any endeavour to design the regulatory framework within which an economy is to function. But that is to view human rights through the wrong set of glasses. Human rights, whether or not they are legally framed, are ultimately political constructs, and as such can—and indeed must—be used to achieve political ends.

Securing the most basic human rights of the poor, be they in wealthy or impoverished states, are what, above all, any fair, rational economy should be about, even if it is deemed that the best way to achieve that is to allow the rich to get richer. The creation and especially the distribution of wealth cannot, if it ever could, be justifiably unconditional. It is these conditions that must now be the focus of the brave new world of global finance that will emerge over the months and years ahead. But it will take courage and great political fortitude. The scale of this challenge, at least in the West, can hardly be underestimated, as is so clearly illustrated by the fact that even when the US Government owns 80% of AIG after pumping nearly \$180 billion of taxpayer's money into the ailing insurance giant, it was still apparently powerless to stop the AIG executives awarding themselves \$165 million in bonuses earlier this year. And this is against the backdrop of the jobless statistics in the US hitting a generational high of 9.84% as of September 2009.²

The increasing prominence of corporate social responsibility (CSR), in both its mandatory and voluntary forms, may well provide something of a guide. CSR has in fact already reached the banking sector albeit only in respect of development project financing. The Equator Principles require banks to monitor the social and especially environmental impacts of the projects for which finance is sought. More than 60 financial institutions

¹ In terms of structural reform, the commitment at the recent Pittsburgh Summit to a shift in IMF quota share of “at least 5% from over-represented countries to under-represented countries using the current quota formula as the basis to work from,” are of particular note: Leaders’ Statement, the Pittsburgh Summit, September 24-25, 2009, para. 20: <http://www.pittsburghsummit.gov/mediacenter/129639.htm>.

² The highest it has been in the US for 26 years. For current and archived statistics, see US Bureau of Labor Statistics: <http://www.bls.gov/cps/>.



world-wide have signed up to the initiative and the scheme, though still only a few years old, has been broadly welcomed by banks and by civil society organisations.

The Equator Principles are hardly a template for fulfilling the redesigning task that confronts the global capital markets today, but they are a step in the right direction. In his 2009 Report to the Human Rights Council, the UN Secretary-General's Special Representative on Human rights and Transnational Corporations, John Ruggie, recognised the important role his good offices can play in this mighty task. "Companies have had to acknowledge that business as usual is not good enough for anybody, including business itself, and that they must better integrate societal concerns into their long-term strategic goals," he noted. The Report concludes that it will seek to find the opportunities presented by the crisis in operationalizing the much telegraphed three-pronged policy framework: to consider the duties of states to protect against human rights abuses; corporate responsibilities to respect human rights; and the matter of access to effective remedies when human rights violations occur. The considerable goodwill capital that Ruggie has amassed from all sides of the CSR debate thus far in his mandate, could be well used in the wide-ranging policy debates that have already begun.

In truth, there will be few institutions of global or domestic governance that will not seek input into, or be in some way affected by, the process of devising the new global financial order. It is that big, with its import that great and its reach that far. Even one year on from the tipping point of the crisis, good will, clear heads, a sound appreciation of the lessons learnt from past and present financial crises and, above all, a keen sense of global economic justice, will certainly be high-price commodities in what lies ahead.

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HUMAN RIGHTS PROTECTION IN TIMES OF INTERNATIONAL FINANCIAL CRISIS

Elisabeth Kardos Kaponyi
Hungary

Introduction

We are living in a globalizing world—through trade, migration, and investment—in which people are increasingly faced with the challenges of a more and more insecure world. Even in some advanced industrial countries, millions are faced with the threat of losing their jobs, losing their homes and their access to social and health care. Economic insecurity and anxiety is increasing not only among the active earners but among the elderly people as well, as they might lose their life savings in the collapse of asset prices.

In an increasingly integrated global economy and global financial system, where the prominence of international trade and investment is obvious and the growth of information and communications technology is facilitating rapid transmission of information, concerns about the impact of globalization on human rights could be overshadowed. The current global financial crisis can have a far-reaching effect on the overall respect for human rights, first of all on the respect for social, economic rights. It is important to recognize that the recent financial crisis is not only an economic, but also a social crisis.

Let me briefly describe the nexus between financial crisis and the protection of human rights.

The impacts of the crisis on poverty and development

The world economy has changed dramatically since September 2008, what began as a downturn in the US housing sector is now a global crisis. This crisis as a result of inadequate regulation and supervision of banks and financial markets has been taking effect on every economies of the world. The current global crisis is spreading to both rich and poor economies as well. In a globalised world with inter-related economies, no continent or country is totally isolated from the impact of this crisis. No country is spared from the consequences of the downturn. The impact on developing countries is even greater. The continuing decline in capital flows and exports is hurting the developing countries, despite



their having adherence to stringent macroeconomic frameworks.¹ As the UN General Assembly Resolution stated; “This is a global problem that requires a global solution.”²

A global solution will require the participation of the entire international community including the UN and its specialized agencies (Inter alia: the World Bank, International Monetary Fund (IMF), International Development Association, a WB arm to low-income countries (IDA), United Nations Conference on Trade and Development (UNCTAD), International Labour Organisation (ILO), United Nations Development Programme (UNDP),³ UNICEF), World Trade Organization (WTO), Organisation for Economic Cooperation and Development (OECD), Group of 20,⁴ The Shanghai Cooperation Organisation (SCO)⁵, etc.

The Leaders’ Statement of the G20 Pittsburgh Summit, September 24-25, 2009 declared that “Global output was contracting at pace not seen since the 1930s. Trade was plummeting. Jobs were disappearing rapidly. Our people worried that the world was on the edge of a depression.[...] The process of recovery and repair remains incomplete. In many countries, unemployment remains unacceptably high. The conditions for a recovery of private demand are not yet fully in place. We cannot rest until the global economy is restored to full health, and hard-working families the world over can find decent jobs.[...] We have a responsibility to invest in people by providing education, job training, decent work conditions, health care and social safety net support, and to fight poverty, discrimination, and all forms of social exclusion.”⁶ The G20 leaders asked the ILO, in cooperation with other international organizations, “to assess the actions taken and those required in the

1 Diana Alarcon, Poverty Practice, Bureau for Development Policy, UNDP; Stephany Griffith-Jones, Columbia University; and José Antonio Ocampo, Columbia University: How Does the Financial Crisis Affect Developing Countries? International Policy Centre for Inclusive Growth, One pager No. 81, April 2009.

2 UN General Assembly: The World Financial and Economic Crisis and its Impact on Development 29 April 2009/ A/63/838.

3 Through its global network, UNDP seeks out and shares innovative approaches to crisis prevention, early warning and conflict resolution. And UNDP is on the ground in almost every developing country—so wherever the next crisis occurs, we will be there to help bridge the gap between emergency relief and long-term development. UNDP continues to support developing countries as they address the current economic and financial crisis, it is staying true to the shared sets of values as set out by the Millennium Declaration. UNDP thus remains committed to ensuring that our policy advice, technical support and advocacy for strengthening coherence is aimed at one end result: real improvements in people’s lives and in the choices and opportunities open to them. <http://www.undp.org/publications/annualreport2009/index.shtml>.

4 The G20 is made up of the finance ministers and central bank governors of 19 countries: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, United Kingdom, and United States of America. The European Union, who is represented by the rotating Council presidency and the European Central Bank, is the 20th member of the G20.

5 The Shanghai Treaty was established in 1996 by Russia, China, Kazakhstan, Kyrgyzstan and Tajikistan (the Shanghai Five). Its aim was to demilitarise the common borders of Russia, the Central Asian republics, and China. Representatives of the SCO observer states: India, Iran, Mongolia, Pakistan, and Afghanistan.

6 PREAMBLE 3., 9. and ANNEX: Core Values for Sustainable Economic Activity 5.



future” in the field of employment, labour market and the protection of the most vulnerable.

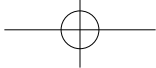
The World Bank has estimated that the global economic crisis will drive 53 million more people into poverty in developing countries in 2009, in addition to the 130-155 million affected in 2008. This change is expected to bring the total number of those living on less than US \$2 a day to over 1.5 billion. As it was emphasized in the October 2009 Global Financial Stability Report (GFSR) of the IMF, the risk of a reversal is a significant market concern, and a number of financial stress indicators has remained elevated. In October 2009, the Executive Summary of the World Economic and Financial Surveys World Economic Outlook (WEO) Sustaining the Recovery stated that advanced economies are projected to expand sluggishly through much of 2010, with unemployment continuing to rise until later in the year. Annual growth in 2010 is projected to be about 1.25 percent, following a contraction of 3.5 percent in 2009. In emerging economies, real GDP growth is forecasted to reach almost 5 percent in 2010, up from 1.75 percent in 2009. The rebound is driven by China, India, and a number of other emerging Asian economies. Other emerging economies are staging modest recoveries, supported by policy stimulus and improving global trade and financial conditions.¹ The World Bank remains central to the international community’s efforts to reduce poverty. World Bank President Robert Zoellick said “We may have broken the fall in financial markets, but we are still some way from a self-sustained economic recovery that provides more jobs, higher incomes and expanded opportunities.[...]The protection for the most vulnerable becomes a permanent part of the world’s financial architecture.” From this meeting of the World Bank, its President sent a strong message to developing economies that they need to be prepared in case of further economic setbacks in 2010.²

Heads of State and Government, Vice-presidents, labour ministers and leaders from employers’ and workers’ organizations met in Geneva for a Global Jobs Crisis Summit organized by the International Labour Organization (ILO) on 15-17 June 2009.³ ILO suggested that employment data by the end of 2009, compared to 2007 data, could show an increase in global unemployment of more than 50 million and that some 200 million

1 Executive Summary of World Economic and Financial Surveys World Economic Outlook (WEO) Sustaining the Recovery, October 2009 Sub-title: Global Recession Is Ending, but a Subdued Recovery Lies Ahead, p. xv. <http://www.imf.org/external/pubs/ft/weo/2009/02/>.

2 The Annual Meetings of the International Monetary Fund (IMF) and the World Bank Group, Turkey on October 6-7, 2009. The Annual Meetings was preceded by meetings of the International Monetary and Financial Committee (IMFC), the advisory body of the IMF, and the Development Committee, a forum of the World Bank and the IMF that facilitates consultation and consensus-building on development issues. The Annual Meetings are usually held for two consecutive years at the IMF and World Bank headquarters in Washington D.C. and every third year in another member country. The last three Meetings abroad were held in Singapore (2006); Dubai (2003); and Prague (2000). Press Briefing by World Bank Group President Robert Zoellick Friday, October 2, 2009

3 ILO Summit on the Global Jobs Crisis (15-17 June 2009) Panel on “Global and regional coordination to address the jobs crisis.”



workers could be pushed back into extreme poverty, as a result of the economic crisis. The social effects of the crisis are already extremely disturbing and could even worsen. Namely:

- Progress in reducing poverty in developing countries is being set back alarmingly.
- The middle class in many countries is being weakened.
- Vulnerable groups are hard hit.
- There is a serious risk of setbacks in the fight against child labour.
- Job opportunities for young women and men are very scarce leading to an upsurge in youth unemployment.
- Workers on short-term contracts, many of whom are women, are not being rehired.
- Migrant workers have reduced earnings and some are losing their jobs leading to a fall in remittances and return migration.
- In developing countries, formal economy job losses are growing, pushing workers into the already large informal economy and forcing migrants from rural areas back to their villages.
- Growing social hardship and economic uncertainty could give rise to political instability and extremism.
- The current crisis comes after a period of uneven international, social and economic development in which imbalances within and between countries enlarged generating instability and a widespread perception of unfairness.
- In addition, inadequate attention was paid to the environmental consequences of growth.¹

In accordance with the Report of the ILO Director-General “Tackling the global jobs crisis—Recovery through decent work policies”² millions of women and men have lost their jobs; business bankruptcies are growing exponentially, particularly among smaller enterprises. Unemployment is expected to continue rising at least until the end of 2010, probably until 2011. Poverty and informal employment will continue to rise as well, reversing recent gains, while middle classes are being weakened. Meanwhile 45 million persons, mostly young women and men, will enter the labour market in 2009 and in the following years looking for their first job. The IMF forecasts some recovery in global growth from mid-2010, but this is conditional on the success of stimulus packages adopted by countries and on re-establishing a functioning financial sector. Both results are as yet uncertain. Evidence of past crises indicates that even after economic growth returns, employment only recovers to pre-crisis levels with a lag of four to five years, on average. And we already had a decent work deficit before the crisis. When jobs are not available the

¹ ILO High-level Tripartite Meeting on the Current Global Financial and Economic Crisis, Geneva, 25 March 2009.

² Report of the Director-General, International Labour Conference (ILC) 98th Session 2009 Report I(A) International Labour Office Geneva.



demand for social protection increases significantly. Prolonged employment crises carry major risks for social and political stability.¹

The Global Employment Trends Report indicates that of the 3 billion people employed around the world in 2008, 1.2 billion were women (40.4 %). The Report said that in 2009, the global unemployment rate for women could reach 7.4 %, compared to 7.0 % for men. ILO warns that economic crisis could generate up to 22 millions more unemployed women in 2009, jeopardizing equality gains at work and at home. At the same time, the ILO also said that the global economic crisis would place new hurdles to the path toward sustainable and socially equitable growth making decent work for women increasingly more difficult, and therefore called for “creative solutions” to address the gender gap. According to ILO Bureau for Gender Equality Director Jane Hodges, women’s lower employment rates, weaker control over property and resources, concentration in informal and vulnerable forms of employment with lower earnings, and less social protection place them in a weaker position than men in any crises. Furthermore even though women may cope with the difficulties by engaging in longer working hours or by taking multiple low-income jobs they still have to maintain unpaid care commitments. ILO Director-General Juan Somavia said that gender equality should be a key principle in any policy response, as the effects of the economic and financial crisis go beyond the scope of women in the world of work and have an impact on the overall stability of society, considering the various roles that women play in it.² In 2008 the ILO launched a gender-sensitive “Decent Work” campaign to increase general awareness and understanding of gender equality issues in the world of work, highlighting the specific linkages between gender equality and securing decent work for all women and men. Moreover the ratification and application of the key ILO gender equality labour standards and the importance of overcoming existing barriers to gender equality were advocated as beneficial for all.³

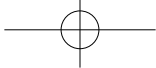
The negative effects of the recession on human rights

The economic and financial crises threaten not only the poorer nations’ ability to attain basic human rights, but the developed countries as well. An increase in consumer awareness on labour, environmental, and health conditions involved in the production of goods available for purchase shows the shareholder and other stakeholder demands for greater openness and public accountability; overall a demand for greater attention to their

1 Report of the ILO Director-General Juan Somavia 98th Session of the ILO Conference, 3-19 June 2009.

2 Annual Global Employment Trends for Women Report (GET) of ILO Reference: 978-92-2-122123-4 (ISBN) Press release, 05 March 2009.

3 “Gender equality at the heart of decent work” Campaign 2008-2009. It is the 90th anniversary of the founding of the ILO, the 10th anniversary of its gender equality action plan and the year the International Labour Conference (ILC) will hold a general discussion on “Gender Equality at the Heart of Decent Work.”



problems. We have to state that the global economic and financial crises do not diminish the responsibility of national authorities in the realisation of human rights. The international community urges to support national efforts to establish and preserve social safety nets for the protection of the most vulnerable segments of their societies.

The negative effects of the recession were concluded in the statement of Ms. Navanethem Pillay, UN High Commissioner for Human Rights at the Human Rights Council 10th Special Session in Geneva, 20 February 2009. She said that the negative effects of the financial and economic crises were felt disproportionately in the developing and least developed countries. Also, disproportionate impact is expected on the livelihoods of the most vulnerable and already marginalized groups of society, particularly: women and children, migrants, refugees, indigenous peoples, minorities and persons with disabilities. The recent global crisis undermines access to work, affordability of food and housing, water, basic services, social protection and the affordability of basic health care and education. Recession may give rise to xenophobic passions, discriminatory practices. She stressed that preventive initiatives, safeguards, as well as economic recovery and growth measures, had to be designed to be gender-sensitive and non-discriminatory.

How could the negative effects of the financial crisis be countered? Against this backdrop, what is the best approach for the protection of human rights? I think there is only one right answer: to respect, protect and fulfill all human rights, protect not only the economic and social rights but also the civil and political rights. Nowadays, there is a need for a holistic, integrated human rights approach to development strategies. As the World Commission, the United Nations General Assembly stated in its Outcome Summit Declaration of 2005: “We strongly support fair globalization and resolve to make the goals of full and productive employment and decent work for all, including women and young people, a central objective of our relevant national and international policies as well as our national development strategies, including poverty reduction strategies, as part of our efforts to achieve the Millennium Development Goals. These measures should also encompass the elimination of the worst forms of child labour, as defined in International Labour Organization Convention No. 182, and forced labour. We also resolve to ensure full respect for the fundamental principles and rights at work.”¹ It is evident that the achievement of the Millennium Development Goals (MDGs) must be re-doubled. The second UN decade for the Eradication of Poverty (2008-2017) must also be bringing some positive effects. The global human rights standards for protecting basic human rights could show the way of the appropriate protection of the human rights and fundamental freedom. For the protection of internationally recognized human rights in times of financial crisis, the most important

¹ A/RES/60/1, 24 Oct. 2005.



agreement are: UN Covenant on Economic, Social and Cultural Rights (CESCR), the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (A/RES/63/117), UN Convention on the Rights of the Child and UN Convention on the Rights of Persons with Disabilities. As the Committee on Economic, Social and Cultural Rights in its General Comment No. 3 stated: [...] International cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard.” The CESCR contains some of the most significant international legal provisions establishing economic, social and cultural rights, including rights:

- relating to work in just and favourable conditions,
- to social protection,
- to an adequate standard of living,
- to the highest attainable standards of physical and mental health,
- to education and
- to enjoyment of the benefits of cultural freedom and scientific progress.

UNICEF convention on securing children’s rights highlights, in particular:

- the right to survival and full development,
- the right to protection from abuse and exploitation and
- the right to participation in family, cultural and social life.

According to estimated data, unfortunately only 20 % of the world’s population has access to adequate social security benefits. The governments have to enhance the level of the labour protection and decent conditions of work, including: wages, working time, occupational safety and health, protection of migrant workers and their families and workers in the informal economy. Due attention should also be paid to extending the coverage and effectiveness of social security schemes and to respond to the HIV/AIDS pandemic.

Possible resolutions

ILO “Global Jobs Pact” proposal aimed at creating jobs, protecting workers and stimulating economic recovery. The Global Jobs Pact is conceived as an open and evolving portfolio of policy options for use by governments, employers and workers in national decision-making, in international coordination and in development cooperation. It is not a “one-size-fit- all” approach. ILO Director-General Juan Somavia said “This pact provides a path crafted together by all members of the ILO and based on tried and tested policies.” Decent work is central to efforts to reduce poverty, and is a mean for achieving equitable, inclusive and sustainable development. Director-General Juan Somavia also stated that “Urgent action is required now to boost economic recovery and job creation whilst preparing for a greener, more balanced, fairer and sustainable global economy.”



Human rights approach of the EU

Last year we held the 60th anniversary celebrations of the Universal Declaration of Human Rights, the 15th anniversary of the Vienna Declaration and Programme of Action proclaimed by the Vienna World Conference on Human Rights and the 10th anniversary of the adoption by the UN General Assembly of the Declaration on Human Rights Defenders.

On 10 December 2008—International Human Rights Day, Brussels EU Commissioner for External Relations and Neighbourhood Policy Benita Ferrero-Waldner underlined in her speech [...] “Today’s celebrations belong to all men and women who dedicate their lives to defending and upholding human rights worldwide I strongly affirm that the European Union continues to be on their side and is fully determined to contribute to promoting and protecting human rights as an integral part of its external policies.” At the same occasion EU Commission Vice-President Jacques Barrot stressed “Behind the European project there is a joint endeavour to the strengthening of pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men in our societies. The EU is not complacent with its own human rights record. The protection of human rights requires a constant effort to extend and update our legislative and policy initiatives in areas such as the fight against racism, xenophobia and all types of discrimination. This is our contribution to implementing every day the Declaration.” On 14 October 2009, Navanethem Pillay, UN High Commissioner for Human Rights opened the first ever UN Human Rights Regional Office in EU in Brussels. She said “The EU is, of course, already an important partner for us, both as a donor and as a strong moral voice on many human rights problems facing people all over the world. When the EU speaks, people listen. When the UN speaks on human rights issues, people also listen, and when we are in tune we can be an important force for change.”

The current Swedish Presidency report from the Commission for Social Development this year makes it clear that an inclusive, stable society requires strong political leadership, transparent decision-making and timely action. The EU is committed to these requirements and welcomes the efforts of the UN to combat social exclusion and promote social integration as issues of global concern, for which we bear a shared responsibility. The global economic crisis is an explosive human rights crisis; a combination of social, economic and political problems has created a time bomb of human rights abuses across the world.¹

¹ Amnesty International Report 2009—State of the world’s human rights



Conclusions

Human rights have to be seen as the basis of the sustainable development of the countries and are never to be regarded as a hindrance of the struggle against economic backdrops. When human rights are not protected, abuses such as discrimination, intolerance, injustice, oppression and slavery can arise. The recent global financial crisis requires specific measures, but these provisions neither should violate human rights and fundamental freedoms nor undermine legitimate dissent.

(The author is Professor Lecturer of the Corvinus University of Budapest,
Deputy-Head of the Institute for International Studies)



PEOPLE-ORIENTED DEVELOPMENT AND HUMAN RIGHTS PROTECTION





CHINA SINCERELY PROTECTS THE FREEDOM OF RELIGIOUS BELIEF

Ye Xiaowen
China

Some western friends always have doubts on whether the Chinese government can genuinely and consistently respect and protect its citizens' rights to freedom of religious belief. I had served as director of the State Administration for Religious Affairs of the People's Republic of China since May 1995 until September 2009. Here, I would like to offer a straight-out illustration to this question based on my own experience and witnessing.

The respect that the Chinese government pays to its citizens' rights to religious freedom is based on its recognition of the objective reality, of the objective procedure of things' evolution and of the internal law of social development, as we admit that the extinction of religions may come much later than that of classes and states. We never deny the cultural heritages that our human race has accumulated in the forms of religious sutras, doctrines, morals and arts during the process of evolution; we are never repulsive to the experience and philosophy that history has stored up in these forms; and we never neglect the shining points of ethnic cultures and the footprints of the development of human spiritual civilization that are embodied in the forms.

Undoubtedly, we will adhere to the orientation of the advanced socialist culture and shape a core value system of socialism in the course of building a "culture of harmony." Socialism, however, is an ocean, an ocean that demonstrates its greatness by absorbing inflows of all rivers. Splendid ethnic cultural heritages, harmonious ethnic cultural resources and useful fruits of human civilizations are all parts of our socialist culture of harmony.

The respect that the Chinese government pays to its citizens' rights to religious freedom is also rooted in our profound cultural tradition. In Chinese history, there have rarely been major conflicts caused by religious belief, let alone religious wars, between believers and non-believers, and between believers of different religions. There contains a rich expression of thoughts on harmony in Chinese religious and traditional cultures. As ancient Chinese philosophy teaches, "In practicing the rules of propriety, harmony is to be prized. In the ways prescribed by the ancient kings, this is the excellent quality." Harmony



is what the Chinese traditional culture distinguishes itself from others, and it is also where ancient Chinese sages based their beliefs and thinking. The thought of harmony reflects a universal law of things, and thus it can evolve and enrich itself with the progress of time.

What's more, the respect that the Chinese government pays to its citizens' rights to religious freedom is based on the most practical and immediate demands of building a harmonious society. Social harmony cannot be established without ethnic unity and religious concord. Everyone is responsible for and entitled to enjoy social harmony. We thus hope that religion can serve as a factor of socialist social harmony, and believers and non-believers must "politically unite and cooperate, and respect each other in belief."

Under the background of reform and opening-up, China is witnessing transformation of its economic system, changes of its social structure, adjustment of interest distribution and evolution of values and people's mentality. The changes have made it more necessary for us to consider the situation, march with the times, plan all sectors as a whole, coordinate various relations, and seek common points while reserving differences to solve conflicts and motivate initiatives of all circles.

As President Hu Jintao has pointed out, it is imperative to handle properly five major relations in the political and social sectors that concern the overall situation of the work of the Party and country. They are relations between political parties, between ethnic groups, between religions, between social strata, and between our compatriots at home and overseas. Promoting harmony in these five major relations plays an irreplaceable role in enhancing unity and pooling strength.

It is very crucial to list religion among the five major relations. They are like a family of five members, and religion is one of them. As a Chinese saying goes, "if the family lives in harmony, all affairs will prosper." It's not a trivial matter whether or not the family member of religion is happy, amiable and aspiring. The inclusion of religion into the five major relations reflects a brand-new, correct conception that the Communist Party of China, with the guide of the Scientific Outlook on Development, has formed on the basis of its in-depth analysis of the country's situation and its deepened understanding about religion's long-term existence and mass involvement.

On this member of the family of five, President Hu Jintao has further stressed, "It is a fundamental demand of doing well religious work under new situations to fully implement the Party's basic principle for its work related to religious affairs and bring into play the positive role of religious personages and believers in promoting economic and social development," and "It is a fundamental task of the religious work to handle well matters related to believers."

Here President Hu has raised two fundamentals—a fundamental demand and a fundamental task. The two fundamentals actually proceed from the same basic



consideration: All believers are people on our own side, or members of our own family. Members of the same family of course should be of one heart and they can be banded together like strands of a rope. Accordingly, we should, and we can, inspire believers' patriotism and their initiatives of contributing to the great cause of building socialism with Chinese characteristics. And we should, and we can, unite believers and non-believers, and pool their resolution and strength under the common goal to build our country and seek development with undivided attention.

It was based on such a judgment and practice that the Sixth Plenum of the 16th Communist Party of China Central Committee pointed out to "bring into full play the positive role of religion in promoting social harmony" in its decisions on major issues on building the socialist harmonious society.

The report of the 17th National Congress of the Communist Party of China further underlined the positive role of religious personages and believers in promoting economic and social development. Chinese citizens' rights to religious freedom have been under sufficient protection; religious activities can be conducted canonically and in order, and religion can develop in a stable and healthy way in our country. It is a universal comment from the country's religious circle that today, religions in China enjoy a golden time for stable development and it is a time that witnesses the best implementation of religious policies.

Currently, China has more than 100 million followers of various religious faiths, 360,000 clergy, about 130,000 locations for religious activities, nearly 5,500 religious organizations and more than 110 religious colleges and schools. Each religion has its own publications and they have published a great number of religious sutras and books. For example, the Chinese Christian Church has printed 70 million copies of the Bible in 22 versions since 1980, becoming a church that boasts the largest number of prints of the Bible in the world.

As China and the western world are far apart, they have to rely on a telescope to observe each other and obtain mutual understanding. While Chinese people get an enlarged and clear image of the west through the telescope, some westerners see a small and ugly China through it. Why? Because they are reversing the telescope. After all, the world is diversified and colorful, and different social systems mean different illustration to the rights to the freedom of religious belief, but one should never base himself on the differences to conclude that there would be no religious freedom in China. While small-minded people would always see contradictions in diversity and rivalry in difference, open-minded people can often discover beautiful rainbows in multiplicity and seek unity and harmony in discrepancy.

The Chinese government respects the rights to religious freedom sincerely,



consistently, firmly and in a deep-going way, as it is decided by our essential conceptions and fundamental interests. Our respect to religious freedom proceeds from the demand of the current situation and also has origin in history. It is a rational choice and is under the protection of law. It is a specially significant contribution made by a ruling party that advocates dialectical materialism and historical materialism (including atheism) and by a government that upholds the separation between religion and state.

(The author is First Vice-president of Central Institute of Socialism,
Vice-president of China Society for Human Rights Studies)



PEOPLE-ORIENTED DEVELOPMENT STRATEGY AND HUMAN RIGHTS PROTECTION

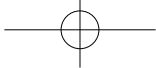
Xue Jinwen
China

It has been put forward at the Third Plenary Session of the 16th CPC Central Committee that “China should adhere to the people-oriented principle, establish an all-round, coordinated and sustainable outlook on development and promote the all-round development of the economy, society and humankind.” It has been also stressed in the report of the CPC’s 17th National Congress that “development is the primary keystone of the scientific outlook on development, with the people-oriented principle as the core, the all-round, coordinated and sustainable development as the basic requirement and the overall planning as the fundamental approach.” On the occasion of the 60th anniversary of the *Universal Declaration of Human Rights*, the Chinese President Hu Jintao wrote to China Society for Human Rights Studies, reiterating: “We should, as always, adhere to the people-oriented principle, show respect for the universality of human rights, place primary importance on earnestly safeguarding people’s right to subsistence and right to development in line with China’s basic national conditions, guarantee the right of all members of society to equal participation and equal development pursuant to law on the basis of boosting a sound and rapid economic and social development.”

It is intrinsically demanded that human rights protection should be enhanced in order to carry out the people-oriented development strategy. Meanwhile, the people-oriented development strategy has given rise to new issues and challenges to China’s human rights protection. We need to adopt relevant strategies to respond to those issues and challenges and to promote the sound development of China’s cause of human rights.

1. Intrinsic Demands set by the People-oriented Development Strategy on Human Rights Protection

What is called the “people-oriented” development is aimed at meeting the needs of all people for subsistence, showing respect for the dignity and value of all people and providing better chances and conditions for the development of all people. These are new demands put forward by the new outlook on the development strategy. First of all, these demands have determined the objectives for development. According to the people-

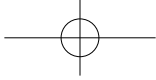


oriented guiding principle, the economic and social development is just a means and its ultimate goal is to meet the needs of all people for subsistence, to improve the dignity and value of all people and to promote the all-round development of all people. If the economic and social development is pursued as the ultimate goal yet the needs of the people, the dignity and value of the people and the all-round development of the people are neglected, then the development will be led astray. In the next place, these demands have determined the principles that must be followed in the development and have set a rigorous limit to the choice of the development patterns. The economic and social development should be aimed at the human subsistence and development, rather than at the cost of impairing the human subsistence and development. When some demands in the economic and social development conflict with the objectives for human subsistence and development, we should put the human subsistence and development in the first place. If the human subsistence is impaired by the increase of economic indicators and the human development is sacrificed to the material development, the people-oriented principle will be completely violated.

It is intrinsically demanded that the human rights protection be enhanced in order to push forward the people-oriented development.

Firstly, in terms of human rights protection, to satisfy the needs of all people for subsistence in the course of development is to safeguard the right of people to subsistence. People are firstly a material being and subsistence is the most essential need of the people. Development will lose its foundation if the need of the people for subsistence cannot be guaranteed; development will lose its motive force and meaning if it is not targeted for satisfying the human subsistence; and development will be led astray if it is conducted at the cost of impairing the human subsistence. What merits attention is that the guarantee of the right to subsistence emphasized from the human rights perspective is an equal guarantee of the right of all members of society to subsistence, rather than a guarantee of the need of a fraction of social members for subsistence. It allows of no improvement of the subsistence of a fraction of social members at the cost of sacrificing the interests of subsistence of others. Such a principle of human rights aimed at safeguarding the needs of all members of society for subsistence on an equal footing is the right intrinsic demand of the people-oriented development strategy.

Secondly, in terms of human rights protection, to show respect for the dignity and value of all people in the course of development is to safeguard the free rights of every citizen. People are a social being, who need to be respected in the society and need to feel the human dignity and value. Development will be meaningless if the human dignity and value cannot be safeguarded, and development will lose its human nature if it is conducted at the cost of downplaying the human dignity and value. The free rights of the citizens are a



guarantee of the people to gain access to their dignity. Subsistence without the guarantee of rights is subsistence without dignity. What merits attention is that the guarantee of personal free rights emphasized from the human rights perspective is an equal guarantee of the personal rights of all members of the society. It allows of no improvement of the dignity and value of a fraction of social members at the cost of sacrificing the interests of others in this respect. Such a principle of human rights aimed at safeguarding the dignity and value of all members of society on an equal footing is also the intrinsic demand of the people-oriented development strategy.

Finally, in terms of human rights protection, to provide better chances and conditions for the development of all people in the course of development is to safeguard the economic, social, cultural and development rights of the citizens. People are a being demanding constant self-realization. Without constant self-transcendence, people will not feel the value of subsistence. Development will lose its value if it does not take the human development as its ultimate goal, and the development will be abandoned by the people if it is conducted at the cost of sacrificing the human development. Not only should the human development be conducted with great efforts, but it also depends on certain social conditions, including such amenities as education, employment, medical service, cultural life, peace and healthy environments. All these are to be guaranteed in the economic, social, cultural rights and the right to development. What needs to be emphasized is that to safeguard the economic, social, cultural and development rights of citizens from the human rights perspective is to ensure that all members of the society enjoy the favorable conditions for their own development on an equal footing, rather than improve the conditions of some social members for their own development at the cost of sacrificing the chances and conditions of other members. Such a principle of human rights aimed at safeguarding the conditions of all members of society for their own development on an equal footing is also the intrinsic demand of the people-oriented development strategy.

2. New Issues Put forward by the People-oriented Development Strategy before the Cause of Human Rights Protection

The people-oriented development strategy is not a good ideal put forward without foundation by the leaders but is directed against the problems existing in China development. With the rapid development of the Chinese economy and society, the people's living standard, on one hand, has been improved significantly; on the other hand, the disparity in the income level and the subsistence of social members has been daily on the increase, the economic and social development in various regions has turned out uneven and the conspicuous contrast has turned up between the economic development and the enhancement of the natural environment. All these have deviated to a certain extent from



our original intention to boost the economic development. Right under such circumstances, the Chinese government has put forward the people-oriented development strategy, demanding that the economic and social development should meet the needs of all members of society for subsistence, the dignity and value of all members of society should be safeguarded and better chances and conditions for development should be provided for the development of all members of society.

To realize the people-oriented development strategy has put forward new issues before the cause of China's human rights protection during the new stage of China's economic and social development.

Firstly, in the course of China's economic and social development, great changes taking place in conditions of existence of the people have resulted in huge historical differences in people's claims of rights. In the beginning of the reform and opening up, people's demand for subsistence was at a low level. Nonetheless, after having access to a moderately prosperous society, people's standard of living has improved much at large and people's demand for subsistence has stepped up accordingly. The present conditions of existence could satisfy people in the past, but now would make people feel unsatisfied. At the same time, with the improvement of the basic standard of living at large, people have set still higher demands on the maintenance of their social, political and cultural rights. Such historical differences in claims of rights have set still higher standards and demands on the cause of China's human rights protection.

Secondly, the rapid increase in incomes and conditions of existence of social members has resulted in hierarchical differences in claims of rights among different social members in the course of the rapid development of the Chinese economy. The social stratum free from subsistence problems would ask for more extensive and varied guarantee of rights; whereas social members at the most primary level would scream more strongly for guarantee of their basic right to subsistence and right to development on a more equal footing. Such hierarchical differences in claims of rights have demanded the equilibrium in the development of the cause of China's human rights protection.

Thirdly, China is a big developing country. The uneven economic and social development among various regions has resulted in a conspicuous spatial difference in claims of rights among these regions. In East China, especially in developed coastal areas and in major cities, due to the established favorable conditions for the economic and social development, people have set still higher demands on the level of human rights protection as well as more extensive demands on the scope of human rights protection. Nevertheless, in underdeveloped regions of Central and West China, especially in rural areas, owing to the economic and social development at a low level, people scream more strongly for guarantee of favorable conditions for their basic right to subsistence and right to development. Such a



spatial difference in claims of rights has demanded the equilibrium in the development of the cause of China's human rights protection.

Fourthly, with the development of the Chinese socialist market economy, the constant elaboration of the social division of labor and people's increasingly diversifying interests have resulted in an obvious social difference in claims of rights among different social members. Such a difference in claims of rights is particularly reflected between workers and the management, between producers, sellers and consumers and between management and those under management. Such a social difference in claims of rights has set a demand on the integration in the development of the cause of China's human rights protection.

These new issues facing human rights protection demand that we must make appropriate strategic choices to ensure the sound development of the cause of human rights protection.

3. People-oriented Development and Strategic Choices for the Human Rights Protection in China

In the face of these new issues appearing in China's economic development, we must properly handle the following basic relations for the choice of strategies for the development of the cause of China's human rights protection with a view to realizing the people-oriented development.

Firstly, the right to subsistence and the right to development should be continually taken as the primary strategic objectives for human rights protection and, meanwhile, the coordinated development of both the protection of the right to subsistence and the right to development and the protection of other human rights should be handled in a proper way. In China, although the economy has developed by leaps and bounds over 30 years of reform and opening up and the living standard of the Chinese people has improved considerably, the right to subsistence and the right to development should still be put in the first place of the development strategy. On one hand, we should take the regional disparity and the differences between urban and rural areas into account, and we should see that many regions are economically backward, that the people are leading rather a hard life and it will take much effort to improve the economic development and people's basic living standard in these regions; on the other hand, we should take the hierarchical difference into account and we should see that even if in economically developed regions, even in coastal major cities in East China, there is still impoverished population, whose basic living conditions should be guaranteed in real earnest; moreover, compared with the Western developed countries, China is still a developing country, therefore, promoting the economic development and ensuring the livelihood of 1.3 billion people is still rather an arduous task. Nevertheless, while safeguarding the right to subsistence and the right



to development, we should attach more and more importance to the protection of other human rights. On one hand, the connotations of the right to subsistence and the right to development will be constantly enriched with the economic and social development: not only does the right to subsistence mean we should guarantee the basic needs of the people for subsistence, but also mean we should ensure people's subsistence with dignity; not only does the right to development mean we should provide chances and conditions for the economic development, but also mean we should provide chances and conditions for social, political and cultural development. The constantly enriched connotations of the right to subsistence and the right to development have organically combined these rights with others. On the other hand, the protection of other human rights, including the franchise, political, economic, social and cultural rights, will also provide more agreeable conditions for the better protection of the right to subsistence and the right to development. We have seen that over recent years while stressing the protection of the right to subsistence and the right to development, the Chinese government has increasingly stressed the protection of other rights. For example, in terms of the political rights, the Chinese government has stressed that the right to know, the right to express, the right to participate and the right to supervise of citizens should be protected.

Secondly, in terms of the mainstay of human rights protection, we should adhere to the principle of protecting the rights on an equal footing, and meanwhile, we should concurrently give attention to the special protection of the rights of disadvantaged groups. Human rights are the rights to be protected on an equal footing. Since the reform and opening up, China has made strenuous efforts in protecting the rights on an equal footing. Citizens have more equal chances for economic development, bear more equal social status, share more equal chances of participation in political affairs and enjoy more equal conditions for creating and enjoying cultural achievements. However, under the market economy system, the competition in society will give rise to the differences between the advantaged groups and the disadvantaged groups. For the disadvantaged groups, ensuring that they enjoy the civic rights on an equal footing is still an important task, which calls for deep-going reforms; at the same time, only ensuring that all people enjoy the rights formally and equally is not enough to enable the disadvantaged groups to virtually and equally enjoy the rights that other social members can enjoy. As a result, for the disadvantaged groups, we should adopt special measures to give special protection so as to enable them to virtually and equally enjoy various human rights. For instance, in China, we should give more special protection to the rights of rural migrant workers. We should pay special attention to the limit to the special protection of the rights of the disadvantaged groups. The special protection is not aimed at enabling the disadvantaged groups to enjoy "privileges," but aimed at enabling them to equally enjoy the rights that are enjoyed by other groups. In this sense, to



realize the equality of rights should be the limit to the special protection of the rights of the disadvantaged groups. If the limit is exceeded, the special protection of the rights will turn into the protection of privileges, which will violate the principle of equality on human rights protection.

Thirdly, in terms of the level of human rights protection, we should guarantee the realization of the minimum standard of living at large and, at the same time, we should, in line with the actual level of the economic and social development in various localities, heighten the level of protection of some rights at the right time and in a proper way. The human rights protection is a protection of the most fundamental rights needed to safeguard people's subsistence and dignity. The level of human rights protection is a most fundamental prerequisite needed to safeguard people's basic subsistence and dignity. As there is a regional difference in China's economic and social development, there is a world of differences in the most fundamental prerequisite needed to safeguard people's basic subsistence and dignity in various regions. In view of the human rights development strategy of the whole country, we should endeavor to guarantee the realization of the minimum standard of human rights protection at large. The present policy of the eastern region giving aid to the western regions, the urban areas repaying rural areas and the industry repaying the agriculture sponsored by the Chinese government has reflected the principle of protecting human rights at large. On the other hand, in developed regions, we should, in line with the actual level of the economic and social development in various localities, raise the level of protecting people's basic rights at the right time and in a proper way and bridge the gap in subsistence and development between the social members within one region. In this respect, we should mainly improve the minimum standard of living, housing conditions, medical service, compulsory education and social security.

Fourthly, in terms of the content of human rights protection, we should lay emphasis on the protection of the disadvantaged groups and, at the same time, we should balance the interests of all walks of life and integrate the aspirations and requirements of various parties. Human rights protection is firstly aimed at safeguarding the interests of the disadvantaged groups. But in modern society, the social division of labor calls for the integration of the interests of various sides and demands the balanced guarantee of their rights. Stressing the protection of the interests of the disadvantaged groups without paying attention to the balanced protection of the rights of various sides will not only split up the society, but also hinder the economic development. For instance, in judicial trials, we should not only protect the rights of the victims, but also protect the rights of suspects, defendants and criminals; in economic life, we should protect the rights of consumers, as well as the rights of producers and sellers; we should protect the rights of both workers and investors; in



social life, we should protect the right of pedestrians to life and should also protect the right-of-way of drivers, and so forth.

To sum up, the people-oriented development strategy has put forward new issues before the cause of China's human rights protection, and will step up the cause of China's human rights protection. We are convinced that, with the positive impetus given by the Chinese government and the participation and strenuous efforts by all walks of life, the cause of China's human rights protection will march forward in a more sound way.

(The author is Director of Center for Human Rights Studies, Nankai University.)



TIBETAN HOUSEHOLDS AND THREE DEVELOPMENTAL STAGES OF TIBETAN MODERNIZATION

Gelek
China

I

From 1990 on, I, as a sponsor of key scientific research programs at the China Tibetology Research Center, have had chances almost every year to lead our teamwork members for field anthropological investigations in Tibet. Our surveys have been focused on households, and they are designed to, by means of thorough and deep investigations of households as social cells, objectively, concretely and vividly depict and reflect the changes of Tibetan society during the past 50 years since its democratic reform. Our surveys are conducted in three different types of areas, that is, urban, crop-growing and pasturing areas in Tibet. The very reason that survey spots are chosen in the above-mentioned different types of areas is that we would like to make our samples more typical, enabling them to largely represent the general development of Tibetan households in social and economic senses.

All of our surveys are made with all investigating groups going to different survey spots in urban, crop-growing and pasturing areas respectively with uniform questionnaires, at the same investigating times and for identical investigating targets. The questionnaires are designed in accordance with the general requirements and needs of programs, and their horizontal contents consist of 17 general items, including informants' basic household information, numbers of family members, family relations, family structures, family earnings and outlays, family economic management situation, family production resources and life consumables, family life styles, housing conditions, labour force and leisure-time arrangements as well as provision for the aged, procreation, education of children and marriage. Centered on the social and economic changes in Tibetan families, these contents can reflect all aspects of the stratum society in present Tibet, such as marriage, families and their life styles; at the same time, they can make a longitudinal historical comparison of all the information in political, economic, social, cultural, religious and population respects before and after the democratic reform. The longitudinal surveys are divided in accordance with four general historical developmental stages: the first stage is "Before the Democratic Reform" in 1959; the second is "After the Democratic Reform" from 1959 to 1966; the third



is the “People’s Commune Period” from 1966 to 1980; and the fourth is “Since the Reform and Opening up to the outside world” from 1980 to 2008. We divide the stages as such in order to compare each item of survey statistics during different historical periods, trying to find some traces of the changes of Tibetan families and society in the past 50 years.

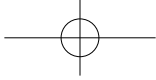
As for the social and economic situations of Tibetan families, many anthropologists, ethnologists and Tibetologists have made some field surveys in the past. But those surveys were carried out long time ago. Their coverage was small, and few of them employed sampling questionnaires. So to speak, our family surveys in the past decades are probably the largest ones which have covered the largest areas among the Tibetan social surveys during recent years. They have provided abundant first-hand information for the research of historical and current states of Tibetan families, especially for the research of the changes of basic Tibetan society both since the democratic reform in 1959 and the reform and opening up to the outside world in 1978.

II

The reason that we paid much attention to the research and survey of families is that the issue of families is an important social problem in academic studies. Especially after the UN set 1994 as an International Year of Families, the issue of families has been attracting extensive attention in the international community.

Secondly, households are the center of people’s daily life in Tibet, and the characteristic of Tibetan residents’ daily activities are mostly reflected through families. The production of man itself, including the combination of two sexes, procreation, fostering, the acquirement of manhood and womanhood, support for the aged and funeral affairs, cannot do without families. If the whole Tibet is a macro society built on households as its basis, families are just some micro social environments where Tibetan people assemble daily and live together. For thousands of years, people have been centered on households for a variety of production and all forms of social and cultural activities. A history of social changes of Tibetan families has actually represented in a form of epitome the history of social development of Tibet as a whole; in other words, the changes of Tibetan families are actually an epitome of the social changes of Tibet. Therefore, we have decided to start with the micro surveys of families, trying to understand and investigate the social changes over the past 50-plus years since the democratic reform in Tibet.

Families constantly change with the development of the society and economy. Meanwhile, we cannot ignore the influence that has been exerted on families in the past 50 years by the political revolution, social transformation and socialist ideology in China. Especially, both the Tibetan democratic reform in 1959 and the reform of economic system started in 1978 have achieved world-attracting effects in Tibet, bringing about



unprecedented enormous changes to the society and economy in Tibet. This essay has not enough length to include them all, now I would like to talk about some of my experiences on the basis of what I heard and saw when I participated in the program teamwork and what have been shown from the results of our questionnaires and statistics.

III

As it is shown in the result of our questionnaires, one of the best known state policies and important political events in Tibet is the democratic reform. The democratic reform remains fresh in the memories of most people, and they all have expressed their satisfaction. The reasons are mainly as the following:

3.1 Traditional Tibetan society was a feudal one in its early stage, a feudal serfdom society in the combination of politics and religions. The basic characteristic of such a system is that, following the regulations made by seigneurs, serfs were forced to receive a share of lands from seigneurs at the cost of their personal liberty, and thus fell into personal attachment to the seigneurs, and became serfs. Lands and most livestock were controlled by priests, nobles and local governments, who amounted only 5% of the total population. Serfs, although in large numbers, had no lands of their own, and were burdened with very heavy unpaid services, turning in high rate land taxes in kind or in currency. In a situation as such, the laborers in enormous numbers could hardly make subsistence, and their production merely played a role of maintaining and continuing their lives. The serfs themselves knew well that any increase of any product in their production would be grabbed by the seigneurs and consumed by very few people. Therefore, it was a matter of course that they had no motive for improving productive techniques and increasing production. As we learned about in our field surveys, both the previous household slaves at Banjuelun Village in Gyangtse and the beggars in Lhasa in the past think that the society before the democratic reform was a dark one in which very few people lived a luxurious life and most people struggled in poverty.

The democratic reform from 1959 to 1961 in Tibet abolished for the first time the feudal serfdom system in Tibet. A large number of serfs began to possess their shares of basic production resources such as lands and livestock, which they had dreamed of for generations. For the first time in the history, hundreds of thousands of serfs became the masters of their own lands, who began to grow crops and pasture livestock on their own lands, and thus the enthusiasm to develop self-employed economy was unprecedentedly high. In addition, the democratic reform annulled the personal attachment of numberless serfs to the three kinds of seigneurs; the previous serfs now attained liberty and became masters in a new society. They enjoyed a variety of rights granted by the Constitution and related laws, directly taking part in a wide range of self-governing political and economic activities.



People experienced real advantages out of this transformation that they had never heard of before. Especially those who used to live at the lowest level of society, namely household slaves, small households, beggars, blacksmiths and butchers, had nothing in the old society; after the democratic reform, however, they had not only obtained their shares of lands, livestock and residences, but their social positions had been unprecedentedly raised. Now they were on an equal footing with their previous owners, and had been liberated in reality. According to the statistics, by October 1960, land reform had been largely completely throughout Tibet, more than 2.80 million *ke* (1/15 hectare) farmlands had been confiscated and redeemed from serf-owners and allocated to landless serfs and slaves in more than 200,000 landless households, who numbered more than a population of 800,000; at the same time, more than 20,000 slaves had been liberated in the crop-growing and pasturing areas.¹ It is for this that all the informants above 40 years old have a deep impression of this world-attracting enormous social transformation, appraise it highly and feel much satisfied with it.

3.2 An American politician Samuel P. Huntington held that the substitute of single secular state political power for the dispersive traditional religious family and racial political power was the most basic sign for the transition from a traditional society to a modern one. In accordance with this benchmark, the course of political modernization in Tibet is very obvious. In the traditional political system in the combination of politics and religions, most people were in a state of enslavement, and the ruling was made by groups formed on the basis of consanguinity; thus it was in the lower stage of social development. Through the democratic reform, the majority were liberated out of the unreasonable system in which they were ruled by very few people, and became the masters of their own and had their destiny in their own hands. It is an important stage in the modernization process of Tibetan areas, and the first step for the Tibetan people to extensively take part in politics. It was still imperfect, and there were still cases of appointing people by favouritism, but the basic principle was by abilities and virtues.

The CPC party branches, Communist Youth League organizations and folk groups founded in Tibet after the liberation opened up a path for people to more extensively take part in politics. And to join the CPC or CYL branch organizations and various social fellowships and accept training at levels had become an important approach for ordinary Tibetan people to take part in political administration. In the system of People's Conferences of Representatives, the principals of governments at all levels were elected. Any individuals who were entitled to suffrage and eligibility for election were likely to enter governments or any other social administrative organization by means of election. United state administrative organizations based on election or appointments were expanded

¹ *Democratic Reform in Tibet*. Lhasa: Tibetan People's Press, Aug. 1995.



to the level of town and township, which had largely replaced the traditional dispersive political organizations closely related to tribes and families. The arrangement and selection of members in the new administrative organizations were based on their abilities and social achievements, rather than their family backgrounds or parentage. Especially after the heads of villages and townships began to be democratically elected, voters were able to participate in the election carefully and prudently, and candidates who could not do justice would be frustrated in the election. That had actually revealed people's concern with the destinies of themselves, the state, the nation and the collectiveness, and the awakening of people's self-awareness.

3.3 After the democratic reform of Tibet, grain production increased rapidly in crop-growing areas, and per capita livestock in pasturing areas numbered nearly twice those before the reform. The democratic reform brought practical benefits to most disadvantageous groups in Tibet; especially in the four to five years after the democratic reform, self-employment economy based on households in most crop-growing and pasturing areas in Tibet did not change, and it was an important period for the family-based economy to be strengthened and developed. Self-employment economy centered on households was extremely suitable to the developmental level of social productivity in Tibet at that time, so both crop-growing and pasturing industries throughout Tibet had witnessed increases both in production and revenues for consecutive 6 years after the democratic reform. Even nowadays, many cadres and ordinary people in Tibet hold that this period was one of the best times after the liberation of Tibet, and thus call it the "Golden Age" of Tibet. In fact, it was also a golden age for the social and economic development of Tibet. Therefore, people have a deep impression of this reform, which they can never forget all life.

3.4 People have a good impression of the "Old Tibetan" cadres during the period of democratic reform (the first and second groups of cadres dispatched into Tibet), many peasants and herdsmen in old ages praise the cadres of that time as had thorough understanding of policies, did thorough work, lived a frugal life, was committed to the practical benefits of ordinary people, and ate, lived and worked together with the Tibetan people. They have been remembered by the Tibetan people all the time.

IV

Not long after the Tibetan democratic reform, just before family economy was fully developed, Tibet experienced another unprecedented radical social reform in a large scale in the crop-growing, pasturing and urban areas of Tibet, namely the People's Commune Movement and the Cultural Revolution. The People's Commune movement in Tibet was largely contemporary with the riots of the "Great Cultural Revolution." Therefore, this reform was dominantly a political one, and the steps of social and political revolution were



obviously faster the growth of economy, and material productivity was not correspondingly increased in large. Consequently, there occurred a “transition in poverty,” as we mention usually. Both communes and production teams were not only economic organizations transcendent to families, clans and tribes, but they were administrative ones at the same time. Within such organizations, the ownership of production resources changed from a family system to a collective one; what is more, organizational labor organizations and work division expanded their scopes from households to production teams. The distribution of products and resources was also conducted within production teams as units; at the same time, a uniform purchasing and selling system of agricultural and sideline products was practiced widely, and even the small amounts of family plots and private livestock of commune members were also prohibited once for a time in Tibet. In cities, family-based private business and service industries were cut off as “capitalist tails.” Many handcraft trades producing commodities characteristic with ethnic features were impelled to produce other products. In this case, few traditional functions were left with families except raising children and supporting aged people.

Admittedly, it was a great social transformation for Tibet to change from organizing production on the basis of households as units towards that on the basis of production teams. But this transform overemphasized class struggles. It was engaged in establishing and strengthening class positions, committed to ideological promotion. Consequently, class awareness became stronger and stronger, consanguine relations centered on families were gradually weakened, and the awareness of consanguinity was held back. All family members, no matter whether they were peasants or herdsman, were administrated uniformly by production teams. Production teams kept scores in accordance with the laborers’ attendance at work sites, and families made their subsistence depending upon these scores. Uniform plans sent down by the state were carried out from production to distribution and even sales, and management and service were conducted along one single continuous line at county government, commune and production team levels. As a result, the relations of families to collectiveness and the state became closer than before.

At the same time, family members became more dependent upon collective and the state. For long people had been accustomed to the “collective and public” dependent life under such average distribution principle. Even nowadays after the reform and opening up to the outside world, there are still a number of aged herdsman who cherish the dependent economic life during the People’s Commune period. As it is shown in the questionnaires for Yaoqia Township in Amdo County, for example, 26% householders among 46 herding families expressed their “satisfaction” towards the People’s Commune system. An aged local herdsman remarked, at the time (the People’s Commune period), “All people lived on labor scores. There was no disparity between the rich and the poor; and what is more, medical



treatment was for free, and it was not an economic problem for children to go to school.” But most informants (including those in crop-growing, pasturing and urban areas) expressed that they “know well” the People’s Commune system but were “unsatisfied” towards it. One of their reasons was that united purchases and sales and average distribution, that is, a system that planned all as a whole, could not inspire the enthusiasm of individuals in production. In addition, a food supply system and a household register system, both were strict and rigid, restricted the flows of populace and the exchanges of commodities. Consequently, the economy did not go on to develop; on the contrary, it was seriously sabotaged. From 1966 on, the grain production in Tibet decreased for three years, and kept a balance for two years. The main economic indexes declined in all respects, and a negative growth occurred in financial revenues.¹

In the history, the Tibetan people had skillfully combined crop-growing, pasturing and planting industries with a household handcraft one in a coordinated way, making it the most ideal household economic structure in the plateau. The very foundations upon which people depended to subsist in the plateau were lands and household handcraft industry. Food supply came out of lands, and daily commodities depended upon handcraft industry. During the “Cultural Revolution” period, however, a large number of handcraft workers were coerced to become peasants; only in Gyangtse Town, as many as 500 handcraft workers involuntarily picked up plows and hoes. Under the slogan to “cut off capitalist tails,” traditional handcraft looms in peasant and herdsman households were confiscated, only in Chanang County more than 4,000 looms were seized. In this way, household sideline production dominated with handcraft production was ruined. Consequently, the production of ethnic handcraft industries decreased from 8.92 million RMB in 1965 to less than three million RMB in 1976,² which seriously affected household revenues. Take Banjuelun Village in Gyangtse County as an example. From 1965 to 1976, its annual pure per capita incomes never exceeded 50 RMB, and its per capita grain yields fluctuated between 300 and 350 kg all the time. In a word, the economy of the whole Tibet fell into stagnation, and household economies were seriously devastated.

During this period, governments and communes were in combination, and cadres went to the countryside frequently (mainly promoting ideology). They lived and worked together with commune members within production teams, and took all the leadership at commune and production levels on themselves, directly commanding the production of communes and production teams. A production team was like an enlarged household, which had substituted for many functions of families, and cadres were like householders or patriarchs, who bothered about everything, no matter whether they were important or trivial. Consequently,

1 Tibet in Modern China (First Volume). Beijing: Modern China Publishing House, 1991.

2 Ibid.



the masses developed their habitual dependency upon rural cadres. Under the item “Whom would you go to first when you confront with difficulties or conflicts” in our questionnaires, what were filled in were “Cadres” at large. Such habitual dependence of Tibetan people upon cadres were gradually developed after the democratic reform, of course, and it was merely further intensified in the People’s Commune movement. The result of such tendency was that the authority of householders was challenged.

In summary, Tibet was focused on class struggles during this period. Its highly uniform and concentrated organizational form as People’s Commune greatly intensified the position and role of collective organizations. The functions of families were greatly weakened, and household economy and family-based social culture were heavily impacted. But such impact and transformation were not based on the enormous growth of material productivity, so they ended in failure at last.

V

When we asked in our surveys “In which period do you think the policies were or are the best” (the periods “before the democratic reform,” “after the democratic reform,” “during the People’s Communes” and “since the reform and opening up to the outside world”), informants think in general that the policies after the reform and opening up to the outside world are the best, and express their satisfaction and heartfelt support for a series of policies in Tibet after the 3rd plenary session of the 11th CPC Conference of Central Committee in 1978. The very reason is that the policies of opening up to the outside world and the reform of economic system initiated at the end of 1978 have gained enormous achievements the same way in Tibet, and many changes have taken place in the Tibetan society, no matter whether in crop-growing and pasturing areas or in cities. Some outstanding points are as the following:

5.1 After the reform and opening up to the outside world, a household-based responsibility system centered on “two long-termed steadiness policies” was first carried out in the crop-growing and pasturing areas of Tibet (the two long-termed steadiness policies refers to that “livestock is owned and raised by households on their own, and this situation shall be kept for long-termed steadiness” in pasturing areas and that “lands are used by households on their own, and this situation shall be for long-termed steadiness” in crop-growing areas). As a result, the tenure of lands and the ownership of livestock were transferred from collective to individual peasants and herdsman, endowing them with the right of decision-making directly related to their interests. In this way, both peasants and herdsman changed from the previous simplistic laborers who subsisted on laboring scores to managerial laborers. That has sufficiently motivated hundreds of thousands of Tibetan peasant and herdsman household in production, boosted the development of productivity,



and increased both peasants' and herdsmen's incomes. People's living standards have thus been remarkably improved. Take Banjuelun Village in Gyangtse County as an example. From 1976 to 1994, per capita grain yields increased from 365 to 1469 kg, and pure per capita incomes from 49.53 to 842.30 RMB. Compared with the per capita income in 1976 in the early stage of People's Commune, that in 1994 increased 13 times. For another example, the questionnaires for more than 40 herdsman households in Yaoqia Township, Amdo County show that after the reform and opening up to the outside world, per capita livestock increased 128.98% more than that before the democratic reform, nearly 36 heads more than the 92.86 ones before the reform and opening up to the outside world. At present, better-off households with more than 120 heads of per capita livestock number about 20% of the total households. More than 85% herdsman households have reached middle and better-off living standards. Hence, when we asked about how the family life had changed after the implementation of the "two long-termed steadiness policies" in our surveys, most informants thought that there had been an "obvious improvement."

5.2 In the 1980s before the reform and opening up to the outside world, absolute majority of labor forces in Tibet were engaged in singular crop-growing and pasturing production, with very few people concurrently in sideline production, so the structure of work force was singular and simplistic. After the reform and opening up to the outside world, the closed singular self-sufficient economy in the crop-growing and pasturing areas gradually turned into a diverse open commodity one. In the pasturing areas, the production was "focused on the raising of livestock in mixed farming;" in the crop-growing areas, "focused on the growing of crops in mixed farming." Motivated by market economy, peasants and herdsmen were not only engaged in farming industry, but began to utilize the opened market and convenient transport for multiple businesses, including industry, architectural construction, transport, commerce, tourism and catering trade. That resulted in the harmonious development of industrial structure and work force structure mixed with crop growing, livestock-raising, forestry and sideline trades as well as diversified production. Township enterprises developed rapidly in some areas. Hence it occurred that many households engaged in the diversified production of farming and commerce or livestock-raising and industry, or specialized in one of these trades. Only in 1985, there had been 12,000 households specialized in a variety of trades throughout Tibet. Among them there are more than 1,300 households specialized in transportation, owning more than 1,200 automotive vehicles. In 1989, the revenues out of diversified production and township enterprises in the farming areas reached 304 million RMB, amounting to nearly one third of the total agricultural and industrial production of the whole region.¹

¹ Ibid.



We found in our surveys that many better-off households became rich by means of mixed business. Take only Doilungdeqen County in Lhasa City as an example. In 1993, personnel engaged in diversified production in the whole county had reached 25% of its total population.¹ According to the survey of rural residents in 2004, the major sources of peasants' and herdsmen's increased incomes were as the following: the incomes of household operation, which were the major part of pure incomes of peasants and herdsmen, numbered 1,103 RMB in total, with a 53 RMB increase and 5.0% growth compared with before; the wage incomes numbered 530 RMB in total, with a 51 RMB increase and 10.6% growth. Wage incomes had held an important proportion in peasants and herdsmen's pure incomes, amounting up to 28.5% in the total incomes; property incomes and transfer incomes had totalled 228 RMB, with an 67 RMB increase and 41.6% growth. In 2004, the transfer of redundant labour force in farming areas achieved remarkable effects, and the proportion of peasants and herdsmen who left their hometown for temporary work had kept its rapid growth. Through the year, the labour force output totalled 540,000 person-times, with labour service incomes reaching 630 million RMB; both the labour force output and related incomes had respectively increased 25% and 20% at the same rate. In particular, the per capita wage incomes of peasants and herdsmen out of their labour services in other places or at home reached 229 RMB, with an 86 RMB increase and 60.1% growth at the same rate. The cash incomes out of labour force output numbered 22.1% of the total cash incomes during the same period, with a 5.3% increase at the same rate; and their contribution to the growth of per capita cash incomes reached 46%. So labour force output has become another important channel for the increased incomes of peasants and herdsmen of the whole region, and the traditional self-sufficient natural economy in Tibetan farming areas has begun to turn into an open commodity economy since then.

5.3 With the growth of market and the development of commodity economy, more and more Tibetan peasants, herdsmen and urban residents began to engage in commerce on the basis of overcoming subsistence problems. As it is shown in a random sampling survey of 301 households which totaled a population of 1,175 in Lhasa City, people engaged in commerce numbered 24.4% of the total employed population, more than those in any other trade.² To make money by means of engaging in commerce has become a new consensus among the residents in Lhasa, and people have concluded out of their practices that one cannot become rich if does not engage in trade. Hence a large group of self-employed households and collective households emerged, who engage in the tertiary industry; they have been at their best in commerce, catering, hotel, services and transport. What is especially cheering is that some peasants and herdsmen began to walk out of their

¹ Series of Information on China, Lhasa Volume. Beijing: Encyclopaedia of China Publishing House, 1995.

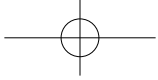
² Ibid.



farmlands and pastures. They step towards towns and cities, towards market, and towards the broader outside world, looking for a road leading to a better-off life. For the first time the conventional situation that Tibetan peasants and herdsmen had been bound fast to lands for a thousand years is historically broken out. The peasants and herdsmen have enlarged the sphere of their activities step by step from their tents and villages to township and county seat, and even to the urban market in Nagchu, Shigatse and Lhasa. Such increasing movement of population boosts in turn the further development of commodity economy in the Tibetan farming areas.

5.4 After the resolution of subsistence problems, the consumption requirements of Tibetan residents are changing as economy develops and living conditions improve. Their requirements in life are no more limited to basic physiological ones such as eating their full and having warm costumes; instead, they begin to seek for enjoyment at a higher level. No matter whether for urban residents or peasants and herdsmen, their life is changing from a subsistence type to a consuming one; in addition, the commodity-consuming pattern is gradually enlarging, in which people try to meet their consumption requirements by purchasing a variety of goods. Hence, the consumption structure has changed greatly.

5.4.1 Housing Conditions. The basic housing requirements of peasants, herdsmen and urban residents have been largely satisfied. Now a general tendency is to rebuild old houses into new ones, and one-story ones into multiple ones. For example, the first thing for the peasants in Gyangtse after they could eat their full was to have beautiful houses and furniture. In 1989, 41 households among the 44 ones in Banjuelun Village, Gyangtse County, that is, more than 93% households, moved into new houses that they built for themselves after the reform and opening up to the outside world; in particular, 22 households rebuilt their new houses into multi-story buildings by 1994. At present, the per capita usable floor areas in this village have reached 25.4 square meters. In addition, many new houses have been luxuriously decorated, even more beautiful than the manor houses of the Palas, a prominent noble family at this place before the liberation. Another example is the Lugu Community in Lhasa City, where there is a population of 1,596. Now all the residents over there have moved into permanent houses built with armored concrete and stones, electricity and tap water are available for every household, and per capita housing areas have increased more than 2.6 times compared with those before the democratic reform. In addition, most herdsmen at the survey site in Yaoqia Township, Amdo County, have also half settled down. Especially, an important decision was made for the whole Tibet in 2006, which aims to “take the housing projects for peasants and herdsmen as a breakthrough point to boost in all respects the construction of new socialist countryside in Tibet.” This decision is changing the appearance of rural areas in Tibet. Only in Nyingchi Prefecture, 2.28 billion RMB have been invested in housing projects during the period from 2002 to 2008. More than 90%



of the peasants and herdsmen have moved into new houses, which are safe and cozy. The peasants and herdsmen remarked that the housing projects had realized their dreams which had been made for generations; hence they are more firmly for the policy of reform and opening up to the outside world.

5.4.2 Food Supplies. As for food services, the greatest change is that people are gradually turning from eating their full to eating well, and that their food structure is being diversified. In addition, the demands for non-staple foodstuffs are constantly increasing, and those for staples (*zanba*, a Tibetan food roasted with barley flour, for instance), raw grains and roughage have been decreasing although they are still in large amounts. And such tendency is most obvious in pasturing and urban areas. According to our questionnaires, the consumption of *zanba*, which is staples for the herdsmen in Amdo, has declined, but the demands for wheat flour and rice and various fruits are obviously increasing. All these food supplies are transported from other places, and a dozen kinds of vegetables bought from markets are added; in addition, most households buy tens of kilograms of fruits and candies every year. From the above, it can be easily seen that the proportion of non-staple foodstuffs in farming areas after the reform and opening up to the outside world has increased year by year, while the amounts of self-sufficient food in the households have shown a tendency of decrease year after year although they still hold heavily. It is mainly because the commodity economy in farming areas has begun to be active during recent years, the areas of the movement of peasant and herdsman population are enlarging, and the growth rate of peasant and herdsman incomes has increased greatly. Likewise, the consumption of non-staple foodstuffs among the urban residents in Lhasa City has increased faster than that in farming areas. Especially, the proportion of expenditure of non-necessary stuffs such as culture and entertainment in total consumption outlay has shown an ascending tendency every year, with its increase rates by far larger than those in the farming areas. These tendencies, doubtless are a sign of people's increased incomes and gradually improved food services.

5.4.3 Costumes. Peasants, herdsmen and urban residents in Tibet are no longer satisfied at the minimum requirement of keeping warmth, instead, they begin to pursue harmonious colors and novel styles, and the demands of medium and high-end costumes are gradually increasing. The herdsmen not only wear traditional self-made leather clothes, but also are increasingly fond of costumes made of chemical fiber and woolen cloth. The herdsmen at a pasturing village in Yaoqia, Amdo now begin to favor convenient Chinese-styled costumes, too. Among the 45 informant pasturing households, every household averages 8 pieces of Chinese-styled costumes. That is a remarkable change. In Banjuelun Village, Gyantse, sheepskin coats braided with roe skins and costing 200 RMB each piece now begin to enter ordinary households. In Lhasa City, there are more and more people in Chinese- and



Western-styled costumes. In addition, these urban residents especially favor light convenient ones at high prices and in novel styles, and the vogues change faster than those in crop-growing and livestock-raising areas.

5.4.4 Articles for Use. People have gradually diverted their attention from ordinary daily commodities and endurable consumables towards high-end endurable consumables. The consumption of articles for cultural purposes, entertainment, enjoyment and development is in an ascending tendency. A variety of high-end endurable consumables such as TV sets, washing machines, audio recorders, video recorders, automobiles and motor bikes did not enter the households until the reform and opening up to the outside world in the 1980s.

5.4.5 Before the reform and opening up to the outside world, the incomes of laborers in Tibet did increase every year, but the consumption outlay was pointed at one single direction, that is, subsistence. After the reform and opening up, the directions of consumption expenditure were diversified—not only the investment in food supplies, costumes, housing and daily use of commodities has increased, but also the proportion of consumption expenditure on non-necessary articles such as in cultural activities, entertainment, weddings, funerals, festivals and other celebrations has obviously ascended. A variety of entertainment forms, including Kara-OK, dancing, billiards, watching TV shows, films and videotaped programs, have increasingly become vogue entertainment and leisure-time recreation among the youth in Lhasa City, and are gradually spreading from cities and towns into farming areas.

5.4.6. Before the reform and opening up to the outside world, the transmission in Tibet mainly depended on radio broadcast and newspapers, but many remote farming areas were inaccessible even to newspapers and radio broadcast, thus poorly informed and unenlightened. For more than one decade since the reform and opening up to the outside world, with people's increased incomes and technological development, the media for public communication has developed in amounts, types and coverage. Radio sets, radio-and cassette recorders and TV sets are no more luxurious things in ordinary households. In Yaoqia Township, Amdo County, which is hundreds of kilometers away from Lhasa City and above 5,000 meters altitude, 46 informant herdsman households have 21 audio-recorders and 19 radio sets in total, most of which were bought after the reform and opening up to the outside world. Now many herdsmen learn about domestic and international important events through these radio sets and recorders, which have mitigated the isolation in remote pasturing areas from the outside world. Banjuelun Village in Gyangtse used to be deprived village inhabited by some household slaves. More than 40 years have passed, this village is now equipped with 37 recorders and 13 TV sets, too. In Lhasa City, watching TV has become an important component of residents' daily life; among the 45 surveyed households



in Lugu Community, there are 35 colorful TV sets and 14 W/B TV receivers. The TV sets and radio cassette recorders in Tibetan households have not only greatly enriched the leisure-time life both in farming and urban areas, but their subtle influence is penetrating the deep mentality of peasants, herdsmen and urban residents, impacting many out-of-date values. No doubt they will have an enormous hold on the life styles and values of future Tibetan people.

5.4.7 According to the statistics based on our questionnaires, the “policy on the freedom of religious beliefs” is one of the best known important state policies among the Tibetan people. 90.5% households admit that they “noticed” and “know” this policy, and hold in general that this policy is “very good,” and almost nobody thinks this policy is not good. That indicates after the reform and opening up to the outside world, Tibetan people have enjoyed their fullest rights of freedom of religious beliefs as individuals, and that people are satisfied at the religion policy in reality.

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STUDY ON PEOPLE-ORIENTED DEVELOPMENT AND HUMAN RIGHTS PROTECTION

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In recent years, one of the most important theory innovations of the Chinese Communist Party and Chinese government is the advancing of the Scientific Outlook on Development, which is an important strategic guiding thought to promote the reform and opening up and the modernization construction of China. The core of the Scientific Outlook on Development is people-orientation, which is a sort of right concept, and whose essential requirement is to respect and protect human rights. Therefore to respect and protect human rights is the inherent meaning of the concept of people-oriented development. From this point of view, the Scientific Outlook on Development is a development concept based on the respect and protection of human rights. The concept is the crystallization of the profound understanding of the Chinese Communist Party and the Chinese government for the relation between human rights and development, whose essential spirit agrees with the international human rights documents. During the three decades of reform and opening up, China has achieved great success in development and protection of human rights. However, China is still confronted with many problems and challenges in the field of human rights protection at the stage of social transformation. It is imperative to change the viewpoints of development, and to solve problems and conflicts from the angle of respect and protection of human rights with the requirements of people-oriented Scientific Outlook on Development.

I. To protect human rights is the inherent meaning of the people-oriented development

What is the meaning of people-oriented development? There are rich and profound contents in the people-oriented development. It is the radical denial of the real-oriented development concept. It highlights people as the center and subject of development, and emphasizes that the aim and outcome of development is to achieve the overall development of human and to generally realize human rights. President Hu Jintao has pointed out in the early 2004 that “Adhering to the principle of ‘putting people first’ means that we should set the goal for the all-round development of the people, seek for and promote development for



the fundamental interests of the masses, constantly satisfy the growing material and cultural needs of the people, conscientiously guarantee the economic, political and cultural rights and interests of the people, so that achievements gained in development will benefit the whole people”¹.

At first, the people-oriented development put people as the subject of development. People is the subject of development, but not the object of development, which shows the central position of people in development, and also shows the dignity of people and the equality of people in legal status. “People” here refers to all members in the overwhelming majority of the people in China, without distinction of any kind, such as nationality, sex, language, religion, social origin, property, birth or other status. People here, is in accordance with the fundamental spirit of the universality of the subjects of human rights in *Universal Declaration of Human Rights*. “People” here possess the basic human rights to equally participate in development. Without the equality in citizen’s legal status, there will be no equality in society, let alone the realization of people-oriented development. The people-oriented development means to treat all social members equally, all social members deserve equal respect, “and to ensure the equal right to participation and development for all members of society in accordance with the law.”² Meanwhile, the people-oriented development also highlights the important position and role of the overwhelming majority of the people in development. “People and mass are the essential force to create the world history. The overwhelming majority of the people in China are the subject for the cause of constructing socialism with Chinese characteristics, the creator of the advanced productivity and advanced culture, and the impeller for the harmonious development of socialist material civilization, political civilization and spirit civilization.”³ *The Declaration on the Right to Development* of the United Nations clearly pointed out that “The development policy should make people become the major participant and beneficiary of development.”⁴

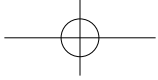
Second, the people-oriented development demands the social justice through the process of development. The “people-oriented” scientific outlook on development demands to realize “development for the people, by the people and to the benefit of all the people.” It highlights “not only to increase the material wealth of the society and to improve people’s living through development, and also to guarantee the social justice and to continuously promote the social harmony through development.” It is thus clear that the people-oriented

1 Hu Jintao: the speech at the Symposium on the work of the population resource and environment of the Central Party Committee, *People’s Daily*, March 10th, 2004.

2 Hu Jintao: to hold high the great banner of socialism with Chinese characteristics, strive for new victories in building a moderately prosperous society in all respects.

3 Hu Jintao: the speech on the Symposium to commemorate the 110th birth anniversary of Comrade Mao Zedong, December 26th, 2003.

4 The declaration on the right to development of the United Nations



development means the development with the aim to respect and protect the human rights, and the development course is certainly the course of realizing and improving human rights, rather than the simple material growth process. The core of human rights is equality, and all social members are equal. Therefore, the people-oriented development demands the state deal with the relation between efficiency and justice, equally care for each citizen's needs, and equally allocate the profits and chances. To eradicate poverty and realize general human rights depend on development, however, the economic development will not automatically bring the development of human rights. Without justice, the long-term efficiency also can not be achieved. The injustice in development will not only hurt some social members, but will also harm the whole society finally. The government at all levels should regard the realization of social equity as the basic policy, and to ensure that the fruits of economic development were shared by the people. More attention should be given to the right claim of different interest groups, and fully satisfy the basic requirement of all people generally benefited through legal and policy arrangements.

Third, the people-oriented development demands that the system arrangement of the relations between rights and power embody the principle of popular sovereignty. We should ensure that the public power restricted and supervised by civil rights, and the objective of the public power operation is to facilitate the whole society's wellbeing and to guarantee civil rights. People's rights are sacred, and the key to the legal system construction is to discipline and restrict public power, in order to make sure that the public power serves for the people's rights. This principle is the demand of the outlook of people-oriented development, and also the footstone of Chinese socialist democracy and rule of law.

II. To guarantee human rights needs new requirements for development

It is universally acknowledged that China has achieved great success in economic, democratic politics, cultural and social construction after the three decades of reform and opening up. While the demand of humanism and the demand to protect human rights has raised new perspective, new value standard and new requirement for our development, and brought us a new ideological liberation for development.

At first, to guarantee human rights demands updating of the development concept. In theory and practice, there are the mistakes of treating and handling development issues separately from the starting point of general development, and respect and protection of human rights. Development is one-sidedly regarded as the growth process of GDP, and there is only the real, but not the human. And this is the neglect of the role of protection of the human rights in development, the ignorance of care and love for people, and the forgetting about that development serves for people's happiness. To treat development from



the angle of protection of the human rights demands us to equally treat people's economic interest with people's political interest, culture interest and social interest while keeping up the principle that development is the absolute need, and development is the primary task. Not only consider the interest coordination among different social classes and groups, pay attention to and regulate for the issue of expanding gap between the poor and the rich, but also consider the interest coordination between the urban and the rural, among people in different areas, and solve the problem of expanding gap between the urban and rural areas, between central and western regions and coastal regions. Not only consider the people's development, but also consider the coordination between human and environment, for it's also to maintain and concern about human interest in itself. To protect the human rights demands updating of development concept and that is to set up the scientific development concept of making economic and social development people-oriented, comprehensive, balanced and sustainable.

Second, to protect human rights demands to pay key attention to the disadvantaged groups in development. At present, the issue of disadvantaged groups has become the focus of social justice of our country. To pay attention to justice, we must pay attention to the disadvantaged groups of the society first. To solve the problem of social justice, we must first solve the problem of right protection for the disadvantaged groups of the society. To put people first, and pay attention to the human rights, we must protect the human rights of each social member, and each social group. But, in contrast, to protect the human rights of the disadvantaged groups has more urgent realistic significance. This is because that, first, to strengthen the protection for the disadvantaged groups is the basic requirement of the human rights. No matter from the old Chinese saying that "the public spirit will rule all under the sky when the great Way prevails, pick the good and select the capable for public posts, have faith and promote good will; cement peaceful relations by upholding good faith, people will not only attend to their own parents and children, so that the old are attended upon when they are dying, the middle-aged people can contribute their own efforts to the society, children will be fairly brought up, old men and women without spouse or offspring, children lost their parents, and the disabled people are all cared of." or from the thoughts advanced by President Hu Jintao that the Chinese government strives to ensure that all the people enjoy their rights to education, employment, medical and old-age care, and housing, which all reflected the basic value of respect and protection of human rights. To respect and protect human rights is the demand for the State, also the responsibility that should be taken by the State. Second, the issue of protecting human rights for the disadvantaged groups is the issue of share of economic development fruits. The development fruits mainly refer to economic fruits, including "public products," such as public facilities, power and water supply, public security, public administration, public medical, public health, cultural



education, environment protection and etc. To realize the fair share of the development fruits must depends on the right power disposition fundamentally.¹ At this stage, to share the development fruits, we must give top priority to the protection of the rights to subsistence and development of disadvantaged groups. The right to subsistence is the right to enjoy a decent living, which covers the basic contents of the economic, social and cultural rights, and has inseparable internal relation to right to development. The white paper of *Human Rights in China* pointed out that “the right to subsistence is the most important of all human rights, without which the other human rights are out of the question.” This is to emphasize the importance of the right to subsistence from its time connotation. *The International Covenant of Economic, Social, and Cultural Rights* of the United Nations provides that “everyone has the basic right to be free from hunger” and “to enjoy fair living standards” and also provides a series of rights to ensure its realization. The right to subsistence of today embodies the principle of justice in economic and social field, and also is the new demand raised for the development of democratic politics. The essence of the right of development is to claim the share of the economic and social development fruits. The disadvantaged groups are the groups at adversity in the society, and the right to subsistence and development of them should be fully protected in economic development, in order to fully protect their dignity of subsistence.

Third, to protect human rights demands to reform and improve the relevant course of action and system mechanism of development. In the course of development promotion, we must put the demand to respect and protect the human rights, and to promote the all-round development of human as the basic value standard, make a conscious effort to reform and improve the practice, system and mechanism that does not conform to the demand to protect the human rights, innovate the development thinking and act, innovate the system mechanism of work, and gradually establish the system mechanism that conforms to the demand of people-oriented scientific development.

It is thus clear that the demand to protect the human rights for development is the demand of scientific development, and that the people-oriented scientific outlook on development agrees with the human rights protection.

III. Push forward the new development of the cause of human rights of our country in the practice of scientific development

At present, Chinese people is building a moderately prosperous society in all respects under the instruction of the scientific outlook on development. This is not only the unprecedented great cause of the human rights in Chinese history, but as well as in the world history.

¹ To promote and guarantee the fair share of the development fruits by legal means—the talk with Li Changqi, the vice president of the China Law Society and Economic Law Research Society.



At first, we must strengthen human rights education for the whole society. Owing to various historical and realistic reasons, the concept of respect and protection of human rights has not been actually known to all the people. It is necessary to strengthen the education of scientific outlook on development, to carry out education in human rights among the government officials and the general public, and gradually enhance the public's awareness of human rights.

Second, we must further improve the legal system of human rights. It is of urgent realistic significance for us to make research on the deficiency in our legal system, lift the policy-oriented approach and new experience in the human rights protection to the legal and system level, and to make them institutionalized and standardized under the instruction of the constitutional principle that "the state respects and protects human rights." For example, it is imperative to promulgate and implement the *Social Insurance Law*, *Public Assistance Act*, *Anti-Discrimination Law*, and *Anti-Domestic Violence Law* etc. We must focus on the new demand to protect human rights of the general public, and continuously improve the constitution-based legal system for protection of human rights.

Third, we must further strengthen the government's responsibility for protection of human rights. The government's power comes from the people and must serve the people. The government is the protector of human rights. The government's responsibility in human rights mainly consists of two aspects: respect and protection. The people-oriented development demands the government to take the human rights protection as the aim and outcome, and to fully consider the right claim of different interest groups, and especially the right claim of the disadvantaged groups of the society in formulating the development policy and strategy. In April of 2004, the State Council issued the program to comprehensively promote the laws-based administration, set up the objective to establish a government under the rule of law, put forward a series of significant measures to deepen the system reform, strengthen the strict administrative law enforcement, intensify the supervision for the administrative power, and to improve and strictly execute the administrative compensation and recuperation and etc. To establish and improve the duty investigation system for policy decision, perfect the supervision mechanism for administrative law enforcement, and to prevent the public power abuse and omission are the major aspects to intensify the government responsibility of human rights. We believe that with the reform and opening up of our country and the development of modernization construction, the human rights protection cause of our country will surely attain more brilliant achievements.

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THE RIGHT TO DEVELOPMENT OF CHINESE ETHNIC MINORITIES PROMOTED IN ACCORDANCE WITH THE IDEA OF PUTTING PEOPLE FIRST

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China

I. The idea of Putting People First and the right to development from the contemporary perspective of human rights.

(1) The right to development and its main contents from the contemporary perspective of human rights.

The *Declaration on the Right to Development* adopted by UN General Assembly resolution 41/128 of December 1986 states that “development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom” and confirms that “the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations.”¹

The *Vienna Declaration and Program of Action* adopted by the UN World Conference on Human Rights in 1993 reaffirms that “the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.”²

In August 2008, UN Secretary-General Ban Ki-moon said on the 15th Anniversary of the World Conference on Human Rights in Vienna that “the World Conference on Human Rights in Vienna marked a watershed in the way we understand human rights, and since then, the world has increasingly understood that human rights are indivisible from development and security.”³

For a state, the essence of the right to development, summarized from the *Declaration on the Right to Development* and the *Vienna Declaration and Program of Action*, includes the following:

1 The Declaration on the Right to Development, quoted from UN website: <http://www.un.org/>

2 The Vienna Declaration and Program of Action, quoted from UN website: <http://www.un.org/>

3 Statement by Secretary-General Ban Ki-moon on the 15th Anniversary of the World Conference on Human Rights in Vienna, quoted from UN radio, <http://www.unmultimedia.org/radio/chinese/>.



A. Recognizing the human person is the subject (or “the central subject”) of development process and that development policies should therefore make human beings the main participants in and beneficiaries of development.

B. Recognizing that it is the primary responsibility of a state to create conditions favourable to the development of its peoples and individuals. Lasting progress towards the implementation of the right to development requires effective development policies at the national level.

C. Ensuring equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.

D. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.

(2) The idea of Putting People First in the Scientific Outlook on Development.

Chinese President Hu Jintao has pointed out clearly that “the Scientific Outlook on Development takes development as its essence, putting people first as its core,...”¹ i.e. China’s development is to “make sure that the aim and outcome of all the work of the Party and the state is to realize, safeguard and expand the fundamental interests of the overwhelming majority of the people. We must respect the principal position of the people in the country’s political life, give play to their creativity, protect their rights and interests, take the path of prosperity for all and promote their all-round development, to ensure that development is for the people, by the people and with the people sharing in its fruits.” It is thus evident that the idea of Putting People First is the core value as well as the purpose of the Scientific Outlook on Development.

Previously, Chinese President Hu Jintao had already made a clear-cut interpretation on the practical connotation of the idea of Putting People First, and he said, “By committing ourselves to putting people first, we must strive to realize the comprehensive development of human beings, seek and promote development proceeding from people’s fundamental interests, continuously meet the ever-growing material and cultural needs of people, take concrete measures to protect economic, political and cultural interests of mass population, and let the achievements of development benefit the entire nation.”²

The formation of the idea of Putting People First in the Scientific Outlook on Development has the following features:

A. The idea of Putting People First has developed the useful elements in the traditional

1 Hold High the Great Banner of Socialism with Chinese Characteristics and Strive for New Victories in Building a Moderately Prosperous Society in All Respects, Report to the Seventeenth National Congress of the Communist Party of China on Oct. 15, 2007, published on *People’s Daily*, Oct. 25, 2007.

2 Speech on the Central Work Meeting on Population, Resources and Environment, March 10, 2004, A Selection of Important Literatures since the 16th National Congress of the CPC, Central Literature Press, 2005.



Chinese civilization and discarded the useless ones. “Thousands of years ago, Chinese people already put forward and stressed the ideas that ‘people are the foundation for states and states will remain in harmony as long as their people live and work in peace and contentment,’ that ‘people are on the top of priority, with states following, then come monarchs,’ and that ‘a government will only prevail when it meets the needs of its people and fail when it goes against them.’”¹ Today’s idea of Putting People First has absorbed “the simple value orientation of people-focusing”² from those thoughts and changed the monarch-oriented values into the current people-oriented ones.

B. The idea of Putting People First is an inheritance to the fundamental Marxist viewpoints. According to Marxist Materialist Conception of History, “there are two benchmarks for evaluating social progresses: one is productivity; the other is human development. Human beings are the aim and outcome of history, and free and comprehensive human development is the ultimate goal for human beings. Karl Marx defines a Communist society as ‘an economic formation that ensures the utmost development of labour productivity as well as the most comprehensive human development’. According to Marx and Engels, human development in real sense refers only to the development of all members in the society, not the development of some members and no development of the rest.” “Therefore the idea of Putting People First reflects the fundamental thoughts of materialist conception of history and conforms to the fundamental Marxist viewpoints.”³

C. The idea of Putting People First is the refined and sublimed CPC’s consistent advocacies in the new era. “The entire history of the CPC’s development is the history of its unremitting struggle for protecting the political, economic and cultural interests of Chinese people.”⁴ Since the 16th National Congress of the CPC, President Hu Jintao has combined China’s situation and tasks in the new historical development stage with relevant guidelines made by previous three generations of collective leadership and refined those guidelines to the idea of Putting People First, which is in the same line as the Party’s consistent position.

To sum up, we could draw the following conclusions:

The idea of Putting People First epitomizes the core value of the right to development in contemporary human rights and represents a Chinese way of expression of the right to development from contemporary perspective of human rights. It is the theoretical foundation for protecting the rights of Chinese ethnic minorities and the guiding principle for promoting prosperity and development of all ethnic groups. The development and practices of the CPC in the new China have illustrated its endeavour to continuously promote human

1 On the Scientific Outlook on Development, Publicity Department of the CPC Central Committee, p27, Study Press, 2008.

2 Ibid.

3 A Book on the Scientific Outlook on Development for Universities and Colleges, Feng Gang ed., p52, People’s Press, 2009.

4 A Book on the Scientific Outlook on Development for Universities and Colleges, Feng Gang ed., p53, People’s Press, 2009.



rights and explore to protect the right to development.

Based on the above concepts and conclusions, this article is to briefly exemplify the protection of the right to development of Chinese ethnic minorities.

II. The status of all Chinese ethnic minorities as the subject of right in the development of the new China has been realized.

“The right to development is the right of active, free participation in development process,”¹ as the *Declaration on the Right to Development* proclaims in Item 1, Article 1: “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.” Item 1 of Article 2 further clarifies that “the human person is the central subject of development and should be the active participant and beneficiary of the right to development.”

Compared with the above statements, the status of all Chinese ethnic minorities as the subject of the right to development has the following two aspects of features:

A. The status of Chinese ethnic minorities as the subject of the right to development is clear and definite in law.

The Constitution of the People's Republic of China, the state's fundamental law, recognizes in the Preamble the status of all ethnic minorities in China's historical and current development: “The People's Republic of China is a unitary multinational state created jointly by the people of all its nationalities.” “The state will do its utmost to promote the common prosperity of all the nationalities.” Article 4 confirms clearly that “All nationalities in the People's Republic of China are equal. The state protects the lawful rights and interests of the minority nationalities and upholds and develops a relationship of equality, unity and mutual assistance among all of China's nationalities.” “The state assists areas inhabited by minority nationalities in accelerating their economic and cultural development according to the characteristics and needs of the various minority nationalities.” “Regional autonomy is practiced in areas where people of minority nationalities live in concentrated communities; in these areas organs of self-government are established to exercise the power of autonomy.” “All nationalities have the freedom to use and develop their own spoken and written languages and to preserve or reform their own folkways and customs.”

As a fundamental law clarifying the rights of all ethnic minorities, *the Law of the People's Republic of China on Regional Ethnic Autonomy* fully stipulates in 7 chapters

¹ Bui Phuong Dinh(Viet Nam), *The Right to Development: Origins, Characteristics and Legality*, published on Dong Yunhu & Chen Zhengong ed., *Development, Security and Human Rights*, P36, China Intercontinental Press, 2009.



and 74 articles the rights to participation in development of ethnic groups in compact communities on their own economic, social, cultural and political affairs in their own regions. Meanwhile, the state has promulgated special administrative laws and regulations to better implement the Law and take concrete measures to accelerate socio-economic development and promote national unity and common prosperity for all ethnic groups in the ethnic autonomous areas.¹

B. The status of all China's ethnic minorities as the subject of the right to development has been demonstrated in practices.

Since the founding of the new China, all ethnic minorities have become participants in the national and ethnic affairs and beneficiaries of the development achievements with the scope and extent of their participation in the development ever increasing. Correspondingly, they have enjoyed more and more development achievements. Here are some relevant facts:

In the National People's Congress, the highest organ of state power, the proportions of deputies of ethnic minorities among the total number of deputies have been higher than the proportions of their population in the nation's total population in the corresponding periods.²

"The regional ethnic autonomy means that under the unified leadership of the state, regional autonomy is exercised and organs of self-government are established in areas where various ethnic minorities live in compact communities."³ It is a Chinese model in which ethnic minorities are the subject of the right to development. By the end of 2008, China had in total 155 ethnic autonomous areas. Of these, there were five autonomous regions, 30 autonomous prefectures and 120 autonomous counties (banners). The population of ethnic minorities practicing regional autonomy accounted for 71 percent of the total population of ethnic minorities.⁴ The heads of all autonomous regions, autonomous prefectures and autonomous counties are all citizens of the ethnic groups exercising regional autonomy in the areas concerned.

Other members of the people's governments of the autonomous areas include an appropriate number of members of the ethnic group(s) exercising regional autonomy as well as members of other ethnic minorities.⁵

By the end of 2008, the ethnic autonomous areas had formulated 637 autonomous

1 i.e. Some Provisions on the Implementation of the Law of the People's Republic of China on Regional Ethnic Autonomy (came into force on May 31, 2005).

2 White Paper on China's Ethnic Policy and Common Prosperity and Development of All Ethnic Groups, published on *People's Daily*, Sep.28, 2009.

3 Ao Junde, Paraphrase of the Law of the People's Republic of China on Regional Ethnic Autonomy, P9, The Ethnic Publishing House, 2001.

4 Quoted from the White Paper on China's Ethnic Policy and Common Prosperity and Development of All Ethnic Groups, published on *People's Daily*, Sep.28, 2009.

5 White Paper on China's Ethnic Policy and Common Prosperity and Development of All Ethnic Groups, published on *People's Daily*, Sep.28, 2009.



regulations and separate regulations, as well as adapted or supplemented regulations to relevant laws.

The *Declaration on the Right to Development* proclaims in Item 3 of Article 2 that “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.”¹ Correspondingly, it is obvious to all that China’s ethnic minorities have benefited from the share of the national development achievements, demonstrated by state’s investment funds on the economic, social and cultural development in minority areas. For example:

Both the central and local governments at all levels have gradually increased their efforts to extend fiscal transfer payments to the minority areas. From 1978 to 2008 the total transfer payments by the central financial authorities to the minority areas totaled 2,088.94 billion yuan, with an annual increase of 15.6 percent. In addition, the state has also set up a variety of special funds to help resolve the difficulties encountered by the minority areas and accelerate their development, including education development subsidies for the ethnic minorities set up in 1951, minority area subsidies set up in 1955, the minority-area reserve fund set up in 1964, subsidy for border construction set up in 1977, fund for aiding economically underdeveloped areas set up in 1980, and fund for the development of the ethnic minorities set up in 1992.

Since the introduction of the reform and opening-up policies, the state has built or renovated township hospitals, county-level epidemic-prevention stations and health centers for women and children, which greatly improving the health-care services in the minority areas. More than 80 percent of the counties in Tibet now have epidemic-prevention stations.²

Since 1979, the state has vigorously organized and encouraged paired-up assistance between the economically developed areas and the less-developed minority areas. In 1996 the State Council determined to organize 15 developed provinces and cities along the eastern coast to provide aid to 11 western provinces (autonomous regions and municipality directly under the central government), and mobilized all departments of the central government to provide pair-up aid to the impoverished areas. Take Tibet for instance, a total of 6,050 assistance projects had been launched in Tibet, with a total of 11.128 billion yuan in assistance fund. Under the central leadership and with the full support of the whole nation and the strenuous efforts made by the people of all ethnic groups in the minority areas, in 2008, the economic aggregate of the minority areas reached 3,062.62 billion yuan, from

¹ The Declaration on the Right to Development, quoted from UN website: <http://www.un.org/>

² Quoted from the White Paper on China’s Ethnic Policy and Common Prosperity and Development of All Ethnic Groups, published on *People’s Daily*, Sep.28, 2009.



5.79 billion yuan in 1952, an increase of 92.5 times calculated at comparable prices. The economic growth rate of Inner Mongolia has ranked top in the country for seven consecutive years, and Xinjiang has maintained double-digit growth for six years in succession. In the same year, the GDP of Tibet stood at 39.591 billion yuan, an increase of 65 times compared with 1959.

III. All ethnic minorities enjoy the right to development opportunities in the development of the new China.

The *Declaration on the Right to Development* proclaims in the first Item of Article 8 that “States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.”¹

In view of the historical reasons, there is a gap between ethnic minorities and the Han people in social and economic development. Citizens of ethnic minorities enjoy not only the equal right to development, but also precedence over the Han people in the following aspects:²

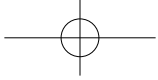
The priority right to development in infrastructure construction. During the 1950s, the state started the construction of eight trunk railways, five of which were in minority areas or linked them with other places. In 1962 the Lanzhou-Urumqi railway line, the first railway line in the Xinjiang Uyghur Autonomous Region, reached Urumqi. Since the late 1970s a large number of key projects have been completed in the minority areas, including the Nanning-Kunming and Southern Xinjiang railway lines, Lhasa Airport, the Lanzhou-Xining-Lhasa optical cable, and the project for utilizing water from the Yellow River for irrigation in Ningxia. In 2007 the Qinghai-Tibet Railway was extended to Lhasa, giving a rail connection to Tibet for the first time in its history. The completion of the projects has greatly improved the infrastructure conditions and the livelihood and laid a solid foundation for economic, social and cultural development in those minority areas.

The priority right to development in natural resources. The minority areas boast over 85 percent of the country’s state-level natural reserves.

The priority right to development in regional construction. To ensure that the ethnic minorities and minority areas get tangible benefits in the strategy of large-scale development of China’s western regions, the state has adopted many preferential measures, such as giving priority to these areas when arranging resources development and processing

¹ The Declaration on the Right to Development, quoted from UN website: <http://www.un.org/>

² Quoted from the White Paper on China’s Ethnic Policy and Common Prosperity and Development of All Ethnic Groups, published on *People’s Daily*, Sep.28, 2009.



projects, giving compensation to minority places that export natural resources, guiding and encouraging enterprises from economically advanced areas to invest in these places, and increasing financial input and support to them.

The problem of poverty which has limited the development of ethnic minorities is gradually being solved. In the 1950s, the state provided free medical services to poor people of the ethnic minorities, granted them loans and farming tools, and helped them set up schools and conducted social relief. Since 1990 the state has set up a fund to assure the basic needs of people living in poverty-stricken minority areas, and 141 impoverished counties were listed as the first batch to gain this support. In 2005 the comprehensive development of poor minority villages became the focus of national poverty-relief efforts. Thanks to the efforts in these endeavors, the impoverished population in the minority areas shrank from some 40 million in 1985 to 7.7 million in 2008.

The priority right to development in the ethnic minorities with small populations. In 2005 the Chinese government formulated and implemented the *Program to Support the Ethnic Minorities with Small Populations (2005-2010)*, increasing its support for the sparsely-populated minority areas with poor conditions. 640 ethnic-minority villages were listed as recipients of assistance. So far, 1.253 billion yuan has been forthcoming for these areas from the central government.

The priority right to development in education. It is worth mentioning that, besides the implementation of the policies of “Two Exemptions and One Subsidy” (exemption from incidental fees and textbook payment and subsidy for boarding) and adding appropriate scores for minority students in the national college entrance examinations, the state launched in 2006 “the program of training high-caliber backbone personnel from the ethnic minorities” to enroll students for Master’s and PhD degrees from the minority areas. So far, the total number of such students studying in the institutions of higher learning has reached 7,900. At present, for about a dozen ethnic groups, including the Uyghur, Hui, Korean and Naxi, the average number of university students per 10,000 people has already surpassed the national average.

The priority right to development in population growth. Ethnic minorities enjoy a preferential maternity policy than Han people, and as a result their population has increased greatly. For example, the population of the Hezhe ethnic group has increased from 300 in the early days of the new China to over 4,000.

Of course, for both China’s ethnic minorities and Han people, there is a gap between China, as a large developing country, and developed countries in terms of development, such as housing and employment.



IV. All China's ethnic minorities enjoy the protection of future sustainable development policies.

As what has been stated above, the *Declaration on the Right to Development* proclaims in Item 3 of Article 2 that “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.” Besides, Item 1 of Article 3 further stresses that “States have the primary responsibility for the creation of national and international conditions favorable to the realization of the right to development.”¹

The *Vienna Declaration and Program of Action* declares in Article 11 of Part I that “the right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.”²

Since the founding of the People's Republic of China in 1949, following the guideline of unity among all ethnic groups for common prosperity and drawing on China's historical experience and the useful practices of other countries, always with a view to China's actual situation, the Communist Party of China (CPC) and the Chinese government have carved out a path for the successful solution to ethnic issues with Chinese characteristics, and exercised the ethnic policy featuring equality, unity, regional ethnic autonomy, and common prosperity for all ethnic groups, thus forming a relatively complete ethnic policy system.³

Here are some examples illustrating the development policies for ethnic minorities in recent five years:

A. President Hu Jintao emphasizes in the Report to the 17th National Congress of the CPC that “Keeping in mind the objective of all ethnic groups working together for common prosperity and development, we must guarantee the legitimate rights and interests of ethnic minorities, and strengthen and develop socialist ethnic relations based on equality, solidarity, mutual assistance and harmony.”⁴ This is CPC's highest-level macro policy to protect the development of ethnic minorities and the guiding principle for other special development policies for ethnic minorities.

B. In 2005 the CPC Central Committee and the State Council convened the Central

1 The Declaration on the Right to Development, quoted from UN website: <http://www.un.org/>

2 Vienna Declaration and Program of Action (World Conference on Human Rights, A/CONF.157/23), quoted from <http://www.un.org/>.

3 White Paper on China's Ethnic Policy and Common Prosperity and Development of All Ethnic Groups, published on *People's Daily*, Sep.28, 2009.

4 Hold High the Great Banner of Socialism with Chinese Characteristics and Strive for New Victories in Building a Moderately Prosperous Society in all Respects, Report to the Seventeenth National Congress of the Communist Party of China on Oct. 15, 2007, published on *People's Daily*, Oct. 25, 2007.



Meeting on the Work of Ethnicities and jointly issued the Decision on Further Strengthening the Work on the Ethnic Minorities and Promoting Social and Economic Development in the Minority Areas, which stipulates that “development is the key to overcoming difficulties and solving problems in the minority areas, and stressed that, with the gradual increase of the country’s comprehensive strength, the central government would continuously strengthen support to the ethnic minorities and minority areas in their social and economic development, improve the policy-related transfer payment system compatible with the system of regional ethnic autonomy, help the minority areas build infrastructure projects that will give an impetus to local social and economic development and give special treatment to small and medium-sized public welfare projects that are closely related to the everyday life of local people.”¹

C. On May 18, 2005, the State Council reviewed and adopted the *Program to Support the Ethnic Minorities with Small Populations (2005-2010)*. The Program had been investigated and formulated by the State Ethnic Affairs Commission (SEAC) and other four ministries and commissions, and it was effective the same year.

D. The state formulated for the first time the *11th Five-year Plan for the Development of the Ethnic Minorities (2006-2010)*, having planned and established the guiding principles and overall targets for developing ethnic-minority undertakings. “The formulation and implementation of the plan symbolizes the scientific way of China’s dealing with ethnic affairs.”²

E. In order to further strengthen the traditional ethnic-minority sports, promote excellent ethnic-minority culture and enhance the physical conditions of ethnic minority populations, the SEAC and the General Administration of Sports of China jointly issued in 2006 the *Opinions on Strengthening Traditional Ethnic-Minority Sports*.

F. On June 9, 2007, the General Office of the State Council promulgated the *11th Five-year Plan for the Economic Development of the Borderlands*, aiming to solve special difficulties and problems for ethnic groups in border areas.

G. On January 7, 2008, the SEAC and the Ministry of Culture jointly issued the *Opinions of Implementation on Strengthening the Preservation of Ancient Books of Ethnic Minorities*, so as to take concrete measures to preserve, rescue, collect, compile, translate, publish and investigate the ancient books and give them a full play to developing ethnic culture, promoting socialist cultural and ideological construction and accelerating the construction of harmonious society.

¹ White Paper on China’s Ethnic Policy and Common Prosperity and Development of All Ethnic Groups, published on *People’s Daily*, Sep.28, 2009.

² Write a New Chapter of Common Prosperity and Development of All Ethnic Groups, published on *People’s Daily*, March 29, 2007.



H. In 2008, relevant departments of the State Council issued *Some Opinions on Further Strengthening Science and Technology Work in Ethnic Minorities and Minority Areas*, so as to further promote scientific and technological undertakings in ethnic minorities and minority areas, enhance the scientific accomplishment of people, help the ethnic areas to increase the ability of independent innovation, and promote social and economic development.

I. In 2009, the State Council promulgated *Some Opinions on Further Promoting the Cultural Undertakings of Ethnic Minorities*, stressing that the culture of ethnic minorities is part and parcel of Chinese culture, that it is the commonly shared spiritual asset for the entire Chinese nation, and that it is a long-term significant strategic task to promote the ethnic-minority cultural undertakings.

The implementation of the above special policies is undoubtedly conducive to the coordinated development between ethnic and developed areas as well as among all ethnic groups. It is China's active measure to protect the right to development in human rights.

Conclusion:

China is a large developing country with a population of 1.3 billion and 56 ethnic groups. The special conditions in China have dictated the country's unbalanced development. But on the whole, ethnic minorities in the new China have developed in the context of international human rights protection and the right to development of all ethnic minorities is in continuous progress.

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PUTTING PEOPLE FIRST AND PROTECTION OF HUMAN RIGHTS

Li Buyun
China

Marxist theory should be composed of four major parts: dialectical materialism, materialistic dialectics, materialist historical view and human values. “Putting people first” belongs to the category of values. Just like the law of the unity of opposite that is the fundamental law of dialectics, putting people first is the fundamental tenet and principle of Marxism.

In the Western history, there was humanism. As early as in ancient Greece, Puluotaigela put forward that “man is the measure of all things on earth.”¹ The humanists in West Europe advocated that human nature is higher than divine nature; humanity is higher than divinity; human rights are higher than divine rights; and people’s rights are higher than monarchial power. These are the most important contributions made by the Western humanists to the human civilization. In Chinese history, there was also humanism and people-oriented principle, such as “The people can be near, but should not be placed below; the people are the foundation of a country; when the foundation is solid, the country is stable.”² “People are on the top of priority; and the state is the second important; and then the monarch follows.”³ In ancient China, these sayings were of progressive significance. Putting people first we uphold today is the inheritance and development of humanism in the human history, and the high summarization and theoretical sublimation of various progressive concepts on this issue in the modern development of human civilization; hence it has richer and more profound and civilized scientific connotation and time spirit.

Putting people first we uphold today is also the inheritance and development of Marxism. Marx and Engels once clearly pointed out that the starting point of their theory is the people who are engaged in actual activities.⁴ “The highest essence of man is the human person;” “Fundamentally, man is simply himself”⁵; and “the people refer to the people’s

1 *Selected Classics on Western Ethics* (Vol. I), published by Commercial Press in 1996, p. 27.

2 Book of History

3 Meng Zi, *Exhausting All His Heart II*

4 *Complete Works of Marx and Engels*, Vol. III, p. 30.

5 *Complete Works of Marx and Engels*, Vol. I, published by People Press in 1979, p. 9 and p. 1.



world, the state and the society.”¹ The proletariat should emancipate not only themselves, but also the whole mankind. Because of the rigid economic system, the over-concentration of political power, and the ideology and political line of taking the class struggle as the outline, we once deviated from the original ideal for quite a long time.

A harmonious society and a country ruling by law depend on and promote with each other, and they are two basic characteristics of an ideal society. The formation of a harmonious society and a country ruling by law should take the “people-oriented principle” as the core values. Because all the doctrines, policies, laws and systems of a human society should proceed from the people, exist for the people and serve the people.

The rich and profound scientific connotations of “putting people first” are mainly embodied in the following ten parts. From these scientific connotations, we can see clearly that adhering to and implementing the “people-oriented” tenets and principle all along is the foundation of the modern theory of human rights and the human rights safeguard system, as well as the most fundamental guarantee for realizing social fairness and justice, and building a country under the rule of law and a harmonious society.

First, the value of man is higher than anything else. The most precious in the world is man himself. All other things on earth cannot compare with man in terms of value. More, a famous thinker of Britain, once said, “No valued thing in the world can be as precious as our lives.”² Hu Jintao, Secretary General of the CPC Central Committee, also said, “The people’s lives are the most precious. China is a socialist country. Our development should not be made at the cost of sacrificing spiritual civilization, at the cost of sacrificing the ecological environment, and at the cost of sacrificing the people’s lives.” Putting people first is against “putting materials first.” Now we maintain that insurance should put stress on saving the people’s lives, and efforts should be made to rescue people during the disaster relief. If a plane is hijacked, we should, first and foremost, put the passengers’ safety first; and production safety is the most important when we develop the economy, science and technology. All these are of great actual significance. During the emergency rescue and disaster relief after the Wenchuan earthquake in Sichuan, the Chinese government attached great importance to the people’s lives, an action which has deeply moved the people in China and the people of other countries as well. Along with the rapid development of China’s economy, mine disasters have become very serious, and accidents have constantly occurred over the past few years. It has attracted high attention of the leaders at different levels and the broad masses of the Chinese people. The situation can no longer be tolerated and must be restrained. China has adopted various effective measures to solve this problem. Another example is death sentence.

¹ Idem

² *Utopia* written by More and published by Commercial Press



In China, the reduction of death sentence by a large margin has become a common understanding of the academic circles. In recent years, the examination and approval right of death penalty has been returned to the supreme people's court, and the open court sessions to hear cases of the second instance involving death sentences must be held, which conforms to this progressive ideological tide. In addition, the criminal policy on "combining punishment with leniency" put forward not long ago is related to the people-oriented policy. It is scientific and respectful to the people's lives and freedom.

Second, man is the purpose rather than the means. Internationally, this subject and viewpoint put forward by Immanuel Kant is of extensive and profound influence. Kant said, "Human beings, all rational animals in a word, exist for their own purposes; so they cannot be used by any willpower as means."¹ As a matter of fact, it is also an important viewpoint of Marxism. "It is not the state system that creates the people, but the people create the state system." "In the democratic system, it is not the people who exist for the law, but the law exists for the people."² All the systems, policies and laws in society are formulated and implemented to meet the needs of the people, and they are all means. Only the people are the purpose. We should not put it upside down. For instance, Comrade Deng Xiaoping put forward the three contents of the essence of socialism. In terms of final significance, developing productivity and taking public ownership as the mainstay are only means, and realizing common prosperity is the purpose.

Third, the people are the central subject of development, a viewpoint which has been very popular in the world in the past one or two decades. Clear explanations on this viewpoint are included in the *Declaration on the Right to Development* adopted by the United Nations in 1988 and in many other international documents on human rights. It is an all-round development in the economy, politics and culture; and the people must be the beneficiaries and participants of the development. Article 1 of the *Declaration on the Right to Development* (adopted on December 4, 1988) pointed out: "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." Article 2 specifies: "The human person is the central subject of development and should be the active participant and beneficiary of the right to development." In China, putting people first is the important content, essence and core of the viewpoint of scientific development. The Sixth Plenary Session of the 16th National Congress of the Communist Party of China summed up: "Development is for the people; development relies on the people; and development achievements shall be shared by the people and for promoting

1 *Selected Readings of the Western Philosophy Books* (Vol. II), published by Commercial Press in 1982, p. 317.

2 *Quotations from Law Philosophy of Marxism* (Preface) by Wu Buyun, p. 3, published by Shaanxi People's Press in 1992.



the all-round development of the people.” We should firmly set up the people’s principal position in development; and should not see things but not people, or make development only for development. Development is of means, only satisfying the people’s needs and making people live a happy life are the purposes. We must strengthen the system of people’s participation in the development course; and must reinforce the system that the development achievements shall be shared by the people; and truly solve the problem of a great disparity between the rich and the poor. The governing party in China has attached great importance to this issue. The report of the 17th National Congress of the Communist Party of China pointed out: we should always take the solution of the “problems of agriculture, rural areas and farmers” as “the most important in the whole Party’s work.” The problems of agriculture and rural areas are the problems of farmers in the final analysis; and the core of the problems of agriculture, rural areas and farmers is actually how the over 800 million farmers will equally participate in the state’s development and equally enjoy the state’s development achievements.

Fourth, promoting the all-round development of human beings. The supreme purpose of the economic and social development is the all-round development of human beings. It is the consistent position of Marxism. In the book *On Capital*, Marx pointed out that the highest stage of the development of the human society is the “social form with every human person’s comprehensive and free development as the basic principle.”¹ Since the governing party of China put forward the “people-oriented” core values at the 16th National Congress of the Communist Party of China, it has stressed time and again the all-round development of the people.² The people’s morality, intelligence, physique, art and technique, i.e., noble morality, rich knowledge, strong physique, pursuit for a happy life and excellent technique, are the strength sources of the development of history and the progress of civilization, as well as the main pursuit of human beings for a happy life. The core of the economic and social development is the all-round development of the people; and without human development, there would be no social development. We should overcome the unilateral understanding of putting stress on economic development and neglecting the development of the people themselves. When taking the economic construction as the core, we shall upgrade the all-round development of the people to the strategic height; and when guaranteeing the economic growth speed and improvement of the country’s comprehensive strength, we should increase the investments in education, culture, public health and physical culture, and make this policy benefit every member in society.

1 *On Capital* (Vol. 1), published by the People Press in 2004, p. 683.

2 The speech made by Jiang Zemin at the Meeting to Celebrate the 80th Anniversary of the Founding of the Communist Party of China points out: “We should keep promoting the all-round development of the people on the basis of the development of the socialist material civilization and spiritual civilization.” *Selected Works by Jiang Zemin*, Vol. 3.



Fifth, upholding and showing human nature. Why has everyone pursued for the founding of a country under the rule of law and a harmonious society since ancient times? One of the theoretical bases is human nature. All things on earth show the dialectical unity between the abstract and the concrete, the general and the individual, general character and individuality. If we don't admit an ordinary "man" and the abstract human nature, the man would not be the human person, and there would be no such a lofty name of "mankind." Based on the lessons of the 10-year "cultural revolution," the Constitution of the People's Republic of China formulated in 1982 specifies for the first time in Chinese history: "The personal dignity of citizens of the People's Republic of China is inviolable." Since the ruling party of China put forward the "people-oriented" concept, the human nature, personal dignity and humanism have won more and more respects. If we open newspapers, we can find almost everyday the articles on the human-based management adopted by the governments and departments at all levels. China is a signatory to *the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. China strictly prohibits from extorting confessions by torture, which exists in some places because of many reasons. In the past few years, the prison management departments in China have worked out and promoted a series of human-based management measures, indicating that the China's prison civilization construction has been raised to a new level.

Sixth, adhering to the people's independence. Freedom is a nature of the people, and an essence of the people too. The people's thinking freedom and behavior freedom are the basic characteristics which differentiate human beings from animals, and are the strength sources for the people to actively understand and create the world. As a matter of fact, Marxism attaches great importance to freedom. Once a Western journalist asked Engels to tell him what socialism was in a word. Engels replied: "I would like to answer you with a sentence from the *Manifesto of the Communist Party*: Our ideal society is an organic whole where personal freedom is the condition for the freedom of all the people in society." We can summarize the policy of reform and opening up China has adopted since the Third Plenary Session of the 11th National Congress of the Communist Party of China with two words: relaxing restrictions, i.e., expanding the freedom of localities, enterprises, institutions and individuals so as to mobilize the people's enthusiasm, initiative and creativity and create more material and spiritual wealth for the society. In the past 30 years since China adopted the market economy and opening up to the outside world, we have created world-renowned marvels in the economic field.¹ The people are looking forward to that China will make

¹ In the 30 years after the initiation of the policy of reform and opening to the outside world (1978-2008), the average annual growth rate of the GDP came to 9.8 percent; and the per capita income in the urban areas increased by 40 times, and that in the rural areas, by 30 times. The percentage of China's GDP in the whole world grew from 1 percent to 5 percent; and the percentage of China's foreign trade in the world rose from less than 1 percent to 8 percent.



more and quicker progress in politics and culture, and create a lively political situation with both democracy and concentration, and freedom and discipline.

Seventh, respecting the people's pioneering spirit. Human beings are rational animals. They can actively understand the world and transform the world, which are the fundamental differences between human beings and animals. "The characteristic of human beings is to do activities freely and consciously." "The conscious life activities differentiate from the life activities of human beings from those of animals. Because of this, human beings are a kind of existence."¹ The difference between human history and natural history is that human history is created by the people themselves.² The people are the central subject of social practice, so they are the creators of human history and civilization. We don't deny the role of the heroes and social elites of different countries in different times; but the enthusiasm, initiative and creativity of the broad masses of the people are the decisive strength to promote the social development. We should adhere to the basic position of historical materialism, and respect the people's pioneering spirit in all social practices. Since the founding of New China, especially since the adoption of the policy of reform and opening up to the outside world, the people's pioneering spirit has been shown from the rural reform to the establishment of the special economic zones and in the economic, political, cultural and social fields, displaying tremendous energy and role.

Eighth, balancing rights and obligations. Over a long period of time, many people who were influenced by feudalist historical traditional viewpoints regarded law as a tool, and their viewpoint of rights was very faint. Various kinds of doctrines, policies, laws and systems and all other facilities, in the final analysis, are to realize and satisfy the people's need and happiness. However, if the people want to enjoy rights, they must perform their due obligations; otherwise, no one can enjoy the rights. Correctly understanding and handling this problem is of actual significance in our legislation and justice.

Ninth, rights are superior than power. Influenced by a Western scholar, our jurisprudence included all laws in the basic sphere of "rights and obligations" and regarded power as a part of rights. As a matter of fact, in the private law field, the laws are mainly used to regulate the rights and obligations between natural persons and legal persons. In the public law field, the laws are mainly used to standardize the power and duties of the state's organs and its working personnel. Our jurisprudence has never had a chapter on the basic sphere of the state's power and duties. Many working personnel of the government organs don't know clearly about the differences

¹ *Complete Works by Marx and Engels*, Vol. 42, p. 96, published by People Press in 1979.

² *On Capital*, Vol. 1, published by People Press in 2004, in the notes on p. 429.



between rights and power. Moreover, confusing concepts frequently appeared in some important documents. Therefore, it is necessary for us to make profound researches on it and promote it. I maintain that there are following eight differences between the state's power and citizens' rights:

1. The state's power corresponds with its duties; and in law, they are unified; and the citizens' rights correspond with their obligations, and they are separated.

2. The state's power cannot be transferred or given up, otherwise it will violate the law and neglect its duties. The citizens' rights can be transferred or given up.

3. The state's power is accompanied by a compulsory force, and the relevant individuals or organizations must obey it; and the citizens' rights have the equal positions in the legal relations.

4. In essence, the state's power belongs to the social "authority," and cannot be taken as interests; and the essence of the citizens' rights is interests.

5. As for power and duties, duties are the standard. When the law grants a state's working personnel with power, it, first of all, means a duty. In the citizens' rights and obligations, rights are the standard.

6. The state should not take actions without the authorization by the law; and the citizens are free without the prohibition by the law.

7. The state's power is produced by the citizens' rights, rather than that the citizens' rights are produced by the state's power.

8. The state's power is means, and the citizens' rights are the purpose. The state's power serves for realizing the citizens' rights. Clearly understanding the above-mentioned eight differences is of great importance to establish a correct viewpoint of the citizens' rights, especially the viewpoint of the state's power.

Tenth, respecting and safeguarding human rights. When respecting the people and safeguarding the people's dignity, we should, first of all, respect the people's interests. Marx once said: Everything that the people win over through struggles is related to interests. The Resolution of the 16th National Congress of the Communist Party of China specifies that adhering to putting people first should be the first one of the six principles for building a harmonious society, and puts forward that "we should always take the fundamental interests of the broadest masses of the people as the starting point and foothold of all the work of the Party and the State, and do a good job in realizing, safeguarding and developing the fundamental interests of the broadest masses of the people." Without respecting, safeguarding and realizing the people's interests, putting people first will be an empty talk. Certainly, these interests are in a broad sense. In the modern democratic and law-ruling society, the people's various kinds of interests are embodied by human rights in a concentrated way. Moreover, the



rights the people should enjoy according to human nature, personality, dignity and value must be clearly and concretely specified with law in great details, making them become legal rights. In this way, the due rights can be safeguarded in the most effective way. The viewpoints and policies on the nine aspects as mentioned above should finally be embodied and implemented through the perfection of the human rights safeguard system.

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RETURN TO HUMAN ORIENTATION: ROUTE FOR CHINA TO SECURE HUMAN RIGHTS IN 21ST CENTURY

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The 30 years of reform and opening up in China has given birth to the fast economic development, the ever-changing look of the society and the great changes in the modernization construction that has caught the eyeballs from the entire world. At the same time, the thoughts and concepts of the people have also dramatically changed, and posed new requirements for the country, the government and the society. Just in this general context, the human rights concept has been proposed, developed, made a theory and put in practice, become an important part of the socialism with Chinese characteristics and also provided the support for the diversity of human rights in both theory and practice.

Development Course of China's Human Rights Theory

Judging from the development course of human rights, the advent of the human rights concept is closely associated with the tradition of the natural law. When the two elements of subject consciousness and equality concept simultaneously exist in the natural law, the result is the birth of the human rights concept. They are the live source and also the spiritual core of the human rights concept. In the modern history, Dante, the Italian poet and thinker, was the founder of the human rights concept. He noted that the purpose of the humankind was to found a unified world government to realize the universal happiness, while the cornerstone of the government was the human rights.¹ Afterwards, the Renaissance, the Reformation and the Enlightenment Thought enriched and perfected the human rights concept, and formed an integral theoretical framework.

The human rights concept and theory have evolved in roughly three stages: from the liberation to 1985; from 1985 to 2004; and from 2004 to present.

In the first stage, the society and the academic circle paid relatively small attention to the human rights consciousness and concept for the profound reasons in politics, economics and culture. For one thing, the western world, particularly America, always used human rights as an important content of their diplomatic policy, and conferred human rights the

¹ On World Government, written by Dante, translated by Zhu Hong, Beijing: China Commercial and Trade Press, P76.



dense political color and the ideological characteristics. For another, Marx and Engels also pointed out that communism objected to political rights, private rights and the most common form of rights, namely, human rights.¹ As the reform and opening up deepened step by step, the human rights issue attracted the attention of the central leaders. In 1985, Comrade Deng Xiaoping made a basic judgment about human rights, saying “What are human rights? First of all, how many people are accessible to the human rights, the minority or the majority? Are the human rights accessible to all the people in China? The ‘human rights’ claimed by the western world are in nature different from what we argue, and the opinions differ.”² The judgment of Comrade Deng Xiaoping admits socialism also has human rights, but differs from the capitalist human rights in connotation and scope. This has opened the door to the probe and practice in the human rights concept.

The second stage featured the deepening theoretical study in China’s human rights domain and the growth of the research team. The dramatic change in the Eastern Europe and the collapse of the Soviet Union in 1989-91 delivered a huge impact on China’s thought circle, and the western countries imposed pressures on China by means of the human rights issue. Such an international environment created both a challenge and opportunity for the domestic study on human rights. The theoretic study faced new questions—that is, what are the socialist human rights? What are their connotation and denotation? What are their characteristics? Comrade Deng Xiaoping further put forward the sovereignty-right issue, that is, the relationship between sovereignty and human rights. In 1991, the Theoretical Study on Developing Human Rights and Legal System in Depth, which serves as a symbol for the breakthrough of China’s theoretical study on human rights, and represents the periodical result of the theoretical study. In November of the same year, the Information Office of the State Council published the *Human Rights in China* white paper, marking the substantial change of the Communist Party of China and the Chinese government in the human rights concept and practice. The white paper fully recognizes the position and significance of human rights, and points out that the right to subsistence and the right to development are the primary human rights of the Chinese people. In 1997, the Fifteenth National Congress of the Communist Party of China for the first time included “respecting and safeguarding human rights” in its program of action as a governing objective. These two decades witnessed the establishment of various types of human rights research institutes and abundant academic works and papers.

As the fruit of the reform and opening up for over twenty years, the social wealth and material base of the country have been tremendously enriched and entrenched, and the change in the material life and lifestyle have influenced the concepts of the people, who

1 Karl Marx and Frederick Engels, Volume 3, People’s Press, 1995, P228-229.

2 Selected Works of Deng Xiaoping, Volume 3, People’s Press, 1993, P125.



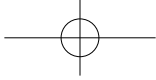
require the human rights be tangibly secured by the constitution, laws, regulations and administrative organs. On March 14, 2004, the principle that “state respects and protects human rights” was incorporated in the constitution, which constitutes a milestone in the Chinese history of human rights development, and draws up the curtain for the new stage of theoretical study and means the advent of the era of the institutionalized human rights. Since 2004, the justice, legislation, ethical policy, administration and other areas have all paid close attention to human rights, and started the construction of institutional security and practice in this regard.

Turning Point of Human Rights in China—Inclusion of Human Rights in Constitution

On March 14, 2004, the second session of the Tenth National People’s Congress adopted the *Amendment to the Constitution of the People’s Republic of China*, which incorporated the article that “state respects and protects human rights” in the constitution as Article 33.3 of Chapter 2—Basic Rights and Obligations of Citizens. Protecting human rights was so upgraded from a theoretical term to the constitutional norms and conferred the supreme legal force, which reflects the will of the people.

The forms of human rights may be divided into many ways. By nature, human rights may be divided into the active rights that stress the obligation of the state to act and the passive rights that emphasize on the obligation of the state not to act; by the implementation subject, the human rights may be classified into personal human rights and collective human rights; and by content, the human rights may be grouped into civil rights, political rights, economic rights, social rights and cultural rights. The inclusion of human rights in the constitution solves the definition for human rights in China. The provisions of the second chapter of the Constitution regarding the basic rights of citizens reflect the philosophy and principles that “state respects and protects human rights,” and make it clear that safeguarding the citizens’ rights is to respect and secure human rights. In addition, the principle that “state respects and protects human rights” serves as the denotation of the principle that the rights and obligations of citizens are unified, and tallies with the principle of socialism, the principle of people’s democracy and the principle of the rule of law. It, therefore, provides the reasonable positioning for human rights in the political civilization under the socialism with Chinese characteristics, and mirrors the diversity of human rights.

The inclusion of human rights in the constitution carries weight in China’s political and social development. First of all, it marks that the socialist political civilization has stepped into a new stage. In the past, the constitution always used the term “civil rights” or “rights of citizens” wherever the universal rights of citizens were involved, but the latter have the great limitation in concept. The introduction of the human rights concept is the result



of emancipating the mind and advancing with the time, is the evidence of the increasing perfection of the socialist democracy and rule of law, and is one of the symbols of the modern political civilization. Second, it enriches and bolsters the right system in China. The basic rights of citizens listed in the constitution fail to cover every aspect of the rights required for the human development and improvement. Confirmation of the principle of human rights means the openness of the right system, helps the right legislation in China, transforms the ambiguous due rights into legal rights or tangible rights, and conduces to justice and law enforcement. Third, the inclusion of human rights in the constitution promotes the generalization of the right subjects, and conforms to the trend amid the current internationalization and globalization. Fourth, the constitutional principle that “the state respects and protects human rights” conduces to the protection of the vulnerable groups. Safeguarding the economic, social and cultural rights of the vulnerable groups in the society is an incumbent obligation of the state, and helps eliminate the hazards that threaten the social stability during the reform and opening up.

New Progress of Human Rights Security

“The law can’t be implemented itself.” Only specifying the human rights in the constitution does not mean relevant articles will be truly implemented. To this end, relevant organs and departments of the state have stepped up the reform and achieved much.

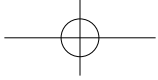
In justice, the courts at all levels have strengthened the protection of the right of the concerned party to proceeding. While the principle of public trial is adhered to, the protection of the minors aged above 14 but below 16 has been reinforced, and the cases involving these minors are not tried in public. The cases involving the minors aged above 16 but below 18 are in general not tried in public. The people’s courts have truly taken actions to reinforce the legal aid, and designated the defence attorneys for 117,407 defendants who met the requirements for legal aid in 2005 alone. The courts have strictly carried out the policy of strictly controlling the use of death penalty while reserving this penalty. As of July 1, 2006, the death penalty cases tried in line with the second instance procedures shall be heard in public. On the New Year Day of 2007, the right to approve part of the death penalty cases conferred on the high people’s courts in all provinces, autonomous regions and municipalities was taken back to the Supreme People’s Court. The state has also penetrated the community rehabilitation-based non-imprisonment penalty execution mechanism, under which the criminals complying with the provisions regarding community rehabilitation are placed in communities, and rehabilitate their criminal psychology and bad habits as required by special government organs and assisted by relevant social groups, civil organizations and social volunteers. The community rehabilitation mainly applies to minor criminals, first offenders, delinquents, and old, sick and disabled offenders, and aims to provide a good



external environment for their rehabilitation. Since 2004, the judicial organs have gradually established the new concept of stressing punishment of crimes and protection of human rights. The state has amended the criminal procedural law, launched the judicial reform, and improved the defense system to further protect the legal rights of suspects and defendants. In addition, the courts also provide the judicial remedy for the citizens who suffer the illegal infringement by the administrative organs through the hearing of administrative trial and state compensation.

In the field of legislation and administration, in 2004, China ratified the *Minimum Age Convention*, 1973, the *Convention Concerning the Prohibition and Immediate Actions for the Elimination of the Worst Forms of Child Labor*, the *Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value*, the *Employment Policy Convention* and other international labor conventions. To date, China has signed 23 conventions and treaties concerning human rights. The state has over the past years decreed a large number of administrative laws and regulations to secure human rights and benefit the people with tangible interests. The examples include the *Regulations on Petitions in the Form of Letters and Visits*, the *Measures for the Administration of Insurance Security Fund*, the *Notice on Further Improving the Employment Environment for Migrant Workers Working in Cities*, the *Provisions on Providing the Judicial Aid for the Concerned Parties with Confirmed Economic Difficulty* and the *Measures for the Administration of the Rent on Urban Low-rent Housings*. The government has continued the publishing of the White Papers on Human Rights, which deals with such dimensions as employment status, regional autonomous region, intellectual property rights, social security, environmental protection and disaster relief and reduction. This aims to sum up the results, identify the omissions and figure out improvement measures. The Information Office of the State Council published the *National Human Rights Action Plan of China (2009-2010)* on April 13, 2009. The Plan is a program of actions to implement the principle of the constitution that “state respects and protects human rights,” defining the working objectives and concrete measures of the Chinese government in respect of the promotion and protection of human rights, and involving five dimensions: Protection of the economic, social and cultural rights; protection of the civil rights and political rights; protection of the rights and interests of ethnic minorities, women, children, elderly people and the disabled; human rights education; and performing international human rights obligations as well as conducting exchanges and cooperation in the field of international human rights. It reflects the attention and focus of the state and the government to the human rights protection, and also proves the governing concept of “people orientation and human orientation.”

The state has made great efforts to protect the rights and interests of the ethnic minorities and develop the economic and cultural causes in the regions inhabited by



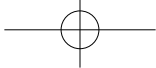
ethnic minorities. The Tibet Autonomous Region is a prime example. The Tibetan people enjoy the equal right to participate in administering state affairs according to the law, and also the autonomous right to administer the affairs of the region and the ethnic group. The People's Congress of the Tibet Autonomous Region and its standing committee have formulated a series of regional laws and regulations as well as separate statutes to provide the legal protection for the special rights and interests of the Tibetan people. Examples are *the Regulations of the Tibet Autonomous Region for the Administration of Cultural Relic Protection*, *the Regulations of the Tibet Autonomous Region for Environmental Protection*, and *the Decision of the Tibet Autonomous Region to Study, Use and Develop the Tibetan Language*. To satisfy the need of the Tibetan people for the religious worship, the government has taken proper actions to protect the religious temples, cultural relics and ancient sites. The government has established many religious sites, such as the Potala Palace, the Jokhang Temple and the Sakia Temple, into the key cultural relics protected by the state and the autonomous region; earmarked more than RMB40 million and organized over one hundred Tibetan experts to complete the proofreading and publishing of the Gangyur and Tanjur, the Tibetan Tripitaka. To promote the economic and social development in Tibet, the central government has offered the mighty support in fund, material and human resources over the past 50 years. According to the statistical data, to enhance the local infrastructure level, the central treasury provided an accumulative fiscal transfer payment of up to RMB201.9 billion in 1959-2008, growing 12% each year on average. In particular, the fiscal transfer payment added up to RMB154.1 billion in 2001-2008 alone. In 2008, roads were made available in almost every county in Tibet, and reached a total mileage of 51,300km, an increase of 44,000km over 1959. The passenger turnover jumped almost 107 times, and the goods turnover soared more than 11 times. The per capita output value in Tibet rocketed from RMB142 to RMB13, 861. Tibet has spearheaded other domestic provinces in realizing the free compulsory education in the urban and rural areas. In 2008, 73 counties (cities and districts) all realized the six-year compulsory education and the basic elimination of illiteracy reduced the illiteracy rate to 2.4%. Tibet now has 16 higher learning institutions and secondary vocational schools, which have a combined enrollment of 50,000 students. At present, the Tibet Autonomous Region has 42 research institutes, more than 140 agricultural and husbandry service centers, 37 demonstration bases and sites, 5 key laboratories and 3 engineering technology research centers. Various professional technicians total 42,525, 74.04% of whom are Tibetans and other minorities. From 2000 to 2007, Tibet completed 613 key research projects, including 148 national key ones. In particular, Tibet has achieved an excellent result in such domains as the cosmic ray observation, highland atmosphere research, prevention of geological disasters like landslide, development and utilization



of subterranean heat, solar energy and other clean energies, and the highland medicine research.

Since the advent of the 21st century, China's human rights cause has experienced dramatic changes, which has come as a result of the efforts of the state, the government and the academic circle, and also represents the future direction of development. A sound human rights protection system and a widespread concept of human rights protection will become the basic feature of China's political civilization, further promote the development of China's reform and opening up, and build a solid foundation for the construction of a harmonious society.

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PEOPLE-ORIENTED DEVELOPMENT AND HUMAN RIGHTS PROTECTION FOR CRIMINALS

Li Yuqian
China

People-oriented development refers to the economic and social integrative development that regards human beings as the orientation and subject of economic and social development and considers the development of human beings as the essence, objective, momentum and symbol of development. One of its important connotations is to protect human beings' rights and interests in all links and works of economic and social development. On December 10, 2008, Hu Jintao, Secretary General of the CPC Central Committee clarified that "We will, as always, adhere to people-oriented principle in building a well-off society in an all-round way and accelerating the process of socialism modernization" in his letter to China Society for Human Rights Studies. Obviously, the "people" in the term of people-oriented development includes criminals in prison, instead of excluding them. Thus, we need to specially value and research the issues of how to apply the scientific concept of "people-orientation" to the work of supervising and reforming criminals in prison and how to promote the protection of criminals' human rights.

I. Characteristics of Human Rights Protection for Criminals

According to the human rights theory of Marxism, human rights are a kind of legal rights and realistic rights, as well as the unity of universality with particularity, and rights with obligations. Human rights of criminals refer to the rights of the person as criminals, and the rights and interests generated after they are deprived of freedom according to law. With special status, they still enjoy the rights and interests that are not deprived of or restricted by law and can have claims that are not deprived of or restricted by laws. Criminals' human rights protection refers to the institutions and measures of a state or other subject, through legislative and justice activities, to realize or guarantee the inviolability of the human rights of criminals that are not deprived of or restricted by laws. The characteristics of human rights protection for criminals are as follows:

First, the diversity of subjects of human rights protection for criminals. Nation is an important subject of human rights protection for criminals. In any sovereignty state, the establishment of the human rights protection for criminals is determined by the national



will. The protection of the human rights for criminals depends on the implementation of laws and regulations and the guarantee of the national coercive forces. A state can determine the rights of criminals through legislation and has the responsibility and obligation to ensure the realization of the rights of criminals. Compared with other subjects, nation has stronger economic basis, political forces and material conditions in ensuring rights of criminals. Other than nation, we also have other subjects to protect the rights of criminals, such as the social groups, political parties, enterprises and institutions established according to law and individual citizens. They are playing important roles in the process of protecting criminals' rights. As a nation needs to exercise many functions, its roles are less direct in protecting human rights of criminals sometimes compared with some specialized organizations (such as legal assistance organizations) or individuals (such as criminals' lawyers). Meanwhile, the international community and various international organizations are also playing roles to some extent in human rights protection of criminals.

Second, limitation of the scope of human rights protection for criminals. Compared with other citizens, criminals cannot completely enjoy civil rights stipulated in the Constitution and laws. Parts of their original rights are deprived of according to law, leading to the decrease of their rights scopes and partial losses of their rights. In overall sense, rights should include right enjoying capacity and right exercising capacity. The limitation of criminals' rights can be divided into three aspects according to the differences of their right enjoying capacities and right exercising capacities: First, they have the capacity of enjoy some rights but are incapable to exercise them. For instance, some criminals have the rights to guard their under-age children and support their parents. However, as their personal freedom has been deprived of, they cannot exercise the rights; second, they have the capacity of enjoying and exercising some rights, but the rights should be exercised with help of the prison side or under the supervision of the prison side. For instance, the protection of the personal rights and legal property and the implementation of the right to vote can be realized only with help from prison side. Meanwhile, the correspondence of criminals should be supervised and inspected by prison police; finally, the rights of some criminals may change according to the changes of their capacity, which may lead to the increase or decrease of their right scopes, or the rise or fall of the degrees of the rights. They may as well lose one or more rights. The factors leading to these changes may include the change of the policies to criminals and their performances in prison. For instance, with the deepening of guilty admittance and repentance in prison, their circumstances can be shifted from irreducible penalty to reducible penalty. When they have important meritorious performances, they can obtain the right of penalty reduction.

Third, certainty of the contents of criminals' human rights protection. Other than the rights deprived of according to law, criminals still have clear and fixed rights that should be



respected and protected. These rights are regulated and ensured by laws and institutions. *China's Constitution, Criminal Law, Criminal Procedure Law and Prison Law* have stipulated the legal rights of criminals from different angles. For instance, Article 33 of the Constitution stipulates that "All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China;" and that "Every citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and the law." Thus, the stipulations of the Constitution that endow the criminals with civil rights and legal positions are the fundamental legal basis for criminals to enjoy human rights. *The Prison Law* makes the programmatic stipulations on criminals' rights in its General Provisions and stipulates the detailed contents of criminals' rights in various chapters and sections. These rights include rights to life, dignity, personal safety, lawful property, basic living security, related political and civil rights, correspondence and meeting visitors, the rights to work and rest, culture education, vocational and technical education, complaint, accusation, prosecution and defensive and other rights stipulated by laws. To sum up, the rights mainly include the negative aspect and positive aspect: To protect criminals' human rights (negative) and to provide necessary conditions to realize criminals' human rights (positive). Regarding protecting criminals' human rights, when the human rights of a criminal are infringed illegally, the protection mechanism of criminals' human rights requires providing corresponding reliefs to them. Meanwhile, Chinese laws and institutions also stipulate clearly that criminals' legal rights cannot be infringed, providing a legal defense for the protection of criminals' human rights. In terms of providing necessary conditions for the realization of criminals' human rights, China requires the government and related subjects to provide sufficient conditions to protect criminals' human rights, especially sufficient material conditions.

II. Strengthening Research on Human Rights Protection for Criminals is of Great Importance to People-oriented Development

(I) Sound human rights protection for criminal is conducive to promoting better development of China's human rights cause

Chinese Government adheres to the concept of people-orientation and implements the constitutional principle of "the state respects and protects human rights." The people-oriented development requires all the links and various works in the economic and social development to reflect and protect the legal rights and interests of all people. The human rights protection for criminals of a country can directly reflect its human rights protection level from one aspect, and can show whether the country really give priority to people's needs. The level of a country's rights protection is not decided by the level of the right protection of the advantaged groups, but by that of the disadvantaged groups. In any country,



the level of the right protection of the social advantaged groups does not mean the protection level of the whole society, however, its protection to the disadvantaged groups can reflect the level of right protection throughout the society. Among all the social disadvantaged groups, criminals are in a more disadvantaged position since part of their rights are deprived of and restricted. Hence, criminals in prison can be an important part of the disadvantaged groups to show a country's level of rights protection. In this sense, the human rights of criminals are an important ingredient of a country's human rights situation as well as an important indicator to measure a country's civilization, democracy and legal system.

(II) Sound human rights protection for criminals is conducive to promoting the construction of rule of law

According to China's Constitution of 1999, China sticks to the principle of ruling by law to construct a law-based socialism nation. The Constitution amendment of 2004 stipulates that "the state respects and protects human rights." On the one hand, China respect and protect human rights and the spread of concept of people-orientation embodies the achievements of socialism construction of rule of law; on the other hand, the concept of rule of law does not simply imply ruling the country according to law. It has obvious value connotation and tendency. Rule of law should also include human rights. During the process, the rights of criminals in prison, as the disadvantaged group, need special protection from the law. A country's status quo and level of rule of law can be reflected by the country's law spirit. Law spirit is the symbol of the legal development level of a country or society, as well as the result of the legal culture of a country or a nationality. To some extent, protecting the rights and interests of the disadvantaged groups is the spirit of the foundation of rule of law. Only under the pre-condition of pragmatically protecting citizens' rights, especially the rights of the disadvantaged groups can we establish a country of rule of law in real sense. In analyzing the relationship between rights protection for criminals and construction of rule of law, the former is especially important for the latter. Given the rights of the criminals, who are in the disadvantaged position in the society, can be effectively protected, undoubtedly, the country is doing well in achieving rule of law. In this sense, the level of rights protection for criminals is an important indicator measuring a country's level of rule of law. In the work of prison administration, we must stick to the principles of ruling prison by law, executing penalty according to law and protecting criminals' legal rights and interests according to law so as to unify ruling by law and protecting criminals' human rights in real sense.

(III) Sound human rights protection for criminals is conducive to improving the transforming quality, reducing the recidivism rate of the people being released and promoting social harmony and stability

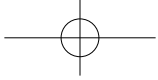
Prison administration work should sticks to the "people-oriented" value orientation



and gives priority to the work of transforming criminals so as to highlight the goals of improving the quality of transforming criminals and reducing their recidivism rate. With the prison functions of punishing and transforming criminals, measures should be made to constantly improve the human rights protection for criminals under the people-oriented principle, pragmatically improve the functions of prisons in rectifying and educating criminals, promote the socialization of criminals and provide guarantee for their subsistence and development. This is an obvious indicator for China's prison administration to develop from traditional mode to modern mode. Criminals fall in a special category of right subjects and their position as the citizens should not be eliminated because of their crimes; on the contrary, owing to their special status, the fact that laws affirm and protect the criminals' position as the special right subjects and their special right contents can encourage and promote criminals to reform themselves actively. This can improve the right protection system for criminals, grant humanitarian concerns to them, enable them to feel the concerns and the efforts of redeeming them by the nation and the society, encourage them to transform themselves with full hope, reestablish their sense as the citizens, help them shoulder the social responsibilities and encourage them to get into the habit of abiding by the law. In this sense, whether we can well protect the legal rights of criminals and protect their right to development is closely related to the efficiency of the penalty execution of prisons. The People's Republic of China has made glorious achievements in reforming criminals in prison, which is closely related to the practices of Chinese prisons of respecting and protecting the legal rights and interests of criminals and providing humanitarian care to them. Thus, it is very important to improve the rights protection system for criminals, constantly push forward the quality of transforming and educating criminals and reduce their recidivism rate.

(IV) Sound human right protection for criminals is conducive to maintaining prison security and stability to provide solid insurance for the stabile social development

Prison security is the basis of various work of prison administration, as well as the pre-condition of realizing the goals of criminal penalty execution. In China, the work of transforming criminals is an important link of the program of social security comprehensive rectification. Maintaining prison security can not only provide effective guarantee for the social security and stability, but also reflect the good environment of criminal transformation indirectly. The realization of the prison security is based on the restraint from the social environment and, more importantly, on the restraint level of prison transformation environment. On the one hand, the prison should adopt energetic supervision and monitoring measures to maintain scientific and effective alert on criminal supervision and monitoring. The implementation and organically combination of classification detention, sorting management and classification education enable the transformation work to exert



positive social effect; the establishment of “three preventions” (human-based prevention, material-based prevention and technology-based prevention) and “four mechanisms” (inspection mechanism, prevention and control mechanism, emergency mechanism and leadership responsibility mechanism) indicates the scientific supervision and monitoring methods on criminals. On the other hand, to ensure prison security and stability, we need to severely crack down on the criminal activities of the criminals in prison, such as cracking down on the jailhouse bullies to maintain the interests and rights of other criminals. At the same time, measures should be taken to standardize the law-enforcement activities of people’s police of prison to prevent their regulation, discipline and law-violation activities and maintain the legal rights and interests of criminals. Thus, maintaining prison security and stability means that the rights and interests of the people in prison can be fully respected and maintained. It also reflects the scientific implementation of the concept of “people-orientation” in the prison administration work, proves the security of the people in prison and shows the standardization and civilization of the law-enforcement activities of people’s police of prison.

III. China making outstanding achievements in protecting human rights of criminals

China’s prison authority attaches great importance to the protection of criminals’ rights. China has promulgated many regulations and laws such as the *Regulation on Reform through Labor of the People’s Republic of China (PRC Laogai Regulations)* promulgated in the early stage of the founding of new China and the Prison Law promulgated in 1994 to clearly define various citizens’ rights of criminals. These regulations attach great importance to the protection of criminals’ rights. Prison administration personnel civilly administrate criminals according to law, supervise and education them under the people-oriented principle, guarantee their due living conditions, respect their dignity, promote their comprehensive development, improve their transformation quality, reduce their recidivism rate and maintain the social harmony and stability.

(I) Protecting criminals’ human rights through legislation

Protecting the legal rights is consistently the important content in China’s legislation work. The laws and regulations such as the *Constitution of the People’s Republic of China* and *Prison Law of the People’s Republic of China* clearly require protecting the legal rights of the criminals according to law. For instance, Article 33 of Chapter Two of the Constitution read “The State respects and protects human rights.” In April 2009, the Chinese government issued the *National Human Rights Action Plan of China*, reiterating that Chinese government adheres to putting people first. The Prison Law has the most detailed stipulation in this regard. Of the 78 articles of the law, 33 articles mention the



rights of criminals directly or indirectly. It also includes the rights of the criminals that need special protection in prison such as protecting personality, personal security, legal property, vindication, complaining, accusation and prosecution general provision for protection. Ministry of Justice also promulgated regulations such as *Regulations of Prison Education and Transformation*, *Regulations on the Work Procedures on the Application of Penalty Reduction and Releasing on Probation in Prison*, *Outline of Criminal Education and Transformation* and *Six Prohibitions of the People's Police of Prison* to protect criminals' rights from aspects of law enforcement, management and education.

In general, China's laws stipulate the rights of criminals in legislative and litigating aspect, as well as society and culture aspect, in political aspect as well as economic aspect, with basic material guarantee as well as high-level spiritual demands, and the rights in prison as well as their rights after being released. We can say that China's all-dimensional, multi-layer and broad-coverage protection of criminals' rights through legislation is true and reliable with strong operability.

(II) Protecting criminals' human rights during the process of prison administration

Prison is the executive authority of criminal penalty in China and we administrate criminals according to law and stress on the protection of their rights. Our practices in this regard include: First, promoting the practice of managing prison according to law. We have established and improved various regulations and institutions on prison administration and promoted the law-based process of prison administration work so as to provide regulations for prison administration and effectively protect various rights of criminals. In recent years, Ministry of Justice launched the special activities featuring "standardizing law-enforcement activities and promoting justice in law enforcement" in prisons nationwide in succession to supervise and inspect the key links of law enforcement in prison administration. For the problems in prison law-enforcement work discovered in inspection, we timely delivery notice of rectification. Through the special activities, we have standardized law-enforcement links, law-enforcement supervision, law-enforcement activities, systemized the law enforcement of prison, regulated prison work according to law, further improved the law-enforcement level in prison and normal management, and further improved the satisfaction rates from all walks of life on the systematic law-enforcement in various prisons and the people's police of prison; the just and efficient law-enforcement environment can effectively protect the rights of criminals.

Second, promoting prison affairs publicity in an all-round way to ensure just and civil law enforcement in prisons. The level and status quo of prison administration conform to the progress of social civilization. In order to further publicize and implement the guidelines of the Communist Party of China on "combining the efforts of punishing and transforming criminals based on human transformation" and establish and improve supervision and



restraint mechanisms, we publicized related regulations such as criminal penalty execution in prison, prison affairs management, education and labor that attract concerns from all walks of life in the society, criminals and their folks, work discipline of people's police of prison, especially the punishment and award measures such as penalty reduction, releasing on probation and temporarily serving sentence outside the prison under surveillance for criminals, their folks and the society through channels such as information release, phone consultation, warden's mail box, establishing reception day of director and wardens and inviting law-enforcement supervisors via newspapers, TV, broadcast, internet and pamphlets so as to accept complaints and reports and actively accept supervision from the CPC committees of various levels, government, people's congress, people's political consultative conference, procuratorates, media and personnel from all walks of life for the purpose of promoting justice by openness and effectively protecting the legal rights of criminals.

Third, performing strict, scientific and civil management on criminals according to law on the basis of humanitarianism. Prison authority always stresses on respecting the personality of criminals, respects their dignity as human beings and their basic rights as citizens and preserves their rights that are not deprived of or restricted. China strictly prohibits the practices of beating, cursing or corporally punishing criminals in prison and the use of excruciation under any guise. Upon discovery of any use of excruciation in any prisons, measures will be taken to resolutely investigate and punish related people according to law so as to keep jail civilization in strict law enforcement. China has joined the *UN Standard Minimum Rules for the Treatment of Prisoners* and *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and initiate strict, scientific and civil management of criminals according to law on the basis of humanitarianism. Meanwhile, China's prison authority also pays attention to the spiritual life of criminals and various prisons have established libraries, reading rooms, wall newspapers and blackboard bulletins, organized song competition, culture and art performances, launched various sports competitions and energetically strengthened cultural construction in prison areas so as to provide a healthy, active and positive atmosphere for criminals and constantly promote their healthy physical and mental development.

(III) Improving human rights protection for criminals during the process of education and transformation

The rights to development are the basic human rights. To protect criminals' human rights, the fundamental goal is to help them realize their own rights to development. In other words, we should help them to return to the society after they are released, not return back to the jail again. Strengthening education and transformation to criminals so that they can thoroughly reform themselves and return to the society is the best and fundamental protection of criminals' human rights. Since 1980s, China has been launching



special schools in prisons in large scale, achieving great effect. In 2001, Ministry of Justice required that prison administration work should focus on improving the transformation quality of criminals, and make law-based, science-based and society-based construction as the channels and measures of improving criminals' reformation quality. In 2008, China put forward to make the recidivism rates of criminals after being released the prior standard to measure prison administration work, paying more attention to education and reformation of criminals, trainings on their social capability after being released and comprehensive protection to their rights. In order to help criminals to support themselves after being released, China conducts culture and technology education to them in prisons. The education mainly focuses on preliminary education and mid-level of preliminary education and measures are taken to encourage them to attend higher education and provide them with necessary conditions. Incomplete statistics show that since 1985, more than 4.8 million education certificates have been obtained in prisons throughout the country. Since 2004, more than 40,000 criminals have obtained diplomas of college level. Meanwhile, China also conducts career technology training for criminals according to their employment demands after being released upon completion of sentences, attracting many criminals in prison. Since 1985, more than 4.5 technological certificates of various categories have been obtained by criminals. Thanks to the professional skills the criminals have learned in prison, they can live independently among the fierce employment competition after they come back to the society. Some of them have made great achievements, realizing their own life values. All these work fully reflect that China respect the rights to development of criminals and ensure their rights through launching education.

(IV) Improving various protection measures to pragmatically protect the legal rights of criminals

China pays high attention to the basic living security of criminals in prison. Prison Law clearly stipulates that the meal standards of criminals should follow the state regulations. Prisons not only have dinner rooms for common criminals, but also have the food specially cooked for criminals of minority ethnic groups. China's prisons also take into consideration the special life custom of criminals of minority ethnic groups and give more concerns to the food for sick criminals. The meals for criminals are well arranged for better nourishment, sanitation and high quality. Facing the situation of the increasing price of non-staple foods, prisons in various regions also manage to cope with its influences through active coordination, ensure criminals' life strictly according to the food quotas and improve their life to some extent, protecting their basic living rights in prison.

Chinese government attaches great importance to criminals' life and health security. In order to protect the life and health rights of criminals, Prison Law stipulates that prisons should establish medical treatment organizations and life and sanitation facilities and set



up life and sanitation system for criminals. China's prison setup has established the three-level medical care and epidemic prevention systems consisting center hospitals of prison administration bureau of provincial level, prison hospitals (medical stations) and clinics in prison areas so as to timely and effectively prevent diseases and cure sick criminals. Criminals with serious diseases can be released on bail for medical treatment. According to Prison Law, the medical treatment and health care are listed into the sanitation and epidemic prevention plans of the regions where the prisons are located. Many prisons cooperate with local hospital to strengthen the medical level in prisons. All these full reflect the importance Chinese government attaches to the life and health rights of criminals and the effective protection capacity of medical care and epidemic prevention systems in prison.

(V) Strengthening construction of supervision mechanisms of human rights protection in prison

The people's procuratorates of China is the law supervision department to monitor the criminal case judgments, judgment executions and the activities of prison offices. Besides establishing specialized supervision and procuratorate departments, people's procuratorates of various levels also have stations and offices in all the prisons. Currently, all the prisons nationwide have established procuratorate stations and offices to independently supervise law-enforcement activities in prisons. This is an important measure of human rights protection in China's judicial system. Procuratorate stations and offices in prisons inspect and supervise the execution work of criminal penalty. Once illegal activities in criminal case judgments and judgment executions are found, they would actively inform competent authorities to make corrections. Through accepting complaints, accusation and prosecution from criminals, these procuratorate stations and offices can pragmatically protect criminals' due rights in prison. For the illegal and criminal activities of the people's police of prison such as torturing and abusing criminals or illegally helping their friends or relatives, procuratorate departments have the rights to directly put in record for investigation. The procuratorate stations and offices play positive roles in protecting the legal rights and interests and increasing the law consciousness of the working staff of prisons.

(VI) Strengthening education and training to constantly increase the quality of the people's police of prison

China's prison authority pays attention to training the law-enforcement capability of people's police of prison. Through strengthening career assess system construction, the people's police of prison is selected through unified examination of the provincial level. All the people recruited should be educated above the college level. Measures are taken to strengthen trainings on police, reasonably arrange training curriculums, intensify trainings on professional knowledge such as laws and prison administration which are closely related to prison work, strengthen trainings of people's police of prison on human rights to



promote human rights protection of criminals, constantly increase the efforts of professional construction of people's police of prison, foster and introduce a batch of specialized talents in laws, prison administration, education, psychology, management and sociology, and constantly improve the capacity of people's police of prison in managing prisons according to law, educating and transforming criminals and justly and civilly enforcing laws. Thanks to these efforts, the quality of people's police of prison has been greatly improved. Meanwhile, prison authority also give play to its roles in social resources by inviting social experts to launch specialty work of psychological rectification, social help and education and medical care. The increase of the quality of the people's police of prison has laid a solid basis for protecting criminals' rights.

In recent years, the human rights of criminals in prisons in China has maintained further development and made new achievements. First, their rights of starting and participating in civil litigations being protected. In many prisons, organizations such as "in-prison law service stations," "legal affairs offices" and "legal aid centers" are established to provide consultation services and help criminals to start and participate in civil litigations. Second, the problem of meeting lawyers being solved. Ministry of Justice specially issued the *Provisional Regulations on Lawyers Visits to Criminals in Custody* to protect criminals' litigation rights. Third, strengthening law-enforcement supervision. Prisons accept supervisions from the social legal supervisors. Some prisons also issue "law-enforcement supervision card" to family members of criminals and hold hearings and demonstrate information such as criminal penalty reduction and releasing on bail. Fourth, conducting humanitarian cares to criminals. According to their performances in prison, criminals can phone, meet and have dinner with their family members. Meanwhile, criminals can select their own foods and commodities for daily use in the supermarkets in prisons. For those criminals from extraordinarily impoverished families and their children cannot afford to go to school, efforts are made to help their children in living and education through establishing "Assistance Funds for Criminals from Extraordinarily Impoverished Families." Fifth, adopting protective measures for the criminals after being released upon completion of sentences, such as buying "short-term living insurance after being released" for criminals. Prisons have established employment guidance centers, employment guidance stations and work probation bases for criminals who have been released upon completion of sentences. Meanwhile, prisons also introduce and recommend the released criminals to enterprises and institutions through various channels. In general, human rights protection for criminals in China is being developed and improved gradually and thanks to these efforts, criminals' legal rights are becoming the rights in real life.

With the constant development and progress of china's modernization construction and prison administration work, the human rights protection of prisoners in China also maintains



improvement and development, which has made prominent achievements. However, we must be fully aware that China is still a developing country with imbalanced economic and social development. Since China is now in the preliminary stage of socialism, its human rights protection in prison still faces some new situations and new problems. There are some sectors that need further rectification and improvement. These problems mainly include: In legislation, some contents need modification with the social development and some laws and regulations urgently need implementation rules; in law enforcement, people's police in few prisons lopsidedly stressed on strict management with weak awareness of protecting criminals' rights; in protection, in some regions with comparatively slower economic development, the facilities of prison security, education, living and medical care are not that complete. Targeting these problems, China's prison authority will pragmatically protect human rights of criminals through formulating and improving laws and regulations on prison administration, extensively publicizing and popularizing human rights knowledge, increasing the awareness of the people's police of prison of protecting criminals' legal rights and interests, fully promoting reforms on prison system, improving prison protection level and constantly perfecting human rights protection for criminals according to the requirements of Hu Jintao, Secretary General of the CPC Central Committee in his letter to China Society for Human Rights Studies under the people-oriented principle and the Constitutional principle of "respects and protects human rights." Here, we hope to learn from the experience of various countries in protecting human rights of criminals, further improve China's work of protecting criminals' human rights and promote the development of human rights cause in China according to law. We would like to, together with all the countries worldwide, constantly promote people-oriented development and make due contribution to the development and improvement of human rights protection worldwide.

(The author is Deputy Director-General of Bureau of Prison Administration of Ministry of Justice of China)



THE DEVELOPMENT OF HUMAN RIGHTS PROTECTION FROM POLITICS TO THE RULE OF LAW —FROM THE ANGLE OF THE PEOPLE-ORIENTED SCIENTIFIC OUTLOOK ON DEVELOPMENT

Yang Songcai & Chen Youwu
China

Since the Third Plenary Session of the Sixteenth Central Committee of the CPC, “putting people first” has become the basic guiding principle for the all-round reform and harmonious development of the Chinese society, and the core to build a harmonious socialist society. As a concept of governing, “putting people first” has been generally acknowledged by the whole society. With the in-depth practice of the rule of law, the human rights protection is also experiencing profound transformation from politics to the rule of law.

1. The theoretical foundation of development of the people-oriented from politics to the rule of law

As the political concept of the Communist Party of China, “putting people first” is mainly embodied in the policy of the Party. The policy of the Party is formulated by the leading organ of the Party according to the procedure provided in the Party Constitution, and it is the expression of the will of the Party, but not the State. The above-mentioned characteristics of the policy of the Party determined that it could only be implemented by virtue of the rule of law.

First, the “people-oriented” is the basic premise of the rule of law. The advancing of the “people-oriented” concept, which reflected CPC’s brand-new understanding of economic and social development, is the rectification for the former utilitarianism policy. There are many conflicts with the concept of the “people-oriented” in the rule of law in force, for example, the overemphasis on efficiency, the ignorance of the environment protection, the deficiency in social security system, the extreme disparity in income distribution and etc. And we must improve and perfect the defects in the rule of law in force under the instruction of the “people-oriented” principle. The development of the “people-oriented” principle from politics to the rule of law does not mean to provide “the people-oriented”



in the constitution or other basic law of the state as a legal principle, to realize lifting “the people-oriented” to the level of the State laws. In fact, the formulation and revision process of any law can be regarded as the process of lifting “the people-oriented” to the level of the State laws. For the legislative body of our country to formulate and revise laws according to the legal procedures, as long as truly under the guiding principle of “the people-oriented,” in the light of the demand of “the people-oriented,” “conform to the human nature, respect the human dignity, embody the humanity, sympathize the human feelings, and protect the human rights”¹, and then the process of formulating and revising the laws is to lift “the people-oriented” to the level of the State laws.

Second, the rule of law is the fundamental guarantee for putting people first. “The people-oriented” is the governing principle of CPC to take up the national and social affairs, which is proved by the practice to be effective, in accordance with the interest of the people and the objective laws, and therefore needs to be implemented on a long term run as the policy of the Party. While through the restriction and regulation for the public power by the rule of law, good social order can be formed, socialism realized, and the human rights respected and protected. Therefore, only if we lift the political declaration of “the people-oriented” to the level of the State laws, and make the policy of “the people-oriented” approved, fixed to the law clause, and standardized through the rule of law, “the people-oriented” can be implemented by the whole society.

2. The connotation in the human rights protection of “the people-oriented”

President Hu Jintao has pointed out in the report to the seventeenth national congress of the Party that we must always put people first. Serving the people wholeheartedly is the fundamental purpose of the Party, and its every endeavour is for the well-being of the people. We must always make sure that the aim and outcome of all the work of the Party and the state is to realize, safeguard and expand the fundamental interests of the overwhelming majority of the people. We must respect the principal position of the people in the country’s political life, give play to their creativity, protect their rights and interests, take the path of prosperity for all and promote their all-round development, to ensure that development is for the people, by the people and with the people sharing in its fruits.

At first, the right subject for “the people-oriented” is the people, and the object is the public power. From the angle of semantic analysis, the concept of “the people-oriented” implies a subject, and the question that who is entitled to “the people-oriented” and who has the obligation to implement “the people-oriented,” and that is who is respectively the right subject and obligation subject of “the people-oriented”? The right subject of “the people-

¹ Li Long, *The Research on the Humanistic Legal View*. Beijing: China Social Science Press, Feb. of 2006.



oriented” can only be the people, which is the inevitable requirement of the principle of the people sovereignty. In China, all rights belong to the people, and the people are the masters of their own, and only the people are justified to be the right subject for “the people-oriented.” If we put the state as the right subject of “humanism,” then we will again fall to the ideological realm of the “humanistic thought” of the ancient time of China. The public power is the obligation subject of “the people-oriented,” which is the value requirement of the rule of law. The rule of law demands to restrict the government power, to protect the citizen’s human rights, and to put the obligation subject of “the people-oriented” as the public power will provide the philosophical grounds for the restriction of the public power, and will also evolve the government obligations from the ethical obligation of the ancient times to the legal liabilities.¹ Besides, we have to make it clear that the people as the right subject here for “the people-oriented” is a macro concept, while each single person of the people is not the right subject of “the people-oriented;” however, the public power as the obligation subject of “the people-oriented,” here refers to both the macro concept and the individual concept. When the public power serves as a macro concept, the State or the government as a whole has the obligation of “the people-oriented” for the people macroscopically, ideologically and institutionally, while when the public power serves as an individual concept, any government organization in any process of excising the public power, always has the obligation of “the people-oriented” to the people. The above definition of the right subject and obligation subject for “the people-oriented” can both satisfy the value seeking for the democracy and the rule of law; it serves the purpose to both protect the human rights and restrict the public power. It provides the standard meaning for democracy, at the same time proved the legitimacy and the effectiveness for the rule of law.

Next, the denotation of “the people-oriented” refers to “everyone.” The “human” in “the people-oriented” has the double meaning. For one thing, the denotation of it certainly refers to all of the people, and all the members of the Chinese society, for it is clearly provided in our Constitution that “the state respects and protects the human rights of its citizens.” The basic human rights of the citizen have the universality, the equal protection principle is applied to the protection of the citizen’s human rights, and discrimination for different individuals is not permitted. For another, the core of “the human” refers to “the people” in China, and it is provided by the Constitution that “all rights of the People’s Republic of China belong to the people.” The scope of “the people” refers to all socialist working people,

¹ In the “Humanistic” thoughts of the ancient time of China, to love people, respect people, be mindful of the people’s hardships, and to make people rich and prosperous is also advocated to the emperor of the State, but its purpose is to maintain the governing of the dynasty. And the people are not the right subject of “the humanism.” The emperor needs to love people, respect people, be mindful of the people’s hardships, and to make people rich and prosperous, which is only the ethical demand for the emperor requested by the confucianists, while the people are not entitled to demand the emperor to do so.



socialist constructors, and all patriots who support the socialism and the unification of the motherlands. The denotation of “the human” refers to “everyone,” and the core refers to “the people.” Here “the people” as the core differs from everyone as the denotation. The people are their own masters in China, and “the people-oriented” is required to embody, reflect, maintain and develop the people’s consciousness and interests. In the legislation and the values, we have to put the people’s interests as our benchmark, and the people are the major force to rely on for “the people-oriented.” While everyone is the application object of the “humanism,” in the legal application, everyone is equal, and the basic human rights of the citizens are equally protected.

Then, “the people-oriented” does not only mean to put the people as “the standard,” but the more as the “foundation” and the “purpose,” where the value and significance of the people lies. The foundation of “the people-oriented” is to put the realization of the human’s value, human’s dignity and the basic human rights as the purpose, and that is to put the respect and protection of human rights as the ultimate goal. This is not only a sort of values, but as well as a sort of view of history and view of world. In values, compared with the magical and the real, the human is the foundation. In the view of history and world, the people and the mass are not only the creator of the social wealth, but also the subject of the history, the fundamental strength to push the society to advance, and at the same time the master of the state currently.

3. The influence of “the people-oriented” on the theory and practice of the rule of law

A) The influence of “the people-oriented” on the theory of the rule of law

The life of the rule of law lies in practice, and the origin of the law comes from the practice. But any practice is inseparable from the instruction of the scientific theory. In Oct. of 2003, the third plenary session of the sixteenth central committee of the Party advanced the theory of the scientific outlook on development, and the core of the scientific outlook on development is “the people-orientated.” A brand-new research paradigm of Chinese legal research is quietly prevailing under the guidance of the concept of “the people-orientated,” and the legal research of our country shows more sentimental human color. We may call this brand-new paradigm as the human view of law or the paradigm of “the people-orientated.” Compared with the former paradigm of research, the paradigm of “the people-orientated” that is under developing has its own vivid characteristic, which is mainly reflected in its more profound cognition in the existence, nature, and development of the human. Its understanding for the human is of multi-latitude in that the human is the trinity of the rationality, virtues, and spirituality, rather than the understanding of only the rationality for the human of the utilitarianism paradigm, or the understanding of only the virtues for the human of the right theory paradigm. The most prominent representative of



the utilitarianism paradigm today is the Economic Analysis of Law on behalf by Posner, who use the cost-benefit analysis tool to seek the maximum of the efficiency, which bears strong utilitarianism color.

The human-orientated is only a sort of concept, a sort of values behind the affairs, but not the principle in the reality. The key to “the people-orientated” is the elaboration and the reconstruction for the theory of the rule of law. The ultimate care of the development of the rule of law is the values of the people-orientated. Any theory of the rule of law against the people-orientated will lose its vitality finally. To provide the scientific theoretical instruction for the practice of the rule of law, the theory of the rule of law must follow the proper and legal requirement of the human. The respect and protection for the basic human rights should be the ultimate pursuit of the theory research for the rule of law. Only from the angle that not only the subject, but also the purpose of the legal research is the human to explain “the human-orientated,” can the jurists help us to correctly understand the scientific outlook on development, and can the law (the rule of law) theory better serve the practice of the law (the rule of law).

B) The influence of “the people-orientated” on the legal practice

The scientific outlook on development of the people-orientated has a significant impact on the legal practice especially the legislation practice in China. In 2004, the incorporation of the statement that “the state respects and protects the human rights of its citizens” into the Constitution reflected the system protection function of the rule of law for the people-orientated, and it also brings the system protection to the level of the basic law of the state. After that, the political concept of the people-orientated has been raised to the system level on a large scale. The legislative organs of the state made a series of revisions to the laws closely related to the human rights protection based on this ground. In August of 2005, the standing committee of the National People’s Congress made some revisions to the *Law on the Protection of Women’s Rights and Interests of the PRC*, which provided that the equality of the men and the women is the basic policy of the state, and also intensified the political participation rights, education rights, labor rights, property rights, personal rights, and the rights to marriage and family of women and etc. The *Lawyer Law* revised in Oct of 2007 intensified the rights of the lawyers to interview, review of case files and documents, and investigation and evidence collection, which enhanced the protection level for the litigation rights of the criminal suspects. *The Regulation on the Disclosure of Government Information* issued by the State Council in April of 2008 marked the access for the protection of the right to know of the citizens to the time when there are laws to go by. In April of 2007, China signed on the *Convention on the Rights of Persons with Disabilities*. In April of 2008, the standing committee of the NPC made some revisions to the law on the proection for the rights of the disabled persons issued in 1990 based on the principles



and spirit of the convention, which made it conform to the international standards better than ever. *The State Compensation Law of the PRC (draft of amendment)* issued in Oct of 2008 is called the “human rights protection bill” by the academics, and since then, the state compensation changed from “law liability principle” to “result-oriented liability principle,” which will be helpful for the state organs and their staff to proceed with cautions, therefore, the violations of the legitimate rights and interests of the citizens will be more effectively prevented.

The rule of law based on the “humanism” raised its respective demand for legislation, law-enforcement, and jurisdiction, and that is respectively the humanistic legislation, humanistic law-enforcement, and the humanistic jurisdiction. In legislation, it demands to put the development of the human, and the realization of the human’s value as the main task of the legislation work, to actually and comprehensively express “the people-orientated.” It demands to realize the change of the law from “official standard” to “people standard.” And it demands the laws legislated to respect the human dignity, conform to the human nature, value the humanity, protect the human rights, and to construct a legal system from the human, enforced and commented by the human, and serve for the human. In jurisdiction, it demands to “respect the value of the human, maintain the right of the human, concern about the existence of the human, and pay attention to the development of the human” in the judicial activities and to actually implement the spirit of “the people-orientated.” The judicial procedure needs to fully respect the subject position of the human, embody the deep concern and comprehensive care for the human, preserve the human’s dignity and fully protect the basic rights and freedom of the human. The concrete operation of the jurisdiction should consider the weakness of the human nature, and allow for the inner feelings of the human. In the law-enforcement, it demands that the administrative law-enforcement agencies must safeguard the legitimate rights and interests of administration counterpart in the process of law enforcement, respect the subject position of the human, reflect the human care, and carry forward the humanistic spirit. It especially demands to attach importance to the procedural right and procedural safeguard enjoyed by the administration counterpart and that is when the rights and interests of the administration counterparts are disposed by the administrative organs, they have the right of claim, the right of access to appropriate information, the right to request a hearing, the peremptory challenges, the rights to request administrative reconsideration and to bring an administrative lawsuit.

The Conclusion:

The protection of human rights will not any more remain on the level of the state policy, and will no more be the political declaration of the ruling Party only. Under the



ideological guidance of “the people-oriented,” the human rights protection has been lifted from the reports and documents to the level of the legal system, and changed from the slogans to the legal provisions written in black and white. This profound change makes it clear that a legal system of the human rights protection with Chinese characteristics has gradually come into being.

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HUMAN-ORIENTED DEVELOPMENT AND HUMAN RIGHTS PROTECTION—CHILDREN’S RIGHT TO EDUCATION

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There are a number of international conventions which provide for children’s right to education, as child is the future master of society and children education is the foundation (stone) of human-oriented development.

Article 24 of the *International Covenant on Civil and Political Rights* (the ICCPR) ensures that children’s right be protected. The Human Rights Committee considers that every Member State should, in the cultural field, take every possible measure to foster the development of the child’s personality and to provide him with a level of education that will enable him to enjoy the rights recognized in the Covenant.

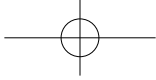
Articles 13 and 14 of the *International Covenant on Economic, Social and Cultural Rights* (the ICESCR) also provide for children’s right to education. These provisions together with other international covenants including the *Convention on the Rights of the Child* (the CRC) and the *Convention on the Elimination of All Forms of Discrimination Against Women* (the CEDAW) recognize the importance of education. Therefore, the right to education reflects the undivided and inter-dependent nature of all kinds of human rights.

When delivering its views on Article 13 of the ICESCR, the Committee on Economic, Social and Cultural Rights considers that education itself is a piece of human rights. As an empowerment of right, education is the primary vehicle. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely is one of the joys and rewards of human existence.

Aims and objectives of education

Article 13 of the ICESCR, which provides for the aims and objectives of education, is based on the *Universal Declaration of Human Rights*. The aims and objectives reflect the following respects: education shall be directed to the human personality’s “sense of dignity” and the full development of the human personality; it shall “enable all persons to participate effectively in a free society” and it shall promote understanding among all “ethnic” groups, as well as nations and racial and religious groups.

Article 29(1) of the CRC provides for the aims of children’s education. Those aims are



linked directly to the realization of a child's human dignity and rights, taking into account the child's special developmental needs and diverse evolving capacities. The aims are: the holistic development of the full potential of the child and the insistence upon the need for education to be child-centred, child-friendly and empowering. The education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. "Education" in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enables children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.

The child's right to education is not only a matter of access but also of content. An education with its contents firmly rooted in the values of article 29(1) is for every child an indispensable tool for her or his efforts to achieve in the course of her or his life a balanced, human rights-friendly response to the challenges that accompany a period of fundamental changes driven by globalization, new technologies and related phenomena. Such challenges include the tensions and contradictions between the global and the local; the individual and the collective; tradition and modernity; long and short-term considerations; competition and equality of opportunity; the expansion of knowledge and the capacity to assimilate it; and the spiritual and the material.

Non-discrimination

Articles 2, 24 and 26 of the ICCPR are applicable to the protection of children against discrimination on any ground such as race, colour, sex, language, religion, national or social origin, property or birth.

The principle of non-discrimination can also be found in Article 3 of the ICCPR. Article 3 obliges each State party to ensure the equal right of men and women to the enjoyment of the rights set forth in the Covenant. This implies that all children regardless of their sex have the right to education.

The Committee on the Elimination of Discrimination against Women points out that Member States of the CEDAW must ensure that public and private education systems include children of all communities and do not exclude any children on the basis of descent. They should reduce school drop-out rates for children of all communities, in particular for children of affected communities. They should also pay special attention to the situation of girls.

The Committee on Economic, Social and Cultural Rights considers that Article 13



of ICESCR concerning non-discrimination should be applied fully and immediately to all aspects of education. In other words, a State must respect the availability of education by not stopping girls from going to school and by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples. In addition, the fellowship system should enhance equality of educational access for individuals from disadvantaged groups.

Article 2 of the CRC relates to non-discrimination. Discrimination on the basis of any of the grounds listed in Article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. This is also inconsistent with Article 29(1)(a) which provides that State parties agree that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential. Denying a child's access to educational opportunities may be resulted in extreme examples such as causing racism, racial discrimination, xenophobia and related intolerance, adopting a curriculum which is inconsistent with the principles of gender equality, limiting the benefits girls can obtain from the educational opportunities offered and discouraging girls' participation, discriminating against children with disabilities or with HIV/AIDS.

The best interests of the child

The importance of acting in the best interests of the child can be found in Article 3 of the CRC. Article 3 sets out the principle that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 29 of the Convention also emphasises the importance of acting in the best interests of the child and child-centred education: that the key goal of education is the development of the individual child's personality, talents and abilities, in recognition of the fact that every child has unique characteristics, interest, abilities and learning needs. Thus, the curriculum must be of direct relevance to the child's social, cultural, environmental and economic context and to his or her present and future needs and take full account of the child's evolving capacities; teaching methods should be tailored to the different needs of different children. Education must also be aimed at ensuring that essential life skills are learnt by every child and that no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life. Basic skills include not only literacy and numeracy but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents and other abilities which give children the tools needed to pursue their options in life.



Children with disabilities

Article 23(1) of the CRC provides for the principles for dealing with children with disabilities: the enjoyment of a full and decent life in conditions that ensure dignity, promote self reliance and facilitate active participation in the community. Article 2 of the CRC concerning non-discrimination also applies to children with disabilities. Article 3 of the CRC concerning the best interests of the child should also be the basis on which programmes and policies are set, and it should be duly taken into account in every service provided for children with disabilities and any other action affecting them.

Children with disabilities often require special services in education to allow them to achieve their fullest potential. The lack of appropriate education and vocational training discriminates against them by denying them job opportunities in the future.

Regarding the care of children with disabilities, the Committee on the Rights of the Child is of the view that:

(a) The provision of special care and assistance is subject to available resources and free of charge whenever possible. State parties have to make special care and assistance to children with disabilities a matter of high priority and to invest to the maximum extent of available resources in the elimination of discrimination against children with disabilities and towards their maximum inclusion in society;

(b) Care and assistance shall be designed to ensure that children with disabilities have effective access to and benefit from education, training and preparation for employment.

Therefore, on the issue of providing education to children with disabilities, the Committee on the Rights of the Child makes the following observations:

(a) Children with disabilities should have access to quality education in order to promote “the development of the child’s personality, talents and mental and physical abilities to their fullest potential;”

(b) education of a child with disabilities includes the strengthening of positive self-awareness, making sure that the child feels he or she is respected by others as a human being without any limitation of dignity;

(c) Depending on their needs, children with disabilities should be provided with inclusive education. Inclusive education is a set of values, principles and practices that seeks meaningful, effective and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students. This goal can be achieved by different organisational means which respect the diversity of children. Inclusion may range from full-time placement of all students with disabilities into one regular classroom or placement into the regular class room with varying degree of inclusion, including a certain portion of special education;



(d) Education for career development should be provided at an early age. Developing vocational skills as early as possible would enable children to make better choices later in life in terms of employment.

Fundamental characteristics of education

In order to implement the principle that “the best interests of the child shall be a primary consideration,” the Committee on Economic, Social and Cultural Rights remarks that children education should exhibit the following interrelated and essential features:

(a) Availability—functioning educational institutions and programmes have to be available in sufficient quantity;

(b) Accessibility—educational institutions and programmes have to be accessible to everyone without discrimination. Accessibility has the following overlapping dimensions:

(i) Non-discrimination—education must be accessible to all, especially to the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds;

(ii) Economic accessibility—education has to be affordable to all. Accessibility means that primary education shall be available “free to all” and free secondary and higher education should be introduced progressively;

(c) Acceptability—the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality);

(d) Adaptability—education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

The Committee on Economic, Social and Cultural Rights takes the view that primary education must be universal, ensure that the basic learning needs of all children are satisfied, take into account the culture, needs and opportunities of the community and be available free to all.

The content of secondary education includes completion of basic education and consolidation of the foundations of life-long learning and human development. It prepares students for vocational and higher educational opportunities. Secondary education also demands flexible curricula and varied delivery systems to respond to the needs of students in different social and cultural settings. In addition, secondary education shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.

The emphasis of higher education is to respond to the needs of students in different social and cultural settings; it must have flexible curricula and varied delivery systems.



Higher education should be available on the basis of capacity and accessible to all without any discrimination.

The Hong Kong Special Administrative Region

Chapter III of the *Basic Law of the Hong Kong Special Administrative Region (the Hong Kong Basic Law)* sets out the fundamental rights and duties of the residents. Chapter VI provides that the HKSAR shall on its own, on the basis of the previous education system, formulate policies on the development and improvement of education. Educational institutions of all kinds may retain their autonomy and enjoy academic freedom. Students shall enjoy freedom of choice of educational institutions and freedom to pursue their education outside the HKSAR.

Further, Article 39 of the *Hong Kong Basic Law* provides that the provisions of the ICCPR and the ICESCR as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

The Hong Kong Bill of Rights Ordinance (Cap. 383) provides for the incorporation into the law of Hong Kong of provisions of the ICCPR as applied to Hong Kong. Although there is no single ordinance which incorporates into the law of Hong Kong provisions of the ICESCR, implementation of those provisions as applied to Hong Kong is ensured through the Hong Kong Basic Law and other Hong Kong legislation.

Moreover, the human rights conventions and covenants mentioned above, including the CRC and the CEDAW, will continue to apply in the HKSAR. The HKSAR government will try its best to implement children's right to education under those conventions and covenants by means of education, promotion, legislation and policy making so as to uphold human-oriented development and to nurture the next generation.

Conclusion

Children's future depends on good quality education. Education is also the foundation of human-oriented development. Let's educate our children as best we can, and set a good foundation for the healthy development of each person in the community.

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PEOPLE-ORIENTED DEVELOPMENT AND HUMAN RIGHTS PROTECTION SINCE THE RETURN OF MACAU

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I. Concept of People-Oriented

Succeeding Dante, a great poet of the Middle Ages, who advocated the humanism, thinkers suffering serious oppression during the long dark period led people to rediscover the inherent existence value of human beings under the shackles of absolutism and religion, calling for revitalizing the ancient cultures¹. The movement made the concept of people-oriented to the new moral standard in the Western society.

Thereafter, under the guidance of enlightenment thinkers, *The Bill of Rights* (1689), *The Declaration of Independence* (1776), *The Declaration of the Rights of Man and of the Citizens* (1789) came into being in succession, and the last two declarations were even taken as the sign of the human rights perspective in modern times. Entering the 20th century, *The Charter of the United Nations*, *The Universal Declaration of Human Rights* and *The United Nations Convention on Human Rights* were formulated successively, bringing the human rights protection and practice into the age of globalization and legalization (international law). Under the drive of the United Nations, regional and special legislation of human rights has mushroomed as well.

Underwent the political and social conflicts in the 19th century and first half of the 20th century, in addition to the basic rights, such as the right to life, right to liberty and the right to equality, the human rights cause gradually expanded into new fields, including the right to development, the right to peace and the right to environment, etc. On the other hand, as the deepening of the communication and understanding among countries, international community also has begun to recognize the connotation of human rights can vary according to different situations of social and economic development².

¹ Burckhardt, *The Civilization of the Renaissance in Italy*, the Commercial Press, 1997, p. 125.

² For example, some scholars in China explain the relationship between national conditions and human rights by combining the concept of human rights and China's traditional harmony concept. Xia Yong, *The Origins of the Concept of Human Rights—History and Philosophy of Rights*, China University of Political Science and Law Press, 2001, p. 198.



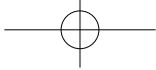
II. Legal Foundation for People-Oriented Development—Carrying out Human Rights Protection in the Legislative System in Macau

Human rights have right attribute, and its protection and realization primarily depends on an effective legal system. As most countries and regions under the rule of law, the legal order in Macau is also the legal foundation of the multi-directional and multi-level implementation of human rights protection, especially since the return of Macau, the system of human rights protection in Macau is becoming more and more robust as the basic law comes into effect and the compiling of many more important codes completes. In the system, it is *The Basic Law of Macau* that has the critical and guiding position.

The Basic Law of Macau embodies its protection on human rights in its Chapter III Fundamental Rights and Duties of the Residents¹. *The Basic Law* gives a wide range of protection on human rights, including the right to residence (Article 24); the right to equality (Article 25), the right to vote and the right to stand for election (Article 26); freedom of speech, of the press and of publication, freedom of association, of assembly, of procession and of demonstration, and the right to form and join trade unions, and to strike (Article 27); the individual freedom and the right to the body intactness (Article 28); the right to be protected under the principle of non-retroactivity and the principle of presumption of innocence in *the Criminal Law* (Article 29); the right to inviolable personal dignity, and to personal reputation and the privacy of their private and family life (Article 30); the right to inviolable home and other premises (Article 31).

Freedom and privacy of correspondence of Macau residents are protected by law. No organization or individual may, on any ground, infringe upon residents' freedom and privacy of correspondence, except in cases where, to meet the needs of state security or of criminal investigation, public security or procuratorial organs are permitted to censor correspondence in accordance with procedures prescribed by law. Macau residents shall have freedom to move and to enter or leave the Macau Special Administrative Region and freedom of emigration to other countries and regions (Article 33); have freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public (Article 34); have freedom of choice of occupation and work (Article 35); have the right to resort to law and to have access to the courts, and to judicial remedies (Article 36); have freedom to engage in education, academic research, literary and artistic creation, and other cultural activities (Article 37); have the freedom of marriage, and the right to form and raise a family freely (Article 38); the minors and the aged and the disabled have the right to be taken care of and protected (Article 38); have the right to social welfare (Article 39); have

¹ From the perspective of constitution science, the term—basic rights—is more common, though basic rights and human rights have high concordance in terms of origins and contents. For their differences, Jorge Miranda, *Direito Constitucional*, Tomo IV, *Direitos Fundamentais*, 2^a Ed., Coimbra Editora, 1998, p. 49ss.



the right of private ownership of property (Article 6); have the right of acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property (Article 103)¹.

At the international law level, treaties which have been concluded and are still in effect since the return of Macau include²:

The International Convention for the Abolition of Slavery and the Slave Trade (1926) (signed at Geneva on 25 September 1926); *The Convention on the Prevention and Punishment of the Crime of Genocide* (signed at Paris on 9 December 1948); *The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (adopted at New York on 2 December 1949); *Convention relating to the Status of Refugees* (signed at Geneva on 28 July 1951); *Protocol relating to the Status of Refugees* (signed at New York on 31 January 1967); *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (signed at Geneva on 7 September 1956); *Convention against Discrimination in Education* (signed at Paris on 14 December 1960); *International Convention on the Elimination of All Forms of Racial Discrimination* (signed at New York on 21 December 1965); *International Covenant on Economic Social and Cultural Rights* (signed at New York on 16 December 1966); *Convention on the Elimination of all Forms of Discrimination against Women* (signed at New York on 18 December 1979); *Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* (signed at New York on 10 December 1984); *Convention on the Rights of the Child* (signed at New York on 20 November 1989); *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (signed at New York on 25 May 2000).

In civil legislation, *The Macau Civil Code* maintains and further improves the personality right system descended from the Portuguese Civil Code 1966. It also implements and makes the rights, including the right to life (Article 70), the right to body and mind intactness (Article 71), the right to liberty (Article 72), the right to reputation (Article 73), the right to privacy (Article 74), the right to be protected on personal experience (Article 78), the right to portrait and to speak out (Article 80), etc., as the civil rights that individuals can directly make claims to courts, bringing the protection of human rights into a new stage.

In addition to the Civil Law's protection of the life of man and several key values from the perspective of the right to personality, *the Criminal Law* highly prevents human rights

1 J. Bacelar Gouveia, *The Fundamental Rights in Macao*, in "One Country, Two Systems, Three Legal Orders—Perspectives of Evolution," Springer, 2009, p. 702-703.

2 Liu Gaolong, *On the Law of Macau* (2nd Volume), Macau Foundation, 2005, p. 302; about the judgment of the applicability of international convention on human rights in Macau, Antonio Malheiro de Magalhaes, *The Validity of the International Agreements of the Human Rights in the Juridical Order of the Special Administrative Region of Macau*, in *One Country, Two Systems, Three Legal Orders—Perspectives of Evolution*, Springer, 2009, p. 607 ss.



violations and carries out punishments via setting up types of crime. Crime types relating to the person include crime of infringement upon life (Article 128), crime of infringement upon body intactness (Article 137), crime of infringement upon personal liberty (Article 147), crime of infringement upon sexual freedom and self-determination (Article 157), crime of infringement upon reputation (Article 174), crime of infringement upon other legal interests of the person (Article 194), just to name a few. Crime types relating to the property include crime of infringement upon ownership (Article 197), crime of infringement upon property (Article 222), crime of infringement upon peace and humanism (Article 229), etc.

III. Specific Measures for Social Development and Human Rights Protection since the Return of Macau

Macau's economy had been shrinking and suffered negative growth successively over the few years before return. From 1996 to 1999, its GDP underwent negative growth for four successive years. In 1998, one year before the return of Macau to China, its GDP growth rate in real terms was negative 4.6%; in 1999, the year when Macau returned, the figure was negative 2.4%¹. With the support of the Central Government and the efforts of the Government of Macau Special Administration Region, Macau's society and economy has made great progress since return. In 2000, Macau's GDP achieved leaping growth with the growth rate reaching positive 5.7%, and realized double digit growth in 2002 for the first time, and the figures in 2004 and 2007 were up to 27.3% and 25.3% respectively². Since the return, Macau keeps surplus on public finance year-by-year, the fiscal surplus amounted to more than MOP 18 billion in five years from 2000 to 2005, while fiscal surplus the Government of Portuguese Macau left to the Government of Special Administration Region over the years was just over MOP 2 billion before 1999; fiscal revenue of the Government in 2005 reached MOP 28.2 billion, nearly doubled 1999 fiscal revenue³. As data shows, Macau's GDP per capita now has reached MOP 313,091 (2008), tripled MOP 110,637 before return. Macau has become one of the richest regions in the world⁴. With the sound economic foundation, the Government will make more resources input to develop the human rights cause and make progresses in the following fields:

1. The judicial and quasi-judicial field

In Macau Special Administration Region, human rights can be protected and realized through both quasi-judicial system and non-judicial system. It is worthy of emphasizing that

1 Statistics and Census Service of Macau Special Administrative Region, 2008, 1988-2008 GDP Growth Rate in Real Terms, p. 441, http://www.dsec.gov.mo/getAttachment/63d2e74e-986a-4f51-8f77-8ced92bb1ae1/C_AE_PUB_2008_Y.aspx.

2 Ibid.

3 Statistics and Census Service Macau SAR Government, Statistical Yearbook 2008, <http://www.dsec.gov.mo/Statistic.aspx>.

4 Statistics and Census Service Macau SAR Government, GDP per capita, <http://www.dsec.gov.mo/TimeSeriesDatabase.aspx?KeyIndicatorID=70>, GDP calculated with outlay method at current prices.



rules aiming at protecting basic rights of individuals are increasing in number, for example, the right to file proceedings to the Legislative Assembly of Macau and to lodge complaints to the Commission against Corruption of Macau is strengthened (Law No.10/2000). The Commission against Corruption of Macau will still be responsible for the protection of rights, freedom, security and legitimate interests of individuals¹.

2. Human Rights Popularization

Since its return, the Human Rights Convention suitable for Macau has been widely popularized. The government printed the convention and distributed them to citizens free of charge between 1999 and 2002. In 2001, the legislative Assembly also published important legislative series on the human rights of Macau Special Administrative Region, such as the right of association, *Lei de Bases de Política Familiar* (Guidelines of Family Policy), *Lei de Bases da Política do Emprego e dos Direitos Laborais* (Guidelines of Employment Policy and Laborer's Rights), and regulations on freedom of speech and freedom of religion, etc.²

3. Employment

In regard to labor employment, Macau Labor and Employment Department has been improving its assistance and service for job hunters since 2000, in order to respond more quickly and effectively to the needs of job hunters and laborers benefiting from social security system, including the Service Commitment Scheme launched in December 2001. In 2001, there were 25,491 registered job vacancies, 37,140 interviews (person-time) and 1,298 employment cases successfully transferred. In addition, the government actively organized activities to facilitate training and employment for the disabled, benefiting many of them since Macau's return.

Since its return, Macau's economy has achieved remarkable accomplishments. The rapid economic growth shows, in terms of labor employment, that the unemployment rate in Macau has been decreasing. It decreased from 6.6% before its return (between October and December, 1999) to 3.7% at present (between May and July, 2009).³ In no doubt, the outcomes of economic development will also appear in wages. The result of employment survey in 2008 showed that the overall average monthly income was 8,000 Macau Pataca (9,500 Macau Pataca for local residents in Macau), representing an increase of about 3,000

1 *Implementation of International Covenant on Economic, Social and Cultural Rights in Macau*, Special Issue of Macau Law Journal, 2006, p. 153.

2 *Implementation of International Covenant on Economic, Social and Cultural Rights in Macau*, Special Issue of Macau Law Journal, 2006, p. 154.

3 Statistics and Census Service of Macau Special Administrative Region, Overall Unemployment Rate, October-December, 1999, <http://www.dsec.gov.mo/TimeSeriesDatabase.aspx?KeyIndicatorID=24>; Statistics and Census Service of Macau Special Administrative Region, Employment Survey, May-July, 2009, Issue 5, http://www.dsec.gov.mo/getAttachment/20560201-5cce-439e-946e-2011f8e60f8a/C_IE_FR_2009_M05.aspx: Between May and July 2009, there were 332,700 laborers with 320,400 employed and about 12,300 unemployed.



Macau Pataca from the average monthly income of 5,100 Macau Pataca in 1998.¹

4. Gender Equality

In regard to realization of gender equality and creation of fair and decent working conditions, the existing systems in Macau Special Administrative Region can provide adequate protection. Since its return to China, not any complaint about discrimination and inequality has ever been received.

5. Family Aid²

Macau government has been constantly allocating enormous resources to social security projects. Even during the economic downturn in 2000-2001, the allocated funds still closed to 10% of its total budget. In regard to households, Macau Special Administrative Region established Household Support Center by its own or in cooperation with private institutions, to provide assistance to the families with special difficulties. It also set up a new unit before its return to China with a support team consisting of experts, such as social workers, mental health counselors and legal counselors. The assistance to pregnant women has always been reflected in legislative and administrative activities of various fields in Macau, including pre-natal and post-natal security in all public hospitals, family planning projects, maternity leave, etc.). After its return to China, the assistance in relevant fields has been improving during practice.

6. Housing

Since Macau has a relatively huge population with limited land, housing has been a tough problem. However, Macau Special Administrative Region did not give up providing support to the vulnerable group to protect their access to appropriate housing. Since 1980s, Macau government has established economical housing policy, which currently basically solved the housing problem of residents in squatter area. In addition, Macau Special Administrative Region set up 3 shelters to provide asylum service to the homeless. It also established public housing to take in widowed senior citizens and senior couples. Currently, hundreds of senior citizens are living in the public housing.³

1 Statistics and Census Service of Macau Special Administrative Region, 2008, Major Employment Indicator, p. 87. http://www.dsec.gov.mo/getAttachment/63d2e74e-986a-4f51-8f77-8ced92bb1ae1/C_AE_PUB_2008_Y.aspx.

2 *The Preliminary Report on Macau Special Administrative Region of the People's Republic of China in accordance with the Provisions of Article 44 of the Convention on the Rights of the Child*, p. 34.

162: The government of Macau Special Administrative Region promoted to establish Household Support Center to provide assistance to the households that are under special situations. In addition to other activities, these centers should provide special support to single-parent households and households with prisoners. These centers should also establish effective mechanism to address crisis caused by any household member, e.g. crisis caused by divorce, family separation, even domestic violence, especially the crisis involving children.

3 *Implementation of International Covenant on Economic, Social and Cultural Rights in Macau*, Special Issue of Macau Law Journal, 2006, p. 196-198.



According to statistics, before its return to China, Macau was concentratively building social housing estates during 1985-1992, and it is the period that the largest amount of social housing estates have been constructed. The number of completed apartments was 1,492. There were also a few economical housing and temporarily housing centers. Since 1965, Macau has built 9,084 apartments of social housing by December 31, 1999.¹ The construction of social housing in Macau gradually stagnated after mid-1990s. Since its return to China, the government also took positive measures to help residents solve housing problem. In regard to the accumulated stock of social housing, there are all together 6,000 residential apartments of public housing since 1980, and about 28,000 apartments of economical housing.² According to statistics provided by Housing Bureau in 2008, the initial plan was to gradually build about 7,000 apartments in 2009, including over 2,600 apartments for social housing and about 4,200 apartments for economical housing. It also tried to build 19,000 apartments for social housing within 2012.³ According to statistics provided by Housing Bureau on September 11, 2009, in order to help families with practical needs solve their housing problem, the government of Macau Special Administrative Region would continue to promote implementation and construction of social housing, to fulfill its goal of building 19,000 apartments by the end of 2012 in phase model.⁴ The social housing policy will provide special care to senior citizens. In addition, the social housing estates under planning will also reserve resources for senior citizens, which will reflect governmental long-term development strategy of taking care of senior citizens.

7. Sanitation

In regard to sanitary policy, Macau Special Administrative Region basically fulfilled its goal of free medical care. A public hospital and a large private hospital within the Region can basically meet citizens' medical needs. Furthermore, the government provides vaccination to the newborn and takes positive measures to prevent and cure epidemics. For instance, SARS in 2003 and H1N1 Influenza in 2009 were all effectively brought under control.

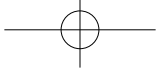
By the end of 2008, the number of doctors and nurses working at hospitals and health

1 Lou Shenghua, *Housing Policy Orientation in Macau: from Safety Nets to Moderate Welfarization*. Administration, Vol.21, Issue 80, 2008 No.2, 263-272. Statistics and Census Service, Statistical Yearbook 1999.

2 Housing Bureau of Macau Special Administrative Region, History of Public Housing, http://www.ihm.gov.mo/chi/database/history_sh.php.

3 Website of Housing Bureau of Macau Special Administrative Region: <http://www.ihm.gov.mo>. Official website of Macau Special Administrative Region, Government Accelerating to Build Social Housing to Help Those with Practical Needs to Address Housing Problem (2008-11-13), <http://www.gov.mo/egi/Portal/rkw/public/view/showcomp.jsp?id=InfoShowTemp&docid=c373e91d9a653d9d8f7fbc64659d4752>.

4 Official website of Macau Special Administrative Region, Distribution of Social Housing Planning for 19,000 Apartments to be Built by the Government (2009-9-11), <http://www.gov.mo/egi/Portal/rkw/public/view/showcomp.jsp?id=InfoShowTemp&docid=c373e91d9a653d9d8f7fbc64659d4752>.



centers or registered at Health Bureau was 1,261 and 1,415 respectively. The proportion of per thousand people to doctors and nurses was 2.3 and 2.5 respectively, while in 1999, the proportion was 1.97 and 2.07 respectively. Please see the below table:¹

Medical health				
	Total population (one thousand)	Number of doctors	Number of nurses	Number of hospital bed
1999	429.6	845	897	888
2007	538.1	1,226	1,335	1,014
2008	549.2	1,261	1,415	1,030

The update announced by the Health Bureau of Macau Special Administrative Region showed that, as of afternoon of September 7, 2009, although there were 1,352 cases of A/H1N1 influenza in Macau, only one case was dead. In regard to this, Health Bureau pointed out that Macau's alert level remained Level 6 Blue (indicating Moderate Local Situation), and was not raised to Yellow (indicating Serious). Currently, most of the patients are in good and stable condition.²

8. Privacy

In regard to personal privacy protection, the Macau Special Administrative Region established Personal Data Protection Act through legislative means, and set up a dedicated Personal Privacy Office to manage relevant issues of human rights protection.

9. Education

1991 Census was the last census before Macau's return to China. Survey showed that the proportion of those with higher education was 4.4%. 2001 Census was the more recent and the first census after its return to China, the abovementioned proportion was 7.4%.³

10. Environment

Below are Human Development Indices of Macau before and after its return to China⁴:

1 Statistics and Census Service of Macau Special Administrative Region, Time Series Database, <http://www.dsec.gov.mo/TimeSeriesDatabase.aspx>.

2 Chinanews.com, 10:08 am, 2009-09-03, First A/H1N1 Dead Case in Macau, Level 6 Remained for Influenza Alert, <http://www.chinanews.com.cn/ga-sszqf/news/2009/09-03/1848026.shtml>;

Xinhuanet, 22:35 pm, 2009-09-07, Confirmed A/H1N1 Cases In Hong Kong and Macau Reached 1,4363 and 1,352 Respectively, <http://news.qq.com/a/20090907/002740.htm>;

Government Public Information Network, Health Bureau's Summary of Weekly Epidemic Characters, <http://www.gov.mo/egi/Portal/rkw/public/view/showcomp.jsp?id=InfoShowTemp&docid=c373e92397a136b08f6b8044686c3a3c>.

3 Statistics and Census Service of Macau Special Administrative Region, 2011 Census, <http://www.dsec.gov.mo/2011Censos.aspx>. In academic year 2007/2008, there were 130 schools/institutions providing regular education in Macau, including 12 higher education institutions and 118 non-higher education institutions, which provide preschool, primary and middle school education (including technical and vocational schools). Among non-higher education schools, 102 were privately owned, and 76 were admitted to free education system.

4 Statistics and Census Service of Macau Special Administrative Region.



	Human Development Index Point
1999	0.867
2000	0.882
2001	0.906
2002	0.913
2003	0.919
2004	0.920
2005	0.930

The above is just a brief introduction of Macau's human right protection system and a series of measures taken by the government, and your advice will be appreciated.

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THE ROLE OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL IN PEOPLE-ORIENTED DEVELOPMENT AND HUMAN RIGHTS PROTECTION

Harro von Senger
Switzerland

Introduction

On March 15, 2006, the General Assembly of the United Nations adopted at its sixtieth session, with a recorded vote of 170 votes in favor, 4 votes against and 3 abstentions, the Resolution 60/251 establishing the Human Rights Council (abbreviated: HRC), based in Geneva, in replacement of the Commission on Human Rights, as a subsidiary organ of the General Assembly.¹ That was one result of the *World Summit at United Nations* of September 2005. The United States, Israel, the Marshall Islands and Palau voted against, Venezuela, Iran and Belarus abstained.

In the resolution, it was reaffirmed that, “while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms.”

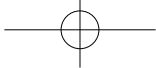
Also “the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization” were recognized.

According to the resolution, the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon (Resolution, article 3). It should also serve as a forum for dialogue on thematic issues on all human rights (Resolution, article 5.b).

Brief Survey on the resolutions of the HRC

What has the newly established HRC achieved with respect to people oriented development and human rights protection?

¹ http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf



I want to consider the first two years of its existence, that is to say the period from its establishment in the year 2006 till September 2008, and I concentrate on its resolutions only. First, I give a general overview on the work done by the HRC in the period taken into consideration. In this period, the HRC has, according to my counting, altogether adopted 143 resolutions.¹ Among them, 36 were so-called country resolutions on the human rights situation in a certain state, and 107 were thematic resolutions having as object certain human rights questions, without any obvious implication of a specific country.

Only 37 of the 143 resolutions decided upon in the period of 2006 till September 2008 were controversial. They had to be put to the vote, and they were adopted by majority decisions. With respect to 21 of these resolutions, the European countries did vote with “no,” while countries of the Southern hemisphere, among them the People’s Republic of China (abbreviated: China), did vote with “yes.” Examples are:

—Globalization and its impact on the full enjoyment of all human rights (4th session A/HRC/RES/4/5, submitted by China on behalf of the Group of Like-Minded States & the Republic of South Africa)

—Combating defamation of religions (4th session A/HRC/RES/4/9, submitted by Pakistan on behalf of Organization of the Islamic Conference)

—Human rights and unilateral coercive measures (6th session A/HRC/RES/6/7, submitted by Cuba on behalf of the Non Aligned Movement)

—Promotion of a Democratic and Equitable International Order (8th session A/HRC/RES/8/5, submitted by Cuba)

Ten times, European countries abstained while countries of the Southern hemisphere, among them China, voted with “yes.” Examples are:

—Strengthening of the Office of the United Nations High Commissioner for Human Rights (4th session A/HRC/RES/4/6, submitted by China on behalf of the Group of Like-Minded States & South Africa)

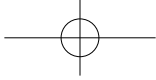
—From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance (7th session A/HRC/RES/7/33, submitted by Egypt)

Twice, the European countries were on the majority side whereas China abstained, for instance:

—Elimination of all forms of intolerance and of discrimination based on religion or belief (6th session A/HRC/RES/6/37, submitted by Portugal)

In one case only, concerning a country resolution, the European countries obtained the majority while China votes “no.” Three of the controversial resolutions were supported by

¹ See Geneva for Human Rights—Global Training—Resolutions adopted by the HRC (as of 13 January 2009), http://www.upr-info.org/IMG/pdf/HRC-Listresolutions_2006-2009_.pdf, access at 28.8.2009.



European countries together with China. An example is:

—Working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of the General Assembly Resolution 49/214 of 23 December 1994 (Draft Declaration on the Rights of Indigenous Peoples) (1st session A/HRC/RES/1/2, submitted by Peru)

In short, with respect to 34 of the 37 controversial resolutions, the countries of the Southern hemisphere, among them China, got a majority with the result that 34 of altogether 37 controversial human rights resolution were adopted, three among them with the support of European countries. That is to say, 31 of altogether 37 controversial resolutions were adopted against the votes of European countries. On the other side, European countries obtained only one vote success with China opposing, and two vote successes with China abstaining.

People-oriented development and Human Rights protection as reflected in HRC resolutions

It is worth mentioning that 106 resolutions were unanimously accepted by all members of the HRC. That means that in almost 75 % of all human rights questions which were discussed during the first 2 years of the existence of the HRC, there exists a consensus. Examples of people's development related resolutions accepted by all member states of the HRC are:

—Human rights and extreme poverty (2nd session A/HRC/RES/2/2, 7th session A/HCR/RES/7/27 and 8th session A/HRC/RES/8/11, submitted by France)

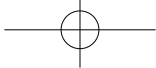
—Human rights and equitable access to safe drinking water and sanitation (6th session A/HRC/RES/6/8 and 7th session A/HCR/RES/7/22, submitted by Spain & Germany)

—Adequate housing as a component of the right to an adequate standard of living (6th session A/HRC/RES/6/27, submitted by Germany)

—Right of everyone to the enjoyment of the highest attainable standard of physical and mental health (6th session (resumed) A/HRC/RES/6/29, submitted by Brazil)

—Integrating the human rights of women throughout the United Nations System (6th session A/HRC/RES/6/30, submitted by Chile)

However, it is a pity that in Western countries such as Germany or Switzerland, the partial global harmony in human rights questions is not communicated. This harmony seems to be a great secret in Western countries. In Western countries, the picture prevails that there is a gigantic gap between the Western Human Rights concepts and Non Western, especially official Chinese, opinions on Human Rights. This picture is not true. For instance, two human rights which are of highest importance for people oriented development and human rights protection, namely the right to development and the right to food, were



accepted by all Western member states of the HRC:

—The right to development (1st session A/HRC/RES/1/4, submitted by Malaysia on behalf of the Non-Aligned Movement NAM, 4th session A/HRC/RES/4/4, submitted by Cuba on behalf of NAM, 9th session A/HRC/RES/9/3, submitted by Cuba on behalf of NAM)

—The right to food (7th session A/HRC/RES/7/14, submitted by Cuba)

But for instance the German and the Swiss people are not informed by their governments about Germany's and Switzerland's positive official attitude towards these two human rights.

In two resolutions on the right to development adopted during the 4th session (12-30 March 2007) and the 9th session (8-24 September 2008),¹ there was emphasized “the urgent need to make the right to development a reality for everyone.” But this “urgent need” is not known as a human rights need at least in my home country Switzerland.

Let me explain this with an example: Between the two cities Zürich (Switzerland) and Kunming (China), a city partnership was set up in 1982 as a cultural exchange, but it had since gradually developed into a technical collaboration. Until 2004, Zürich specialists gave Kunming intensive support in terms of water supply, urban drainage, and public transport and so on. In November 2000, the people of Zürich had to vote about the question whether or not this kind of help should be given to Kunming by the city of Zürich. One argument of the opposing side was the Human Rights issue. They said instead of giving intensive support in terms of water supply, urban drainage, and public transport and so on, one should better put the Human Rights question on the agenda. At a public symposium in the Kunsthhaus Zürich (Museum for Modern Art in Zürich), I argued that by giving to the city of Kunming intensive support in terms of water supply, urban drainage and public transport, the city of Zürich had already put the Human Rights question on the agenda, namely the Human Right to development. I was applauded by the people attending the symposium. At the end, the people of Zürich voted with 64 % in favor of the city partnership Zürich—Kunming. My argument during the vote campaign introducing the Human Right to development to the people of Zürich which was reported by the leading Zürich newspaper² might have been one factor promoting the positive outcome of the vote.

The Western developed states should honor their commitment to dedicate 0.7 per cent of their gross national product (GNP) to official development assistance.³ In order to

1 Human Rights Council, Resolution 9/3, http://www2.ohchr.org/english/bodies/hrcouncil/9session/final_resolutions.htm; Human Rights Council, Resolution 4/4. The right to development, adopted without a vote, 31st meeting, 30 March 2007: http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=67&t=11.

2 Zürich sollte stolz sein: Podiumsdiskussion zu Kunming, in: *Neue Zürcher Zeitung*, 8.11.2000, S. 47.

3 RIGHT TO DEVELOPMENT—Report of the Working Group on the Right to Development on its seventh session (Geneva, 9-13 January 2006), E/CN.4/2006/26, 22 February 2006, <http://daccessdds.un.org/doc/UNDOC/GEN/G06/110/34/PDF/G0611034.pdf?OpenElement>, p. 6.



strengthen the determination of those States to fulfill their duty, I think that the HRC should further clarify the content and scope of this right and propose effective measures to prevent the misuse of development assistance, for instance because of corruption of involved governments. The impact of corruption on human rights is an issue of the Resolution 7/11 “The role of good governance in the promotion and protection of human rights.”¹ The duties of the receiver of development assistance should be clearly defined. Development assistance should never be conceived or given in a way which undermines the ability of self-reliance of the receiving nation. One should teach the people of Third World Countries how to fish instead of giving them fishes. And development assistance should really help the people of the countries concerned and not first of all finance a big administration body of international development assistance organizations.

Another point: In Western countries, there is often discussed the relationship between commerce and human rights. This looks as if commerce and human rights are two different matters. However, one could easily argue that doing commerce is in itself already a human rights activity in as far as it helps “states which formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefore”² to attain their development objectives. Western countries voting for the right to development within the HRC should thus detect the potential of the right to development with respect to commercial activity. Of course, this commercial perspective of the right of development should be not the only one.

Human Rights Council (Geneva, 8-24 September 2008)

Western states voting for the right to development in the HRC are reluctant to inform their peoples about this human right. Also hidden from Western societies are other positions which Western states are taking in the HRC.

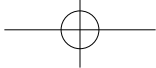
One example is the negative Western attitude towards two Resolutions on Human rights and international solidarity which were adopted by the HRC.³ In Resolution 9/2 which was adopted during the 9th session of the HRC (8-24 September 2008), the HRC

“Urges the international community to consider urgently concrete measures to promote and consolidate international assistance to developing countries in their development

1 http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_11.pdf

2 Declaration on the Right to Development, Adopted by General Assembly resolution 41/128 of 4 December 1986, Article 2 linea 3, <http://www2.ohchr.org/english/law/rtd.htm>.

3 Human rights and international solidarity (6th session A/HRC/RES/6/3 and 9th session A/HRC/RES/9/2, both times submitted by Cuba).



endeavors and for the promotion of conditions conducive to the full realization of all human rights;”¹ session of the Human Rights.

Another example of a negative Western position towards a HRC resolution refers to the right of peoples to peace. In the World Summit Outcome Document of September 2005 as well as in the Resolution 60/251 adopted on April 3, 2006, by the General Assembly of the United Nations at its sixtieth session concerning the establishment of the HRC, it is recognized

“That development, peace and security and human rights are interlinked and mutually reinforcing.”²

The smooth and sound development of the states of the world obviously depends on world peace. Therefore the right of peoples to peace should beyond any doubt get the support of all states of the world. However, Western states voted in the HRC against this human right. At the 8th session of the HRC (Geneva, 2-18 June 2008), the resolution on the right of peoples to peace was adopted by a recorded vote of 32 to 13, with 2 abstentions. The result of the vote looks as follows:

In favor: Angola, Azerbaijan, Bangladesh, Bolivia, Brazil, Cameroon, China, Cuba, Djibouti, Egypt, Gabon, Ghana, Guatemala, Indonesia, Jordan, Madagascar, Malaysia, Mali, Mauritius, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Uruguay, Zambia;

Against: Bosnia and Herzegovina, Canada, France, Germany, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland;

Abstaining: India, Mexico.³

Why did European countries vote against this resolution? I quote from a press communiqué of the United Nations:

ANDREJ LOGAR (Slovenia), in an explanation of the vote before the vote on behalf of the European Union, said the European Union supported some principles and recognized the linkages between peace and the enjoyment of human rights. But it believed that the issues raised in the resolution were best dealt with in other fora. The draft resolution omitted to state that the absence of peace could not justify failure to respect human rights. It noted with interest that the draft resolution foresaw the holding of a workshop of experts to clarify the contents. The European Union could not support the draft resolution and requested a

1 http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_9_2.pdf

2 United Nations, General Assembly, A/60/L.1 2005 World Summit Outcome, Values and principles, article 9, <http://www.who.int/hiv/universalaccess2010/worldsummit.pdf>.

3 Human Rights Council, Resolution 8/9, Promotion on the right of peoples to peace, http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_9.pdf.



vote on it. The European Union would vote against it.¹

I do not find the reasons given by the speaker of the European Union very convincing.

Maybe because of the poor reasons based on which the resolution was refuted by European countries, no government of any Western country concerned nor any Western mass medium has, as far as I know, informed the Western people about the unanimous Western “no” against the right of peoples to peace nor did they tell the reasons of the negative attitude towards this human right. By opposing the mentioned resolution, the Western states concerned negated for instance the following statement:

The Human Rights Council also stresses that the deep fault line that divides human society, between the rich and the poor, and the ever-increasing gap between the developed and developing worlds pose a major threat to global prosperity, peace, security and stability;

Final remarks

All states of the world are sitting in the same boat. If the gap of the living standard between the countries of the Northern hemisphere and the countries of the Southern hemisphere becomes too big, it is detrimental to the whole world and menaces the countries of the North as well as those of the South. The HRC puts, as far as its thematic resolutions are concerned, a great emphasis on the question of development. While development is a key human rights issue in the Southern hemisphere, it has not yet really come as a human rights issue to the consciousness of the peoples of the Northern hemisphere. Within the HRC, Western countries and Southern countries enjoy a large amount of common ground with respect to the question of development. But there exist also disagreements, for instance as far as the right of peoples to peace is concerned. Instead of concentrating always on some individual human rights issues, it would better conform to the principle of a balanced human rights policy if Western countries would inform their peoples on what is going on in the HRC with respect to the development issue, on their own positive attitudes for instance towards the right to development and the right to food. There should be an enlargement of the human rights horizon in the Northern hemisphere, and it should take more into account some basic development and material needs of peoples of the Southern hemisphere.

(The author is Professor of Swiss Institute of Comparative Law, Switzerland)

¹ UNITED NATIONS Press Release, HUMAN RIGHTS COUNCIL ADOPTS 13 RESOLUTIONS, APPOINTS 13 NEW MANDATE HOLDERS AND EXTENDS EIGHT MANDATES, Human Rights Council, AFTERNOON 8 June 2008, <http://www.unhchr.ch/huricane/huricane.nsf/view01/F862D09328BA5EACC125746C006CB1DF?opendocument>.



PEOPLE-ORIENTED DEVELOPMENT AND HUMAN RIGHTS PROTECTION

Severo S. Catura
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Development as a human rights agenda of the philippines

For a developing country such as the Philippines, the pursuit of development along its major aspects—economic, political, social, and cultural—is aimed at no less than creating and sustaining a better life at present and ensuring a better future for its citizens. This development strategy puts premium on the development of individuals and ranks high in the agenda of good and effective governance of the current administration.

Defining a people-oriented development agenda as presented in detail in the current Medium Term Philippine Development Plan, President Gloria Macapagal Arroyo said that the basic national development strategy is that which shall “fight poverty and build prosperity for the greatest number of the Filipino people.”

President Arroyo specifically underscored a mission to “open up economic opportunities, maintain socio-political stability, and promote good stewardship—all to ensure a better quality of life for all our citizens.”

The fulfillment of this mission is made stronger by the Philippine government’s acknowledgment that it is every Filipino’s right, his human right, as it is the right of every other person here on earth, to partake of the benefits of development—the unbridled access to all opportunities to develop his full human potentials, and to create and live in an environment and in a society that allow those same potentials to flourish.

Thus, it was with great optimism that President Arroyo, at the Human Rights Week celebration in December 2008, and at the height of the global financial recession where the Philippines came out almost unscathed because of its strong macroeconomic fundamentals, declared that “we will see the light of day when we will be ready to join the ranks of the first-world, when poverty shall have been marginalized and when we will have achieved all the hallmarks of a modern society where institutions are strong, especially the institutions of human rights.”

Indeed, it will be—and it has to be—the liberation of the Philippines’ poor and needy citizens from poverty and social marginalization that will be the hallmark of its success in human rights advocacy.



I venture to recall the observations of Council of Europe Commissioner for Human Rights Thomas Hammarberg in his lecture in Dublin in April 2008 on the inter-relationship between development and human rights when implementing the United Nations Millennium Development Goals.

Stressing that there is “no real development without human rights,” Hammarberg noted that the current concepts of human rights approach to development must be seen as a convergence of the two concepts—that of human rights and that of development. Hammarberg went on a step further by saying that “the very purpose of the development efforts should be to ensure human rights for everybody [and that while the] full realization of human rights is the goal, development work is a means.”

But ideal concepts such as this are often hampered by constraints in actual implementation. This challenge arises: How can the State effectively pursue and mainstream a development framework hinged on human rights obligations, whereby the essential human rights principles, strategies, and plans become integral to the successful implementation of development plans, policies, programs, and activities?

Had this been a research paper, the above statement would pose as a research problem to be answered by data generated. But this being a position paper, we pose this challenge before this distinguished body, even as we gather more inputs to develop that framework and the strategy that will effectively put it on mainstream.

Human rights promotion and protection in Philippine domestic laws and as a global commitment of the Philippine government

Over the years, the Philippine government has steadily built its capacity to rise to the above-mentioned challenge primarily because of an urgency to establish and to propagate a culture of human rights, borne out of a people’s continuing desire to sustain and to institutionalize the human rights and freedoms that were hard-earned after almost two decades of authoritarian rule.

In 1986, after successfully launching a non-violent People Power revolution and regaining our birthright to democracy, we crafted a Constitution that enshrined our commitment to promote and protect human rights. Not merely satisfied with the State’s three-fold obligation on human rights—that is, to respect, to protect, and to fulfill—the Philippine Constitution added another aspect in its commitment—the promotion of human rights.

Thus, these relevant provisions were carved in stone in the Philippine Constitution: Article II, Section 4, states that “it is the prime duty of the Government to serve and protect the people;” Article II, Section 11, provides that “the State values the dignity of every human person and guarantees full respect for human rights;” and Article II, Section 5, says



that “the maintenance of peace and order, the protection of life, liberty, and property, and promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.”

Explicitly stated in the same Constitution are principles that demonstrate the State’s conviction that development and human rights should be mutually supportive.

Article II, Section 9 states that “the State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.” On the other hand, Section 10 of the same Article states that “the State shall promote social justice in all phases of national development.”

This same Constitution went further by providing for the creation of a Commission on Human Rights of the Philippines (CHRP), with the main function to monitor the entire government’s compliance to its human rights obligations. It is noteworthy that the CHRP is perhaps the only such body in the world created not by a legislative statute, but by the highest fundamental law of the land.

And if we are to take pride in our political history, the Philippines holds the distinct honor of being not only one of the first signatories, but the very first signatory to the Universal Declaration of Human Rights. Today, the Philippines is party to eight international conventions which it has ratified in the last six decades:

- International Convention on Civil and Political Rights (ICCPR), signed on Oct. 23, 1986;
- International Convention on Economic, Social, and Cultural Rights (ICESCR), signed on June 7, 1974;
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD), signed on Sept. 15, 1967;
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), signed on Aug. 4, 1981;
- Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), signed on June 18, 1986;
- Convention on the Rights of the Child (CRC), signed on Aug. 21, 1990;
- International Convention on the Protection of Rights of All Migrant Workers and Members of their Families (CMW), signed on July 5, 1995;
- International Convention on the Rights of Persons With Disabilities (CRPD), signed on April 15, 2008.

Apart from these that were mentioned, the Philippines is also a State Party to other relevant international instruments, including the Convention on the Prevention and



Punishment of the Crime of Genocide, the Convention Relating to the Status of Refugees, the four Geneva Conventions of 1949, the eight ILO Fundamental Conventions, and the UNESCO Convention against Discrimination in Education.

All these human rights laws and instruments to which the Philippines has committed its adherence do not only serve as the primary basis for government actions to ensure fulfillment of its obligations in human rights promotion and protection, but also more importantly as a guarantee that the development plans of the State truly reflect its adherence to these same rights.

In furtherance of the development-human rights convergence

To realize the convergence of people-oriented development and human rights protection, a major initiative carried out by the Philippine government along this direction is its continued resolve to adopt a National Human Rights Action Plan that will redefine its overall human rights framework and agenda.

Barely two years after the concept of a national human rights action plan was first proposed in the Vienna Declaration and Programme of Action as a result of the World Conference on Human Rights held in Vienna in 1993, the Philippine government formulated the first Philippine Human Rights Plan (PHRP) in 1995, covering the period of 1995 to 2000.

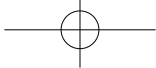
The CHRP led the formulation with a broad-based presidential task force. It focused on 16 groups recognized as vulnerable and needing special consideration and involved a process of consultation and review in the preparation of a range of proposals and regional action plans.

It was a brave undertaking by the CHRP considering its character as an independent government body. Justifiably, it fell short in the implementation due to several reasons, which included the lack of resources and monitoring, accountability, and institutional commitments.

Learning from the lessons of the first PHRP, President Arroyo, in December 2006, issued Administrative Order No. 163 specifically directing the Presidential Human Rights Committee (PHRC) to formulate the second plan, now known as the Second National Human Rights Action Plan, or NHRAP-2, and to undertake the necessary measures that will ensure its adoption and implementation.

Today, the crafting of NHRAP-2 does not only focus on the vulnerable sectors, as had been in the first Plan, but is also driven from two fronts: The eight core international treaties; and the results of the series of cluster area consultations that aim to evolve the plan to its fruitful conclusion.

A major input into the NHRAP-2 is the Philippine government's compliance to the



core international treaties, more specifically its response to the Concluding Observations of the concerned UN human rights committees. Inputs of this nature will be the responsibility of lead agencies that are specifically assigned to each of the international treaties under AO 163.

These lead agencies and their corresponding treaty clusters are: National Economic Development Authority for ICESCR, department of justice for ICCPR, department of social welfare and development for CRC, department of the interior and local government for CAT, department of labor and employment for CMW, national commission on indigenous peoples for ICERD, national commission on the role of Filipino women for CEDAW, and national commission for disability affairs for CRPD.

Each treaty cluster is composed of representatives from both government and civil society organizations that are all identified by the lead agencies.

On the other hand, the Philippine government sees the NHRAP-2 consultation process not simply as a vehicle for input-gathering, but also as an opportunity to propagate a culture of human rights.

Inputs are specific on the required lasting improvements in the human rights situation in Philippine society that are founded on harnessed political will at various levels of governance in the country. Political will is then translated into policies, programs, and resources necessary to progressively achieve a better quality of life for the people, especially the vulnerable, marginalized and the disadvantaged; enjoyed in larger freedoms and human rights.

Apart from recommendations for possible Executive actions that will ensure that human rights concerns are properly addressed, the NHRAP-2 shall likewise include a human rights agenda specific to the Legislature and the Judiciary. Also included will be strategies for education and information dissemination of the plan itself for all concerned institutions.

The formulation process ensures that the new plan is cognizant of the “human rights-based approach,” emphasizing the people’s empowerment, as well as their entitlement as claim-holders, to participate in, contribute to, and enjoy the rewards of political, economic, social, and cultural development. Consequently, government is also made clear of its role to fulfill these claims in view of its responsibility as duty-bearer.

In the meantime, the cluster area consultations that were mentioned cover all the geographic regions of the Philippines and involve as many stakeholders as possible.

These consultations aim to ensure national and multi-sectoral ownership of NHRAP-2. As a principle underlying the process, such an ownership would require the inclusion of as many national, regional and local specific human rights issues and concerns, including the agenda of the various vulnerable and disadvantaged groups of Philippine society, and



integrating the same into NHRAP-2.

Being locally based and focused on sectors, the consultations must infuse and incorporate a local and sectoral dimension to the plan, involve LGUs, CSOs and sectors at the local levels, determine the resources to move the plan, and identify site-specific human rights issues and concerns that will later find form in a Regional Human Rights Action Plan, or the NHRAP.

Once the NHRAP-2 has set into place a policy framework at the national level, it will be the NHRAP which will ensure that the national plan is implemented down the grassroots communities and villages in accordance with the various nuisances peculiar to the local areas. This mechanism will see to it that the development plans conceptualized by the people towards the protection of their basic rights will most assuredly redound to their benefit and welfare.

Finally, to ensure complementation and coordination of directions and objectives, the NHRAP-2 will be linked to current development plans, such as the Medium-Term Philippine Development Plan, Millennium Development Goals, including Administrative Order No. 249 issued by President Arroyo in December 2008 as part of the government's manifestation of commitment to fully comply and abide by the Universal Declaration of Human Rights (UDHR) in its 60th Anniversary.

Seen as a hold-over mechanism pending the completion of the NHRAP-2, AO No. 249 directs offices and agencies concerned under the Executive Branch of government to institute policies, programs, and projects that will further the government's overall effort to protect human rights along the tenets of the UDHR.

Specifically, the order directs these executive bodies to respond to such issues as the need for swift resolution of alleged human rights violations; observance of human rights in the conduct of peace and order and internal security operations; comprehensive education campaign on people's rights under the Philippine justice system; availability of access to more lawyers and legal officers; human rights education and the building of a strong human rights constituency among military and police authorities, as well as students and youth; improvements in education through the Philippine Main Highway Education Program; and the establishment of centers for human rights education.

The other directives are to address social and economic security, specifically the needs of informal sectors; delivery of gender-sensitive public service; addressing further the rights of indigenous peoples; ensuring further the protection of children in armed conflict with the law; productive reintegration of returning overseas workers; unyielding fight against poverty; housing, more specifically the implementation of the Urban Development Housing Act; local government accountability in human rights information dissemination; and the overall formulation of the country's development policies, plans, and programs in



accordance with the “human rights-based approach” to development.

In the meantime, while the PHRC shall ensure the Executive department’s compliance of its obligations under the NHRAP-2 in the next five years, the overall monitoring of the plan, to include the obligations of the Legislative and Judicial bodies will be undertaken by the CHRP.

For now, an initial check-list of some of the social and economic issues that surfaced during the area consultations for NHRAP-2, which the government will address in terms of human rights promotion and protection:

1. Effect a conscious application of ICESCR standards in the overall development planning and programming, and in policy and program implementation and monitoring by government, including the review of all relevant legislations to ensure its compatibility with the provisions of the ICESCR

2. Prioritize public health concerns, including the mitigation of immigration among health workers that will affect healthcare delivery, and the review of all existing legislation enforcing health and safety at work in order

3. Move for a larger share for education in the national and local budgets for the continuing and fair allocation of resources to improve facilities and services, including the remuneration of teachers, in local areas

4. Address conflicting laws and economic activities in indigenous territories, including the overlapping of ancestral land claims with land titles issued by government, contentions in the issuance of mining permits that conflict with the rights of indigenous peoples to their ancestral lands and domains, and the prevalence of traditional beliefs and practices that undermine respect for human rights principles, especially on gender equality and non-discrimination

5. Improve conditions of poverty in hunger stricken and armed conflict areas, by way of enhanced policies that will sustain economic growth with distributive effects resulting in development and improvement in the quality of life of the poor and marginalized.

6. Address the need for more protection for Filipino migrant workers in other countries, especially the women who are abused by their foreign employers, and the persistent problem of trafficking of women.

7. Undertake a multi-sectoral policy review of the Comprehensive Agrarian Reform Program to highlight corrective interventions addressing violations and deviations in implementation, and its effects on food production and on the lives of concerned farmers and peasants

8. Push for a more effective implementation of the Accessibility Law that require certain buildings, institutions, establishments and public utilities to install facilities and other devices that will assist and enhance the mobility of disabled persons



9. Establish national performance accountability of concerned agencies monitoring the implementation of wage standards and employment conditions, as well as measures in improving the unemployment and underemployment conditions and in continuing the monitoring of the social impact of deviations and violations

10. Minimize, if not eliminate, conflicts in the implementation of laws affecting the exploration, development and utilization of natural resources, particularly mineral resources.

11. Rectify corruption in governmental transactions which results to lack of delivery of public services

12. Address insufficient budget allocation for social investments

It is noteworthy that most of the 2008 Concluding Observations by the UN Committee on Economic, Social, and Cultural Rights affirm the abovementioned inputs to the NHRAP-2.

Conclusion: affirming faithfulness to a human rights-based approach to development

Given its long experience in human rights advocacy and its staunch commitment to see a culture of human rights become integral to the Filipino's way of life, the Philippines is more than ready to face up to the demands of a human rights-based approach to development.

Specifically, we face the challenge foursquare on how we can effectively pursue and mainstream a development framework hinged on human rights obligations, whereby the essential human rights principles, strategies, and plans become integral to the successful implementation of development plans, policies, programs, and activities.

Our confidence in being able to rise to this challenge lies in a mechanism, the Philippines' NHRAP-2, which we strongly feel would push the promotion and protection of human rights farther. As human rights-based approach to development shall be the message, the NHRAP-2 shall be the medium by which the message is institutionalized as an instrument of good government.

This presentation of the Philippine NHRAP before this body must not simply be seen as a manifestation of the country's level of human rights advocacy, but more importantly as an illustration of its openness to learn from other countries' experiences in its human rights advocacy, specifically in the implementation of their respective NHRAPs.

At the same time, we hope to encourage those who are here whose countries are in the process of formulating their own human rights action plans that are similarly hinged upon the concept of development as a measure of human rights protection. And we say to them, "stay the course, for we are doing definitely something right." And for those who have none



yet, we say “the time to do it is now.”

The Philippines’ NHRAP-2 is by far the most important venture our government has carried out with regard to human rights, and it shall live up to becoming the human rights and development policy framework to guide policy makers and implementers, as well as the roles of the human rights constituency in general.

Notwithstanding the challenges and difficulties of the work, the NHRAP-2 will realize an improved environment of national harmony based on an increased accountability of the national and local governments as duty bearers and an empowered civil society that sees itself as rightful claimholders.

Sixty years since the adoption of the Universal Declaration of Human Rights, much has been done by our country to assert its seriousness in human rights advocacy. But as in all other meaningful and relevant undertaking, the promotion and protection of the human rights of the Filipino people will always be a continuous process.

But this we can always assure you, the Philippines will always muster all strength to ensure that more and more Filipinos enjoy social progress and better standards of life in larger and greater freedoms. That much we owe to humankind.

(The author is Executive Director and Undersecretary of the Presidential Human Rights Committee of Philippines)



PEOPLE-ORIENTED DEVELOPMENT AND PROMOTION OF THE HUMAN RIGHTS

Mohammad Shafi Shafieinia
Iran

Development and human rights as known today are new expressions which have been used a lot after World War II and the adoption of the UN Charter and the Human Rights Declaration in the materials and documents related to international law etc.

Although they started and grew in a similar and equal situation, development and human rights were placed parallel to one another and without convergence. However, various challenges not only changed them substantively and expanded them conceptually but also made them two things which are essential to each other with the same destiny.

The obligation of observing the human rights in designing the strategies of development and the necessity of viewing development within human rights policies as well as the need to create convergence and coordination between the two, have all become the concerns of the UN and all the institutions and centers specializing in human rights at international, regional and national levels. These institutions and centers all try to contribute to global peace and security through development's support of the human rights and vice versa as well as through placing the right to development alongside the basic human rights. They also try to obligate governments to change their approaches based on profit-making to the ones which are pro-human rights by codifying and preparing legally binding laws.

It seems that although certain governments such as the US oppose people-oriented development, it will become far-reaching. The day will come when the right to development will not only be recognized as a public duty and obligation at the service of nations but also a shared asset belonging to all mankind. On that day, development will have gone beyond the artificial boundaries of governments to serve humankind. Therefore the authoritative elite of nations have to think of adopting laws on how development can be justly distributed and also of establishing executive bodies and the required sanctions to do so.

People-oriented Development

The issue of development has gained such a lofty and high status in political, social and economic discussions that governments can not turn a blind eye to it in their visions; neither can they leave them out of their medium and long term causes and objectives.



In order to know “people-oriented development” and how it relates to “human rights” or to predict their future together, one needs precise information on the evolution of the concepts of “development” and “human rights” in the contemporary history and especially in the aftermath of World War II.

The historical developments of the concept of “Development”

The United Nations has declared four decades as “development decades.” By reviewing them one realizes that the applied approaches towards developments have been changing from absolutely economic to humanistic.

The First Development Decade:

In 1960s, “economic growth” was emphasized. It was construed that absolute poverty alleviation could be achieved through economic growth. Increase in the GDP was introduced as the best choice.

The Second Development Decade:

In the second development decade i.e. the 70s, “a more balanced distribution of wealth and income” gained significance and it was emphasized in Resolution 2,626 of the UN General Assembly that the “growth in GDP” alone can not play as effective role as it should in removing deprivations. It was said that “the ultimate purpose of development is to provide increasing opportunities to all people for a better life.” Gradually social factors started to be taken into consideration.

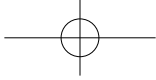
The Third Development Decade:

In this decade the ground was created by institutes and universities to pay attention to the cultural and human dimensions of development. Theories of development gradually became more concerned with expounding these cultural and humanistic aspects.

The Fourth Development Decade:

Human development found a new form after entering the fourth decade of development. In the new concept, humans are the ultimate purpose of Development and human development is defined as a process which makes it possible to freely choose one’s job, religion, thoughts, decide one’s own fate, enjoy long lives, good health and sanitation, tranquility, peace and quiet, security and more important than all, education for all.

Therefore, the development plans of countries are not just limited to economic movements. Now it is of utmost importance to attach value to “human resources” and each individual by reinforcing and actualizing people’s potential and innate abilities. The emphasis placed on “expanding people’s choices” is actually a positive approach regarding the “better life” which results in the dynamic understanding of the trend of human development. The concept of human development is expanded beyond just economic concerns because the patterns of economic growth are generally measured by the increase in the per capita income rather than by the improvement in the quality and the level of



living. The message of human development is to get developed “for and by” the people. Such a goal is not materialized unless it is made possible for the capabilities of the people of the society to flourish.

The proponents of human development postulate that the wealthiest countries are not the ones whose people live the best lives. Richard Jolly the special advisor to United Nations Development Program (UNDP) has said that “there is no clear link between economic growth and human development.” The number of the marginalized people living in some rich countries is indicative of the fact that severe inequalities exist in them. Ms. Fukuda-Parr said that “market efficiency does not give you equality, environment stability or human security” she also said that “human activities flourish in places where there are human supervisions, whereas the current model for development leaves such little time for this. It is a matter of regret that an economic theory ignores half of all the human activities because it can’t measure them with numbers and figures.”

Development and Sustainable Development

According to the definition by the “Brant Land” commission, sustainable development may be considered as meeting the needs of the present generation in a way that the abilities of the next generation in meeting its needs are not ruined. As a matter of fact, sustainable development is a concept that shows the responsibility of the present and next generations. UN refers to development as: a process which unites the efforts of people and the government for improving the economic, social and cultural conditions of a region; a process which involves the people of a region in the life of a nation and empowers them the best way possible to participate in national prosperity and progress.

Attention paid to the “human aspects of development” has made the UN adopt a new method in measuring development called the “human development indicator.”

The purpose behind people-oriented development

As it was mentioned, development, although it has been in existence for a short time, has seen manifold changes conceptually. As a matter of fact, the case of development is open and new meanings and aspects are yet to come and affect it.

People-oriented development seems to be a different interpretation of usual and ordinary words and expressions which need to be articulated.

One can have different impressions of people-oriented development based on the four development decades mentioned above:

A: people-oriented development has nothing to do with the first concept of development offered in the first development decade.

B: people-oriented development equals what was raised in the second development



decade i.e. a more balanced distribution of wealth and income and reduction of inequalities.

C: people-oriented development equals balanced development and being mindful of the cultural aspects of development.

D: people-oriented development is all about humans and the quality of their lives. Nowadays, such a definition is more acceptable compared to the other ones.

It seems that people-oriented development encompasses all these definitions and meanings but pursues a higher purpose. If we follow the trends more closely we realize that economic conditions and the removal of obstructions to economic development as well as the change in the economic tools and capital are still pivotal in the concept of development; the ultimate goal is still a “better life” with the emphasis on welfare. However, what has been missing and has been the root cause of the development problems in the past and the present and has emerged in the various stages of development is the status of people in their societies minus their economic role and effectiveness.

Although no one can deny the importance of economics and optimization of economic tools which have a high status within comprehensive development plans, the title of people-oriented development itself clearly shows that people and humans must be the basis of planning and policy making in any kind of development.

The major difference between people-oriented development and the four development decades is that the UN has made conceptual changes in the aforesaid definitions of economy as well as in analyzing the results of economy. However, the shadow of an economy-based approach is still cast over the development definitions, studies and debates. This limits the scope of the non-economic initiatives and proposals and reduces the cooperation of governments. People-oriented development claims that “humans” must be made the basis of development planning; therefore first we need to present a proper understanding of humans and then take the next steps. In other words we have to go from “humans” to “economies” and not the other way round i.e. from economy and its related challenges to humans. This is where this new approach differs from what was championed in those four development decades mentioned above, and therefore we may call this the “Fifth Development Decade.”

The above definition of people-oriented development is actually another interpretation of human rights. They are actually two sides of the same coin.

Development and Human Rights

In order to talk about the concept of people-oriented development with an approach that is rights-oriented, one has to pay attention to the question “Is there a relationship between development and human rights and, if so, at what level and why?” In this line even a brief familiarity with the objectives and principles of human rights can help us reach the relationship between the development and human rights.



In its preamble, the UN charter refers to basic human rights as unchangeable and as the basis for human rights. According to paragraph 3 of article 1, paragraph 1 of article 13, articles 55 & 56, paragraph 2 of article 62, article 68 and paragraph 3 of article 76 of UN Charter, all the member countries are duty-bound to cooperate in line with strengthening respect for human rights and basic freedoms without any discrimination based on gender, language and religion.

In its first article, “The Universal Declaration of Human Rights” refers to two basic principles to define human rights: “freedom” and “dignity,” because “human beings are born free and equal in dignity and rights.”

All the preambles of other complementary documents or conventions as well as the regional human rights statements emphasize the innate and inherent dignity and worth of humans and there is always talk of freedoms and equal dignity and integrity in either their introductory notes or in their articles. The conclusion is that “freedom” and “human dignity” as two fundamental principles constitute the foundations of human rights.

It can even be said that human dignity is the most fundamental and basic principle and is actually the mother of all other human rights and principles for it is superior to and above other basic freedoms.

Considering the principles of human rights and the emphasis placed by the UN Charter and international human rights on them, it took three decades for the declaration on the right to development to be adopted by the UN General Assembly. In line with fulfillment of the right to development, the UN General Assembly decided in its session in 1990 to set the discussion of the relationship between development and the entitlement of any individual to economic, social, cultural, political and civil rights as one of its objectives for the World Conference on Human Rights in 1993.

At the conference and after lengthy discussions and exchanges of views, ultimately the final declaration and action program stated that: “Actors in the field of development cooperation should bear in mind the mutually reinforcing interrelationship between development, democracy and human rights.”

Moreover this conference reiterated: “While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the violation of internationally recognized human rights.”

This approach with the expansion of human development concept evolved in the 90’s and in the present moving towards supporting human rights. Simultaneous promotion of human development level and human rights will result in the development of abilities and their support of basic rights and freedoms.

In fact the rights-oriented solution is a bond between human development and human rights. Human rights grant moral legitimacy to human development objectives and



place them on the path to social justice. This solution guarantees commitments for more sustainable, rational, and deeper development. The common core of the rights-oriented solution consists of the international norms, values and conventions of human rights which can be found in the treasure trove of human rights agreements and documents.

Within the framework of the rights-oriented solution for development it is not optional to have good planning and it is compulsory to have development based on human rights.

Development of rights or a moral issue

Is the right to development a binding and legal right or a moral matter? Perhaps the reason behind developed countries' opposing to it is hidden in the answer to the very question. The United States claims that the right to development is not a part of human rights because it is not imperative and binding and also is outside international laws. On the other hand, UNCTAD reasons that development of advanced countries has come at the cost of the un-development of third world countries therefore a percentage of the income of advanced countries should go to developing countries. Hence, such countries have to live up to their responsibilities to developing countries.

Identification of the right to development has been mostly done through UN documents. Jurists have not seriously supported the right to development as a part of international laws. According to Professor A. Pellet, the right to development is still considered as a status and it will not be identified as a full-scale, concrete right until it gains enough stability as a personal right.

Generally speaking, the formation of legal principles and norms through the resolutions of the General Assembly and other organs and specialized organs and agencies of the UN is a gradual process. The existing resolutions related to the right to development are more treated like Soft Laws and under current circumstances no one may verify that there are international laws in place for the right to development. However one can testify to the formation of a two-stage process of the regulations of international laws for the right to development.

The common destiny of human rights and people-oriented development

The legal history of development is so much similar to that of human rights. Therefore there is no doubt that the right to development like human rights will attract the attention of the whole world. However, the basic question is, whether human rights with their universal acceptability as well as their instruments and sanctions are able to achieve their goals or they will be confined to and isolated in hope-inspiring conventions and documents? There is no doubt that what has been done regarding human rights and what has been achieved so far, but for human rights efforts must continue. Nevertheless, we have to accept the bitter



fact that the UN and other responsible bodies have not been able to play the role expected or to present a solid and reliable framework for safeguarding human rights and the right to development; a framework that would force governments to observe human rights and discourage them from abusing them.

In my article many reasons for the weakness of the documents of the human rights and lack of success in getting implemented have been dissected in details. The article concludes that the principles and basics of human rights and the right to people-oriented development conventions and related documents, which constitute and organize the structural framework of human rights and their demands and ideals, are seriously lacking. The UN, international organizations and assemblies along with the public opinion of the world must be brave and supportive enough to address the human dignity properly.

The future of people-oriented development

The status quo of the concept of people-oriented development in the international laws of development is good and it is generally welcomed and accepted. However, it is not as strong as other binding laws and lacks the required sanctions to guarantee its implementation.

It seems that in the near future the people-oriented development and rights-oriented development, fundamental rights will attain their true status in basic human rights law and international law and the governments whether in developed or developing countries will respect them, because nations will no longer tolerate the severe rifts amongst countries. On the other hand, the UN and the human rights groups and societies that are determined to contribute to global peace and security will put the governments in developed countries under pressure to do so.

Most probably the realistic and prudent politicians in the developed world will be of the opinion that the continuation of this is not in favor of their power, governance and national security and will force the hegemonistic rulers to reinstitute the a portion of the rights of other nations at the level of the UN or public opinion of the world.

People-oriented development and the Constitution of I.R. Iran

The constitution of the Islamic Republic of Iran firmly believes in people-oriented development and states its stance on it in a very clear way in its preamble and articles. The constitution strives for the freedom from autocratic system and leaves the fate of the people to themselves because the purpose of ruling is to help people grow and prosper in their moving towards the divine establishment so that the ground for the emergence and flourishing of the godly aspects of human beings will be prepared. This can not be materialized unless all the elements in the society participate actively and wholeheartedly



in the changes of their society going through. The Iranian constitution provides the ground for such a movement in all the stages of political and decisive decision makings for all the individuals in the society so they tread the path to human perfection and get involved in the promotion and leadership.

In Islam economy is a tool to be used for achieving the goal. The economic plan of Islam tries to provide the proper ground for the actualization of all the different human creativities. That is why the provision of equal and appropriate facilities and job creation for all people and meeting their basic needs to perpetuate their progress towards perfection are entrusted to the Islamic ruling.

In its various articles the Iranian constitution reiterates the rights of the people and their peerless role in the ruling and human development and considers people's votes as the criterion for the power transferring and appointment of new governments.

In articles two and three, the constitution articulates the pillars of the establishment and mentions the duties of the government towards the people in 16 items, some of which are as follows:

In order to attain the objectives specified in Article 2, the government of the Islamic Republic of Iran has the duty of directing all its resources to the following goals:

- ensuring political and social freedoms within the framework of the law;
- the participation of the entire people in determining their political, economic, social, and cultural destiny;
- the abolition of all forms of undesirable discrimination and the provision of equitable opportunities for all, in both the material and intellectual spheres;
- the planning of a correct and just economic system, in accordance with Islamic criteria in order to create welfare, eliminate poverty, and abolish all forms of deprivation with respect to food, housing, work, health care, and the provision of social insurance for all;
- securing the all rights of all citizens, both women and men, and providing legal protection for all, as well as the equality of-all before the law;
- the expansion and strengthening of Islamic brotherhood and public cooperation among all the people;

It states in articles seven, eight and nine:

In the Islamic Republic of Iran, the affairs of the country must be administered on the basis of public opinion expressed by the means of elections, consultative bodies—such as the Islamic Consultative Assembly, the Provincial Councils, and the City, Region, District, and Village Councils and the likes of them—are the decision-making and administrative organs of the country. *al-'amr bilma'ruf wa al-nahy'an al-munkar* is a collective and reciprocal duty that must be fulfilled by the people with respect to one another, by the government with respect to the people, and by the people with respect to the government.



The conditions, limits, and nature of this duty will be specified by law. No individual, group, or authority, has the right to infringe even in the slightest way upon the political, cultural, economic, and military independence or the territorial integrity of Iran under the pretext of exercising freedom. Similarly, no authority has the right to abrogate legitimate freedoms, not even by enacting laws and regulations for that purpose, under the pretext of preserving the independence and territorial integrity of the country.

Also in its chapter 3 and in articles 22, 20, 19, 24, 23, 28, 37, 36, 35, 34, and 33 the constitution emphasizes that the dignity, life, property, rights, residence, and occupation of the individual are inviolate, that the investigation of individuals' beliefs is forbidden, that publications and the press have freedom of expression, and that innocence is to be presumed, etc.

It is notified that what the constitution of the Islamic Republic of Iran, the late Imam Khomeini (RA) and Ayatollah Khamenei, the current leader of the Islamic of Iran, were seeking for were not realized as they were desired due to different reasons which are clear for all; like the 8 year imposed war, all out sanctions by the US and its allies, the damages left from the tyranny of Pahlavi dynasty,... This occurs while we are now witnessing Iranian progress in various fields and the Islamic Republic of Iran is trying to achieve as much as in the shortest possible period. Within the same context the dialogue of the forth decade of the Islamic Revolution has been named as the dialogue of "progress and justice."

In the Islamic Republic of Iran 20 year vision plan (until 1404 (2025)) which was communicated by the Great leader of the Islamic Republic of Iran on November 4th, 2003 we read the following:

The prospect of such features for the Iranian horizon will be:

—Development in accordance with the present needs of cultural, geographical and historic requirements and based on ethical principles and Islamic, national and revolutionary values, with emphasis on religious democracy, social justice, legitimate freedoms, dignity and human rights and enjoying social and judicial security;

—With advanced knowledge, capable of producing science and technology and the greatest share of the human resources and social capital in national production;

—Secure, independent with powerful government, and strong unity between people and the government;

Enjoying the health welfare, food security, social security, equal opportunities, proper distribution of income and strong family institution away from poverty, corruption, discrimination and benefiting from favorable environment;

—Stressing cooperation in economy, science and technology with the South West Asia (including Central Asia, Caucasus, Middle East and the neighboring countries) with emphasis on software movement and production of knowledge, speedy and continuous



economic growth, with the relative raise in the per capita income and removal of unemployment;

—Conducting constructive and effective interaction with the world based on the principles of dignity, wisdom and expediency.

Conclusion

The rights-oriented strategy is considered as a school of thought seeking for all out realization of the human dignity. In short and based upon our previous experiences we can draw the following conclusions:

1- The people-oriented development is still maturing and we may clarify this process and realize its implementation in the best manner by exchanging our experiences.

2- The people-oriented development does not ensure realization of the human rights but it is seeking the realization.

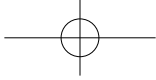
3- The rights-oriented and the human-oriented developments require improvement of the existing mechanisms and promotion of the legal frameworks.

4- In the international law for development the right to development is considered as a fundamental human right.

5- The UN resolutions view the development as a right based on which all developed states shall support the developing ones.

6- Within the present instruments and documents the subject of development has been attended to from every aspect though the most emphasis has been put on the economic and social ones.

Today we are witnessing that subjects like the right to development, human-oriented development and inter-dependent of development and the human right are given high significance within the international bodies and in the political and legal spheres, but the important point which sometimes has been disregarded or overlooked is that whether the people-oriented development can be realized by just provision of education opportunities, the fundamental freedoms and etc or its realization also requires all governments and nations to believe that all human beings, beyond all boundaries, are within a single human race and belong to a certain population which is considered as a single family unit. They need to believe that all the mundane assets and resources have been created for human beings and they are the sole owners and users of these assets and resources and every one has its own equal share out of this divine blessing and he/she shall necessarily enjoy his/her share whether he/she may not be able to have it by himself/herself. Though qualification of individuals plays very important role in using the divine blessings but all of them shall enjoy their equal and common rights and share to a certain level. And now the power and wealth owners are given a new assignment for observance of the right to development in addition to



those of the fundamental human rights.

If we believe in the innate dignity and equality of all human beings and their freedoms, we shall extend this idea to other areas and levels. Otherwise due to the pressures and requirements we will have to witness a gradual and step by step setback which will definitely be accompanied by heavy damages against humanity including expansion of terrorism and global insecurity. All this depends upon our current international approach.

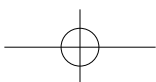
Surely we will witness a day that either due to the beliefs or requirements human beings will have to accept the reality that all human beings belong to a single family and before any development taken place in the past they were and are members of a single inter-related community.

Basically, the real and proper development namely the people-oriented development is an all-around and parallel development. The development shall give priority to all-around development of human beings as social members and individuals, and shall secondly consider parallel increase and comprehensive advancement. All-around development includes such dimensions as the economic, political, social, cultural, ethical and spiritual aspects, as well as different aspects of the individual and collective life, excluding these aspects that may expose our desired development to a serious threat. Even within the software development sphere, if only a single or certain number of these human aspects are prioritized, then that single aspect or those certain aspects may fall into difficulty due to overgrowing. This phenomenon may lead to the consequence that the illness of every individual poses a threat to his/her life. Therefore, the Islamic Republic of Iran emphasized in its early documents that development shall be human-oriented, parallel and all-around. All people shall observe this reality and take it into consideration in their periodical planning.

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POVERTY ELIMINATION AND HUMAN RIGHTS PROTECTION





ELIMINATION OF POVERTY: AN ESSENTIAL HUMAN RIGHT

Li Yunlong
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Poverty means the shortage of materials and the social consequences caused by such shortage. "Poverty usually means a hard material life, that is, the living standard of a person or a family fails to comply with the minimum standard acceptable to the society. They lack certain necessary life necessities and services, and lead a hard life."¹ Poverty may be divided into the absolute poverty and relative poverty. By absolute poverty, it means the inability to meet the minimum physiological needs of humans, the failure to secure the basic life and the incapacity to maintain the normal simple reproduction. Relative poverty means that a person or a family basically resolves the issue of subsistence, can maintain the simple reproduction, but keeps a living level below the standard generally acknowledged in the society. The population with absolute poverty are mainly distributed in the developing countries. The 2008 World Bank report shows that in 2005, 1.4 billion people in the developing countries lived on less than USD1.25 per day.² The population with relative poverty exist in both developing and developed countries. According to the poverty line determined by the American government, the proportion of the impoverished population in America is usually 10%. In 1999, the impoverished population was 35.80 million, 13.3% of the total population.³ The impoverished population represented 12.5% of America's total population in 2004.⁴ The poverty rate was likely to reach 12.7% in 2008.⁵ The Federal Statistics Office of Germany data show a 14.9% poverty rate in the country in 2009.⁶ The

1 Research reports published by the Project Team for the Research on the Poverty of Chinese Urban Residents and the Project Team for the Standard of China for the Poverty of Rural Residents, 1990.

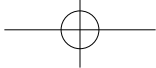
2 World Bank New Report Shows More-than-expected Impoverished Population in the World, <http://finance.sina.com.cn/world/ggjj/20080828/13595247339.shtml>, August 28, 2008.

3 The Information Office of the State Council: The Human Rights Record of the United States in 1999, February 27, 2000.

4 The Information Office of the State Council: The Human Rights Record of the United States in 2004, March 3, 2005.

5 Economic Crisis Increases the American Impoverished Population by 1.50 Million, http://www.sinovision.net/news.php?act=details&news_id=9897, August 20, 2009.

6 Rate of Impoverished Population in Germany is 14.3%, <http://de.mofcom.gov.cn/aarticle/jmxw/200905/20090506262496.html>, May 20, 2009.



poverty rate in France stands at 13.4% in 2009.¹

Poverty, whether absolute or relative, is a deprivation of human rights. Elimination of poverty is a basic requirement of human rights. Right to life is a basic human right. Absolute poverty harms the physiological activities of humans, shortens the life span, and thus constitutes a direct infringement of the right to life. The *International Covenant on Economic, Social and Cultural Rights* of the United Nations further confirms every human has the basic right to be exempted from hunger. To eliminate all the infringements on the right of humans to life, absolute poverty must be eradicated. Similarly, relative poverty also violates the human rights. The *Universal Declaration of Human Rights* declares that every human shall have the right to enjoy the living standard required to maintain the health and welfare of himself and his family members, including foods, clothing, housing, medical service and necessary social services. The *International Covenant on Economic, Social and Cultural Rights* expressly specifies that every human shall be entitled to obtain a certain living standard for himself and family, including sufficient foods, clothing and housing, and keep improving the living conditions. Obviously, the human rights of the impoverished population of a society will be violated, even if their basic subsistence is no problem. This is because they lead a life below the appropriate level acknowledged by the society. The human rights just aim to make everybody win the dignity and value as a human. The impoverished living status deprives humans of due value. Poverty is a deprivation of the most basic human right and an insult against the human dignity. Poverty divests the basic rights of humans, and makes people unable to satisfy the basic demand as humans. Eliminating poverty and making everybody accessible to foods, clothing, housing and schooling should represent the priority of the human rights issue before every country throughout the world.

Human rights form an interrelated integrity. The *Vienna Declaration and Programme of Action* adopted by the World Conference on Human Rights in 1993 specifies that all the human rights are universal, inseparable, interdependent and interrelated. Poverty prevents people from enjoying other human rights. Under the poverty state, it is totally impossible to meaningfully discuss the economic, social and cultural rights. If the basic subsistence can't be maintained, how will the right be ensured to work, education, medical service and advanced culture and art? Poverty will also prevent the realization of the political rights of citizens. Under the poverty state, people have no way to effectively realize the free speech, because they lack the practical means to perform such freedom. Compared to the rich, the voice of the poor is very hard to be conveyed to the society. The way of the poor to participate in politics is also paved with difficulties. Due to the lack of enough resources, the poor are very hard to influence the political decision-making, and safeguard their interests

¹ Impoverished Population Account for 13.4% of France's Total Population, <http://finance.sina.com.cn/roll/20090724/18212970268.shtml>, July 24, 2009.



in the political competition. Due to the lack of education, the poor will face more difficulties in participating in the country administration. Even in a one-person-one-vote election, the poor have not enough motives to participate in the voting, and the poor present a lower percentage of voter turnout. Similarly, the universal deficiency of other human rights also worsens poverty. If the right to work is not guaranteed, people will definitely get caught in poverty. If the right to education is not ensured, the possibility that a person becomes the poor will be greatly increased. Without the right of political participation and democratic election, people will be unable to change the political and social structure that gives rise to poverty, and poverty will be regularized and long standing. Poverty is closely connected with other human rights, forming a chain of rings that circle each other. Louise Arbour, the former United Nations High Commissioner for Human Rights, said poverty is often the cause and consequence of the human rights violation phenomenon. Poverty restricts the development of almost all the human rights. All the human rights are vital to the poor, and these rights include the right to speech and the right to vote, and the right to foods, clothing, housing and travel, the right to work and the right to medical service and health. This is because abject poverty is closely related to exclusion, discrimination, unequal access to resources and opportunities as well as the social and cultural insult phenomenon. Deprivation of human rights adds difficulty to the poor in joining the labor market and obtaining the basic services. This, in turn, inhibits the ability of the poor to take part in the public life, intervene in the policy that influences them and strive to put right the unfair phenomenon.¹

If poverty is not eradicated, other human rights cannot be realized. By the same token, if other human rights are not realized, poverty will be unable to be eliminated. For example, poverty and political freedom are the things that are mutually the cause and the effect and reinforce each other. If poverty is not eliminated, political freedom is very hard to come into reality. In an impoverished underdeveloped country, political freedom and democracy will be luxuries. Similarly, if political freedom and democracy are not made happen, the task to eliminate poverty will be very difficult to be fulfilled. This has just formed a vicious circle and a strange circle that is not easy to step out of. The most ideal method is to promote various human rights at the same pace and seek their simultaneous development. However, either historically or practically, the development of various human rights is always unbalanced. Some countries have successfully fulfilled the modernization and developed the human rights relatively well. Their development roadmap is to first eliminate the poverty issue through the social policies and then promote other human rights step by step after tremendous social wealth has been created through industrialization. The major western countries such as Britain, France and America did not realize the one-person-

¹ Louise Arbour: Why Is Poverty A Human Rights Issue? <http://www.cetin.net.cn/cetin2/servlet/cetin/action/HtmlDocumentAction?baseid=1&docno=294639>.



one-vote general election until the early 20th century, even though industrialization was realized a long time earlier. In today's world, some poor underdeveloped countries declare to provide various economic, social and political rights in the constitution and government communiqués, but these rights can only stay on the paper and can't come true. Those countries found with the serious infringement on human rights are mostly underdeveloped poor countries. Violation of human rights is directly linked to poverty. The experience of the Asian emerging industrialized countries that quickly realized industrialization and basically eliminated poverty tells us that elimination of poverty can propel the universal advance of human rights, promote democracy and expand freedom. Thus, to promote the development of human rights with practical effect and break the vicious circle that poverty and absence of political freedom strength each other, elimination of poverty should constitute the top priority. Eliminating poverty serves as the foundation for further realizing other human rights. The poor are neither able to enjoy the economic and social rights or capable to realize the political rights of citizens. Elimination of poverty is the starting point for the universal development of human rights, and also the effective resort to the universal realization of human rights. In this sense, elimination of poverty should become a top priority for the world human rights. For the developing countries, eliminating poverty, first of all, means eradicating the absolute poverty and satisfying the basic subsistence needs of the people. This is the foundation for the development of other human rights. The most important human right issue for the developing countries is to feed the 1 billion starved population, to accommodate the homeless people and provide a dignitary life for the poor who live on less than one dollar every day. In this sense, eliminating poverty is the essential human right in the developing countries. As far as the developed countries are concerned, eliminating poverty means reducing the population with relative poverty and cutting down the impoverishment rate while maintaining the basic subsistence of the economically vulnerable population through the social policies. Therefore, eliminating poverty still remains a basic human right in the developed countries.

The international community has paid high attention to eliminating poverty, just because of the critical role played by it in the development of human rights. To draw the attention of the international community to the poverty issue, mobilize various countries to take concrete poverty reduction actions and publicize and promote the work of poverty elimination throughout the world, the 47th United Nations General Assembly decided on December 22, 1992 to make every October 17 the International Day for the Eradication of Poverty. The event has taken place for 17 times since 1993. In March, 1995, the World Summit for Social Development decided to establish 1996 as the International Year for the Eradication of Poverty, and in December of the same year, the United Nations General Assembly built the first International Ten Years for the Eradication of Poverty, which



ranged from 1997 to 2006. At the United Nations Millennium Summit in September, 2000, the leaders of various countries in the world identified the clearly-defined objectives and indicators, known as the Millennium Development Goals, with regard to the issues of the eradication of poverty, hunger, disease and illiteracy. The goals specifies that the proportion of the population living on less than one dollar every day will be cut down by half by 2015, and the proportion of the population threatened with hunger will also be reduced by half.¹ Specifically speaking, the population living on less than one dollar will be slashed from 1.25 billion in 1990 to below 625 million in 2015. Since the early 1990s, the world has made some progress in the eradication of hunger, and the proportion of the starved people had declined from 20% in 1990-1992 to 16% in 2004-2006. From 1990 to 2005, the population living on less than one dollar dropped from 1.8 billion to 1.4 billion. However, the progress of poverty elimination is unbalanced from place to place in the world. The fall of the global impoverished population has mainly come from the sharp reduction of the impoverishment rate in the East Asian countries. Other regions have been rather slow in this regard. The extremely impoverished population in Sub-Saharan Africa gained 100 million in 2005, while the impoverishment rate still stays above 50%. At the same time, the economic crisis that broke out in 2008 will impose more difficulties to the global efforts to eradicate poverty, which may mark time and even retrogress. In 2009, the population living in the extreme poverty is estimated to grow 55 million to 90 million compared to that before the economic crisis.²

Over the thirty years since the reform and opening up, China has witnessed the steady, fast economic growth with the remarkable improvement of the people's living standard. China has taken the lead across the world in eliminating poverty. The rural population with absolute poverty in China dived to 14.79 million in 2007 from 250 million in 1978, while the impoverishment rate in the same period plummeted to 1.6% from 30.7%. According to the World Bank assessment, the impoverished population reduced in China accounts for 55% of the world's total and 75% of the total in the developing countries. China has ahead of schedule realized the goals under the Millennium Development Goals of cutting the impoverished population by half, and laid a solid foundation for the realization of the millennium development objective.³

Based on the swift economic growth and the sharp reduction of the impoverished population, China has achieved the universal progress of the human rights cause. First,

1 United Nations Millennium Declaration, <http://www.un.org/chinese/aboutun/prinorgs/ga/millennium/A-55-L2.htm>.

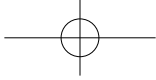
2 Millennium Development Objective Report: The Economic and Grains Crises Influence the Progress Already Made. <http://www.un.org/chinese/News/fullstorynews.asp?newsID=11887>, July 6, 2009.

3 The Address of Ambassador Li Baodong at the 2008 Social Form of the Human Rights Council under the Topic: Role and Responsibility of Countries in Eliminating Poverty, <http://www.fmprc.gov.cn/ce/cegv/chn/xnyfgk/t510976.htm>, September 3, 2008.



the people's living standard has greatly improved, and realized two historic leaps from poverty to basic subsistence and further from basic subsistence to being fairly well-off. From 1978 to 2007, the per capita net income of Chinese farmers jumped from RMB134 to RMB 4,140. This represents a growth of 6.3 times or an annual average growth of 7.1% in terms of the constant price. Second, the right of the laborers to work has been realized fairly well. The Chinese government has made every possible effort to create jobs, expand the employment scale, and control the unemployment rate to the extent as applicable to the society. In 2007, the job-taking population hit 769.90 million, an increase of 368.38 million over 1978, or an annual average growth of 12.70 million. Over the past three decades, a total of 370 million jobs have been created, while the urban registered unemployment rate has remained at a relatively low level. Third, the right of Chinese citizens to education has been solidly secured and realized. China has implemented the nine-year compulsory education in an overall manner. In 2008, the net enrollment rate of primary schools nationwide arrived at 99.5%, that of junior middle schools reached 98.5%, and the illiteracy rate of the young and middle-aged population fell to 3.58%. Fourth, the right of Chinese people to medical services has been ensured, and the health level of the people has dramatically risen. China's per capita life expectancy reaches 73 years, an increase of almost 5 years over 1978, the infant mortality rate declines 56% to 15.3%, and the maternity mortality rate is 36.6/100,000, a drop of 60%. Last, China has achieved the evident progress in the construction of democratic politics. To secure the right of the citizens to be informed, the Chinese government has established and perfected the information disclosure mechanism. To ensure the right of the citizens to participation, China has continuously improved the democratic system at the grassroots level. By the yearend of 2007, there had been more than 610,000 villagers' committees and community residents' committees across the country. The absolute majority of the villages and cities across the nation have held more than 6 re-elections of the villagers' (residents') committees.

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POVERTY ERADICATION AND HUMAN RIGHTS SAFEGUARDS: CHINA'S PROGRESS AND REFLECTIONS

Zhan Zhongle & Su Yu
China

During the process of human rights protection worldwide, poverty is increasingly attracting attentions from the international community. Whether the right of getting out of poverty can be regarded as a basic human right is still undetermined¹, at least it has become an unavoidable focus in the human rights area. In the article, I plan to discuss the significance of poverty eradication to human rights protection, review the efforts and achievements China has made in this regard and to analyse, examine and introspect the existing problems.

I. Poverty eradication: an important undertaking for human rights protection

Poverty eradication is an important undertaking in the area of human rights protection, which has already been recognized by the world community. However, important divergences still exist regarding the connotation of “poverty.” Some scholars point out that though we do not want to admit, all the legal studies on poverty make clear at the very beginning that “there is no legal definition of poverty” (though we can define poverty line)². Pierre sane pointed out straight the essence of the issue: When we can define poverty in relative dimension, poverty is uncertain and unsolvable; the well-known standards for decency keep changing³. Except for the definition of abject poverty which may threat people's basic existence, there are important divergences on the definition of “relative poverty.” In general, we often use “poverty line” to roughly measure poverty. Currently, the World Bank recommends to use absolute poverty line with a benchmark of \$1.25 to measure purchasing

1 There is no international convention to announce the right of getting out of poverty to be the basic human rights so far. At the 62nd Session of the Commission of Human Rights under the UN Economic and Social Council, UN independent expert Arjun Sengupta did not list poverty elimination into the human rights obligations in his report and only required the world community to recognize poverty elimination as a human rights obligation. Source: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/113/45/PDF/G0611345.pdf?OpenElement>, August 15, 2009. Meanwhile, scholars have different views on elimination of poverty and elimination of abject poverty (extreme poverty, absolute poverty). It is a common sense in human rights field that these two categories cannot be treated equally.

2 Poverty: Invasion to Human Rights, International Social Science Journal (Chinese Version), Issue 2, 2005, P.141.

3 Pierre sane: Poverty: New Area for Human Rights Struggle, International Social Science Journal, Issue 2, 2005, P.85-86.



power parities (PPP) of daily income (\$1 was once used for the benchmark and is still in use in some places) and the median poverty line of \$2.¹

Before poverty eradication was officially set as an important goal of human rights protection, many international covenants and treaties established similar goals. Article 25 of the *Universal Declaration of Human Rights* notes, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.” Section 1 of Article 11 of the *International Covenant on Economic, Social and Cultural Rights* stipulates: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.” Section 2 recognizes the fundamental right of everyone to be free from hunger. The recognition of all these rights and goals lays a basis for poverty eradication to have an importation position in the undertaking of human rights prevention.

Starting from mid-1960s, the world community clearly put forward actions focusing on poverty eradication in human rights area. The first international instrument that recognizes poverty eradication as the common goal for the world community formulated by the United Nations is *Declaration on Social Progress and Development* issued in 1969. Article 10 (c) of Part II “Objective” of the Declaration reads: “The elimination of poverty; the assurance of a steady improvement in levels of living and of a just and equitable distribution of income.” *Vienna Declaration and Program of Action* issued in 1993 mentions the goals of eliminating extreme poverty (absolute poverty) or eliminating poverty. Point 14 of Part 1 of the Declaration notes: “The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community.” Point 25 reads: “The World Conference on Human Rights affirms that extreme poverty and social exclusion constitute a violation of human dignity. It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.” Point 30 clarifies “poverty” as the serious obstacles to the full enjoyment of all human rights. *United Nations Millennium*

¹ For poverty, the World Bank once had a well-know definition: Poverty includes not only the low income and insufficient human development, but also the people’s vulnerability to the outside impact, including the lack of voices and rights and social exclusion. Owing to the complicity and abstruseness of various accesses to detailed concepts and definitions of poverty and because of the limitation of my presentation, I will not fully unfold the issue and will only explain the recent poverty standards.



Declaration has a special chapter for “Development and Poverty Eradication,” which shows the determination of eradicating extreme poverty and poverty under the concept of right to development. UNDP also deliberates the issue of poverty elimination and alleviation in its annual Human Development Report for many years.

Though poverty eradication has become the key undertaking of human rights protection, the relationship between poverty eradication and human rights protection is not fully recognized by the international community. The most important example is, while analyzing the relationship between poverty eradication and human rights protection, scholars often start from individual aspects while pay less attention to developing countries’ roles as rights protection providers. Under the circumstance, it is necessary to deeply review the relationship between poverty eradication and human rights protection.

II. Relationship between poverty eradication and human rights protection

Poverty eradication and human rights protection interact with each other with important significance. On the one hand, poverty eradication can help improve human rights protection. In developing countries, human rights protection usually depends on large amount of active government actions. Poverty eradication means results in the two aspects: the first is to improve the viability and living situations of individuals, including protection their rights to life and health and other important rights and interests (especially under the circumstance of abject poverty eradication); second, if related people can shake off poverty and maintain certain development, the government revenue will be increased, or at least the fiscal burden can be alleviated, which can enable the government to allocate more resources to implement other undertakings of human rights protection. Thus, poverty eradication can not only directly protect related human rights, but also promote human rights protection in other areas. It links with the “right to development” in the second aspect and they together constitute the rights and interests urgently claimed by the developing countries.

The importance in this aspect should be further elucidated as it is involved in the important divergence of human rights conception in the world community. Some scholars pointed out that “developed countries neglect the urgent issues of developing countries, prate about the human rights they value to poor countries and require developing countries with their human rights standards.....Owing to the historical reasons, human rights in developing countries mean first the right to subsistence, that is, eradicating poverty, and make it the basis for further development¹.” “For most developing countries worldwide..... rights to subsistence and development are the most basic and important human rights people need urgently. Without the two rights, they cannot maintain other rights.....Only when the

¹ Qian Jianxing: “Human Rights Outlook of Developing Countries—Combating Poverty and Sustainable Development,” *International Forum*, Issue 3, 2006, P.11-12.



rights to subsistence and development of the people across the world are protected can the human rights undertaking in the world be really developed. Fighting against poverty is the fundamental channel to resolve the rights to subsistence and development¹.” Actually, the rights to subsistence and development are invoked to be the human rights pivot of poverty eradication undertaking while poverty eradication often targets specific institutional framework and the requirement of institutional goal arrangements (usually referring to the institutional claims of seeking economic development). This is the in-depth implication of the claims of giving priority to the goal of poverty eradication. Some scholars pointed out: “To shake off poverty, we should give priority to development,” and quoted UNDP reports, saying: “decent living standards, sufficient nutrition and medical care and other social and economic progress are not simply the goals of development. They are the human rights closely linked with people’s freedom and dignity. But these rights are not endowed by any publications. They need a series of social arrangements such as rules, institutions, laws and workable economic environment so as to ensure the enjoyment of these rights².” This argument points out the eradication scope of poverty eradication as a human rights protection undertaking in the institutional and even strategic arrangement, and affirms the important position of poverty eradication with the rights outlook similar to institutional guarantee³.

Individual living and development crisis is what developing countries worrying about very much. The crisis, when expanded to the overall layer, can be developed into economic insufficiency and social turmoil (“Poverty is not only a disaster for the poor, but also the in-depth reason of ethnic conflicts, terrorism, social turmoil and environmental deterioration”⁴). It deeply influences a country’s stability, healthy development and the government’s capability of providing other guarantees in general. For developed countries, poverty eradication means to simply assist a few people with deficient supply; however, for developing countries, poverty eradication means not only to provide supports to a large amount of people in deficiency, but also the efforts in developing production and increasing economic income. Uptight public fund is the bottleneck of the entire human rights undertaking in some occasions. In this regard, economic value weightily bears many important values in other areas. As an undertaking that can improve social and economic

1 Fu Boyan, Luo Ying: “Fighting Against Poverty: the Outstanding Contribution of the New China to the World Community,” *Social Sciences of Jiangxi*, Issue 12, 2000, P.9.

2 Xiao Wei, Qian Jianxing: “Human Rights and Development,” *Fudan University Journal of Social Sciences*, Issue 3, 2004, P.106.

3 “Institutional Guarantee” is a well-known theory in basic human rights area in Germany. More information on the theory, please refer to Carl Schmitt (Germany): *Constitutional Theory*, translated by Liu Feng, Shanghai People’s Publishing House, 2005, P.176-190.

4 A Wei: “Combating Poverty Is Still a Big Problem,” *Read*, Issue 4, 2007, P.40.



development and public financial revenue, and then help human rights protection in other areas, poverty eradication maintains dual concerns and affirmation in value measurement and thus becomes the key focus of developing countries.

On the one hand, the strengthening of human rights protection can help eradicate poverty, which cannot be neglected. In addition, the promotion of human rights protection in many areas can go well with poverty eradication and even the goal of social and economic development. Some scholars pointed out: Experience in economic development shows that human rights is not a forcing obligation, but the inherent dimension of development; human rights itself are a kind of important capital and are playing an important role in capital accumulation of the poor people. Not respecting human rights means social exclusion, the lack of individual and social recognition and social marginalization; in return, this also means the impoverished people can seldom or cannot obtain production assets. In General, human right is important adjustor of the enabling environment needed for economic growth and development¹. The improvement of human rights protection can better explore the development potential of impoverished groups; meanwhile, many areas of human rights protection themselves go well with and even support each other with social and economic development. For instance, the rights of maintaining just judgments, equal pay for equal work for women and men and democratically participating in public affairs can advance with economic construction. The implementation of these rights can also help the sound development of the society and economy. We need to value their long-term positive influences, which will in return play valuable roles for the undertaking of poverty eradication.

In general, for the two aspects of poverty eradication and human rights protection, we cannot simply conclude that one aspect is prior to, or even excludes, the other aspect. We must see their direct and indirect, short-term and long-term interaction between them. China's practice in this regard also reflects this problem.

III. China's efforts, achievements and problems in poverty eradication

Poverty eradication is a human rights protection undertaking that China attaches great importance to. In 2000, the Information Office of the State Council issued *Fifty Years of Progress in China's Human Rights*, pointing out: "In the past 50 years since the founding of New China, especially since the initiation of reform and opening up to the outside world, the Chinese government has always put the people's rights to subsistence and development first, focused on economic construction, and made efforts to develop social productivity. Consequently, China's economy and society have advanced by leaps and bounds, its comprehensive national strength has been raised, and the people's livelihood has improved by

¹ Alfredo Sfeir Younis: Violation to Human Rights Is a Decisive Factor Leading to Poverty, International Social Science Journal (Chinese Version), Issue 2, 2005, P.135-138.



a large margin thereby realizing two historic leaps bringing the people from poverty to having enough to eat and wear, and then to living a better-off life.” *The National Human Rights Action Plan of China 2009-2010* affirmed again: “By putting people first, the Chinese government makes sure the constitutional principle that ‘the state respects and protects the human rights of its citizens’ is implemented. While respecting the universal principles of human rights, the Chinese government in the light of the basic realities of China, gives priority to the protection of the people’s rights to subsistence and development, and lawfully guarantees the rights of all members of society to equal participation and development on the basis of facilitating sound and rapid economic and social development.” Since the initiation of reform and opening up to the outside world, China has been promoting its poverty eradication undertaking consistently and has made important progress in many aspects.

At the preliminary stage of reform and opening up to the outside world, the poverty problem was comparatively serious in China. Impoverished population in rural areas (in absolute poverty) hit 250 million¹. In 1982, the Chinese government decided to allocate special funds of 200 million yuan a year to support the three most impoverished regions of Dingxi, Longxi and Xihaigu for successive 10 years². In September 1984, the CPC Central Committee and the State Council issued the Circular on Helping Impoverished Regions Change the Appearances As Soon As Possible, deciding to solve the problem of 18 connected impoverished regions. In 1986, poverty alleviation work was listed into the Seventh Five-Year Plan: Efforts should be made to enable people in most impoverished regions to have enough to eat and wear and have the capability of preliminarily developing commercial economy independently. Starting 1985, the state decided to reduce and exempt agricultural tax for three to five years in impoverished regions. Soon after that, the Chinese government specially allocated funds for construction subsidies in border areas and subsidies in minority areas. But the efforts of poverty alleviation were still insufficient at that time. At the end of 1980s, the funds for poverty alleviation nationwide were 4.05 billion yuan a year (GDP in 1989 was 1.69092 trillion yuan)³. Outstanding achievements were made. From 1986 to 1993, the impoverished population nationwide was reduced from 120

1 In terms of poverty criteria, China’s poverty line is lower than the minimum subsistence line of the World Bank. For instance, before the end of 2008, the poverty line set by the Chinese Government was 785 yuan per capita annual income. According to the PPP in dollar in 2005, the criterion was equivalent to \$0.57 a day per capita. However, calculated by the foreign exchange rate between dollar and RMB at that time, the criterion was only \$0.31 a day per capita, which was far behind the poverty line recommended by the World Bank, which was \$1.25. More information, please refer to Cheng Gang: Wide Gap Between China’s Poverty Line and that of the World,” *China Youth Daily*, April 9, 2009, P.8.

2 The State Council specially established the an office under the Leadership Group of Economic Development in Impoverished Regions for the three regions and the Office of the Leadership Group for Agricultural Construction in Dingxi, Longxi and Xihaigu to be responsible for poverty eradication in the three regions.

3 Materials and data from Huang Zhongcai, Chai Kejian: A Long Way from the Bank, but the Light on the Bank can be Seen—Record of the National Poverty Alleviation Work, *China Ethnicity*, Issue 7, 1989, P.6.



million to 80 million, down 6.4 million people a year on average¹.

Starting 1994, China's poverty alleviation work entered an arduous but substantial stage. Thanks to the previous hard work, China's impoverished population decreased gradually; however, the reducing rate also went down gradually with increasing difficulties. The reasons were mainly: first, all the 80 million people living in poverty did not have enough food to eat and enough clothes to wear with per-capita net income below 350 yuan. Of this amount, 30 million people lived with per-capita net income below 300 yuan and 10 million below 200 yuan. They were living in extreme poverty; second, the impoverished people inhabited mainly in remote areas with inconvenient transportation, lacking resources such as northwest China, deep mountains in southwest China, rock mountain areas, deserts, high and cold areas, Loess Plateau and regions vulnerable to epidemics. Owing to the slow economic development and deterioration of ecological environment, the work of poverty eradication encountered with great difficulties. Under the circumstance, starting 1994, China formulated and implemented a national poverty alleviation program, trying to resolve the problem of food and clothing of 80 million impoverished people within seven years².

Starting 1994, with limited financial strengthen, the Central government increased investment in this regard gradually from 9.785 billion yuan in 1994 to 24.815 billion yuan in 2000 with total investment from the Central government for poverty alleviation reaching 112.7 billion yuan, three times of the total investment for poverty alleviation from 1986-1993. However, in early 21st Century, many people who had been helped out of poverty again came back to poverty. From 1986 to 2000, the impoverished population reduced by 6-7 million every year; however, after that, the reducing rate went down sharply. During the three years from 2001 to 2003, a total of 3 million people shook off poverty nationwide. But in 2003, the impoverished population increased by 800,000 people³. Under the circumstance, the academic and practical circles stressed on the adjustment of poverty alleviation tactics: focusing on sustainable development, implementing development-oriented poverty alleviation projects and improving the quality of human resources in impoverished regions. Thanks to the diversified measures against poverty, the work of poverty eradication advanced constantly. At the end of 2008, the impoverished population in rural areas was reduced to 40.07 million⁴. The remaining impoverished regions are ecologically fragile,

1 Chen Wenling: Review and Consideration of China's Anti-Poverty Process, *New Orient*, Issue 4, 1998, P.6.

2 Ibid.

3 Yan Tingwu: Back to Poverty: Pains and Embarrassment in Fighting Against Poverty, *The World of Survey and Research*, Issue 1, 2005, P.38.

4 Data from: Statistical Communiqué of the People's Republic of China on the 2008 National Economic and Social Development (February 26, 2009) by National Bureau of Statistics of China, http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/t20090226_402540710.htm, August 17, 2009; Research Group of China Population and Development Research: *Research Report on National Population Development Strategy (II)*, China Population Publishing House, 2007, P.2145-2147.



such as the regions in Loess Plateau with serious soil erosion and closed impoverished regions among mountains and valleys in Hengduan Mountain Range. In addition to the tense relationship between resources and environment, insufficient ecological supports and inconvenient transportation, the undertaking of poverty alleviation is still very hard¹.

IV. Self-examination on the basic concept of poverty eradication and human rights protection

China's undertaking of poverty eradication is becoming target-oriented in tactics and better devised in technologies, gradually forming the program of supporting regions in absolute poverty through environmental-friendly tourism, special agriculture and livestock products (such as pet animals, decorative plants and herbs), industrial crop growing, agricultural product processing and ecological migration and so on under the guidance of the sustainable development strategy; For people in relative poverty regions and impoverished people in urban areas, efforts are made to alleviate poverty through development of economy and social security undertaking. On the layer of technical measures, China has adopted many agricultural technologies and economic measures in its work of poverty alleviation. However, its poverty eradication undertaking is still facing many difficulties. Besides the geographic environment and the lack of resources of impoverished regions, we also need to reexamine our practices in other aspects.

The fundamental goal of poverty eradication is to protect human rights while the ultimate goal of human rights protection is to safeguard the dignity as a people. Thus, we need to have in-depth understandings on various conditions for decent life with dignity, which includes not only the individual and social material conditions, but also spiritual conditions and social status conditions for individuals. We should not take it for granted in bias that material conditions are the foregoers of spiritual conditions; on the contrary, we should also learn about the feedback from spiritual conditions to material production activities. The two aspects can sometimes be developed in parallel and even can promote each other positively. An independent, creative, diligent, wise and skilful person can do much better than those in the opposite in terms of eradicating poverty; the perfection levels of all aspects of a person's personality may exert great influence upon the process of poverty eradication. The seriously insufficient human capital in impoverished regions is increasingly becoming a very prominent restraining factor, which not only fails to support some effective agricultural technologies or economic measures with high technical requirements, but also lacks of necessary capacity of implementation and development concepts. The recent poverty alleviation work has gradually recognized the importance of improving the quality

¹ Research Group of Institute of Geographic Sciences and Natural Resources Research of Chinese Academy of Sciences: Researches on Population and Poverty Alleviation in Ecologically Vulnerable Regions.



of human resources, which also reflects the shortcomings in previous efforts; meanwhile, we began to envisage the importance of the supporting political mechanisms such as farmers' participation, which also reflects the necessity of adjusting our previous concepts. The lack of farmers' rights to know and participate in public projects has influenced the process of poverty alleviation to a great extent¹.

Actually, we should not remain at the technical levels of only improving the quality of human resources or simply enhancing participation degree in decision making. We should have much higher and further vision. Some scholars have pointed out: It is not enough to simply provide technical trainings to impoverished people; we should also stress on poverty alleviation in education and culture sectors. The main reasons include: first, "culture can exert great influences to people's living attitudes and their working spirits;" second, the ways of thinking and development of many impoverished people cannot go along with the fast tempo social life nowadays. Once they have the opportunities to be trained, they will maintain much broader choices in making a living². Some scholars have realized that since the impoverished people have been living in poverty for a long term, they have established their own ways of life, behavior standards and values systems, such as strong senses of fatalism, senses of helplessness, senses of inferiority and short-sighted and narrow vision. It is this kind of poverty culture that restrains people's ways of thinking and limits their behaviors, giving them empty life. It is very hard for them to fundamental change their minds as they live in impoverished and deserted regions; their backward ways of life, low education levels, passive attitudes, lack of the spirits of diligence and arduous efforts and minds of regarding commodity trade as a dangerous road constitute the bottleneck in the process of coming out of poverty³. From the views of these scholars, we can see the sign of the following important conclusion: poverty elimination is closely connected to the perfection and improvement of people while the perfection and improvement of people is the ultimate goal of human rights protection undertaking. We need to substantially ensure and safeguard the dignity as a "people" and realize real human rights. Dignity is never a concept of form without content, but an abstract composite filled with people's spirits, ethic values, quality and capacity, and social and legal positions. We can further reiterate that maintaining and supporting human rights, personality and dignity are the necessary key conditions for poverty eradication.

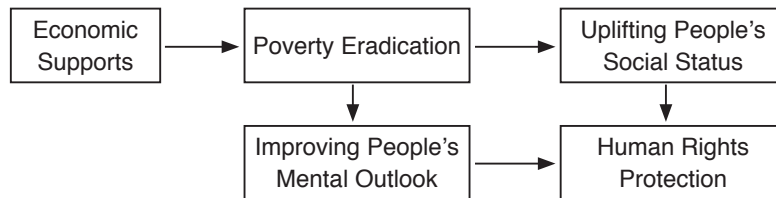
1 See You Zuohua: The 10 Relations Between the Construction of Poverty Alleviation Mechanisms and Regional Development Promotion that Should be Clarified—Investigation and Consideration on the Poverty Alleviation Practices in Henan Province, *Agricultural Archaeology*, Issue 6, 2008, P.267.

2 Ibid. P.265, P.269.

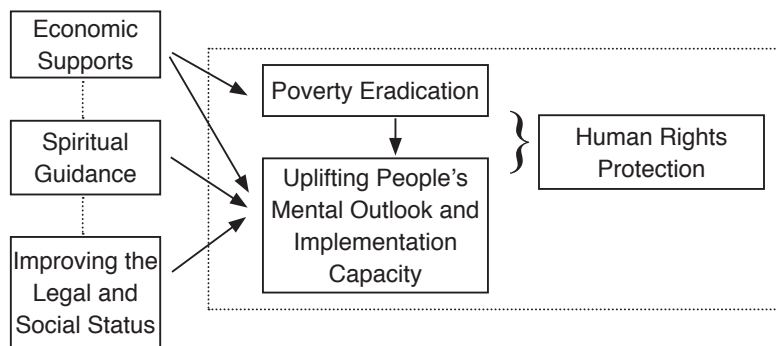
3 Wang Junwen: The Unavoidable Road for Poverty Elimination: the Key Interpretations on Poverty Alleviation in Culture Sector in Impoverished Regions in Rural Areas in China, *Agricultural Archaeology*, Issue 6, 2007, P.342-345.



In general, our previous understandings on the logic sequence of poverty eradication and human rights protection are:



But the correct understandings should be:



Hence, we should appropriately adjust the relationship between poverty eradication and human rights protection. We should realize that they are not the simple relationship of foregoer and follower, or “priority” and “general,” but the relationship of complementing and supporting each other. Many undertakings closely related to human rights protection such as cultural and spiritual life, work skill trainings, equal legal status, combating discrimination and democratic participation in public decision makings can be, and should be totally taking into consideration in the work of poverty eradication. Only by organically combining the undertakings of poverty eradication and human rights protection can we breakthrough the bottleneck of poverty alleviation in our basic ideas.

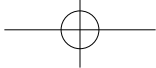
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POVERTY ELIMINATION: AN INNATE COMPONENT OF CONTEMPORARY BASIC CONCEPT OF HUMAN RIGHTS

Wang Linxia
China

In 1969, the UN adopted the *Declaration on Social Progress and Development*, clearly calling for “the elimination of poverty; the assurance of a steady improvement in levels of living and of a just and equitable distribution of income.” *The International Development Strategy for the Fourth United Nations Development Decade* formulated in 1990, the *Declaration on International Economic Cooperation*, in particular the *Revitalization of Economic Growth and Development of the Developing Countries* and the *New Program of Action for the Least Developed Countries* for the 1990s passed in the second session of UN Conference on the Least Developed Countries in Paris listed the sustainable economic development in developing countries and the elimination of poverty as the priority goal of international development strategy and the priority in the field of international co-operation. In December 1992, the 47th session of the UN General Assembly designated October 17 to be the International Day for the Eradication of Poverty. *The Vienna Declaration and Program of Action* in 1993 explained the necessity and urgency of poverty elimination. It declares that the “existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community,” and that “extreme poverty and social exclusion constitute a violation of human dignity,” calling on all national governments to “promote the human rights of the poorest, and to put an end to extreme poverty.” In 1995, the UN World Summit for Social Development focused on the discussion of issues of poverty elimination, social harmony and developmental improvement. This meeting passed its “declaration” and “program of action,” and designated 1996 to be the world year of poverty elimination. In 2000, the 55th session of the UN General Assembly passed *The United Nations Millennium Declaration*, whose the third part was titled “Development and Poverty Eradication,” declaring that “We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which



more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone and to freeing the entire human race from want.”¹ Kofi A. Annan, the then Secretary-general of the UN, delivered a speech on the International Human Rights Day in 2006, emphasizing that “Basic human rights—the right to a decent standard of living, to food and essential healthcare, to opportunities for education or decent work, or to freedom from discrimination—are precisely what the world’s poorest need most. Yet, by virtue of their enfeebled status, they are the ones least able to achieve or defend such “universal” rights. As a result, human rights are jeopardized wherever and whenever a man, woman or child subsists in extreme poverty.”

All the above-mentioned documents have stated the same standpoint, that is, to eliminate poverty is a prerequisite for all the social members to equally enjoy a life based on modern material civilization, and thus should become a human rights goal that the international community is committed to. In other words, to eliminate poverty is an innate component of contemporary basic concept of human rights, and a basic piece of human rights.

1. Differences on understanding the relations between poverty elimination and human rights in the international community

The UN has adopted some resolutions on the point that poverty elimination is an important piece of human rights, but differences still exist among different countries in understanding this issue. Due to different interests of pursuits and diverse understanding among different countries, the process of poverty elimination is not satisfactory although some achievements have been made. Especially, the Western and Eastern countries are obviously dissimilar deeply in their consciousness in understanding and dealing with the point that poverty elimination is a basic human rights issue, and that has caused sluggish activities and inefficiency. Apart from political and ideological factors as well as interest motives, other causes of these disputes include historical backgrounds, traditional ideas and habitual thought. Political and interest reasons have been discussed a lot, so this essay is focused on the historical reasons and habitual thought.

1.1 Historical disparities formed in dissimilar human rights contexts between the West and the East are a latent cause for the disputes

The so-called West and East here are not geographic concepts in a strict sense; rather, they refer to the developed countries represented by Europe and the developing ones in Asia, Africa, Latin America and Oceania. In 2007, the least developed countries in the world approved by the UN numbered to 50, in particular, 34 in Africa, 10 in Asia, one in

¹ www.un.org/Chinese/ga/55/res/a55r2.htm



Latin America, and 5 in Oceania.¹ Most of these countries used to be colonies of European countries.

Europe was the original place of modern bourgeoisie revolutions, but a large number of the developing countries used to be the colonies of European developed countries. These two have distinct historical positions and developmental processes, which are partly the causes of the differences in the issue of human rights.

European countries stress political rights such as the freedom of speeches, assembly, association and religious belief, which are directly related to the social status and political pursuits of newly arising bourgeois as men of property in the early stage of bourgeoisie revolutions. The bourgeois, economically powerful, were politically powerless and socially humble; they were deeply oppressed by a variety of feudal privileges. In this case, some enlightening bourgeoisie thinkers put forward their theories of the so-called natural rights such as social contract, innate rights of man and people's sovereignty to smash feudal constraints and strive for their own liberation. These natural rights include the right to life, the right to property, the right to self-defense and the right to equality. Evidently, to protect private property was a requirement of the newly arising bourgeois to safeguard their own economic interests and to pursue the freedom of speeches, assembly, association and religious belief was a banner for them to seize political power, but to eliminate poverty was not their concern. In this way were formed the political context and human rights contents of European countries, that is, the emphasis on protecting the private possessions of man of property rather than helping proletarians securing wealth. Therefore, the human rights put forward during the bourgeoisie revolutions were in fact those of man of property. Take the universal suffrage after the English Revolution as an example. For more than half a century after the triumph of the revolution, people with the vote numbered only one twenty-eighth of the population, and those eligible for election were even in smaller amounts. The very reason was that the law stipulated some property qualification for voters. In other words, only those with a certain amount of property had the political rights such as the vote, and only such rights were regarded as human rights at that time. In such a context of human rights, poverty elimination did not belong to the category of human rights, of course. Such thought and cognitive inertia are still latently working on European populace. Publicly, they admit that poverty elimination is human right, but deeply at heart their perceptions are discounted. When in activities, it is indicated as less enthusiasm and limited contribution to international poverty alleviation causes.

¹ Asia: Afghanistan, Bangladesh, Bhutan, Cambodia, Laos, Maldives, Burma, Nepal, Yemen, East Timor; Africa: Angola, Benin, Burkina Faso, Burundi, Cape Verde, Central Africa, Chad, Comorin, Congo (Kinshasa), Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Somali, Sudan, Togo, Uganda, Tanzania and Zambia; Oceania: Samoa, Vanuatu, Tuvalu, Kiribati, Solomon Islands; Latin America: Haiti.



On the contrary, most developing countries underwent colonist oppression and depredation. These countries were deprived and backwards; after their independence, which was a paramount political mission, the priority task is just to change their economically backward situation, develop their economy and improve their living standards. Therefore, poverty elimination becomes a priority human rights issue, of course, for these countries.

1.2 Superiority complex in human rights consciousness and thought habit result in the cognitive hindrance in recognizing that poverty elimination is basic Human Rights

As time goes, the contents of human rights are constantly enriched, and that is a matter of course. That is a fact that the Western community cannot deny, but because the concept of human rights was originated from the West, they unavoidably have an idea deeply in their consciousness that their human rights propositions are orthodox. Therefore, they always have an authoritative air on human rights issues, and many of them show a conservative or even inimical attitude towards the new development of human rights contents.

It is true that the concept of human rights was put forward and given its preliminary meanings by the Western countries. However, as the history advances, if one stubbornly insists that only the concept of human rights originally put forward by the West is the proper connotation of human rights in their real sense, it will lead to the parochialism and partiality of human rights in the Western language system. Such a concept of human rights is certainly a hindrance to the contemporary related practices. It is proved that poverty seriously hinders the progress and development of the contemporary world, and poverty elimination is a huge challenge for the guarantee of human rights. The traditional Western human rights language, just like its international political and economic orders that have prevailed for hundreds of years, cannot meet the requirement to respond to and cope with the new problems in the development of mankind considering the changing international situation. International human rights languages should keep up with times and include new contents, and to eliminate poverty unavoidably becomes a new connotation of the development of international human rights cause.

2. It is a difficult long-term task to eliminate poverty and guarantee human rights

Poverty is one of the sources of wars, riots and terrorism, and it is also an enormous hindrance against a fair and just social order and equal relations between human beings. Thanks to the concerted efforts by the international community, some preliminary effects have been achieved in international poverty alleviation. According to the 2007 World Development Indicators publicized by the World Bank, global poverty rate kept decreasing in the first four years of this century, and the population in poverty reduced to less than one billion. As statistics show, the population whose daily living cost is less than one US dollars in the globe decreased to 18.4% in 2004; and it is estimated that a population of 985 million



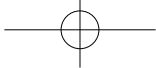
or so lived in extreme poverty. While in 1990, the number was 1.25 billion.

Despite of some achievements, the efforts on poverty elimination are still insufficient. Following this trend, it is still hard to reach the UN Millennium Development Goals in all regions of the world, that is, to decrease the population in extreme poverty to half before 2015. According to an estimate in 2007 by the World Bank, in the world population of 6.5 billion, those whose daily income is less than one US dollar amount to nearly one billion, and those whose daily income is less than two US dollar number to 2.6 billion or so. In other words, about one sixth population in the present world (nearly one billion) are utterly destitute; about one fifth (1.3 billion) have no secure drink water; and more than one third (2.6 billion or so) have no basic hygienic facilities. The population in the least developed countries in the world totals 750 million, nearly half of whom subsists on less than one US dollar every day. In addition, the highest illiterate rate of a whole population all over a country amounted up to 82%, highest infant mortality 16.2%, and the shortest average longevity 39 years old. So, the international community still has heavy responsibilities in eliminating poverty and guaranteeing human rights.

3. Developed countries and developing ones should assume different responsibilities for poverty eradication

The former UN Secretary-general Annan once pointed out that poverty was still spreading and population in distress was still increasing in some countries although they had made efforts to eliminate poverty and although global economy had shown a growth tendency. According to the numbers publicized by the UN, the least developed countries numbered to 24 in 1971, and 31 in 1981; but in 1990, they increased up to 43, and 50 in 2007. This datum shows that the disparity between developed and developing countries is being further enlarged.

The disparity between the rich and the poor in the international community is mainly result of an unreasonable world economic order. In addition, economic globalization has further enlarged the gap between developed countries and developing ones; and in the opportunities of trade and investment increase brought about by the globalization, those which received the most benefits are the developed countries. Developed countries should have made more contributions to poverty elimination. But the fact is on the contrary. Developed countries have not honored their promise to increase their aids to the deprived countries. For years, in the general environment in which global economy continues to grow, the official developmental aids from developed countries to the least developed ones have not increased at the same rate as that of the economic growth of developed countries although such aids have accrued somehow. Judging from the point of actual value, the ratio of the aid funds offered by developed countries and the revenues of these countries is only



one second of that in the 1960s. At the same time, however, developed countries have tended to relate their aids to the human rights conditions and their so-called democratic process in the aided countries, and thus intervened in the reasonable use of the limited aid funds. In this case, there happened the strange phenomenon criticized by Annan, that is, some people are vehement and talkative in the issue of human rights, but do nothing for the security and development of man. The beginning of this essay has tried to explain from an historical point the attitudes and standpoints of the Western developed countries in the face of poverty elimination, but that cannot be a pretext for not performing their international obligation in poverty alleviation.

Developing countries have received limited benefits from developed ones, but have been compromised most seriously in the present international financial crisis incurred by developed countries. Due to this crisis, developing countries have suffered from abrupt decreases of exports, reduction of prices of primary products, withdrawal of foreign investments, abatement of foreign aids and exhausted overseas remittance; in addition, economic depression has also incurred the descending financial power of the governments of developing countries in solving poverty problems, directly impacting the governmental work of these countries on poverty elimination. Developed countries should recognize that international poverty alleviation is their undeniable duties. And developed countries also have to recognize that to help developing countries on poverty elimination is an obligatory duty rather than any condescension, and that it will not only favour developing countries but also benefit developed countries themselves. Developed countries should be more aware that if the problem of poverty cannot be solved as early as possible, the various contradictions in the world will be further intensified, and the turbulence in the international community will be inevitable. In the present background of globalization, no country can avoid a global disaster incurred by any international turbulence.

When stressing that developed countries should assume their duties to the international community, especially to developing countries in the issue of poverty elimination, developing countries should strengthen themselves to solve the problem of poverty, especially do more work on the development of social justice and the decrease of disparities between the rich and the poor in their own societies. In this respect, China has gained some inspiring experience.

In summary, both developed and developing countries need to make concerted efforts at the height of safeguarding human rights to eliminate poverty and achieve the “UN Millennium Development Goals.”

4. The Experience of China in Poverty Elimination and Their Significance

The Chinese government has implemented its large-scaled poverty alleviation and



development since the 1980s, which is well planned and organized. After more than 20 years painstaking efforts, the poverty alleviation and development project has gained some world-attracting achievements in China.

Firstly, rural population in poverty has been greatly decreased. In accordance with the poverty standard of the Chinese government, the population in absolute poverty in the rural areas of China had reduced from 250 million in 1978 to 14.79 million in 2007, with its proportion in the total rural population decreasing from 30.7% to 1.6%; and the population with low incomes in poverty who has preliminarily solved its problem of subsistence but does not remain in a stable state has lessened from 62.13 million in 2000 to 28.41 million in 2007, with its proportion in the total rural population decreasing from 6.7% to 3%.

Secondly, the incomes of peasants have steadily increased. From 1989 to 2008, the net per capita incomes of peasants in the key counties of state poverty alleviation and development project increased from 303 RMB to 2,611. In particular, during the period from 2002 to 2007, the net capita incomes of peasants in such key counties increased from 1,305 to 2,278, with an average of 9.04% increase during these five years, and higher than the national average growth rate of 7.47% in five consecutive years.

Thirdly, infrastructure has been obviously improved. By the end of 2008, in the key counties of state poverty alleviation and development, the natural villages accessible to highways, electricity, telephones and radio and TV signals have respectively numbered 84.4%, 96.8%, 87.5% and 92.9% of the total amount of natural villages in such counties. And peasant households accessible to tap water and deep well water have amounted up to 58.1%.

Fourthly, profound changes have been taken place in social causes. In rural areas, the state has implemented 9-year compulsory education in all respects, boosted a new type of rural co-operative medical system, and established a complete rural minimum subsistence system. From 2002 to 2008, villages with a variety of kindergartens or nursery schools have increased from 7.38% to 55.2% of the total amount of the surveyed villages; villages with simple clinics from 9.86% to 77.4%; villages with qualified countryside doctors or assistant doctors from 10.18% to 77.4%; and villages with qualified midwives from 9.58% to 73.7%.¹

4.1 The main characteristics of poverty alleviation and development in China

4.1.1 Governmental dominance and social involvement

The poverty alleviation and development in China has been guided vigorously by the central government. In 1986, the central government established a special institution in charge of poverty alleviation and development, namely the State Council Leading Group of Poverty Alleviation and Development and its office, and corresponding organizations were

¹ www.cpad.gov.cn/data/2009/0927/article_341204.htm



subsequently set up at provincial, district and county levels. On the basis of organizational guarantee, the central government graded poverty, selecting counties in poverty to be emphatically supported by the state; at the same time, it allocated poverty alleviation funds for special use, and worked out favorable policies for the areas and populaces in poverty. In 1994, the State Council constituted and promulgated *the National seven-year Plan for the Poverty Alleviation*, clearly advancing that the country should spend 7 years or so to strive for largely solving the subsistence problem of a rural population of 80 million in poverty. By the end of 2000, the rural population in abject poverty had decreased to 32.09 million, which means that the key objective of this poverty alleviation project had been largely reached. In 2001, the State Council publicized and implemented *the Program of Poverty Alleviation and Development in Rural Areas of China (2001-2010)*, putting forwards the criteria of low incomes. The work on poverty alleviation and development clearly brought forth that emphasis should be laid on the improvement of each village as a whole, the transfer and training of labor force and poverty alleviation through industrialization to reform fund management systems and improve poverty alleviation mechanism. During the 30 years from 1978 to 2008, the central government has invested more than 170 billion RMB for the special use of poverty alleviation and development; in addition, it has also invoked more than 200 billion RMB loans for poverty alleviation and development by means of interest payment. The financial investment by the central government and local governments at all levels has provided sufficient support for poverty alleviation and development. In 2007, the Chinese government decided to establish a minimum life guarantee system in rural areas all over the country. In this case, the basic subsistence of rural population in poverty has been practically guaranteed. In 2008, the third plenary session of the 17th CPC Conference of Central Committee suggested carrying out a new standard for poverty alleviation, and implementing a poverty alleviation and development policy in all respects to the population of low incomes. In March 2009, Premier Wen Jiabao made it clearer in his report on governmental work, declaring that “A new standard for poverty alleviation and development will be applied this year to implement a poverty alleviation and development policy in all respects to the population of low incomes. The new standard will be raised to per capita 1,196 RMB, and the project will cover a population of 40.07 million.” So, the poverty alleviation and development work in China has entered a new stage.

Widespread social involvement is another important experience from the poverty alleviation and development of China. The Guangcai Program initiated in 1994 has invested more than 130 billion RMB and donated more than 17 billion RMB for poverty alleviation and development. Non-governmental organizations have launched a large number of programs to actively take part in the cause of poverty alleviation and development, including the Hope Project launched by the Central Committee of China Communist Youth League,



the Spring Buds Program and the Mother's Water Cellar initiated by the All-China Women's Federation, the Happiness Project originated by the China Population Welfare Foundation, and the 120 Items for the Security of Mother and Infants sponsored by the China Foundation for Poverty Alleviation. The extensive social involvement has played a good and necessary supplementary role in the poverty alleviation and development, in which the governments are a mainstay.

4.1.2 Characteristic of poverty-alleviation work of China: Poverty alleviation through gradual development

Since a large-scaled poverty-alleviation work was launched in 1986, China has taken a series of measures step by step, including the training and transfer of labor force, the reform of interest payment systems, and poverty alleviation through development. In this way, it has pushed its poverty alleviation and development from one stage to a more advanced one.

The key point of the poverty-alleviation work in China is that it persists in poverty alleviation through development. Economic growth does not autonomously tilt towards disadvantaged groups, and social assistance cannot automatically improve their capabilities in development. So, to eliminate poverty through development is a correct choice, and it has played an active role in boosting the economic and social development in impoverished areas, alleviating the poverty in rural areas, and optimizing the national economic structure of China.

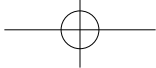
4.2 The achievements in poverty alleviation and development have positive meanings to the international community

4.2.1 The historical achievements that China has gained in its poverty alleviation and development are a contribution to world poverty alleviation

The achievements of poverty alleviation and development of China have accelerated the global poverty alleviation course. According to the *Report of China on the Achieving of the Millennium Development Goals*, China is the first developing country that reached ahead of time the objective of decreasing half of population in poverty no matter whether in reference to the poverty alleviation standard of the Chinese government or an international one. From 1990 to 2005, the global population in poverty who spends less than one US dollar everyday has been declined down to 1.4 billion, with a 23% decrease. But with China excluded, the global population in poverty has increased 58 million in fact.

4.2.2 China has actively made contributions to international poverty alleviation when it is committed to solving its domestic poverty problems.

Against the background of financial crisis, China is heavily burdened with its own poverty alleviation tasks, but it is still active in making contributions to international poverty alleviation. Before 2008, China has exempted 46 the least developed countries from the debts, which totalled more than 40 billion RMB. At the same time, it had provided



more than 200 billion RMB assistance for developing countries. In the face of the financial crisis, the Chinese government has also promised to cancel all the debts owned by least developed countries that had not been paid off to China by the end of 2008. China is among the first group of countries that donated 30 million US dollars aid funds to the International Food and Agriculture Organization. The assistance from China is attached with no political conditions, meanwhile, it will not respond to the request of some countries to attach any political conditions to its assistance. So, China is a role model in such practices.

4.3 The poverty alleviation task of China is arduous

China has gained a historical achievement in its poverty alleviation, but its future task is still arduous, and the situation is still serious. On the one hand, in accordance with the law of “diminishing marginal utility,” the remaining deprived population will meet more difficulties and higher costs in poverty elimination, for most of the remaining population in poverty live in remote areas where natural conditions are especially atrocious, such as the Tibetan Plateau, the northwest drought areas, the desertized areas, the karst areas, the mountainous areas along the borders of Sichuan and Shaanxi provinces, and the inland bordering areas. In those places, survival environments are horribly bad; infrastructure is backwards; social development is lagging behind; public services are unavailable; and endemic diseases are frequent and serious. So the poverty alleviation over there means an enormous difficulty. At the same time, there is an acute problem that the population who has preliminarily shaken off poverty becomes deprived once again. The tendency of increasing disparities between urban and rural areas, different regions, and different social groups has not been sufficiently controlled. In a word, poverty alleviation and development are still facing tough challenges in China.

The present data of deprived population in China is calculated in accordance with the criterion of China itself. If calculated in reference to the UN minimum standard of one US dollar per capita daily consumption, the total deprived population of China is no less than 200 million.

On all accounts, poverty alleviation requires the attention and cooperation of the international community. Especially, the international community needs to improve their cognition and identity that poverty alleviation is a basic point of human rights. More support should be given to the developing countries in the field of poverty alleviation. We recognize and emphasize that the concept, guarantee and practices of human rights are dynamic and progressive; meanwhile, we are convinced that the international community will finally come to a consensus that poverty alleviation is a basic piece of human rights, for poverty alleviation is a foundation for social justice and world harmonious development after all.

(The author is Director of Secretariat of China Society for Human Rights Studies)



POVERTY ELIMINATION AND HUMAN RIGHTS PROTECTION OF ETHNIC MINORITIES—IN THE CASE OF POVERTY ELIMINATION IN MINORITY AREAS IN CHINA

Wang Ping
China

Poverty is used to describe people's living situation and can be divided into absolute poverty and relative poverty. Absolute poverty refers to the situation that a person and a family cannot survive only through their labour and other legal incomes, while relative poverty refers to the living condition where the incomes of some people are less to certain extent compared with the social average level. In some countries, those whose incomes are 40 percent lower than the average level are considered to be in relative poverty. According to the World Bank, those whose incomes are lower than one third of the average level are considered to be living in relative poverty. Poverty bears on the human rights and poverty alleviation is especially important for human rights protection for minorities. Since the founding of new China, especially after China's adoption of reform and opening up policy when the Chinese government launched large-scale poverty alleviation actions, great changes have been taken place on the alleviation of poverty in minority inhabited regions, which greatly promoted the enjoyment of human rights of ethnic minorities.

I. Poverty is an important issue in human rights protection and poverty elimination is more important for minorities

Poverty is the negation of human rights and poverty elimination means human rights protection. We have at least three reasons for support this judgement. Firstly, the state of poverty itself is the negation of human rights. The goal of human rights protection is to enable people to enjoy happy life while poverty stands just opposite such happy life. Moreover, absolute poverty also seriously threatens people's right to subsistence, tramples people's dignity and undermines the foundation of human rights. People's right to subsistence is the fundamental human rights. If the right to subsistence cannot be safeguarded, human rights in other categories may become meaningless. Secondly, the factors that lead to poverty usually have structural or institutional elements. For instance, unfair international economic order may lead to exploitation of impoverished countries



and may cause large quantities of impoverished population, unfair economic and social institutions and policies within a country of sovereignty may also lead to poverty of some specific groups. Even in a country with the institution and system that seem to be reasonable, or the institutional arrangement has to choose such as market-oriented institution, certain groups of people may also fall in disadvantaged position such as poverty. These people include those who lose their jobs due to the institutional arrangement of market economy. These living conditions generate injustice and the institution and policy designs bring unfair consequences infringe people's equal rights and negate human rights. The international community and governments of countries of sovereignty should bear the accountability for the negative influences brought by the work of eliminating the structural and institutional elements or making up the institutional defects. Thirdly, when impoverished people are concentrated in specific regions or specific groups, besides the institution and policy elements, the historical and geographic factors also account for the poverty. In some occasions, the negative influences brought by unfair history may be the important reason of the poverty of some specific groups. In the contemporary age when we talk about human rights, we should take the responsibility for the consequences in the history when we did not talk about human rights.

Among the impoverished population, the ethnic minorities usually occupy larger proportions. For instance, in the United States, the number of white people family in extreme poverty with income less than \$5,000 in 2006 account for 2.5 percent of the total number of white families; the percentage in black people families was 6.6 percent, 4.1 percentage points higher and the percentage of families of Latin American descendants was 3.5 percent, 1 percentage point higher. In 2006, a total of 20.2 percent of white people families had incomes exceeding \$100,000 while only 9.1 percent of the black people families and 10.5 percent of Latin American families reached that level. The United States also has two important minorities: the Indians and Inuits in Alaska, totaling 4.5 million. They are the indigene people of the America but their life is not satisfying. About one quarter of them are living below the poverty line. Of the 21 million population in Australia, indigene people number 450,000. Most of them are living in remote and deserted regions and are the most impoverished people in Australia. In Australia, indigene people are very possible to become illiterates, lose their jobs and be imprisoned. Their suicide rate is also the highest among all the ethnic groups. Meanwhile, the expected lifespan of indigene people is 17 years shorter than that of non-indigene people.

China is a multinational country. Besides the majority ethnic group of Han, China also has minorities with a combined population of nearly 100 million, accounting for 8.4 percent of the country's total population. In China, the percentage of impoverished people of minorities among all impoverished population is also comparatively higher. In different



stages, the impoverished people in minority-inhabited regions (including impoverished Han people living in the autonomous localities of minorities) rate about a half of the impoverished population of the whole nation.

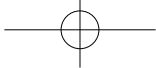
The reasons of poverty in impoverished regions of minorities in China include the common elements of all impoverished regions, as well as the special factors of the minorities and the places they are living. The special factors mainly include: the first is the backward natural conditions. Most of the minority people in poverty live in high and rigid mountainous areas in border areas of west China, stone covered mountainous areas in southwest China and drought and desert areas in northwest China; and the second is the backward social development. Before 1950s, the impoverished population of more than 10 minorities in Guangxi, Yunnan, Guizhou, north part of Sichuan and Tibet, lived in post-primitive society, slave society or serfdom stage of feudalism society. After the founding of new China, people of these minorities obtained equal civil and political rights. But their conditions of economy, education and health care remained backward and all the infrastructures for modern society are totally blank.

After the new China was founded, the Chinese government made it a national strategic task to help minorities out of poverty. This year marks the 60th anniversary of the founding of the People's Republic of China. During the first 30 years after the founding of new China, the whole country was in poverty and could not afford to help minorities; in the second 30 years, China carried out large scale poverty alleviation actions and has made huge achievements.

II. Poverty alleviation targeting minorities in China

During the large-scale poverty alleviation actions starting from 1980s, the Chinese government launched special measures targeting impoverished people and impoverished areas of minorities. We can say these measures are effective with prominent achievements. The measures include:

—Expanding the scope of poverty alleviation program in counties of minorities so as to include more minorities people into the scope of policy support of poverty alleviation. In 1986 when the Chinese government selected the impoverished counties for special support for the first time, the general norm was farmers' per capita net income of 150 yuan or below in 1985; but for the autonomous counties of minorities, the norm was 200 yuan; the norm was 300 yuan in counties (banners) of minorities of pasturing areas. According to the norms, of the 331 impoverished counties for special alleviation nationwide, 141 were in minority regions, accounting for 42.6 percent. The principle is still being followed now. In 1994, China newly selected 592 impoverished counties for special alleviation, including 257 counties of minorities, accounting for 43.4 percent. In 2001, another 10 counties



of minorities were added to the program. Plus the 74 counties in Tibet, the number of impoverished counties of minorities under the state special supports reaches 331.

—Launching special actions in special areas. China established special funds for poverty alleviation in 47 counties, including eight counties in south Ningxia, eight counties in central part of Dingxi, Gansu and 19 counties in Hexi region where impoverished people are densely populated. In 2008, the special fund was increased to 300 million yuan a year. The State Council also formulated special plans to launch special actions in 640 administrative villages populated by 22 minorities with total population less than 100,000. Meanwhile, special support actions were implemented to help 135 counties near the land border areas (including 107 counties in autonomous areas of minorities).

—Organizing program of counterparts support. In 1996, the State Council organized 10 developed provinces and municipalities in east coastal region to support 10 provinces and autonomous regions in west China where most minorities live. The detailed arrangement for the program is: Beijing assists Inner Mongolia Autonomous Region, Tianjin assists Gansu, Shanghai assists Yunnan, Guangdong assists Guangxi, Jiangsu assists Shaanxi, Zhejiang assists Sichuan, Shandong assists Xinjiang, Liaoning assists Qinghai, Fujian assists Ningxia, and Dalian, Qingdao, Shenzhen and Ningbo assist Guizhou. The program lasts until today and has hastened the pace of poverty elimination in impoverished regions of minorities. Take the program of Fujian Province assisting Ningxia Hui Autonomous Region for example. Leaders of the two provincial administrative regions have joint conferences of counterparts support program and government departments of the two regions also established collaboration relations to plan poverty alleviation actions. In the past 13 years, Fujian injected funds totaling 193 million yuan for free to impoverished areas in Ningxia and collected donations exceeding 100 million yuan from all walks of life in Fujian to Ningxia. Fujian also built high-level terraced fields of 229,000 mu, renovated cave dwellings for 1,900 families, constructed 200 village-level health institutes, built 78 rural scientific and cultural activities centers, distributed 22,260 TV sets, established six immigrant demonstration areas, arranged 21,985 immigrants from 4,681 families and constructed 124 Fujian-Ningxia demonstration villages in impoverished regions in Ningxia, benefiting nearly 500,000 people there.

The poverty alleviation and reduction activities taken by China for impoverished regions of minorities have made huge achievements and prominent effect. Statistics show that after the 30 years of efforts, the impoverished population in minorities regions reduced from 100 million (including the impoverished population of Han ethnic group living in minorities regions) in 1978 to 7.74 million in 2007. During the successive seven years from 1994-2000, the poverty alleviation activities helped more than 250 impoverished counties in minorities regions out of poverty, enabling more than 36 million impoverished people



to have enough food and clothing. From 2001 to 2007, another 9.13 million people have got adequate food and clothing.

III. China boasts valuable experience but faces arduous tasks

Based on China's national situation and reality, Chinese government has been carrying out large-scale poverty alleviation activities according to the needs of different regions for 30 years, and has invented various poverty alleviation modes and accumulated abundant valuable experience, such as the policy of development—oriented poverty alleviation. Poverty alleviation does not simply mean to provide remedies for life. We need to guide the masses in impoverished regions, under the necessary assistances and supports from the state, to embark on the development road suitable for their realities with their characteristics through adjusting economic structure, developing local resources, developing commodity production, improving production conditions and improve the self-accumulation and self-development capacities of impoverished families under the orientation of the market. Another principle is to stick to comprehensive and all-round development. On the one hand, poverty alleviation needs to improve the basic production and living conditions such as strengthening construction of facilities of farmlands, basic infrastructures, environment innovation and public service and helping impoverished villages access the electricity power, road transportation, post service, telephone and broadcast and TV. On the other hand, efforts should be made to improve education, health care and culture conditions in impoverished regions, encourage development of village-level health institutes, and strengthen training for medical care personnel. Compulsory education should be popularized in impoverished areas to encourage more children to go to school so as to promote all-round development. We can say, the work of poverty alleviation is to encourage people in impoverished regions to fully enjoy human rights. The major body and main force of improving the poverty-stricken areas are the impoverished people themselves. Thus, in the work of poverty alleviation, we should rely on the impoverished people, respect their innovation and encourage them to carry forward the spirit of hard and independent struggle. This is an important piece of experience of poverty alleviation. These valuable experiences will play important roles in the future work of poverty alleviation, including the work in minority areas.

Poverty alleviation is a long-term and arduous work for any country in the world, especially in developing countries. It is also true to the work of poverty alleviation in minority areas in China. In general, the poverty in minority areas has been greatly alleviated. However, the problem is still prominent in some parts of minority areas. We still face arduous tasks: First, the proportion of impoverished people of minorities among the total impoverished population is very high and they are very likely to be impoverished.



In 2007, the incidence of people in absolute poverty in autonomous areas of minorities in China was 6.4 percent, 4.8 percentage points higher than the country's average, which was 1.6 percent. The number of people in absolute poverty in autonomous areas of minorities was 7.74 million, accounting for 52.3 percent of the country's total, which was 14.79 million; the low-income earners in rural areas of autonomous areas of minorities was 18.41 million, rating 52.1 percent of the country's total, which was 28.41 million; second, the work of poverty alleviation is facing great difficulties. Most of the remaining impoverished people of minorities live in the edges of deserts in south part of Xinjiang, high and rigid pasturing areas of Qinghai-Tibet Plateau, Ningnan mountainous areas in Ningxia, Wuling mountainous areas, stone-covered mountains and remote mountains in Yunnan, Guangxi and Guizhou, etc. In these places in high mountains, deep valleys, drought deserts and high and rigid pasturing areas, the per-capita cost of poverty alleviation is very high; third, many people come back to poverty. Incomplete statistics show that in 2007, a total of 1.85 million people in autonomous areas of minorities came back to poverty because of natural disasters or diseases, 250,000 people more than 2006. The rate of falling back to poverty in 2007 was 23.9 percent, 7.1 percentage points higher than 2006, which was 16.8 percent.

Thus, our future task will be very arduous. But I believe, so long as we bear the human rights-based concepts that everyone in the world can enjoy human rights and happiness, and carry forward the spirit of dogged perseverance handed down by our ancestors, we, hardworking and diligent Chinese people, will never yield to difficulties.

(The author is Deputy Director-General of Department of Education,
Science and Technology of State Ethnic Affairs Commission)



REFLECTIONS ON THE POVERTY-ERADICATION POLICY IN BORDER AREAS IN A NEW ERA —WITH XINJIANG AS AN EXAMPLE

Xu Jianying
China

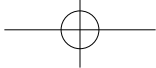
As the world's largest developing country, China gives priority to people's rights to subsistence and development in human rights protection. Urgently needed in poverty-stricken areas in China, poverty eradication constitutes an important way to realize people's rights to subsistence and development. In this regard, special attention must be paid to China's border areas. It is well known that China has vast border areas with a poor development foundation, a large number of ethnic minorities and concentrated impoverished populations. Therefore, it is an arduous task to eradicate poverty in these areas, which is something we need to think carefully about. This paper takes Xinjiang Uygur Autonomous Region as an example to present some preliminary personal views on poverty eradication in border areas in a new era.

I. An overview of the poverty in Xinjiang

Extending through the northwest of China and lying deeply in the heart of Eurasian continent, Xinjiang covers an area of more than 1.6 million square meters, with oasis accounting for only 10% and an extremely large share of cold highlands, deserts and Gobi. Bordered with 8 countries, Xinjiang has 5,600 kilometres of land borders and is inhabited by 45 ethnic groups, 13 of which have been living in Xinjiang for centuries.

Most of the poverty-stricken people of Xinjiang are residing in farming and pastoral areas and along border areas. There are altogether 27 poverty-stricken counties covered by state preferential policies and 3 counties, 276 towns and 3606 villages covered by autonomous region's assistance. Among them, 21 counties are located in southern Xinjiang (all are covered by state assistance), accounting for 76% of the total, and 9 counties in northern Xinjiang (3 of them are covered by autonomous region's assistance), accounting for 30% of the total.

On the whole, the majority of the impoverished people in Xinjiang come from the following three groups: the extremely poor population, the low-income population and the



poor population scattered in the counties, cities, towns of northern and southern Xinjiang.

The distribution of impoverished population in farming and pastoral areas of Xinjiang presents the feature of regional concentration. In southern Xinjiang, the majority of the impoverished farmers and herders live in Hotan, Kashi, Kizilsu Kirgiz Autonomous Prefecture and the surrounding Taklimakan Desert in Aksu Prefecture, while situations in the first three areas are more serious. In northern Xinjiang, impoverished people mainly reside in cold farming and pastoral highlands, especially the Tianshan and Altai Mountains. According to the poverty standard established by the state in the new development stage, by the end of 2003, there were 2,593 million impoverished people in almost 570,000 households in farming and pastoral areas in Xinjiang, accounting for 27% of the population of this kind in Xinjiang. The regional concentration of the impoverished population in farming and pastoral areas is consistent with the oasis-economy agriculture.

The ethnic-minority population accounts for the majority of the impoverished population. In the 30 poverty-stricken counties covered by state preferential policies, ethnic-minority population accounts for 91% of the total population. In northern Xinjiang, ethnic-minority population accounts for 63.8% of the population in poverty-stricken counties, while in southern Xinjiang, that figure goes up to 96.85%. Specifically in Hotan, Kashi and Kizilsu Kirgiz prefectures the percentages are 98.62%, 95.33% and 94.50% respectively. This is related to the mix of ethnic groups in local areas. For example, in rural southern Xinjiang, the ethnic-minority population accounts for as high as over 99% of the total population.

In terms of the division of farming and pastoral areas, by the end of 2002, among the 30 poverty-stricken counties, there were 17 rural counties, 11 pastoral counties and 2 semi-farming and semi-pastoral counties. The impoverished population mainly concentrates in rural areas, mostly in Hotan and Kashi.

According to investigations and statistics and compared with the entire Xinjiang, the poverty-stricken counties have relatively low level of resources, with generally insufficient accumulation of human resources and less schooling of the employed workforce. In terms of the natural growth of population, low birth rate and high death rate are commonly seen in the poverty-stricken counties. In terms of physical conditions, 8.02% of the population has long been suffering from shattered health. In terms of education level and labor skills, the workforce has a low comprehensive education index.

II. The characteristics of social and economic development of the poverty-stricken areas in Xinjiang

With regard to the natural economy of the poverty-stricken areas, oasis economy is dominant in southern Xinjiang, while the development of northern Xinjiang is pillared



by husbandry economy. The social and economic development has the following characteristics.

Adverse natural environment and fragile ecosystem have restricted the regional economic development of poverty-stricken areas, reducing the living standard of farmers and herders. In the current development stage, the villages of the poverty-stricken counties that need assistance are mainly located in ethnic-minority, border and impoverished areas. With adverse natural environment and fragile ecosystem, it is extremely hard for economic development of farming and pastoral areas, which has seriously influenced agricultural and pastoral production and the income of farmers and herders and aggravated the poverty of local economy, forming a vicious circle of intractable poverty. Economic conditions in impoverished farming and pastoral areas are rather poor. In 2002, the GDP of the impoverished area was 10,032 billion yuan, representing only 8.23% of the total of Xinjiang, and the per-capita GDP was 1,944 yuan, accounting for only 25.64% of the average of Xinjiang. The impoverished farmers and herders find themselves at the preliminary stage of basic subsistence with poor-quality and low-level consumption, even their consumption demands for food, clothing and shelter cannot be met.

Agricultural production and infrastructure construction such as irrigation facilities are rather weak with a low capacity to fend off natural disasters. Rural impoverished population mostly concentrates in water-deficient areas of southern Xinjiang, and water shortage is one of the major contributing factors to Xinjiang's poverty. Correspondingly, there is a lack of basic irrigation and hydropower facilities in poverty-stricken areas, so that seasonal rivers cannot be controlled and spring droughts and summer floods threaten the local living and production, leading to the existence of saline-alkali and desertified soils at the same time. The utilization rate of water resources is as low as about 40%.

In poverty-stricken areas, transport lines are long and roads in bad conditions and communication and power facilities are backward. Inconvenient transport, low-level road technology and weak communication and power facilities have not only restricted the moderate concentration of population, but aggravated the scattering and enclosing of the population as well, therefore increasing the cost of poverty alleviation, limiting the flows of personnel, goods, information and capital, and also impeding many impoverished population in obtaining information and participating in the market.

The social security system in the poverty-stricken areas is seriously lagging behind. As a technical measure to alleviate poverty and control falling back to poverty, the social security system is seriously lagging behind in poverty-stricken areas of Xinjiang. One of the reasons is that people have inadequate understanding on insurance, resulting in the small participation in insurance and the low quality of social insurance. Second, with limited financial resources, the government of the autonomous region has a long way ahead before



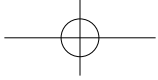
implementing the system of minimum living standard throughout the vast rural areas. Third, the scattering of population has led to the situation where much is invested but few are benefiting. Fourth, because of limited financial resources of local governments, local economies are lagging behind with the rate of financial self-sufficiency being only about 20%, and they are in deficit for a long time, delaying the progress of social welfare and preferential undertakings.

The backward education level has also seriously impeded the development of economy in poverty-stricken areas. Among the impoverished population, most have short time of education, and the rates of illiteracy and semi-illiteracy are high. According to statistics and monitoring data of Xinjiang in 2002, those who cannot read or can read little account for 9.16% of the total workforce in poverty-stricken areas, more than 2 percentage points higher than the average of Xinjiang. In addition, most of the poverty-stricken areas are concentrated by ethnic minorities, who enjoy a preferential birth policy. Therefore, the rapid growth of population in these areas has also contributed to the poverty.

The lack of government officials and capable managers has restricted the local economic development. Poverty-stricken areas are in urgent need of capable government officials, especially grassroots officials in county and township levels. Talents in planting, management and market are also needed, more so for farmer entrepreneurs. Far fewer enterprises are located in southern Xinjiang than those in northern Xinjiang, accounting for less than one third of Xinjiang's total. Also, the existing enterprises are small in size, poor in profitability and weak in competency.

III. Xinjiang's endeavor to eradicate poverty and its problems in the new era

Since the reform and opening-up policy was adopted, with support from the state, the work of poverty eradication has scored significant achievements after several decades of arduous efforts. In 1978, there were 5.32 million people living without enough food and clothing, while in 2000, the problem of basic subsistence was solved and significant achievements were scored in irrigation projects, roads, medical and health facilities in farming and pastoral areas. The rate of settlement and semi-settlement of herders rose to 84.5%. Significant changes in ideology and way of living have taken place among farmers and herders, with increased awareness of market. Since 2001, Xinjiang has strengthened its efforts to eradicate poverty, attaching importance to not only consolidating the basic subsistence, but also increasing farmers' and herders' income, improving quality of life and promoting the development of a new socialist countryside. The central government and the government of autonomous region have increased capital input in poverty alleviation, for example, 1.22 billion yuan and 1.11 billion yuan were invested in poverty alleviation in 2005 and 2006 respectively. Infrastructure facilities, including power, transport, irrigation



and medical and health, have been further strengthened. Economic sectors with local characteristics in some areas have been developed. Surplus workforce has been transferred effectively in many ways. Incomes of farmers and herders have seen marked increases, with the per-capita net income of farmers and herders in the 30 poverty-stricken counties reaching 1,863 yuan. Meanwhile, the autonomous region has established and continuously improved the poverty-alleviation organizations and systems, raised the standard for aiding the poor, strengthened to build up the ranks of poverty-alleviation personnel, intensified the poverty-alleviation measures, increased poverty-alleviation capital input, expanded poverty-alleviation projects, so as to promote the eradication of poverty unswervingly.

In terms of the actual conditions in Xinjiang, it is relatively difficult to fundamentally solve the problem of poverty in farming and pastoral areas; therefore there is a long way ahead for aiding the poor in Xinjiang in the new era. We must fully recognize that eliminating poverty in Xinjiang is a long-term and arduous task. So far, the problems for eliminating Xinjiang's poverty include the following:

First, a very small proportion of the population is still living without adequate food and clothing, although the number is small, it is much difficult to get it solved. At present, the majority of these poor people are residing in remote desert and high-altitude cold areas, which are plagued with inadequate resources, slack information, weak economic foundation, harsh ecosystem and frequent natural disasters. Farmers and herders in these areas have basically no income; therefore they must be moved to other areas to solve the problem of basic subsistence, which demands for large amount of capital and goods. It is a heavy task for the impoverished people to really solve the problem of basic subsistence on their own.

Second, it is also difficult to consolidate the basic subsistence for the poor people. Those who have solved the problem of basic subsistence only have adequate food and clothing, and the conditions of production and living have not been fundamentally changed. Because of frequent natural disasters, farmers and herders who have just solved the problem of basic subsistence have low and unstable income, and much efforts has to be made to strengthen infrastructure construction, ecological harnessing and human quality training. Therefore, long-term effort is needed to consolidate the achievements in poverty alleviation and build a well-off society in an all-round way.

Third, for those who have solved the problem of basic subsistence, the standard for basic subsistence is rather low and their quality of life poor. According to analysis and investigation, the standard of supporting to low-income population in Xinjiang in early 21st century should be 1,130 yuan, which is only a standard for basic subsistence. If calculated with the poverty standard designated by the World Bank which is no less than 1 dollar of the living allowance per day per capita, the number of impoverished farmers and herders



in Xinjiang is much larger. In this sense, the “basic subsistence” we refer to does not mean the eradication of poverty. Therefore, we have a more arduous task to increase income for farmers and herders in poverty-stricken counties to help them live a well-off life.

Fourth, poverty is serious in terms of width and depth in southern Xinjiang. As mentioned before, southern Xinjiang has the largest ethnic-minority population, and the three prefectures in the southwest edge of the Tarim Basin are impacted by harsh ecological environment and lagging-behind economy. It is a gigantic and systematic social project to increase the economic development of this area.

It has been demonstrated by the above brief analysis that the task of poverty alleviation in Xinjiang is a long and arduous one. Therefore, we must fully recognize that it is a protracted and heavy process and rationally meet with the difficulties and challenges in poverty alleviation.

IV. Reflections on accelerating the poverty eradication in Xinjiang

The protraction and difficulty of the poverty eradication demand an awareness of long-term poverty alleviation, an effective poverty-alleviation mechanism and persevering efforts. To this end, deep reflections should be made on the following aspects:

1. Establishing an effective mechanism to ensure the stable increase of poverty-alleviation capital

Efforts should be strengthened to increase the input in infrastructure construction such as small farmland irrigation projects. With regard to the weak farmland irrigation facilities in poverty-stricken counties eligible for state assistance in Xinjiang, a special fund should be established to subsidize small farmland irrigation construction and support given to the impoverished farmer households who have put labor into the construction of small farmland irrigation projects. Regular fixed-asset investment and treasury bond capital within budget should be allocated to the construction of small farmland irrigation facilities in poverty-stricken areas.

Preferential fiscal policies should be implemented. Xinjiang is a minority area as well as a border one, with vast land and sparse population, therefore efforts must be multiplied to create basic living and working conditions for impoverished people. The state should establish a “Long-term Development Fund for Poverty Alleviation in Poverty-Stricken Border Areas,” and Xinjiang government should correspondingly establish a “Fund for Poverty Alleviation in Border Area” as a special fiscal fund to be used exclusively for aiding the poor in ethnic-minority and border area. Besides, when the central government increases its efforts to extend fiscal transfer payments to the border provinces and prefectures, a special fund should be allocated to poverty alleviation in border areas. Government should readjust local tax policies in border areas and render support to the poverty-stricken counties



covered by state preferential policies.

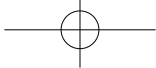
The central government should establish the fund for poverty alleviation in southern Xinjiang. The state should set the most impoverished Kashi, Hotan and Kizilsu Kirgiz prefectures as the priority of poverty alleviation and establish special funds for poverty alleviation in the poverty-stricken counties in southern Xinjiang, so as to support infrastructure construction, crop cultivation and aquiculture and poultry raising with local characteristics, industrialized operation of agriculture, job trainings for farmers and herders, ecological migration, and poverty alleviation for emergency. It must help the vulnerable groups in poverty-stricken communities to improve their living, working and health conditions, enhance their quality and capability and accelerate the impoverished farmers and herders to get rid of poverty and become affluent at an early date.

Preferential tax policies should be given to poverty-stricken counties. The majority of the counties and cities in Xinjiang have a weak industrial foundation with stagnant and backward development of the three industries. Local economies have less ability to accumulate capital and develop themselves. Since the state abolished taxes on agriculture, local governments have been living beyond their means. In order to support the development of county-level economy in poverty-stricken areas and enhance their ability to balance between urban and rural areas, the state should provide preferential tax policy support during the preliminary stage of industrialization and urbanization in poverty-stricken areas.

The management system of poverty-alleviation capital should be improved. With regard to the fact that poverty-alleviation funds, work-relief subsidies and subsidized loans are managed by different government departments, we suggest the government centralize power and responsibility by designating a special body to collectively review projects and distribute funds and recruiting professional personnel to evaluate projects, so as to ensure the planned operation, scientific administration and effective exploitation of the funds.

Methods of interest subsidies on loans should be changed to appropriately extend the number of years for interest subsidies on poverty-alleviation loans. It is suggested that the time limit for interest subsidies on poverty-alleviation loans be changed to 3-5 years, or interest subsidies be provided in accordance with the production cycle of project. Interest subsidies should be within the limits of annual plan. The central government should allocate to different provinces the quotas for interest subsidies. The provincial poverty-alleviation departments holding the quotas should file reports to provincial finance departments in accordance with actual loans provided by prefectures counties, and after the review by finance departments, settle with provincial Agriculture Bank of China.

Rural financial operations should be supported. We must bring the policy-oriented financing into full play, make innovations on the system of rural financing service, expand the agricultural policy-oriented financing services and reinforce the support to policy-



oriented financing. Innovations on rural credit cooperatives in countryside should be carried out so as to establish permanent mechanisms for rural financing development.

2. Promoting the transfer of workforce in poverty-stricken farming and pastoral areas in an active yet prudent and effective manner.

Governments at different levels should formulate preferential policies to encourage the transfer of rural workforce in Xinjiang, so as to create a favorable atmosphere for farmers and herders to find jobs and start up businesses in cities. First, Xinjiang should break through the dual pattern of labor and employment and abolish the restrictive policies of geological location, identification, household registration and industry on farmers and herders working in cities, so as to make equal treatment to farmers and herders working in cities on the one hand, and urban workforce on the other, in terms of status of employment, position arrangement, welfare and benefits, and social insurance, promoting an orderly flow and reasonable distribution of rural workforce between rural and urban areas. Besides, inland employers are encouraged to recruit in favor of the workforce from poverty-stricken areas in Xinjiang under the same condition, and the government should give commendations and rewards to the enterprises that have made marked contribution to absorbing farmers and herders from poverty-stricken counties in Xinjiang and the organizations and individuals who have scored outstanding achievements in organizing exports of labor services.

3. Vigorously strengthening efforts to train all types of personnel with high focus

Government should strengthen the exchange of staff and pared-up assistance in the poverty-stricken counties covered by state preferential policies in southern Xinjiang. In Hotan, Kashi and Kizilsu Kirgiz Autonomous Prefecture of southern Xinjiang, where the number of impoverished population accounting for 85.4% of that of Xinjiang, whether the 19 poverty-stricken counties can eradicate poverty fundamentally is of crucial importance to the overall situation of building up a well-off society of Xinjiang. The state should step up efforts to provide staff and economic support to the southern Xinjiang and help them speed up to get rid of poverty.

Qualified talents should be attracted into poverty-stricken areas in Xinjiang through supporting significant construction and scientific projects. The state should establish significant construction and scientific projects in poverty-stricken areas so as to attract and retain qualified personnel and enhance the quality of local engineering and technological and scientific talents. Meanwhile, the state should encourage inland senior experts to conduct investigation and research and consultation to the poverty-stricken areas in Xinjiang so as to participate in and provide guidance to the policy-making and implementation of significant scientific projects and problems.

Efforts should be boosted to increase support to development and training of personnel in poverty-stricken areas in Xinjiang. First, the state should establish a fund for development



of human resources in poverty-stricken areas, devoting mainly to cultivate professional and high-calibre personnel; second, the state should coordinate inland key universities, R&D institutions, and medical facilities to set up branches or jointly-run schools and provide paired-up assistance; third, the state should increase the number of “special personnel” of professional techniques in poverty-stricken areas in Xinjiang and build up a team of professional minority personnel with a reasonable size and good quality; fourth, the state should further increase the training for ethnic-minority party and government officials in poverty-stricken areas.

4. Striving to improve the medical and health conditions in poverty-stricken areas.

The government should increase its input in rural public health service in poverty-stricken areas in Xinjiang. More efforts should be made to increase input in rural public health system in poverty-stricken areas with the focus on preventive and health-care services and enhance the medical and health conditions of rural population in the entire poverty-stricken area.

The new type of rural cooperative medical care system has made solid progress. When implementing new type of cooperative medical care system in poverty-stricken areas, the central and autonomous region governments should appropriately increase their shares of input to solve the medical problem and health care of farmers and herders.

The system for medical aid services should be improved. The governments at all levels should strengthen efforts to support medical aid services and establish as soon as possible the system for rural medical aid services so as to make medical treatment and medicines available to impoverished farmers and herders.

5. Cultivating new regional economic growth points in southern Xinjiang.

Impoverished population mostly concentrates in Hotan, Kashi, Kizilsu Kirgiz Autonomous Prefecture at the southwest edge of Tarim Basin, where there are fragile ecological environment, prolonged communication and transport lines and backward economic development. Therefore, government should open mind to cultivate new economic growth points.

Opening up to the outside world should be accelerated to create new exit of Eurasia continental bridge. Because of the special geological location of southern Xinjiang, efforts should be made to build Kashi city as the new regional center city in the westward opening-up process and conduct economic and technological exchanges and cooperation with Middle and South Asian countries, vigorously promoting the rapid development of economic construction in southern Xinjiang.

Competitive industry chains should be cultivated with market orientation. All counties should work on the basis of local conditions and cultivate market competitiveness of county-level economy relying on competitive industries, so as to accelerate poverty alleviation



process. Blazing a trail for new industrialization, the government should plan and build up at an early time on-the-spot processing and value-adding businesses, extend the competitive industry chains and enhance the economic capacity of the poverty-stricken areas on the whole.

In addition, efforts should be strengthened to conscientiously increase the input and accelerate infrastructure construction in poverty-stricken areas. Protecting and improving ecological environment should be long insisted. The size of investment of work-relief subsidies should be enlarged and migration to other areas to alleviate poverty should be conducted in accordance with local actual conditions.

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HUMAN RIGHTS PROTECTION AND POVERTY ELIMINATION: IMPLICATIONS FOR PRACTICE

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Introduction

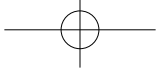
There has been a lively debate in recent years among scholars, human rights advocates, development experts and politicians about the relationship between poverty and human rights. This debate is often polarised in terms of a trade-off between development and human rights. But, both philosophically and empirically there seems to be little support for the view that, the eradication of poverty requires setting aside, to some future date, concern for human rights. In this brief paper I intend to treat poverty as a human rights problem and then examine some of the consequences that flow from such thinking.

Poverty as a human rights problem

Development economists have tended to think about poverty in terms of low income and economic growth has been the favoured route out of poverty. But there is now an emerging consensus that while growth is important in providing some of the means for tackling poverty, it is not an end in itself; we also need to think about the kind of growth we are encouraging through development. The UNDP's Human Development Indexes attempt to capture some of the different dimensions of poverty and well being; meanings which are not adequately conveyed by data on per capita income alone, but which also take into account life expectancy, literacy, education, health and gender inequalities. The Millennium Development Goals with their focus not only on reducing extreme poverty and hunger, but also in raising standards in the provision of healthcare and education and in promoting gender equality and a sustainable environment, convey this richer understanding of what poverty is and what causes it.

Recent thinking about the significance of growth has been influenced by new insights into poverty garnered from listening and consulting with the poor themselves. In their successor study to the publication *Voices of the Poor* (2000), Narayan and colleagues collect, from around the world, stories of success in moving out of poverty "from the bottom up"¹.

¹ Narayan, D., Pritchett, L. and Kapoor, S. (2009) *Moving Out of Poverty: Success from the Bottom Up*, Palgrave Macmillan.



One of the key findings is that poor people are not trapped in a culture of poverty, as many policy makers have assumed. Studies of poverty need to understand and tackle the various constraints on the poor succeeding in their own initiatives to improve their situation. “Fighting poverty,” as the UK’s Department for International Development expresses it, “isn’t all about aid, it’s about helping people to help themselves”¹.

The scholar who has made the biggest contribution to our thinking in this area is the Nobel prize-winning Indian economist, Amartya Sen. He conceptualises poverty as “capability deprivation;” an individual experiences poverty when they are deprived of the capabilities or “substantive freedoms” to “lead the kind of life he or she has reason to value”². While inadequate income is clearly a significant factor in leading an impoverished life it is, Sen argues, not the only one.

Without an understanding of what poverty is it is impossible to develop the appropriate policy responses. Although insufficient income remains the standard definition of poverty, international agencies, such as the UNDP, drawing on the work of Sen and others now also use a multidimensional view that “encompasses the lack of opportunity to access an education, basic healthcare, clean drinking water or to influence political processes and other factors that matter to people”³. For the World Bank:

“Poverty is hunger. Poverty is lack of shelter. Poverty is being sick and not being able to see a doctor. Poverty is not having access to school and not knowing how to read. Poverty is not having a job, is fear for the future, living one day at a time. Poverty is losing a child to illness brought about by unclean water. Poverty is powerlessness, lack of representation and freedom.”⁴

The consequences of a human rights approach to poverty

How does treating poverty as a human rights issue help the struggle to eradicate poverty? I think we can try to address this question from two perspectives. First, talking about human rights encourages a popular discourse on our moral values. When we talk about poverty as a human rights violation we are saying that poverty is unacceptable. Second, a human rights-based approach fosters the development of political and legal processes which strengthen the accountability of duty-bearers. At the heart of the human rights-based approach, however, is the individual human. Thinking about poverty as a human rights issue helps to focus our attention on the experience of the poor as individuals

1 <http://www.dfid.gov.uk/Global-Issues/How-we-fight-Poverty/>

2 Amartya Sen (1999). *Development as Freedom*. Oxford University Press, p.87.

3 http://www.undp.org/poverty/focus_poverty_assessment.shtm

4 <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/0,,contentMDK:20153855~menuPK:373757~pagePK:148956~piPK:216618~theSitePK:336992,00.html>



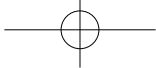
and not just as numbers aggregated to illustrate overall trends.

For example, we know that gross school enrolment rates tell only half the story in terms of progress towards universal primary education. Drop-out rates and primary school graduation rates give us a truer picture of the numbers of children who actually complete a primary education and, if the figures are disaggregated by gender, we may also observe that it is boys rather than girls who are benefiting from the new schools and trained teachers. But if we also start to thinking meaningfully about a child's right to education we have to think about individual children in specific situations. If we say that children's right to education is being violated we force ourselves to think about who has a duty to promote and protect these children's right to education and what is preventing them from enjoying this right. The problem may be a lack of schools and the local government may be failing in its responsibility to build enough schools. However, many children's exclusion from school lies in the poverty of their family which may force the child to work or the family may be unable to pay the cost of school fees or uniforms. We also know that a failure to protect a girl child's right to education may lie not only in the supply of schools, but also their type and design and in discriminatory attitudes towards the value of a girl's education found at home, at school and in the wider society.

A human rights-based approach to poverty, therefore, prompts us to think about the problem of different dimensions of poverty, very specifically, within a framework of duties to respect and protect that can help to inform the drafting of laws and regulations and the development of policy at both a national and international level. As the brief example of the right to education illustrates, making this right real requires us to think about the complex social, economic, cultural, institutional and political context in which individuals can make realistic human rights claims. A human rights-based approach, therefore, has analytical value in helping us to unpack the complex challenges posed by the context in which the poor, themselves, struggle to move out of poverty.

Human Rights as Moral Claims

A human rights-based approach to poverty also enables us to talk about poverty, or "capability deprivation," using a very powerful moral language of obligation and values. Some people argue that talking about poverty as a human rights violation is just empty rhetoric. There is certainly a danger that the struggle to realise the right for everyone to live in a world free from poverty is so fraught with problems that we fall back on very general and empty statements. While cognisant of the difficulties, I think that the kinds of conversations about human rights that take place in seminars like this, but also in the newspapers, coffee shops, villages and businesses around the world are helping to challenge received wisdom and the complacency expressed in sayings such as, "the poor are always



with us.” Despite our diversity, these conversations and encounters reflect a surprising degree of consensus about shared values and visions of justice that are helping shape new expectations and demands on policy makers.

Of course, different cultures, religious and philosophical traditions have given a higher priority to some rights over others. In European history it was the rights of the propertied man that were paramount and it was within this context that the Enlightenment philosophers began to speak about natural rights. In our post-modern age—in a largely secular and globalised world—the philosophical foundations of human rights can seem less firm. Yet, the central idea that, there is a dignity inherent in each one of us that needs to be respected and protected is hard to refute. The idea of human rights goes beyond a selfish utilitarianism which justifies pursuit of my happiness, to incorporate a conceptualisation of the good life and human flourishing for others as well. Human rights-thinking, therefore, challenges economic growth which increases inequality. From a human rights approach inequalities reflect discrimination by those with power and the denial of rights to some groups.

The moral strength of human rights lies in its commitment to respect and protect the rights of the other. Over time our understanding of who the other is who needs our protection has changed. Across different cultures traditional ideas—for example, about the role of women, homosexuals, the disabled, the criminal—have been confronted by new ideas and practices. Although traditional values can remain influential they are not static and new thinking about the way to treat others can become part of a culture’s mainstream. Here in China it was less than 80 years ago that women’s feet were still being bound and girls were routinely denied the same opportunities as boys. Although the human rights of women in China still face challenges there has been a huge change in attitudes and the way women are treated. This came about through a transformation in the discourse about women and as a result of specific changes to the law. Without the new language about women being widely used by scholars, politicians, writers and journalists and the general public in China, these changes to the law, and the effectiveness with which the law has been implemented, would not have come about.

As well as evolving domestic discourses on rights within countries, the international discourse on human rights is also evolving. The Cold War was a terrible setback to the international understanding of human rights which had emerged in the aftermath of World War II. While the Universal Declaration of Human Right issued in 1948 brought the full family of human rights together in one inspiring document, Cold War realities led to a division in the conceptualisation of civil and political rights and social, economic and cultural rights. Two international conventions, rather than one, emerged to put the Universal Declaration into international law; and support for each Treaty became politicised. While the West tended to trumpet the superior values of civil and political rights, the socialist



world argued that these rights were secondary to the need to promote economic rights. The idea of hierarchies of rights has been a distraction; it has diminished our appreciation of the full range of rights we need to enjoy to be fully human and in a practical way it has hindered our thinking about the indivisibility of rights.

There continues to be a widely held idea that we can pick and choose which rights we want to protect and which we can ignore or treat as less important. China is not alone in arguing that social and economic rights take precedence over the enjoyment of civil and political rights. This is often expressed along the following lines—what use is freedom of expression if you are starving. However, this line of argument, which suggests that the pursuit of one set of rights will hinder enjoyment of another, does not seem to be grounded in empirical evidence. If anything, the evidence supports the view that human rights are indivisible.

Research from the World Bank Institute, published in 2004¹, demonstrated empirically that the protection of civil and political rights is an important component in the struggle to eliminate poverty. While many people have asserted that good governance will be an automatic outcome of economic development and a country becoming wealthier, in fact the evidence indicates that this does not necessarily happen. Economic development may actually impede the enjoyment of civil and political rights as vested interests “capture” many of the mechanisms of governance. From a statistical analysis of the relationship between a number of indicators of civil and political rights and development, however, researchers found a causal relationship showing that better governance led to improved development outcomes. Looking at how this relationship might work the researchers concluded that it was through giving the poor a voice that the rights to freedom of expression, to association and public participation seem to have a positive relationship with the struggle to eliminate poverty. This argument is also supported by the views of the poor themselves who value democratic processes, particularly well-functioning local democracies².

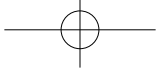
Social progress in achieving greater equality for women and for workers arose as women and workers themselves questioned and challenged the control exerted by men and capital. Similarly it will only be through the initiatives of the poor themselves and enhancing the scope for the poor to use their own agency that they will be able to move out of poverty. Thinking about poverty in terms of human rights gives a greater urgency to the struggle to eradicate poverty and is a powerful tool for anti-poverty campaigners.

Human Rights as Law

Over the last couple of decades human rights have been expressed not just as moral

1 Kaufmann, Daniel (2004) “Human Rights and Governance: the Empirical Challenge”, www.worldbank.org/wbi/governance.

2 Narayan, D., Pritchett, L. and Kapoor, S. *Ibid* p.42.



claims, but also claims that can be realised in law. These legal claims may be expressed in general terms, such as in many countries' constitutions and in the treaty commitments under international law. Thus, the International Convention on Economic, Social and Cultural Rights sets out a series of general commitments—the right to health, to shelter, to food, to education, to decent work and so forth—which, taken together sum up a human right to well being or freedom from poverty. While some countries, including China, have given a general undertaking to respect human rights in their constitutions, the South African Constitution is bolder and has attempted to hold the government to account for its progress in reducing poverty. The Constitution mandates the Human Rights Commission to require the state to provide it with information on measures taken towards the realisation of rights concerning housing, health care, food, water, social security, education and the environment¹.

Although these general human rights statements support a progressive discourse and can be a useful tool for human rights advocates, it is at the level of domestic policies and laws that we need to look for the sort of remedies that can make social and economic rights real. It is in a country's laws governing access to health care, education, employment, housing and social welfare, as well as access to finance and land rights that countries demonstrate their political commitment to the eradication of poverty. Domestic law sets out the obligations of duty bearers—this is primarily the state, but may include enterprises and organisations and even families. The law also establishes the rights of the individual: rights to be free from discrimination, legal rights to claim certain entitlements such as free health care or compensation in cases of occupational illness or injury and rights of access, for example, to education, to public spaces, to information or to form associations and express opinions. It is through domestic law that moral rights become real rights that individuals can claim and become real obligations for the state, and others with power, to meet or face legal consequences.

Making rights in law real—legal empowerment and legal remedies

Domestic laws have the potential to protect the poor from powerful interests and also provide the framework in which the poor can claim their entitlements to education, health care and social welfare payments. But the progressive intentions of legislators can be easily undermined by a failure to consider how the law will be implemented in practice or the influence of money and powerful interests on the legal process. Passing laws without thought to the institutions that will carry out the law: the courts, the lawyers and the government administration can not only undermine legislators' intentions, but also the authority of the law itself.

¹ Section 184(3) of the South African Constitution



If the law is going to help the poor in their struggle against poverty, then the poor need to be able to access the legal system. They also need to be able to understand what their rights are in law in a language that is meaningful and enables them to make decisions about the best course of action where they perceive that their rights have been violated. Bringing cases to court may not necessarily be appropriate; for reasons of cost and time a negotiated settlement may be in the best interests of a poor client and many countries support mediation services. But, there will be cases where reaching a negotiated settlement is impossible and the poor will then need access to the courts to obtain legal remedies. A meaningful access to the courts for the poor will only be possible if some kind of legal aid is available.

Experience from around the world illustrates the various ways in which the poor can access the courts and the law becomes a source of empowerment and not oppression. Public interest law firms and NGOs staffed by activist lawyers are a popular and effective way in which the interests of the poor can be represented. These solutions can plug the gaps in legal aid provision: a fully comprehensive government-funded provision of legal aid for all poor claimants—and not just the most indigent—is beyond the means of most developing countries. Pro-bono assistance from practising lawyers or lawyers funded through voluntary donations are often an important way in which the poor can use the law to protect their rights in a manner comparable to the rich. Class action cases can be a cost effective way of pursuing litigation where there are large numbers of claimants; this often arises in cases involving environmental pollution. The pollution of water supplies by local factories can destroy the land and irrigation of crops or result in ill health and expensive medical treatment. The right to a sustainable environment is a very real dimension of the right to be free from poverty for millions of farmers.

The international Commission on Legal Empowerment of the Poor¹, which completed its work last year, cites many examples of how the law can help to empower the poor. On a visit I made to the Philippines with Chinese legal aid lawyers we spoke with coconut farmers who had received training from a local NGO on the laws that protected their coconut palms from being cut down by local developers. Armed with this information and the skills to register complaints with the court these local farmers were able to use the law to protect their means of livelihood. In China, too, we can point to examples of ways in which local farmers have studied the law and then been able to use this knowledge to challenge those who threaten their land or, workers who have learnt how to try and claim compensation from their employers in the event of serious occupational illness or injury.

Of course, not all farmers or workers have the time or skills to bring their own legal cases. While legal aid budgets in China have been rising, millions of poor farmers living in

¹ See <http://www.undp.org/legalempowerment/>



the poorest and most remote villages have little or no access to trained lawyers, since there are still so few lawyers available outside the major cities. Since 2006 The Rights Practice has been supporting the Public Interest and Development Law Institute in the Law School at the University of Wuhan to help address this problem by training legal workers in the 26 poorest counties of Hubei province. With encouragement from the provincial Bureau of Justice the training has been designed to build the capacity of the legal workers to assist with the most common problems brought to them by the farmers and migrant workers in these poor and remote villages: problems of unpaid wages and compensation claims for disabling injuries sustained at work are the most common cases. Through their discussions with villagers our local partner discovered a fairly high level of general rights awareness, but much less awareness of how these general rights could be realised through the right to legal aid and assistance. It is this right to legal aid and to access the legal system which makes real the more rhetorically expressed rights to education, health and work.

Although paralegals, such as these Hubei township-based legal workers, can, with some appropriate training, provide a range of valuable basic legal services there are times when the services of a qualified and experienced lawyer is called for. In this situation what we might generally term public interest lawyers play an essential role. Some of these lawyers may work full time in NGOs or law firms specialising in such cases or they may take on cases for certain deserving clients at little or no cost while subsidising their time from their other paid work. As the Commission for Legal Empowerment of the Poor concludes, supporting access to justice is a vital ingredient in helping the poor to use the law to protect their rights and interests. Where the poor do not have access to justice they are being denied a legitimate means for making their claims. Without access to the legal system the poor are more likely to be exploited by powerful interest groups and to feel forced to take measures outside the law to defend their own interests.

Lawyers play a very valuable role in helping to hold duty-bearing institutions to account for their obligations. Where the obligations of the law are unclear judges and lawyers can help to clarify the law's intentions. We know in China, where much of the law has only developed over the past 30 years, that, many laws remain vague and poorly defined and further clarification is usually needed through implementing regulations. It is inevitable in this kind of situation that there will be conflicts within the courtroom over interpretation. The progressive realisation of social and economic rights will always raise questions about resources and priorities and lawyers for the poor will understandably call for an expansive interpretation of the legal obligations owed to their client. However, the law can really only reflect decisions about the allocation of resources and entitlements to services and support which have first been made in the political sphere. Nevertheless, if the state makes a claim to protect social and economic rights it is right that this claim is tested in courts of law.



Empowering the poor to claim their rights to legal remedies is part of the essential process of making human rights real.

With its vast population, China has made impressive progress in reducing poverty since the reform process started 30 years ago. It has already achieved the goal of halving the number of people in extreme poverty by 2015, the first of the Millennium Development Goals. But, as the UNDP China office recognises, “remaining poverty is however becoming increasingly difficult to address, as the rural poor are now concentrated in remote regions with difficult natural conditions”¹. Inequality in the provision of basic public services, particularly poor provision in rural areas, was addressed in the 2007/2008 China Human Development Report. There are also new challenges arising from the feminisation of agriculture, the flows of migrants and urban poverty. While China continues to achieve impressive rates of growth the Gini coefficient, a measure of inequality, indicates that the benefits of growth are not being shared equally.

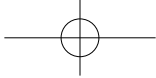
In this difficult context a number of lawyers and NGOs in China have sought to challenge, through the media and research as well as in the courts, government policies which, they allege, discriminate against certain groups and types of individuals. Often representing poor, vulnerable or marginalised clients, and using the language of rights, these lawyers have been attempting to use China’s growing body of domestic legislation to further their clients’ interests. The cases they bring are addressing fundamental questions about individual rights, the obligations of government and the accountability of those in power. After making impressive progress in tackling poverty over the past 30 years, China now faces new and more complex sets of challenges which cannot be addressed solely through delivering high rates of growth. Policy making not only needs to address the interests of the people, but of the individual. Empowering the poor and socially excluded to use the law and its institutions to claim redress for rights violations and to protect their interests helps channel protest into the court room and away from violence on the streets or the futility and cost of petitioning.

Conclusion

A human rights perspective on poverty eradication does not ignore the benefits of economic growth, but it does encourage policy makers to address the outcomes of growth and to achieve growth in a way that respects the individual’s right to essential freedoms—of choice, of opportunity and to complain. Freedoms which, the evidence suggests, promote a virtuous cycle of helping more people move out of poverty.

(The author is The Founding Director of The Rights Practice, UK.)

¹ <http://www.undp.org.cn/modules.php?op=modload&name=News&file=article&catid=10&sid=10>



A RIGHTS-BASED APPROACH TO DEVELOPMENT AS A STRATEGY FOR POVERTY ALLEVIATION AND ITS CHALLENGES

Palan Mulonda
Zambia

Introduction

Development is a concept that has preoccupied nations and the international community at large for decades. Beginning with the model of the Marshall Plan designed following World War II to reconstruct Europe and Japan, development professionals have been interrogating the concept. At universal level, international consensus on action for development began in 1960, with the General Assembly of the United Nations setting priorities and goals through a series of 10-year International Development Strategies. These decades have consistently stressed the need for progress on all aspects of social and economic growth based on the somewhat naïve idea that the so-called “undeveloped” countries of Africa, Asia and Latin America had to be brought up to the economic standard of industrialized countries in Europe and macro-economic infrastructure projects to the benefit of business enterprises in the North and the political elites in the South. The policy of the first three development decades of the United Nations, therefore, had a devastating effect on the situation in the south.¹

On the other hand, human right as a concept traces its origins from antiquity though it is safe to state that the discourse of this subject only gained momentum after the Second World War that ended in 1945. The adoption of the Universal Declaration of Human Rights in 1948 by the General Assembly laid the foundation for the further elaboration of human rights standards both universally and regionally resulting in a plethora of standards viewed as either persuasive or binding depending on their formulation. However, the standard setting in the field of human rights has ended to be enforced overshadowed by the legal character these standards assume and how best they can be enforced. It is therefore safe to state that the link between development and human rights as envisaged in the United Nations Charter has only become pronounced of late. Development and human rights have

¹ See Poverty, Development and Human Rights in *Human Rights in Development Year Book 2002*, edited by Martin Scheinin and Markku Suksi, Martinns Nijhoff Publishers, Oslo 2005, p.17.



been viewed as separate concepts for a very long time.

As the former UN High commissioner for Human Rights, Mary Robinson once eloquently stated in her Presidential Lecture at the World Bank in the December 2001.

“Lawyers should not be the only voice in human rights and equally, economists should not be the only voice in development. The challenge now is to demonstrated how the assets represented by human rights principles, a form of international public goods, can be of value in pursuing the overarching development objective, the eradication of poverty.”¹

The challenge faced by community of nations of synergizing the two concept of development and human rights seems to have been in part achieved by the UN General Assembly proclamation under the Declaration on the Right to Development in Article 1(1) that “all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”². In 1993 at the Vienna Conference on Human Rights, the governments of the world re-affirmed that development is an inalienable right and stated that the “existence of widespread extreme poverty inhabits the full and effective enjoyment of human rights”³. At the Copenhagen World Summit on Social Development of 1995, reduction of worldwide poverty was explicitly recognized for the first time as one of the overriding goals of both development and human rights policies. It situated poverty within the context of under-development, nothing that poverty was characterized by the denial of civil, cultural, economic, political and social rights.

In the Programmer of Action of the Social Summit, the multi-dimensional character of poverty was explained as follows:

Poverty has various manifestations, including lack of income and productive resources sufficient to ensure sustainable livelihoods; hunger and malnutrition; ill health; limited or lack of access to education and other basic services; increased morbidity and mortality from illness; homelessness and inadequate housing; unsafe environments; and social discrimination and exclusion. It is also characterized by a lack of participation in decision-making and in civil, social and cultural life.⁴

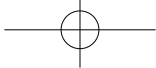
At the dawn of the millennium, world leaders at the Millennium Summit in September 2000, adopted a set of Millennium Goals aimed at eradicating extreme poverty and hunger, achieving universal primary education; promoting gender equality and empowering women;

1 Marry Robinson, “Bridging the Gap between human rights and Poverty Reduction: A conceptual Framework Proposed By the UN High Commissioner for human rights.” Human Rights in development, yearbook 2002, ed. Martin Scheinin and Markku Suksi, Martinns Nijhff Pushers, Oslo 2005, p.21.

2 Adopted by General Assembly Resolution 41/128 of 4 December 1986.

3 Vienna Declaration an Plan of Action, 1993, para.14.

4 See Manfred Nowak, A Human Rights Approach to Poverty, in Human Rights in Development YearBook 2002, ed. by Martin Scheinin and Markku Suksi, p.22



reducing child mortality; improving maternal health; combating HIV/AIDS, malaria and other diseases; ensuring environmental sustainability-through a set of measurable targets to be achieved by the year 2015.¹ The goals are linked to human rights standards of varying character and support the argument that a rights-based approach to development is relevant in addressing basic human needs.

It is the thesis of this paper to demonstrate that there never be harmonious development without a rights-based approach to development that integrates the norms, standards and principles of the international human rights framework into the plans, policies and processes of development. The rights-based approach starts with the idea that the denial of human rights is both the cause and the outcome of poverty and marginalization.

The paper, will further postulate that policies, plans and actions are not sufficient if they are merely imposed from above. To ensure sustainability of development interventions, not only must peoples, groups and individuals be involved in the decisions that affect their lives and be given access to the means to realize their rights, they must also become aware of their legal rights in order to be able to hold the duty-bearer accountable.

In the context of legal rights, the paper will look at the arguments for and against the realization of human rights with a bearing on development using legal means and will in this respect interrogate the proposals before the Zambian National Constitutional Conference (NCC) with a view to establishing whether they indeed will enhance development or undermine the architecture of the country's constitutional order. The paper will also look at the possible challenges likely to be encountered as a result of the international financial melt-down to development in general and harmonious development in particular with Zambia as a case in point.

The Paper will end with possible options for enhancing the rights-based approach to development as an avenue to poverty reduction.

(The author is Vice President of Human Rights Committee of Zambia)

¹ <http://www.un.org/en/development/other/overview.shtml>



POVERTY ERADICATION AND THE ENJOYMENT OF HUMAN RIGHTS

Pham Thi Kim Anh
Viet Nam

How does poverty impact on the enjoyment of human rights? What are the policies of the Government of Vietnam toward poverty eradication, the achievements and its impact on human rights enjoyment of Vietnamese citizen?

1. What is Poverty?

From income perspective: a person is poor if, and only if, her/his income level is below the defined poverty line.

From basis needs perspective, poverty is deprivation of material required for minimally acceptable fulfillment of human needs. It also recognizes the need for employment and participation.

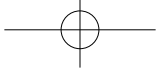
From capability perspective, poverty represents the absence of some basis capabilities to function. It is the lack of real opportunities due to social constraints as well as personal conditions to lead valuable and valued lives.

In the main, the concept of poverty as said by Paul Spickers and David Gordon includes: need, standard of living, limited resources, lack of basic security, lack of entitlement, multiple deprivation, exclusion, inequality, class, dependency, unacceptable hardship. If a person is living in that situation, he/she is living in poverty.

2. Relationship between poverty and the enjoyment of human rights.

The Universal Declaration of Human Rights clearly states that, every one has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, ... (article 25 UDHR), the International Covenant on Economic, Social and Cultural Rights reiterates the recognition of this right and provides that it is an obligation of State Parties to the Covenant to implement these rights (article 11 of the ICESCR).

Poverty as mentioned, is deprivation of material required for minimally acceptable fulfillment of human needs. Therefore, poverty definitely erodes or nullifies the right to health, to adequate housing, the right to food and safe water, the right to education of people.



As poverty is not only a state of lacking or absence of resources, but also deprivations of opportunities to have access to those resources, it is a denial of fundamental economic rights, the right to have a decent life, to seek an adequate standard of living.

The impact of poverty on the enjoyment of civil and political rights is the same, as poverty not only deprives the conditions of enjoyment of human rights such as economic, social rights as mentioned above, but will also deprive opportunities and equality of a person, leading him to an disadvantage and excluded position in the society, on the one hand a person living in poverty will have less opportunity to pursue his material life, on the other he is in unfavorable position to exercise his civil and political rights, his right to non-discrimination, the right to fair trial, to political participation and security. Articles 2 and 3 of both the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights stipulate the rights to non-discrimination and equality of people. Poverty as multiple deprivation, exclusion and inequality, by no mean is a condition for the enjoyment of human rights.

3. Viet Nam's poverty reduction programme and measures to reach out to vulnerable groups

Comprehensive and sustainable poverty reduction has been a high priority and a consistent goal throughout Viet Nam's socio-economic development. Viet Nam is recognized by the international community as one of the leading countries in poverty reduction. Indeed, poverty reduction has been the top priority of the Government in its effort to promote human rights as it suits the country's circumstances and the United Nations Millennium Development Goals (MDGs). A "*Comprehensive Poverty Reduction and Growth Strategy*" has been approved by the Government in May 2002 on the basis of the 2001-2010 Social and Economic Development Strategy, with a total budget of VND 43,000 billions focusing on vulnerable groups such as poor house-holds, poor communes, communes with special hardship, among which priority is given to poor female headed house-holds, poor ethnic house-holds and poor house-holds with social protection beneficiaries (the elderly, persons with disabilities and children with special circumstances).

Thanks to the adequate policies and mechanisms, since the launch of Doi Moi over 20 year ago, Viet Nam has recorded notable achievements in increasing incomes and reducing poverty, which have gone beyond the MDG on poverty reduction. The national poverty rate in Viet Nam (according to the poverty line established by the General Statistics Office and World Bank) dropped sharply from 58.1% in 1993 to 15.97% in 2006. The ratio of people living on less than 1 dollar a day has reduced eight times, from 39.9% in 1993 to 4.9% in 2006. Vietnamese poverty line has been elevated, together with increased average income, to gradually reach the international poverty line. Viet Nam's HPI (Human Poverty



Index) ranking as compared to other developing countries has risen from 51/92 in 1993 to 47/103 in 2005. Viet Nam's accomplishment in poverty reduction has been praised by the international community and regarded as *one of the most successful stories in economic development* (Viet Nam 2004 Development Report, the World Bank). Comprehensive and sustained poverty reduction is defined as a key objective in Viet Nam's economic and social development. After 20 years of reform, the people's life has been significantly improved. Per capita income has increased from under US\$ 200 in 1990 to US\$ 1,024 in 2008. The income gap between urban and rural areas has been gradually narrowed. Poverty, according to the national poverty line, has been cut from over 60% in 1990 to 13.8% in 2008. Viet Nam's poverty line has been raised to approach the international poverty line.

Achievements in poverty reduction and eradication have brought about better conditions for enjoyment of human rights of vulnerable groups, as follows:

For Children: Viet Nam has recorded encouraging achievements in guaranteeing children's rights and interests. Apart from the 2001-2010 National Plan of Action for Vietnamese Children, the protection and promotion of the children's rights have been incorporated into economic and social development strategies and plans, thus enabling children to enjoy their rights to a fuller extent. Free-of-charge medical examination and treatment programmes and measures to reduce infant mortality rate and the rate child malnutrition children have been effectively implemented. About 8.4 million children accounting for over 90% of children under 6 have received free-of-charge healthcare cards. Right-age enrolment rate has seen a steady increase, with primary education enrolment standing at 95.04% in 2005-2006 and lower secondary education at 80.3%. Meanwhile, drop-out rate has been on decline. Preferential policies have been put in place to better assist poor children, migrant children and ethnic minority children. Safe and healthy recreation services are provided for children. 40% of communes and wards and 80.3% of districts have recreation facilities for children. 100% of provincial libraries and 30% of district libraries have sections dedicated to children. Children are enabled to express their opinions and participate in cultural and social activities at school and in the community through national and international forums, Teenage Association and Junior Reporters' Club.

For Women: Viet Nam has recorded encouraging achievements in ensuring women's rights. Women account for 25.76% of all members of the National Assembly in the 2007-2011 term, ranking 4th in the Asia Pacific Region. 83% of working-age women are employed. Women are present at almost every state administrative agency and state-owned enterprises where 68.7% of the public servants and 30% of employers are female. They also participate in numerous political and social organizations, accounting for 30% of these organizations' executive members at different levels. Women have their names recorded in Land-use Right Certificates/ House Ownership Certificates with their husbands. They also



have equal rights with men in the issue of citizenship. Female adult literacy rate is 91%, and women account for 30% of all post-graduates. Female life expectancy is 73 while male 70. Women have 4 months of full pay maternity leave and are given one extra month pay.

According to the United Nations Human Development Index and Gender Development Index, Viet Nam ranks 105/177 and 91/157 respectively. Viet Nam is present for the first time in the list of countries that have established the Gender Empowerment Measure (GEM) and ranks 52/93. According to the World Bank and the Asian Development Bank, Viet Nam has one of the highest rates of economic participation of women in the world, is one of the more advanced countries with respect to gender equality, and stands out in East Asia for its success in closing gender gaps in the last 20 years.

For ethnic minorities: Viet Nam is carrying out two National Target Programmes, namely the Assistance Programme on land for housing and production, and domestic water for poor ethnic minority households living in hardship (Programme 134) and the Socio-Economic Development Programme for communes in special hardship in mountainous, remote and border areas (Programme 135). The implementation of these Programmes has significantly improved the livelihood of people, especially in remote areas, improved infrastructure, thus enabling better access to science and technology applicable to production, heightening the sense of duty and contribution to the development and narrowing the gap among regions. In addition, the Government of Viet Nam has also introduced policies on price and charge subsidies, preferential loans for ethnic households in special hardship for production and settlement, support to small-population ethnic minorities, and free-of-charge provision of 18 newspapers and magazines for people in hardship regions.

The above policies have improved the equality for ethnic minorities in all areas. More and more of ethnic minority people are holding important positions in state authorities at national and local levels. The 12th National Assembly has 87 deputies from ethnic minorities, accounting for 17.65%. The poor household ratio among ethnic minorities has decreased rapidly by an average of 3-5% per year. Regions with special hardship have received significant investments in infrastructure: 96% of communes with special hardship have motor roads reaching the commune centre; electricity is available in 100% of the districts and 95% of the communes. All communes have primary school and kindergarten; all districts have secondary schools. By the end of 2007, 71% of communes with special hardship had accomplished universalization of primary education and 80% had accomplished universalization of lower secondary education. All districts have health clinics and doctors and medical personnel; common diseases in ethnic and mountainous areas, such as malaria, goiter, leprosy and tuberculosis, have been prevented and reverted; the protection and health care for mother and child, and malnutrition prevention have



recorded many successful stories.

For persons with disabilities: The State of Viet Nam always creates all favorable conditions to continuously improve the enjoyment of the rights of Vietnamese persons with disabilities. Persons with severe disabilities, wounded soldiers, Agent Orange victims, including children, receive State-provided subsidies and care. The healthcare and rehabilitation network for persons with disabilities has been set up at all levels. During the last 10 years, more than 300,000 people, including tens of thousands of children, benefited from corrective rehabilitation and received corrective instruments free of charge, received assistive devices such as wheel-chairs and attendant-propelled chairs; and hundreds of thousands of persons with disabilities are provided with health insurance. Viet Nam is developing an integrated education model, converting textbooks into Braille, developing a system of sign languages and unified the writing system for the blind. The number of children with disabilities enrolled in secondary and tertiary education increases each year, many of them excel in their studies. Up to now, there are approximately 100 vocational centers for persons with disabilities and 35,000 people receive vocational training.

4. Achievements in poverty eradication and the enjoyment of other human rights in Viet Nam

Until the late 1980s, Viet Nam remained a poor country, with a slow growing economy and stagnant production. The people were faced with a lot of difficulties, the rate of unemployment and illiteracy were high, while many of their spiritual and material needs were not met. Despite those difficulties, the people's economic, social and cultural rights were inscribed in the Constitution and law, reflected in specific national development policies and implemented in reality, particularly since the *Doi moi* process.

After more than 20 years of *Doi moi*, important achievements in economic and social development have been recorded. The economy has grown at a steady and high rate, averaging 7.5% per annum. The economic structure has gradually shifted towards services and industry sectors having a larger share while that of agriculture shrinks. All economic sectors are encouraged to grow to contribute to the country's economic development, particularly to job creation and improvement of the quality of life. The sharp increase in total national investment has not only created a momentum for economic development, but also helped reduce the burden traditionally put on the State budget, thus enabling the Government to concentrate resources on such priorities as education, health, infrastructure development, human resource development, poverty reduction and assistance to areas with difficulties.

In education: investment in education and training has been seen as investment for development. Budget allocation for education has increased annually and now accounts for



20% of State budget expenditures. More schools have been built throughout the country. Viet Nam completed the universalization of primary education in 2000, 15 years prior to the MDG deadline. Universalization of lower secondary education is being carried out. By the end of 2007, 42 of the country's 63 cities and provinces have met national targets on universalization of lower secondary education. At present, Viet Nam is ranked 64th among 127 countries on education development by UNESCO.

In healthcare: necessary conditions for the people to enjoy their right to health care have been created with priority given to women, children and ethnic minority people. Strategic programmes and policies on vaccination for children, health insurance assistance, free-of-charge medical treatment and examination for the poor and children under 6, prevention and control of tuberculosis and HIV/AIDS have proven to be effective. Under-5 mortality rate has been reduced from 58 deaths per 1000 live births in 1990 to 25.9 in 2007 while under-1 mortality rate has been cut from 31 deaths per 1000 live births in 2001 to 16 in 2007. Child malnutrition rate has decreased to 21.2% in 2007. Maternal mortality rate has been reduced from 233 per 100,000 live births in 1990 to 75 in 2007. Almost all ethnic minority communes with difficulties have health clinics while community-based health services are available in most villages, contributing importantly to the prevention and control of many fatal diseases and improvement of the people's health and quality of life.

In employment: the 2006-2010 National Target Programme on Employment has been carried out with focus on giving loans for employment through the National Fund on Employment and supporting projects, helping to facilitate job search activities. From 2001 to 2008, 12.44 million new jobs have been created, 9.3 million of which are from social and economic development programmes and over 2.6 million through the National Fund on Employment. Since January 1, 2009, Viet Nam has, for the first time, introduced an unemployment insurance scheme to provide additional assistance to people searching for jobs. This is a remarkable step forward by Viet Nam in comparison with countries at the same level of development.

In media and communication: The mass media has been growing rapidly in diverse forms and with rich contents. They have become important forums for people's voice and made active contribution to the process of renewal, the fight against corruption and other vices. In 1990, there were only 258 newspapers and magazines. At present, there are 700 print press agencies with 850 publications, tripling the 1990 figure. There are also 68 TV and radio stations at central and provincial levels, 80 e-newspapers and thousands of electronic news bulletins and 55 publishing houses. In Viet Nam, there are over 15,000 licensed journalists. Regular internet users account for nearly 24% of the population, which is higher than the average Asian figure of 18%. At present, 95% of communes of extreme difficulties have radio stations, and many among them have radio or relay stations



broadcasting in ethnic minority languages. The Vietnamese people also have broad access to international press as well as TV and radio programs. According to the 31 March 2009 report of the International Telecommunication Organization (ITU), Viet Nam is among the top 10 countries having the highest IT growth rate in the 2002-2007 period in terms of the level of coverage, usage and skills.

In religious activities: Vietnam is a country of multi-religion and multi-belief. The country has 20 million followers of different religions, including the world's religions, such as Buddhism, Catholicism, Protestantism, Islam and domestic religions. Religions coexist in harmony with one another in the spirit of great national unity. All religions are created favorable conditions in their activities. The State has allocated land for the religions to build worshipping places, meeting the demand for religious activities of the followers. Thanks to achievements in economic growth, there has been good conditions for growth in the training of religious clergy: The Vietnamese Buddhist Sangha has established three institutes, six colleges, and 31 intermediate training schools, which have trained 5,090 Buddhist monks and nuns; the Vietnamese Catholic Church has six seminaries now training 1,236 Catholic priests; the Institute of Bible and Theology of the Vietnamese General Protestant Church (Southern Region) has organized two training courses for 150 trainees. On 30 August 2006, the Institute of Bible and Theology started construction for a new base in Hồ Chí Minh City;... During five years (1999-2004), the Religious Publishing House published 719 publications with 4.2 million copies (more than 500,000 of which were Bibles) at the request of religious individuals and organizations. Bibles have also been printed in the Ba Na, Ê-đê, and Gia Rai ethnic minority languages to facilitate religious practice among followers in these ethnic groups.

5. A number of measures to cope with the impacts of the economic crisis, especially on vulnerable groups

In 2009, the impacts of the global financial crisis and economic downturn have become apparent in many sectors of Vietnamese economy, including production, services, export and foreign investment. Therefore, the Government's key task in 2009 is to concentrate every effort to prevent economic recession, accelerate production, increase export, stimulate investment and consumption, as well as ensure social security.

Viet Nam has introduced 5 sets of measures to prevent economic recession, maintain growth and ensure social security, namely: (i) promoting production and export; (ii) stimulating investment and consumption; (iii) implementing flexible, effective financial and monetary policies; (iv) accelerating poverty reduction and ensuring social welfare; and (v) strengthening public management in an effective, flexible and timely manner. These measures have received positive feedbacks from the international community.



Thanks to the vigorous and comprehensive implementation of these measures, signs of positive developments have been seen in almost every area of the economy, constituting an important basis for the promotion of social welfare and mitigation of negative impact of the economic crisis on the people, especially vulnerable groups. The Government has allocated budget, increased national reserves, especially on food, in order to implement social security policies. The Government continues to provide support food, restores promptly socio-economic infrastructure, assists and enables resettlement for victims of natural disasters and epidemics. Since early 2009, Viet Nam has put in place investment solutions with a view to quickly reducing poverty in 61 provinces with the highest poverty rates and housing projects for the poor, social protection beneficiaries, laborers at concentrated industrial zones and students. The Government has also implemented unemployment insurance policy, in accordance with the Law on Unemployment Insurance. Viet Nam is making budget adjustments to provide direct subsidies for the poor and pays particular attention to ensuring the rights to healthcare and education, especially of entitlement beneficiaries and regions with special hardship.

(The author is Deputy Director-General of Department of International Organizations of Ministry of Foreign Affairs of Vietnam.)



POVERTY ELIMINATION, HUMAN DEVELOPMENT AND HUMAN RIGHTS PROTECTION

Pierre Picquart
France

Looking on the planet at the long social history of many populations, the legitimate human aspirations of our different societies, the considerable reforms to accomplish, and considering the problems of “Poverty Eradication and Human Rights Protection,” these two important challenges represent for today and for the future, a major and determining challenge for a new harmonious world.

Indeed, today, many of these questions remain and they all require urgent responses and pragmatic actions adapted to various situations and areas. We recommend to choose, to discuss and to look at these following focus and issues:

1. Only fight against Poverty or Human development? Even if reducing poverty is a huge challenge, the global concept of Human development looks more interesting. Should we consider this full index (such as the “Human Development Index” (HDI)¹) which takes account of human development in the world?

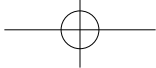
2. If the number of poor worldwide has decreased from 52% to 26% between 1981 and 2005, what progress are we seeing today and what are the prospects?

3. Considering the Poverty Eradication and the Human Development, how to manage these new goals with Human Rights Protection?

Besides and in regard to the current economic and financial crisis, we have to progress in health, education and other services, and to meet these eight Millennium Development

¹ The Human Development Index (HDI) is an index used to rank countries by level of “human development,” which usually also implies whether a country is developed, developing, or underdeveloped. The HDI combines normalized measures of life expectancy, literacy, educational attainment, and GDP per capita for countries worldwide. It is claimed as a standard means of measuring human development—a concept that, according to the United Nations Development Program (UNDP), refers to the process of widening the options of persons, giving them greater opportunities for education, health care, income, employment, etc. The HDI attempts to measure a country’s development. The HDI combines three dimensions:

- a. Life expectancy, at birth, as an index of population health and longevity;
- b. Knowledge and education, as measured by the adult literacy rate (with two-thirds weighting) and the combined primary, secondary, and tertiary gross enrolment ratio (with one-third weighting);
- c. Standard of Living as measured by the natural logarithm of gross domestic product per capita at purchasing power parity.



Goals. Human development is about putting people at the centre of the development.

I. Better than to eradicate and eliminate “the only concept of poverty in the world,” it seems interesting to approach the concept of “Human Development Index” (HDI).

As it was said before, “Time is short. We must seize this historic moment to act responsibly and decisively for the common good.” With only six years until the 2015 deadline to achieve the Millennium Development Goals, the UN Secretary-General Ban Ki-moon chose these words to strongly urge Governments to engage constructively in the preparations for a high-level meeting in September 2010 to review progress towards the MDGs and other international development goals.

1. Focus about the Millennium Development Goals

This focus is more interesting because it is universal. Talking about poverty today is to progress in more areas related to population: in health, education, the fight against viruses, motherhood, the environment of nature and of people, equality in the life, child hearth, a global partnership for development ... and many other topics.

In this perspective, China has an essential place. China can make enormous contributions to the achievement of the Millennium Development goals. China shows for Chinese people and others countries a new development model with more of 1 billion and 300 million inhabitants. China has succeeded in a few decades with an extraordinary progress.

As a major developing country home to one fifth of the world’s population, China has achieved remarkable economic and social progress in the past thirty years. With development as its first priority, China has set its own goal of building a moderately prosperous society in an all-round way, which is fundamentally in line with the MDGs.

Overall, China has made great progress in achieving the MDGs. Most targets have been met or exceeded seven years in advance, including for poverty, hunger, illiteracy, and under-five mortality rates.

The degree of progress, however, varies in different fields and different regions of the world, African countries, in particular, still face severe challenges in many fields. In 2015, one third of one billion world’s poor will live in Africa.

“The Millennium Development Goals (MDGs)” represents eight international development goals with 192 United Nations member states and at least 23 international organizations have agreed to achieve by the year 2015.

They include reducing extreme poverty, reducing child mortality rates, fighting disease epidemics such as AIDS, and developing a global partnership for development.

2. Background

In 2001, recognizing the need to assist impoverished nations more aggressively, UN

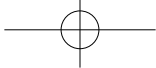


member states adopted the targets. The MDGs aim to spur development by improving social and economic conditions in the world's poorest countries.

They derive from earlier international development target, and were officially established at the Millennium Summit in 2000, where all world leaders present adopted the United Nations Millennium declaration, from which goals were promoted. Signed in 2000, we find eight goals with 21 targets, and a series of measurable indicators.

3. 8 goals and 21 targets

1	Eradicate extreme poverty and hunger	<ul style="list-style-type: none">•Halve the proportion of people living on less than \$1 a day•Achieve Employment for Women, Men, and Young People•Halve the proportion of people who suffer from hunger
2	Achieve universal primary education	<ul style="list-style-type: none">•By 2015, all children can complete a full course of primary schooling, girls and boys
3	Promote gender equality and empower women	<ul style="list-style-type: none">•Eliminate gender disparity in primary and secondary education preferably by 2005, and at all levels by 2015
4	Reduce child mortality	<ul style="list-style-type: none">•Reduce by two-thirds, between 1990 and 2015, the under-five mortality rate
5	Improve maternal health	<ul style="list-style-type: none">•Reduce by three quarters, between 1990 and 2015, the maternal mortality ratioAchieve, by 2015, universal access to reproductive health
6	Combat HIV/AIDS, malaria, and other diseases	<ul style="list-style-type: none">•Have halted by 2015 and begun to reverse the spread of HIV / AIDS.•Achieve, by 2010, universal access to treatment for HIV/AIDS for all those who need it•Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases
7	Ensure environmental sustainability	<ul style="list-style-type: none">•Integrate the principles of sustainable development into country policies and programs; reverse loss of environmental resources•Reduce biodiversity loss, achieving, by 2010, a significant reduction in the rate of loss•Halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation•By 2020, to have achieved a significant improvement of the lives of at least 100 million slum-dwellers
8	Develop a global partnership for development	<ul style="list-style-type: none">•Develop further an open, rule-based, predictable, non-discriminatory trading and financial system•Address the Special Needs of the Least Developed Countries (LDC)•Address the special needs of landlocked developing countries and small island developing States•Deal comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term



II. We find that poverty is still pervasive in the world, but in the same time, the number of poor worldwide has decreased from 52% to 26% between 1981 and 2005.

The percentage of the world's population living in extreme poverty has halved since 1981. The graph shows estimates and projections from the World Bank 1981-2009. Most of this improvement has occurred in East and South Asia.

According to a report published by the World Bank in August 26th, 2008, the number of poor worldwide has decreased by 500 million, and their proportion in the total population decreased from 52% to 26% between 1981 and 2005.

1. Poverty Reduction

Of the 50 poorest countries in the world, classified according to the Human Development Index (HDI), 33 are in sub-Saharan Africa. Malnutrition, poverty, illiteracy, dire health situation ... the continent is the first casualty of the widening inequalities in the world. While from 1960 to 1980, African countries have registered significant progress in economic development and social progress has slowed, mainly because of the disastrous effects of structural adjustment plans carried out by international financial institutions. (World Bank, 2008)

2. Progress and realizations

Progress towards reaching the goals has been uneven. Some countries have achieved many of the goals while others are not on track to realize any. The major countries that have been achieving their goals include China (whose poverty population has reduced from 452 million to 278 million) and India due to clear internal and external factors of population and economic development.

However, areas needing the most reduction, such as the Sub-Saharan Africa regions haven't yet to make any drastic changes in improving their quality of life. In the same time, the Sub-Saharan Africa reduced their poverty about one percent, and are at a major risk of not meeting the MDGs by 2015.

Fundamental issues will determine whether or not the MDGs are achieved, namely gender, the divide between the humanitarian and development agendas and economic growth, according to the Overseas Development Institute¹.

Today, if many countries have achieved many of the goals, the present situation in the world economy has made the attainment of Poverty Reduction and the MDGs even more complex, and it is important to do the followings to achieve the Goals.

¹ The Overseas Development Institute (ODI) is one of the leading independent think tanks on international development and humanitarian issues, based in London. Its mission is "to inspire and inform policy and practice which lead to the reduction of poverty, the alleviation of suffering and the achievement of sustainable livelihoods in developing countries." It does this by "locking together high-quality applied research, practical policy advice, and policy-focused dissemination and debate."



3. What are the issues?

(1) To establish a true partnership for development.

The developing countries bear the primary responsibilities for their own development. But the developed countries should also provide a necessary assistance. The international organisation, the States and the community should create an enabling external environment for developing countries to reduce poverty and achieve development.

(2) To develop a fair framework of progress review.

It is necessary to take a comprehensive look at the progress made as well as challenges faced by various countries in achieving the goals and make a serious review of the delivery of the committed international development assistance.

(3) To provide strong financial and technical support.

The developed countries should honour their commitments in official development assistance, rise above short-term business interests and reduce the monopoly of technology. Meanwhile, the developing countries should intensify research and development of technology in order to enhance their own economic competitiveness.

(4) To increase international assistance to Africa.

In view of Africa's special needs, the international community should provide Africa with more financial and technological support, and at the same time respect the rights of African countries to make their own decisions, with assistance focused on enhancing their self-development capabilities.

III. Considering the Poverty Eradication and the Human Development, how to manage these new goals with Human Rights Protection?

If poverty may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights, human rights are integral values to develop as the complement to the fight against poverty and human development.

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

The first point: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."



The second point: Everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it was independent, trust, non-self-governing or under any other limitation of sovereignty.

The third point: Everyone has the right to life, liberty and security of person.

Without reading here all the 30 articles we can read in the Universal Declaration of Human Rights, is there today a consensus on the human rights? The concept in the western media is sometimes unclear. In fact everyone seems to agree to this “human concept,” but there is often a difference of the general opinion about the “human rights” in the West countries and the “human rights” in some other countries. Who is right?

The fight against poverty is related to the development of human rights. There is an obvious interaction between these two issues. It depends on the threshold of the developing countries, of the population size, of the traditions, of the economy ... We can not compare today human rights in Africa, in India, in France, in the United States and in China. It would be a misjudgment, although the ideal is to achieve.

The levels of development are not the same in the world. Who to manage 60 million, 600 million or 1.3 billion people? What are the economic development and the social bases? The important focus is the aim, the purpose. To look in what direction the policy of a country improves step by step the fight against poverty and human rights. Many western countries have built these freedoms focus in several centuries. And they have still problems to solve in their societies. Other nations, like “New China,” must build a new society of harmony in a few decades.

For many people in the world, the first human rights are: food, hygiene, health, education, toward freedom and better individual choices. A society advances on these goals for improvement. It is the reason that Poverty elimination is a basic prerequisite to honor human rights, since “the existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights.

The fight against poverty and the advancement of the human rights are intrinsically linked. They need to enroll in the context of a general policy, a local, national and international strategy.

Do not recognize this fact and these challenges would be a grave mistake. The idealistic promises or freedoms given to the people without human development would consist in a half measure. In different ecosystems, people live on different origins and varieties of materials for their subsistence, hence their different methods to gather and use them. Such knowledge, experience, behavior, techniques and values formed through the cognition and



use of nature make up the diversity of culture.

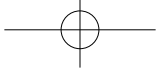
It is a common ideal of human community to fully enjoy human rights. However, due to differences in the degree of development, social systems, history and culture in nearly 200 countries around the world, it is impossible for them to make simultaneous progress in their pursuit and practice of this common ideal. They also differ in their understanding of the universality and relativity of human rights conception. For developed countries modernization is already a reality, where people focus their attention on post-modernization trends and social phenomena.

But for the developing countries still in poverty and backwardness, modernization is still a goal to be achieved, where there is a great distance to high industrialization and urbanized social life. In fact, in any nation, practice of human rights and the extent to which human rights are honored are restrained by the degree of its own social development.

Although developing countries can learn from the positive and negative experiences of developed countries in their realization of human rights, it doesn't mean that the conception of human rights can be exported like goods. Learning cannot be alienated from one's own national reality. This is true in relations between countries and so is in relations between different ethnic groups within a nation.

In modern human society, every nation and every ethnic group has its respective strong points as well as limitations and deficiencies. So are their understanding and the degree of realization of human rights. It is necessary to understand and learn from each other for the enrichment in humankind common conception of human rights.

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POVERTY ELIMINATION AND HUMAN RIGHTS PROTECTION IN NIGERIA

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Nigeria

Definitions

Poverty is closely related to very basic subsistence levels of living. It is tied to lack of minimum income to acquire the minimum necessities of life, such as food, primary health care, literacy, and basic infrastructure. However, development experts have now moved beyond the narrow monetary/income perception of poverty. They now have a broader concept of poverty consisting of State welfare and the related factors.

In this paper we define absolute poverty as a condition where a person or group is unable to access the most basic and elementary requirements for human survival in terms of food, clothing, shelter, health, transportation, education and recreation. Relative poverty is a comparative state of deprivation among individuals or groups.

Poverty has become a state of the majority of the world people. Why is this? Is it enough to blame poor people for their own predicament? Have they been lazy, made poor decisions, and been solely responsible for their plight? What about the governments? Have they pursued policies that actually harm successful development? Such causes of poverty and inequality are no doubt real. But deeper and more global causes of poverty are often less discussed. Poverty has become a problem in Africa, and this has become a social problem in our community such that it gives birth to other social problems. We also examine here the impact of poverty and its consequent effect on human rights.

Obviously, wealth creation and employment generation are the panacea to this twin problem. In Nigeria government sees poverty eradication as a serious issue relating to Human Rights. The elimination of poverty is perhaps the most difficult challenge facing any country in the developing world where, on the average; the majority of the population is considered poor.

Evidence provided by the Federal Office of Statistics in Nigeria shows that the number of those in poverty increased from 27% in 1980 to 46% in 1985; it declined slightly to 42% in 1992 and increased sharply to 67% in 1996. By 1999, more than 70% of Nigerians were said to be in poverty. That was why Government declared in November 1999 that the N470 billion budgets for year 2000 was to relieve poverty. Before the National Assembly



even passed the budget, the Government got approval to commit N10 billion to the Poverty Alleviation Programme (PAP 2000). In the 2001 budget, the Government also increased the allocation to poverty alleviation programme by 15%.

Poverty reduction was never a direct and deliberate policy of the Nigerian government until 1980-5. However, most of the programmes established under the various National Development Plans (NDPs) had appreciable positive impact on poverty reduction. Such programmes included the River Basin Development Authorities (RBDAs), the Agricultural Credit Guarantee Scheme (ACGS), Rural Electrification Scheme (RES) and Rural Banking Programme (RDP). Others include Operation Feed the Nation (OFN), Universal Primary Education (UPE), Green Revolution (GR) and Low Cost Housing Scheme. All of these programmes/schemes were designed to enhance the quality of life of Nigerians in terms of employment generation, enhancing agricultural output and income as well as curtailing rural-urban migration. They also promoted human rights of Nigerians.

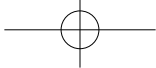
The SAP Era Initiatives

The Structural Adjustment Programme (SAP) marked the beginning of a conscious and deliberate effort by Government to address poverty in a more focused manner. The Government in the 80s made determined efforts to check the severe economic crisis that worsened the quality of life of most Nigerians through the adoption of the Structural Adjustment Programme (SAP). However, the implementation of SAP further eroded the quality of living conditions of most of the citizenry. This spurred the Government of the day to design and implement a number of poverty alleviation programmes between 1989 and 1993. In addition, under the guided deregulation that spanned from 1993 to 1998 more poverty alleviation programmes were put in place. Worthy of note amongst those programmes include:

Directorate for Food, Roads and Rural Infrastructures (DFRRI) established in 1986 and designed to specifically target the Rural Areas.

The National Directorate for Employment (NDE) established in 1986 with the major objective of designing and implementing programmes to combat mass unemployment. The NDE has trained over 766,783 unskilled persons (including disabled) in the National Open Apprenticeship Scheme between 1987 and 1996 and resettled 106,854 amongst the total persons trained. The School on Wheels Scheme engaged 15,317 unemployed youths at the end of 1994 and under the Special Public Works it has created jobs for 154,910 persons between 1987 and 1996 (CBN Annual Reports, 1992-1996).

The Better Life for Rural Women established in 1987 came in handy at a period when the life of the rural woman was worst hit by the dreadful malady of poverty due mainly to lack of skills and education for gainful employment. The programme achieved the formation



of 11,373 women co-operatives by 1993; establishment of 3,613 processing mills as well as distribution of several thousand tons of farm inputs to women.

Peoples Bank of Nigeria (PBN) and the Community Banks in 1989 and 1990 respectively encouraged savings and provided Credit facilities for the underprivileged in both urban and rural areas. The two banks have had some positive impact on the lives of the poor.

The Family Support Programme (FSP) and the Family Economic Advancement Programme (FEAP) established in 1994 and 1997 respectively. The latter provided micro-credit to thousands of co-operative societies, which supported the establishment of cottage industries in both rural and urban areas.

National Agricultural Land Development Authority (NALDA).

Other programmes that could not be overlooked when we talk about poverty alleviation programmes in Nigeria include the Agricultural Development Projects (ADPS) and the Strategic Grains Reserves Programme. While these are agriculture based, we have also health inclined programmes such as Primary Health Care (PHC) scheme and the Guinea worm Eradication Programme.

Same social welfare related programmes also include the National Housing Policy (NHP), Federal Mortgage Bank of Nigeria (FMBN) etc. All these have their different levels of impact on the lives and living conditions of Nigerians.

The Democratic Era Initiatives

At the inception of the current democratic dispensation, the Government embarked on a Poverty Alleviation Programme (PAP), with the aim of job creation. This was later reformed into National Poverty Eradication Programme (NAPEP) as an agency to address problems posed by poverty using a multi-sectoral approach. Its emphasis is laid on monitoring and co-ordination of all relevant poverty alleviation programmes and projects of the three-tiers of government.

Government Poverty elimination Activities—2001 to-date

For the purpose of effective co-ordination and monitoring of all poverty related programmes in Nigeria, sustainable structures have been established at the National, State and Local government levels. As part of our intervention activities, government has:

- i. Established a registered data for the unemployed in each State of the Federation and FCT. A total of about 1.1 million unemployed youths have been registered so far.
- ii. Attached a total of 100,000 youths under the Capacity Acquisition Programme (CAP) in 2001, to selected Skills Acquisition Training Centres, and a significant number of them being resettled after the training.



iii. Attached a total of 50,000 graduates of tertiary institutions under Mandatory Attachment Programme (MAP) in 2001 to selected professional institutions, companies and a significant number of them have been retained/absorbed by those institutions and companies.

iv. Sponsored the production of Training Modules for 42 viable trades for the CAP training.

v. Articulated a structural monitoring format to capture all aspects of development indices from the grassroots – ward – village – Local government – States.

vi. Distributed 2,000 units of KEKE-NAPEP—a tri-cycle commercial transport on hire purchase under the Micro-Credit Delivery Programme (CDP) to 2,000 owner operator beneficiaries.

vii. Distributed critical spare parts on loan to 109 KEKE Spare parts dealer beneficiaries

viii. Distributed 109 Tool Boxes for the KEKE repairs and maintenance to 109 KEKE mechanic beneficiaries.

ix. Trained 36 Technicians at the six (6) geo-political zones workshops for the KEKE repairs and maintenance.

x. Empowered and resettled 500 beneficiaries under the bricks project.

xi. Empowered and resettled 500 beneficiaries under the tailoring and fashion design project.

xii. Empowered and resettled 10,000 beneficiaries under the informal sector project.

xiii. So far disbursed about N36 million worth of cash micro-credit to various women groups through some reputable NGOs and MFIs.

xiv. Empowered, resettled and restored hope to a significant number of hopeless ex-VVF patients in over 10 VVF centres across the entire nation.

xv. Multi-partnership coordination strategy Government's multi—partner coordination strategy involve a partnership comprising of Federal, State and Local Governments, Commercial Banks, Micro finance institutions and Community Banks to make available an enhanced pool of funds available as credit to Nigerians at the grass roots. Government would cause the State and Local Governments and the Commercial Banks to pool loanable funds.

Conclusion:

POVERTY AND HUMAN RIGHTS PROTECTION IN NIGERIA

Nigeria is a signatory to all conventions on human rights, as such deliberate efforts have been made and are being intensified to ensure that human rights of Nigerians are not only protected but also upheld in all policy decisions in the country. We have since



established various programmes that would guarantee human rights. They are also being upheld by the instrumentality of the government agency for the elimination of corruption such as the Independence Corrupt Practices Commission (ICPC) and the Economic Financial Crimes commission (EFCC).

Whereas the government is not claiming that all is well, as a developing nation, we have started the journey towards the elimination of poverty and protecting human rights at all levels in our country. We therefore call for support from our friends and partners.

(The author is Minister of Special Duties of Nigeria)



ANTI-POVERTY AND HUMAN RIGHTS IN KENYA

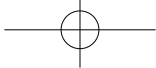
Anne. M. K Ngugi
Kenya

Background

“... poverty may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights” (United Nations Committee on Social, Economic and Cultural Rights, 2001)

Poverty is a deprivation of essential assets and opportunities to which every human is entitled. Everyone should have access to basic education and primary health services. Poor households have the right to sustain themselves by their labor and be reasonably rewarded, as well as have some protection from external shocks. Beyond income and basic services, individuals and societies are also poor—and tend to remain so—if they are not empowered to participate in making the decisions that shape their lives. Within sub-Saharan Africa, continuing food insecurity, a rise of extreme poverty especially in rural areas, stunningly high child and maternal mortality, and large numbers of people living in slums have resulted in a widespread shortfall for most of the Millennium Development Goals, especially in Millennium Development Goal Number 1, which is about eradicating poverty, especially extreme poverty and hunger, by 2015.

The distinguishing feature of chronic poverty is extended duration in absolute poverty. Therefore, chronically poor people always, or usually, live below a poverty line, which is normally defined in terms of a money indicator (e.g. consumption, income, etc.), but could also be defined in terms of wider or subjective aspects of deprivation. This is different from the transitorily poor, who move in and out of poverty, or only occasionally fall below the poverty line. Absolute poverty means not being able to satisfy the minimum requirements for physical human survival. Absolute poverty thresholds are developed using the cost of a basket of goods that satisfies essential food and nonfood needs: food, clothing, and shelter. The Millennium Development Goal (MDG) for economic well-being is to reduce by half the number of people living in absolute poverty, measured using a poverty line of one US dollar per person per day (PPP). Relative poverty is defined in relation to average income levels or societal norms. The relative poverty concept goes beyond physical survival and is related to



the concept of social exclusion. Relative deprivation is a lack of access to a level of goods and services that are required for meaningful participation in society.

There have been major advances in the fight against poverty and hunger, but these have begun to slow down or even reverse as a result of the global economic and food crises. Many poverty reduction policies have failed to reach socially excluded groups; men, women and children are still systematically excluded from public institutions (such as health, education and legal services), the economy and political participation; as well as within social institutions like the household. There are very large numbers of chronically and severely poor people who are not being reached by current development policies, and whose situation is often deteriorating in comparison even with other poor people; around half of these are children, at risk of growing up poor and, in turn, passing their poverty on to their children, and 100 million are older people, many of whom are caring for grandchildren without financial support. Millions of others are long-term poor subsistence farmers or workers earning inadequate wages to meet their basic needs. At the same time, many more people are vulnerable to poverty as a result of environmental instability, political insecurity, and pandemics such as HIV/AIDS which are substantially reducing the numbers of people of prime working age, and increasing the caring responsibilities of those left behind. All these factors mean that traditional safety nets are over-stretched and lead to poor people having to redistribute to those even poorer than themselves. Economic shocks, whether related to the macro-economy or to micro-level economic factors, can also plunge people (further) into poverty. People who are already long-term poor are usually least able to recover from such shocks and may have to adopt coping strategies that lead to or reinforce poverty traps. Thus, 900 million people will still be living on \$1 per day even if the Millennium Development Goals are met.

Tackling Poverty: Historical Perspective

Before the 1970s, planners assumed that there would be an automatic “trickle down of benefits from the haves to the have-nots” as economies grew; an economic planning error that assumed that economic growth will benefit all. However extreme inequalities in the benefits accruing from economic growth saw an increase in the levels of global poverty. Thus, in the 1970s, there a widening of the definition of poverty, which was marked by efforts to promote growth with equity and targeted interventions focused on the poor. Integrated rural development and gender specific programs emerged for the first time. The *basic needs approach*, which was introduced by the International Labor Organization (ILO), recognized that there are non-monetary dimensions that influence whether people are poor. The five main basic needs were defined as food, health, water and sanitation, education, and shelter. The late 1970s also saw the development of the *Physical Quality of*



Life Index as a measure of poverty; it is based on the basic literacy rate, infant mortality, and life expectancy in the first year of life.

The 1980s saw the emergence of the *capabilities approach* of assessing poverty; poverty is a deprivation of the basic capabilities of individuals, thus income is only one determinant of an individual's capability and functioning. The capability approach shifted the focus from *means* (such as having income to buy food) to *ends* (being well-nourished). The approach recognized that there are a number of factors at work that determine the ability to turn income into well-being. Human development was defined as the process of expanding people's choices; thus, human poverty was the deprivation of the most essential capabilities of life—to lead a long and healthy life, to be knowledgeable, to have adequate economic provisioning, and to participate fully in one's community. Participation, human well-being, and freedom became central features of the notion of development.

In the 1990s, poverty reduction moved to the top of the development agenda; the definition expanded even further as more participatory research emphasized its multidimensional nature. Vulnerability became a central dimension, based on the idea that the poor have fewer assets than the non-poor to cushion themselves against shocks (such as financial crises, conflicts, and natural disasters).

An Overview of Poverty in Kenya

One of the serious challenges that face Kenya, and which has not been resolved since independence, is the issue of high and rising poverty levels. This problem is largely caused by failure of development resources to reach the poor through the traditional budgetary allocation system and exclusion of a large proportion of the poor from accessing credit from mainstream banking due to lack of collateral and high interest rates. Thus, the poverty situation in Kenya has continued to deteriorate over time, especially from the 1990s when foreign aid became tied to good governance at the end of the cold war era; when the effects Structural Adjustment Programmes, liberalization and globalization started being felt as the poor were forced to pay to access erstwhile free services; and when retrenchments, downsizing and layoffs became the “order of the day.” The high poverty levels in Kenya can be checked if the government's political structure recognizes and guarantees equal access to the rule of law and deep respect for human rights. Success in poverty alleviation campaign could only be achieved if the process incorporates a human rights approach that involves equal access to the rule of law. This would eliminate corruption and ensure that every individual has a fair share of the national cake. Corruption is a vice that is quite devastating to the economy as it results in abuse of power by those in responsible positions, misappropriation and misallocation of funds. The end product of corruption is the collapse of productive institutions, and this directly contributes to a decline in economic growth.



Currently, Kenya has an estimated 80 percent of its total population (about 24 million people) living below the poverty line, yet the country is enormously endowed with resources that can be exploited to reverse the trend. The deterioration in living standards in the country is reflected in the rising number of people without food, inadequate access to basic necessities such as safe water, sanitation, and health facilities. Most of the poor are in the rural areas and include subsistence farmers and pastoralists. Poverty in Kenya is caused by a number of factors, which include a high degree of inequality of income and production resources, inequality in the access to economic and social goods and services, and inequality in participation in social and political process. Other causal factors include lack of education, lack of job opportunities, unfavorable climatic conditions, large family sizes, poor government planning and interventions, lack of good governance, and weak democratic institutions and practices. A much recent factor leading to increased poverty is HIV/AIDS pandemic. In the rural areas other causes of poverty, include failure to formulate comprehensive land reforms, and the absence of effective social security system for most people. The negative impact of structural adjustment programmes on poverty is through reduction of government expenditure on education and health, cost-sharing and price decontrols, resulting in increase in price of basic commodities.

Based on the fact that a person is entitled to the right of owning property and making choices to enhance his survival; based on the fact that the deprivation of this right is detrimental to the stability of the nation; and based on the fact that it is the responsibility of the government to recognize the existence of these rights and ensure they are respected for the purpose of economic growth, the Poverty Eradication Commission (PEC) was established in April 1999 as a Presidential Commission with the Poverty Eradication Unit (PEU) as its secretariat; its Vision being—"A Kenya free from extreme forms of poverty;" and its Mission—"To eradicate poverty through advocacy, stakeholder co-ordination, facilitation and resource mobilization." PEC was charged with the onus of implementing a 15-year National Poverty Eradication Plan (NPEP 1999) and by extension, the Poverty Reduction Strategy Paper (PRSP), Economic Recovery Strategy for Wealth and Employment Creation (ERS); and the Millennium Development Goals (MDGs). An Anti-poverty Trust Fund (APTF) was gazetted in 2001 to help the Commission to further its agenda. The other local anti-poverty initiatives include district focus for rural development, development of the informal sector, geographical and sectoral targeting of the poor, and rural credit especially micro financing.

An anti-poverty strategy for rural areas should be based substantially on improving productivity of agricultural activities and social and physical infrastructures, thus enabling better distribution of farm inputs. Effective and sustained implementation of economic reforms can stimulate economic growth, generate employment, reduce concentration of



economic activities in urban areas (by increasing investment in agro-based and other rural-based industries), and, as a result, alleviate poverty. Rapid economic growth is regarded as a key solution not only to poverty eradication, but also to tackling unemployment, poor health and economic exploitation. However, this strategy has not been successful in reducing poverty in Kenya, partly due to very low growth rates achieved over the years. Nevertheless, some growth strategies are more effective than others in reducing poverty. The government should take steps to foster pro-poor growth. A key sector identified for pro-poor growth is the rural farming sector. Other strategies include the *basic needs approach* to development focusing mainly on the provision of basic needs such as food, water, shelter and healthcare for the poor; settlement schemes and land redistribution. However, a major part of the anti-poverty policy should involve enhancement of productivity of land already owned, rented or worked on by the rural poor.

The Human Rights Approach: The Right to Subsistence as a Basic Human Right

Anyone, for whom a number of human rights remain unfulfilled, such as the right to food, health, education, information, participation, etc., is a poor person. Poverty is thus more than lack of resources—it is a manifestation of exclusion and powerlessness. Thus, a right to subsistence (or right to basic necessities) has appropriately been named a basic human right; the right is basic in that the enjoyment of other human rights depends on the enjoyment of this right. As a human rights claim, realization of the right to subsistence for everyone means that the interests at stake are so crucial that other goals and preferences must be subordinated to the fulfillment and respect of these interests. Because extreme poverty today is inextricably linked to extreme inequality, poverty reduction strategies ought to be based on the premise that the necessary re-distribution of resources from the wealthy would not affect them substantially. However critiques of the human rights approach adopt a negative view of such anti-poverty programmes; saying that it is analogous to asking a person with a loaf to share it with 100 starving people, a scenario that would result in “starvation for all.” But, by so saying, the critiques fail to appreciate the fact that extreme poverty is caused by extreme inequality, and that the moral evil of violating the right to subsistence increases when there is no relevant cost or effort involved in stopping the violation.

The importance of social protection as an integral part of social policy has long been recognized, so much so that the right to social security is inscribed in both the Universal Declaration of Human Rights (1948) and the International Covenant on Economic and Social Rights (1966). This reflects recognition of the need for institutionalized support mechanisms for poor and vulnerable people, and of the inadequacy of other policy approaches in fully achieving this. Human rights originate as a philosophical concept—linked in direct and



indirect ways to ideas about the inherent worth and dignity of ‘man’ in most secular and religious belief systems; some view it as implicit in notion of modernity and civilization. Given that human rights are intended to function trans-nationally, jurisprudence outlines a set of principles which underpins their meaning and application—human dignity, bodily and personal integrity and privacy constitute the foundational ethical standpoint. The Universal Declaration of Human Rights, which was adopted in Paris, 1948 includes the following as basic entitlements: the right to life; the right to equality; the right to liberty and security of person; the right to equal protection under the law; the right to be free from all forms of discrimination; the right to the highest standard attainable of physical and mental health; the right to just and favorable conditions of work; and the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

In addition human rights are regarded as: universal (*apply to all human beings in all contexts*); indivisible (*have to be considered as an integrated whole*); interdependent (*the realization of each depends on the realization of others*); interrelated (*one set of rights cannot be denied or suspended without putting the whole framework into question*); and inalienable (*they cannot be taken away*). In combination, these principles are intended to ensure that governments cannot ‘cherry pick’ the rights they are willing to recognize and protect; governments are bound to promote and protects “all rights for all people on their territory.” It is on the basis of these principles that the human rights approach, which recognizes the right to subsistence as a basic human right, is founded. An appraisal of some articles from the Universal Declaration of Human Rights, Paris, 1948, shows the interrelation and interdependence of the various rights enshrined therein, especially as regards poverty reduction. Thus, in designing poverty reduction programmes, all articles need to be considered as the guiding code. Some examples of some articles and their relationship to poverty eradication include:

Article 25 Universal Declaration of Human Rights, Paris 1948: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

The right to food is the right of all individuals; it encompasses economic and physical accessibility, and also encompasses food safety and food security. The right to adequate housing should be seen as the right to live somewhere in security, peace and dignity; it encompasses such aspects as legal security of tenure; habitability (relative to space and health); physical accessibility, economic accessibility, safety and proximity to services. The right to adequate clothing implies that poor people are entitled to clothes that enable them to appear in public without shame. The right to health is the right to the enjoyment



of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's body, including reproductive health, and the right to be free from interference, such as freedom from torture and non-consensual medical treatment. Thus, the right to health implies that functioning public health and health care facilities, goods and services are available and accessible in sufficient quantity within a State; according to international human rights law, the generic right to health encompasses a number of more specific health rights including: the right to maternal, child and reproductive health; the right to healthy natural and workplace environments; the right to prevention, treatment and control of diseases; and the right to health facilities, goods and services. Accessibility has a number of dimensions, including physical, information and economic accessibility. 'Economic accessibility' means that health facilities, goods and services must be affordable for all.

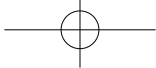
Environmental considerations shall be taken into account with a view to ensuring that low-income housing is located in a safe and healthy environment. All people must enjoy housing with access to essential services, materials and facilities. Priority should be given to providing infrastructure (e.g. roads, water and sanitation systems, drainage and lighting) for existing low-income settlements.

Article 26 Universal Declaration of Human Rights, Paris 1948: "*Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*"

Based on the ability of education to transform lives, this article obliges governments to address the need for tertiary education amongst its population (many losing out due to the very limited opportunities available in public institutions; the issues of economic accessibility limiting access to private institutions for the poor; thus inability to transform lives through education)

Article 3 Universal Declaration of Human Rights, Paris 1948: "*Everyone has the right to life, liberty and security of person.*" (Peace & Security).

An individual's human security is defined as his or hers expectation of years of life without experiencing the state of generalized poverty. Population human security is then an aggregation of individuals' human security. NB poor people usually suffer from multiple forms of insecurity. In addition to experiencing financial, economic and social insecurity, they are often homeless, marginalized, discriminated against and subject to physical violence by State and non-State actors since they cannot afford court protection. They frequently reside in or must travel through areas in which their personal security and that of their family is put at risk. Frequently, protective services such as police protection are not provided for the poor at the same level to other members of society placing them at greater



risk. Accordingly, efforts to strengthen the right of poor people to personal security shall have a crucial place in poverty reduction strategies.

Article 6 Universal Declaration of Human Rights, Paris 1948: *“Everyone has the right to recognition everywhere as a person before the law.”* (Access to Justice)

All persons are equal before the courts and tribunals and enjoy certain procedural guarantees in civil and criminal trials. Equality before the courts means, in particular, that all persons must be granted, a right of equal access to an independent and impartial court or tribunal for the determination of civil disputes or criminal charges without discrimination. The most important procedural guarantee in both civil and criminal proceedings is the right to a fair and public hearing. Poor people are particularly vulnerable to human rights violations and abuses by governmental authorities and private individuals. The most important tool to defend themselves against these abuses is court protection. Usually, for economic or other reasons poor people lack the capability to obtain court protection. Even if free legal aid is available, they may lack the necessary information and self-confidence to seek redress through the courts. Thus, States should actively promote the free access of poor people to courts, tribunals and other dispute resolution mechanisms as a remedy against human rights violations. Similarly, if accused persons do not understand or speak the language used in court, they should have the free assistance of an interpreter.

Article 23 Universal Declaration of Human Rights, Paris 1948: *“Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary by other means of social protection.”*

And Article 22 Universal Declaration of Human Rights, Paris 1948: *“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”*

The right to decent work encompasses productive and sufficient work of acceptable quality in which rights are protected and which generates an adequate income with adequate social protection. Sufficient work means that all have full access to income-generating opportunities. Thus, the right to decent work has three rights dimensions: the right to work, rights in work and the right to adequate social protection. The right to decent work also requires that well-designed and adequate social safety mechanisms are put in place for those occasions, such as economic and political crises, when regular employment becomes unavailable to some individuals.



Poor people invariably lack adequate and secure livelihoods. In the countryside and cities, they experience unemployment, underemployment, unreliable casual labour, poverty wages and unsafe working conditions. In the countryside, their livelihoods are made precarious by multiple factors such as: inadequate access to land and irrigation, lack of seeds and fertilizers, deficiencies of transport, and the overexploitation of common resources such as pastureland, forests and fish.

Article 27 Universal Declaration of Human Rights, Paris 1948: *“Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”*

The right to take part in cultural life is respectful of cultural diversity and serves as a protection against social exclusion. Culture must be understood broadly to mean the shared way of living of a group of people, including their accumulated knowledge and understandings, skills and values, and which is perceived by them to be unique and meaningful. States have a responsibility to take all necessary measures to prevent the poor and other marginalized groups from being socially excluded and to enable them to participate in the social, cultural and political life of their respective communities. In education, cultural identity should be considered also: The quality of education should be directed to the development of the child’s personality, talents and abilities to their fullest potential, and to preparation of the child for responsible life in a free society, in a spirit of tolerance and respect for human rights, the natural environment, the child’s parents and cultural identity, and civilizations different from his or her own. School discipline shall/ should be administered in a manner consistent with the child’s human dignity.

Article 19 Universal Declaration of Human Rights, Paris 1948: *“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”*

And Article 21 Universal Declaration of Human Rights, Paris 1948: *“Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.”*

The two articles are concerned with the individual’s freedom of expression and participation. Lack of political rights and freedoms is both a cause and a consequence of poverty. Socially and politically excluded people are more likely to become poor, and the poor are more vulnerable to social exclusion and political marginalization. Political rights are usually defined as the right and opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives. This includes the right to vote and to be elected in parliamentary and other elections, to have views represented before decision-making bodies, and the right of equal access to public service. Political freedoms include



essential democratic rights such as freedom of speech, expression, information, association, assembly and the media. While political rights are usually restricted to citizens, political freedoms are general human rights to be equally enjoyed by all human beings, regardless of citizenship or other status.

The right to seek and receive information establishes the duty of Governments to provide the poor, and their freely chosen representatives, with all relevant information concerning governmental activities and services. This includes information in respect of governmental services that are essential for the poor, such as access to education, health services, employment services, social security, administration of justice and the political decision-making processes. The right to freedom of expression guarantees the right of the poor and their representatives to express and impart any opinions, ideas or information, in relation to the Poverty Reduction Strategy process and in general, either orally, in writing or in print, in the form of art, or through any other media. Active and informed participation by the poor is not only consistent with, but also demanded by the rights-based approach to poverty eradication because the international human rights framework affirms the right to take part in the conduct of public affairs.

One may distinguish four stages of participation: preference revelation; policy choice; implementation; and monitoring, assessment, and accountability. The stage of *preference revelation* is the initial stage of any process of policy formulation. Before policies can be formulated, people must be enabled to express what their preferences are, i.e. what objectives they want to achieve. Traditionally, the poor are left out, as they often do not possess enough political or financial power to make their interests count. A human rights approach must take steps to alter this situation, by creating a legal-institutional framework in which the poor can participate effectively in policy formulation. Decentralization of government and a deepening of democracy are therefore essential components of the human rights approach to poverty eradication. The final stage of participation is that of *monitoring and assessment* of policies so that the State and other duty-bearers can be held accountable for their obligations. It is an essential feature of the human rights approach that the people who are affected by policies are able to participate in monitoring and assessing their success or failure and then take part in the procedures for holding the duty-bearers accountable. Appropriate institutional arrangements are needed for such participation to be possible.

The Poverty Reduction Framework: Tackling Social Exclusion

Due to the multi-dimensional nature of poverty, five thematic priorities are considered while developing frameworks for poverty reduction; these include gender equality, private sector development, environmental sustainability, regional cooperation, and capacity development. Poverty is recognized to be a dynamic, complex phenomenon involving



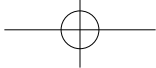
concepts such as vulnerability and powerlessness; therefore, poverty reduction requires a broader focus than income poverty alone. Focus is broadened to encompass and factor in the interaction of the various forms of capital in the process of wealth creation/economic growth, thus enabling the state to develop more effective poverty eradication initiatives. The forms of capital that need to be considered include:

- **Human Capital:** includes education, good health, skills, and ability to work.
- **Natural Capital:** natural resource stocks such as land, forested areas, clean air, etc.
- **Physical Capital:** basic infrastructure and services such as shelter, transport, water and sanitation, energy, and communications
- **Financial Capital:** earned income, savings, remittances, access to credit, and so on.
- **Social Capital:** social resources such as networks of family, friends, and social and community organizations.

Poverty reduction must be supported by appropriate policy formulation, which needs to be aimed at establishing country-owned, integrated pro-poor national policies and frameworks, involving all stakeholders, and inclusive processes at national and local levels. Appropriate poverty reduction policies must consider whether poverty is chronic or transient; the chronic poor always live in poverty and have very few assets or opportunities to escape it, while transient poverty is temporary or cyclical. The transient poor can move out of poverty once the exogenous shock has passed. Transient poverty might be related to seasonality, or to losing a job. Social protection programs become key to minimizing and mitigating transient poverty. The concepts of chronic and transient poverty recognize that poverty is dynamic, and that people may move in and out of it over time.

Poverty reduction initiatives also need to be popularized through advocacy and information programmes, emphasizing that freedom from poverty is a human right; *thus, ensuring the chronically and severely poor are aware of their entitlements*. Very often they are not aware of programmes that could benefit them. Evidence-based programming is critical to the success of social development programmes; thus poverty eradication strategies need to be backed by policy-oriented research, involving an analysis of extreme poverty in the country, and monitoring progress toward its eradication. The research process would help develop indicators for poverty measurement, especially “expenditure-based” indicators that consider “the average basket of basics” that an individual requires over a given period of time. Community participation is crucial to the success of poverty eradication initiatives, thus, capacity-building ought to be done at the community level, to enhance the capacity of communities to implement innovative projects geared towards empowering poor and vulnerable families and individuals.

The Poverty Reduction Framework is based on three pillars of pro-poor economic growth, social development, and good governance. These pillars acknowledge the



confluence of economic, social, and institutional factors in causing—and therefore solving—the poverty problem.

Good Governance: Pro-poor growth and social development hinge on the quality of governance. Good governance facilitates sound macroeconomic management, private sector investment, the transparent use of public funds, and effective delivery of public services. Good governance requires adherence to the rule of law and reduction of widespread corruption.

Pro-Poor Growth: Growth is said to be pro-poor when the poor benefit *disproportionately* from it (in other words, when the poor gain more than the non-poor); or growth is pro-poor simply when it reduces poverty. In both formulations, the key is how well the poor connect to the growth process, and why. Overall growth that does not see a rise in the incomes of the poor is not pro-poor growth. Though economic growth is required for poverty reduction, growth alone is not enough, since not all growth benefits the poor equally. How well the poor connect to the growth process determines its degree of “pro-pooriness.” Growth can effectively reduce poverty when it generates employment and income opportunities for those at the bottom end of the income distribution. Policies to promote labor-intensive growth are thus particularly powerful pro-poor measures.

One other definition of “pro-poor growth” focuses on the distributional shifts during the growth process; roughly speaking, for growth to be deemed “pro-poor,” the incomes of the poor should grow at a higher rate than those of the non-poor. Similarly, a recession will be deemed pro-poor if poor people lose proportionately less than others, even though they are in fact worse off. NB the extent to which growth is pro-poor then depends on how much a chosen measure of poverty changes. The “initial level of inequality” has to be established and a measure of how inequality changes over time so as to be effective in evaluating whether growth is pro-poor. Also to be considered are the “marked concentrations of poor people in specific regions and/or sectors” while analyzing patterns of growth relative to overall poverty reduction. NB the extent to which growth favors the rural sector is often essential to assessing the impact of poverty reduction strategies on aggregate poverty.

Social Development: Economic growth alone is not enough in meeting the challenges of poverty eradication; interventions in five core areas of social development also have to be identified and implemented: human capital formation; population policy; social capital development; gender and development; and social protection.

i. HUMAN CAPITAL FORMATION: The focus of human capital formation is on the individual agent, with its measures being such aspects as duration of schooling and qualifications. Direct outcomes of human capital formation are income and productivity, while the indirect outcomes include health and civic activity. Human capital focuses on the economic behaviour of individuals, especially on the way their accumulation of knowledge



and skills enable them to increase their productivity and their earnings—and in so doing to increase the productivity and wealth of the societies they live in. The underlying implication of a human capital perspective is that investment in knowledge and skills brings economic returns, individually and therefore collectively. Associated with human capital is the concept of cultural capital, which focuses on the way power structures are reproduced. It offers no necessary judgment on the effects of this reproduction; its function as a theory is an explanatory one. Cultural capital is a more academic notion; it refers to the credentials and cultural assets embodied in individuals and their families. Cultural capital has been used in two contrasting directions. It is used to explain the reproduction of social hierarchy, as elite families endow their children with the cultural capital which enables them to succeed in maintaining their elite position. But it is also used to explain how some manage to use education to move from non-elite positions into elite positions.

ii. POPULATION POLICY: A population policy makes planning for poverty eradication programmes to be more effective, as takes into account the resources required for human development and human resources available for carrying out the poverty eradication plan. Demographic transition, that is the profile of the population which focuses on such factors as population growth and changes in age, is taken into account in developing a policy framework for building up nation wide infrastructure and manpower, so as to achieve both population stabilization and sustainable improvement in human development. NB demographic transition is the transition from a stable population with high mortality and fertility to a stable population with low mortality and fertility. A population policy will help the state to meet the challenges of meeting all the needs of rapidly growing adolescent and young adult population and of catering to their increasing expectations for improved quality, spectrum and access to services. Population policies also help states to utilize human resources as the engine to hasten the socio-economic growth and improvement in quality of life, and to bring about convergence and synergy between ongoing programmes to improve demographic, socio-economic and educational transitions to achieve rapid population stabilization.

iii. SOCIAL CAPITAL DEVELOPMENT: The focus of social capital development is on relationships, while its measures include membership, participation, attitudes, values, and trust levels. One direct outcome of social capital development is social cohesion, while indirect outcomes include economic achievement and more social capital. Social capital is defined in terms of *networks*, *norms* and *trust*, and the way these allow agents and institutions to be *more effective in achieving common objectives*. The most common measures of social capital look at participation in various forms of civic engagement, such as membership of voluntary associations, churches or political parties, or at levels of expressed trust in other people. Social capital has been deployed to explain a wide



range of social phenomena, including general economic performance, levels of crime and disorder, immigrant employment and health trends. Despite some ambiguity, social capital is generally understood as a matter of relationships, as a property of groups rather than the property of individuals. Social capital helps to counterbalance reliance on policy concepts and instruments which are too narrow to deal effectively with *the complexities and interrelatedness of the modern world*.

iv. GENDER AND DEVELOPMENT: The Gender and Development (GAD) perspective emerged in the late 1980s. GAD focuses on the interdependence of men and women in society and on the unequal relations of power between them. The GAD approach aims for a development process that transforms gender relations in order to enable women to participate on an equal basis with men in determining their common future. The GAD approach, which aims at integrating women in development, and which emphasizes the importance of women's collective organization for self-employment, views development as the achievement of human well-being through three basic principles: survival, security and autonomy. Development projects generally aim to improve the condition of people's lives. From a gender and development perspective, a distinction is made between the day-to-day condition of women's lives and their position in society. In addition to the specific conditions which women share with men, differential access means women's position in relation to men must also be assessed when interventions are planned and implemented. Women and men have different roles and responsibilities and therefore have different interests/needs. These are called gender interests/needs. For analytical purposes, they can be classified as either practical or strategic, although they exist in a continuum.

v. SOCIAL PROTECTION: There are many different definitions of social protection; one definition suggests that social protection policies and programmes are best understood as *those which aim to help poor and vulnerable people manage risk and overcome deprivation, through direct cash or in-kind transfers*. Specific social protection measures need to be complemented by wider legislation; policy reforms; and actions that help reduce risks and promote social equity and inclusion. Social protection is a growing area of research and policy. Traditionally, social protection literature focused on safety nets: mechanisms that aim to protect people from the impact of shocks such as flood, drought, unemployment or the death of a breadwinner. Safety nets were often regarded as expensive, welfarist interventions that created dependency on the state. Definitions of social protection are now broader and include longer-term mechanisms designed to combat chronic poverty, as well as short-term interventions to reduce the impact of shocks. Recent research emphasises that social protection schemes are an investment in the future as they have the potential to promote growth and improve long-term poverty-reduction.

Social protection policies aim to address both severe and long-term poverty, and to



reduce vulnerability, and are thus one of the most significant areas of policy for chronically and severely poor people. Well-designed and resourced programmes can:

Stop shocks and stresses pushing people (further) into poverty: by providing either cash or in-kind transfers that help people cope with such events and pressures, or by preventing some of the causes of these shocks and stresses.

Help poor people build assets: in particular, physical and human capital, that are essential for moving out of poverty, coping better with shocks and stresses, or benefiting from policies aimed at people living close to the poverty line. This largely occurs again through cash or in-kind transfers (tangible assets, such as livestock or tools, or other in-kind assistance such as nutritional supplements), either directly to households, or which enhance poor people's access to essential services.

Protect and promote the well-being and capacities of people who are currently poor: largely through measures aiming to support human development, but in some cases going beyond these to overcome deprivation in terms of information or social and political participation.

Contribute to reducing inequality: both by redistributing income and by facilitating very poor and marginalized people's participation in economic growth.

Protect incomes and consumption: largely through cash or in-kind transfers, cash or food for work programmes, and food subsidies.

Enhance human development: mainly via measures to ensure access to basic services (e.g. fee waivers and exemptions and subsidised health insurance), and nutritional supplements and fortification.

Promote productive livelihoods: through direct support to agriculture, such as starter packs or crop insurance, asset transfers (e.g. restocking of livestock), or microfinance.

Common mechanisms of social protection include pensions, unemployment benefits, child grants, food and cash transfers, and public work programmes. Humanitarian aid has been dominated in budgetary terms by the delivery of food aid and this dominance can mean that alternative social protection responses such as cash transfers are not considered. Cash transfers are included here because of their importance in addressing social exclusion. Cash transfers are probably the most effective mechanism in meeting the immediate needs of the poor and socially excluded. They are increasingly seen as being much more relevant than money given to communities through Social Funds, for example. Evidence suggests that what poor people want is a comprehensive package of predictable funding, linked to citizenship rights, as opposed to a series of ad hoc packages, through humanitarian support or project funds. Cash transfers have the potential to be more socially and economically transformative than other forms of humanitarian aid. They can have a positive impact on both individuals and local markets by empowering people to decide how they want to spend



their money, as well as immediately improving their personal income. Humanitarian aid may be relevant in acute situations, but not for chronic poverty. The potential growth effects of social protection through multiplier effects in local economies created by getting cash to poor people may be particularly important in kick-starting markets in fragile states which have been weakened by conflict or economic crisis.

(The author is Commissioner of Kenya National Commission on Human Rights.)



POVERTY AND HUMAN RIGHTS

Elizabeth Astete Rodriguez

Peru

The year 2010 will herald humanity's entry into a new century, the beginning of a new era full of great expectations, hopes and challenges for the achievement of a better world.

Undoubtedly, the biggest challenge for governments and society alike is to make the world a better place for the largest number of people in the shortest possible time.

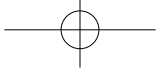
According to international consensus, poverty, especially extreme poverty, constitutes a violation of human dignity and, therefore, it is one, if not the main enemy of this global priority.

The relationship between poverty and human rights is reflected in the Vienna Declaration and Program of Action, which was adopted by the World Conference on Human Rights in Vienna on 25 June 1993. On that occasion it was noted that the existence of widespread extreme poverty not only inhibits but also precludes the full and active enjoyment of human rights. Today we can state that it is a denial of these rights, which are nothing more than a set of rules directed towards the full realization of the dignity of all people.

The World Conference on Human Rights affirms that extreme poverty and social exclusion are concrete examples of violations against human dignity, stating that urgent steps must be taken to achieve better knowledge of extreme poverty and its causes, particularly those related to the problem of development, in order to promote the human rights of the poorest, and put an end to extreme poverty and social exclusion and promote the enjoyment of the fruits of social progress. These concepts have been reiterated subsequently in a number of resolutions adopted within the framework of the United Nations Organization.

We have spent many years trying to understand extreme poverty and we might even begin to wonder whether it would not be better to have a magical formula so that we could all taste and feel poverty for a couple of days in order quicker and more efficiently.

The need to tackle this serious problem is reflected in efforts such as the Copenhagen Declaration and the Program of Action of the World Summit for Social Development of March 1995 or the outcome document of the 2005 World Summit, among the many other documents that have been and will continue to be generated internationally on this subject



in recent years.

But perhaps the size of the task to be carried out can be measured in terms of the Millennium Declaration and attaining the Millennium Development Goals, in particular, reducing by half the proportion of people who live on less than a dollar a day, as well as reducing by half the proportion of people who suffer from hunger by 2015.

Extreme poverty remains pervasive and exacerbated by issues such as gender inequality—primarily affecting women and girls—the disabled, indigenous people, compounded by the recent global food, energy and financial crisis, which affects all of us.

According to information from the United Nations independent expert on human rights and extreme poverty, Magdalena Sepúlveda, the food prices crisis has pushed more than 125 million people into poverty [in 2008] and it is estimated that an additional 55 to 90 million people would be plunged into extreme poverty in 2009¹.

In a time when the population of poverty in the world is increasing, it is imperative to enhance the efforts of the civil society and international organizations, but most of all the efforts of the States agreeing to undertake a political commitment to eradicate it. The challenge involves the commitment of both countries affected by poverty and developed and prosperous countries. A true commitment to this effort requires approaching it from the standpoint of the human rights of the poor and extreme poor, rather than merely from a charitable and humanitarian perspective.

Good governance at national level is essential for effective action against extreme poverty and the strengthening of national institutions. As noted by the General Assembly of the United Nations, each country has the primary responsibility for its own sustainable development and poverty eradication².

However, this effort must be supported by the international community and with that understanding account should be taken of the Draft Guiding Principles “Extreme Poverty and Human Rights,” a process that started in 1987 and is nearing completion. These principles link the protection of human rights to the fight against poverty, confirm the principles of indivisibility of rights, participation and non-discrimination [of those living in extreme poverty]. Thus, they seek to strengthen the implementation of existing international human rights standards and can turn into an instrument for the promotion of the Millennium Development Goals.

According to the Economic Commission for Latin America and the Caribbean (ECLAC), there has been a reduction in the number of people [living] in poverty in Latin America due to a growth in per capita GDP of more than 3 percent between 2003 and 2007.

¹ Report of the Independent Expert on the question of human rights and extreme poverty. A/64/279 dated 11 August 2009, Para. 23.

² General Assembly Resolution A/RES/60/2009. Adopted during the Sixtieth Session. 22 December 2005.



This has been instrumental in reducing unemployment and poverty and extreme poverty levels in most countries of the region. In 2006, 14 million people escaped poverty and 10 million people were no longer living in extreme poverty.

For its part, the World Bank estimates that approximately 60 million people in Latin America escaped poverty between 2002 and 2008, while another 14-15 million people would have escaped it in 2009, if only the region had continued to grow at the 4.3 percent rate.

And although it is the first time that the number of poor people in the region has dropped below 200 million since 1990, the rate of decrease has been hampered by the international financial crisis, which is likely to cause a 2 percent contraction of GDP in Latin America in 2009.

Peru, just like the other countries of the region, has been engaged in the process of poverty reduction. In 2001, total poverty in Peru stood at 55.6 percent. However, total poverty fell by 5.2 percentage points, declining from 44.5 percent in 2006 to 39.3 percent in 2007, and extreme poverty, which represents 13.7 percent of the population, declined by 2.4 percent. This process continued in 2008, declining 3.1 percentage points compared to 2007¹.

An open and stable economic policy has been necessary to achieve this important change, which has triggered a substantial increase in investments, production and exports. The development of several projects that teach the poor how to optimize their resources which involve, among others, farming techniques and animal husbandry for profit, as well as more simple things such as an orderly distribution within the stockyard, which ultimately improves animal productivity, have also contributed to reducing poverty and extreme poverty in Peru.

It is common for rural areas in Peru and the rest of the continent to remain mired in persistent poverty and traditionally excluded from the economic growth process. In the conviction that such delays can change, we have drafted the “Sierra exportadora” project in order to promote what is produced in the Sierra by generating strategic alliances between public and private sector which would contribute to the strengthening of organizations, the introduction of new technologies and market access, among others.

However, there are several sectors of the population mired in poverty and vulnerable, such as migrants. The migration to cities is a widespread phenomenon that affects several countries of the region, both within their territories and even beyond their borders. In Peru there has been a serious process of depopulation from rural areas to urban areas and a rapid phenomenon of migration abroad.

In the second half of the twentieth century, Latin American migration to developed

¹ INEI. Press Release No. 063, May 2009.



countries, mainly to the United States, has become an important phenomenon. According to the 1960 census, migration was estimated at 1 million people, but in the 2000 census, it was estimated at 14.5 million people (census figures for each decade), without counting illegal immigrants¹.

The people of Peru are fully immersed in this unstoppable process of seeking better living conditions. Migration of Peruvians increased six-fold, from 46,596 in 1990 to 319,766 in 2005².

The vulnerability of people due to their poverty is commonly manifested through exclusion and intensified dramatically after becoming illegal migrants and vulnerable to the risk of being trafficked, which is a modern form of slavery, while they continue to suffer the effects of widespread violation of their human rights.

In the context of an advisory opinion, the Inter-American Court of Human Rights has stated that migrant workers have labor rights even if they are illegal migrants.

Also, this statement brings us to another important concept: that the fight against discrimination is a *jus cogens* norm of international law that cannot be reversed.

This statement is key to strengthening the link between poverty and human rights, which was previously mentioned at the beginning of this intervention.

For the poor who are living in a situation of disadvantage, especially for the extreme poor who are still mired in extreme poverty facing globalization, economic, social and cultural rights as well as civil and political rights are of particular importance.

Doctrine and jurisprudence on human rights have taken an important step towards breaking down the division between political and civil rights (so-called first-generation rights), and economic, social and cultural rights (so-called second-generation rights) which are programmatic in nature. This division, which facilitated the violation of social, economic and cultural rights by the States, has been replaced by the concepts of interdependence and complementarities, which give due importance to the full enjoyment of all human rights.

Today, it is especially important to ensure the full enjoyment of social, economic and cultural rights by the poor. This can be seen by many actions carried out internationally. At the universal level, the Optional Protocol to the International Covenant on Economic Social and Cultural Rights, adopted by the UN General Assembly on the iconic date of 10th December 2008³, recognizes the Committee that ensures compliance with the Covenant and its power to receive complaints against states violating the commitments expressed therein.

At the American level, it is worth mentioning the Plan of Action of the Fourth Summit

1 Population and Development Series. International migration in Latin America and the Caribbean: trends and profiles of migrants. Series No. 35, CEPAL, Santiago, 2003, Pg.17.

2 Source: Peruvian Directorate General of Immigration and Naturalization (DIGEMIN) the Computing and Statistics Unit.

3 General Assembly Resolution A/RES/63/117



of the Americas, held in Mar del Plata, Argentina on 5th November 2005, which urges Member States to consider signing and ratifying the San Salvador Protocol on economic, social and cultural rights and to collaborate in the development of progress indicators in the area of economic, social and cultural rights (ESCR).

In this regard, the General Assembly of the Organization of American States (OAS) adopted a series of resolutions aimed at establishing guidelines for the preparation of the periodic reports that must be submitted by the States on the steps they have taken to ensure compliance with the Protocol of San Salvador. The General Assembly through resolution AG/RES. 2074 (XXXV-O/05) adopted the “Standards for the Preparation of Periodic Reports pursuant to Article 19 of the Protocol of San Salvador”¹. As a result of this momentum, the Inter-American Commission on Human Rights (IACHR) in compliance with a mandate presented a document entitled “Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights,” which will serve not only as a basis for the design of an internal evaluation mechanism for the review of each State’s national reports, but also clearly defines indicators for measuring State Party compliance with the Protocol of San Salvador.

The path to ensuring the full enjoyment of all human rights by those affected by poverty and extreme poverty has already begun. Let us hope it is irreversible. However, there is still a long ways to go. The achievement of this goal is a shared responsibility among us all.

I would like to share with you the words of Madam Louise Arbor, the former United Nations High Commissioner for Human Rights.

“... By tackling poverty as a matter of human rights obligation, the world will have a better chance of abolishing this scourge in our lifetime ... Poverty eradication is an achievable goal.”

(The author is Undersecretary for Economic Affairs, Ministry of Foreign Affairs of Peru.)

¹ Resolution AG/RES. 2074 (XXXV-O/05) of 07 June



POVERTY: CAUSES AND REMEDIES

Ibrahim Bin A. AL-MONEEF
Kingdom of Saudi Arabia

Definition of Poverty

There are two kinds of poverty, i.e. absolute poverty and relative poverty. The absolute poverty index, known also as ill-nutrition index, refers to the consumption expenditures of a member of society that are sufficient to meet his nutritional energy needs. And in accordance to the most recent poverty gauging measures, a set of goods have been selected to represent the preponderant type of consumption by the society's poorest classes. Secondly, the relative poverty index is meant to represent the total cost of a basket of goods needed to cover an individual's basic consumer needs, nutrition-related or non nutritional, such as habitation, clothing and access to health and educational services, etc.

The World Bank identifies low-income or poor countries as those whose per capita income is less than \$600 per annum. The majority of these countries, 45 in total are located in Africa; fifteen of which their per capita income is under \$300 per year.

The UNDP on the other hand comes with more additional indexes of one's wellbeing and livelihood standards, which helped to expand the poverty circle to include 70 more countries of the world which, though not ranked low-income states, are home to approximately 45% of the world's poor. That is, there are poor people living in the midst of countries rated as rich, like the US, where 30mn impoverished persons are said to live, constituting 15% of the total American population.

In the latter half of the twentieth century, there was rampant discourse of the poor and penury in UN literatures, high jacking the subject matter from a communal, locally social phenomenon to a global one. Thereby we started to see the world countries classified into rich and poor ones with criteria and indexes for relative poverty being advocated for states and individual alike. That is, we do not have to apply the same criteria of poverty applicable to someone living in Somalia to, per se, another who lives in the US.

Poor countries are also defined as those states which suffer poor levels of education and healthcare, and lack in potable water, sanitary services and wholesome food sufficient for everyone. There is also a constant drain on their natural resources environmental deterioration and plummeting living conditions in their communities.

Of no less importance is our realization that poverty is not only the lack of ready



money but also the inaccessibility to education and health services. Poverty, too, is a chronic social disease that bears dire consequences for society in terms of its collapse and possible annihilation. And because it is man's continuing problem, its fight cannot be accomplished in one's thoughts alone; rather, poverty is countered with solidarity and joining hands together; and with assiduous work and an innate conviction on the timeless value of work. Some contend that "Urbanization is a primary cause of the abject poverty. A lot of people, nowadays, find themselves gripped in its jaws because urbanism weighs down the modern man with a terrible ennui, confuses and makes him endlessly turn in an empty circle, totally oblivious of his immediate obligations."

And to remind the international community of the dire situation of the world's poor, the UN has marked 17 October of every year as the International Day for the Eradication of Poverty.

Islam's Position on Poverty

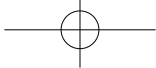
In Islam there are two denominators for gauging a person's poverty. First, there is the minimum amount of property liable to payment of the zakah tax(regular charity); and this amount is estimated in Islamic Law to stand at 200 silver Dirham's, i.e. close to SR475 in current prices(the equivalent of \$130). Others put this amount at a lower threshold going no further than SR119 or \$35 Zakah or regular charity is payable on the above-mentioned amount only if the said money was left unused for a whole year. Within this context, a person is considered poor as long as his yearly surplus falls below the figure cited above.

The other denominator is being self-sufficiency in terms of earning enough to meet one's basic needs, varied as they are yet inclusive of all the elements indispensable to man's sense of wellbeing. According to this approach, the costs of living are under the direct influence of the price index of commodities, fluctuating and unstable as they can be from the viewpoint of current economic concepts. Hence, poverty is termed as "the gaping gap in one's daily struggle to cap his basic needs and reach self-sufficiency."

As far as Islam is concerned, the majority of fiqh experts are in favors of self-sufficiency and riches rather than inadequacy and poverty.

Causes of Poverty

Analysts of poverty see it springs from multiple reasons, inter alia, natural and man-made disasters, poor educational system, rash and unplanned population explosion, unemployment and wanting development policies. They also, at least some of them, maintain that poverty is a relative problem in the sense that this phenomenon increases or decreases depending on the factors that create it, i.e., where education predominates in a society, poverty can be less severe for example. Thus, poverty incidence varies among



peoples and cultures, notwithstanding its occurrence everywhere in the world that it is part and parcel of the social fabric of every nation. The difference, however, remains in the degree of poverty's severity, types and ratio of incidence per population. Thus far, we can divide poverty causes into two main, distinct categories: internal and external.

a) The internal causes of poverty are related to how much a society is inherently capable of dynamically advancing its goals of progress in material and human resources. Domestically also, poverty can be caused by a society's inability to organize its various activities, extract its natural resources or maintain their sustainable development.

The individual himself plays a part in lessening his poverty when he knows how to adapt his personal circumstances to match the ensuing changes in the fortunes of his society; for if he could do that, he will find ways to avail himself of the new opportunities made available to him thanks to the advent of new facilities and technologies, and land himself a job that could free him from want and deprivation. No doubt the lack of jobs exacerbates the intricacies of poverty, which is a proof that poverty is not, as some critics claim, inherent in the human nature like one's shadow inseparable from him.

b) The external causes of poverty range from wars, armed conflicts and countries bullying other smaller ones, to direct foreign interference into States' internal affairs and plundering their riches thanks to the former's manipulation and dominance over international organizations and power houses; so much so that the bullied peoples' fortunes turn from once a blooming productive economy into a vicious cycle of inadequateness and sheer destitution.

The UN policies themselves, as issuing from a global institution; itself remote in approach and lacking of the minutes of peoples' development needs, contribute to an already entrenched poverty situation because of their failure to take into account the domestic and regional root causes of poverty, whose elimination ensures combating it effectively. This is in addition to a chronic dearth in the flow of international donations to those states, their ill distribution and/or problematic political regimes.

World Crisis

The natural disasters the world has suffered quite recently, such as the droughts, flash floods and typhoons, have doubtlessly multiplied the numbers of the hungry and the homeless around the world. Plus the nearby investment in warfare equipment and weaponry on the part of war mongers and arms manufacturers to create frivolous wars for the sake of making money; accompanied, on the other hand, by record low investments in food and agriculture, against a backdrop of ongoing world wide economic crisis that witnessed super powers renegeing on their obligations and finally, the advent of the so-called globalized economy that knocked off many a national economy, these together place an additional



burden on the shoulder of developing countries' governments, as well as the international organizations concerned with poverty alleviation, like the FAO and UNDP, to cope with the dire consequence of food shortage and famine.

Statistics

The number of the hungry and starving people in the world as cited by the FAO report, which have reached unprecedented levels having crossed the scary figure of one billion people mostly in developing countries, is all but a stark omen of a humanitarian catastrophe in the offing; it is so looming and urgent that humanity in its entirety has to face up to the soonest possible; for it defies the commonest sense to think that as some people die from the meshes of satiety, a lot more others perish from the pangs of hunger.

Let us consider some of the following facts that are all but taken for granted:

—The fortune of the three richest people in the world is equal to the GDP of the poorest 48 States in the world put together. And the wealth of the richest 40 people in the world transcends in bulk the total income of 41% of the entire world population.

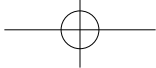
—Of the six billion souls populating planet Earth at present, there are approximately 4.3bn of them living in developing countries, with 3bn people of the latter figure being below poverty line, i.e. \$2 per day. Still, of these 3bn two-dollar-per-day people, we have 1.2bn persons subsisting on only less than one dollar daily.

It is only appropriate here to quote Ban Ki-Moon, the UN Secretary General, as he remarked on the International Day for the Elimination of Poverty, observed yearly on 17 October, by saying: "Over the past two years, the soaring food prices, the global economic crisis, climate change and armed conflicts have pushed the number of people impotent of earning their food to unacceptably high levels."

One glance at the world map is sufficient to point at where the hungry throngs are located geographically according to specialist reports. Thus, there are about 642mn people in Asia and the Pacific region; 265mn in sub-Sahara Africa; 53mn in Latin America and the Caribbean; 42mn in the Middle East and North Africa, and circa 15mn in the industrialized countries.

The latest figures further point out categorically that the current economic crisis has lost another 50mn people their livelihoods in 2008 alone, while another 100mn are predicted to join the caravan of the hungry and destitute by the end of 2009.

Finally, in the light of the statistics so far cited, we come to the conclusion that mankind cannot maintain a sense of equilibrium and self-sufficiency unless we probe and grope for the root causes of poverty and, then eliminate them altogether. The above figures also point a finger at a huge black hole in our current ill-thought management of the problem



of poverty which, if left unaddressed properly, shall have dire consequences for subsequent generations.

Its Impact on Education:

Scarcity of education may be the most important cause of poverty. There is, however, a link between poverty and illiteracy and vice versa, since the poor person, surely, cannot pursue his education. Poverty, as well as its gross consequences and problems on the community, has a huge impact on individual education. This in turn results in obstacles to development and progress of nations. Freedom from poverty in the Arab communities becomes more important under estimations that indicate rising levels of poverty in Arab countries as well as increasing differences in the distribution of income and wealth which has resulted in the expiation of the weak social segments and induce fears that the class structure in these countries does not currently support the community of freedom and good governance and may impede the necessary community change process.

Poverty acts against the development and prosperity of the community since it affects the foundation of building the community. That is the Man. In this sense poverty represents the opposite of human development, that is, deprivation from acquisition of the human capabilities and to employ such capabilities efficiently to attain the level of a decent human life. Accordingly, poverty stands as a difficult obstacle facing those who suffer from poverty, as individuals or families, and prevents their active participation in the activities of the civil and political communities.

Poverty and Human Rights:

Unfortunately, human rights are placed at the bottom of the priorities while policy and economics are at the top although statistics indicate that there are more than (53) million persons who will share with more than (150) persons their life under the line of poverty. The number of hungry people is now one billion and that between 18-51 million will lose their jobs due to the current economic crisis as reported by international reports concerned with human rights. We believe that no body agrees to the use of food as a tool for political pressure. The result is five million people in dire need for food assistance.

Reports issued by the organizations concerned with human rights indicate that human rights are violated in different forms in poor countries in comparison with rich countries. Protection of economic and social rights today represents a dire need and a priority under the increasing hardship facing needy people and vulnerable segments. To face such hardships, the world community has to shoulder its responsibilities to eradicate poverty and provide social justice to poor countries.



Solutions:

Easing of poverty, promotion of sustainable development and investment in human beings are legal demands possible to be achieved by mutual efforts of the international community through direct education, direct employment, preparation of work opportunities for youth and employment, preparation of work opportunities for youth and employment of unexploited human energy through encouragement and support of education and health institutions and small infrastructure project that can be run by poor people.

On the other hand, health shall be improved through eradication of diseases and epidemics such as HIV and AID as well as reorientation of researches in the direction of the problems that affect a considerable number of the world population. Islam was able to uproot poverty through the mechanisms of confrontation adopted by Islam in fighting poverty and eradication of its sources which are presented in three fundamental channels: preventive, remedial and complementary. Preventive mechanisms consider work as worship where the worker obtain two rewards, that is a reward in the hereafter and a material reward in the present life, adding to that, the organizing of exchange on jointly basis, hence prohibiting prices resulting from factors other than the supply and demand, and to direct consumption pattern away from lavishness and stinginess. Remedial mechanisms are represented by Zakat which is unique to Islam, revenues of the treasury other than Zakat and charities.

Complementary mechanisms are represented in the public expenditure policy through which the state increases the supply of necessary goods and orient this policy to intensive-labor investment. Then state may exclude some necessities from private ownership if such necessities are related to the living standard of the poor.

The Custodian of the Two Holy Mosques' initiative on dialogue and its impact on spreading human values, which is organized by the League of Islamic World, is one of the effective means for approximation among communities in order to make the world a community where peace, security and cooperation to solve struggles and remedy social diseases and epidemics prevail.

The initiative of the king of humanity on interfaith dialogue was not the first of his initiatives. It was preceded by his initiative on the Middle East peace adopted the Arab summit in Beirut in 2002, and the energy initiative for the poor in June 2008. The Kingdom has extended assistances to the poorest countries as well as supporting the organizations concerned with eradication of poverty world wide, supporting the U.N. credit funds, the U.N. Fund for Childhood, relinquishment of debts of developing countries and supporting the international relief organizations. These initiatives of the Custodian of the Two Holy Mosques and his government enrich the principle of common responsibility towards the present and future of man and message from the Kingdom to the world indication that interfaith dialogue, connection among civilizations, tolerance and peaceful co-existence



among individuals and peoples, freedoms from hunger, disease, illiteracy and corruption are considered human rights priorities. That was the noble goal of the Custodian of the Two Holy Mosques, which is a proof of the Kingdoms way on which it was found. Fighting poverty needs collective work that to say, fighting poverty is not the task of government alone, it mostly comes through collective and individual initiatives since no one wishes to see poor people. Communal initiatives are type of permanent solutions if programmed. The government alone, it mostly comes through collective and individual initiatives since no one wishes to see poor people. Communal initiatives are type of permanent solutions if programmed.

The government of the Kingdom is convinced that realization of sustainable development of the Saudi Community is not attainable by granting assistance and granite to small families, instead it is achieved by assisting these families to become productive, participate in the social fabric and contribute directly to the national economy.

Conclusion:

International tax evasion, ultimately leads to a reduction of the income of all states which in turn will reduce the social affairs budget or the budgets of institutions concerned with the poor well-bring. If the private sector and international business sector pay the due taxes, this will increase government revenues and consequently increase the allocations of social institutions which support the poor segments.

(The author is Board Member of Human Rights Commission for the Saudi Arabian Government)



POVERTY ELIMINATION AND HUMAN RIGHTS PROTECTION

Erdene Batuul
Mongolia

I'm here with a purpose of introducing the current state of human rights protection issue in Mongolia.

According to a recent survey, poverty in last decade shows 12.5% of reduction in urban areas and yet 14% of increase in rural areas, which means we have 0.6% of reduction or very insufficient national poverty alleviation indication.

Although the national average of the poverty extent has been reduced by 1.6% in the last decade, its indication in rural areas rose by 3.6%.

Being represented by reduction of population's real profit and their weakening living standard, the poverty has negative effects such as deterioration of public health, losing access to education and well manners, school drop outs and divorce and crime increase.

Poverty in Mongolia is mainly caused by low income. Job shortage is the main cause of the low income. Despite some statistical indication shows unemployment has been fallen down, there is skepticism considering certain data and evidences. There are a lot more obscure job shortages in the herders' families too. Also, there are many individuals who have a job seeking status on the condition of registering themselves at the local labor regulation office. The status itself is not much of a use and therefore, people don't have incentive to be registered, anyway.

So, insufficient decrease in poverty leads into breach of many basic rights of our citizens. There are wide spread practice of employers delaying to pay their workers' salary and also not complying with the national minimal wage regulations. Lately, it has been often noticed that employers differentiate job applicants on their physical condition, age and gender.

Caused by the job shortages, under aged children are often forced into labor in order to support not only themselves but also their families and relatives. Though, we have laws and regulations that prohibit children's employment in certain hazardous professions, for the sake of a living, they secretly get engaged with laborious works for a full time as if they were adults. Even further, there are incidents of children working in the night shifts and for overtime. Of course, the legislative organization is taking measures to improve the situation.



Good economic condition is much more supportive and effective to provide public with jobs and abandoning child labor than setting up just the legal framework. Since the beginning of the national policy of granting some money to children, it has been considered as an important government step toward poverty alleviation, tackling cash export flow out of rural areas and children's rights protection as it has encouraged school children's attendance and the births at this low population rate nation.

Paying kindergarten children's food cost by the government, not the parents, has played an important step toward the poorer families' children to be enrolled in the preschool education system. In addition, implementation of the "School lunch" program is another tangible measure toward securing the children's right.

The higher poverty rate in rural areas, in comparison with the urban areas, is indeed our main concern. We have been implementing the cooperation campaign of rural areas for more than a decade and yet still haven't seen its satisfactory outcome.

Our Parliament is still on course of employment encouragement policy. Accordingly, we have reflected some amendments and alterations on our legal documents and undertaking tasks of increasing job availability. Moreover, we are providing state support to those entities that train and tutor workers and laborers.

Despite the fact that there are obstacles in reaching the Millennium Development Goals that state to reduce poverty by a half by the year of the 2015, Mongolia believes that we have the opportunity and resources.

Dear Colleagues,

The followings are the suggestion for protecting human rights and the poverty elimination:

1. Eliminating poverty without improvement on economy is impossible. Therefore, the rapid economic growth must be ensured first.
2. It is impossible to take measures on poverty elimination and protection of human rights without further development and improvement on social welfare legal frameworks. Therefore, the legal reform should be maintained as the vitally urgent and important goal.
3. There is a great necessity to exploit legal and economic incentives to support interests of individuals and entities to increase job places and employments.
4. Unless we focus national economic capability and foreign aid programs on tackling of poverty extent, we will consume immense time, efforts and amounts. That is why there are extra efforts necessary.
5. Unless we develop infrastructure, we will never depart from urban and rural radical differences.

How, any citizen that lives a great distance from cities, not connected with hubs by electricity, communication and roads, and living remotely from market that is too far for any



information to reach, could receive its entitled public service, civil benefits and basic human rights?

I personally think these are the main objectives for Mongolia and therefore have been giving my best parliamentarian's efforts to fulfill them.

(The author is Member of the State Great Hural (Parliament) of Mongolia)



STUDY ON HUMAN RIGHTS ISSUE





HUMAN RIGHTS: A MOVING REALITY

Pierre Bercis

France

Many people and organizations have a defensive and conservative conception of human rights. Their only goal is to protect the achievements of both the *Declaration of the Rights of Man* and the *Universal Declaration of Human rights*, respectively adopted in 1789 and 1948.

While this is necessary, it is not however our idea of the human rights philosophy. In our opinion, they must move toward an expansion matching the world changes on all fronts (scientific, medical, technological, economic, and cultural, etc.). We must constantly improve their content so that people feel freer than in the past.

Everything is not possible immediately. But it is a goal, a permanent goal, an ideal society.

Of course, peoples don't make progress at the same speed. We must consider the level of development of each one of them. But the ideal is to move forward together "in harmony," as our Chinese friends often rightly repeat.

We need a common horizon for all humanity. This is how Europe, through the action of its workers, has gained economic and social rights in the 19th and 20th century.

These new rights were added to the traditional human rights core, for instance freedom of expression, freedom of movement etc. This is why we are pleased to see that China and the United States are currently introducing a social welfare system for their people, joining Europe in this regard.

However, our organization, New Human Rights, believes that progress shouldn't stop there. We want other human rights, and we ask our friends to share this dynamic conception of human rights with us.

Therefore we ask each and every one of you to lobby for the recognition of the "right to peace," for this right is often mentioned in the texts of the UN, but not recognized by the Universal Declaration, which is regrettable. Without peace, which people can live happily? It is certainly not a utopia but a basic need to achieve happiness, development and harmony.

Secularism is another human right that we choose to fight for in France as well as in the rest of the world. One says it's a French word, meaningless elsewhere.

I disagree and I would like to remind you of its definition.

Secularism means that if religions must be respected, their rule should not lead civil



society or governments. Religions are a personal matter, a private matter.

As you know that science is evolving at great speed, you cannot ignore either that the tremendous progress it brings can also affect the physical, psychological and genetic integrity of individuals. This is what fascist states were planning to do during the war by conducting experiments in Europe and I believe the Japanese intended to do the same in China. Thus we believe the universal consciousness must be vigilant on this issue and prohibit certain practices that could alter human nature in the future. Cloning especially must be authorized only for therapeutic purposes.

I will mention only one more new human right, one that is necessary to reach that state of harmony we all aspire to—the right of respect for cultural diversity.

The world is rich with cultural and linguistic pluralism. It is fortunate that the Chinese have a different language and culture than French people. It's also fortunate that our African friends are different from Americans or Europeans. And yet right now this diversity of peoples is threatened.

It is threatened by the hegemony of a single model—the United States of America's, which is gradually gaining ground in various ways. Our languages, our information, our cinema, our way of life in society, the way we eat, our dress code recede slowly toward uniformity.

Of what interest will be the world of tomorrow if from one end to the other of the planet it has the same color, the same taste, the same aspect?

Culture is like animal and plant biodiversity, which we call the “right to live in a healthy environment.” One should respect what is natural.

Everyone, wherever they are, without looking at the past but rather looking toward the future, must fight to protect the world's wealth at all levels. This is the condition of the harmony we want with you.

Let's keep the dialogue open.

(The author is President of the New Human Rights Association (Nouveaux Droits de l'Homme), France)



THE CONCEPT OF HARMONY AND HUMAN RIGHTS

Mohamed Noman Galal
Egypt

There are various philosophical concepts explain the inter-human relations through the march of human history. Prominent among them are two concepts: the concept of conflict and the concept of Harmony.

Maurice Duverger (1917-), the French political and legal scholar focused his studies on the concept of conflict as a basis that governs the relations between societies and states at the international arena.

Karl Marx (1818-1883) and many others of the German philosophers including Ludwig Feuerbach (1804-1872), Friederich Hegel (1770-1831) were conflict-oriented thinkers to explain the relations among individuals and nations. The most famous thinker is Thomas Hobbes (1588-1679) in his book “Leviathan” in which he explained the state of savagery, brutality and lawlessness among people, which he called the state of nature that is equivalent to the state of war which led to the establishment of civil society governed by absolute or omnipotent sovereign to control this state of insecurity.

The people, according to Hobbes, due to the savage state of nature and the evil human nature resorted to absolute sovereign to save them from such barbaric and lawlessness state to be able to live in security, safety and peace.

In the Chinese culture the two concepts i.e. conflict and harmony prevailed. The legalist school particularly “Han Fei” focused on the concept of conflict while “Confucius” paid a great attention to promote the concept of Harmony. The dichotomy between them is similar to that between Thomas Hobbs and John Locke, while the Taoist school advocated the concept of love.

It is pertinent at this juncture to elaborate little bit on the roots of the concept of Harmony in Chinese culture and in Chinese philosophy one can trace these roots in four ideas:

First: The idea of the “*yin and yang*” the negative and positive or the female and male, or the darkness and light. The “*yin and yang*” concept proves the complementarities of the life as well as its balance, thus harmony could be achieved.

Second: The idea of the “*Tao*.” The Chinese philosopher “*Lao Tzu*” (b.600 d.470) believed that human life, like everything else in the universe, is constantly influenced by



outside forces. He encouraged his followers to observe and seek to understand the laws of nature, to develop intuition and to build up personal power, and to use that power to lead life with love and without force.

The core of Taoism is the concept of “*Wù Wéi*” that involves knowing when to act and when not to act. It is a natural reaction, as planets revolve around the sun but without doing it. It means doing things naturally without effort. One saying of “*Lao Tzu*” “The truth is not always beautiful, nor beautiful words the truth.” The main book of Lao Tzu is called “*Dao De Jing* (DDJ). It is compared to Confucius’s “*Analects*” or “*Sun Tzu*” “*Art of War*.” It is compared also with the New Testament and “*Lao Tzu*” is compared with Jesus Christ as some scholars find that Jesus and “*Lao Tzu*” features astonishing examples of these two spiritual masters leading their followers down the same path despite vast differences in time and geography.

Third: The legalist school (legalism: *Fǎ Jia* i.e. school of law). It was one of the main philosophic schools during the spring and autumn period and the warring states period (770-221 BC). It was a period of great cultural and intellectual ferment in China and gave rise to the important Hundred Schools of Thought. China under the political leadership of “*Li Si*,” his form of legalism became predominant. Some scholars consider Li Si’s form of legalism to have been one of the earliest known totalitarian ideologies. Legalism was a pragmatic political philosophy that does not address higher questions like the nature and the purpose of life. The school’s most famous proponent and contributor “*Han Fei*” believed that ruler should govern his subjects by the following trinity:

- a) *Fǎ*: Law or principle. All people under the ruler are equal before the law.
- b) *Shù*: Method, tactic or art. These should not be known and should be employed by the ruler and if successfully enforced even a weak ruler will be strong.
- c) *Shì*: (legitimacy or power), It is the position of the ruler, not the ruler himself, that holds the power. The early thought of the legalism was first formed by “*Shang Yang*” and was further developed by “*Han Feizi*” and “*Li Si*.” It meant to strengthen the government and reinforce the adherence to the law. The legalism fully emerged during the “Warring States Period” and preceding “Spring and Autumn Period” was marked by frequent violence and war. This school believed that a lone individual had no legitimate civil rights or any personal freedom but to strengthen the ruler. It considered the people and their actions evil and foolish thought it allowed common people to gain even noble rank on merit. The school played a very important role in *King Zhuang Xiang of Qin*’s rise to power. It could be called a Realpolitik school. It was discredited later on as it focused on use of force. Though some of its ideas were revived now and then, particularly when “*Mao Zedong*” approved some of its methods.

Fourth: Confucianism (*Rújiā*) it is the philosophy of ethics and morals developed by



Confucius (*Kong Fuzi* or Master Kong, 551-479 BC). It had advocated totally opposite concepts to legalism. It stressed the importance of education for moral development of the individual so that the state can be governed by moral virtue rather than by the use of coercive laws. *Mencius* who is the second exponent of this philosophy said that “Ever since man comes into this world, there has never been one greater than Confucius.” Confucius believed that people live their lives within the parameters firmly established by “Heaven” which means the “Supreme Being” as well as “nature” and its fixed cycles and patterns though he argues that men are responsible for their actions and especially for their treatment of others. Confucius, social philosophy largely revolves around the concept of “*ren*,” compassion or loving others. While, his political philosophy is rooted in his belief that a ruler should learn and practice self-discipline and govern his subjects by his own example i.e. if the ruler is good the subject will be good. He advocated the conformity between names and deeds in his theory of “*Zhengming*” i.e. a proper use of language or rectifying the behavior of people so that it exactly corresponds to the language with by which they identify and describe themselves. The “*de*” or virtue is the moral power that allows one to win followers without recourse to physical force.

In Muslim culture, also the two concepts were dealt with. The concept of duality: day and night, light and darkness, warm and coolness, life and death, heaven and hellfire ... etc. are often repeated in the Holy Qur’an as a great sign of Almighty. While many Muslim philosophers and thinkers including the most famous sociologist Ibn Khaldoun (1332-1406) explain the history of humanity including the rise and decline of Muslim dynasties on the concept of force which is a manifestation of the concept of conflict. Other Muslim philosophers called for harmony prominently among them Al Farabi (870-950) in his famous Book “*Al Madina Al Fadala*” or “*The Virtuous City*.” In fact, the cardinal concept advocated by Islam is the concept of harmony and solidarity among people in society and humanity at large. Some important Qur’anic verses could be quoted in this connection.

The first is the verse in Holy Quran that states, “O’ Human being, we created you from male and female and spread you over as tribes and people to get to know each other.”

Another verse of the Holy Quran advises Muslim to make peace as their main priority in their relations with others even during wars and conflicts “If they—the enemy—showed inclination towards peace, you, Muslims, must do the same.”

A third verse advises Muslim to do even double effort to achieve peace and harmony as they stipulate clearly the purpose for creating human being is to develop the earth and build better life and not to go into quarries, conflicts, or wars against each other I quote “God says, I will create a human beings to be viceroy on earth i.e. to live on earth and develop it, the angels answered back that these human being will do bad deeds, corruption and bloodshed. God answered that I know what you; angels, don’t. God taught Adam all names



i.e. professions to work and develop earth and advised human-being to enter into peaceful relationship through knowledge and being acquainted and cooperate with each other for noble cause not for evil deeds or aggression.

Since the beginning of the 20th century onward, humanity suffered from scourge of wars and devastation. Thus, the thinkers and philosophers called for establishing international organization to control organize and monitor the relations among nations. Consequently, wars could be avoided, harmony could be established and peace could prevail.

Pondering upon the march of history, one could come to four main conclusions as following:

First: The selfishness, greed and bigotry are the core reasons for all conflicts among people and nations.

Second: Due to the huge devastation and destruction of many lives of people, their properties and all the achievement of humanity through ages, many philosophers and thinkers and even wise individuals called over the years for peace, harmony and cooperation, or in the modern political terminology for peaceful co-existence. The Afro-Asian Movement, which begot the Non-Aligned Movement, is one of the recent political manifestations world-wide in this endeavour for peace, harmony and cooperation among nations. Towering political leaders in this connection could be remembered for their dedication and their vision to promote such concepts and to advocate the Afro Asian and Non-Alignment Movements. Nehru of India, Zhou Enlai of China, Nasser of Egypt, Sukarno of Indonesia, Nekruma of Ghana, Tito of Yugoslavia are but few of such galaxy of leaders who championed this endeavour. One Swedish scientist managed to leave his imprint in this noble concept of promoting peace and harmony in the world i.e. Alfred Nobel (1833-1896).

Today in China since the opening and reform policy initiated by Deng Xiaoping (1904-1997) in 1978 to reorient Chinese policy to be focused on development, peace, cooperation, mutual benefits and common interest, great achievements took place. This is proof certain that harmony if prevailed, individuals, societies and nations could be prosperous as well as safe and secure. The call of President “*Hu Jintao*” to build a harmonious society and harmonious world relationship is very pertinent in this connection.

Third: All religions and creeds called for peace and harmony. Nevertheless, some politicians, businessmen or even fanatic clergy in all religions and cultures envisage conflicts and wars as a way to develop their nations through military industry and invasion of other nations. The economic concept of “cut-throat competition,” or military concept of brinkmanship, or political concept of invasion / conquest or religious concept of missionary and converting others to one’s own religion are but few of the nefarious concepts that are



promoted by short-sighted politicians, clergy or military people.

This way of thinking and behaviour led to the modern concept of clash of civilizations and thus declaring war against many cultures and countries. Consequently, the fundamental human rights are violated and even lost i.e. the right to live in safe and secure environment and the right of people to self-determination and to choose their own regime government according to the wish of the people. The right to freedom of thinking and of expression are curtailed due to the new McCarthyism named after Senator Joseph McCarthy (1908-1957) advocated by certain leaders, scholars and clergymen in certain parties of the world.

Fourth: The way out of our current dilemma or the vicious circle of the cycle of violence, conflicts and wars is through dialogue and re conciliation. This approach of dialogue though sometimes seems tedious and endless but it is less perilous and could lead to reconciliation and harmony rather than mobilizations of forces to settle differences through the rattle of swords. Once more Islam calls for dialogue and putting forward one's argument in a sober way to achieve one's objectives.

Reflecting on the current international situation one can envisage certain characteristics salient among them are:

1. The revolution of information and communication technology (ICT) that has virtually shortened the distance brought down the barriers and boundaries, and opened the skies.

2. The globalization phenomenon has changed the nature of human rights in substance, form and practice.

3. The new development in international law and international judicial system, particularly the increasing role of the UN Security Council in issues of human rights and the assertive role by the International Criminal Tribunal vis-à-vis the violation of human rights, all this led to new stage and a new perspective in looking at the issue of human rights worldwide.

4. The increasing importance of the UN council on Human Rights as well as other international, regional and national NGO's have led to the increasing of the importance of the issue of human rights. They play the role of watchdog on human rights.

It is to be remembered that the developing countries and the former socialist countries took a balanced approach, at least theoretically, at the UN system to advocate the three following ideas:

First: The idea of complementarity and indivisibility of civil and political rights; and the economic, social and cultural rights, which is adopted by the developing countries.

Second: The idea of the right to development as a basic human rights and should have been achieved for the developing countries to be able to raise the standard of living for their people.



Third: The idea of the cooperation between the developed and developing world, which was advocated by the Non-Alignment movement.

This is what I could call a balanced approach to promote harmony and to avoid conflict among nations.

Unfortunately, the divide between North and South still exists and the gap is increasing. Needless to say that such a situation does not lead to harmonious international relations. I salute the call of President Hu Jintao to endeavour and intensify efforts to build harmonious international relations.

As advocates of human rights, at national, regional and international levels, I feel that we should call for denouncing concepts such as clash of civilizations, xenophobia, Islamophobia and hatred of the others. Such ideas represent nothing but myopia, and lead to nothing but fomenting conflicts, wars and hatred among people and nations.

I believe that the concept of building harmonious international relations is a noble concept; it is the dream of humanity all over its march towards development and prosperity. We should work to make it sacrosanct concept for the coming generations to be able to enjoy their basic human rights and fundamental freedoms.

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THE PROFOUND REVELATION OF HUMAN SOCIAL RELATIONS AND THE PROFOUND REALIZATION OF INFORMATION RIGHT OF CITIZENS

—THE SOCIAL SIGNIFICANCE OF NETWORK TECHNIQUE ADVANCEMENT IN THE PERSPECTIVE OF “ENTITY CUBE”

Gao Gang
China

The R&D group of relationship searching in Microsoft Asia Research Institute explains “Entity Cube” launched in 2008 as follows:

“Entity Cube extracts person names, place names, institution names and Chinese phrases automatically from over a billion WebPages and then calculates the possibility of their connection with each other automatically through certain algorithms; meanwhile, Entity Cube indexes contents supporting their connection. Besides, Entity Cube finds the most likely term to describe relationship between person names, the most likely title and works related to a person and so on. Entity Cube automatically distinguishes personal profiles that corresponds with certain person names from all these Chinese WebPages and then orders them according to the possibility that they are indeed personal profiles.

When given some key words by customers, it can find the person; place and institution names that are most likely related to these key words and order them by their relevance with key words. Apart from that, Entity Cube provides news browsing service on the basis of person’s names, visualized relationship search service and so on.”

In the operation process of “Entity Cube,” all these complicated description finally turns into diagrams of interpersonal relationship, recordings of personal life history, situational description of personal activities that lie before customers.

People find that interpersonal social correlations are precisely depicted by a new generation of network searching technique.

I. The technical innovations and limitations of “Entity Cube”

By now, Entity Cube provides the following key functions:

1. Depiction of structure of interpersonal relationship

Entity Cube tries to depict the structure of complicated interpersonal relationship on



the basis of the recorded public information of social activities in certain time and space. In Entity Cube, the definition search of any person yields three categories of relationship information in his public social activities: related persons, places and institutions.

2. Description of concrete contents of interpersonal relationship

All the complicated relationship between people and society presented by “Entity Cube” is realized through concrete social activities. In the connection diagram and progress diagram provided by Entity Cube, a click at a time line or a knot on a time line yields lively and vivid information units, and nicely designed hyperlinks lead customers to the original WebPages that records all the details of this information unit and thus allow customers to see “the whole picture.” These information units are usually about public incidents that happen at public places and related incidents caused by these public incidents.

These incidents explain the reasons of formation, the state of existence and potential influence of complex human social relations, and thus explain the social significance of various interpersonal correlations.

3. Revelation of dynamic progress of interpersonal relationship

Entity Cube not only aims to reveal the spatial relationship of human social activities, but also tries to reveal the progress and evolution of these activities in time. It precisely arranges the human social activities in time sequence and map the progress diagram of the evolution of human social relations.

The diagram is constantly changing along with the dynamic information on the Internet. The constantly changing relationship between persons and persons, persons and institutions, persons and places, persons and incidents are truly depicted. Accordingly, the “time axis” of Entity Cube is regarded by The R&D group of relationship searching in Microsoft Asia Research Institute as the reason why “Entity Cube is a cube.”

In order to visualize personal social relationship more clearly, Microsoft also embedded search of “Six Degrees of Separation” into Entity Cube.

American sociologist Stanley Milgram advanced the theory of Six Degrees of Separation in the 1960s. The theory holds that: “the distance between you and any stranger won’t be larger than six when measure with person as the unit, in other words, you can reach any stranger through at most six persons.” Although the theory itself and the experiments that attempt to confirm it cause various debates, a large number of application techniques on the Internet are designed on basis of it.

Technicians of Microsoft claim that they introduce the search of “Six Degrees of Separation” according to the theory of Six Degrees of Separation.

The search of “Six Degrees of Separation” can help people to discover the social connections between any two persons in real life. The interpersonal complex relations in real life are straightforwardly represented in a plane graph. Circles of different colours



indicate different closeness of relations; every connection line carries information links to interpersonal connection.

By now, due to limitation in quantity of raw data and the vast difference in text style, the “Six Degrees of Separation” search still has various inaccuracies, but it reflects the awesome interpreting power underlying Internet information.

The innovations of “Entity Cube” are:

i. Locking onto the target directly: This is decided by the method of setting targets and principles of defining search ranges. Entity Cube sets search targets to be concrete persons, thus rendering the results more accurate and information retrieval more effective.

ii. Revealing profound connections: By information tracing with any search target as a starting point, Entity Cube provides classified information in three dimensions: connections between the search target and related persons, connections between the search target and related places, connections between the search target and related institutions. In this way, Entity Cube reveals various connections between persons and persons, persons and incidents, activities time and space.

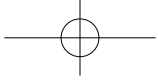
iii. Demonstrating the dynamic progress continuously: Information on Internet is the same as in real society, in that are constantly changing. Entity Cube is consistent with these objective laws, thus keenly captures the dynamic progress of human social activities and interpersonal relations.

The information structure demonstrated by this search tool which is highly consistent with dialectical thinking principles can not only depict the linear structure of social interpersonal connections, but more importantly, it's able to excavate such more profound information as the closeness of social interpersonal connections, the sphere of influence of human social activities and evolution of human social experience.

By now, all work of “Entity Cube” is based on Internet information, as a result, the incompleteness, inaccuracy, discontinuity, authenticity and falseness of the information base limit the actual effectiveness of “Entity Cube,” even lead to deviation of its results from its set goal.

The deficiencies of Entity Cube are mainly manifested in the following aspects:

(1) Incompleteness of information: Take China as an example, the penetration rate of the Internet had reached 25.5% in June 30, 2009, that is 0.338 billion netizens. It is impossible for Internet information drawn from such a level of penetration rate to reflect the complex interpersonal social relations of Chinese society. Even information on the existing 16,086,370,233 WebPages of Chinese Internet is not fully utilized by “Entity Cube.” What's more, information that constitutes the deep and covert social connections which are private or secret and cannot be utilized by public search engines like Entity Cube as its database for analysis. In a word, the scarcity, brevity, discontinuity and fragmentariness restrict the



completeness, objectivity and authenticity of Entity Cube.

(2) Uncertainty of information: Due to the high repetition rate of person names, inaccuracy and even falseness of raw information, irrationality of emotions in the cyber world and limitations caused by all kinds of objective and subjective constraints on search technology, the present search techniques is not able to accurately reveal the public attention for persons and incidents, the closeness of interpersonal relations, the progress of society.

(3) Potential safety hazards of information: In the development of Entity Cube, Microsoft Asia Research Institute paid close attention for protection of privacy, all the demonstration of interpersonal relations are based on public information about social activities, and they tried best to screen information related to personal privacy and public safety. Even so, publication of single social activities and publication of all personal social relations are distinct for personal safety (including psychological safety). With the increasing popularity of publication of personal information on the Internet, it is inevitable for personal information of public figures or non-public figures to be publicized. At present, no Internet search technology can be as intelligent as absolutely operating within legal bounds and moral limits. Protection of personal privacy and public safety is still a common social problem caused by Internet information.

Since Internet was commercialized, it has been promoting information gathering, transmission and utilization with individuals as basic elements, and proceeds to bring about the general trend of integral connection, overall sharing and multi-application.

In such communication environment, personal privacy protection is directly related to the safety protection of the fundamental information unit of the Internet. It's not only related to the protection of individual interests, but also associated with the maintenance of social safety.

Presently, Internet information safety has become one of the basic safety elements of living conditions of human beings. The emergence of Entity Cube has also raised alarm bells for people: high concern about the potential safety hazards of the rapidly changing information environment is a public issue facing all sectors of the society.

II. The significance of network technique advancement in the profound realization of information right of citizens

Compared to comprehensive webpage information search provided by Google and Baidu, "Entity Cube" uses real person as logical starting-point (person as definition subject of information search) of information search; it gathers all the information related to this object, and the results of the search try to reveal the time and spatial relationship between the information related to the search object, and thus describes the real state of interrelated persons and incidents. Such searching logic not only increases the effectiveness of gathering



and searching of information, but also inspires the extensiveness and profoundness of people's understanding of needed information.

Marx said: "The essence of human being is not inherent individual abstract subject. Realistically, it is the sum of all social relations."

As intelligent social animals, the instinct of existence and development of human beings drive them to more complicated social connections. Human beings always develop their potential as individuals, engage in pursuit of individual life and realize the value of individual life. Exactly for this reason, interpersonal relationship constitutes the basic forms and basic contents of all social activities. The motivation, process, result and even value of human social activities largely depend on interpersonal connections and interactions which are driven by human instinct and reason.

Learning interpersonal relationship means learning essence of operation of society and the essence of human beings.

Interpersonal relationship and its structure are quite complex in real life. All the relations are in a dynamic process of realizing their essence. Due to the complexity of the structure and variability of interpersonal relationship, the status and essence of interpersonal relationship are difficult to be clearly observed and profoundly understood in real life.

"Entity Cube" developed by Microsoft tries to reveal dynamic picture of interpersonal relationship on the basis of comprehensive analysis of network information about human social activities, and brings forward a fresh perspective for observation and understanding relationship structure and operation state of the society.

In thinking method, "Entity Cube" tries to unify the relation of time and space; technical route chosen under the guidance of such dialectic thinking method (whether intentionally or not) approximates the real state and basic operation laws of the objective world and human society, as a result, it provides information guidance for people to learn the connections of various things in real society.

It builds a technical bridge between philosophy level and social life level and straightforwardly illustrates dynamic interpersonal relationship in society. The creation, development and perfection of this technique are bound to help people learn the real world interpersonal relationship recorded in the Internet, the mainstream dynamic operation state of society decided by interpersonal relationship, individual position in universal social interpersonal correlation and the effect of social correlation and mobility on individual interests and destiny. This brand new searching technique which is committed to reveal interpersonal relationship would certainly play an important role in understanding and promoting energy exchange between real culture and digital world and contribute greatly in the profound realization of right of public information.



The right to know is the basis of exercising their social rights. Only timely, thoroughly and profoundly catching key information in the constantly changing circumstances can the right of free speech, supervision, participation, discussion and rights in various other fields be effectively exercised. Citizens' right to know not only gives them access to superficial, static and fragmentary information in the dynamic environment, but should also guarantee that they get information about the overall situation, internal reason, and complex correlations and so on. Key information in the changing circumstances is information with human beings as subjects and can exert considerable influence on people's interests.

The direct result of providing technical platform of information publication for netizens and the rapid increase in the amount of network information is that human social activities are richer, more extensive and more completely recorded. On basis of this, network information data has become the direct display of the operation state of real society. Observation, depiction, explanation and analysis of interpersonal relation and connection between human beings and nature on basis of such network information data is getting support of new digital network technical platforms such as "Entity Cube" and "Google Earth." These techniques and their commercial values are grounded in deep market development based on information utilization, and their social values lie in detailed construction of digital mirror sites in order to meet the ever increasing demand of knowledge of the public and promote the realization of the public's right to know on a higher level.

The application functions of "Entity Cube" indicate a brand new level of Internet information transmission as follows:

Description of operation state of society with human activities as the subject;

Demonstration of the structure of social connections with interpersonal relations as the core;

Outlook on the progress of social development with human progress as the thread.

Doctor Nie Zaiqing, Lead Researcher of Microsoft Asia Research Institute, said: "It is a brand new trial to extract structured information from billions of WebPages automatically. We will expand the number of WebPages from one billion to ten billion in the future. I believe that most customers will use Entity Cube to search Internet information related to certain persons by then."

Through the development of digital network technology, it can be noted that technology always remedies its defects through practical experience and rational pursuit of human being and reaches higher technical levels in pursuit of the ideal goal.

This indicates that the public can get to know needed information of various aspects of the society functioning with human activities as subjects more accurately, more comprehensively and more profoundly.



With the boost of digital network technology, new Internet search engines take meeting information demand of individuals as their core goal, and expansion of the exchange ability and strengthening correlation capacity as their major means, and comprehensively restructure the mechanisms of information creation, information retrieval, information integration and information utilization.

Digital network technology of WEB2.0 age is promoting the following two trends in communication and the profound realization of information right of the public:

The first trend is the deep exploration of energy contained in individual information. All the techniques such as RSS, blog, instant communication platform with text recording and interactive multimedia service, digital camera with geographic positioning information, various cable and wireless information channels and numerous individual receiving terminals provide increasingly strong technical support the obtaining, creation, transmission and utilization of personal information. Digital network technology is exploring the profound energy of individual information creation and communication as well as meeting personal information demand. Empowering the public with both the right to learn the environment changes and the right to describe the environment changes is an unprecedented social revolution in human history.

The second trend is the massive integration of network information energy. Technical principles and modes of network information construction, represented by WIKI, are accumulating network information energy with increasing extensiveness and promoting the integration of Internet information and information cooperation of the whole network. The overall connection, gathering, analysis and utilization of Internet information have become trends in network communication; information cooperation of the whole network based on individual information creation has become the major construction style of today's large-scale network information project. The expression of personal opinions and the creation of public interests including personal interests is another right the Internet has given to the public; it's the right to fully participate in the economic, cultural and political construction of the society through means of information transmission.

It has been 15 years since the Internet started to provide commercial service for the public. It can be seen that today's Internet is transitioning and evolving from free accumulation of fragmentary information to systematic integration of information units and professional analysis of overall information. The overall application network technology is promoting the description of the authentic state of the real world and analysis of complex causality, and thus promoting the profound realization of right of public information.

In the Manifesto of the Communist Party Marx and Engels describe their ideal society as this: "the free development of each is the condition for the free development of all."

It seems that the trends in the development of Internet boosted information transmission

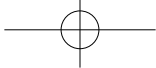


have the same features as the ideal condition described by founders of socialism: to empower every member of society with the right of information retrieval, free speech, participation in discussion and free creation, to respect the value of every life, to exploit energy of every life, to fulfil the ideal of every life, to safeguard of right of every life, to liberate every life to their freedom.

Searching engine is a basic application tool of the Internet information world, and the technology of information gathering, navigation, integration and interpretation links every member of society to digital world, and thus promotes the interaction and communication between individual energy and energy of the whole human civilization.

The Internet is not only a great technical revolutionary, but also a great social revolutionary, digital network technology is constantly breaking limits on information retrieval, transition, analysis and utilization, and empower everyone the freedom of information creation and utilization.

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HARMONIOUS DEVELOPMENT AND HUMAN RIGHTS PROTECTION

Harktistuti Harkrisnowo
Indonesia

The ASEAN intergovernmental Commission on Human Rights was established in Huahin, Thailand on October 23rd. This is a highly significant step that has been taken by ASEAN countries after quite a lengthy process, in order to have human rights promoted, fulfilled, upheld and protected in the ASEAN region. I am also happy to share with you that Jakarta, the capital city of Indonesia, has been chosen to be its office site. The establishment of this Commission, in addition to the commission on women and children is the first of many steps taken, in our commitment to intensifying community building through the establishment of ASEAN security community, ASEAN economic community, and ASEAN socio cultural community. I sincerely believe that this collective endeavour, together with other regional human rights cooperation, as is the event we are holding today, would be contributing to the development of the international human rights cause as well.

The concept of human rights is claimed to establish a powerful framework for progressive change in our collective cause, both at the national and international relations. Hence today it constitutes one of the key issues in the world, while its implementation being one of the most scrutinized issues. This is understandable since human rights are a set of basic rights and fundamental freedom, inherent in the existence of each individual on the face of the earth, based on an individual's dignity as a human being.

Whenever we talk about human rights, we would undeniably talk also about the concept of universality, which has been progressively promoted all over the world, indicating that all of us here, and many others beyond this room, believe that human rights are in the interest of us all. At this outset, we must also recognize that the levels of development in different countries are not the same, and this variable has to be taken into account. This has also been recognized in the resolution adopting the Human Rights Council in 2005 asserting that:

“...while the significance of national and regional particularities and various historical and religious backgrounds must be borne in mind, all states. Regardless of their political, economical and cultural system, have the duty to promote and protect all human rights and fundamental freedoms.”

This underlines, ladies and gentlemen, that the most important thing is that we are all



committed to realize human rights in every possible way in a progressive manner.

Talking about human rights is also talking about people empowerment, and how the state is obliged to open the space for the people to express themselves, to have their entitlements of rights fulfilled accordingly, to participate in the process which would produce decisions affecting their future. Briefly said, the idea of human rights is rightly based on ethics and morality, rather than on grand schemes found in the political arena. As such this is also known to engender an approach to development which is people-oriented. I am sure that all of us here hold similar opinion, that measures taken to ensure that all program and activities designed for the people shall take into account how this would impact their life.

The above noble ideas are of course closely related to our gathering today where constructive discussion and sharing would happen. In this regard, I have to commend the topic chosen by the organizing committee of this Forum, namely “Harmonious Development and human rights.”

Under this heading three issues in conjunction with human rights and development are discussed: poverty, financial crisis and people-oriented development.

The Millennium Development Goals, adopted in 2000, is one of the reflections of the international community on the gravest predicaments faced by all nations today. Unsurprisingly, poverty eradication is delineated as the primary goals of the MDGs. Allow me to share with you some facts on poverty:

- Almost half the world—over 3 billion people—live on less than \$2.50 a day.
- The GDP (Gross Domestic Product) of the 41 Heavily Indebted Poor Countries (567 million people) is less than the wealth of the world’s 7 richest people combined.
- Nearly a billion people entered the 21st century unable to read a book or sign their names.
- Less than one percent of what the world spent every year on weapons was needed to put every child into school by the year 2000 and yet it didn’t happen.
- 1 billion children live in poverty (1 in 2 children in the world). 640 million live without adequate shelter, 400 million have no access to safe water, 270 million have no access to health services. 10.6 million died in 2003 before they reached the age of 5 (or roughly 29,000 children per day).

In addressing poverty, many development programmes designed, are based on the assumption that the benefits of economic growth will trickle down to all members of society, including the poorest. However, economic growth does not always benefits the poor in a country. This problem stem from the fact that conventionally, development is seen merely as economic growth. However we have witnessed that this type of development tends to be unsustainable, more so when global financial crisis hit us.

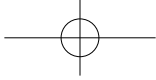


The increasing awareness of the problem is one of the reason why we are now see more development programmes giving special attention to human needs, and the distribution of development benefits, rather than focusing all efforts on economic development. Thus a more people-oriented development is needed, for the states or governments cannot work alone. They need to have their people as active instead of passive partners in a harmonious and sustainable economic and social development; they need to empower people that would lead to the condition where people are able to take greater control over all aspects of their lives: social, political, economic and ecological.

Undeniably, that such great undertaking could only be materialized if conducted collectively, in an atmosphere of partnership, not only within a nation, not only within a region, not only among the developing country, but among all countries and the peoples of the world. The works of scholars from all over the world has brought about the development of networks and of dialogues which eventually materializes in various Human Rights Instruments and mechanism, with common understandings that international cooperation is instrumental in realizing human rights for all in this world.

I am glad that the China Society for Human Rights Studies initiated this forum. I believe we will have a fruitful discussion, learning and sharing from each other, producing lessons learned and best practices that we could somehow use in each of our endeavour in our country. I am also hoping that our discussion today and tomorrow would not be the end of our work, since each of us would continue this great effort in his or her own way to further the cause of human rights, our collective responsibility.

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THE THOUGHT-PROVOKING COURSE IN WHICH COUNTRIES IN THE WORLD GUARANTEE AND DEVELOP HUMAN RIGHTS

He Ping
China

“Human rights” and “citizen’s rights” are two overlapping concepts which have subtle differences, and they are related to the concepts of “human beings” or “citizens.” The definition of the social status, essence and rights of a “human being” or “citizen” constitutes the connotation of “human rights” or “citizen’s rights.” Karl Marx held that the definition of rights of social members had its historical characteristics and was marked with the sign of times. This argument is correct. The earliest definition of citizen’s rights may date back to the ancient Greek and Rome periods. In the classical world, the basic rights of a citizen included his participation in city political life and enjoyment of state remedies. Aristotle regarded the qualification of a citizen as the primary condition to participate in city political activities. In Athens at that time, the population qualified with citizenship numbered less 10% of the total. In the ancient Rome, the qualification of citizenship was extended to most civilians in Rome at first, then to the conquered nations, and at last to most subjects all over the empire by means of the “*Edict of Caracalla*,” but except women and lower classes. In the feudal society in the Medieval Europe, rights were defined through ranks (priests, nobles and civilians), which were manifested as privileges of ranks or exclusive stipulations. The European history since the end of the medieval ages was a history of struggles in which a variety of classes rose up in succession for more rights of their own, and it was in these struggles that the concept of equality and the principle of universal human rights developed and became increasingly popular in the early modern times.

Thomas H. Marshall, a British scholar, made a clear division of the universal connotations of human rights. He made use of “citizenship” to generalize the rights which he had divided into three respects. In his opinion, complete “human rights” or “citizen’s rights” were composed of “civil rights,” “political rights” and “social rights.” Civil rights were the rights needed to guarantee personal liberty, including personal liberty, the freedom of speeches, thought and beliefs, the right of property, the status that everyone was equal before the law, and the right to apply the law to claim and defend the above-mentioned rights. Political rights were the rights to elect and be elected; social rights included the right



to enjoy basic social welfares such as labor insurance, medical care and education, and ask the society to guarantee one to live like everyone else in the society. The concept of “right to development” put forwards by developing countries has provided a theoretical platform for them to resist foreign interference and dominate the development of human rights within their own territories.

1. The Development of Human Rights in Britain, America and France of the Early Modern Times

With the scope of Europe, main struggles for the three types of rights respectively occurred in the 18th, 19th and 20th centuries. In Britain, the struggles for a variety of legal rights started earlier, including personal liberty, the freedom of speeches, publication, thought and beliefs, the right to property and the right of fair judgment. The acts and bills, such as *The Great Charter* drafted in 1215, *The Petition of Right* in 1628, *the Habeas Corpus Acts* in 1679 and *the Bill of Rights* in 1689, were all the signs and results of such struggles. In addition, the *Declaration of Independence* in the American Independent War and the *Declaration of the Rights of Man and of the Citizen* publicized during the French Revolution as well as the constitutions passed subsequently have all literately affirmed citizens’ basic rights and political rights.

The core of political rights is the vote, which is a kind of supplementation to citizen’s basic rights. In Britain, the extension of political participation has started as early as during the “bourgeoisie revolution” in the 17th century when congresses became the carrier of state power, but the right to elect members of upper and lower houses did not extend from nobles and bourgeois to common civilians until the 19th century. The Chartism in the 19th century was just a movement for basic political rights, including universal suffrage. Britain did not abolish its property qualification for suffrage. America was free from feudal hierarchy; hence it admitted the right of citizens to equally take part in politics when it declared citizens’ basic rights. By the 1930s, all states except for a few ones (Louisiana and Virginia) in America had abolished property qualification for election, and carried out the system of universal suffrage. During the 18th and 19th centuries, France relapsed into a seesaw game between the request for more democracy and the sentimental attachment and preference to the old traditional system; and for several times it was within an inch of revolutions. So far, almost in all Western developed countries universal suffrage has been granted to adults.

Social rights include the right to receive social and governmental guarantee in unemployment benefits, education and medical treatment. All the serial struggles, which the European working class has launched for the improvement of working and living conditions since the end of the 19th century, including strikes, petitions and even the revolutions in Russia, Germany, Hungary and some other countries, can be viewed as conflicts caused



by citizens' struggles for social rights. After the First World War, Britain took the lead to enforce the law for improved working conditions, and it even began to carry out a policy of universal social welfare after the Second World War.

Marquardt, a previous member of brainpower of Blair's Government in Britain and the president at the Mansfield College, remarked that the contemporary capitalist society was a "tamed capitalism." Due to the pressure of Marxist ideology and the constant struggles of working class, the Western European capitalist society was coerced to carry out social welfare policies to guarantee citizens' basic life welfares and social rights such as education, labour and medical care after it granted citizens' political rights, including suffrage.

2. Experiences of North European Countries in Their Human Rights Development

After the Second World War, North European countries such as Sweden, Norway, Denmark and Finland have significantly transformed traditional capitalism, and combined different social systems. In regard to economy, they have chosen market economy to keep their economic vigor, and thus prepared a reliable material foundation for the guaranteeing of citizens' social rights; politically, they perform social democracy, guaranteeing the exercise of citizens' political rights both theoretically and in practice; in the distribution of incomes, they conduct "socialism," with the governments redistributing national revenues by means of high taxes to guarantee people's basic living standards. North European countries apply high tax rates. Take Sweden as an example. In 1995, the month incomes of blue-collar workers averaged 15,100 kronor, and those of white-collar workers 20,200 kronor. Their income taxes numbered 31% of their monthly incomes, while the progressive individual income taxes of managers at large companies amounted up to 60%-70%, with the highest even to 85%. The countries such as Denmark, Sweden and Finland adopt a from-cradle-to-grave welfare policy to guarantee medical treatment, education and labor insurance, including education for free, paid holiday and medical care in hospital for free. Such a policy has sufficiently guaranteed citizens' "social rights," and left very small gaps between the rich and the poor. Take Sweden as an instance. The income gaps between citizens had decreased from 30% in the 1950s and 1960s to 15% in the 1980s (with average incomes as 100%). In 1978, a family of six only supported by a husband with annual 4,600 US dollars earnings had largely the same total incomes (14,117 US dollars or so) as a household of the same size supported by a husband earning 23,000 US dollars a year after the former received governmental allowances and the latter paid taxes.

The "socialist" distribution policies in Sweden and other countries are based on their systems that basically guarantee citizens' political rights and enable the will of the majority to become decisions. In 1983, for example, Sweden attempted to carry out an "Employees' Investment Foundation System," which was going to transfer the profits of enterprises from



capitalists to worker collectives, enabling employee collectives to control the profits and stocks of enterprises step by step. The draft envisioned that 20% would be appropriated from the profits apart from 500,000 kronor of capitalists, and be added to the foundation owned by employee collectives; and meanwhile, the pensions paid by employers on behalf of employees would increase by 1%. In this case, the employee collective foundation would gradually amount up to half of the shares of enterprises, and private ownership would become the ownership of employee collectives. This draft was warmly welcomed by employees, but capitalists organized a 700,000 people procession to protest on October 4, 1983. However, the Swedish parliament approved the bill of “employee investment foundation” at last by votes. In the list of incorruption publicized by Transparency International in 2005, 6 countries among the first 8 places were North European ones (which were respectively Iceland, Finland, New Zealand, Denmark, Singapore, Sweden, Switzerland and Norway in sequence). The North European countries can build a “harmonious” society with balanced human rights development just because they can apply the theory of social democracy, which is related to Marxism, into their social practices, and transform systems, innovate and be open to all beneficial things.

3. A Lesson from the Human Rights Development of the Former Soviet Union

The recent research abroad indicates the dissolution of the Soviet Union was not a result of expanded citizens’ rights. In his book *Revolution from Above—The Demise of the Soviet System*, David M. Kotz disclosed the speciousness in two major ideas that explained the demise of the Soviet System: one held that the planned economic system in Soviet Union could not bring about long-termed technological advancement and rapid improvement of people’s living standard, the internal weakness of such economic system would gradually slow down economic development and at last lead to collapse; and that it could be secured only if capitalism was restored; the other assumed that after Gorbachev conducted speech freedom and free election, the Soviet people made use of their newly acquired rights to abolish socialism and set up socialism.

As recent surveys have shown, the working people of the Soviet Union did receive some benefits from socialism, and the distribution and guarantee of social welfares in the Soviet socialist system were by far more equal and fair than those of capitalism, but the Soviet people were not able to fully exercise the political rights that the Constitution and Marxist theory had promised. In other words, “social rights” were relatively sufficiently guaranteed, but “political rights” were not, especially the right to overrule the attempts in which a few elite changed the general direction of social development. The demise of the previous Soviet Union had many reasons, but the unbalanced and disordered development of “citizens’ rights,” “political rights” and “social rights” might be an important one among



them. The multitude was in a passive position, and they had no experience of standing up to safeguard their own interests. When the elite decided to disaggregate the Soviet Union, they had no way to organize any resistance.

As opinion surveys of the Soviet Union at that time have shown, people who favoured capitalism numbered only 5-20% of its total population, a public opinion poll in May 1991 indicates that in the European population of the Soviet Union, 10% favoured the socialist system before the reform; 36% the socialism with more democracy; 23% the Swedish-style socialism; and only 17% free market capitalism. Evidently, capitalism was not a choice of the majority of the Soviet people. But among the elite in the Soviet Union government, only 9.6% favoured traditional Soviet-style socialist system; 12.3% preferred Western-style democratic socialism, but 76.7% completely turned to capitalist society. The very reason was that these elite people had become a special interest group and collected enormous wealth by means of the economic and social reform of the Soviet Union. The first concern of this group was their privileges and interests. If back to the socialism before the reform, they could have some relative privileges and status, but their privileges would be limited; what is more, they would be unable to accumulate excessive wealth and leave it to their future generations. Only capitalism can provide an opportunity for them to manage such wealth and leave it to their future generations. People of the former Soviet Union thus underwent steep decrease of living standards. The experiences of the Soviet Union indicate that “citizens’ rights,” “political rights” and “social rights” must be developed in balance.

Summary

The former Soviet Union gained enormous achievements in guaranteeing citizens’ social rights, that is, basic social welfare such as labour, medical insurance and education. But as for citizens’ political rights, especially citizens’ rights to participate in state governance, despite theoretical promises, the Soviet Union government did not create procedural conditions to guarantee its people to exercise such rights and dominate social development at their own will until the few years before the collapse. Consequently, a small-sized special interest group was able to change the general direction of social development. China has drawn a lesson from the failure of Soviet-styled socialism; meanwhile, it has also learnt from the experience of European developed countries. On the basis of such, it holds the sublime Marxist theory that is committed to the freedom and liberation of man, putting forwards its “Human-oriented” guideline. Specifically, it broadens the concept of human rights in China, including the rights of political participation and social welfare, viewing it an important objective of the present government.

Since the 1980s, China has conducted a series of reforms and legal system constructions, which are called “liberalization” by foreign scholars. By doing so, it has



enlarged and guaranteed Chinese citizens' personal, political, economic and social rights, leading the nation once known as a "Stalinist country" among foreign scholars to a new "socialist country with Chinese characteristics." This progress is accompanied by better understanding to the concept of "human rights." *Human Rights in China*, a white paper issued by the Chinese government on Nov. 1, 1991, acknowledged that "the enjoyment of human rights" is a lofty objective of human society; and when he gave an interview to the minister of French defense department on Apr. 8, 1997, President Jiang Zemin mentioned the "general principles" of human rights and the particular conditions of China, holding that China needs to "constantly improve its democracy and legislation to guarantee people's civil and political rights." At present, the Chinese government has signed 25 international conventions on human rights such as the *International Covenant on Civil and Political Rights*, and it has started to implement the national action plan of human rights. All these have shown the great progress that China has made both in the theory and practice of human rights.

Historically from a macro point, China emphasized the "right to subsistence" and "right to development" due to its economic development and some historical reasons. Citizens' rights have enormously developed since the reform in the 1980s, but because of the economic reform, the previous social welfare that some city and town staffs had formerly enjoyed is now cancelled, and China is at a new stage in protecting and broadening citizens' basic social welfare. As for political rights, democracy has to be further developed although there have been many reforms in which government officials are directly selected at levels. As it is shown in the 5,000 years history and the recent 60 years practices of China, the Chinese people is a nation with the ability of self-improvement, and for sure it can keep up with the time to reach its great goal of "full human rights" step by step.

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SYSTEM ETHICS: NEW APPROACH TO GUARANTEE HUMAN RIGHTS

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To respect and protect human rights is an issue of common concern nowadays. In 2004, China added “The state respects and protects human rights” to Article 33 of its Constitution in the form of amendment. Incorporation of human rights into the Constitution not only eliminates all kinds of concerns in notions, but also facilitates the transition of government management style and promotes the development and advancement of human rights protection. It’s more profound significance lies in its inauguration of a new era in human rights protection in China, and its marking of the transformation of human rights protection from the level of advocating and appeal to the level of legal regulation and systematic guarantee. In accordance with this, the design and establishment of every system in our country should follow the principle of human rights protection in order to respect and protect human rights. The protection of human rights, on the one hand, needs the confirmation and support of systems, on the other hand, the design and operation of the systems should embody the ideas of human rights protection. Therefore, system ethics is the joint of system design and human rights protection and an important approach to guarantee human rights.

I. The internal correlation of human rights protection and system ethics

Human rights are indispensable for modern citizens. Still, there is no consensus on the meanings of human rights; they include meanings of different levels, such as “rights to be a human,” “rights as a human” and “rights that make a human become a human.” However, there are two points of agreement in these various levels of understanding: “First, human rights are the basic rights that make a human become a human and maintain his dignity. Second, human rights are the rights to resistance oppression of authorities.” Human rights is a standard that distinguishes human beings from animals politically, legally, morally and conceptually; they show that the value of a human is acknowledged by the society, and also human rights stand for the citizen rights in state political life; in terms of their contents, human rights can be categorized into citizen rights, political rights, economic rights, social rights, cultural rights and so on; in terms of their essence, human rights are the sum of all



the rights that humans should enjoy that are acknowledged by certain moral ideals and moral ideas; in terms of their implementation and realization, human rights should be expressed and confirmed systematically, i.e. the transformation of rights claim from *what ought to be* to *what is*. Therefore, from the perspective of the guarantee and realization of human rights, transformation from notions to real life rights must rely on social systems, otherwise, the ideas of human rights will always just remain as ideals and lose its realistic significance.

Systems are important resource for the subsistence and development of modern society and modern people, and a fundamental and advanced power that governs the operation of modern society. However, the operation of any society is not just a series of cold systems, but also includes activities of moral and emotional humans. In other words, the design and operation of systems of human society inevitably embody values and value orientations, which mean that any system has its own moral ethics. Therefore, system ethics are indispensable components for the design and operation of systems. In terms of its essence, it can be interpreted in two aspects “ethics of systems” and “ethics in systems.” We determine that system ethics can be understood as the dialectic unity of ethical demands and a series of regulations needed to realize the moral ethics within the basic structure and system of the society. That is “Ethics of systems—the ethical appraisal of the fairness and legitimacy of systems, and ethics within systems—ethic pursuits, moral principles and value judgements that are contained in systems.” It can be seen that, system ethics includes profound system-ethic and system-moral characters. And the notion of human rights protection constitutes a significant aspect of system ethics, it is the notion that “certain human rights should be enjoyed by various social organizations and individuals, and they should be respected and cannot be violated on illegitimate grounds.” The notion of human rights protection in system ethics requires that individuals, social groups and governments assume the responsibility of human rights protection, recognition, respect and protection. Just as the key reason of the subsistence and development of socialism lies in persistence in its highest ideal of comprehensive development of human beings, and this ideal fully reflects concern for the subsistence and development rights of human, its inner system requirements and basic contents is the protection of human rights. Therefore, system ethics must be the way of realizing the rights of humans in society and their collective will, the basis and value orientation of which must be the realization and maintenance of human rights.

In sum, the essence of system ethics is the relationship between system and the subsistence and development of humans. The construction, choice, reform and innovation of systems can promote the activeness, initiative and creativity of humans and can facilitate the realization of rights and comprehensive development of humans, only such systems are ethically sound. In light of this, the essence of system ethics is the relationship between system and protection of human rights.



II. The value orientations of systems which are based on human rights protection

The exploration of the realization approaches of human rights from the perspective of system ethics lies in the construction of moral order of a system and incorporating human rights in its construction, and realizing and protecting human rights in its operation. This will not only promote the development and progress of the system itself, but also facilitate the full protection and realization of human rights in social development. The value orientations on the basis of human rights protection system are mainly reflected as system fairness, system freedom, system equality and system democracy; therefore, system ethics provide new approaches and modes of thinking for the realization of human rights.

1. System fairness

System fairness is the basic value orientation and fundamental virtue. To be more specific, system fairness is the balance of the interests of an entity and the interests of overall society and members of society through system design, in order to get the rights and obligations duly confirmed in the process of social distribution. The essence of system fairness is to achieve equal distribution through system arrangements of equal opportunities and equal processes. In modern society, system fairness is mainly reflected in the proper distribution of rights and obligations. Equal distribution of basic rights and obligations is a key aspect of the social system fairness. In addition, socialist system fairness is also embodied in fairness of political system, legal system, government management system, cultural system and so on.

In terms of political system fairness, we should further guarantee the people's legal rights, improve socialist democracy, extend the people's right of participation and discussion in state affairs, strengthen protection of the disadvantaged group and safeguard the fundamental interests of the overwhelming majority of the people through systems; in terms of legal system justice, we should guarantee that everyone is equal before the law, ensure legislation justice, procedural justice and execution justice through systems; in terms of government management system fairness, we should establish and improve various rules and regulations, guarantee the administrative justice and efficiency through systems, further improve and implement the civil service system, quicken administrative reforming and government restructuring, gradually transform government functions, guarantee administrative justice, honesty, democracy and efficiency; in terms of culture system fairness, we should guarantee the equal access of different social groups to education, improve various cultural affairs, guarantee fair competition through system in culture markets, treat different cultures and cultural interactions with tolerance and justice. Therefore, system justice is a significant aspect in the improvement of socialist society system and an important guarantee of realization of human rights.



2. System freedom

Freedom in the perspective of system ethics is a right which empowers and guarantees the freedom and independence of citizens through system by various kinds of objective entities. Objective entities mainly refer to economic, political and legal entities and so on. System freedom in real world is mainly reflected as political freedom, economic freedom and legal freedom. Political freedom is free pursuit of political rights by the people. However, pursuit of political rights must be safeguarded by freedom in political system. Without system guarantee for political freedom, free choice and autonomous decision-making is impossible to realize. Meanwhile, citizens shouldn't enjoy rights and freedoms at the expense of the interests of country, the society and collective interests and the rights and freedoms of other citizens. Under socialist market economy, "economic freedoms" means extending the right of autonomous management, embracing diverse economic sectors, free competition and market regulation of production and exchange. Only "economic freedom" can invigorate the enterprises, improve productivity and develop the economy. However, to avoid the limitations of market regulation, macro-control is needed to regulate the economic order through legal, economic means and so on, and thus promote the "free" development of the economy. Law and freedom are unified in essence. They are the representation of different social relations: on the one hand, as a measure of freedom, law identifies the bounds of freedom, thus the freedom enjoyed by citizens is within the legal bounds. On the other hand, law is a form of restriction on freedom, and citizens cannot abuse their freedom. However, the key of legal freedom lies in the fact that it's not restriction of freedom but better realization of freedom is the end of legislation which in turn is the restriction on "over freedom" that hampers freedom. In essence, the opposition of law and freedom is only in form, they are closely correlated in content. Legal system is a system that safeguards freedom and thus loses its objective and value without freedom. However, without laws, the society will lose its order and finally every member of society loses his freedom. Therefore, system freedom is a measure of value for safeguarding social freedom and also a powerful guarantee of individual freedom.

3. System equality

System equality means safeguarding the equality in enjoying the basic rights and obligations in terms of economy, politics, law and the equality of opportunity in terms of procedure. In social life, system equality pursues equality in opportunity and process instead of results. Therefore, equality is not even distribution of rights but equal opportunity to obtain rights. In opportunity equality, social system guarantees the fair competition and same starting points for every member of society, great or small. As interpersonal differences are impossible to erase, it is impossible to set different competition rules according to the specific circumstances of every individual. It's only realistic to set everyone



at the same starting line and allow them to strive for various rights according to the same set of rules. To achieve process equality, the same rules should be established for everyone in systems and the activities of right obtaining should be put in a contract, and violation of the contract should be penalized and observation of the contract be rewarded. According to the requirements of opportunity equality and process equality, distributing interests depending on the personal capability and contribution is also an aspect of equality. Strictly speaking, complete interpersonal equality is an ideal never possible to realize. Especially now under socialist market economy, the only equalities we can realize is equality in political rights, moral character, the right to work, gender status and so on, especially equality in competition opportunity, and these requirements are in accord with the principle of justice. In achieving the fair order of the system, equality and justice are two inseparable components. Equality is the surest way to achieve justice, only on the premise of equality in opportunity; starting point and competition can justice be realized in proper circumstances.

4. System democracy

Democracy is an effective form in system development and improvement. System democracy not only confirms democracy in form and recognizes the people as the masters of the country, but also in essence make democracy as the pursuit of the management system of the country. On the one hand, system democracy guarantees the right of extensive participation in the management and decision-making of the country by the people; on the other hand, it guarantees the actual realization of this. In order to realize socialist system democracy in China, we should on the one hand further improve and stick to the system of National People's Congress. The system of National People's Congress is an effective form to implement democratic election, democratic decision-making, democratic management and supervision. The National People's Congress is established as the supreme organ of state power in law. The implementation of its functions and reflection of the people's will is also guaranteed by the law, and thus decision can be made scientifically and democratically. On the other hand, we should further improve the system of multi-party cooperation and political consultation under the leadership of the Communist Party to promote the institutionalization and normalization of democratic supervision, administration and discussion in state affairs; we should improve the legal system of the mass organizations' democratic participation and democratic supervision of state and social affairs and earnestly guarantee the democratic rights of different parties and social sectors. In sum, democracy is not only "the people's sovereignty" and "majority rule" in form, but also guarantee of administration and discussion of state affairs through different channels by the masses through various laws and regulations, reflection of the need and aspirations of the masses by various principles and policies. The value orientation of system democracy lies in the realization of true democracy.



III. The realization of human rights protection through system ethics

Against the background of globalization, respect and protection of human rights has become not only the main theme of current world politics, but also the objective request of socialism construction. The fundamental principle of socialism is to make the people the real masters of the country and the subject of human rights. At the same time, the system construction of human rights protection in our country should not only be reflected in system development in the macroscopic level, but also should be reflected in the progress of concrete laws and regulations in the microcosmic level which can effectively promote human rights protection in operation. For example, after “Sun Zhigang incident” in 2003, the state council repealed “Measures for Housing and Repatriating Vagrants and Beggars in Cities,” and replace it with “Measures for Assisting and Managing Urban Vagrants and Beggars with No Means of Livelihood,” and public security is substituted by civil administration as the organ in charge of this issue. This case reflected the improvement in government’s capacity in performing duties according to the law and transition of administrative idea from control to service on the one hand, and the government’s respect and humanistic care for citizen rights and human rights on the other hand.

It can be seen that, it is exactly the ethical value orientation of the system that effectively limits the arbitrariness and self expansion in the implementation of rights and confirms and guarantees the basic rights of citizens realistically. Therefore, in order to promote the realization of human rights effectively and persistently by the system, the system must be built on the basis of morality and rationality. Only a morally rational system can be recognized, supported, trusted and observed by the public, to safeguard the rights of every citizen and boost the interests of every member of society, and to fulfil its function of guiding and restructuring of social life.

In sum, human rights protection is realized not only through such soft measures as demonstration, appeal, advocating, education and so on, but more importantly through internalization of ethical rules into the construction of universally binding and rigid system by democratic procedures. Only when mostly systems are supported by moral codes, regulated by ethical principles and guided by ethical ideals can citizens conscientiously observe social systems and enjoy and guarantee the realization of human rights under sound regulation of system ethics. System ethics is a new approach for human rights protection.

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HARMONIOUS DEVELOPMENT CENTRAL TO THE HUMAN RIGHTS PROTECTION

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Our Forum is convened in this remarkable year—the year of the 60th Anniversary of the People's Republic of China. Last year, China warmly welcomed the participants of the Beijing Olympics. I am especially glad that during these solemn events all its participants witnessed the Chinese progress in the field of the human rights security. China forever charms and attracts as a magnet of heart everyone who has ever come and discovered its 5 thousand years history and culture!

I would like to express my thanks to the organizers of the Forum that has been traditional since 1998. Forum participants get the chance to freely exchange their views on the most dramatic problems of today regarding the current state of human rights and freedoms.

The subject of our Forum, “Harmonious Development and Human Rights,” is extremely important. Apprehension and practical realization of the new approach to the development of human civilization are vital in today's world. Such an approach should be based on the understanding of its harmonious design principle.

1. It is my belief that the principles of harmony and development are intertwined, interdependent and interrelated. Therefore, understanding human rights and freedoms requires, first and foremost, approaching the development from the scientific angle along with the application of the harmony principle to human rights protection. It means that social harmony should not be viewed as a static equilibrium between the interests of different social classes and groups with the division of labor in the society fixed once and for all.

Essentially, the point is to apply the scientific approach to the practical implementation of the harmony principle. As a result, development of the society and exercise of human rights and freedoms, which are vital for the development of each individual, form dynamic harmony, i.e. continuous creative transformation of the society and the individual. Just as the dynamic Universe concept superseded the static Aristotelian “harmony of the spheres” model during the Renaissance, understanding of the system for securing human and civil rights and freedoms and their dynamic harmony requires theory and practice.



The harmonious unity of the individual and the society resembles the jewel net of the Hindu god Indra. According to the ancient Chinese concept of ten mysterious gates, each jewel contains the reflection of all the other jewels in the net and the net itself, and each of the jewels is reflected by all other jewels.

2. Applying the development principle to the international protection of human rights and freedoms should pursue two main directions: 1) establishing an international security system for the prevention of wars and violence between nations; 2) implementing the international standards for the protection of human rights and freedoms. These are aimed, respectively, at achieving harmonious peace in the international relations as well as harmonious peace of the human mind. The “harmony” principle itself implies unifying these two aspects into a system for development of both the international community and the human personality.

We should acknowledge the very important role of the UN in establishing international standards for protection of human rights and freedoms. The Universal Declaration of Human Rights established the principle of equality, i.e. the legal framework ensuring equal access of every person to individual development without distinction of race, color, sex, language, religion, political beliefs, national or social origin, property, birth, or other status. However, the importance of legal confirmation and international recognition of the principle of equal rights alone do not warrant equal access of people and nations to the means of development in the world of inequality.

Unfortunately, there are no harmonious societies and harmonious nations known to mankind.

3. At the same time, the imbalance of the concept and protection of human rights in the Western world towards the priority of individual interests over social and collective interests for the development of nations and humanity is becoming more and more apparent. In the words of Karl Marx, “the human essence is not an abstraction inherent in each single individual. In its reality, it is the ensemble of social conditions.” It means that the rights of an individual shall not be in opposition to the rights of the community. Likewise, the great Confucius placed interests of the individual behind the interests of the society and the family.

4. The neoliberal economic policies of the consumer society have led to an overwhelming human pressure on nature and global climate changes, jeopardized mankind’s living conditions, and resulted in the global financial crisis that aggravated all the threats and challenges to human rights and freedoms, such as poverty, mass migration, trafficking, especially in women and children, discrimination, racism, xenophobia, corruption, food crisis, environmental disasters, epidemics, wars, and terrorism.

The aforementioned global problems severely affect the human rights situation in many



countries, including Ukraine. As the Ukrainian Ombudsman, I have to acknowledge the negative effect of such global challenges as mass poverty, unemployment, and multi-million migration on human rights and freedoms. Some five to seven million Ukrainians have migrated to work abroad, while six million labor migrants, mostly from Asia and Africa, have come to Ukraine.

Once again, like at the previous Beijing Forum, I urge all the participants to support the ratification of the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in their countries and to establish mechanisms for its implementation.

5. It is necessary to focus our attention on international terrorism, specifically maritime piracy which is another manifestation of the global crisis and disastrous gaps in social and economical development of different nations. The world appeared to be unprepared for this new challenge for human rights and freedoms.

Only by the Somali pirates, at the moment, almost two hundred seafarers from all over the world, including China and Ukraine, are held captive. This year alone, sixty Ukrainian seafarers were taken hostage, and twenty eight, including two women, are held captive at this very moment. This suggests, to my mind, that we should elaborate and adopt, at the UN level, the Universal Convention against International Terrorism.

At the same time it is my belief that without the poverty alleviation in Africa, including Somalia, it would be impossible to eradicate piracy. The international community and organizations need to coordinate their efforts and find solutions to these global problems.

6. Unfortunately, after the World War II, the international community never managed to establish an effective international security system to achieve harmonious and sustainable peace. Initially the world became bipolar and later unipolar, and therefore unbalanced and prone to conflicts. Double standards have become a norm in international relations, and the force of politics has been replaced with the policy of force. The international security is now viewed as the privilege of certain nations to ensure their own security at the expense of others. What is especially dangerous is the tendency to get round or ignore the UN international security mechanisms when making the decision to use the military force as was the case against Yugoslavia, Iraq, Afghanistan, and other countries. The concept of aggressive military blocs is not compatible with international harmony. The development and harmony principles can only be realized in the context of international solidarity based on mutual respect and international cooperation.

7. In today's world more and more people place their hopes for stability and international security on China. China has proven to the world its readiness to provide assistance and support to other developing countries. China plays an important role in harmonization of international relations and establishment of an international collective



security system with participation of the countries with the vast majority of the world's population. It's role is important not only for ensuring the international security but also for providing social conditions for the exercise of all human rights and freedoms within the framework of an *integral right of every individual to an all-round development*. This right encompasses the right to life, access to healthcare, poverty alleviation, eradication of wars and terrorism, and is secured by the rights to education, decent work, access to international and national cultural legacy, and preservation of cultural diversity and national identities.

8. The recent global crisis has contributed to the increase in poverty. Once again, the developing countries have fallen victim. Every sixth person on Earth does not have access to such basic things as food, education, healthcare, and housing. The global food crisis stands as the most vivid example. Since 2006, over a hundred million people have found themselves below the poverty line only due to the increased food price. 31 countries of the world are facing critical food shortage. This comes as the result of domination of the financial sector over manufacturing where real wealth is produced. According to the estimates of the Organization for Economic Cooperation and Development, 250 million people in the world are going to lose their jobs only due to the food crisis.

At the 12th session of the UN Human Rights Council in September of this year in which I was honored to participate, the point was raised that the recent increase in famine had not been caused by crop failure. Rich countries, at the first place, have to reform their distorted agricultural policies undercutting small-scale farms in developing countries.

The main threat to the international community is the global disproportion between the level of development of the 20 per cent of the world's population that live in developed countries and the other 80 per cent living in developing countries. This imbalance is dangerous. Therefore, mankind is facing the need to adjust the development model to ensure equal conditions for the development of all nations and take special measures to boost the development level of poor countries. In accordance with *the UN Millennium Development Goals*, developed countries have to, despite the financial crisis, abide by their commitment to increase official development aid up to 0.7 per cent of the GDP by 2015.

9. The key to personal harmony is an all-round development of human capabilities for creative work. The key to the harmony of the society is matching the goals of social production with their means. It is my belief that a human being must not be the means of wealth accumulation. This is only possible, however, on condition that all-round development of capabilities of EVERY individual becomes both the goal and the means of social production. As the Human Rights Defender, I stress: it is crucial that the governments secure the access of EVERY person to the means of development!

10. Gender harmony deserves a special mention. In China, it is commonly known that "women hold up half of the sky."



As the Commissioner for Human Rights, I keep stressing that human rights begin with the rights of the child. In a few days we will mark the 20th anniversary of the UN Convention on the Rights of the Child. This Convention has been ratified by almost all the countries of the world except for Somalia and the USA.

Despite such a broad support, the rights of children are often grossly violated by means of such shameful practices as human trafficking, child pornography, prostitution, and pedophilia. This is the direct consequence of the market economy where everything is a commodity. The global financial crisis, growing social inequality, discrimination and poverty have escalated the violations of the rights of children. Sexual exploitation and abuse of children is the world's most dramatic problem. According to the UN, each year, two million children get involved in the world's porn industry. In Europe, this shameful phenomenon has reached epidemic proportions. As the Ukrainian Ombudsman, on the occasion of the 20th Anniversary of the Convention on the Rights of the Child at UN, in Geneva, I put forward the initiative to implement in the State parties a criminal responsibility for those internet mass-media involved in the proliferation of child pornography as well as to block activities of the internet providers who use web-sites with images of children which are sexually abused. Besides, it is my conviction that all parties to the UN Convention on the Rights of Children must provide in national legislation for criminal liability of sex service clients, especially the services of children, as well as for the use of child pornography on the Internet. Without eradication of these obnoxious practices in relation to children it would be impossible to implement either the harmony principle or the personal development principle. Ukraine ratified two Optional Protocols to the UN Convention on the Rights of the Child, including on Human Trafficking, Child Prostitution and Child Pornography. I call on the participants of the Forum to urge the accession of their countries to this important Protocol.

11. In conclusion: Effective protection of human rights requires implementing an innovative model of civilization development. We will have to rise to the apprehension of not only the material but also the spiritual aspect of the harmony principle. Without doing this, we will be doomed to extinction. I rest assured, our Forum will enrich the contemporary conception of the human rights with the new approach to the world architecture based on the principle of harmonious development.

(The author is Ukrainian Parliament Commissioner for Human Rights (Ombudsman of Ukraine))



RESPECT FOR CITIZENS' RIGHT TO HEALTH: THE MEDICAL CARE SYSTEM REFORM IN SHENMU COUNTY

Liu Huawen
China

Against the background of international financial crisis, governments at different levels in China have attached great importance to people's livelihood and adopted policies aiming to expand domestic demand and safeguard the security of people's livelihood. Chinese citizens are expecting these kinds of initiatives. With a population of 378,000, Shenmu County, Shaanxi Province has launched a "Medical Care System Free for Everyone," which is quite an unusual practice.

Abundant in coal resources, Shenmu County ranks No. 1 among the counties in Shaanxi Province in terms of comprehensive economic power and No. 92 among the counties in China. Starting from March 1st this year, Shenmu County has adopted the "Medical Care System Free for Everyone." Under the system, about 95% of the residents in the county are covered by the urban and rural cooperative medical insurance and the basic medical insurance, with the practice of outpatient medical cards and inpatient medical reimbursement. In China, this is a surprising and doubtful move, as China is a developing country with a large population and an urban-rural dual structure, which has greatly influenced the work and life of urban and rural residents for years. Is the aggressive reform in Shenmu County just a dream which cannot be realized? What kind of social development has this unprecedented practice revealed to us?

1. The medical care system reform in Shenmu County and citizens' right to health

The right to health is one of the fundamental human rights of citizens. Both the *Constitution of the People's Republic of China* and the *International Convention on Economic, Social and Cultural Rights* approved by the Chinese government have stipulated such human rights. By no means an easy task, health security is a task which always leaves room for improvement and therefore requires sustained efforts.

First, the government must have the strong political will to safeguard citizens' right to health. We should pursue economic growth as well as social development, especially the promotion of human rights. The government should not just focus on GDP figures and indicators while ignoring social progress and the sustainable development of people and



environment. Shenmu County has made substantial financial investment in the medical care system reform, which demonstrates its political will featured by human orientation.

Second, the insurance coverage and security level are the keys to safeguarding people's right to health. The new system adopted by Shenmu County has covered almost all the residents in the county, thus eradicating the inequality caused by the household registration system and enabling farmers to enjoy the same medical care as urban residents. What is worth mentioning is that the high insurance coverage in Shenmu County did not result in low level security. According to the new system, the minimum line of medical reimbursement is rather low and the maximum line of medical reimbursement is rather high and, moreover, the local residents are allowed to receive treatment in higher-level hospitals either in or out of the county, which reveals the high level security ensured by the new medical care system.

Third, what is worth commending is the timeliness of the new policy. The government of Shenmu County took initiatives in reforming its medical care system although the governments at higher levels did not require that. The local government did not postpone the adoption and implementation of the new policies under the pretext of "further investigation and research are needed" or "present conditions are not mature yet." It acts in line with the principles and policies of the central government, attaches great importance to people's livelihood and has worked out new policies regarding people's right to medical care which is closely related to people's right to life and health. Considering that there is no similar practice in China and the local government of Shenmu County will have to face suspect and pressure from the media and society and even from the governments or officials at higher level, we think that the government of Shenmu County has demonstrated undaunted and pioneering spirit.

From the perspective of legal rights, many scholars both at home and abroad hold the view that the realization of economic, social and cultural rights, including the right to health, requires certain conditions and sustained efforts. However, this interpretation is likely to mislead those governments or officials which tend to follow the beaten track or be in two minds when it comes to medical care system reform. How do we judge the present conditions? How do we set priorities in making decisions and identifying objectives? How can we be sure whether the government has made efforts to the best of its ability? These are issues to be addressed.

Let's think about those people who fall ill due to poverty, become poverty-stricken due to illness, suffer from great pain and still cannot access the due or sufficient medical treatment. When facing these people, we cannot find it in our hearts to tell them to wait for treatment until the conditions are mature and relevant systems are improved and perfected.



2. Looking forward with both suspect and acknowledgment from the society

Considering the effectiveness of the practice, we can say that the “Medical Care System Free for Everyone” adopted by Shenmu County is quite successful. In terms of financial guarantee, the fiscal revenue of the county amounted to 7,227 million *yuan* last year, only 100 million of which went to medical expenses. The medical reimbursement in March and April this year stood at 22.3 million *yuan*, lower than the fiscal budget of 26 to 30 million *yuan*. What is very important is that the local residents, especially those farmers who could not access public health service in the past, are now covered by the insurance and therefore are very satisfied with the new system.

Some skeptical media say that the new system adopted by Shenmu County requires that the insured should pay a certain percentage of expenses by themselves, so the new medical care system is not really “free for everyone” as it is called and therefore is just a show. However, according to the system, there is a minimum line for in-patient medical reimbursement, respectively 200 *yuan* per person per case for hospitals at town and village level, 400 *yuan* per person per case for hospitals at county level, and 3,000 *yuan* per person per case for hospitals out of the county. The expenses under the minimum line (including the minimum line) should be born by the patient himself and the expenses above the minimum line will be reimbursed provided that the total expenses per person per year are not more than 300,000 *yuan*. So we think the new system is actually very reasonable. As we know, even in welfare countries like Norway, it is impossible for citizens to get the total medical reimbursement without paying any sum of money.

Just as Shenmu County had expected, the new medical care system has encountered many problems after its implementation. For example, some patients tend to get more treatment than necessary and some hospitals tend to give more treatment than necessary. They intend to obtain more personal interests from the country. On the one hand, hospitals with sufficient supporting facilities are designated as the medical insurance hospitals and on the other hand, hospitals with insufficient supporting facilities are not included and therefore cannot play their roles. Nevertheless, in spite of these problems, the advantages of the new system outweigh its disadvantages.

For achieving further development and improvement, the local government of Shenmu County needs to make scientific decisions based on the real situation and people’s will in the county. The medical care system reform in Shenmu Country has aroused universal concern from different sectors in the society. Their acknowledgement, criticism, opinions, suggestions, as well as domestic and international interpretation and experience can all provide reference to us.

Considering that the international community usually adopts the framework of four “A”s in the research and review of economic, social and cultural rights, the author thinks



that we could refer to the framework of four “A”s when interpreting the right to health. This framework includes four basic factors which are closely related to each other:

(1) Availability: sufficient health care facilities, products, services and items should be made available to citizens. The facilities, products, services and items can be different in different areas, but they must include safe and drinkable water and sufficient hospitals and health facilities. To put it another way, sufficient and available resources should be provided.

(2) Accessibility: the barriers between the right holders and available resources should be removed. Citizens should be able to access health facilities, products and services. We should also take into consideration four key factors: indiscrimination, physical accessibility, affordability and availability to relevant information.

(3) Acceptability: all the health facilities, products and services should be appropriate and acceptable to patients in terms of medical ethics, culture and customs. Thus, there will be no mental or cultural obstacle for right holders.

(4) Adaptability: relevant systems and practices should be flexible and can be adjusted according to the development and demand of the society and community so as to make sure that the medical facilities, products and services are appropriate and qualified from the scientific and medical perspectives. The government of Shenmu County is expected to make more efforts and achieve more in these aspects.

The medical care system reform in Shenmu County still has a long way to go. We can predict that it will take time before the medical care system is further improved and perfected. To respond to the issue of more treatment than necessary, the Public Health Bureau of Shenmu County has issued *Regulations regarding the Medical Expenses Control in Shenmu County (Tentative)*. According to the regulations, starting from June 1st this year, the government will conduct a monthly survey and the top three hospitals which have violated the regulations will be punished accordingly. Mr. Guo Yongtian, Deputy Director-General of the Public Health Bureau & Director of the Office of Medical Care System Free for Everyone, said that currently there were some problems and new problems were likely to arise in the near future, but these problems were being tackled case by case by Shenmu County.

3. Looking forward to more “myths” like the reform in Shenmu County

Compared with other counties, Shenmu County is a little aggressive in the medical care system reform. But the effectiveness of the practice proves that the reform is not just a dream which cannot be realized.

What I want to emphasize is that although medical security is very important, yet it is not the whole story of the right to health. To protect citizens’ right to health, the government should attach great importance to disease prevention and medical education, improve



people's livelihood in an all-round way and achieve the target of sustainable development of the economy and society.

Moreover, I hope that Shenmu County can make sustained efforts to promote the sustainable development of education (12-year free education has been provided starting from a few years ago in the county), environmental protection (forest and grass coverage has reached 46.3% in the county), economy and society and conduct system reform and innovation. Moreover, Gao Xiaoming, member of the Standing Committee of NPC in Shenmu County & Deputy Magistrate of Shenmu County, was detained and interrogated by the Commission for Discipline Inspection of Yulin City for violating government rules and regulations. Up to now, Gao is the official of the highest level who has been detained and interrogated in Shenmu County. The Director General of the Financial Bureau of Shenmu County, who was involved in the case, was detained and interrogated as well. Combating corruption and building a clean government is crucial to the sound development of the whole society.

My point is not that "free for everyone" means progressiveness. My point is that the government of Shenmu County has demonstrated its strong political will to improve people's livelihood and has adopted new system characterized by timeliness and equality, which is based on its sound financial performance. We hope that the initiative taken by Shenmu in medical care system reform is a breakthrough in building a harmonious society in an all-round way rather than a flash in the pan.

China will remain a developing country for a long period of time and needs to make sustained efforts to eradicate poverty and narrow the gap among different regions. But we are not against the practice that some well-off regions adopt higher level measures in order to protect human rights, especially citizens' economic, social and cultural rights. This is in line with the spirit of human-oriented economic and social development.

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HUMAN RIGHTS, FOREIGN POLICY AND DEVELOPMENT: AUSTRALIA'S ROLE INTERNATIONALLY AND IN THE ASIA-PACIFIC

Philip Lynch
Australia

Introduction

In the course of the recent periodic review of Australia by the UN Human Rights Committee, one of the independent experts called on Australia to grasp its opportunity—and fulfill its obligation—to become an 'AAA' human rights state.

This paper responds to three issues raised by and implicit in that call. First, why should Australia strive to be an 'AAA human rights state'? Second, does Australia have the necessary characteristics and satisfy the preconditions to become such a state? And, third, what are some of the steps and measures that Australia should take, including particularly at the international and regional levels, to pursue this path if, indeed, it is a path worth pursuing?

A Human Rights—Based Approach to Foreign Policy and Development—Global Good Samaritans

In her significant new work, *Global Good Samaritans: Human Rights as Foreign Policy*, Professor Alison Brysk poses an important question. Why, she asks, do a small number of principled, persistent, human rights promoting states—'Global Good Samaritans' she calls them—sacrifice their national interest to help strangers? Her simple answer is ...*they don't*.¹ By this, Professor Brysk is not implying that there are no states that could legitimately lay claim to Global Good Samaritans. Instead, she explains, such states construct and re-construct their national interest with a broad, long-term vision of a rule-based international system that values and promotes human rights, security, democracy and good governance. Global Good Samaritans, she posits, see the 'blood, treasure, and political capital they contribute to the international human rights regime as an investment, not a loss'.² They have learned to see themselves, she continues, 'as interconnected members of a global

¹ Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009) 31.

² Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009) 31.



community that works best for everyone when human rights are respected'.¹

Put another way, Global Good Samaritans recognize the domestic and international imperatives of: first, a rule-based international social order; second, states that adhere to those rules; and, third, a genuine multilateral commitment to tackling global problems. They recognize that, in the absence of these imperatives, urgent challenges such as climate change, poverty, financial instability and food insecurity will remain unresolved, with grave implications for global, regional and national peace, security and development.

In addition to recognizing the dangers of not adopting a persistent and principled approach to human rights in international relations and foreign policy, Global Good Samaritans also see and reap the benefits of doing so. The manifold benefits attendant with being a humanitarian internationalist state and human rights promoter include at least the following.² First, the development of a more stable and predictable international and regional policy environment. Second, enhanced international credibility and diplomatic capital. Third, enhanced policy coherence and effectiveness as human rights construct common frameworks for domestic, bilateral and multilateral policy and relations.³ Fourth, the development of diverse, cross-cutting international networks with other promoter states.⁴ And fifth, the ideation and mobilization of universal, constructive national values and identities.

Does Australia have the Characteristics and Satisfy the Preconditions to becoming a Global Good Samaritan?

Professor Brysk's landmark study identifies a number of characteristics or "inputs" that are said to "equip" a state to become a principled human rights promoting state.

First, human rights promoting states tend to be open democracies with a vibrant, active and vigilant civil society. Mature states support a strong non-government sector and welcome constructive criticism by NGOs as an opportunity to identify and collaboratively address human rights problems.

Second, human rights promoters tend to be globalised and networked. Together, these first and second attributes create the 'means and motive for internationalism'.⁵

1 Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009) 31.

2 See generally, Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009).

3 There is strong evidence, for example, that Canada's domestic Charter of Rights and Freedoms and its foreign policy on 'Human Rights, Democracy and Good Governance' have formed a virtuous circle and been mutually reinforcing: see, eg, Louise Arbour, 'The Responsibility to Protect and the Duty to Punish: Politics and Justice in a Safer World' (2001) 59 *Behind the Headlines* 1; Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009) 91, 226.

4 For example, Australia should consider joining the Human Security Network, a group of like-minded states such as Canada, Ireland, Costa Rica and Norway, formed to further develop and enact the 'human security agenda', including the 'responsibility to protect' doctrine (see <http://www.humansecuritynetwork.org/menu-e.php>).

5 Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009) 6.



Third, such states tend to be reasonably well developed and politically, socially and economically stable and secure. According to Brysk, at least a ‘moderate threshold of development and a modicum of security ensure that state survival and welfare needs are sufficiently satisfied to allow the pursuit of long-term cosmopolitan visions’.¹

Fourth, principled promoters generally enjoy low levels of social stratification and are often multicultural and cosmopolitan. A number of recent studies demonstrate the strong linkages between equity and participation, on the one hand, and economic development, stability and deep democracy on the other.²

Fifth and finally, ‘another positive factor increasing the probability of internationalism is a middle power international niche’.³ Brysk notes that middle powers, particularly regional middle powers, can play a constructive international role as builders of systems and institutions. Such powers have a strong interest in multilateralism and consensus and can act as a critical counterweight to global hegemony. This is particularly the case when such powers do not unswervingly belong to any coalition or bloc of countries.

In my view, having regard to the above factors, Australia has what it takes to be a highly effective, principled, persistent human rights promoting state. Australia is democratic, globalised and multicultural, with an active and networked civil society. It enjoys relatively low levels of social stratification and relatively high levels of economic development and political stability. It is also a secure middle power, albeit with a strong recent tendency to position itself perhaps too closely with so called ‘like-minded states’ and perhaps insufficiently closely with our regional neighbors.⁴ It is notable, but little known, that, in the development of the *Universal Declaration of Human Rights*, Australia positioned itself as an *independent* middle power, unaligned with any blocs. In the negotiation of this historic instrument, Australia used this position of independence to broker deals and bridge divides, advocating strongly for the inclusion, indivisibility and interdependence of both civil and political rights (thus aligning itself with the United States) and economic, social and cultural rights, including the right to full employment (thus aligning itself with the Soviet Union).⁵ That is a legacy that must be re-energized.

Having made this assessment, what follows are some modest suggestions as to how Australia could fulfill its potential to be a more active and influential human rights promoter state; a potential that is, in my view, critical given Australia’s position as a likely middle

1 Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009) 7.

2 See, eg, Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009) 224. See also Iris Marion Young, *Inclusion and Democracy* (2000) and Amartya Sen, *Development as Freedom* (1999).

3 Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009) 7.

4 In this regard, Brysk notes ‘a lack of reinforcing regional support networks’ as a potential impediment to Australia’s becoming a Global Good Samaritan: Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009) 229.

5 Ashley Hogan, *Moving in the Open Daylight: Doc Evatt, an Australian at the United Nations* (2008) 39-43.



power in the only region of the world without a regional human rights instrument or mechanism,¹ and a region confronting significant human rights and development issues.

I will structure my proposals in terms of what, in my view, Australia can and should do at the international, regional and local levels and limit myself to two or three proposals in each of these areas.

What should Australia do to Better Promote Human Rights and Development?

International Initiatives

Human Rights Promotion as a Key Priority of Foreign Policy

At the international level, Australia should strategically position itself as an outstanding international citizen and human rights promoter, including by developing a consistent and comprehensive strategy on human rights and foreign policy.² That policy should seek to mainstream and integrate human rights across all areas of Australian foreign policy, including aid, development, trade, investment, migration, environment, business and security. It should contain concrete measures and commitments to promote and protect human rights in the region and internationally.

Australia's international, regional and bilateral approach to human rights should be persistent and principled, fearless and forceful.

Australia's Security Council Candidacy

Australia's current Security Council candidacy can and should be a flagship for this approach. It is well known that Australia is seeking election as a non-permanent member of the UN Security Council for 2013-2014. A Department of Foreign Affairs brochure outlining the candidacy identifies 'Respecting human rights' as one of four key pillars of Australia's international engagement and promotes Australia as a 'principled advocate of human rights for all'.³

Historically, Australia has played a significant and constructive role in the development and operation of international human rights norms and institutions. Looking forward, Australia should commit its Security Council candidacy to the promotion and protection of fundamental rights and freedoms, including through the further elaboration of human rights standards and the strengthening of institutions and mechanisms at the international, regional

¹ It is notable, in this regard, that the ASEAN states have recently agreed on the establishment of an ASEAN Intergovernmental Commission on Human Rights, albeit an institution which does not have a clear protection mandate, is committed to a principle of 'non-interference in internal affairs', and arguably lacks independence. These deficiencies notwithstanding, the establishment of the Commission is clearly a positive development.

² For an example of a leading state in this regard, see Ministry of Foreign Affairs (Netherlands), *Human Dignity for All: A Human Rights Strategy for Foreign Policy* at <http://www.minbuza.nl/dsresource?objectid=buzabeheer:53627&type=org>.

³ See Department of Foreign Affairs and Trade (Australia), *Australia: Security Council Candidate 2013-2014* (2009) at <http://www.dfat.gov.au/un/unga.html>.



and domestic levels.¹

As a Security Council candidate, Australia should commit to taking a principled and consistent approach to human rights and to ensuring that domestic policies and practices are human rights compliant. Australia should use its Security Council candidacy as a vehicle to promote Australia's objectives and national interest in promoting international human rights, the rule of law and good governance.

If Australia is elected to the Security Council, it should engage the Council in effectively responding to major human rights challenges and implications, including in relation to climate change, poverty, financial instability and food insecurity.

Australia should also use its candidacy and seat, if successful, to further develop and pursue a progressive international human rights agenda. There is good precedent for this. Canada used its seat on the Security Council in 1999-2000 to promote the protection of civilians (including through the adoption of significant resolutions on humanitarian intervention), engaged human rights bodies such as UNICEF and the International Committee of the Red Cross directly in the deliberations of the Council, and brought international attention to the issue of 'conflict diamonds' and the inter-relationship of business and human rights.²

Australia could and should similarly commit itself to a range of priorities that are both of international human rights significance and strategically aligned with Australia's domestic and regional interests and commitments. This could include advocating for: (1) a moratorium on executions and the universal abolition of the death penalty;³ (2) the advancement of Indigenous peoples globally;⁴ (3) the further elaboration of robust international and domestic regulatory frameworks for business and human rights; (4) progress in gender equality and non-discrimination, including reducing violence against women and children;⁵

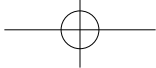
1 It is notable that Sweden has identified the 'mainstreaming of human rights into the work of the UN Security Council and in the international arena' as a key foreign policy objective: see Parliament of Sweden, *Human Rights in Swedish Foreign Policy*, Government Communication 2003/04:20, 11 at http://www.manskligarattigheter.gov.se/dynamaster/file_archive/040301/3e2f0d255a5e3a6938c1bc0678ff7d8e/s200304_20e.pdf.

2 Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009) 68-9. Sweden has similarly committed its term as President of the European Council of Ministers in 2009 to the prioritization and promotion of human rights: see http://www.manskligarattigheter.gov.se/extra/pod/?id=2&module_instance=2&action=pod_show&navid=2.

3 Australia is a party to the *Second Optional Protocol to the International Covenant on Civil and Political Rights*, aiming at the abolition of the death penalty.

4 The Hon Jenny Macklin MP (Minister for Families, Housing, Community Services and Indigenous Affairs), 'Statement on the United Nations Declaration on the Rights of Indigenous Peoples', Parliament House, Canberra, 3 April 2009 at http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/un_declaration_03apr09.htm.

5 At the domestic level, Australia has recently adopted a National Plan to Reduce Violence against Women and their Children (see <http://www.fahcsia.gov.au/sa/women/progserv/violence/nationalplan/Pages/default.aspx>), while promoting gender equality and eliminating violence against women is a strategic priority for Australia's aid program (see <http://www.aisaid.gov.au/publications/pdf/women.pdf>).



(5) addressing the threat of terrorism in a human rights and human security framework; (6) the operationalization of the ‘responsibility to protect’ principle;¹ and (7) addressing poverty in a human rights framework, particularly in Asia and the Pacific.²

Australia and the UN Human Rights Council

Australia should similarly take a proactive, progressive, principled and persistent approach to the UN Human Rights Council, whether as an active observer state or member. Australia has an important role in working towards ensuring the Council fulfils its mandate, and achieves its potential, as the leading multilateral forum for the discussion, promotion and enforcement of international human rights.

Australia could take two immediate concrete steps in this regard.

First, Australia should publicly commit, as a matter of national and foreign policy, to “competitive, genuinely-contested and principled elections for the Human Rights Council,”³ in accordance with the requirements of General Assembly Resolution 60/251. As a coalition of leading national and international NGOs recently elucidated in an open letter to all UN member states, this should involve: committing to only voting for those candidates whose human rights records and election pledges meet the membership requirements set forth in Resolution 60/251; standing for, and encouraging others to stand for, election; presenting and voting for candidates individually rather than as part of a regional slate or bloc; and consulting with NGOs and civil society in formulating and evaluating pledges, commitments, human rights records and candidacies.⁴

Second, Australia is scheduled to go through the Human Rights Council’s Universal Periodic Review process in 2011. The recent Canadian appearance demonstrated the need to ensure adequate planning and ‘open, transparent, timely and substantive engagement’ with both government and civil society in preparation for the UPR. Consistent with the recommendations of Canada’s Senate Standing Committee on Human Rights,⁵ Australia should develop a detailed plan for its preparation for, and response to, the Universal Periodic

1 The Hon Stephen Smith MP (Foreign Minister), ‘Australia Supports the Responsibility to Protect’, Media Release, 21 July 2009 at <http://www.foreignminister.gov.au/releases/2009/fa-s090721b.html>.

2 In a similar vein, in 2007, the Ministry of Foreign Affairs of the Netherlands published *Human Dignity for All: A Human Rights Strategy for Foreign Policy* at <http://www.minbuza.nl/dsresource?objectid=buzabeheer:53627&type=org>. The Policy commits the Netherlands to 100 concrete activities to advance human rights in six priority areas, being: (1) abolition of the death penalty; (2) an absolute ban on torture; (3) the relationship between freedom of religion and other rights and freedoms; (4) women’s rights; (5) children’s rights; and (6) non-discrimination on the basis of sexuality.

3 Open Letter to UN Member States: Embrace Competitive Elections to Human Rights Council, 13 August 2009 at <http://www.hrw.org/en/news/2009/08/13/letter-un-member-states-embrace-competitive-elections-human-rights-council>.

4 Mexico announced a policy along these lines in its statement to the General Assembly in support of Resolution 60/251 on 15 March 2006.

5 Standing Senate Committee on Human Rights (Canada), *Canada’s Universal Periodic Review before the United Nations Human Rights Council* (May 2009) (at <http://www.parl.gc.ca/40/2/parlbus/commbus/senate/com-e/huma-e/rep-e/rep02may09-e.htm>).



Review. This plan should outline a process that will ensure open, transparent, timely and substantive engagement with civil society, parliamentarians, and the Australian public with respect to Australia's human rights obligations and follow-up and implementation of UPR recommendations.

Australia's Commitment to the Millennium Development Goals and Global Poverty Reduction

There are very strong associations between human rights, development and poverty. As the First World Conference on Human Rights pronounced in 1968, 'the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development'.¹

Giving partial effect to this statement, in 1970, the United Nations General Assembly adopted an historic resolution setting a development assistance target of 0.7 per cent of gross national income.² This target was recently reaffirmed at the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, held in Doha from 29 November to 2 December 2008.

The provision of development assistance is one of the key means by which a state can contribute to global development, security, peace and good governance. It is also one of the foreign policy vehicles through which a state can impart its values at the international level, thereby promoting the national interest.

In addition to being in the national interest, the imperative to provide development assistance also has a legal dimension. Pursuant to article 2(1) of the *International Covenant on Economic, Social and Cultural Rights*, to which Australia is a party, Australia is legally obliged to assist in the realization of social and economic rights 'through international assistance and co-operation ... to the maximum of its available resources'. The UN Committee on Economic, Social and Cultural Rights has recognized that this obligation 'is particularly incumbent upon those States which are in a position to assist others in this regard'.³

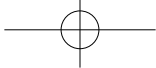
Australia, as an Organisation for Economic Co-operation and Development country with one of the highest Gross National Incomes per capita in the world,⁴ is in a very strong position to make a significant contribution to international cooperation through foreign aid. Despite this, the ratio of Australia's aid to GNI for 2008-09 was around

1 *Proclamation of Teheran, Final Act of the International Conference on Human Rights*, UN Doc A/CONF.32/41 (1968) at [13].

2 *International Development Strategy for the Second United Nations Development Decade*, *UN General Assembly Resolution 2626 (XXVI)*, 24 October 1970, [43].

3 Committee on Economic, Social and Cultural Rights, *General Comment No 3: The Nature of States Parties Obligations* (1990) [14].

4 World Bank, 'GNI Per Capita 2006, Atlas Method and PPP' (2007) at <http://siteresources.worldbank.org/DATASTATISTICS/Resources/GNIPC.pdf>.



0.32 per cent, while the ratio for 2009-10 is estimated at around 0.34 per cent.¹ The current Government has committed to increasing aid spending to 0.5 per cent of GNI by 2015. Even this commitment, however, leaves Australia well short of the internationally-agreed 0.7 per cent target, and well behind Global Good Samaritans such as Norway (0.95 per cent), Sweden (0.93 per cent), Denmark and the Netherlands (both 0.81 per cent) and Ireland (0.54 per cent).²

Recently, leading aid and development organisations have rightly commended the Australian Government's more coordinated action with other donors, as well as greater transparency, increased focus on basic health and education, enhanced monitoring and evaluation, granting of untied funding and improved in-country management in respect of its aid program.³ However, the Australian Government's overseas aid program is inadequate when compared with the contributions of many other countries. Australia's contributions have decreased significantly since 1970 when it was equal first in the ranking of the proportion of GNI to aid. By 2006, Australia had dropped to 15th out of 22 donors, leading the UN Committee on Economic, Social and Cultural Rights to note with regret at its recent periodic review of Australia that 'in 2008-2009 the State party has devoted only 0.32 percent of its gross national income to official development assistance, whereas the United Nations target for ODA is 0.7 percent of GDP for developed countries.' It is imperative that, as a country with the means (and, I would add, the motive), Australia act quickly and positively to implement the Committee's recommendation that 'the State party increase its official development assistance to 0.7 percent of its GDP'. It is also imperative that Australia's aid and development program continues to become more closely aligned and integrated with human rights policy and commitments, including through the provision of support for human rights institutions and norms, and the human rights capacity and capabilities of governments and civil society.⁴

Australia, Business and Human Rights

The impact and influence of corporate activity is significant, widespread and increasing. Corporations have the capacity to foster economic well-being, development, technological improvement and wealth, as well as the capacity to impact harmfully on the human rights and lives of individuals and communities.

1 AusAID, 'About Australia's Aid Program' at <http://www.aisaid.gov.au/makediff/default.cfm>.

2 These figures relate to ODA provided in 2007: see David Kinley, *Civilising Globalisation: Human Rights and the Global Economy* (2009) 113.

3 World Vision Australia, *Island Nation or Global Citizen—How is Australia Faring in the Global Challenge to Make Poverty History?* (2007) 14 at http://www.worldvision.com.au/learn/policyandreports/files/islandnation2007_hi.pdf.

4 The Netherlands' *Memorandum on Human Rights Policy* (2001) and Canada's *Policy for CIDA on Human Rights, Democratization and Good Governance* (1996) (at [http://www.acdi-cida.gc.ca/inet/images.nsf/vLUIImages/HRDG2/\\$file/HRDG-Policy-e.pdf](http://www.acdi-cida.gc.ca/inet/images.nsf/vLUIImages/HRDG2/$file/HRDG-Policy-e.pdf)) provide valuable guidance in this regard. See generally, David Kinley, *Civilising Globalisation: Human Rights and the Global Economy* (2009) 93-114.



Despite this, there are significant governance and regulatory gaps at both the international and domestic levels between what corporations *do*, *can do* and *should do* about human rights and responsibilities. As the UN Special Representative on Business and Human Rights recently identified, these gaps have been exacerbated by the globalization of business without a correlate globalization of laws and institutions. He concluded that ‘the gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation’.¹

The Special Representative’s 2008 report to the UN Human Rights Council, entitled ‘Protect, Respect and Remedy’, is a constructive model for addressing ways in which to impute human rights duties to business.² The Special Representative’s framework sets out three duties and responsibilities. First, States are under a *duty to protect* human rights. Second, States have a duty to provide *access to a remedy* for breaches of human rights by third parties (such as corporations). Third, business itself has a *responsibility to respect* human rights, or at least to do no harm.³

With the recent renewal of the Special Representative’s mandate, there is both an opportunity and responsibility for states to further develop and operationalise this framework at the domestic and international levels.⁴ In my view, this is a particularly important opportunity and responsibility for Australia. It is an opportunity because Australia already has highly evolved and effective legal, regulatory and prudential frameworks and institutions for business. It is a direct responsibility because there is no clear framework of human rights obligations applicable to Australian corporations in their relationships overseas with host state governments or populations. This is notwithstanding the highly globalised nature of Australian business, including that Australian corporations often operate in areas of lax or limited regulation or where host governments lack the will or capacity to monitor corporate conduct in their jurisdictions or to enforce standards. Australian companies, particularly mining companies, can have a severe impact on the human rights of people in many parts of the world, particularly the rights to food, water and health.⁵

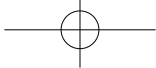
1 John Ruggie (United Nations Special Representative on Business and Human Rights), *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc. A/HRC/8/5 (7 April 2008) [3].

2 John Ruggie (United Nations Special Representative on Business and Human Rights), *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc. A/HRC/8/5 (7 April 2008).

3 John Ruggie (United Nations Special Representative on Business and Human Rights), *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc. A/HRC/8/5 (7 April 2008), [9].

4 The mandate was itself extended to, relevantly, develop “concrete and practical recommendations on ways to strengthen the fulfilment of the duty of the State to protect all human rights from abuses by or involving transnational corporations”: UN Human Rights Council, *Mandate of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises*, Resolution 8/7 (18 June 2008) at para 4(a).

5 *Freedom, Respect, Equality, Dignity: NGO Submission to the Committee on Economic, Social and Cultural Rights*



According to the Special Representative, one of the most effective means by which to promote rights compliance is to develop corporate cultures in which respecting rights is seen as being an integral part of doing business.¹ Government is uniquely placed to stimulate the development of these cultures. By devising innovative mechanisms which harness the power of the market, and by leveraging regulatory and service-provision functions, governments can simultaneously encourage business entities to respect human rights and enable them to pursue their business objectives. Without limiting the scope of policy initiatives that could and should be pursued, I suggest that Australia consider at least the following soft power tools to begin to operationalise the ‘Protect, Respect and Remedy’ framework for business and human rights. First, Australia should take a leadership role by adopting the Special Representative’s framework as a basis for its corporate human rights policy and approach, both domestically and extra-territorially. Further, Australia should actively support and engage with the work of the Special Representative, including by officially inviting him to undertake a mission to Australia to meet with government, business, human rights NGOs and other key stakeholders. Second, Australian governments and public authorities should move to incorporate human rights provisions in governmental contracts. Third, those same entities should conduct or require Human Rights Impact Assessments, particularly on large-scale projects. Fourth, governments and public authorities should support socially-responsible market indices and certification programs; at a minimum, governments should, for example, take such indices and programs into account as part of their procurement policy and practice. Fifth and finally, Australia should lead the development of voluntary national guidelines for business on how to act compatibly with human rights, including in their extra-territorial operations.²

Regional Initiatives

Australia’s Human Rights Role in the Region

Shortly after coming to office, the current Australian Government identified ‘comprehensive and active engagement with the Asia-Pacific region’ as ‘one of the three pillars of the Rudd Government’s foreign policy approach’.³ As a key foundation of this

on *Australia’s Compliance with the International Covenant on Economic, Social and Cultural Rights* (April 2008) [113]-[115] at <http://www.hrlrc.org.au/content/topics/esc-rights/icescr-ngo-report-australia-un-committee-on-economic-social-and-cultural-rights/>.

1 John Ruggie (United Nations Special Representative on Business and Human Rights), *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc. A/HRC/8/5 (7 April 2008) [29].

2 For a more detailed discussion of these proposals, see Human Rights Law Resource Centre, *Engage, Educate, Empower: Measures to Promote and Protect Human Rights* (Submission to National Human Rights Consultation, April 2009) 46-53 at <http://www.hrlrc.org.au/content/topics/equality/engage-educate-empower/>.

3 The Hon Stephen Smith MP (Foreign Minister of Australia), ‘Australia, ASEAN and the Asia-Pacific’, Speech to the Lowy Institute, Sydney, 18 July 2008 at http://www.foreignminister.gov.au/speeches/2008/080718_lowy.html.



pillar, Australia's role and responsibility in promoting universal observance of human rights in the region is both complex and critical.¹

Asia and the Pacific are the only areas in the world without regional human rights laws or institutions. Europe and the Americas each have a Human Rights Convention and Human Rights Court, Africa has a Charter and a Court of Human and Peoples' Rights, and the League of Arab States has a Charter on Human Rights.

Asia and the Pacific are also regions that confront significant human rights and rule of law issues, including entrenched poverty, systemic gender discrimination and inequality, inadequate health care and an increasing incidence of HIV/AIDS. The human rights implications of climate change for Asia and the Pacific could be catastrophic.

For present purposes, I propose to confine my concrete remarks to potential Australian policies and programs pertaining to the Pacific region, rather than addressing such initiatives in both Asia and the Pacific. The primary reasons for this bifurcation are, first, that Asia and the Pacific are extremely different regions, socially, economically and politically and, second, that Australia has very different diplomatic relations, roles and spheres of influence in the two regions. That said, many of the guiding principles I will discuss are equally applicable across both regions.

Australia's Role in Promoting a Pacific Human Rights Instrument and Mechanism

As a persistent, principled human rights promoter, and both a developed democracy and influential middle-power, Australia has an important leadership role to play in promoting and supporting the development of a Pacific regional human rights instrument and institution.

Leadership comes in many forms. Effective leadership, however, is always respectful and sensitive to context. It is rarely a 'top down' exercise of authority. The most effective means by which Australia can promote a regional human rights culture may not be to propose a 'human rights model' as perhaps envisaged by the terms of reference of the current parliamentary inquiry, but rather to integrate human rights into all of our engagements with the region.

The Prime Minister seemed to foreshadow such an approach with his Port Moresby Declaration on Australia's relationship with the Pacific in March 2008.² The Foreign Minister has described this approach as being based on cooperative engagement and mutual respect; 'working and talking with, not at, our neighbors'.³ It is notable in this regard that

¹ The issue is also the subject of a joint parliamentary committee, the Joint Committee on Foreign Affairs, Defence and Trade, which has been tasked to inquire and report on 'human rights mechanisms and the Asia-Pacific': see http://www.aph.gov.au/house/committee/jfadtr/asia_pacific_hr/index.htm.

² Australian Government, *Port Moresby Declaration* (March 2008) at <http://www.ausaid.gov.au/country/PortMorDec.cfm>.

³ The Hon Stephen Smith MP (Foreign Minister of Australia), 'Australia's New Approach to the Pacific', Speech to the Australian Institute for International Affairs, Melbourne, 7 August 2008 at <http://www.foreignminister.gov.au/speeches/>



the Pacific Plan of 2005, adopted by the Pacific Island Forum, itself provides a constructive framework for fruitful human rights dialogue, expressing as it does a vision of the Pacific as a 'region that is respected for the quality of its governance, the sustainable management of its resources, the full observance of democratic values and for its defense and promotion of human rights'.¹

As the Australian Parliamentary Secretary for Pacific Island Affairs, the Hon Duncan Kerr MP, recently recognized, 'the Pacific is not a blank canvas on which external conceptions of human rights need be drawn.'²

Australia's Role in Promoting Regional Ratification and Reporting under International Human Rights Treaties

As a first step to aiding the development of a regional human rights culture and instrument, Australia should support increased Pacific engagement with the international human rights system. Currently, the Pacific has the lowest human rights treaty ratification rate of any global region. This is notwithstanding that treaties such as the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* provide clear, comprehensive, internationally accepted principles that can enhance governance and improve accountability. Through a process of periodic reporting to the UN regarding treaty implementation, Pacific states could work with independent international human rights experts to develop recommendations and strategies to improve human rights at the local level. As a longstanding participant in these processes, Australia should provide Pacific states with legal and financial support to ratify and implement these treaties and engage effectively and constructively with the UN.

Australia's Role in Building National Human Rights Institutions

In addition to having the lowest regional level of human rights treaty ratification, the Pacific also has the smallest number of National Human Rights Institutions of any region in the world, although Nauru and Samoa are both actively considering establishing such mechanisms.

There are a number of reasons for the low level of treaty ratification and NHRI establishment, including that, in many Pacific states, both governments and civil society have limited financial and human resources and lack relevant technical capacity and expertise, particularly in respect of monitoring and reporting requirements.

2008/080807_AIIA.html.

1 Pacific Islands Forum, *The Pacific Plan for Strengthening Regional Cooperation and Integration* (October 2005) 2 at http://www.forumsec.org/UserFiles/File/Pacific_Plan_Nov_2007_version.pdf.

2 The Hon Duncan Kerr MP (Parliamentary Secretary for Pacific Island Affairs), 'Human Rights in the Pacific: Opportunities and Challenges', Speech at Melbourne Law School, 22 July 2009 at http://www.foreignminister.gov.au/parlsec/speeches/2009/090722_pacific_hr.html.



While the Asia Pacific Forum of National Human Rights Institutions,¹ which is hosted by Australia and to which Australia has contributed approximately \$6 million since its establishment, has an important role to play in this regard, it is limited in its mandate, scope and influence. This is similarly the case with the Australian Human Rights Commission, notwithstanding the importance of its dialogue and engagement with Asia and the Pacific. As a state, Australia has a bigger role to play. As one modest initiative to build Pacific Island capacity, Australia should sponsor the establishment of an adequately resourced unit within the Pacific regional office of the UN High Commissioner for Human Rights in Suva, Fiji. This unit should promote and facilitate, first, human rights treaty ratification, implementation, monitoring and reporting, second, the development of an appropriate and effective regional human rights instrument and mechanism, and, third, the development of appropriate, independent, effective and sustainable NHRIs consistent with the Paris Principles.²

Australia's Role in Promoting Human Rights Capacity in Civil Society in the Pacific

It is, of course, axiomatic, that any Australian leadership on human rights recognise that there are many skilled and dedicated people already doing human rights work in Asia and the Pacific. These people should be engaged, supported and resourced. The input and participation of civil society is essential to the success of any regional program to promote human rights. Australia could make a valuable contribution by providing human rights education and training to assist governments to understand and comply with their obligations, and to empower individuals and groups to recognise and assert their rights. As one modest initiative to build Pacific civil society capacity, Australia could fund the establishment of an Oceania Human Rights Network. This would comprise a coalition of human rights focused NGOs from the Pacific, Australia and New Zealand to facilitate dialogue, networking, capacity building and collaboration between NGOs across the region, and to work constructively with governments to promote human rights standards and institutions.

Successful implementation of such programs may pave the way for the Pacific-led development of regional human rights laws and institutions. There are strong arguments for such regional human rights conventions: they can bring localised knowledge and legitimacy to the international human rights framework and lead to the establishment of independent and well-resourced human rights bodies at the regional and national levels; all of which contributes to the practical protection and realization of human rights at the grassroots and on the ground.

¹ See <http://www.asiapacificforum.net/>.

² *Principles relating to the Status of National Institutions (Paris Principles)*, UN GA Res 48/134 (20 December 1993).



National Initiatives

The final area I want to discuss is that of the promotion and protection of human rights at home, an issue inextricably linked with our capacity and ability to promote human rights abroad and therefore a core aspect of any comprehensive and coherent foreign human rights policy.

In order for Australia to adopt not only a principled and consistent, but also effective, approach to human rights in international affairs—from the death penalty, to child labor, to people trafficking to asylum-seekers—human rights must become core business in internal affairs. No country has a perfect record on human rights, but those that take their own obligations seriously are in a much better position to promote implementation abroad.

I do not propose to rehearse the significant and entrenched substantive human rights issues that confront Australia and demand urgent attention and further action, from Indigenous disadvantage, to homelessness, to violence against women, to the ongoing policy of mandatory detention of asylum seekers.¹ Instead, I want to focus on three institutional litmus tests being: first, Australia's response to the recent Concluding Observations of the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights; second, how Australia responds to the recent National Human Rights Consultation; and third, the status of Australia's national human rights institution.

Responding to UN Human Rights Treaty Bodies

About ten years ago, Australia was scrutinized by several United Nations human rights treaty bodies. Responding to concerns raised by those committees about issues such as mandatory sentencing and indefinite migration detention, then Attorney-General Darryl Williams labeled the reports as lacking in credibility and an 'insult to Australia'.² The then Labor Opposition welcomed the reports as 'factual' and 'balanced'.

A decade on, and with the roles reversed, the current Australian Labor Government faces a significant test of its domestic and international human rights credentials after both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights issued their first report cards on Australia since 2000.

For while the committees commended Australia on steps including the National Human Rights Consultation and the historic apology to the Stolen Generations,³ they gave the Government just one year to report back on human rights progress in areas including

¹ For a useful summary of these issues, see the recent Concluding Observations on Australia by the Human Rights Committee (UN Doc CCPR/C/AUS/CO/5 [2 April 2009]) and the Committee on Economic, Social and Cultural Rights (UN Doc E/C.12/AUS/CO/4 [22 May 2009]).

² The Hon Daryl Williams (Attorney-General), Media Release, 19 March 1999.

³ Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009) [5]–[7].



immigration detention, counter-terrorism laws and violence against women.¹ The Human Rights Committee also called for an immediate re-design of the Northern Territory Intervention into Indigenous communities to conform with international human rights standards and our own *Racial Discrimination Act 1975*.²

While the former government responded to such UN reports by attacking the committees themselves, in 2009, there are positive signs that Australia's response may be more mature and constructive this time. For starters, the Australian delegations appearing before both committees acknowledged that there are areas of profound disadvantage in Australia and that international engagement and scrutiny play important roles in identifying and addressing these areas.³

Second, in contrast to the former government, which criticized the UN's 'over-emphasis' on information and evidence from non-government organizations, this time around the Australian Government welcomed the critical, but constructive, involvement of Australian NGOs in the reporting processes. This is crucial. As I stressed earlier, Global Good Samaritans support a strong, vibrant, independent non-government sector and welcome constructive criticism by NGOs. They also recognize the importance of working with and through NGOs to identify and effectively address human rights problems on the ground.

The real test for the Government, however, will be to respond as constructively to the substance of the reviews as to the processes, as the committees expressed grave concern that the state of human rights for many disadvantaged groups in Australia remains precarious and vulnerable.

In this regard, it is notable that the Human Rights Committee's Concluding Observations recommended that Australia establish a mechanism to consistently ensure the compatibility of domestic law with the ICCPR⁴ and establish appropriate procedures to implement Views of the Committee in individual cases.⁵ In my view, as an aspect of implementing this important recommendation, it is imperative that the Government leads the establishment of a Joint Parliamentary Human Rights Committee.⁶ This Committee

1 Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009) [11], [17], [23] and [29].

2 Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009) [14].

3 See, eg. Australia, *Opening Statement to the 95th Session of the Human Rights Committee*, 23 March 2009 at http://www2.ohchr.org/english/bodies/hrc/docs/statement/Australian_statement_HRC_090323.doc.

4 Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009) [8].

5 Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009) [10].

6 For a more detailed discussion of this proposal, see Human Rights Law Resource Centre, *Human Rights and Parliamentary Scrutiny: Submission to the House Standing Committee on Procedure* (July 2009) at <http://www.hrlrc>.



could have three primary functions. First, it could scrutinise all Bills and subordinate legislation for compatibility with protected rights. Second, it could conduct thematic inquiries into human rights issues. Third, it could monitor and report on the implementation of the Concluding Observations and Views of the UN treaty bodies themselves, together with the recommendations of the Special Procedures of the UN Human Rights Council. The UK Joint Committee on Human Rights has similar functions and is an example of a highly effective parliamentary committee. It has been described as ‘one notable way in which parliamentary accountability is being enhanced’.¹

Recognising that the establishment of such a committee is a longer-term endeavour, in the shorter term it would be very useful to supplement this initiative with a small conference or roundtable involving relevant government officials and departments, NGOs and, where appropriate, state and territory government representatives, to discuss implementation issues in further detail. Such a conference should discuss follow up on the Concluding Observations under both the ICCPR and ICESCR, perhaps by identifying and focusing on 4-5 major cross-cutting themes identified by the respective treaty bodies.

In my view, such a conference or roundtable could build on the collaborative work already undertaken in the treaty body processes by government and NGOs and develop a mutual program of action and implementation in key areas. It would also be a useful forum in which government and NGOs could share insights and also discuss approaches to forthcoming reviews of Australia by the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of Persons with Disabilities and the Committee on the Rights of the Child.

A Human Rights Act for Australia

The legal protection of human rights in Australia, or rather the lack thereof, was the subject of observations and recommendations by both the Human Rights Committee² and the Committee on Economic, Social and Cultural Rights.³ The Human Rights Committee noted, for example, that Australia is alone among so-called Western developed countries in its failure to enact comprehensive national human rights laws. Further, it critiqued the lack of parliamentary or judicial mechanisms to ensure that Australian law and policy are compatible with our fundamental human rights obligations and noted that the rights

org.au/content/topics/international-human-rights-mechanisms/parliamentary-scrutiny-of-human-rights-submission-to-standing-committee-on-procedure-july-2009/.

1 Anthony Lester, ‘Parliamentary Scrutiny of Legislation under the Human Rights Act 1998’ (2002) 33 *Victoria University of Wellington Law Review* 1, 2.

2 Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009) [8].

3 Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/AUS/CO/4 (2009) [11].



to equality and non-discrimination are inadequately protected in federal law.¹ Similarly, the Committee on Economic, Social and Cultural Rights, while welcoming the National Human Rights Consultation, emphasised that any Human Rights Act should protect the full range of economic and social rights, such as the right to adequate healthcare and housing.²

In my view, Australia's status as the only Western democracy without a national human rights law undermines our authority and legitimacy on international human rights issues. If we are to have a legitimate and authoritative voice in international and regional human rights dialogues, Australia must commit to effective domestic human rights implementation, including through the adoption of a comprehensive national Human Rights Act. It would send a strong message for Australia to confirm human rights as a central priority precisely at a time when the global financial crisis threatens the dignity and equality of many poor and vulnerable groups.

Of course, a national Human Rights Act would not, in itself, be a panacea to disadvantage and discrimination. It could, however, promote more responsive and accountable government, improve public services, and enshrine fundamental values such as freedom, dignity, respect and a fair go. Moreover, the incorporation of international human rights—those core minimum standards that ensure all people can live with dignity and respect—into national law could ensure that human rights are actively considered at all levels of government. Perhaps most importantly for present purposes, a comprehensive national Human Rights Act, could provide a framework for international, regional and domestic policy coordination and cohesion, creating a 'virtuous circle' in which a constructive national identity is mobilized which places human rights at the centre of its self-perception and external engagement.³

Strengthening the Australian Human Rights Commission

In a recent speech on human rights in the Pacific, the Australian Parliamentary Secretary for Pacific Island Affairs, the Hon Duncan Kerr MP, said as follows: Through education, advocacy and capacity-building, National Human Rights Institutions can

1 Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009) [8] and [12].

2 Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/AUS/CO/4 (2009) [10].

3 Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009) 225-6. Analogously, Brysk states that "Canada's adoption of its Charter of Rights and Freedoms successfully inspired international rule of law promotion efforts, which in turn contributed back to Canadian jurisprudence via developments in international human rights law": at 226. Conversely, as an example of how failure to promote human rights at home can hinder protection abroad, she claims that "Canada's lagging performance on aboriginal rights at home eventually undermined an initially promising record of principled international promotion of indigenous peoples": at 226.



bridge the universal rights reflected in our constitutions, and the rights that transform every day lives. National Human Rights Institutions remind individuals, communities and governments of their responsibilities. Further, they help them fulfill them. We need to improve access, resourcing and effectiveness, and overturn attitudes which accept the infringement of human rights as a given.

Mr. Kerr concluded that, ‘for these reasons, the Australian Government is a strong supporter of efforts to establish and strengthen national human rights institutions in the Asia-Pacific region.’¹

While these are important and insightful sentiments, like our international and regional advocacy on legal protection of human rights, they are weakened by the situation in our own backyard.

The Australian Human Rights Commission is Australia’s independent statutory human rights body. It fulfils a range of significant functions, including developing human rights education programs, advising the Australian Government on human rights, conducting research, and inquiring into and conciliating complaints of unlawful discrimination.² Given these important functions, a strong and effective Commission is essential for the adequate protection and promotion of human rights in Australia. Two factors, however, impede the effectiveness of the Commission.

First, the Commission does not have a range of powers and functions arguably required by international human rights law and the Paris Principles. In particular, the Commission does not have power to: conduct formal inquiries into a broad range of matters affecting human rights across Australia; properly investigate breaches of anti-discrimination laws and human rights instruments on its ‘own motion’ without an individual complaint; effectively monitor compliance with conciliation agreements; or intervene ‘as of right’ in legal proceedings where human rights issues are raised. In my view, it is critical that the Commission’s powers be expanded as envisaged above to ensure better compliance with Australia’s international human rights obligations—particularly under the Paris Principles—and generally contribute to the improved protection of human rights in Australia.

1 The Hon Duncan Kerr MP (Parliamentary Secretary for Pacific Island Affairs), ‘Human Rights in the Pacific: Opportunities and Challenges’, Speech at Melbourne Law School, 22 July 2009 at http://www.foreignminister.gov.au/parlsec/speeches/2009/090722_pacific_hr.html.

2 See generally, the *Australian Human Rights Commission Act 1986* (Cth) s 11(1); Human Rights and Equal Opportunity Commission, *Annual Report 2007-2008* (2008). The AHRC is responsible for administering the following Commonwealth laws: the *Age Discrimination Act 2004*; the *Disability Discrimination Act 1992*; the *Racial Discrimination Act 1975*; the *Sex Discrimination Act 1984* and the *Human Rights and Equal Opportunity Commission Act 1986*. The AHRC also has specific responsibilities under the *Native Title Act 1993* (to report on the exercise and enjoyment of the human rights of Indigenous Australians with regards to native title, a role specifically undertaken by the Aboriginal and Torres Strait Islander Social Justice Commissioner), and the *Workplace Relations Act 1996* (in relation to federal awards and equal pay, a role specifically undertaken by the Sex Discrimination Commissioner).



The second factor impeding the effectiveness of the Commission is that of resources, or rather lack thereof. The Commission's ability to contribute to the protection and promotion of human rights in Australia depends, of course, on it being adequately resourced. Despite this, the Commission has been persistently under-funded¹ and, on its own account, is 'significantly constrained due to available resources'.² In the most recent financial year, the Commission experienced a budget cut of approximately 12.5 per cent from the previous year, resulting in a loss of almost 60 staff.³

It is imperative not only for the effectiveness, but also the independence, of the Australian Human Rights Commission that it is adequately, securely and sustainably funded. This is particularly so in the current economic climate, as the Commission's work, especially in relation to the enforcement of anti-discrimination laws, is of perhaps greatest consequence to those in the community who are most marginalised and put at risk by difficult economic conditions.

Conclusion

I now return to my question at the outset, the challenge posed by the Human Rights Committee in New York: 'Does Australia have what it takes to become a 'AAA' human rights state?' My answer, paraphrasing a far greater mind and orator than me, is 'Yes, we do' and, further, 'Yes, we should'.

Australia does, on my analysis, have the characteristics and satisfy the preconditions to becoming a Global Good Samaritan—a principled, persistent, fearless, flavorless and forceful human rights promoting state. For this to happen, however, will require political leadership and vision, concrete legislative and institutional reform, budgetary prioritization, and the mobilization of a national identity which values human rights every bit as highly as beaches, BBQs, football, the Anzac spirit, vegemite and even, dare I say it, the Ashes. I offer my modest proposals to further this endeavor.

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1 See further, Legal Aid Queensland, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Sex Discrimination Act 1984* (Submission No. 26, 2008) 1.

2 Australian Human Rights Commission, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Sex Discrimination Act 1984* (2008) [627].

3 Australian Human Rights Commission, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Sex Discrimination Act 1984* (2008) [618]-[620].



THE ROLE OF THE COMMISSION ON HUMAN RIGHTS AT THE PRESIDENT OF REPUBLIC OF KAZAKHSTAN IN PROTECTION OF ECONOMIC AND LABOR RIGHTS OF THE WORKING-PEOPLE

Leonid Martynov
Kazakhstan

The Commission on Human Rights at the President of Republic of Kazakhstan (further—the Commission) is created in our country 12 years ago. It is an advisory-deliberative body, which assists to the Head of the state to realize his constitutional powers as a guarantor of rights and freedom of a person and a citizen.

One of the primary tasks of the Commission is to participate in development of concepts and programs of state policy in the sphere of protection of human rights, and to afford assistance to strengthening of international cooperation in this area.

The competence of the Commission includes consideration of references of citizens and organizations containing the information on infringements human rights, drawing up of annual and special reports addressed to the President of Kazakhstan, carrying out sociological researches, the analysis of the current legislation and preparation of projects of laws and other issues on activities of protection of human rights.

In the course of realization of its powers, the Commission cooperates with the governmental bodies, nongovernmental rights protective organizations, mass media, and also Representatives on human rights (Ombudsmen) in the Republic of Kazakhstan.

For carrying out the expert-analytical researches under the Commission, the Advisory council is established.

The Commission has the right to request and get necessary data, documents and materials from the state bodies and officials, and also to hear their reports and information, to check data on infringements of human rights. Recommendations and conclusions of the Commission are brought to the notice of the President of the Republic of Kazakhstan. They are also submitted to a corresponding state body which is obliged to consider them and notify the Commission about the decision accepted.

In 2007 the Commission prepared and published *Basic report* on the situation of observance of civil, political, economic and cultural human rights in Kazakhstan.



And recently the second fundamental work—*National program in the field of human rights in the Republic of Kazakhstan for 2009-2012* was presented to the Commission. It was published in three languages—Kazakh, Russian and English under the auspices of the Program of development of the United Nations Organization and its constant representative Mr. Haoliang Xu, the partner organizations, such as the Embassy of the Great Britain in Kazakhstan, the Embassy of the Netherlands in Kazakhstan, the Center of the Organization for Safety and Cooperation in Europe (OSCE).

At the Program, the analysis of condition of more than 20 concrete types of human rights is carried out. Also it contains expected results on realization of the Program, the prospects on perfection of laws and protective mechanisms of human rights in Kazakhstan, connected with this sphere.

The Commission pays constant attention to economic and labour human rights. Strengthening and development of the legislative base of Kazakhstan is an evidence of it. Last years the Parliament accepted the Labour Code based on the International Labour Organization Standards, laws on social partnership, on responsibility of an employer for causing harm to life and health of a worker on manufacture, on population employment and other legislative enactments.

The state and governmental programs concerning improvement of social reforms, increasing of social guarantees, and growth of salaries, pensions and grants, increasing of social benefits for population vulnerable layers are approved and realized.

Ratification of the International pact on economic and social rights by Kazakhstan has a great value for workers and all the population of the Republic. In Kazakhstan all basic Conventions of the International Organization of Workers are also ratified.

The whole system of agreements between the state bodies, trade unions and employers (including the General, branch tariff, regional agreements) is introduced. Collective contracts are applied at almost all enterprises where trade unions operate.

The law on trade unions of Kazakhstan gave significant rights to the representatives of the organizations of workers. The National program of worthy work in Kazakhstan coordinated with the International Labour Organization for 2007-2009 was approved.

For information:

- The size of the minimal salary in Kazakhstan is 13,717 tenges (92 US dollars) and is equal to the size of the living wage;
- The monthly average salary is 69,756 tenges (465 US dollars);
- The average size of pension is 15,263 tenges (102 US dollars), and the size of students' grants—9,375 tenges (63 US dollars);
- The number of unemployed people estimated on methodology of the International Labour Organization is 6.4%.



At the same time, the Commission on Human Rights mentions that mass infringement of the labor legislation proceeds in real life of Kazakhstan. Infringements of the constitutional labor rights of citizens are the most widespread.

Annually work of the state inspection reveals tens of thousands of facts of infringements of the labor legislation including without limitation to the enterprises with foreign participation.

The number of accidents and even deaths of people on manufacture because of fault of an employer is very high. Discrimination of workers, especially women and youth, is committed. An imperfect and unfair salary payment system divides the society into the rich and the poor.

Up to the present moment arrears of wages at private enterprises is not liquidated.

It is required to take legislative measures to eliminate unfair disproportion in payment of various categories of workers, to provide the accessible salary for workers in the field of education, public health service, culture, agriculture.

In Kazakhstan the salary share in the gross domestic product is only 31.9 %, when in developed countries it is kept at a rate of 50-56 %.

Long ago the necessity to reconsider policy in the sphere of employment in such a category as *independently employed population* or *atypical employment* to which many rural citizens, dealers may be concerned is ripe. The majority of them are women; they do not have payments on sick lists on pregnancy and childbirth, days of incapacity for work, annual vacations are not provided, deductions for obligatory accumulation pension payments are not made, they are not subject to obligatory social insurance for harmed health.

For elimination of these disadvantages and problems the Commission on Human Rights recommends:

- * to develop the Concept on bases of social policy in the Republic of Kazakhstan, to define the basic directions, rights and duties of subjects of regulation of social policy —state bodies, institutions of local government, entrepreneurship, business and public associations;
- * to develop and pass the new laws *About the minimal salary, About self-employed population*;
- * to improve the Labor Code, to make amendments on prohibition of any type of discrimination at payment of equivalent work of workers in the foreign companies because of the nationality and citizenship of workers;
- * to ratify the conventions of *the International Labor Organization About determination of the minimal salary, About salary protection, About the social security minimal norms* and others.

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THE DEVELOPMENT OF THE CONCEPT OF “CITIZEN” IN THE TEXTS OF CHINESE CONSTITUTIONS

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China

The concept of “citizen”¹ refers to an individual “resident” that, as one of the component elements of a sovereign state, and corresponds to a modern political state featured with complete sovereign. In a modern society, a “citizen” means that an individual belongs to a “political state” which has independent and complete sovereignty and a complete set of legal and orderly mechanisms for the operation of state power. “Citizen” is the “value attribute” of the political relevance between an individual and a sovereign state. It is an organic combination of human being’s natural attributes with their social ones. According to the principle of rule of law, the political relevance between individuals and sovereign states is prescribed by Constitution. Therefore, whether an individual has the legal status (or “social role” from the sociological perspective) of “citizen” must depends on the clear definition by Constitution of a sovereign state.

Since the Imitating Constitutionalism was introduced and the relationship between individuals and the state included in the Constitution in late Qing Dynasty, citizen’s legal status, which is the political relevance between individuals and the state, had not been clearly recognized by Constitutional provisions from the very beginning. There was a development process from “subject” to “national,” “national” to “people,” and “people” to “citizen.” During the historical development of individuals obtaining citizen’s legal status in the Constitution, the political relevance between individuals and the state changed from subordination to equality and from obscurity to clarity, laying a constitutional foundation for a “civil society” and “the state under the rule of law.”

1 “Citizen” is an imported word, which was first introduced into Chinese political vocabularies in early 20th century in the books by literati and persons of ideas and integrity introducing western constitutions, as in *Citizen’s Autonomy* by Kang Youwei. Mr. Kang raised in relatively early times the modern concept of “citizen” and is the first person who maintained the “establishment of citizenship.” See: Wang Zhendong, *Human Rights: From the world to China*, CPC Construction Material Press, 1999.



I. The embodiment and characteristics of the “citizen” concept in the texts of the constitutions before the founding of the People’s Republic of China

(I) From “subject” to “national”

Before the new China was founded, the word “citizen” was not used to express the political relevance between individuals and the state in the previous constitutions. In 1908, the Qing Government promulgated the *Outline of Imperial Constitution*, in which the word “subject” was used. So was the term “Qing Empire,” instead of the “state” concept that corresponds to “individual.” Therefore, according to the *Outline of Imperial Constitution*, the political relevance between individuals and the state was totally subordinate, and individuals were reflected as the legal status of “the ruled” in the text of the Constitution. On Nov. 3rd, 1911, the Qing Government rushed to promulgate the *19 Significant Doctrines*, in which the word “subject” was removed and replaced by “national.” However, this was reflected only in Article 7: “Members of the Upper House are elected by the nationals according to their special qualifications prescribed by law.” Other than that, the rights and obligations of nationals were not mentioned at all throughout the text.

(II) The mixed use of “national” and “people”

Following the victory of the 1911 Revolution, the Kuomintang Party led by Dr. Sun Yat-sen established the Provisional Government of the Republic of China in Nanjing. In order to carry forward the achievements of the 1911 Revolution and restrict Yuan Shikai who came to power later, the Provisional Government promulgated the Provisional Constitution of the Republic of China on Nov. 3rd, 1912. In the document, the legal status of individuals was defined as “national” as well as “people” corresponding to “the Republic of China.” It is, however, unclear as to the differences between the connotations of “national” and “people” as the legal status of individuals prescribed by the Constitution. Article 1 stipulates: “The Republic of China is organized by Chinese people.” Article 2 solemnly declares: “The sovereignty of the Republic of China belongs to the entire nationals.” However, in the main body of the Constitution, although various rights of “people” have been prescribed with the word “people” at the core, there is no explanation on the nature of “people;” in other words, it is still unclear whether the rights of “people” belong to individuals or to all the people in abstract sense. The subsequent Electoral Law placed some conditions on people’s right to vote. For example, “only those who have paid direct tax of more than two dollars annually and have real estates valued over 500 dollars, and have lived in the constituencies for more than two years with an education level above primary school can enjoy the right to vote.” As for the right to stand for election, there are more conditions, lending some support to the argument that “people” is only entitled to the property owners. Therefore, some scholars have made class analysis on the concept of people, believing that “it in fact refers exclusively



to the bourgeoisie themselves rather than the mass population of working people.”¹

In 1913, the then so-called “Constitution Drafting Committee of the Parliament of the Republic of China” framed the *Temple of Heaven Constitution*, in which the words “national” and “people” were continuously used, however, the relationship between the two words and whether the words were representing individuals corresponding to the state were still undefined. Chapter 3 “Nationals” of the Constitution Draft prescribes in detail the various rights of people and stipulates clearly that, “Those who are holding the nationality of the Republic of China in accordance with law are the people of the Republic of China,” mentioning for the first time the determination of the qualification of people. Obviously, from the perspective of constitutional technology, the draft has basically mixed the concepts of “national” with “people,” according to which both the 1914 Constitution of the Republic of China (or the Yuan’s Constitution) and the 1923 Constitution of the Republic of China (known as the Constitution of Bribery) made provisions.

The General Outline of the Constitution for the Political Tutelage Period of the Republic of China, adopted by the National Assembly on May 12, 1931 (promulgated by the National Government on June 1), the 1936 *Constitution Draft of the Republic of China* (known as the *May 5th Constitution Draft* in history) and the 1946 *Constitution of the Republic of China* are very much the same, in that all the documents define “national” as every one of the subjects of state sovereignty or those holding the nationality of the Republic of China, and define “people” as the subjects of rights and obligations. *The General Outline of the Constitution for the Political Tutelage Period*, however, combines “national” with “people” to recognize various constitutional rights and obligations of individuals. For example, Article 6 stipulates: “The nationals of the Republic of China, regardless of their genders, races, religions or classes, are all equal before the law.” Article 7 stipulates, “According to Article 8 of the *Outline of the Founding of the Republic of China*, nationals of the Republic of China in the entirely autonomous counties enjoy the rights of election, recall, initiative and referendum prescribed by Article 9.” In comparison, the *Declaration of the First National Congress of Kuomintang* clarifies that “the rights of people of the Republic of China are entitled to nationals of the state, and they must not be granted to those who are opposed to the state to prevent disruption of the country.”² From the aforementioned provisions, it might be safe to assume that the entire scope of “national” prescribed in the texts of constitutions during the period of the Republic of China are very much the same with that of “people.”

1 Jiang Bikun, *A Brief History of Modern Chinese Constitutionalism and Constitution*, Law Press, 1988, pp130.

2 *Materials of all the National Congresses and Plenary Session of the Central Committee of the Kuomintang*, Guangming Daily Press, 1984, pp11.



(III) The legal demonstration of the concept of “citizen”

Although the concept of “citizen” had not been clearly defined in the various texts of the constitutions, it already appeared in some important legal documents before the founding of the People’s Republic of China. While the concept of “citizen” was often used interchangeably with “national” and “people,” it had attracted wide attention as a correspondent to political state.

As early as in *the Constitution of Revolutionary Party of China*, Dr. Sun Yat-sen identified the party members into three categories (class identifications) with different privileges and defined the differences between party members and non-party members as those between citizens and non-citizens: “(1) those who joined the party before the uprising of the revolutionary army are called Uprising Members. They are founding citizens and enjoy all the priorities in participating in politics and ruling the country. (2) Those who joined the party after the uprising and before the establishment of the revolutionary government are called Helping Members. They are meritorious citizens and enjoy the rights to vote and stand for election. (3) Those who joined the party after the establishment of the revolutionary government are called ordinary members. They are advanced citizens and enjoy the right to vote. Meanwhile, “non-party members will not be granted citizenship during the revolutionary period until the Constitution is promulgated.”¹ From the legislative perspective, the 1929 *Law of Implementing the Autonomy in Towns* promulgated by the National Government stipulates that people of the Republic of China who have lived in their towns for one year or owned houses for more than two years and reached the age of 20 enjoy the right to attend the congress of the towns and exercise the rights of election, recall, initiative and referendum after oath and registration as citizens of the towns. Only the following people cannot enjoy their rights: (1) people who have been sentenced of anti-revolutionary acts; (2) people who have been sentenced to be corrupt officials and evil gentries; (3) people who have been deprived of civil rights and have not been rehabilitated; (4) interdictors; and (5) people who are addicted to opium or its alternatives.² It stresses that some of the nationals cannot be registered as citizens and therefore have no right to vote. The Law has lifted the restrictions on genders, properties, experiences and cultures of electorate prescribed by previous autonomy regulations, including the requirements of direct tax payment of more than 2 dollars, ownership of movable properties or real estates, incumbent or used-to-be public officers or teachers, and graduating from higher primary school or above or holding equivalent qualifications. Now the major difference between

¹ See: *The Constitution of Revolutionary Party of China*, in *the Collected Works of Dr. Sun Yat-sun*, China Publishing Company, 1984.

² Xie Zhenmin, *The Legislative History of the Republic of China*, China University of Politics and Law Press, 2000, pp699.



citizens and nationals is whether they are able to exercise their political rights.

Different from the Constitutions promulgated by Beiyang Government and the Government of the Republic of China, the constitutional documents formulated and promulgated by the Communist Party of China in revolutionary base areas have recognized the concept of “citizen” from the very beginning. For example, *the Outline Constitution of Chinese Soviet Republic*, reviewed and passed by the Second Soviet National Congress in January 1934, stipulates that “in the reins of Soviet political power, workers, peasants, red soldiers and all working and laboring people with their families, regardless of their genders, nationalities (Han, Manchurian, Mongolian, Hui, Tibetan, Miao, Li, and Taiwanese, Korean and Annan of China) or religions, are all equal before Soviet law and they are citizens of the Soviet republic.” In order to let the worker, peasants and red soldiers have their own political power, the Soviet election law stipulates, “all the above-mentioned Soviet citizens at the age of 16 have the Soviet rights to vote and stand for election, to send directly representatives to participate in Soviet congresses at all levels, and to discuss and decide all national and local political issues.” Besides, “citizen” is used again in Article 13: “all the Soviet citizens have the freedom of anti-religious propaganda, and the imperial churches can only be allowed to exist when they comply with Soviet laws.” However, in the texts of *the Administrative Outlines of the Shensi-Kansu-Ningsia Border Region Government*, passed by the First Session of the Second Assembly of Representatives of the Region on Nov. 17, 1941, and *the Constitutional Principles for the Shensi-Kansu-Ningsia Border Region*, passed by the First Session of the Third Assembly of Representatives of the Region on Apr. 23, 1946, the word “citizen” couldn’t be found at all, nor was the word “national,” since both were replaced by the word “people” as the subject of fundamental rights and duties. The logical reason was the imitating feature of the construction of the political power during the base-area period, when the most important legal documents were imitating or copying the terms from the Soviet Union Constitution and other legal documents, instead of carefully and strictly investigating in constitutional theories the legal differences between the concept of “citizen” and those of “national” and “people” in the constitutional documents.

In summary, during the nearly half a century between the Imitating Constitutionalism in late Qing Dynasty and the founding of the new China, because of lack of complete and effective theoretical and systematic definition of the political relevance between individuals and the state in the constitutional theories, the legal terms expressing the political relevance between individuals and the state are naturally diversified, ranging from “subject” to “national,” and from “national” to “people” and “citizen.” All the above concepts are not completely institutionalized or standardized in terms of expressing the political relevance between individuals and the state, simply borrowing and mechanically copying the texts of foreign constitutions and lacking independent theoretical explanations and institutional



regulations with Chinese characteristics.

II. The evolution and features of the concept of “citizen” in the development of constitutions of the new China

(I) The provisions on “people” and “national” in *the Common Program*

In *the Common Program of the Chinese People’s Political Consultative Conference*¹, which was adopted before the founding of the new China and played the role as the provisional constitution, there was no concept of “citizen” corresponding to the modern state. Instead, there was only the concept of “people,” which was the main force of social revolutionary campaigns and was covered with thick political ideology. The state had yet to recognize on the whole that every individual could unconditionally enjoy certain “fundamental rights” to confront the state, which was reflected by Article 7 of *the Common Program*. It stipulates that “the People’s Republic of China shall suppress all counter-revolutionary activities, severely punish all Kuomintang counter-revolutionary war criminals and other leading incorrigible counter-revolutionary elements who collaborate with imperialism, commit treason against the fatherland and oppose the cause of people’s democracy. Feudal landlords, bureaucratic capitalists and reactionary elements in general, after they have been disarmed and have had their special powers abolished, shall, in addition, be deprived of their political rights in accordance with law for a necessary period. But, at the same time, they, shall be given some means of livelihood and shall be compelled to reform themselves through labor so as to become new men. If they continue their counter-revolutionary activities, they will be severely punished.” The above stipulation was obviously painted with revolutionary and dictatorial colors, and there were no “fundamental rights of citizens” unconditionally protected by the state. However, *the Common Program*, under the guidance of the theories of the new-democratic revolution, established some fundamental “people’s rights,” which were classified into the following categories: first, the rights with people as the subject provided for people; second, the rights with people’s organizations as the subject provided to people’s organizations; third, the rights with national minorities as the subject and provided to national minorities; fourth, the rights preconditioned by special interests of specific subjects to be protected clearly; fifth, the rights with unspecific subjects; sixth, the right of equality. Specifically, they included:

1. The rights of people

Four articles in *the Common Program* involve the rights of people: (1) The state power of the People’s Republic of China belongs to the people (Article 12); (2) The people shall have the right to vote and stand for election (Article 4); (3) The people shall have

¹ Adopted by the First Plenary Session of the Chinese People’s Political Consultative Conference on Sep. 29, 1949.



freedom of thought, speech, publication, assembly, association, correspondence, person, domicile, change of domicile, religious belief and the freedom of holding processions and demonstrations (Article 5); (4) The people shall have the right to file charges with the people's supervisory organs or people's judicial organs against any state organs or any public functionaries that violate the law or are negligent in the performance of their duties.

2. The rights of people's organizations

The people or people's organizations shall have the right to file charges with the people's supervisory organs or people's judicial organs against any state organs or any public functionaries that violate the law or are negligent in the performance of their duties.

3. The rights of national minorities

Two articles contain the provisions on the rights of ethnic minorities, and they are: (1) all national minorities within the boundaries of the People's Republic of China shall have the right to join the People's Liberation Army and to organize local people's public security forces in accordance with the unified military system of the state (Article 52); (2) All national minorities shall have freedom to develop their dialects and languages, to preserve or reform their traditions, customs and religious beliefs (Article 53).

4. The protection of the special interests or rights of specific subjects

The Common Program made the following stipulations on the protection of the special interests or rights of specific subjects: (1) Must protect the economic interests and private property of workers, peasants, the petty bourgeoisie and the national bourgeoisie; (2) Dependents of those who have given their lives for the revolution and of members of the revolutionary forces, who are in need, shall receive preferential treatment, from the state and from society (Article 25); (3) In all areas where agrarian reform has been carried out, the ownership of the land acquired by the peasants shall be protected (Article 27); (4) The special interests of juvenile and women workers shall be safeguarded (Article 32); (5) The protection of the health of mothers, infants and children (Article 48); (6) The protection of the proper rights and interests of Chinese residing abroad (Article 58); (7) The People's Republic of China shall accord the right of asylum to foreign nationals who seek refuge in China because they have been oppressed by their own governments for supporting the people's interests and taking part in the struggle for peace and democracy (Article 60).

5. The rights of unspecific subjects

The Common Program protects the rights of unspecific subjects. For example, Article 49 stipulates that "freedom of reporting truthful news shall be safeguarded."

6. The equal rights

The right of equality protected by *the Common Program* is classified into two categories with different natures: one is the equal rights for nationalities, as Article 9 stipulates, "All nationalities in the People's Republic of China shall have equal rights and obligations." Article



50 stipulates, “All nationalities within the boundaries of the People’s Republic of China are equal.” Article 51 also stipulates, “In places where different nationalities live together and in the autonomous areas of the national minorities, the different nationalities shall each have an appropriate number of representatives in the local organs of political power.” The other is the equal rights for men and women. Article 6 stipulates, “Women shall enjoy equal rights with men in political, economic, cultural, educational and social life,” “Freedom of marriage for men and women shall be put into effect.”

It should be noted that *the Common Program* also employed the concept of “national,” but it prescribes the legal and moral duties for “nationals.” As Article 8 stipulates, “It is the duty of every national of the People’s Republic of China to defend the fatherland, to abide by the law, to observe labor discipline, to protect public property, to perform public and military service, and to pay taxes.” Article 42 further stipulates, “Love of the fatherland, love of the people, love of labor, love of science and care of public property shall be promoted as the public spirit of all nationals of the People’s Republic of China.”

According to the related provisions on the concepts of “people” and “national” in *the Common Program*, the legal natures of “people” as subject of rights and of “national” as subject of duties and the scope of population they refer to are obviously different. “People” as the subject of rights is a collective concept, referring only to part of the population instead of the whole, while “national” as the subject of duties refers to all individuals. As for the inconsistency of the scopes of subjects of rights and duties, Premier Zhou Enlai made clarifications and analysis in his *Report on the Formulation and the Characteristics of the Common Program Draft*. “People” refers to the classes of workers, peasants, petty bourgeoisie, national bourgeoisies and certain patriotic democratic circles who woke up from reactionary classes. “After the properties of the bureaucrat-bourgeoisie were confiscated and the lands of the landlord class distributed, the negative measure was to sternly suppress the reactionary activities among them, and the positive option was to compel them to reform themselves through labor so as to become new men. Before reforming, they did not belong to “people,” but only fell into the category of “national,” and they were not entitled for rights of people but had to fulfill the duties of national.”¹

It is noticeable that, according to Article 7 of *the Common Program*, those who did not belong to “people” referred to “all Kuomintang counter-revolutionary war criminals and other leading incorrigible counter-revolutionary elements who collaborate with imperialism, commit treason against the fatherland and oppose the cause of people’s democracy,” as well as “feudal landlords, bureaucratic capitalists and reactionary elements in general,” who had no “political rights,” but “shall be given some means of livelihood and shall be

¹ See: *People’s Daily* Sept. 26th, 2009, quoted from Xu Chongde, *Reference Material of China’s Constitution*. Renmin University Press. 1990



compelled to reform themselves through labor so as to become new men.” This means that the above persons, except that they did not enjoy the political rights entitled for people in accordance with *the Common Program*, were not deprived of other “rights,” especially that the fundamental right to existence as natural persons was recognized.

To summarize, born before the founding of the People’s Republic, *the Common Program* was influenced by the then revolutionary and war situation in terms of the political relevance between individuals and the state, since it was not adopted by the National People’s Congress. Therefore, the concept of “citizen” were unable to develop as an exact reflection of the political relevance between individuals and the state, and the concepts of “people” and “national” as transitional alternatives defined the legal status of individuals corresponding to the new democratic state. This process is evitable, although it has historical limitations.

(II) The concept of “citizen” was included into the texts of the Constitution and laws.

It is *the Electoral Law of the National People’s Congress and Local People’s Congresses at All Levels of the People’s Republic of China* promulgated in 1953 that is generally recognized to be the first normative document which employs the concept of “citizen,” as Article 4 stipulates, “All citizens of the People’s Republic of China who have reached the age of 18 shall have the right to vote and stand for election, regardless of ethnic status, sex, occupation, family background, religious belief, education, property status or length of residence.” However, there is no other place throughout the text mentioning the word “citizen” again. The legislative organ did not provide explanations on the formal replacement of “national” by “citizen” in *the Electoral Law*, either, there was no mentioning of the reason and implication for adopting the word “citizen” in Mr. Deng Xiaoping’s explanatory report on the draft of the Electoral Law. In that same period, relevant magazines and periodicals had no illustration on this. *Explanations by the Central Electoral Commission on Elections on Several Questions concerning the Voters’ Qualifications* published on April 3rd, 1953 provided the following answer to the question that “whether foreigners living in China have the right to vote and stand for election or not”: all foreigners living in China but not holding Chinese nationality do not have the right to vote or stand for election. All those holding the nationality of the People’s Republic of China and having reached the age of 18 with the citizenship shall have the right to vote and stand for election. In this answer, “holding the nationality” and “with citizenship” were surprisingly quoted as two paralleled conditions, proving that there was no connection between “citizenship” and “nationality.”¹ At the

¹ In today’s world, the two legal statuses, person with nationality and citizenship, have been distinguished in the written constitutions of many states. Usually, more stringent requirements are imposed for citizenship than nationality. For example, Article 12 of the Constitution of Nicaragua Republic stipulates that the Nicaraguans at the age of 18 are Nicaraguan citizens. According to Article 13, those who have the following experiences will be deprived of their civil rights: (1) during the period when their rights have been deprived of (because of real insolvent bankruptcy); (2) during the period when they are serving sentences and deprived of freedom (those who challenge their sentences excluded);



same time, in order to make preparations for the National People's Congress and the local people's congresses at different levels, *the Methods of Registration for National Demographic Census* was issued to facilitate the registration of voters, stipulating that "all the nationals of the People's Republic of China shall register." Such stipulation seems to indicate that nationals are persons with the nationality of the People's Republic of China. The citizenship, however, is a vocabulary with richer connotations and is not the natural consequence for obtaining nationality. A person who has obtained the nationality of a state becomes its national, but he/she is not necessarily a citizen of a state without obtaining citizenship.

It is in the 1954 Constitution where the concept of "citizen" was formally introduced in the text of Chinese constitutions. Through prescribing the fundamental rights of citizens, the 1954 Constitution has established the human rights system based on the status of "citizen" and enlarged the scope of the subjects of constitutional rights prescribed by *the Common Program*, thus laying an institutional foundation for the fundamental rights of citizens prescribed by all the constitutions of the new China and developing the basic connotation of human rights. The stipulations on the constitutional rights by the 1954 Constitution have the following features:

1. Based on the fundamental rights of citizens, it has established a complete structure for the fundamental rights of Chinese citizens through an independent chapter of "The fundamental rights and duties of citizens."

Chapter 3 of the 1954 Constitution specifies the various fundamental rights of "the citizens of the People's Republic of China." These rights include the followings:

(1) The equal rights

Article 85 stipulates, "Citizens of the People's Republic of China are equal by law."

(2) The right to vote and stand for election

Article 86 stipulates, "Citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of nationality, sex, occupation, family background, religious belief, education, property status or length of residence, except mentally disordered persons and persons deprived of the right to vote and stand for election according to law." "Women enjoy equal right to vote and stand for election with men."

(3) other situations according to law. Article 52 stipulates clearly that citizenship is related to the obligations of citizen. Every right has its matching obligation. Thus if individual citizens corresponding to the state are simply confirmed their status with their nationality, it will lead to a situation where a considerable number of persons with the nationalities of their own states can only enjoy the rights provided by their states and will be unable to fulfill their obligations effectively for their states because of the limitations of their own capacity. Therefore, there are certain theoretical and practical implications for correctly understanding the relationship between individuals and states by distinguishing citizenship with nationality under the principle of consistency between rights and obligations.



(3) Freedom of speech, of the press, of assembly, of association, of procession and of demonstration

Article 87 stipulates, “Citizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration. The state provides necessary material conveniences to guarantee citizens to enjoy the above freedom.”

(4) Freedom of religious belief

Article 88 stipulates, “Citizens of the People’s Republic of China enjoy freedom of religious belief.”

(5) The freedom of person is inviolable

Article 89 stipulates, “The freedom of the person of citizens of the People’s Republic of China is inviolable. No citizen may be arrested without a decision of a people’s court or the approval of a people’s procuratorate.”

(6) The residences of citizens are inviolable; the privacy of correspondence is protected by law; the freedom of residence and migration.

Article 90 contains the provisions on the inviolability of the residences of citizens, the protection of privacy of correspondence and the freedom of residence and migration. It stipulates, “The residences of citizens of the People’s Republic of China is inviolable, and the privacy of correspondence of citizens is protected by law.” “Citizens of the People’s Republic of China enjoy the freedom of residence and migration.”

(7) The right to work

Article 91 stipulates, “Citizens of the People’s Republic of China have the right to work. Through the planned development of national economy, the state gradually expands labor employment, improves and enriches working conditions and remuneration and benefits, so as to ensure citizens to enjoy the right.”

(8) The right to education

Article 94 stipulates, “Citizens of the People’s Republic of China have the right to education. The state establishes and gradually increases various schools and other organs for cultural education, so as to ensure citizens to enjoy the right.” “The state specially cares the intellectual and physical development of young people.”

(9) The freedom of cultural pursuits

As for the freedom of cultural pursuits, Article 95 stipulates, “Citizens of the People’s Republic of China are guaranteed the freedom to engage in scientific research, literary and artistic creation and other cultural pursuits. The state encourages and assists creative endeavors made by citizens engaged in education, science, technology, literature, art and other cultural work.”

(10) The right to make charges and the right to compensation



Article 97 stipulates, “Citizens have the right to make to state organs at all levels written or oral charges against violation of the law or dereliction of duty by any functionary. Citizens who have suffered losses through infringement of their civil rights by any functionary have the right to compensation.”

Besides “the fundamental rights of citizens” provided in detail in Chapter 3, the 1954 Constitution mentioned the rights of citizens in Section 6 “The People’s Court and the People’s Procuratorate” of Chapter 2, which, in terms of the nature of rights, are constitutional rights. These rights include:

(1) The ownership of means of subsistence

Article 11 stipulates, “The state protects the right of citizens to own lawfully earned income, savings, houses and various means of subsistence.”

(2) The right to inherit private property

Article 12 stipulates, “The state protects by law the right of citizens to inherit private property.”

(3) The right to use the spoken and written languages

Article 77 stipulates, “Citizens of all nationalities have the right to use the spoken and written languages of their own nationality in court proceedings. The people’s courts should provide judgments, notices and other documents for any party to the court proceedings who is not familiar with the spoken or written languages in common use in the locality.”

2. Besides the constitutional rights of individual citizens, the 1954 Constitution also contains provisions on specific constitutional rights of specific subjects, who enjoyed these rights individually but not entirely consistent with their citizenship.

This has indicated the extensive scope of subjects of the constitutional rights prescribed by the 1954 Constitution. These “constitutional rights” of the specific subjects include the following:

(1) The constitutional rights of working people

Two articles of the 1954 Constitution contain provisions on the constitutional rights of working people. One is the right of working people to rest, the other is their right to material assistance. Article 92 stipulates, “Working people of the People’s Republic of China have the right to rest. The state prescribes working hours and vacations for workers and staff, and gradually expands material conditions for rest and recuperation of working people, so as to ensure working people to enjoy this right.” Article 93 stipulates, “Citizens of the People’s Republic of China have the right to material assistance when they are old, ill or disabled. The state develops the social insurance, social relief and mass health services and gradually expands these facilities, so as to ensure working people to enjoy this right.”

(2) The constitutional rights of women

Article 96 stipulates, “Women in the People’s Republic of China enjoy equal rights



with men in all spheres of life, political, economic, cultural and social, and family life.”

(3) The constitutional rights of peasants

According to the 1954 Constitution, peasants are a special category of subject enjoying constitutional rights, as stipulating in Item 1 of Article 8 that “the state protects by law the peasants’ ownership of lands and other means of production.”

(4) Handicraftsmen and other non-agricultural self-employed working people

The ownership of means of production of handicraftsmen and other non-agricultural self-employed working people is also recognized by the 1954 Constitution, in which Article 9 stipulates, “The state protects by law the ownership of means of production of handicraftsmen and other non-agricultural self-employed working people.”

(5) Bourgeoisie

As a special subject of constitutional rights in a transitional period, bourgeoisie’s ownership of means of production and capitals is also recognized by the 1954 Constitution. Article 10 stipulates, “The state protects by law bourgeoisie’s ownership of means of production and other capitals.”

(6) Chinese nationals residing abroad

Paying attention to the rights of Chinese nationals residing abroad, the 1954 Constitution extended the fundamental rights of citizens prescribed by the Constitution. Article 98 stipulates, “The People’s Republic of China protects the legitimate rights and interests of Chinese nationals residing abroad.”

(7) Foreigners

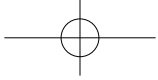
Necessary provision is given concerning the rights of foreigners by the 1954 Constitution. Article 99 stipulates, “The People’s Republic of China shall accord the right of asylum to foreigners who have been oppressed because of supporting just undertakings, participating in peaceful campaigns and conducting scientific work.”

(8) The accused

Section 6 “The People’s Court and the People’s Procuratorate” of Chapter 2 contains clear provisions on the right of defense of the accused. Article 76 stipulates, “The accused has the right of defense.”

(9) Constituencies

The 1954 Constitution makes clear and specific provisions on the constitutional rights of supervision by constituencies and of removing of deputies. Article 61 stipulates, “Deputies to the people’s congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships and towns are subject to supervision by their constituencies. The electoral units and constituencies which elect local people’s congresses at different levels have the right, according to procedures prescribed by law, to remove and replace at anytime deputies whom they elected.”



(10) Marriage, the family, and mother and child are protected by the state

Article 96 stipulates, “Marriage, the family, and mother and child are protected by the state.” This stipulation is conducive to protecting related fundamental rights of citizens.

Serving as the provisional constitution, *the Common Program* prescribed constitutional rights to meet the requirements of the new democratic revolution, especially those of class struggles. Therefore, in the circumstances where friends and foes were clearly divided and class struggles extremely fierce, the rights of the new political power could only be designated to people instead of enemies, and it was impossible to establish a power system applicable to “citizenship” which made no distinction between friends and foes. This way of stipulation on rights was inseparable with the specific political, economic and cultural situation and characteristics of the early period of the new People’s Republic. In this sense, enemies of people were not given rights by law; instead, necessary and effective control measures must be adopted to prevent sabotage and subversion on the new Republic by enemies. Article 7 of *the Common Program* has clarified the legal purpose to implement dictatorship and penalty on enemies of people. According to the stipulation, “the People’s Republic of China shall suppress all counter-revolutionary activities, severely punish all Kuomintang counter-revolutionary war criminals and other leading incorrigible counter-revolutionary elements who collaborate with imperialism, commit treason against the fatherland and oppose the cause of people’s democracy. Feudal landlords, bureaucratic capitalists and reactionary elements in general, after they have been disarmed and have had their special powers abolished, shall, in addition, be deprived of their political rights in accordance with law for a necessary period. But, at the same time, they, shall be given some means of livelihood and shall be compelled to reform themselves through labor so as to become new men. If they continue their counter-revolutionary activities, they will be severely punished.” Although some necessary restrictions were imposed by the 1954 Constitution on the rights of enemies of people, those “feudal landlords and bureaucratic bourgeoisies” who reformed themselves obediently were given “some means of livelihood” through provisions on “the fundamental rights of citizens.” In other words, except that they were restricted necessarily on political rights, “the fundamental rights of citizens” of other natures could be exercised with certain conditions. In particular, Article 85 stipulates, “All citizens of the People’s Republic of China are equal before the law.” This stipulation has in fact recognized those “feudal landlords and bureaucratic bourgeoisies” who reformed themselves obediently were equal with other ordinary citizens in terms of general constitutional rights. This has embodied the mutually complementary relationship between “state and individual,” which is the fundamental legal characteristic of a political state stressed by modern constitutions.

The 1975 and 1978 constitutions were adopted during the Cultural Revolution and were



severely influenced by ultra-leftist ideology, however, stipulations on constitutional rights by the 1975 Constitution did not deviate from the purposes of the 1954 Constitution in terms of institutional structuring, in that it retained the system and structure of “fundamental rights of citizens” prescribed by the 1954 Constitution, and also made relevant additions to and removal from the contents of “fundamental rights of citizens,” some of which were even with progressive feature. Therefore, on the whole, the system of constitutional rights established by the 1975 Constitution moved forward on the one established by the 1954 Constitution and witnessed no setbacks.

According to the provision by the 1954, 1975 and 1978 constitutions, the concept of “citizen” basically existed as the subject of “fundamental rights.” However, influenced by various political elements since the founding of the new China, “citizenship” had never been recognized in the texts of constitutions, so the constitutional regulation of citizens’ fundamental rights existed while the definition of the subject exercising citizens’ fundamental rights could not be found. The severe disfigurement of legal theories in the design of citizens’ fundamental rights system was not conducive in practice to establishing a concrete legal protection system for safeguarding fundamental rights of citizens.

(III) The 1982 Constitution recognized “citizenship,” enriching and improving the system of citizen’s fundamental rights.

As the best constitution since the founding of the People’s Republic of China, the 1982 Constitution contains a series of provisions on constitutional rights and fundamental rights of citizens, constituting the current and complete system and structure of constitutional rights and fundamental rights of citizens. On the one hand, with regard to protecting fundamental rights of citizens and safeguarding constitutional rights, the 1982 Constitution has restored the good traditions of the 1954 Constitution in a relatively all-around manner and recognized many useful stipulations that meet the requirements for the development human rights protection; on the other hand, the 1982 Constitution has enriched and improved the constitutional rights and fundamental rights of citizens in accordance with China’s actual conditions, adding many more new rights and reflecting the advanced theories of the Constitution in protecting constitutional rights and fundamental rights of citizens. Specially speaking, it has the following features:

1. It has prescribed in a relatively all-round way the fundamental rights of citizens and established a complete system and structure of fundamental rights of citizens.

Specially, it has highlighted the status of citizens’ fundamental rights in the Constitution by putting “The fundamental rights and duties of citizens” as Chapter 2 followed by Chapter 3 “The Structure of the State,” changing the traditional order in the 1954, 1975 and 1978 Constitutions. This has clarified the relationship of purposes and methods between citizens’ fundamental rights and powers of state organs, rationalizing



the relationship between state power and rights of citizens and conforming to the spirits of modern constitutions. The fundamental rights of citizens prescribed in the 1982 Constitution include the following:

(1) It has prescribed the legal requirements for obtaining citizenship, providing scientific and practical foundation for establishing the system and structure of fundamental rights of citizens.

The fundamental rights of citizens are constitutional rights designed with citizens as the subject of rights, constituting an important way for human rights protection through Constitution. The scientific level and effectiveness of the design of citizens' fundamental rights rely on the clarity of the definition on the scope of the subject of rights. If the scope of citizens has not been clearly defined before the fundamental rights of citizens are prescribed, the design of the fundamental rights of citizens is, at least in legal theories, much problematic in system. Although the fundamental rights of citizens prescribed by the Constitution are comprehensive and systematic, the role of fundamental rights in human rights protection will be impacted because of unclear definition of the scope of citizens. Obviously, the 1982 Constitution has drawn lessons from the legal disadvantages in the previous three constitutions, stipulating in Item 1 of Article 33 that "All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China." This article has defined rather clearly the scope of subject of citizens who enjoy fundamental rights, having resolved the problem of scientific nature of the design of fundamental rights of citizens. After establishing the legal requirements for citizenship, the Constitution declares that people who have citizenship can enjoy unconditionally the rights prescribed by the Constitution and law, with the prerequisite of fulfilling corresponding duties prescribed by the Constitution and law at the same time. It in fact clarifies the "universality" of fundamental rights of citizens towards people with citizenship. It conforms to the general value requirement for the design of fundamental rights of citizens.

(2) The constitution clarifies that citizens are all equal before law.

The 1954 Constitution recognizes the principle of equality of citizens by law, which is not recognized by the 1975 and 1978 Constitutions. In the 1982 Constitution, Item 2 of Article 33 stipulates, "All citizens of the People's Republic of China are equal before the law." From the perspective of constitutional hermeneutics, although there are certain semantic differences between "by law" and "before the law," both terms are the same in the fundamental spirits of and requirements for protecting the equal right of citizens, reflecting the equal rights of citizens.

(3) It prescribes the right to vote and stand for election of citizens.

Article 34 stipulates, "All citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of nationality, race,



sex, occupation, family background, religious belief, education, property status, or length of residence, except persons deprived of political rights according to law.”

(4) It prescribes citizens’ freedom of speech, of the press, of assembly, of association, of procession and of demonstration.

Article 35 stipulates, “Citizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.”

(5) It prescribes the freedom of religious belief of citizens.

Article 36 prescribes in detail the different situations for freedom of religious belief, including: “Citizens of the People’s Republic of China enjoy freedom of religious belief;” “No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion;” “The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state;” “Religious bodies and religious affairs are not subject to any foreign domination.”

(6) It prescribes the inviolability of the freedom of person of citizens.

Article 37 stipulates, “The freedom of the person of citizens of the People’s Republic of China is inviolable.” “No citizen may be arrested except with the approval or by decision of a people’s procuratorate or by decision of a people’s court, and any arrest must be made by a public security organ.” “Unlawful deprivation or restriction of citizens’ freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited.”

(7) It prescribes the inviolability of the personal dignity of citizens.

Article 38 stipulates, “The personal dignity of citizens of the People’s Republic of China is inviolable.” “Insult, libel, false charge or frame-up directed against citizens by any means is prohibited.”

(8) It prescribes the inviolability of the residences of citizens.

Article 39 stipulates, “The residences of citizens of the People’s Republic of China are inviolable.” “Unlawful search of, or intrusion into, a citizen’s residence is prohibited.”

(9) It prescribes the freedom and privacy of correspondence of citizens are protected by law.

Article 40 stipulates, “The freedom and privacy of correspondence of citizens of the People’s Republic of China are protected by law.” “No organization or individual may, on any ground, infringe upon the freedom and privacy of citizens’ correspondence except in cases where, to meet the needs of state security or of investigation into criminal offences, public security or procuratorial organs are permitted to censor correspondence in accordance with procedures prescribed by law.”



(10) It prescribes the right of citizens to criticize and make suggestions.

Item 1 of Article 41 stipulates, “Citizens of the People’s Republic of China have the right to criticize and make suggestions to any state organ or functionary.”

(11) It prescribes the right of citizens to make complaints, charges or exposures.

Article 41 stipulates, “Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary; but fabrication or distortion of facts with the intention of libel or frame-up is prohibited. In case of complaints, charges or exposures made by citizens, the state organ concerned must deal with them in a responsible manner after ascertaining the facts.” “No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them.”

(12) It prescribes the right of citizens to compensation.

Item 3 of Article 41 stipulates, “Citizens who have suffered losses through infringement of their civil rights by any state organ or functionary have the right to compensation in accordance with the law.”

(13) It prescribes the right of citizens to work.

Article 42 stipulates, “Citizens of the People’s Republic of China have the right to work.” “Using various channels, the state creates conditions for employment, strengthens labor protection, improves working conditions and, on the basis of expanded production, increases remuneration for work and social benefits.” “Work is the glorious duty of every able-bodied citizen. All working people in state enterprises and in urban and rural economic collectives should perform their tasks with an attitude consonant with their status as masters of the country. The state promotes socialist labor emulation, and commends and rewards model and advanced workers. The state encourages citizens to take part in voluntary labor.” “The state provides necessary vocational training to citizens before they are employed.”

(14) It prescribes the right of citizens to material assistance.

Article 45 stipulates, “Citizens of the People’s Republic of China have the right to material assistance from the state and society when they are old, ill or disabled. The state develops the social insurance, social relief and medical and health services that are required to enable citizens to enjoy this right.”

(15) It prescribes the right of citizens to education.

Article 46 stipulates, “Citizens of the People’s Republic of China have the right to receive education.” “The state promotes the all-round moral, intellectual and physical development of children and young people.”

(16) It prescribes the freedom of citizens to engage in cultural activities.

Article 47 stipulates, “Citizens of the People’s Republic of China are guaranteed the freedom to engage in scientific research, literary and artistic creation and other cultural



pursuits. The state encourages and assists creative endeavors made by citizens engaged in education, science, technology, literature, art and other cultural work.”

(17) It prescribes the rights of citizens to private property and to its inheritance.

Article 13 stipulates, “Citizens’ lawful private property is inviolable.” “The State, in accordance with law, protects the rights of citizens to private property and to its inheritance.”

(18) It prescribes the right of citizens to compensation.

Item 3 of Article 13 stipulates, “The State may, in the public interest and in accordance with law, expropriate or requisition private property for its use and shall make compensation for the private property expropriated or requisitioned.”

(19) It prescribes the right of citizens to use the spoken and written languages.

Item 1 of Article 134 stipulates, “Citizens of all nationalities have the right to use the spoken and written languages of their own nationalities in court proceedings.” “The people’s courts and people’s procuratorates should provide translation for any party to the court proceedings who is not familiar with the spoken or written languages in common use in the locality.”

2. Besides the fundamental rights of citizens, it also contains provisions on other subjects of rights in protection of constitutional rights, and these subjects enjoy the following constitutional rights in accordance with the Constitution:

(1) The rights of working people

Article 43 stipulates, “Working people of the People’s Republic of China have the right to rest.” “The state expands facilities for rest and recuperation of working people, and prescribes working hours and vacations for workers and staff.” Article 8 also stipulates, “Working people who are members of rural economic collectives have the right, within the limits prescribed by law, to farm private plots of cropland and hilly land, engage in household sideline production and raise privately owned livestock.”

(2) The rights of workers and staff in enterprises and undertakings and for functionaries of organs of state

Article 44 stipulates, “The state prescribes by law the system of retirement for workers and staff in enterprises and undertakings and for functionaries of organs of state. The livelihood of retired personnel is ensured by the state and society.”

(3) The rights of women

Article 48 stipulates, “Women in the People’s Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, and family life.” “The state protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike and trains and selects cadres from among women.”

(4) Marriage, the family, and mother and child are protected by the state.

Item 1 of Article 49 stipulates, “Marriage, the family, and mother and child are



protected by the state.”

(5) The rights of Chinese nationals residing abroad.

Article 50 stipulates, “The People’s Republic of China protects the legitimate rights and interests of Chinese nationals residing abroad.”

(6) The rights of returned overseas Chinese and of the family members of Chinese nationals residing abroad

Article 50 stipulates, the state “protects the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad.”

(7) The rights of disabled members of the armed forces, of the families of martyrs, and of the families of military personnel

Item 2 of Article 45 stipulates, “The state and society ensure the livelihood of disabled members of the armed forces, provide pensions to the families of martyrs and give preferential treatment to the families of military personnel.”

(8) The rights of the blind, deaf-mute and other handicapped citizens

Item 3 of Article 45 stipulates, “The state and society help make arrangements for the work, livelihood and education of the blind, deaf-mute and other handicapped citizens.”

(9) The rights of foreigners

There are several provisions concerning the rights of foreigners, including Article 32: “The People’s Republic of China protects the lawful rights and interests of foreigners within Chinese territory, and while on Chinese territory foreigners must abide by the law of the People’s Republic of China.” “The People’s Republic of China may grant asylum to foreigners who request it for political reasons.” Article 18: “The People’s Republic of China permits foreign enterprises, other foreign economic organizations and individual foreigners to invest in China and to enter into various forms of economic co-operation with Chinese enterprises and other economic organizations in accordance with the law of the People’s Republic of China.”

(10) The rights of constituencies

Item 1 of Article 102 stipulates, “Deputies to the people’s congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships and towns are subject to supervision by their constituencies.” “The electoral units and constituencies which elect deputies to local people’s congresses at different levels have the power, according to procedures prescribed by law, to recall deputies whom they elected.”

(11) The rights of the accused

Article 125 stipulates, “The accused has the right of defense.”

With regard to the stipulations on the legal status of “citizen,” the political relevance between individuals and the state have been fully standardized through the recognition of citizenship and the protection of fundamental rights of citizens. The political relevance



between individuals and the state has now been completely institutionalized and legalized through stipulations in the text of the Constitution. In addition to the general legal connectivity between individual citizens on the one hand, and state and state organs on the other, which was established by the fundamental rights of citizens, the connotation of the political relevance between individuals and the state has been enriched and developed through the stipulations on the constitutional rights of specific subjects such as working people and the accused. From the perspective of human rights protection, because the concept of “universal human rights” was established in the text of the Constitution in 2004, individuals have gradually changed their status from legal to natural-person one so as to relate themselves politically with the political state, which has more intensified “moral duties” to resident, one of the composing elements of a sovereign state. The fields covered by the relationship between individuals and the state are expanding.

(IV) The concept of “citizen,” as an institutional term recognizing the political relevance between individuals and the state, has its historical limitations.

Since the 1982 Constitution was adopted, rapid progresses have been scored in China’s human rights protection. In particular, with victories of struggles for human rights protection in international human rights practices since early 1990s, while retorting the provocative speeches by the few countries hostile to China’s human rights policies, we have new understandings on the latest trends and developments of international human rights protection and have rectified some opinions and understandings originally not exact or scientific on the fundamental perceptions to human rights. In 1997 and 1998, Chinese government signed *the International Covenant on Economic, Social and Cultural Rights* and *the International Covenant on Civil and Political Rights*, recognizing the fundamental idea of universal human rights in international human rights covenants. On Feb. 18th, 2001, the Standing Committee of the National People’s Congress approved *the International Covenant on Economic, Social and Cultural Rights*, in accordance with whose stipulations the Chinese Government would submit a report on implementing *the International Covenant on Economic, Social and Cultural Rights* to the Human Rights Commission during UN Human Rights Meeting in March 2005. Given that China’s human rights protection has been increasingly in line with international practices, the Amendments to the Constitution of the People’s Republic of China was adopted on the Second Session of the Tenth National People’s Congress on March 14th, 2004, adding “The state respects and protects human rights” into the Constitution. “Human rights” should be perceived in accordance with universal human rights as stipulated by international human rights covenants, i.e. all the rights applicable to natural persons within the boundaries of the contracting states. Therefore, if the “human rights” as in the added amendment of “the state respects and protects human rights” is not perceived in accordance with universal human



rights in international human rights covenants, such stipulation actually makes no sense. From the 1954 Constitution to the effective 1982 Constitution, human rights protection has always been the primary guiding principle for designing constitutional rights system of the constitutions, only that the constitutional rights prescribed by the constitutions, including fundamental rights of citizens and the subject enjoying constitutional rights have not been expanded universally to all natural persons. The fundamental rights of citizens are applicable only to citizens holding nationality of the People's Republic of China, while the rights of foreigners are protected by the Constitution through a special constitutional rights system. According to the stipulations on constitutional rights by all the constitutions, the constitutional right applicable to all natural persons within the People's Republic of China does not exist. If the concept of "human rights" in the amendment to the Constitution is not perceived in accordance with universal human rights in international human rights covenants, then it does not have much meaning to the amendments and will even have negative influences on the significant achievements scored in human rights protection since the founding of the new China. In fact, the 1975 Constitution adopted during the Cultural Revolution has not only prescribed the fundamental rights and other constructional rights of citizens in much detail, but also stressed the basic responsibility of the local people's congresses at different levels for protecting rights of citizens. So if the amendment "the state respects and protects human rights" is in the sense of traditional human rights, then it is of no use to make it. To conclude, the introduction of "human rights" concept into the Constitution should be the human rights in universal human rights sense. The inclusion of human rights concept in the Constitution has transformed the mode for human rights protection and the structure of constitutional rights prescribed by China's previous constitutions, and extended the responsibility for human rights protection of the government to certain fundamental human rights enjoyed by all the natural persons living and working within the People's Republic of China, which are more fundamentally protective than fundamental rights of human. However, there is no contradiction between such universal human rights and fundamental rights of citizens prescribed by traditional constitutions, and they are mutually complementary. The introduction of the concept of universal human rights into the Constitution has recognized, on the one hand, the protection of citizens' fundamental rights by traditional constitutions, and, on the other hand, the unique value of citizens' fundamental rights prescribed by traditional constitutions in human rights protection, with independent fields of human rights protection different from ordinary human rights. As for foreigners, stateless persons and natural persons of other natures who are not holding nationality of the People's Republic of China, except for the standards of human rights protection prescribed by international human rights covenants, they do not naturally by law enjoy the same quantity and scope of constitutional rights with citizens holding nationality



of the People's Republic of China. The connotation and scope of rights of citizens are more extensive and profound than human rights in universal human rights sense.

Therefore, the introduction of human rights concept into the Constitution in 2004 has enriched the system of constitutional rights and citizens' fundamental rights prescribed by the effective Constitution and expanded the scope of subjects of constitutional rights as well as the depth and width of constitutional rights, giving more reliable constitutional guarantee for human rights protection. The introduction of "human rights" concept into the Constitution has enlarged the scope of moral duties of the state to individuals, broken beyond the limitations by the legal definition of the concept of "citizen" towards the political relationship between the state and individuals and enriched the connotation of principles for modern constitutional government, thus providing an effective institutional guarantee for the Constitution as the fundamental law to better safeguard "state sovereignty," standardize the order of the power exercised by state organs and protect individuals' lawful and legitimate rights and interests.

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HUMAN RIGHTS POLICY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

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Subject to the 1999 Constitution, the Bolivarian Republic of Venezuela is a democratic, social, legal and fair country, and sees it as the supreme value standard to keep the legal order, secure the smooth implementation of the law, maintain the life safety, freedom, equality, fairness, unity, democracy and social responsibility, and uphold the diversity of human rights, moral ethics and policies.

Guided by such a framework, Venezuela has carried out the political, economic and social development for the sake of respecting human rights since 1999. Moreover, Venezuela not only considers the opinions and views of human rights experts and scholars, and focuses on the opinions of male and female citizens. They have held talks over such issues as the increasing diversity and democracy in the society; the social, cultural and political inclusiveness; the correction of the neo-liberalist policies that destruct the social protection structure; and the identification of exceptional scenarios under the clearly-defined social policies in order to secure human rights.

However, such consideration has received the response of the Venezuela's right wing, which now no longer assumes power, and the international organizations that have allied with the right wing. They have systematically launched the movements to disclose the events that damage human rights on a large scale. The country has started building a complex society, where human rights constitute the basic element.

Formulation of the public policies focusing on human rights and poverty relief is realized by a series of specific programs. These programs are aimed to deepen the policies concerning the construction of the social inclusiveness for the purpose of protecting human rights. Meanwhile, these programs also lay an emphasis on the adoption of the suitable methods and strategies when making the plans, stress the change in the social structure and social conditions through the implementation of these programs, promote the transition from the pure social assistance conducts to the social relations, and advance the development of the participation and the subject democratic system through concrete forms. Such a system is just the ideal described by the constitution of our country.



Carry out Construction from the Angle of Human Rights

The entry into force of the constitution of the Bolivarian Republic of Venezuela has urged various administrative organs of the state to operate in compliance with the international standard. In this sense, the state has also taken necessary actions to enhance the effectiveness of the human rights security system of the state.

The new constitutional legal framework, decreed in 1999, confers Venezuelan citizens the right to participate in public affairs and express opinions on such affairs. Thus, building a participative and subjective democratic system is the flag of this country, and the people of the country are fully eligible and entitled to participate in the public affairs through local planning committees, social audit departments and community committees that are created.

The Constitution of the Bolivarian Republic of Venezuela of 1999 addresses every area of politics, economy and society, covers all the Venezuelan citizens, whether men or women, without any discrimination, prioritizes the guarantee of social rights, such as the basic rights of humans, and allows no difference on account of their social rank or economic condition. Thus, the rights to education, health, residence and social security based on civil rights shall exceed the significance of such conducts as relief or public assistance, and be viewed as the inalienable rights of all the Venezuelan citizens.

Thus, the different human concepts that appear in the social and political development will be greatly different from the past, because the relationship between the state and its citizens has also changed. In this process, many public policies focusing on certain specific areas in the past, many long-term poverty relief programs with slight effect and many programs conducted by the central institutions but rarely participated in by the public have gradually developed into the programs with the active participation of the mass, just as what they are like today, and they are no longer social relief in nature, but become the human right. The Social Project program is a good example.

The practices from 1999 to 2008 have given rise to the so-called Venezuelan Process during which the policies, social program, technological program and other programs were formulated. Venezuela ended the centuries-long backward situation that featured the vote seeking (by offering government positions and giving promises) and Neo-liberalism (advocating the limited intervention of the state in the judicial and economic activities) dominating the country. At that time, any faction would be prevented from participating in the state administration as long as it objected to the government ruling, and the workers for human rights protection also lacked the experience and ability in applying and administering public policies. However, it must be pointed out that some common problems still exist in the organization, planning and coordination of public policies; the effect assessment indicators and mechanism; the internal communication mechanism and publicity mechanism; and other areas. However, these problems have just become the motive for



learning, and urged the work to be done in an increasingly effective manner.

To make the program planning structure close to the first condition needed by people is not accidental. The concrete process used to achieve these objectives is important, because the possibility of realizing the objective depends on the healthiness and efficiency of the policy management to a large extent, which forms an important condition that most Venezuelans can perform human rights.

As far as the policies directly related to human rights are concerned, the traditional situations in violation of human rights must be noted. For example, the situations in relation to exclusiveness are an example, because such policy excludes most people from some rights (to receive university education, some health service and certain professional service, etc.). Another example is the administrative bad habits that guarantee some entrenched group. This aspect should at least be solved through a clearly-defined social and policy-based organizational form.

The work to promote the human rights protection has made a difference in our country; a solid system ensuring the smooth execution of the contents specified in the constitution has already come into being; and also, the right to receive education that each of us should enjoy has also made progress in either system or actual operation of the citizens. The male and female citizens who are increasingly close to the public institutions will not clearly apply for relief. The state constitution focusing on respecting and safeguarding human rights and the system administration based on an inclusive policy enable a considerable number of Venezuelans to participate in the activities related to their rights and the responsibility to the state.

In the domain of civil rights, the respect for life and freedom makes it possible to generate preventive rather than oppressive programs and plans in relation to the citizen security. Of course, it is not something easy to change a typical oppressive country, in particular, the concepts of the current civil servants who only act according to the law. In the domain of civil rights, if we say the persecution against the public demonstration has been terminated, we would like to say the police group is still reserving an oppressive culture, in particular, when handling the events involving the poor. Because of the adhesion to the inherent thoughts, a boy with brown color and coffee eyes aged 19-24 is certain to become a sacrifice at weekend. This is also reflected in the judicial administration, and basically exists in the penalty system.

To build a civilized society that respects human rights not only means the advance in the legislative field, but requires the state government and the society assume the liability together to implement a series of policies to change and face various increasingly imperative problems. Because these problems have caused the death of many people, who are sadly seeing the society is repeating the past story.



About political rights, the quick termination of the exclusive policy has made the democratization of the political relations, and given birth to the force objecting to the class with power. The decisive role of the public in the political affairs has been strengthened. In the domain of social rights, it should be a field where public policies are most powerful. Here, the established participative policies are changing the social status of Venezuela, rather than facing the problems in different natures.

Just as the United Nations Children's Fund, the United Nations Educational, Scientific and Cultural Organization and the United Nations Economic Commission for Latin America among many other international organizations admit, Venezuela has fulfilled its Millennium Objective. For example, the free education, the improvement of the hygienic conditions and the availability of drinkable water at households are all the result of the efforts of the state and the communities. A remarkable amount of program plans and policies can be seen in the Millennium Objective that are implemented and adjusted to meet the need of the state development in Venezuela. Also, the Millennium Objective includes project tasks.

Program Establishment/Change of Rules

To build a new social order with active efforts involves the change of the rule, either from the perspective of consolidating technological knowledge or from the perspective of understanding the reality. Other methods need to be found in order to devise the program plans based on the respect for human rights in the new social order of the state, rather than being content with those program plans aimed to provide relief and physical materials.

First of all, it must be pointed out that an effective tool is the participative survey. Though this is not the major topic of this article, it is a clear and accurate method for the planners in the office, and helps them understand what is truly functioning in the state. Some say the process of this survey method has the active and lasting characteristics, just like the continued education. It can be imaged that through the active participation in such survey, the public can be mobilized and organized. Once they are organized, it will be possible to find out the practical status and outstanding problems regarding the surveyed and further take actions to protect the social, economic and political interests of the surveyed.¹

The work oriented to human rights protection means understanding the status quo and the reality of the society. However, it must be also realized at the same time that as the surveyor, the drafter and the observer of the unfair phenomenon that damages the unity of the people, we must know it is not easy to express the attitudes of questioning, eliminating, supporting or promoting the change, or express all the attitudes in some cases. In the

¹ Social Program: Proposed by Hugo Chávez in 2003 to reinforce the establishment of the participative democratic system. It is considered by the government as a huge effort to repay the vast social debt and a necessary method to terminate poverty and build a free, equal civil society.



process of approaching the public, community or elected institution, we should confirm whether our working methods are influenced by one or more established rules, realize the existence of these established rules, and also know to look at them in a critical and dominant attitude.

In this regard, the writer *Darcy D' Oliveira* (1975) mentioned how to find out suitable surveyors in the survey process: The persons who live and work together with the people in a community and are trusted by them; maintain the true and mutual trust relations with the surveyed; and the surveyors also need to realize that his appearance itself is a factor to change the community. Therefore, he must be able to communicate with all the people while keeping a certain objective distance.

Every aspect mentioned above should be discussed and considered carefully, because to look for the program makers in the changing institutions for the sake of human rights protection can establish trust in the public, while such trust will play an active role in those communities, organizations or institutions. Either technically or politically, to provide the system support should be included in the entire work. The political views should not be put aside, but just see it as a pure technical job, merely work on schedule, and forget the role assumed in society, humanity and law when building a new social order.

When making the program plans focusing on human rights, instructions should be given to relevant staff, and a program summary should be offered to them to help them change the views in essence. The conditions include the desire to do something—the basic condition, the will to conduct the creative exercise, the ability to find new resources to obtain other materials, and the concept that it is possible to do something in other ways. This requires government officials and program makers perform the survey, and check their participative ability, technical ability and ability to change the environment and create opportunities.

Social Policy & Programs

Our country is now experiencing the changes in many ways, and these social and political developments will promote the structural change of the society. These programs are merely one of the many factors that conduce to the structural change of the society, represent the positive side of the social policy and serve as the practice of the participative and subject democratic system.

The social policy of the state is based on the universality, equality and common responsibility of the society, while the programs in this field, such as the system program¹,

¹ These programs focus on health (Internal Region Program, Miracle Program and Smile Program), poverty (Black Hippolytus Program), nutrition (Foods Program), entry of the Indian groups into the society, reinforcement of the national economy (Face Change Program), illiteracy elimination (Robinson Program I), socialization of education



constitute the basic strategy to overcome the social inequality and the poverty issue on a large scale and at a fast speed and achieve an inclusive society. Under the framework of this new order, it is necessary to reassess the standard for an inclusive society so as to instruct the formulation and implementation of the social programs, plans and projects.

These programs have played a significant role in improving the life of the Venezuelan people and guaranteeing the ethical unity. For example, the *Mercal* Program, the Black Hippolytus Program, the Regional Mothers' Program and the Che Guevara Program are all aimed to reduce the proportion of the population with extreme poverty. According to the data provided by the state family budget survey 2005III conducted by the National Data Institute, almost 48.3% of the population have benefited from various programs of the government in income.

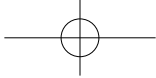
The Robinson Program, the *Ribas y Sucre* and the Sucre Program are the educational programs aimed to secure schooling, promote the entry and stay of students into schools and continue their learning as an effort to ensure all the citizens have the opportunity to receive the free, compulsory and high-quality education. In the health service field, an important progress is the health programs implemented nationwide: The Internal Region Programs I, II and III; the Miracle Program, the Smile Program and the closest *José Gregorio Hernández* Program.

The result achieved by every program is an expression that the Venezuelan government keeps its commitment. The Venezuelan government not only aims to fulfill the established objectives under the Millennium Plan, but also aims to effectively carry out the policies in the actual fight against poverty and build a more humanistic and equal world. Every program is the evidence made by the Venezuelan government in protecting human rights.

From the domestic and foreign policies that have been adopted by Venezuela since 2000, it can be seen that Venezuela is continuously deepening the interest of the people in participating in the social affairs in the regional unity mechanism and the respect for human rights. This is why you can see the development and progress in these areas in MERCOSUR, ALBA and UNASUR.

The conclusion may be reached that human rights as the focus of the public policy are related to the policy draft of the government and the development programs of the community, and have become a reality in our country, and also a true strategy for us to fight against poverty. The rights to food, housing and personal liberty are no longer a shell game in the constitution, and truly become part of the life of all the Venezuelan citizens and part of our world.

(Robinson Program II), socialization of sports (Internal Region Sports Program), identity card (Identity Program), socialization of land, national innovative potential (Science Program), rescue and construction of symbolic elements (Culture Program), families and women with extreme poverty (Regional Mothers' Program) and greening (Trees Program).



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THE EUROPEAN CONVENTION OF HUMAN RIGHTS: A HARMONIOUS SYSTEM OF HUMAN RIGHTS PROTECTION

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The year 2009 presents, in fact, a good occasion to speak about the European Convention of Human Rights: We celebrated this year the 50th anniversary of the Convention's procedural mechanism and the 60th anniversary of the Council of Europe, the Convention's fathering organization.

So both these institutions have lived long to allow consideration of their respective merits. You will not be surprised to hear from me, that both have lived fully up to their expectations.

The Council of Europe is the oldest political European organization and was founded in 1949 in order to develop throughout Europe common and democratic values, namely the rule of law and human rights. Today it covers virtually the entire European continent, with its 47 member states. For States which are not yet part of and wish to join the economic organization of the European Union, a good record within the Council of Europe is seen as an important precondition.

As an intergovernmental organization, the Council of Europe does not set directly binding law but provides a framework to the elaboration of European Conventions and Treaties.

The European Convention of Human Rights was the very first convention elaborated by the Council of Europe and remains also the most important. It contains a catalogue of fundamental civil and political rights and freedoms.

For Europe after the Second World War, shaped by the horrible and most serious human rights violations which had occurred, these Convention rights stood for a new hope. They were greeted as "seeds of peace" and "essential bridges to the future." All Member States of the Council of Europe have harmonized and amended their national legislation in order to comply with these human rights standards. Today, the Convention has become Europe's reference document for human rights.

However, the substantial rights set out in the Convention are only a starting point in understanding its extraordinary impact: The uniqueness of the European Convention lies in



the system behind: In fact, the European Convention for Human Rights offered—from the very beginning on—a mechanism for the enforcement of its guarantees.

And this “detail” made all the difference.

During my visits to China I learned about the importance of the concept of harmony in your society. This idea of harmony is one of the key values of Chinese traditional culture. It refers to balanced relations between two sides, despite their opposites, differences or contradictions.

I have been told that the fact that you estimate highly the idea of harmony is based on the deep knowledge of the essential value of harmony: different factors can create new and positive phenomena by reciprocal compromises.

Turning now to the subject of my talk again, I think that the very ability to conciliate different, sometimes even antipodal demands is one of the main strengths of the European Convention and provides perhaps even the key to its success. In fact, the European Convention can be called a harmonious system of human rights protection.

First of all, the European Convention’s system is harmonious, because human rights are protected by a balanced system of both, word and action. The Convention not only stipulates basic human rights, it also established an international judicial organ, the European Court of Human Rights, with jurisdiction to find against States that do not fulfill their undertakings.

Second, the European Convention’s system is harmonious, because it perfectly reconciles past engagements with present needs. The Convention text is today nearly sixty years old, but judicial interpretation by the European Court of Human Rights has allowed its constant adaption to changing social and moral standards. So the Convention stays a “living instrument” and can be applied to situations that were not foreseeable when it was first adopted.

And thirdly, the European Convention’s system is harmonious, because the very existence of a judicial body permits to examine and solve human rights cases in their specific contextual situation. So, conflicting interests are carefully balanced before priority is given to a certain right.

1. “Harmony between word and action”: The European Convention of Human Rights’ enforcement mechanism

The Convention stands out against all other similar initiatives by its unique international supervision machinery: A single, full-time and permanent tribunal, the European Court of Human Rights, oversees the enforcement of the Convention. It consists of 47 judges out of the 47 different Member States. We judges are, of course, completely independent in the performance of our duties and do not represent our respective home states.



States and individuals, regardless of their nationality, may complain before the Court about alleged violations of the Convention by Contracting States. However, since the Court was established, almost all cases have been brought by individuals. Over 30,000 such applications are lodged every year.

This can be certainly partly explained by the fact that, in line with its status as a basic human rights institution, access to the Court is made as “easy” as possible. So any individual can bring a case, as applications may be filed formless, without legal assistance and in any language of a Contracting State. Also, the procedure before the Court is rather simply constructed and there are no fees.

Depending on the importance of a case, the Court sits in three-, seven-, or—when very important legal issues are at stake—in seventeen- judges chambers. Most cases are decided after written procedure alone, but there may be also adversarial and public hearings. However, this is not often necessary, because cases before the Court mostly raise questions of law alone. In fact, the European Court is not an ordinary court of appeal, but determines only whether a contested national law or practice violates the Convention’s provisions or not.

A very important feature of this procedure is the fact that the Court may examine a case only after all relevant legal remedies at the national level have been used. In other words, individuals complaining of violations of their rights must first have taken their case through the courts of the country concerned, up to the highest possible level of jurisdiction. In this way, according to the principle of subsidiarity, the State itself is first given an opportunity to provide redress for the alleged violation at national level. In practice, many complaints do not satisfy this criterion and are, therefore, like applications which are lodged too late or are plainly unfounded, not even examined by the Court.

Those cases, which are considered on the merits, ultimately lead to Court judgments finding that a Contracting State has or has not, by a particular law or practice, violated the Convention.

In event a violation being found, several obligations follow for the State concerned:

First and most obviously is the obligation to pay compensation to the applicant if the Court has ordered it to do so. Depending on the circumstances of the case, the State may also be obliged to other individual measures for the applicant’s benefit, such as to release him from unjustified arrest or to re-open an unfair trial. Finally, the State concerned must be careful to ensure that no such violations occur again in the future. In some cases this requires the State to take general measures, so for example to bring its legislation into line with the Convention.

The Court’s judgments are final and binding. However, as we all know, without compliance or enforcement, even the best of judgments are of little value to the victims of



human rights violations.

So, in the European Convention system the judicial procedure is followed by diplomatic supervision.

When the Court delivers a judgment finding a violation, it transmits the file to the Committee of Ministers of the Council of Europe, a body comprising the foreign ministers of all Member States or their representatives. It is this organ which will examine and ensure that the State concerned has done all that is necessary to comply with the Court's judgment. The political pressure exercised by the Committee of Ministers has always proven sufficient: To date, there has yet been no judgment of the Court that has not been complied with, even if in some cases it has taken some time.

In sum, the European Court and the Committee of Ministers ensure that the rights guaranteed under the Convention remain concrete and effective. Over the past half-century more than 10,000 judgments, delivered and executed by these institutions, have granted redress to victims and obliged national governments to oversee their respective practices and law in many fields. Today, there is hardly an article of the European Convention which has not spawned a significant case law. Through the Court's jurisprudence, the European Convention on Human Rights has become a powerful and dynamic tool in the response to new challenges.

2. Harmony between past and present: The European Convention as a "living Instrument"

Whoever reads the Convention's catalogue for the first time, may be struck by the fact that it is practically limited to the most basic and most essential rights: The right to life and liberty, freedom from inhuman and degrading treatment, slavery, servitude and forced labor, the right to a fair trial; freedom of conscience, of speech and of assembly—these guarantees are broadly uncontroversial and remind strongly of the UN Universal Human Rights Declaration. They are not ground-breaking in themselves. Still, scholars and practitioner all over the world praise the protection of human rights under the European Convention as "most sophisticated" and of "a very high level."

This is so, because the content and meaning of the rather general rights of the Convention, has constantly been developed by the European Court of Human Rights so that we can speak of a "living instrument."

An important legal theorist once said: "Law must be stable yet it cannot stand still." This has proved true for the European Convention of Human Rights:

Many of the terms used in the Convention contain value judgments or moral principles which evolve over time. This means that in applying the Convention the Court will have regard to the developments in the State Members. Sometimes, this implies that the Court



overturns its jurisprudence because of new social or political attitudes. For example, in the past fifty years the approach of European societies has considerably changed to issues such as homosexuality, children born out of wedlock, transsexuals or the question of equality between the sexes. These facts are widely accepted today and, in accordance, the present European Court would not accept here any penalization or discrimination.

Sometimes, the Court's jurisprudence has also extended the scope of rights and generated new concepts out of the Convention text. The judicial principle of positive obligations, for instance, requests States to take concrete action in order to secure human rights in addition to the traditional prohibition to interfere. So, it is now clear that under the right to life in Article 2 of the Convention State authorities must carry out an investigation into deaths caused by officials or to do all that could reasonably be expected to avoid a real and immediate risk of life. Similarly, under Article 8's right to family and private life, a State may be obliged to allow a person to remain in the country because of his personal situation or regulated activities which cause pollution.

Of course, even "dynamic interpretation" has its limits and will not justify the reading new rights into the Convention. Nevertheless, it helps to keep an ageing legal text effective. The Convention's drafters intended to protect the individual not only against the threats of the past, but also against the threats of the present and the future.

And indeed, today new contexts have emerged, which were unforeseeable fifty years ago when the Convention was adopted. Terrorism, large-scheduled organized crime or different types of trafficking create tension in our European societies and a tendency to give precedence to order and security, sometimes perhaps to the detriment of basic human rights. The influx of clandestine immigrants to Europe driven by poverty and despair has an impact on policies which are often accompanied by xenophobia, racism and intolerance. In the same way, the connection which is, sometimes over hastily, made between certain types of religious belief and violence has exacerbated susceptibilities. Finally, development in the fields of science and technology, although an instrument of progress, may generate new threats for private life and freedoms.

All these circumstances call for delicate choices between the interests of the community against the rights of the individual. Hence the importance of the European Court as a last judicial instance in human rights matters, which can judge concrete situations upon their compliance with a timeless legal convention but by doing so, has regard to contemporary standards. This brings me finally to the last part of my talk, in which I will speak of the difficult balancing exercise the Court often has to undertake and the toolkit developed in this regards by its case-law.



3. “A just balance between different interests and rights”: The European Court of Human Rights’ Approach

Even the most fervent human rights defender must accept that individual rights and freedoms sometimes have to be restricted.

So, perhaps, the real issue in the human rights debate does not concern their existence in itself but how far and to what extent an individual’s fundamental rights should prevail over the overall interest of society or another individual’s rights. And, indeed, the relationship between human rights and public or other interest exceptions is one of the most important subject-matters in the European Court’s jurisprudence.

This being said, I have to stress, however, that certain rights of the European Convention cannot be restricted at all, even in order to realize the most legitimate and important objectives.

These, so-called “absolute rights”—which include the right to life, the right not to be subjected to torture or to degrading or inhuman treatment or the right not to be subjected to slavery or forced labour—are deemed so fundamental and vital to human existence and dignity that there is no excuse for interfering with them.

The Court has always been strict on this point. In its recent jurisprudence it affirmed, in particular, several times the absolute nature of the prohibition of ill-treatment: For instance, it found that a hijacker cannot be subjected to threats with torture, even in order to extract from him information about his victim’s whereabouts. Also, a foreign citizen who faces serious risk of torture in his home country must not be expelled, whichever risk or threat he constitutes for the national security of the host State; In sum, in situations involving rights of an absolute character, the need to balance different interests simply does not arise.

Many other rights and freedoms under the Convention, though, expressly allow for restrictions. This is, in particular, the case of the right to privacy, freedom of religion and thought, freedom of expression and freedom of assembly and association which can be found in Articles 8-11 of the Convention. Here, their first paragraph sets out a right while their second paragraph qualifies it by listing limitations: Interference by the authorities is allowed fewer than three prescribed conditions.

First, the interference must be in accordance with a national law. Second, the interference must pursue a legitimate aim. Legitimate recognized aims concern the protection of public interests (such as national security, economic well-being, health and morals) or other private interests (for example somebody’s interest of good reputation). And, thirdly, the interference must be necessary in a democratic society and proportionate. The European Court goes through each of these requirements in turn to decide whether or not a national restriction amounted to a violation of the Convention. Only if all three conditions are met, and it is in first line for the State authorities to prove that this was the case, it will



permit that in this specific situation other interests and rights override the fundamental human right of an individual.

In most of the cases before the Court, the fulfillment of first two of these criteria, that is: the existence of a legal basis and a legitimate aim, is not problematic. However, the answer to the third question, the requirement of necessity in a democratic society and its proportionality, proves often tricky and not so easy to answer. This is why I will be a bit more elaborate on this point.

Establishing that a measure is “necessary in a democratic society” involves showing that the action taken is in response to a pressing social need. The test of proportionality requires the Court to balance the severity of the restriction placed on the individual against the importance of the public interest. When this balance appears to be just, in other words, when there is a reasonable relation between the aims to be achieved and the methods used, a measure is also proportionate.

Let me accompany these theoretical explanations with concrete examples out of the Court’s jurisprudence:

As regard the life to privacy, we had lately some interesting cases concerning environmental matters. Applicants complained, for instance, about aircraft noise disturbing their sleep and toxic emissions from nearby waste-plants.

The Court admitted that there had been interference with the respective complainants’ right. However, balancing all competing interests at stake, the conclusions it reached as to the existence of a violation differed: It dismissed the complaint about the night flights, as it found that these were in the interest of the economic well-being of the concerned state and the individuals concerned could move elsewhere without financial loss. So the overall balance was fair and the interference still proportionate. This was, however, not so in the case of a man who suffered from a waste-treatment plant located close to his house: Here the judges’ choice went in favor of his rights rather than those of the community. They considered that the level of nuisance which involved “gas fumes, pestilential smells and contamination harmful to health” exceeded that which would be viewed as reasonable. It found a violation of the applicant’s right.

Other situations of conflicts of rights arise where the free expression of one person encroaches upon another individual’s interest in good reputation. National authorities tend to prevent the first right for the benefit of the latter, which is sometimes wrong. The Court found, for example, that a defamation conviction of a journalist because of his harsh words against a high standing politician amounted to a violation of his freedom of expression. The politician’s interests were outweighed by the fact that the criticism had some basis and that, by his profession, the politician had himself knowingly laid open to public scrutiny.

The Convention right to religious freedom also occasionally clashes with other



important interests and rights. Recently, a Turkish student complained about the prohibition to wear the Islamic headscarf at public university. The Court, however, found that in this specific situation the State's principle of secularism and State neutrality in religion matters prevailed. So it dismissed the complaint.

You see from these examples, that the interpretation given to public or other interests' exceptions has often a political or value-laden nature. Therefore, in very controversial cases, the European Court refers to the national state's solution of the situation. This is the concept of the national margin of appreciation which means that in absence of a uniform European conception, a national State may be in the better position to judge the sensitivities present in a specific setting.

Some time ago, the Court was confronted with a conflict between a child's right to know its origins and the mother's interest in keeping her identity secret. The child had been abandoned by her mother at her birth and was adopted. When she later tried to obtain information about her biological parent, the national authorities refused this under reference of the mother's wish to stay anonymous. The European Court found that, having regard to the state's discretion in such a delicate matter as policies concerning children abandoning, their proceeding was still acceptable. So it arrived at the conclusion that the national authorities had not violated the child's rights to family life under the Convention.

So, in sum national states have the primary role of protecting human rights, which the European Court supervises. So, when difficult issues of social, moral or economic policy are involved on which there is no clear European consensus, states keep their discretion—unless they strike a clearly unproportional balance to the detriment of basic individual rights.

Conclusion

I have mentioned many merits of the European Convention system. But I will not hide that this system, as any human system I guess, has also its shortcomings and is not perfect. So the very success of the European Convention has brought with it a danger: Today the increasing number of applications to the Court threatens to overwhelm this institution. So in Europe, we are at the moment seriously discussing about procedural reforms to keep the system alive.

Also, from a world-wide perspective, the European Convention is certainly only a restricted regional system in the ever-expanding web of human rights protection mechanism. The organs of the European Convention were—at the least in the first few decades of their existence—privileged in that their field of application extended to a relatively homogeneous region of Europe. So the Convention has to be seen as the product of a specific European history, territory and geopolitical situation. I don't think that this Western template could,



would or should be as such conferrable to other continents which have or will find their own solutions.

The concern of the Court is to ensure that all persons, some of whom are in vulnerable and even distressing circumstances, enjoy concrete and effective protection of their most fundamental rights. This concern is a world-wide one and the key to the progress of all its peoples. So we should stay in dialogue.

(The author is Judge at the European Court of Human Rights)



INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW

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As Sun Tzū already noted in *The Art of War*, one of the oldest and most successful books on military strategy is: “In the practical art of war, the best thing of all is to take the enemy’s country whole and intact; to shatter and destroy it is not so good. So, too, it is better to capture an army entire than to destroy it, to capture a regiment, a detachment or a company entire than to destroy them.”¹

This example of Taoist thinking in the 6th century BC has still its value and alludes to one of the main principles of International Humanitarian Law (IHL): the principle of necessity as one of the main constraints of the conduct of war. Today IHL is, however, mainly concerned with the protection of the civil population and civil goods.

The subject of my paper is “International Humanitarian Law and Human Rights Law.” Let me start off with some general remarks. I shall then turn on the relationship between the regimes of IHL and Human Rights Law (HRL). I shall conclude by touching the means and methods of accountability and implementation as they were gradually established after the Second World War.

IHL was, for a long time, a closed system of norms, and of interest to only a few scholars and diplomats. But it is much more than that and its implications reach well beyond the realms of war and peace. As a matter of fact, IHL is at the origin of modern human rights thinking. It was a precursor of the modern human rights movement that emerged decades afterwards with the Charter of the United Nations and the Universal Declaration of Human Rights.

IHL was ahead of its time in putting individuals at the centre of its focus. From its very beginning, it tried to alleviate the suffering of *individuals*, if necessary by restricting the actions, or the freedom to act, of *States*. In the 1860s, Louis Appia, one of the five founding members of the ICRC declared that “to humanize war, if that is not a contradiction, is our mission.”²

1 *The Art of War by Sun Tzū—Special Edition*, English Translation and Commentary by L. Giles, El Paso Norte Press 2005, Chapter III: Attack by Strategem.

2 C. Moorhead, *Dunant’s Dream—War, Switzerland and the History of the Red Cross*, London, HarperCollins, 1988, p. 22.



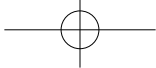
These words will sound familiar to the modern international lawyer. But they draw on even older traditions. In *The Social Contract*, Jean-Jacques Rousseau made the following observation: “War then is a relation, not between man and man, but between State and State, and individuals are enemies only accidentally, not as men, nor even as citizens, but as soldiers; not as members of their country, but as its defenders. Finally, each State can have for enemies only other States, and not men; for between things disparate in nature there can be no real relation [...] The object of the war being the destruction of the hostile State, the other side has a right to kill its defenders, while they are bearing arms; but as soon as they lay them down and surrender, they cease to be enemies or instruments of the enemy, and become once more merely men, whose life no one has any right to take.”¹

Emer de Vattel, a Swiss scholar who was writing before Rousseau in 1758, made this statement in *Droit des Gens* (See below): “As soon as your enemy lays down his arms and surrenders, you no longer have any right over his life.”

After the Second World War, a system of human rights was gradually developed², and a productive interrelationship between the two branches of law—IHL and Human Rights Law (HRL)—came into being. Generally speaking, the evolution of the human rights system led to dramatic changes in the established structures of the international order. Previously, this order had been concerned only with States. But the human rights movement brought the individual to the forefront of international law. An interesting aspect of this paradigmatic shift was the substantive enrichment of both HRL and IHL through a process of mutual influence. In the field of HRL, mechanisms of implementation were created that helped also to enforce IHL, which had its deficiencies in this regard. In addition, Moynier’s dreams were gradually realized, namely the effort to enforce IHL through international criminal law. We may expect IHL to be influenced by a more recent development in the realization and implementation of human rights: the creation of truth and reconciliation commissions. It is argued today that in certain situations, such alternative methods might be as well-equipped as, or even better equipped than criminal courts or tribunals to put into practice some of the principles of IHL.

1 J. J. Rousseau, *The Social Contract or Principles of Political Right*, 1762. Translated by G. D. H. Cole, Book One, Chapter 4. Available at: <http://www.constitution.org>.

2 T. Buergenthal, „Self-Executing and Non-Self-Executing Treaties in National and International Law,” *Recueil des cours*, Vol. 235 (1992), pp. 303 *et seq.*



I. Substantive Aspects of Processes of Mutual Influence and Convergence and of Exclusion

1. General Approach¹

a) Theoretical Models

IHL has had a life of its own for a long time. One might call it, in modern terminology, a “self-contained regime.” However, because of the rise of HRL within the Charter of the United Nations, the relationship between this new body of law and traditional IHL came to require clarification. Three basic theories have been suggested:

The “theory of separation” holds that the two branches have different histories; they also differ in their contents. They share no common ground. Clearly, this theory has become untenable. It is no longer compatible with the practices of international organizations and of States, both of which appeal, increasingly, to IHL and HRL in situations of armed conflict. Equally strong tendencies can be detected in jurisprudence and doctrine to refer in parallel to both regimes in the same situation.

The “theory of fusion” holds that IHL and HRL have merged into a new and unique normative system: both branches have lost their identities and have become indistinguishable parts of a normative whole. This was the theory underlying the Teheran Conference organized by the United Nations in 1968, which dealt with IHL as “international human rights in armed conflicts.” This theory is just as wrong as the theory of separation, and neither theory reflects legal realities. That is because both IHL and HRL have retained to a large degree their separate identities: different legal bases as for as content and spirit are concerned as well as different sorts of mechanism for their implementation.

The truth lies—as the “theory of convergence or complementarities” correctly maintains—in the middle. According to this theory, IHL and HRL resemble two overlapping circles. There are human rights that are beyond the scope of IHL (such as the right to vote), and there are principles of IHL with which HRL is not concerned (such as many rules regulating the conduct of hostilities). But increasingly, important sections of both systems have not only the same goals (*finalité*) but similar contents as well. The difficult task now, for both theory and practice, is to develop—from case to case or within a more general scheme—criteria to decide, when both regimes overlap, how they ought to relate to each other.

1 M. Bothe, “Humanitäres Völkerrecht und Schutz der Menschenrechte: Auf der Suche nach Synergien und Schutzlücken,” in P.-M. Dupuy et al. (eds.), *Völkerrecht als Wertordnung, Festschrift für Christian Tomuschat*, Kehl, Engel, 2006, pp. 63-90; M. Bothe, “The Historical Evolution of International Humanitarian Law, International Human Rights Law, Refugee Law and International Criminal Law,” in H. Fischer, U. Froissart, W. Heintschel von Heinegg und Ch. Raap (eds.), *Krisensicherung und humanitärer Schutz, Festschrift für Dieter Fleck*, Berlin, Berliner Wissenschafts-Verlag, 2004, pp. 37-45; H.-J. Heintze, “On the Relationship between human rights law protection and humanitarian law,” *International Review of the Red Cross*, No. 856, 2004, pp. 789-814.



Let me explain why the third theory now seems to be the most pertinent. This was not immediately obvious. The first human rights instruments were drafted idealistically, in a time when it was assumed that under the Charter of the United Nations peace would flourish. The need to provide for the promotion and protection of human rights in times of war was just not felt. Also, when the Universal Declaration of Human Rights was adopted in 1948 by the UN General Assembly, no war clause was included. This approach neglected the fact that human rights are most endangered in times of war or during national emergencies. However, things changed and, gradually, a more realistic view began to assert itself. For instance, the European Convention of Human Rights was based on the idea that the scope of its application included situations of armed conflict. One section of the Convention—the first paragraph of Article 15—reads like this:

“In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.”

Underlying this clause is the pragmatic acceptance that even though newly created international institutions represented significant progress in the quest for world peace, they would not do away with war and violence. Therefore, problems over the applicability of HRL in armed conflicts would continue to be relevant.

Similarly, in its first paragraph, Article 4 of the International Covenant of Civil and Political Rights provides that:

“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties (...) may take measures derogating from their obligations (...) to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”

Other human rights treaties contain similar clauses. These examples—many others can be cited—seem to indicate that human rights law is now based on the idea that, generally, its applicability endures in times of armed conflict. This is quite “logical,” considering that by their very nature human rights aspire to be universal in scope. IHL instruments, on the other hand, refer to principles and rules outside the human rights system. Let me just mention, in this context, Article 75 of Additional Protocol I. This provision expands the protection granted by common Article 3, which has been called a “mini-convention,” and which constitutes a sort of “summary” of legal principles, particularly in the very complex field of judicial guarantees. It grants a minimum of protection in times of armed conflict to anyone who, for one reason or another, was unable to claim a particular status (prisoner of war, civilian internee in



accordance with the Fourth Geneva Convention, wounded, sick or shipwrecked).

Article 75, para.8, of Additional Protocol I states: “No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1.”

We see that unlike human rights norms, this “summary of the law” leaves no room for derogation.

b) Overlapping of IHL and HRL

Is there a general theory that might help us to decide when to apply IHL and when HRL?¹ What is the proper approach? Let me make the following two points.

IHL applies *only* in situations of armed conflict. However, HRL continues to apply in an armed conflict if and in so far as treaty guarantees have not been suspended under the war or emergency clause of the relevant human rights treaty. This seems to be only “logical” as it is the purpose of HRL to protect persons at all times, and it is therefore relevant to and applicable also in situations of armed conflict. If human rights are inherent in human beings, they cannot also be contingent—unless one believes that during war both soldiers and victims cease to be human. IHL and HRL are to be applied concurrently. According to the general rules of International law (as codified in Article 31 of the Vienna Treaty Convention), the two bodies of law have to be harmonized. IHL has to be interpreted in the light of HRL, and vice versa; they will thereby reinforce each other and provide the maximum freedom for the individual.

However, there might be instances in which human rights and humanitarian norms contradict each other. In such instances, IHL, being *lex specialis*, prevails. The “strength” and predominance of IHL is in direct proportion to the proximity of the battlefield. Thus, the closer a particular legal situation is to the battlefield, the more IHL will prevail over HRL. In law enforcement, HRL generally prevails. Law enforcement usually takes place within the framework of State institutions, a forum for HRL rather than IHL.

In fields where IHL and HRL overlap, the proper approach for solving problems concerning the relationship between the two seems to be this: the general rule of complementarity applies. However, in exceptional cases, the more specific rule prevails.

2. Rule of Complementarity (Parallel Interpretation)²

Instances of overlapping HRL and IHL regimes are to be found most frequently in

¹ Bothe, “Humanitäres Völkerrecht und Schutz der Menschenrechte,” see *supra* note 3; Bothe, “The Historical Evolution of International Humanitarian Law,” see *supra* note 3; C. Droege, “The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict,” *Israel Law Review*, Vol. 40, 2007, pp. 310-355; Heintze, see *supra* note 3.

² L. Doswald-Beck, “Human Rights and Humanitarian Law: Are there Some Individuals Bereft of all Legal Protection?” in *Mapping New Boundaries, Proceedings of the American Society of International Law*, 98th Annual Meeting, Washington D.C., 2004, pp. 353-358.



situations of occupation and in non-international armed conflicts. In these circumstances, HRL complements the protection provided by IHL. Norms reinforce each other.

Application of HRL in armed conflict is recognized under IHL. This has been the usual practice of the Security Council, the General Assembly, the Commission on Human Rights and now the Human Rights Council. They have repeatedly reaffirmed the applicability of human rights in situations amounting to armed conflict.

Jurisprudence and State practice have thus accepted the application of human rights in times of armed conflict, on both the international and the national level.

Congruence of content was attained in several areas: the right to life; prohibition of torture, cruel, inhuman or degrading treatment or punishment; arbitrary arrest or detention; discrimination on grounds of race, sex, language or religion; and due process. With regard to trials in non-international armed conflicts, common Article 3, for example, refers to a “regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.” Similarly, Article 84 of the Third Geneva Convention states that a prisoner of war may be tried only by a court that offers essential guarantees of independence and impartiality as they are generally recognized. Clearly, both provisions are accessible to interpretation in the light of parallel rights contained in human rights instruments.

On the other hand, in various cases IHL provisions might be more precise and demanding than their counterparts in HRL; the latter might then be interpreted in the light of the former in order to strengthen the rights of the individual. The rights of the missing, and the right to be reunited with one’s family, come to mind in this context. Many more examples can be given. I shall address two particularly interesting issues related to situations that involve overlapping IHL and HRL regimes: administrative detention and belligerent occupation.

c) Example one: Procedural principles and safeguards for internment and administrative detention in armed conflicts and other situations of violence¹.

Deprivation of liberty for security reasons is an exceptional measure of control that may be taken during armed conflict, whether international or non-international. Administrative detention of persons believed to represent a threat to State security is also being imposed—with ever increasing frequency—in situations other than armed conflict. In the matter of protecting the rights of persons affected, both internment and administrative detention are insufficiently elaborated. By drawing on the provisions of IHL and HRL, procedural principles and safeguards might be developed for application as a minimum standard in

¹ J. Pejic, “Procedural Principles and Safeguards for internment/administrative detention in armed conflict and other situations of violence,” *International Review of the Red Cross*, No. 858, 2005, pp. 375-391.



all cases of deprivation of liberty for security reasons. There are some basic norms in legal instruments for regulating international armed conflicts. But it is not at all clear how administrative detention is to be organized in non-international armed conflicts. Common Article 3, which applies as a minimum standard to all non-international armed conflicts, contains no relevant provisions, apart from the requirement of “humane treatment.”

Since there are no rules for the internment of individuals in non-international armed conflicts, it is necessary to draw on HRL when devising procedural principles and safeguards to regulate internment in such conflicts.

d) Example two: Belligerent occupation¹

The law of belligerent occupation was codified in The Hague Declarations and Conventions of 1889 and 1907. The provisions contained in these instruments constitute customary law now. The Fourth Geneva Convention developed this regime in great detail. Additional Protocol I added only a few details.

The occupations which the authors of the Hague Regulations had in mind came about when, during an armed conflict, the forces of one party drove the forces of the other party from sections of their own territory. The character of military occupations in modern times has often been quite other. First of all, they have lasted longer. The occupation of the northern part of Cyprus by Turkey, or of the territories in Palestine by Israel, comes to mind. The old law of belligerent occupation has often seemed inadequate for dealing with such situations; and this raises many questions about the applicability of traditional rules. Certainly the old theory of balancing the security interests of the occupier against the rights of the occupied population remains valid. But how does one balance competing interests when circumstances have changed? In the analysis of any legal regime, it is useful to clarify the interests that have to be accommodated in that regime. There is a simultaneous application of IHL and HRL.

3. Exception: *Lex specialis* (Instances of the More Specific Rule Prevailing)

The ICJ has authoritatively determined that human rights provisions continue to apply in times of armed conflict, unless a party has lawfully derogated from them. In its *Advisory Opinion on Nuclear Weapons*, the ICJ stated:

“The Protection of the International Covenant on Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain

¹ See M. Bothe, *Effective Control—a situation triggering the application of the law of belligerent occupation* (manuscript); A. Roberts, “Transformative Military Occupation: Applying the Laws of War and Human Rights,” *American Journal of International Law*, Vol. 100, 2006, pp. 580-622; D. Thürer and M. MacLaren, “‘Ius Post Bellum’ in Iraq: A challenge to the Applicability and Relevance of International Humanitarian Law?” in K. Dicke, S. Hobe, K.-U. Meyn, A. Peters, E. Riedel, H.-J. Schütz und Ch. Tietje, *Weltinnenrecht—Festschrift für Jost Delbrück*, Berlin, Duncker & Humboldt, 2005, pp. 753-782.



provisions may be derogated from in times of national emergency.”¹

The Court clarified the relationship between the right to life under Article 6 of the International Covenant on Civil and Political Rights and the protection of life under IHL.² The ICJ held that a *renvoi* to the applicable *lex specialis*, the law of armed conflict, was necessary in order to determine the legality of any deprivation of life. The prohibition of arbitrary deprivation of life was considered to apply. But how to determine whether, in an armed conflict, such deprivation is arbitrary? The Court held that it lay with *lex specialis* to decide this question. One therefore has to turn to the law applicable in armed conflict, which is designed to regulate the conduct of hostilities. Thus, whether a particular case of loss of life, caused by the use of certain weapons in warfare, is to be considered an arbitrary deprivation of life, contrary to Article 6 of the Covenant, can be decided only by referring to the special law applicable in armed conflict; it may not be deduced from the terms of the Covenant itself.³ In other words, planning an operation with the intention of killing is, of course, never lawful under IHL. But this is not to say that intentional killing is never permitted: it is lawful when, in order to protect life, it is deemed to be strictly unavoidable; even a warning will not be required in instances of self-defence, for example. But this standard is very different from the one applied in a planned operation in an armed conflict. IHL permits incidental loss of civilian life and injury to civilians caused by an armed attack, but requires that such loss of life or injury not be excessive in relation to the concrete and direct military advantage that is anticipated.

II. Accountability (Procedures, Mechanism)

Effectiveness is inherent in the idea of law. We should, however, not be too demanding, or at least not be too demanding too soon. Thomas Hobbes was of the opinion that “covenants, without the sword, are but words.”⁴ Justice Oliver Wendell Holmes Jr., of the United States Supreme Court, insisted that what the law meant was this: “the prophecies of what the courts will do in fact, and nothing more pretentious.” Holmes held that it was no use talking about “rights” in the abstract; what mattered were remedies. If there is no remedy, no court to enforce a norm, then it is, according to Holmes, not meaningful to speak of that norm as “law.” The British philosopher J.L. Austin identified law with the “command” of the Sovereign. These views represent, I think, too narrow a concept of law. We do not follow this line of thought, which is rooted in the age of positivism and in the cult of sovereignty.

1 T. Meron, *The Humanization of International Law*, Leiden/Boston, Martinus Nijhoff Publishers, 2006, p. 46.

2 L. Doswald-Beck, “The right to life in armed conflict: does international humanitarian law provide all the answers?” *International Review of the Red Cross*, No. 864, 2006, pp. 881-904.

3 Meron, *supra* note 2, p. 46.

4 H. Arendt, *Macht und Gewalt*, 10th ed., München/Zürich, Piper, 1995, p. 9.



It does not reflect the way law operates within States; on the international plane, it would reduce international law to mere policy.

However, without a minimum degree of effectiveness, a norm or normative system cannot be called law. We are not suggesting that a norm, in order to be considered law, must be backed by the power to “enforce” it. But, generally, the power to “implement” it—*mise en oeuvre*—should be available. IHL is weak in the sense that, besides the monitoring activities of the ICRC, it is difficult to identify procedures designed to back and to give effect to its rules. There is no judge or policeman standing at the sidelines of the battlefield, as the British military historian John Keegan¹ once said. However, I could fill another hour talking about the implementation of IHL an HRL. Three actual methods might be mentioned: human rights mechanisms, criminal courts and tribunals, and truth and reconciliation commissions.

1. Human Rights Mechanisms²

All major human rights treaties establish, on the international level, a right to remedies and individual standing. Individual complaint mechanisms produced case law. Enforcement mechanisms have evolved on the basis of individual entitlements and of private standing both in national courts and before international bodies. On the other hand, IHL was not, or at least not exclusively, conceived with individual’s *procedural* rights in mind; it is difficult to imagine how IHL would incorporate all the procedural rights that have been developed in HRL. It is a characteristic feature of human rights instruments that they guarantee rights to individual remedies, independent and impartial investigations and individual reparations. There are no procedures regarding individual complaints, at the international level, that are available to victims of IHL violations as such.

However, there are cases in which human rights courts, court-like bodies or other monitoring bodies, have referred to or applied IHL. For instance, the Inter-American Commission on Human Rights or the European Court of Human Rights. But the international supervision is restricted to the rights guaranteed by human rights treaties. For this reason, the usefulness of human rights courts and court-like bodies as instruments to enforce or implement IHL might, as inherent in their conception, be limited.

2. Individual Criminal Responsibility

I dare say that nowadays international criminal tribunals are the most spectacular

1 M. Ignatieff, “Die Ehre des Kriegers,” in H. M. Enzensberger (ed.), *Krieger ohne Waffen: das Internationale Komitee vom Roten Kreuz*, Frankfurt a.M., Eichborn, 2001, p. 19: „Dort, wo in einer Schlacht getötet wird, gibt es keine Richter, keine Polizisten!“

2 F. Martin, “Application du droit international humanitaire par la Cour inter-américaine des droits de l’homme,” *International Review of the Red Cross*, No. 844, 2001, pp. 1037-1066.



means of protecting IHL.¹ Violations of IHL are committed—among others—by official authorities. Under the protection provided by state sovereignty they traditionally enjoyed immunity and impunity and evaded accountability. International tribunals aim to end impunity and to hold individuals accountable.

After the Second World War, the International War Crimes Tribunal of Nuremberg established the principle of individual criminal responsibility. Nuremberg paved the way and provided a model for the ad hoc tribunals for the former Yugoslavia and Rwanda that were set up nearly half a century later.

In 1998, on the basis of an international treaty, a permanent international criminal court, the ICC, was created. So far, 110 States have ratified the Statute. According to its Statute, the ICC has jurisdiction over persons for the most serious crimes of international concern: crimes against humanity, genocide and war crimes (the crime of aggression over which the Court also has jurisdiction, does not yet have a legally binding definition).²

The existence of international criminal courts to address the problem of war crimes is a promising development. The fact that the international community now possesses a permanent body with the jurisdiction to prosecute such crimes is indeed unprecedented in international law; it has no historical equivalent or precedent. States still bear the primary responsibility for prosecuting and sentencing their own criminals, including those who have committed international crimes.

Of late, truth and reconciliation commissions have been put forward as an additional or alternative tool. These commissions embody an idea of justice that is centred on survivors or victims and is not retributive. This victim-centred vision of justice—which enables victims to recall painful memories in exhaustive detail, and is committed to the idea of allowing victims to tell their stories—is not likely to be realized by trials.

To sum up, let me say, that norms take time to sink in: they gain strength through constant application—sporadic at first, perhaps, but growing more frequent and acquiring substance with each application.

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1 T. Meron, "International Criminalization of Internal Atrocities," *American Journal of International Law*, Vol. 89, 1995, pp. 554-577; T. McCormack, "The Importance of Effective Multilateral Enforcement of International Humanitarian Law," in L. Lijnzaad, J. van Sambeek and B. Tahzib-Lie (eds.), *Making the Voice of Humanity Heard—Essays on Humanitarian Assistance and International Humanitarian Law in Honour of HRH Princess Margriet of the Netherlands*, Leiden, Martinus Nijhoff, 2004, pp. 319-338; D. Thürer, "Vom Nürnberger Tribunal zum Jugoslawien-Tribunal und weiter zu einem Weltstraftgerichtshof?" in *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1993, pp. 491-516.

2 Art. 5-8 of the Statute of the ICC.



ON THE RESTRICTION TO THE FREEDOM OF ASSEMBLY, PROCESSION AND DEMONSTRATION

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Assembly, procession and demonstration, with clear democratic function, play a very important role in the process of forming, expressing and implementing political views of individuals. It is for this reason that the government should adopt active measures to ensure citizens to exercise rights in this category.

In order to ensure people to better enjoy their freedom of assembly, procession and demonstration, the government usually allows people to use venues for assembly (such as streets, parks and plazas) at will, rearranges traffic and provides police safeguard targeting the disturbance from the opposition. In other words, when people exercise their Constitutional rights and freedom of assembly, procession and demonstration, the government is required to ensure the realistic significance of such rights and freedom in two ways of doing something and letting it be.

However, rights and freedom of any form should be subject to law. In detail, while exercising our rights and freedom, we should first remember that our ways of exercising rights and freedom do not harm the rights of others and the society. While exercising the rights, people should also reconsider the manners, venues and timeframes of exercising their rights so that they can smoothly express their views and do not cause damages to normal social orders and social stability because of the problems in the manners, timeframes and venues of exercising their rights.

I. Freedom of assembly, procession and demonstration is under legal protection

The Law on Assemblies, Processions and Demonstrations issued in 1989 gave simple definitions to these terms. According to Article 2, the term “assembly” used in the law means an activity in which people gather at a public place in the open air to express views or aspirations; the term “procession” means an activity in which people line up for a march along a public road or across a public place in the open air to express their common aspirations; and the term “demonstration” means an activity in which people express their common aspirations, including demands, protests, support or moral support, in the manner of an assembly, a procession, a sit-in, etc., at a public place in the open air or along a public



road. The freedom of assembly, procession and demonstration means people's activities in these regards should not be intervened into or restricted.

The concepts of the three terms of assembly, procession and demonstration are closely related, but also differentiate from each other. First, their relations are embodied by the fact that they are the expansion of the freedom of speech and press, falling into the category of "speech" or "expression" in broad sense¹; second, the goals for citizens to conduct these activities are the same, namely, to express their political wills in fiercer, more dramatic and more eye-catching ways so as to influence other people or public policies and social progresses; third, from the angle of natural law, it should be the natural rights for the people to conduct such activities because every one has the right to express his or her political wills before the public in the way he or she likes or is good at.

Because of that, to participate in public life in the ways of holding assemblies, processions and demonstrations is an ancient but frequently used political practice. In order to ensure the correct use of the rights, this basic rights are not only included into the Constitution, and China also specially formulated a law to standardize assemblies, processions and demonstrations in 1989, so as to ensure these rights not to be overly abused in real life.

As a set of rights jointly protected by the Constitution, the concepts of these terms, which are related to each other, are different from association. To be exact, association refers to an activity in which people associate with each other into comparatively stable organizations for some certain goals or promoting some certain social reforms. Such organizations can exercise the rights and freedom endowed by the Constitution through organizing activities such as assemblies, processions and demonstrations. The activities of assembly, procession and demonstration can be conducted by organization, namely, in the form of association; it can also be conducted temporarily and without planning. In terms of assembly, procession and demonstration, they are different from each other in terms of the states, strong levels and expression ways of political wills and political appeals².

II. Assembly, procession and demonstration are the basic human rights

The terms of assembly, procession and demonstration are not used in some international covenants of human rights such as *International Covenant on Civil and Political Rights*, which only uses the concept of "assembly." Does it mean that the international human rights covenants only recognize and protect the freedom of assembly but not the freedom of procession and demonstration? I think we cannot make such conclusion. Assembly does not simply mean that people with the same ideas gather together and select a fixed venue

¹ Zhang Qianfan: *An Introduction to Constitutional Laws—Principles and Application*, the Law Press, 2004, P.551

² Zhang Qianfan: *Constitutional Laws*, the Law Press, 2005, P.210-211



to discuss issues and convey information. Actually, they are exercising the rights of free speech endowed by laws. Thus, assembly is only one of the preconditions of exercising the right. Or we can say, only by gathering together can people collectively exercise the freedom of speech under Constitutional protection in the manners of procession and demonstration.

Assembly, procession and demonstration need joint participation of many people. However, not all the collective activities jointly participated by many people belong to the freedom of assembly, procession and demonstration under Constitutional protection. Only the intended and temporary gatherings of some people for some certain purposes fall into the category of rights and freedom recognized and protected by the Constitution. Then, what kind of assemblies with what goals can be protected by laws? Different legal system has different stipulations. On this basis, the international human rights covenants such as article 21 of the *International Covenant on Civil and Political Rights* do not have clear definition. According to the *Law of the People's Republic of China on Assemblies, Processions and Demonstrations*, Chinese citizens can assemble for various reasons. But the activities such as culture and entertainment, sports, normal religious activities and traditional custom activities are not regulated by the law.

Assembly, procession and demonstration can be conducted in many ways. Public places such as streets, parks and urban plazas can be used as the venues of assembly, procession and demonstration; other venues also include the places near the construction controlled by the government or owned by individuals. Assembly, procession and demonstration can be conducted by walking on foot, or by various vehicles (bicycles, trucks and cars, etc.). These activities can have limitation on people, such as opening to some specific groups of people, or opening to all people. But we must point out that to exercise the rights of assemblies, processions and demonstration under Constitutional protection in any venue and in any manner, we should abide by corresponding laws and regulations.

III. The exercise of the rights of assembly, procession and demonstration should be restricted properly

Though the freedom of assembly, procession and demonstration belongs to freedom of speech in broad sense, the activities of assembly, procession and demonstration undoubtedly need more attentions from the government compared with individual, reasonable and milder activities of speech and press. Such attentions may be intervention or protection on many occasions. This is related to the unexpected aftermaths during the process of exercising such rights such as the serious damages to social securities and orders brought by improper exercise of rights. It is also related to the dilemma of the government caused by the exercise of the rights.

On the one hand, the political information conveyed by assemblies, processions



and demonstrations and the political goals they try to reach should target the improper behaviours of the government. Only targeting the government or some certain government leaders can the people who exercise the rights obtain legal protection and moral supports from the public and achieve changes according to their expectation during the democratic process of a country; on the other hand, such criticism-based practices must also rely on the supports and protection from the government.

The above-mentioned cases put forward corresponding requirements to those who exercise such rights. These requirements can be concluded as the principles the people involved in assemblies, processions and demonstrations should abide by during the process of solving problems in a peaceful, lawful and coordinative manner.

(I) Principle of peaceful assembly

International human rights covenants¹, as well as the domestic laws of many countries including China, require people to conduct assemblies, processions and demonstrations in peaceful manner. This means that any violence-based assembly, procession and demonstration are not protected by law. Meanwhile, the goals and original intentions of assemblies, processions and demonstrations should be spreading some certain concepts, opinions, ideologies and information through peaceful dialogues and communications with the people outside the activities, including government. If the goals of the assemblies, processions and demonstrations are to incite people to overthrow the government through violence, pound at normal official activities of government departments and damage the peaceful social orders, such assemblies, processions and demonstrations would lose their validity and justice.

During the process of assemblies, processions and demonstrations, when those who exercise the rights fight each other or against onlookers, or violence targeting properties, stores and vehicles along the road occurs, such as throwing stones or Molotov cocktails at stores and damaging vehicles, such assemblies, processions and demonstrations would lose their attribute of peace. Given those who participate in assemblies, processions and demonstrations bring weapons (including guns for distance destruction or stones and sticks for face-to-face fighting) during the process, such assemblies, processions and demonstrations should not be regarded as peaceful activities, no matter whether they use the weapons or not. But they can use defensive facilities for self defence such as helmets or defensive facemasks. Such activities can still be considered as peaceful assembly, procession

¹ Among all the international and regional human rights covenants, only African Charter on Human and Peoples' Rights does not use the definitive "peace" while describing freedom of assembly in Article 11. International Covenant on Civil and Political Rights, European Convention on Human Rights and American Convention on Human Rights use the definitive "peace" while describing the basic human rights. Article 15 of American Convention on Human Rights also used the term "without arms" to make the concept of "peaceful" more obvious.



and demonstration. Activities such as sit-in or block-up, so long as the participants do not use force or conduct active confrontation, can also be regarded as peaceful assembly¹.

The noises generated by those who participate in assemblies, processions and demonstrations are another way to judge whether the activities are conducted in a peaceful manner or not. In order to build momentum and win stronger and wider supports, the organizers must spare no efforts in attracting audiences during the process. Guided by the principle, which is acceptable, people who participate in assemblies, processions and demonstrations would naturally shout out slogans together and sometimes, they would use loud speakers. Under the circumstance, we should first examine whether audio amplifiers are needed before judging the attributes. Given the audio amplifiers are really needed, the utilization of such facilities should not be considered to dilute the peaceful attributes of the assemblies, processions and demonstrations. When such facilities are considered unnecessary, using the facilities may damage the peaceful attributes; second, the venue of such activity is another important issue. If the venues are selected in dwelling residences and schools and such activities are held in the period of time when people are sleeping or students are having classes, such activities may damage the peaceful attribute; when the venues are in the parks, streets or urban plazas, and participants also abide by corresponding laws and regulations, such activities should not be considered to damage the peace.

The need of special audiences is also a factor to judge whether an assembly, procession or demonstration is conducted peacefully. But the factor is difficult to control. When the information conveyed by the organizers and sponsors of the activities and their expressions are not targeting the government or some kind of abstract social unfairness, but another groups with totally different beliefs and religions, or the activities may exert huge influences on the economic and political interests of another groups, such activities may lead to hostilities or conflicts between two groups. Under the circumstance, is the government obliged to maintain the process of normal assembly, procession and demonstration, such as enforcing the police and adjusting and planning traffic, or should the activity organizers change their slogans, banners and routes so as to make their activity milder? From the angle that such activity is the Constitutional rights of the people, we can say, the government undoubtedly should bear more obligation of protection. Otherwise, how come it is the rights and freedom under Constitutional protection?

The government has the responsibility of protection: first, the government should not suppress any activity only because the information organizers try to express and convey in the process troubles the government; second, when activity organizers and participants have conflicts with other people, it is the obligation of the government to protect the participants

¹ Novak (Austria): Comments on Covenant of Civil Rights—UN International Covenant on Civil and Political Rights, translated by Bi Xiaoqing/Sun Shiyang, etc., Sdxjoint Publishing Company, 2003, P372



who exercise the right. According to Novak, most representatives of the Human Rights Commission believe that individuals should be protected against interventions of any kind during the process of exercising the freedom of assembly. Especially for those unwelcomed and criticism-based assemblies or the demonstrations of minorities or marginalized groups, signatory states are obliged to provide sufficient police protection and provide protection through banning conflicting demonstrations so as to avoid conflicts and riots¹.

(II) Principle of legal assembly

The principle of legal assembly, procession and demonstration requires the organizers and participants of such activities to exercise their rights and freedom strictly according to related stipulations of laws before and during such activities. The slogans and other information conveyed during the activities should also abide by related norms established by the current laws. For instance, we should not instigate ethnic animosity. This is the basic requirement of the Constitution and other laws on the activities of assembly, procession and demonstration, as well as the precondition for such activities to gain supports and protection from the government. When organizers and participants fail to conduct such activities according to laws and regulations and approvals of related departments, the activities would also lose its legal base of being protected.

Before and during the process of holding an assembly, procession and demonstration, we should first consider the legality of the advertisements to promoting the activities and the legality of the slogans and information during the process and the views and opinions discussed and shared with the public. These are the most expressive parts in assemblies, processions and demonstration, as well as the freedom of speech recognized and protected by Article 35 of the Constitution. For the government, the protection and restriction principles of these parts of contents should follow the restriction and protection principles on speech. Activity organizers and participants, should not disseminate the information clearly banned by laws according to prescriptions of related laws. For instance, *the Criminal Law* forbids obscene contents. Article 12 of *the Law on Assemblies, Processions and Demonstrations* issued in 1989 also lists the activities of assembly, procession and demonstration that the government can reject, they are: harming the unity, sovereignty and territorial integrity of the state, and instigation of division among the nationalities, etc.

The principle of legality also requires assemblies, processions and demonstrations to be organized and held according to corresponding procedures, such as submitting written applications to competent departments before holding such activities. The activities should be conducted according to permitted goals, manners, timeframes, venues, routes and other procedures with permitted slogans and banners; during the process, participants should

¹ Novak (Austria): Comments on Covenant of Civil Rights—UN International Covenant on Civil and Political Rights, translated by Bi Xiaoqing/Sun Shiyan, etc., Sdxjoint Publishing Company, 2003, P373



actively cooperate with police who maintain orders and stop illegal and criminal activities. Competent departments should timely inform the decisions of permitting or rejecting such activities to organizers within the timeframe stipulated in laws. If the application is refused, competent departments should give out reasons in written form. The government should also timely report the problems in the activities to related department for proper handling so as to fundamentally reduce the social reasons of assemblies, processions and demonstrations.

(III) Principle of consultation

Under many occasions, people conduct assemblies, processions and demonstrations to reflect the social problems that they think are unfair, and hope to arouse the public consciences and maintain wide sympathies and supports through the activities that can draw attractions from the public, media and the government. If possible, related legal and other mechanisms can be initiated to solve these problems. Large quantity of such cases can be found at home and abroad in history. Mohandas Karamchand Gandhi in India successfully ended the British colonialism ruling and won national independence through leading and initiating non-violence and non-cooperation movement; in 1960s, Martin Luther King, Jr., a black people in the United States led assemblies, processions and demonstrations and successfully compelled the U.S. Government to nullify the unfair racism system, enabling the black people in the United States to have equal legal positions and protection as the white people.

China is now experiencing rocketing development. During the process, many new social problems have emerged and will emerge in the future. To solve these problems such as issues related to employment, environmental protection and migrant workers who are in the disadvantaged position, we need normal social disputes-solving mechanisms; when some problems cannot be solved through normal mechanisms, we should also allow methods such as assemblies, processions and demonstrations, which can reduce the animosity and resentment caused by these problems. At the same time, many problems can be exposed through these activities, creating the preconditions for solving these problems.

Against the background that assemblies, processions and demonstrations are held and organized only to solve the existing social problems, the organizers and participants and the parties they target, such as migrant workers and bosses of construction enterprises, should consult related problems based on the principle of solving problems peacefully. When the organizers and participants target the problems of the government in some aspects, the government should timely improve their work in related aspects. Given some problems cannot be solved immediately, government department should have comprehensive negotiations and communications with activity organizers and participants and solve the problems through negotiation. In case where the problems need involvement of other parties,



the government should be the coordinator so as to create sound communication platforms and opportunities of solving problems through consultation for various parties, including the government. When a favourable turn emerges, their short-term goals are possible to be realized or various parties have formulated feasible measures, it is a wise option for the organizers and participants of assemblies, processions and demonstrations to give up the activities.

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HUMAN RIGHTS PROTECTION IS NO ILLUSION

Samuel Kofi WOODS, II
Liberia

Today, we gather here in full recognition of our deep and abiding confidence in the determination of all the citizens of the world to foster universal peace and human dignity.

On December 10, 1948, the world experienced a major transformation when the Universal Declaration of Human Rights was proclaimed.

At that historical moment, the world was still enwebbed in the crisis of slavery, colonialism and the partitioning of nation states through conquest, brute force and naked power. Though it was a human intervention which would change relations among states and individuals, it was seen as a mere declaration that both victims and perpetrators ridiculed as the idealism of the few, never to be pursued and/or acknowledged.

After more than 60 years, this idealism has been transformed into reality curbing the arbitrariness of individuals and states.

Since 1948, remarkable progress has been made in international relations, internal state governance and the search for democratic governance.

The advent of the 1960s witnessed the development of the covenant regime. During this period, the Covenant on Civil and Political Rights and the Covenant on Social, Cultural and Economic Rights were ratified by States. Both Covenants sought to establish the universal basis for the exercise of individual liberties and collective freedoms.

The 70s witnessed the emergence of various conventions and charters committing states at regional levels. These included among others, the African Charter and subsequently the African Commission on Human and Peoples' Rights which sought to affirm Africa's commitment and distinction within the ambit of the rights regime as well the American Charter and Convention and the Inter-American Charter reinforced their commitment.

These regional mechanisms led to the establishment of various Commissions and Courts on Human Rights.

In the first instance, it was thought that the various commissions would impose certain legal restraints on states and their leaders. When it appeared limited, various regional courts were established further reinforcing the need for greater punitive measures and deterrence.

In our own times, we have lived to see the establishment of various mechanisms which have affirmed universal jurisdiction and influenced international human rights jurisprudence.



The establishment of the International Criminal Court, various regional tribunals and the commitment of some states to arrest, trial and prosecute alleged violators of human rights are stark evidence of the moral and legal imposition of the human rights agenda.

The establishment of regional mechanisms such as the International Court on the Former Yugoslavia and the Special Court on Sierra Leone are cases in point. They have established phenomenal precedence in international human rights law. Leaders of nations have been subjected to the scrutiny for crimes allegedly committed in their own territories and elsewhere. The arrest of General Pinochet and others shows that no individual how powerful and how authoritative can escape the long arms of international law.

In addition to these developments, New meaning and interpretations have been accorded to both Chapter 7 and 8 of the United Nations Charter. The formation of regional organizations blocks and other forms of collective protection regimes have established. The responsibility of states to undertake and intervene in civil conflicts has been increasingly recognized.

These developments in human existence have increased universal sensitivity to the dignity of the human person and the sanctity of their values. It has further reinforced the principles of universality as opposed to cultural relativism.

Some of the most remarkable developments have occurred in many parts of the world where dictators and leaders have realized that international accountability for crimes against your own people is possible.

Now more than ever before, the limits on power, the use of force and violence to espouse one ideal and aspirations whether on issues of religion, democratic governance have been established. The supremacy of human dignity and the exercise of individual freedoms have been enhanced. The world has made progress and advance.

In all of this, we still have questions of equality among nation-states. Powerful nations and their leaders have not been subjected to equal scrutiny for alleged crimes against humanity. Like domestic situations, the jurisdiction, moral and legal underpinning of international law must develop the will and mechanism to ensure the equality of states and leaders. The law must be enforced against the so-called rich and powerful. In this way, the full spirit and intent of international human right law will be achieved and ordinary people will find hope in the principle of universality as espoused by the original intents and purpose of the universal declaration.

I come from Liberia, a nation which experienced one of the world's most fratricidal civil conflicts. We now grapple with our past attempting to fulfill the dictates of national reconciliation but challenged with ending impunity. We now seek to balance our desire for justice and ensure that peace and stability is maintained. I am hopeful that our own debate will allow our country to rise amidst the storm and become a better nation.



I applaud the Chinese Government and its People for participation in the peace-keeping initiatives in Liberia. Your country's participation has been positive. As Minister of Public works, I can attest to the role your country plays in the reconstruction and rehabilitation of key infrastructures in Liberia. Liberians are grateful for your partnership.

Finally, let me pay tribute to all men and women the world over whose blood, sweat and tears have nourished our hope for justice and peace. The universal student movement has ignited a torch yet to be extinguished. The persistent civil society movement continues unabatedly. And the many Government and countries who continue to realize that our world will be a better place when the rights of all are respected irrespective of race, color, creed and nationality.

My Dear the Human Rights Agenda is no illusion. It is a reality which must be achieved collectively.

(The author is Minister of Public Works of Republic of Liberia)



ELECTORAL DEMOCRACY AND PARTICIPATORY DEMOCRACY

Xiong Lei
China

For years, free election has been used as the seemingly only yardstick to measure a country's democracy. So long as a country has general suffrage, it is considered democratic.

Suffrage or the right to vote is certainly an important political and human right, and it is often hard won in any society. But two elements are essential to this matter: One, it must be based on the nature of power or regime, which is required to be independent of external coercion and internal inequity as a prerequisite for democracy. Two, it is only one of the many aspects of democracy and attention to electoral democracy should not detract the attention to other aspects of democracy, such as public participation.

Take China's case for example. This year marks the 60th anniversary of the founding of the People's Republic of China. Up to 1949 when the People's Republic of China was founded, the Chinese people had been under the oppression of foreign aggressions, nearly partitioned by imperialist powers, and the Chinese people suffered, either from imperialist aggressions or from civil wars. The ruling government then was very suppressive at any attempt to mobilize the masses of people, so there was no chance for a suffrage at all.

With the founding of the People's Republic, led by the Communist Party of China, the Chinese people stood up, and became masters of their own destiny. They began to enjoy unprecedented rights. Ordinary peasants and workers who had no right at all in old China were elected deputies to the National People's Congress, or the legislators of the country for the first time. The People's Congress, or our legislature, is one of the major channels through which the people participate in state affairs and politics. The *Constitution* provides that every Chinese citizen at and above 18 years old, regardless of his or her ethnic origin, race, gender, occupation, family background, religion, schooling, and income, is eligible to elect and be elected.

Thanks to this basic law of the country, Shen Jilan, an 80-year-old woman farmer from Shanxi Province, was elected a deputy to the First National People's Congress in 1954 due to her outstanding performance in leading her fellow women villagers to take part in the farming and demanding equal pay for equal work with men. Since then, she has been getting elected for every NPC and has become the only deputy to all the 11 NPCs in the past



60 years, and the most senior legislator in China. This is something unimaginable in old China.

This electoral democracy, however, is not all-mighty, nor is the only form of democracy. Election is a means to vote someone to represent a group of people to a body with power. Once the guy is voted into that body, it is up to him or her to execute the power. His or her decision can be beyond the control of those who have elected the person into that position. For instance, G. W. Bush was elected into the US presidency. But does the decision to invade Iraq represent any democracy? Certainly not. And the process of decision making on that issue was not democratic at all.

On the other hand, the election campaign in typical western style can be well manipulated by people with money and power. Unless well established among the political elites with considerable financial backing, individuals without due resources are unlikely to get anywhere in the power echelon.

Therefore it is misleading to focus democracy on free elections. More importance, instead, should be attached to a populous form of democracy, participatory democracy featuring public participation. Without full and democratic public participation, free election can be superficial and showcase.

Participatory democracy concerns more about fairness in the process of decision making. And such process is more relevant to people's daily life. For instance, a planned hydropower project on a river in Southwest China is to compensate for the local farmers to be displaced on terms of 200 yuan for each mango tree to be inundated. Yet, from each mango tree the local farmers could earn 400 to 500 yuan a year. Such compensation could hardly sustain the displaced farmers' currently living standard. Hence the conflicts between local farmers and hydropower developers, could lead to social unrests, or even riots. Here public participation in the process of decision making would be essential to guarantee equity for all the stakeholders, and prevent possible social unrests.

Of course not all people embrace the idea of public participation. However important and constructive it is in the long run, on the outset it appears to prolong the process of decision making. But in fact, participatory democracy is not anything new to the Communist Party of China. It managed to grow from dozens of members in the early 1920s to lead the people in overthrowing the reactionary power and become the ruling party of China within merely 28 years just because of the democracy it tried to execute within its organization and army. One of the winning tricks of the CPC over the much better armed and seemingly more powerful enemy were the Three Democracies it has performed since the Red Army days in the 1920s, namely political democracy featuring equality between officers and men and soldiers' capacity to criticize the officers; military democracy embodied in every soldier being encouraged to make proposals or suggestions on tactics to win a battle; and economic democracy which



allows soldiers to have a say in the economic management of the company.

As China began to follow the policy of reform and opening, some people, including those in leading positions, tend to focus on the so-called advanced managerial skills in the west and forget our own fine tradition. That is a pity. But in recent years more and more people have come to recognize the treasure in our own tradition and revalue this tradition.

Before Chairman Mao Zedong declared the founding of the People's Republic of China on October 1, 1949, he was challenged by Huang Yanpei, a well-known non-Communist educator and a friend of Mao. Huang asked Mao: Throughout Chinese history, no dynasty could go beyond the historical periodicity that every dynasty was vigorous in its initial years and went prosperous, but then declined and finally collapsed and doomed. Could you Chinese Communists manage to survive this historical periodicity?

Mao was confident and told Huang Yes. Because, Mao said, "We have the advanced political regiment; we have democracy which allows people to supervise the government."

There have been zigzags in the exploration to realize this democracy in Mao's mind, and there were even deviations from that goal when efficiency was emphasized. But democracy has become the commonly accepted value of younger generations of CPC leaders.

In 2006, the 6th Plenary Session of the 16th Central Committee of the Communist Party of China summarized the participatory democracy into the following four rights: right to know, right to participate, right to expression and right to monitor or supervise. These four rights can be regarded as the cornerstone for China's participatory democracy.

Of course there are obstacles for people to enjoy these rights. There are cases of abuses of power. But we have been moving to improve our system to honor these rights, and we also see encouraging signs that ordinary people and individuals are acting to practice these rights. One noteworthy phenomenon in the development of participatory democracy is the growth of China's civil society.

Before the reform and opening, China was a well organized society. Everyone belonged to a unit, either a school, a factory, a government department, a research institution, or a village, which was either state or collectively owned. People's life was simple and the dominant belief was that so long as a collective and the state got prosperous, so would the individual. In other words, the individual's welfare was closely bound to the collective and state interest. And the contradictions could be easily solved within the scope of the unit, village or neighborhood through organizations like Party or Youth League branches, trade union, women's federation, and neighborhood committee.

With the reform and opening, new economic sectors have been introduced and the Chinese society or social structure become much more diversified, with people's interest pursuits more complicated. No single person, however democratically elected to a leading position, can represent all the interest groups on all issues at all times. Nor could a single



organization do so. All these new elements gave rise to the necessity of growth of civil society, which is particularly embodied in the growing consciousness of public participation. Since the 1990s there have emerged many grassroots NGOs, which have been active in various fields.

According to the Ministry of Civil Affairs, the registered NGOs at national and local levels numbered 346,000 by the end of 2006, which more than doubled the figure of 116,000 in 1991. These grassroots NGOs are more diversified than the conventional GONGOs, or government organized NGOs, in terms of their focuses and ways of function. They can be advocacy groups, think tanks, watchdogs of a particular issue, or activist groups offering particular assistance to a particular social group. They are mostly active in tackling some pressing problems concerning the public, like sustainable development, environmental protection, legal assistance to vulnerable groups, and prevention and control of HIV/AIDS.

For instance, rural women now account for more than 60 percent of China's agricultural production. Yet their representation in rural leadership remains low, accounting for merely one percent of the heads of China's 660,000 villages. To increase the percentage, an NGO called the Rural Women Network set up a training center for rural women, with training programs ranging from practical farming skills to strategies on how to campaign for village heads. The Ministry of Civil Affairs has even collaborated with NGOs and other members of civil society in producing a *Guidebook on Women's Participation in Villagers' Self-Governance*, offering tips on how to deal with problems rural women run into most frequently in trying to run for a decision-making position.

An NGO founded in 2004 to promote market-based models for solving environmental problems, the Global Environmental Institute (GEI), masterminded the *Guidelines for Sustainable Forestry Management by Chinese Enterprises Operating Overseas*, which was accepted by the government and has become an official document released in August 2007. The *Guidelines* require that the outgoing Chinese enterprises should go further from just abiding by law in their host countries. They are urged to contribute to the local environmental management, ecological preservation and community development even if these are not provided in local legislation.

Specifically, according to the *Guidelines*, a Chinese enterprise which has timber operation overseas is asked to conduct environmental impact assessment on its project before it enters the host country and make sure that its business would not bring about serious environmental problems.

For any permissible hazardous affect on some groups of local people, the enterprise should have fund for remedies or ecological compensation to help local residents increase incomes and engage in new environmentally friendly operations.

According to Chinese officials, the *Guidelines* is the first document of its kind in the



world aimed to regulate a country's enterprises in their overseas operations with regard to sustainable development.

Another area where the growth of participatory democracy and civil society is evident, is the Internet. Internet has constituted an effective way for participatory democracy, and Chinese officials are learning to get adapted to this new culture. The latest statistics shows that China has more than 300 million netizens, some 23 percent of the Chinese population. And one third of the netizens have their blogs. When something crops up, the concerned netizens would form different opinions or forums. But on some issues the netizens' opinions could be unanimous and that is when the government policy or decision can be affected.

A typical example is Deng Yujiao's case, in which a 21-year-old worker, Deng Yujiao, at a recreation center in Central China's Hubei Province declined to give "special services" for three local officials visiting the center. She was doing washing and she told the official that she was not on duty and was not on the staff to provide that kind of service. Special service is often understood as a euphemism for sex. Two of the officials began to curse and tried to force her, and one of them slapped Deng with wads of cash and pushed her down on to a sofa. The furious girl pulled a fruit knife out of her bag and lashed out, stabbed one of the attackers to death and wounded another. Then she surrendered to the police.

The case took place in May. The police originally tried to charge her as "intentional murder." That aroused nationwide online protests, and millions of BBS showed sympathy for Deng. Later the charge lessened to "intentional assault." The public opinion still protested, arguing that Deng was actually on the part of being assaulted. Finally the court ruled that she was "excessively acting in self-defense." This was regarded as a victory of justice and public opinion.

The Chinese netizens not only expand supervision over the Chinese government, but also watch western media closely. One response to some western news media's distorted coverage of the riots in Lhasa and some other Tibetan areas in March 2008 was the launching of a new website by a 23-year-old IT worker named Rao Jin, which is Anti-CNN.com. The website is now one-year-old and has remained active.

One thing to observe is that participatory democracy should be extensive, involving all social groups rather than focusing exclusively on the so-called elites. Exclusive participation has nothing to do with democracy.

By all means, more and more people in China have come to realize the significance of participatory democracy and civil society's role in it. Such extensive participatory democracy actually will lead to democracy in its true sense.

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HARMONIOUS DEVELOPMENT: FROM THE PERSPECTIVE OF MODERN HUMAN RIGHTS

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The modern countries are endeavouring to realize development. However, they often have to face two issues in development—imbalance and disharmony while pursuing the development speed. That is, people differ as to whether to pursue harmonious development and how to make this happen. From the perspective of the essence, standard, purpose and methodology of the harmonious development, this paper aims to discuss the relations between harmonious development and the modern human rights principles, the definition of human rights, the standard of right to development and the practical requirements of the international human rights, and also to reveal the substantial relations between development and human rights.

I. Harmonious Development: A necessary requirement of modern human rights principle

Harmonious development is an indispensable part of the modern democratic politics and the modern constitutionalism. The modern constitutionalism being built by various countries usually contains three principles, that is, rule of law, democracy and human rights. As far as the relations among democracy, rule of law and human rights are concerned, the exterior of democracy is rule of law while the interior of democracy is human rights. Rule of law at an ideal state is to realize the harmony between public power and civil right. Civil right is respected, protected and aided by the public power, and human right is the origin, boundary and purpose of the public power. If the law achieves this state, rule of law will exist. Rule of law is a series of procedures that are well arranged, human right is the subject to be realized by the rule-of-law procedures, while democracy represents the institutionalization after fusing both.¹ Therefore, the principle of human rights constitutes the prerequisite, foundation and destination of the constitution and constitutionalism, and represents the fundamental standard that measures the implementation of constitutionalism.²

¹ Xu Xianming: *Essence of Rule of Law Is Human Right* (Preface)—An Interpretation of the Human Right History, *Human Right Research*, Xu Xianming, etc., Volume 1, Shandong People's Publishing House, 2001, P4.

² Dong Yunhu: Inclusion of "Human Right" in Constitution: An Important Milestone of the Development of Chinese Human Rights, *Human Rights*, Issue 2, 2004, P34.



Just as Robespierre, the thinker in the French Revolution Period, noted, “to maintain the human rights, natural and unalienable, and to develop every aspect of humans are the purpose of all the political groups.”¹

From the perspective of political construction, development should be carried through under the framework of the modern constitutionalism. Moreover, only adhering to the principle of human rights, can harmonious development be made happen. Human is the purpose of development, while the essence and core of the harmonious development must focus on human, which, as the orientation of development, must be adhered to putting people first. Human orientation means making human the standard for the value and society, and orients the human subsistence and development as the supreme value objective. In the form of practice, human orientation means making the interests of people the aim and outcome of development, orients the all-round development of human, and seeks and promotes the development for the sake of the fundamental interests of the people.

II. Harmonious Development: inherent sense of modern human rights concept

Under the European traditional concept of human rights, civil right and political right always remain at the core, while the developing countries always put the economic, social and cultural rights in the central position of the human rights concept. The human rights concept contained in the *Universal Declaration of Human Rights* adopted by the United Nations in 1948 includes the civil right and political right as well as the economic, social and cultural rights. However, when discussing the formulation of the *Universal Declaration of Human Rights* into an international convention with the binding force as an international law, the United Nations General Assembly split the content of the human rights convention, which has led to the separation of the human rights concept. Since the 1970s, the international community has taken the following measures to safeguard the integrity of the human rights concept: (1) The United Nations General Assembly adopted the Resolution on the New Concepts of Human Rights on Dec. 16, 1977. The Resolution points out that all the human rights and basic freedoms are inseparable and interdependent, and the same attention and equal urgent consideration should be given to the execution, enhancement and protection of civil rights and political rights as well as the economic, social and cultural rights; and it will never be possible to realize civil rights and political rights if the economic, social and cultural rights are not enjoyed simultaneously. The adoption of the Resolution is of great importance in understanding the international concept of human rights in a complete and correct manner, and putting right and promoting the human right activities of the United Nations. At the same time, it also indicates that the international community has

1 [France] Robespierre: Revolutionary Rule of Law and Judgment, Translated by Zhao Hanyu, The Commercial Press, 1985, P136.



started changing the traditional concept that human rights are only limited to civil rights and political rights.¹ After the adoption of the Resolution, the United Nations Economic and Social Council decided to set up the Committee for Economic, Social and Cultural Rights in 1985. In 1986, the international community adopted the Limburg Principles, and appealed the same attention and equal urgent consideration paid by the international community to the civil rights and political rights as well as the economic, social and cultural rights. The second world human rights convention taking place in Vienna in 1993 passed the *Vienna Declaration and Programme of Action*, reiterating that all the human rights are universal, inseparable, interdependent and interrelated; that the international community must see human rights from the same position, with the same attention and in the fair and equal attitude; and that attention must be given to the significance of national characteristics and regional characteristics and different historical, cultural and religious backgrounds, but every country has the obligation to promote and protect all the human rights and basic freedoms, regardless of its political, economic and cultural systems.²

The harmonious development requires the comprehensive development of humans and the comprehensive social advance, which is the accurate understanding and reflection of the essence of the modern human rights concept. Promoting the comprehensive development of humans needs to put right the disadvantage of the European traditional human rights concept that stresses the civil and political rights and ignores the economic, social and cultural rights, to realize the rights of humans in a comprehensive manner, and safeguard the integrity of the modern human right concept and the inherent inseparability of human rights. Though different countries may decide the key areas of development according to their actual conditions, to safeguard the integrity of the human rights should be the common objective that all the countries strive to achieve during development.

III. Harmonious Development Conforms to Standard of Right to Development

The right to development is a new-generation human rights. As to the connotation and standard of the right to development, the *Declaration on the Rights to Development* of 1986 notes that the right to development is an inalienable human right; based on such right, every human and the people of every country are entitled to participate in, promote and enjoy the economic, social, cultural and political development; and during such development, all the human rights and basic freedoms can be fully realized. The Declaration holds that humans are the subject of development, and therefore, humans should become the active participant

¹ For details, see the *China Encyclopedia for Human Rights* edited by Wang Jiafu and Liu Hainian, published by the Encyclopedia of China Publishing House in 1998, P185.

² The Editorial Group of International Human Rights Law Textbook: The International Human Rights Law Textbook, Volume 2 (Document Collection), published by the China University of Political Science and Law Press, 2002, P91.



and beneficiary of the right to development, and all the individuals and collectivities of humans are entitled to development. As to the content of the right to development, it is the unity of the right to the political, economic, cultural and social development. The new view of development defined by the United Nations Educational, Scientific and Cultural Organization contends that development is diverse; development is not restricted to the only content of economic growth; economy, culture, education, science and technology definitely have respective features, but they supplement each other and are mutually related; and only when they are integrated, can they form the guarantee for the development centered on humans.¹ In 1991, the World Bank also made an authoritative statement that the comprehensive development not only includes economic variables, but also encompass the non-economic factors that can improve the life quality; though it is difficult to draw a clear line for the casual relationship, some non-economic variables are linked to the economic development.² The World Bank also listed the dimensions to measure the comprehensive development from 1973 to 1987, including growth, infant mortality rate, educational change, change in the women's education, change in the educational difference between women and men, educational level, women's educational level and the political and civil rights. As the national modernization movements are deepening, people focus on breaking down the economic and social areas into many levels to seek the policy for different levels under different structures, specific development of different factors and the coordinated development between them, and think that economic growth is not necessarily the social development, and the ampleness of materials does not equal the life happiness; that improving the natural environment and enhancing the social environment and the political environment are the things that are more important than the pure pursuit of GNP; that the concept of development exceeds the scope of industrialization and richness argued by economists, also goes beyond the scope of westernization and integration claimed by many politicians, but shift to diverse factors, including environment, creature, society, life, culture, politics, science and education, that are based on respective conditions such as the history, environment and resources of a nation.³ The 2000 Human Development Report published by the United Nations employs the average life span, the educational level and the medical care as three major indicators to measure the degree of social development of various countries, and uses such indicators as non-discrimination, sufficient supply of foods and clothes, ownership of dignitary jobs, elimination of inequitable and illegal conducts, guarantee of security and elimination of fear as the parameters for assessing the human

¹ Amadou Mahtar M'Bow: *The Time of the People*, China Translation and Publishing Corporation, 1986, P96.

² 1991 World Development Report: *Challenges Faced by Development*, China Financial & Economic Publishing House, 1991, P49.

³ *Asia-Pacific Economic Time*, January 3, 1993.



right development status of different countries.

Harmonious development tallies with the international standard for the right to development. Harmonious development requires every country to stick to the principle of comprehensive, consorted and sustainable development on the way to development. This means that development is not restricted to the growth of the economic quantity, the optimization of the economic structure and the improvement of the technological level, but more importantly, means the comprehensive improvement of the physical and mental life of the people and the comprehensive development of humans.¹ At the core of the comprehensive, coordinated and sustainable development is to meet the diversified needs of the people, including the need for survival, the need for development and the need for enjoyment, namely, to realize all the rights of all the people as humans.

IV. Harmonious Development: practical requirement for promoting and protecting human rights in the world

The humankind has made long strides since the modern society. However, underdevelopment and inharmonious development still remain the reality across the world, and are eminently evidenced by: At the international level, the traditional security issues have not been resolved from the route; the non-traditional security issues are emerging; the conflicts in some regions are escalating, and the international peace and security are threatened and challenged from time to time; influenced by the financial crisis that originated in Europe and America, the world economic growth has slowed down, and the gap in the economic development level has further expanded between the developed countries and the developing ones; and the global environmental issue still remains severe, and the natural disasters occur frequently. At the domestic level, the national and racial conflicts deteriorate from time to time; the developing countries, particularly those most underdeveloped countries, face the food shortage and insufficient drinkable water; the unbalanced development between the urban and rural areas and between regions; and the educational, health and natural resources are in short supply, and the environmental pollution is serious. Overall, either at the global level or the domestic level, both underdevelopment and development disharmony exists. Differently, various countries and territories present different statuses in the development disharmony owing to the different development stage, development strategy and development difficulties.

Just in the said historical context, the countries in the world are attempting to correctly handle the relationship between the means and purposes of development—that is, on one hand, to strive to promote the economic growth and the urbanization process; and on the

¹ Fu Guorong: Promoting the Healthy Development of the Human Right Cause with the View of Scientific Development, *Human Rights*, Issue 5, 2004, P55.



other hand, to endeavour to overcome such problems as the polarization of rich and poor, environmental pollution, moral depravity, protection of the vulnerable groups and the miscarriage of justice so as to benefit every member of the society with the development result. The experience and lessons of various countries during development indicate that economic growth does not naturally create the welfare for humans, that poverty makes human rights rootless, and human rights call for the care from the state and the society. Human rights are required by the members of the society to acknowledge and realize their values and social status.¹ The momentum and purpose of the globe and various countries for development mainly aim to enhance the level of the human rights protection, plainly speaking, to raise the living standard and life quality of humans. Underdevelopment chiefly comes from the lack of development momentum and the extensive participation of the people, while the disharmony of development primarily stems from the deviation from the human orientation, or that development fails to benefit everybody, which gives rise to new disequilibrium. Therefore, whether at the international level or the domestic level, to ensure complete development requires the efforts to ensure harmonious development, while the fulfillment of the harmonious development involves the efforts to respect and protect human rights.

V. Conclusion

Development comes as the top priority for both the international society and the domestic society, which has been generally accepted by the people. However, the people differ as to whether and how to pursue the harmonious development. In essence, pursuing and realizing the harmonious development mainly go to tackle the relationship between development and human rights. Human rights should constitute the momentum and purpose of development, and development will lose its direction and soul without the guidance of human rights and the nourishment of the human right spirit. The view of harmonious development reveals the essence, principle, objective and methodology regarding development. In this sense, it provides a clear route sign to resolve various conflicts faced by the humankind, prevent and get rid of various social and natural crises, and realize the global prosperity. In order to guide the development of the international community and the domestic society, we should always bear in mind the essence of the people orientation for the harmonious development, keep exploring and enriching the connotation of the modern view of human rights, make every effort to promote the harmonious development across the world, and strive to boost the level of the international human rights protection.

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¹ Wan Exiang, Guo Keqiang: *The International Human Right Law*, Wuhan University Press, 1993, P6-10.



ON THE LOGIC PROCESS OF HUMAN RIGHTS PROTECTION

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The value foundation of human rights originates from people's dignity, while the formation of people's dignity is closely related to certain social system and historical conditions. From this aspect, we can say that human rights has natural attribute and social attribute, of which, social attribute plays a decisive role on the value of human rights. Various relations among people formed during social activities are the field carrier of the existence of human rights. Thus, as the main body of human rights, people play a decisive role in the development of human rights. Philosophically, the "people-oriented" outlook stressed that "people" should be the key of all kinds of development from three aspects of ontology, axiology and the social ultimate pursuit¹. In contemporary China, the "people-oriented" outlook has been widely used in various fields as scientific concept of economic, political, cultural and social development. Especially in law field, people's comprehensive development and personality liberty have natural links with human rights, playing a guiding role in improving the legal system and the institution of ruling of law. Hence, clarifying the internal relations between "people-oriented" outlook and human rights will be the key to help elucidate human rights protection, especially the Constitutional protection of the basic civil rights.

I. "People-oriented" outlook is the logic starting point of human rights protection

The origin and development of "people-oriented" philosophy can be traced along three routes: First, the western capitalism people-based ideology and its development route; the second is people-based ideology in the traditional oriental culture and its development route; and third is the Marxism people-based ideology and its development route. The theoretical contents of people-based comprise of people's status as the main body, people's practices, people's capacity, people's rights, people's quality and the development of people's personality with different focuses in different period of time because of the different view angles². The western capitalism people-oriented ideology were originated from the humanism spirit

¹ Zhang Kuiliang: Philosophic Significance of "People-Based" Outlook, *Philosophic Research*, Issue5 of 2004, P.11-16

² Han Bin, Meng Xianping: *Studies on the Theory and Practice of People-Oriented Outlook*, Central Party School Publishing House, 2006, P.1



of ancient Greece—caring about people, especially caring about people’s spiritual life, and respecting people’s value and their basic rights, especially the value and rights as the spiritual presence¹. The people-oriented ideology in traditional oriental culture includes the thoughts of “benevolence and love” of the Confucius, “universal love” of Mo-tse, “giving priority to the people” of the Mencius, “learning about the fate” of Xun Zi, “understanding the law” of Han Fei Zi, “hunger and cold leading to riots” of Wang Chong, “giving priority to the people worldwide” of Huang Zongxi, “mass ruling” of Gu Yanwu, “the world belonging to everyone” of Wang Fuzhi and “three principles of the people” of Dr. Sun Yat-sen later. All these thoughts embody the ideas of “giving priority to people as human beings” and “giving priority to people as citizens”². On the basis of critically inheriting the capitalism people-oriented ideology and utopian socialism people-oriented ideology and in combining with the development of western countries, Marx and Engels, based on the historical materialism and the outlook of surplus value, realized that people have sensible activities and that whether people’s thinking is the objective truth or not is not a theoretical issue, but a practical issue³. The entire history is the development history to make people as the objective in the sensibility awareness and prepare the needs of the people as “humans”⁴. That means people have their own essence.

The gestation and development of western humanism spirits hastened the generation of the requirement of “natural rights” of the bourgeois in modern time, and the establishment of modern law-based society also created possibility of human rights protection; while criticizing the capitalism, Marx and Engels stressed on people’s independence and self-determination; the oriental people-oriented ideology was also influenced by “western learning flowing eastward” in modern times and democracy became the mainstream idea. But the idea of “people first” stressed by the oriental ideology was different from the western “human rights”⁵, and also served governance to some extent. Observing the development of “people-oriented” thoughts synthetically, we can get some similarities

1 Han Bin, Meng Xianping: *Studies on the Theory and Practice of People-Oriented Outlook*, Central Party School Publishing House, 2006, P.7

2 Han Bin, Meng Xianping: *Studies on the Theory and Practice of People-Oriented Outlook*, Central Party School Publishing House, 2006, P.6

3 *Selected Works of Marx and Engels*, People’s Press, 1995, P.58

4 Marx: *Manuscript of Economic Philosophy in 1844*, P.128

5 “People first” thought were originated from the ethic philosophy of traditional Confucianism. The Confucius stressed that “a person cannot take his stand without trust” and people’s trust constitutes the foundation of political governance: One the one hand, people are important because they are the foundation of political power; on the other hand, people are important because they constitute the foundation of the relations between the rulers and the ruled. People thus became the restricted mainbody of the state power and the social group that the rulers should earnestly deal with. Please refer to Ren Jiantao: *Studies on Ethic Politics—Theoretical Perspective from the Angle of Confucianism of Early Stage*, Jilin Publishing Group Co. Ltd., 2009, P. 258



between them: both the western and eastern countries emphasized the importance of “people” and reformed the society’s politics, economy and culture in all dimensions with the people as the core and fundament, whether from the perspective of ontology and method, or that of value. Putting people as the core is the core value of “people-oriented” outlook, which is to respect people’s life and value in the real life. To respect is the appeal of people’s subjective value. Whether one person could be respected is also the embodiment of “people-oriented” outlook in the real sense. In modern countries ruled by law, it means human rights protection, which is not the human rights protection in western traditional sense, but the consensus formed in the evolvement of human society. The consensus brought forward clear requirements for the governance of a state; that is to say, the operation of the state power must be centred on human rights protection. From this evolving process, we can see that “people-oriented” outlook was the philosophical foundation of human rights protection.

China experienced the disconnection, reconnection and development between the traditional culture and modern culture in modern time. We can say, the “people-oriented” thought we are talking about today is the “people-oriented” outlook with Chinese characteristics tested by practices. To certain extent, China is a nation with typical oriental features. The cultural accumulation in about 5,000 years has rooted the people-oriented thought of oriental traditional ruling method deep into people’s heart. However, China experienced many great events during its development in modern age, and the “people-oriented” ideology also changed from the subjects of the monarch to the pursuit for individual liberty. In modern society of ruling of law, human rights protection should finally be based on ruling, and the subject of ruling—the people. Hence, after leading the Chinese people to establish the new China, the Communist Party of China persists to the principle of “the people are the masters of the country.” The Constitution stipulates that “All power of the People’s Republic of China belongs to the people” and “the state respects and protects human rights.” All these indicate that the socialism with Chinese characteristics stresses on human rights protection, which is not only reflected in individual activeness, but also in the limitation of ruling (ruling of law). According to the third plenary session of the 16 Party Congress, efforts should be made to establish the comprehensive, coordinative and sustainable outlook on development and promote all-round development of economy, society and the people by abiding by the people-oriented outlook. This shows that in China, respecting people’s life and value is relative to social development. In a law-based country, it is the result of the joint efforts of individuals of citizens and the state to realize people’s legal rights. In this sense, the natural result of “people-oriented” outlook in China is human rights protection with Chinese characteristics. Thus, “people-oriented” outlook is the logic starting point of socialism human rights protection with Chinese characteristics.



II. Human rights protection is the basis for the Constitutional protection of the basic civil rights

As the core of human rights, “people’s dignity” is centrally embodied in the Constitution, which is the fundamental law of a country, as the basic civil rights under Constitutional protection in modern democratic and law-based countries. Thus, the basic civil rights take the core position in the legal system of modern law-based countries. In modern society, only after people’s rights are transformed from legal rights to the rights in real life can the subjects of the rights obtain the interest contents of the rights, and it is then that the rights contain realistic value for the subjects, and are genuine and complete; under the circumstance, a state can realize its will and expected legal values¹. It is for this reason that human rights protection would unavoidably require human rights Constitutional protection. In other words, human rights protection is the basis for the Constitutional protection of basic civil rights. Specifically, we can discuss the issue in three aspects: First, human rights protection needs Constitutional guarantee from the subjective appeals of the main body; second, human rights protection needs Constitutional supports, viewing from the angle of objective social effect; third, human rights protection needs Constitutional recognition in terms of the process of realizing the value of individuals, the country and society.

First of all, the core part of human rights protection is to protect people’s dignity with focus on the subjective initiatives and perceptual knowledge of people as individuals. In this sense, as the individual of a human being, people in emotion need to sustain the life and require various materials for life sustaining, and based on this, require respect and freedom as a human being. However, though people are born free, they also need “shackles” to meet their demands as the “human beings” since they live in the society. The so-called “shackles” are the laws in modern law-based countries. These laws, based on the Constitutions, are used to standardize various aspects of the social life. Thus, while respecting the state governance, people naturally require clearly reflecting their personal right appeals in the Constitutions in the form of the Constitutional recognition and protection of the basic civil rights; secondly, only when the rights on the paper play their corresponding roles in real life can they meet “people’s” needs. Under this circumstance, various department laws of various fields are necessary to standardize the rights related to basic civil rights so as to realize the basic protection of basic civil rights; thirdly, only after the whole process from subjective appeals of rights to the emergence of social effect is realized can people realize the value of self-content and then would like to interact with the state so as to realize the state will. For the state, it realizes the state will. More importantly, it realizes its expected

¹ Please refer to Zhang Wenxian: *Studies on the Category of Law Philosophy*, China University of Political Science and Law Press, 2001, P.315



legal value and proves the soundness of state governance.

In terms of China, the 1982 Constitution in force is the relatively complete Constitution so far. All the information from “the personal dignity of citizens of the People’s Republic of China is inviolable” at the beginning to the newly added “The state respects and preserves human rights,” on the one hand, reflects people’s appeals to individual rights and respects to individual rights, and on the other hand, reveals the respects of the state governance to the human rights and the determination of ruling by law. Of course, the improvement of China’s legal system is still a very important topic. Only by starting from human rights protection, centering with the Constitutional protection of the basic civil rights and various department laws promoting the realization of the basic civil rights as the basic contents strictly according to the Constitution can we realize human rights in real sense. During the realization process, the state, society and the people also put forward requirements: first, the people need to be sufficiently confident and are willing to be in the ruling mode of the state; second, the standardization of the state governance need to realize its due social value, namely, standardizing social life so as to further enhance people’s confidence. The sound interaction between the people and the state governance can help realize state protection of human rights and reflect the concept of “putting the Constitution above everything else” and the authority of laws. More importantly, it can improve citizens’ awareness of ruling by law and their legal quality.

III. “People-oriented” outlook is the philosophical basis of the Constitutional protection of the basic civil rights

As the above mentioned, the “people-oriented” outlook is committed to respecting people’s life and value. Of the two aspects, respecting people’s life is the most basic function as it is the natural condition of people’s existence as a human being. Only in the circumstance that a person’s life is not under threat and is respected can he or she has more energy for self-development, paying back to the society, constructing his or her country and has appeals to his or her personal rights. Thus, respecting people’s life is the precondition of realizing human rights protection. Under the circumstance that the precondition is met, people’s value should be respected, which is more important. As the individuals in a country and the society, people are the major force of the political, economic and cultural development of a country and the society. We can say, the sound development of the country and society cannot continue without people’s intellectual and physical work. The working process can fully demonstrate the different characteristics of different people; in addition, the national and social progresses also need the interaction and integration of these characteristics. Such process is just the process of realizing individual value. The roles of the state and the society during the process are to respect people’s value in a standardized



manner through using their powers. In a modern and law-based country, the subjective appeal of “people-oriented” outlook is to protect human rights, while the final step of human rights should be the Constitutional protection of the basic civil rights, and the latter two are to meet the subjective demands of the “people”—the subject of the rights. During the practices, given a country’s state governance is really guided by people’s needs, the sound interaction between the society and individuals will emerge. This reflects the dual development of “state—society” in modern time.

Viewing from the above-mentioned process, we can see from the angle of history development that the philosophical contents of “people-oriented” outlook will unavoidably continue to be evolved based on its own subjective initiatives. This indicates that the appeals of human rights, which are logically based on the outlook, will generate more and new appeals with the history development. Thus, within the institutional scope, the Constitution, as the fundamental law of a country, can only standardize the basic civil rights through combining partial enumeration and summarization so as to protect the basic civil rights. Under the circumstance, the Constitutional protect of the basic civil rights is defined as “people’s dignity” with the objective value orientation of the inner philosophic significance of “people-oriented” outlook. “People’s dignity” and the “liberal and democratic orders,” which is the governing mode of modern countries, jointly constitute the objective value order of the Constitution. Based on the value order as the judgment criterion, we can clarify the protection system of the basic civil rights. In detail, we need to define the basic civil rights from the angle of the people and showcase the connotations of the basic civil rights, which include the two aspects of the functions of subjective rights and objective standardization. The function of subjective rights mainly embodies passive defense and active claim and is developing with the development of the principle of people’s sovereignty. It reflects the change of the relations between individual rights and the ruling powers of the rulers from “confrontation” to “request;” the function of objective standardization can effectively coordinate the state power and civil rights, make effective defense and require the state to make offers on the basis of certain objective value. The two functions jointly protect the integration of the basic civil rights in the Constitution, providing space for all-dimensional thinking and development of the Constitutional interpretation of the basic civil rights¹. The functions can be defined as the concept of protection of the basic civil rights, namely, changing from individual requests to value judgments so as to forming multi-level system of Constitutional protection of the basic civil rights. In detail, we need to distinguish the different levels of the requests upon Constitutional protection of the basic civil rights and clarify the efforts of department laws in standardizing related problems.

¹ Please refer to Li Jianliang: *Constitutional Theory and Practice (I)*, Xuelin Culture Cause Co. Ltd., 1999, P.57-65



Regarding China's practice of ruling of law, though China's current Constitution has abundant stipulations related to the basic civil rights, people will have more claims on rights during the practices with the development of people's subjective initiatives and the improvement of people's economic, political and educational level, and more contents will be included into the system of the basic civil rights. But the Constitution cannot be revised frequently and many new claims of civil rights will be in the predicament of seeking legal protection¹. However, so long as we persist to the "people-oriented" outlook and respect people's value in a pragmatic manner, we will properly handle these problems.

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¹ Such predicament includes not only the dilemma that no law can be found for protection, but also the difficult position that we can find law for protection, but cannot generate ideal results.



HUMAN RIGHTS AND PEOPLES' ENGAGEMENT: THE NEW POLITICAL CULTURE AND BALANCING ASSESSMENT FOR GLOBALIZATION —CRYSTALLIZATION OF LESSONS-LEARNED FROM NATIONAL HUMAN RIGHTS COMMISSION OF THAILAND

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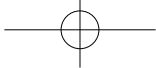
Introduction and Justification

The purpose of this paper is to share experiences of the National Human Rights Commission of Thailand (NHRCT) and some working groups on the human rights violation cases related to the marginalized peoples, especially those living with the poverty e.g. the urban poor, the ethnic minority groups and the indigenous peoples. In order to concretize the rights-based practices, some projects were done with the collaboration of the people and some partners, and with the enhancement of the peoples' safeguards from their engagement and capacity building processes with rights-based approach.

Geographically, Thailand has a territory of 514,000 square kilometers, nearly one-fifth of the size remains forest. The borders of Thailand meet all neighboring countries: Laos, Cambodia, Burma and Malaysia which covers approximately 4,863 kilometers. On the west, the border is next to Burma and then the south as far as the Malay Peninsula. On the east, the border with Laos meanders southeast along the Mekong River until it reaches Cambodia, which is at the east of Bangkok.

In 2009, Thailand has a population of 66.68 million within 76 provinces. They are generally Thai citizens, while non-Thai citizens, more than 3 millions, assumed to be stateless and undocumented persons.

In the matters of overall economic development, Thailand has made progressive and consistent growth rapidly during 2003-2005, and it has been up risen considerably by many countries to become a “medium level” economy. Then during 2006-2009 its economic development was slow down and simultaneously met both irregularly internal and external conflicts. Anyhow, according to the 2009 report on the Millennium Development Goals, the United Nations Development Program (UNDP) and the Thai Government announced that Thailand has already achieved many of goals set for 2015, including those concerned with



poverty, hunger, gender equity, HIV/AIDS, malaria and access to water, and that a number of others would likely be met soon.

Thailand has been known as the peacefully constitutional monarchy, with elected leaders ruling the country since 1991. The development of human rights has gradually raised and borne some people's engagement and human rights responsive mechanisms, including the National Human Rights Commission of Thailand (NHRCT) that was established by the 1997 People's Constitution and is currently envisaged by the 2007 Constitution and the 1999 National Human Rights Commission Act.

In general, the 2007 Constitution is safeguarding the spectrum of rights for both communities and individuals. A number of strong provisions are included in the chapter the Rights of Citizens and the Obligations of the State e.g. the right to be protected in the peaceful habitation of one's home (Section 33); the liberty of movement and the rights to choose one's residence (Section 34); the right of traditional communities to participate in the management, maintenance, preservation and exploitation of natural resource and the environment (Sections 66-67); the right to own private property and detailed procedural protections in the event of expropriation of immovable property (Sections 41-42); and the rights of participation in and information about the decision-making process in all kind of development or changes which will affect their lives (Sections 56-62).¹ And for the 1999 National Human Rights Commission of Thailand Act, it authorizes the NHRCT to undertake the quasi-judicial functions including investigating human rights violations, working on individual complaints and communications, monitoring and advising the Government as well as providing the human rights education and research.²

Apart from such domestic human rights responses, in the regime of international human rights, Thailand also initially voted in favor of Universal Declaration of Human Rights in 1948 and subsequently endorsed the 1949 Geneva Conventions. Then, it earnestly undertook human rights lineage again from 1985, chronologically as: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1985); the Convention on the Rights of Child (CRC) (1992); the Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1992); the International Covenant on Civil and Political Rights (ICCPR) (1997); the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1999); the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) (2007); and the Convention on

¹ The Secretariat of the National Legislative Council, Thailand, "the 2007 Constitution" (the Thai language)

² According to the Principle relating to the Status of NIs (the Paris Principles) GA Res.48/134 (1993) <www.unhcr.ch> (19 October 2009): The International Co-ordinating Committee of National Human Rights Institutions (ICC) accredits the NHRCT with the status A+ since it completely complies with the Paris Principles (independence, completed reporting documentation, implementing of some of the key tasks of the NIs and financial independence).



Rights of Persons with Disabilities (CRPD) (2008). The remaining core Treaties, especially the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), are still under the consideration process.¹

For the accountability of the undertaken International Human Rights Treaties, the State's Obligations with the foreign policy and collaboration in Section 82 in the 2007 Constitution stipulates that "the State shall promote friendly relations and cooperation with other countries, adopt the principle of non-discrimination, and comply with its ratified international human rights treaties including the obligations with other countries and international organizations."² So, it clearly implies that the international human rights standards should be considerably applied as the domestic legislation without any delay or unreasonable obstacles while the positive international cooperation shall be implemented indeed.

But anyhow during the last decade, a growing number of violent incidents have been pervasively triggered. The Unrest in Deep South has provoked a strong response from the government forces. The 2003 vigorous anti-drug program has also raised gross and unlimited violence when the government has applied strong pressure on entire communities, particularly spotlighted to all highland villages and border areas as well as the urban poor communities whose members were suspected of involvement in drugs and public order violations. Moreover, the large-scale development projects both in the rural and urban areas caused the massive displacements while some natural conservation policies have been seriously enforced. The State still fails to protect these rights and sometimes it is found as the infringer also. There has been a massive disregard of the Constitution. In additional, the never ending political unrest, since the replacement of the 1997 People's Constitution by the 2007 Constitution after the overthrow of the elected government by the military coup in 2006, has caused the prolonged economic crisis and the exhaust of human rights and judicial systems, which retrograde the deep-rooted democracy and human rights consecutively.

Relevantly, in order to enhance the above-mentioned undertaken human rights instruments constructively, the NHRCT has initiated the cooperative efforts with the multi stakeholders i.e. the ethnic minorities; the urban poor; the educators; the government officials and the law enforcers through the various activities with the tri-parties mechanism (the peoples, the NHRC- and the Sub-Commissions). This social cooperation is the value-added bridge which can function properly on the ground at this time. Some ad-hoc committees and working groups were created for conciliation and participation. The principles of open minded, respectful consultation and mutual partners are also encouraged during the implementation.

¹ The Office of United Nations High Commission on Human Rights <www.ohchr.org> (19 October 2009)

² Supra Note 2.



To encounter with the pervasively penetrated development, particularly against the money-oriented policies, the NHRCT spares no effort to intensify the right to development which reaffirmed the significance of the communities' participation and determination, to develop their own communities.¹ At the same time, there was the worldwide human rights development knowledge transference as a lesson learned and one of the prominent lessons learned was the participation process, and subsequently it has been used to build up the guidelines of the human rights protection and promotion, which is a pro-active measure. The involvement of concerned parties who deliberate and implement projects or activities that affected human rights and actions that assist, rehabilitate and remedy the affected victims. The Civil Society Organizations (CSOs) and the Community-based Organizations (CBOs) are the main actors to play these vital roles. The CBOs are signified as the group of people who share common values and ways of life. Furthermore, they share their management experiences which one another in the form of group working in line with the human rights principle, especially on the Economic, Social and Cultural Rights and the right to self-determination. The CSOs are defined as the group of various people who share common values and vision as well as the networking management.

Lesson-learned: from Strategic Factors to Actual Activities

Since 2003, the NHRCT has been very active concerning capacity building and participation among the grass roots, CBOs, CSOs and NGOs in order to accomplish sustainable development and peaceful society. The NHRCT studied and monitored the economic, social and cultural situation through the people's points of view and selected four areas around the country as the pilot study project with the cooperation with other groups of vulnerable people. Then it enlarged the multifaceted work to the underprivileged and marginalized groups, such as the ethnic minority groups, the stateless peoples and the urban poor.² The factors driving towards the new political culture and balancing assessment for globalization has been identified and used as the strategic factor to design the action plans and the actual activities with the human rights-responsive and dynamic approach.³

Some landmark cases e.g. the nationality revocation of the 1,243 people in Mae Ai district, Chiangmai province; the involuntary relocations of several tribal and indigenous villages from the crucial suppression, aggressive development and money-oriented policies in northern and Andaman provinces. The refusal of the accessibility or deprivation of the fundamental human rights by the government officials against the non-Thai ethnic

1 The 1993 Vienna Declaration and Program of Action, p. 2 <www.ohchr.org> (16 October 2009)

2 Sub-commission on Economic, Social and Cultural Rights, National Human Rights Commission of Thailand, 2003-2008

3 See Figure.



minorities and the discrimination on the grounds of race, national and social origin as well as the birth or other status are exercised within all human rights mechanisms and urged for urgent protection and effective remedy in different level. Some innovative ways e.g. the Thai-Civic Action Network (Thai-CAN) and Human Rights Education for the law enforcers and violators have been initiated to enable the proper procedures for enforcing these human rights standards and mechanisms effectively.

Several international human rights materials were translated into Thai mediums. The seven core ratified Treaties as: CRC; CEDAW; ICCPR; ICESCR; CERD; CAT; and CRPD were simplified and developed as the bilingual mediums. Then a pack of related documents e.g. the General Recommendations or Resolutions were translated into Thai and distributed widely. While some international human rights workshops were also replicated for the capacity-building of the relevant staff members and key actors for human rights education.

These country-wide activities were summed up with the ten pilot learning activities in a project entitled “the People’s Human Rights Mechanism: the ways to build Human Rights from the Grassroots,” conducted within the thematic areas while several working groups on rights of marginalized peoples in Thailand still keep functioning as well as the new networks are always emerging from the wide range of the target groups with the self-determined and rights-based activities i.e.

- the Network of the Poor for Developing the Phuket province,
- the Thai Education Watch Network,
- the Tribal and Indigenous Peoples’ Network,
- the Youth for Human Rights Network, and
- the Economic, Social and Cultural Rights Network.

The three most prioritized issues concerning the people living with poverty are the community rights entitlement; the justice for natural resources management in different situations; and the human integrity development.

In the matters of legislation and social cooperation, the conflict of laws in relation with the international human rights laws, the constitutional statutes and the domestic laws are studied and discussed in public while some recommendations are steadily proposed to the legislative, political and administrative bodies. Some innovative guiding principles, particularly the community rights entitlement and the natural resources management, are introduced to the domestic arena. All projects were conducted the community-capacity building processes with the people-driven upgrading activities and the full scale participation. The examples of these projects could be summarized as follows:

From 2003 to 2005, the NHRCT implemented the co-operative project between the Chiangrai Rajabhat University and the Chiangrai College of Technology and Agriculture entitled “the New Paradigm towards Ethnic Communities Development: Rights-based



approach” (the New Paradigm Project) which partly supported by the Canadian International Development Agency (CIDA) and the Development Cooperation Foundation (DCF).¹ The project activities focused on the research and development on human rights issues with the empowerment process of the CBOs and the CSOs; i.e. the highlander communities, the Assembly of Ethnic Groups of Thailand and the Network of Ethnic Eminences, in order to draft the Community’s Master Plan on the Community Development, the Environmental Preservation and the Narcotic Control. The multifaceted activities were conducted within five selected areas for finding the concrete recommendations for this specific Master Plan.²

During 2004-2005, Tsunami and other natural disasters caused high rates of internal displacement around Asia Pacific region. The annual meeting of Asia Pacific Forum of National Human Rights Institutions (APF) in March 2005 urged the members to start up activities by using the UN Guiding Principles on Internal Displacement providing a solid normative framework for addressing the human rights challenges of internal displacement, including in times of natural and man-made disasters. Later on, a working group of the APF/Brookings-Bern Project on Internal Displacement visited Thailand and conducted the preliminary survey and feasibility study on internal displacement project. They accordingly recommended the NHRCT to apply a lesson-learned of the New Paradigm Project as an offshoot for the Internal Displacement project. Hence, the 2006-2008 Internal Displacement project entitled “A Comparative Study through Enhancing Process on the Rights to Life and the Right to Self-determination for the Internally Displaced Persons among the vulnerable areas under the Thai Government Policy” was initiated with the partial support from the APF/Brookings-Bern Project on Internal Displacement.³ This project undertook the development and research methodology with the rights-based approach. Several capacity building activities were introduced with the cooperation of the CBOs and the CSOs in three selected provinces in the north, i.e. Lampang, Chiang Mai and Nan. This project was completed with the outcomes as the lesson—learned entitled “The Internally Displaced Persons’ Networking: the Constructive Ways through the Bill of Rights.”⁴

The NHRCT’s lesson—learned from the violated cases by “the penetrated Development” during 2003 to 2009 shows that there are a vast gap concerning attitudes and understandings towards the concept of “the Rights to Development and the Economic,

1 The NHRCT and the Canadian International Development Agency, The Good Governance in Thailand from Policy Formulation to Implementation: the constructive ways through the Bill of Rights to promote and protect human rights in Thailand, January 2003, December 2005.

2 Sub-commission on Ethnic Groups issues, National Human Rights Commission of Thailand, 2003-2005.

3 The NHRCT and the APF/Brookings-Bern Project on Internal Displacement, A Comparative Study through Enhancing Process on the Rights to Life and the Rights of Self-determination for the Internally Displaced Persons among the Risky Areas under the Thai Government Policy, December 2005 - November 2006.

4 Sub-commission on Ethnic Groups issues, National Human Rights Commission of Thailand, 2005-2008.



Social and Cultural Rights.” It respectively brings about numbers of severe confrontations. The implication of “Development” of the State’s point of view was different from that of the peoples’ on the ground, and as a result most development projects did not comply with, but seemed to deteriorate, the quality of life. The NHRCT often found both the involuntary displacement cases with the arbitrary land seizures causing severe changes the ways of life, for it was managed without the people’s consent and participation.

In order to concretize and synergize the ways towards the human rights and peoples’ engagement as the new political culture, the NHRCT intensified some activities in the vulnerable areas of the Chao Lay (Sea Gypsies) Communities in the Andaman provinces, especially in the tourist attraction provinces, Phuket. With the completion of economic and development in the name of the globalization, it recognizes that the local communities, i.e. Chao Lay Communities, are mostly disregarded. The NHRCT had conducted the professional visits and study programs for capacity building and networking through human rights activities, entitled “ASEAN NHRI Forum and ESCR Enhancement via People’s Engagement and Empowerment through Rights-based Activities” (ESCR-PEER). Several dispute resettlements, especially on the ancestral domain land, with the intervention of the NHRCT and some relevant partners, were drawn out as the lessons-learned, i.e. the Community Title Deed, to dialogue with the ASEAN countries, particularly Indonesia, Malaysia and the Philippines, who have the National Human Rights Institutions, likewise Thailand. The ASEAN National Human Rights Institutions Forum (ASEAN NHRI Forum) is jointly documenting the comparative experiences of justifiability in addressing Economic, Social and Cultural Rights, and will finalize it at the 6th Annual Consultative Meeting of ASEAN NHRI Forum, in November 2009, in Yogyakarta-Indonesia, while it will be dialogued with the ASEAN Secretariat, with the expected outcome to work with ASEAN Intergovernmental Commission on Human Rights (AICHR) at that time as well.

Further Implementation and Recommendations

The NHRCT proposes the implementation for those relevant, with the enhancement of the state authorities, as follows:

(1) The CBOs should establish problem-solving capacity by ways of coordination among community member, systematic networking, and good governance with accountability as well as people’s empowering activities. The CBOs will study their problems in their own aspects, develop their plans for resolving their identified problems and implement them with subsidized resources; hence, they could manage themselves with their self-design.

(2) The CSOs should be established as a peer-to-peer network of the CBOs. The social dialogues and public inquiries will be mobilized through this network. The CBOs can share



their capacities and assistance for the others, such as, to propose the policy and strategies by people empowerment through participation process and information dissemination and transferring the message through media. The organizations that respond to disseminate the right concept should be strengthened. The group of people has to participate in every human rights promotion activities.

(3) The capacity building, people-driven upgrading and human space drawing activities should be started up. The CBOs and the CSOs will upgrade themselves and their work becomes acceptable which legitimizes their status as a partner of development project, hence the human space drawing for CBOs, CSOs, local governors, municipalities, professionals and NGOs will be systematically shaped and draw some answers for the proper ways to deal with the problems. The additional activities should be set up, such as knowledge and understanding about human rights through people and government officials as well as the relevant rules, regulations and the laws.

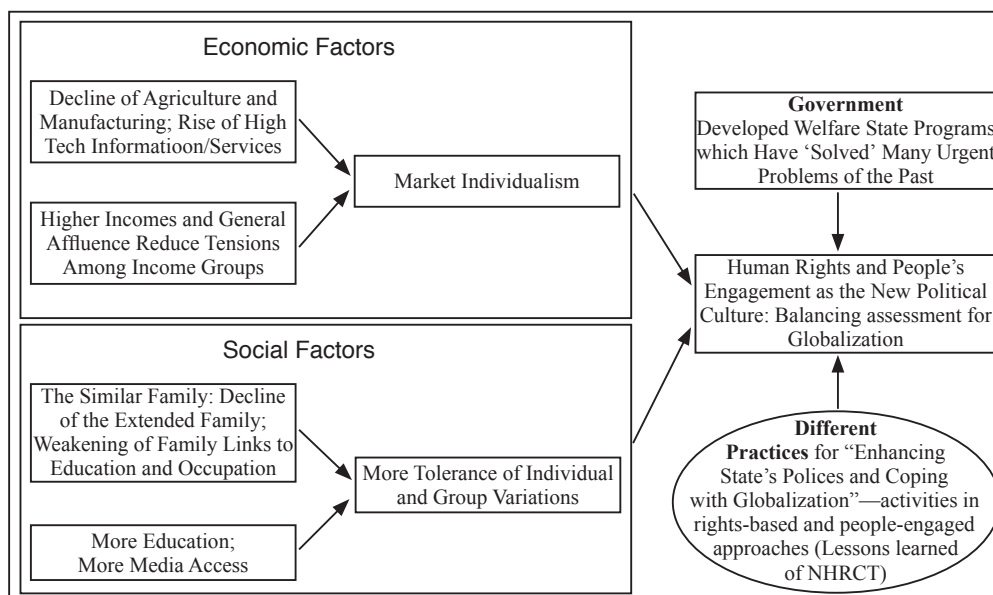
And analytically, according to all lessons-learned from either the NHRCT or all social movements regarding the enhancing human rights mechanisms, the social cooperation is an appropriate bridge which can be the value-added process for implementing the human rights standards and mechanisms. The strategy as to propose “the human rights and peoples’ engagement as the new political culture and the way to balancing assessment for globalization” still has to be used to deconstruct the blanket discrimination and misconception from the prolonged centralized concept. Some more recommendations for the implementation in different levels could be shown in the matrix of lessons learned and recommendations, as follows:



Lessons learned and Recommendations for Human Rights and Peoples' Engagement as
The New Political Culture and Balancing Assessment for Globalization

Level	Strategic assessment	Concrete actions	Correlative enhancement
Domestic	Effective Information Technology system	<ul style="list-style-type: none">• The institutional linkages between whole bodies responsible for the collection, collation and analysis of data, and those responsible for policy formulation, as well as those who subsequently implement policies.	<ul style="list-style-type: none">• Diversity of developing• Cultural and Social rights
	Capacity building of 'Good Governance'	<ul style="list-style-type: none">• Strengthening the rule of law, judicial processes, government inspection units, watchdog NGOs, investigate media, trade unions, parliamentary oversight committees, ombudsman-type arrangements, and consumer and share holder activism	<ul style="list-style-type: none">• Policy Implication
	Assurance measurements (Affirmative action) (e.g. Poverty reduction strategy)	<ul style="list-style-type: none">• Affirmative policy for maximizing fundamental rights for some vulnerable groups	<ul style="list-style-type: none">• Affirmative actions
Regional	Capacity building of 'Good Governance'	<ul style="list-style-type: none">• Strengthening the rule of law, judicial processes, government inspection units, watchdog NGOs, investigate media, trade unions, parliamentary oversight committees, ombudsman-type arrangements, and consumer and share holder activism	<ul style="list-style-type: none">• Policy Implication
	Effective Information Technology system	<ul style="list-style-type: none">• The institutional linkages between whole bodies responsible for the collection, collation and analysis of data, and those responsible for policy formulation, as well as those who subsequently implement policies.	<ul style="list-style-type: none">• Diversity of developing• Cultural and Social rights
International	Capacity building of 'Good Governance'	<ul style="list-style-type: none">• Strengthening the rule of law, judicial processes, government inspection units, watchdog NGOs, investigate media, trade unions, parliamentary oversight committees, ombudsman-type arrangements, and consumer and share holder activism	<ul style="list-style-type: none">• Policy Implication
		<ul style="list-style-type: none">• Introduction of Multi Stakeholder Mechanisms	

Figure: Factors driving towards the New Political Culture¹ and balancing assessment for globalization

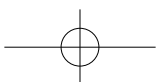


(The author Supattra Limpabandhu is Director of Central Administrative Bureau, Secretary of the Economic Social and Cultural Rights Sub-Commission of the Office of the National Human Rights Commission of Thailand; the author Ekachai Pinkaew is Human Rights Official in Office of National Human Rights Commission, Thailand)

¹ Applicable revised from Clark, Terry Nicholas, "Globalisation and Transformations in Political Cultures," a article in Hambleton, Robin(ed.) "Globalism and Local Democracy; Challenge and Change in Europe and North America," (New York: Palgrave Macmillan, 2000), pp.70.



STUDY ON HUMAN RIGHTS IN CHINA





RESEARCH ON THE FULFILMENT OF HUMAN RIGHTS AND ITS EVALUATION METHOD

Li Junru
China

To boost the human rights development in China and respond to the challenges that the international community has made towards the conditions of human rights in China, we must further deepen the human rights research with Chinese characteristics, making our obligatory contributions to the world human rights practices and human rights theory. In accordance to the issues we have met in the research and communication on human rights, it is necessary to conduct a profound research on the fulfilment of human rights and its estimate.

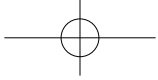
Fulfilment of Human rights: an Important Subject of Human Rights Research

It is necessary to discuss what the fulfilment of human rights is at first, for it is a foundation for the discussion.

Human rights are certain kinds of rights that mankind has formed and enjoyed in the historical development of politics, economy, culture and social life. As the history of human society has told us, man's cognitions of human rights come out of practices, and man has to depend upon practices to turn his cognitions of human rights into reality. Man's knowledge about human rights that man has formed in their practices is just the so-called human rights theories. Therefore, the fulfilment of human rights refers to the course in which human rights theories are turned into the reality through practices and its results.

Investigating the fulfilment of human rights epistemologically, the dialectic materialism holds that the course from practices to cognitions is the first epistemological leap and that from cognitions to practices the second one. In this sense, the fulfilment of human rights is the second leap in the course of cognition. When we review the fulfilment of human rights from the point of view of the second epistemological leap, which is profounder than that of politic science, we can notice that the fulfilment of human rights is not only a very important field of research, but also it consists of research topics in four aspects:

Firstly, the research on the requirements for human rights that practices have imposed. That cognitions can turn into practices is a sign of initiative of the former. But such initiative is absolutely not a purely subjective thing, not the initiative through which one can



be whatever he subjectively wants to; instead, it is the initiative based on the requirements arising out of practices in certain practical conditions. In the research on the fulfilment of human rights, the first issue that needs to be dealt with is what kinds of human rights the practices have required. Whether a society can meet the requirements for human rights that practices have imposed or not is just the very criterion to estimate the fulfilment of human rights in a society. There is no other criterion except for this. What needs to be made clear is that the actuality of fulfilment of human rights is evidently related human rights theories, but it does not mean the mechanical imitation or comparison of human rights theories. In researching the actuality of fulfilment of human rights in China, one cannot simplistically copy a human rights theory for comparison, let alone comparing the actuality of fulfilment of human rights in China, which is a developing country, with that in developed ones; instead, the only standard is whether the conditions of human rights in China have met the requirements for human rights that the practices have imposed on China.

Secondly, the research on which part of human rights theories have been turned into practices to the requirements of practices. Practices are the courses of physical movements to intentionally transform the world. The purpose is the cognitions turned into practices, the cognitions achieved through activities. When cognitions are turned into practices, the first thing is to turn cognitions into the objective of practices. Specifically, the cognitions, such as theories, need to be turned into the objectives and foundations of activities such as program, policies, laws and regulations. When researching the actuality of fulfilment of human rights in China, one must ascertain which parts of human rights theories and principles have become the programs and policies in the development of China, and what laws and regulations on human rights have formulated in China. What needs to be made clear is that the research on the actual fulfilment of human rights in China cannot merely remain at the level of documents, but it is undeniable that the changes and progresses at the level of documents are also a progress in the issue of human rights, a necessary important link and significant representation in the fulfilment of human rights.

Thirdly, the research on turning human rights theories into reality through practices. To turn human rights theories into the objectives of practices to the requirements of practices is the first step in turning a human rights theory into reality, but not the final fulfilment of human rights theories. The final fulfilment of human rights theories means that the human rights theories and their principles as the objective of practices finally become a social reality in the course of practices. Or in short, they should become the actual rights that the people enjoy in reality, and can be guaranteed by law.

Fourthly, the research on the test and development of human rights theories through practices. As for the second leap from cognitions to practices, Mao Zedong once remarked that it “is more meaningful” than the first one. It is not only because the second leap in the



course of cognition turns conceptual things into reality, but also that in the second leap, cognitions are tested, improved and developed through practices. Therefore, the research on the fulfilment of human rights in a country must involve basic information on two aspects: one is which human rights principles have turned into reality in the country; and the other is what new exploration and development this country has made in its practices of human rights, including what new cognitions it has formed about the human rights theory.

On the basis of such cognitions and consideration, we must view the fulfilment of human rights highly when we deepen our research on human rights.

Evaluation of Fulfilment of Human Rights: An Important Issue in the Communication on Human Rights

In the research and communication on human rights, especially in international communication, a thought-provoking phenomenon is that different people can draw completely different conclusions from the same facts and the same phenomena when they evaluate the fulfilment of basic political rights such as the freedom of beliefs and press. To better improve the communication on human rights, therefore, we should research more deeply the evaluation of fulfilment of human rights.

The evaluation of fulfilment of human rights is essentially a value judgment on the basic conditions of fulfilment of human rights in a country. It is unavoidable that people with different values or value tendencies make different value judgment on the actual fulfilment of human rights in the same country, but it does not mean that man has no way out in the face of an issue as such. As it is mentioned above, the fulfilment of human rights is manifested at the first place as the satisfied human rights requirements through practices, hence when value judgment is made on the fulfilment of human rights, the start point and basic requirements should be to what extent human rights have satisfied the human rights requirements of the people in this country. In other words, when we judge the actuality of fulfilment of human rights in the country, we must see what objective requirements for human rights have been imposed by the people in the country in the developmental course of practices; and at the same time, we need to see whether the policies, laws and particular practices of this country have satisfied the people's requirements as such. In my opinion, such objective historical investigation and assessment can help us to form a few basic consensuses.

What need to be pointed out are the following two points:

First, the human rights requirements in question are the requirements for human rights that the people of the country have imposed in the development of practices. In other words, one cannot evaluate the human rights requirements of the people in this country with those in other countries. That is the objectivity, if you like.



For instance, we have noticed that when it talks about the actuality of fulfilment of human rights in China with some foreign officials or folk people during these recent years, China has held that today's conditions of human rights in China have been the best in the history of China; but the foreign counterparts argue that the conditions of human rights in China have not been fundamentally changed and there are many problems. With a further observation of the opinions of both sides, one can find that they have talked about different things in the name of the same topic. What China talks about is that due to the development during the past 60 years since the founding of the People's Republic in 1949, especially due to the efforts during the past 30 years since the reform and opening up to the outside world in 1978, the Chinese people have enjoyed the rights to subsistence, development and something else that they had never before; but the foreigners emphasize that the Chinese people do not enjoy citizens' basic political rights and so on in accordance to their own requirements for human rights or their requirements for the human rights in China. If everyone requires others and judges the fulfilment of human rights in other countries with his own requirements for human rights, people certainly will dispute. And that is exactly not objective.

In our opinion, therefore, if we want to objectively observe the actuality of fulfilment of human rights in a country, we should observe the actual human rights requirements arising from the people of this country in practices, and to what extent this country has met the people's requirements for human rights in the course of practices.

Secondly, the requirements for human rights in question are constantly changing in the developing course of practices, rather than fixed. That is to say, for this issue, no one can skip any stages or ignore social progress or the changes thus caused in the requirements for human rights. Instead, we must keep an eye on the changing requirements for human rights so as to meet the increasingly improved human rights requirements of the people.

For the actuality of fulfilment of human rights in China, for example, we must notice that the people's requirements for human rights in different periods of social practices are completely different. Before the founding of the People's Republic of China in 1949, China was a semi-colony and semi-feudal society, so the nation's independence and people's liberation were the historical pursuit of the Chinese people at that time. For the human rights requirements of the Chinese people during that period, one was the collective human rights for national independence, and the other was basic political, economic and social rights for the liberation of the people. The policies and reforms of the New China when it was founded 60 years ago met such human rights requirement of the Chinese people, thus opened a new era in the history of China. After the requirements for these rights were satisfied, it was urgent for the Chinese people to improve the backwards economy and culture of this country and alleviate the poverty of the people by means of earlier industrialization. At



that time, the Chinese people's yearning for a new life was increasingly focused on their rights of subsistence and development. They had been the Chinese people's new pursuit of human rights since the mid-1950s. To meet the people's requirements for the rights of subsistence and development, the CPC led the Chinese people to launch large-scaled socialist construction and develop its economy. But the party made some mistakes in its guidelines, and thus failed to complete this mission. By the end of 1978, the CPC transferred its focus from class struggles to economic construction and began its reform and opening up to the outside world, and hence the Chinese people's rights to subsistence and development started to be fulfilled step by step in practice. After it entered the 21st century, the Chinese people have imposed some new requirements for human rights, that is, to continually focus on economic construction to guarantee the acquired rights to subsistence and development, meanwhile to plan the harmonious development of economy and society as a whole in leading and supporting the people to gain more basic rights in social welfare and other respects. As for the requests for some political rights that the people have constantly made during these recent years, if only with a glance at their particular claims, one can easily find that they require to obtain the rights to be informed, to participate, to be heard, and to oversee. Such requirements were centered on the rights to subsistence and development before, now simultaneously on the right of social welfare. It is an interesting phenomenon in the fulfilment of human rights in China, and it shows that the requirements of the Chinese people for human rights are not fixed; instead, they are characterized with stages, and are constantly improved together with economic and social development. The fulfilment of human rights in China is just continually developed as such in constantly meeting the human rights requirements of the people.

To sum up, when one observes and estimates the fulfilment of human rights in a country, the first thing to be ascertained is what human rights requirements the people of this country have imposed in practices, especially what new requirement they have made in the different stages of practices; and the second is that whether the country has met the people's requirements for human rights or not, especially whether it has satisfied the people's new requirements for human rights on the basis of reality. This is the evaluation method that we should advocated and insist on for the fulfilment of human rights.

Bright Spots in the Fulfilment of Human Rights: Improvement and Development of Human Rights Theories

The fulfilment of human rights just means a course in which human rights theories are tested, improved and developed through practices. Hence, when we research this issue, we need think much of which new questions have been made and what new ideas have been added to the traditional human rights theories in the fulfilling course of human rights.



The currently popular human rights theory and its principles in the world were mainly formed during the burgeoning course of capitalism in Europe and America. From the point of geographical spheres, they reflect the ideological principles formed in the fulfilment of human rights in Europe and America; historically, they have shown the need of the people in Europe and America for overthrowing feudalism and theological oppression; and from the point of contents, they indicate the requirements for man's liberation and development of individuality in the course in which capitalism substituted for feudalism. This traditional human rights theory and its basic principles have both their universal applicability and their historical limitations. Therefore, in the courses of fulfilment of human rights in each country afterwards, this theory and its basic principles have been challenged by many issues that require deeper speculation and further improvement and development although they have played an important role. For example, the *Universal Declaration of Human Rights* adopted 61 years ago has insisted on this traditional human rights theory and its basic principles, but at the same time, it has summarized the experiences in the world's anti-fascist war and the achievements of democratic countries in the fulfilment of human rights, adding some new contents to the human rights theory. For another example, after the Second World War, especially during the recent two or three decades, no positive effect has been achieved by performing the Western-styled democracy and related human rights principles in some Latin American and African countries. All these questions deserve our speculation and research.

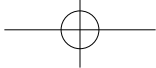
As we have noticed, during the 61 years since the adoption of the *Universal Declaration of Human Rights*, the world has witnessed a series of important historical events, among which two are the most significant. One is that a tide of independence of countries and liberation of nations occurred, and together with the collapse of a colonist system that had been formed as capitalism expanded in the planet, there emerged a large group of developing countries; the other is that socialism burgeoned, developed and reached a climax after the war and underwent its huge setbacks at the turn of the 20th and 21st centuries. But at the same time, China, with one fifth of the total population of the world, has opened up its socialist road with Chinese characteristics and gained world-attracting achievements in its reform and opening up to the outside world within merely 30 years. These two important historical events have raised two significant issues about human rights: one is that human rights are not only those in the sense of the liberation and development of individuality, but it should also include the collective human rights that a nation or country enjoys; and the other is that human rights are not only the political rights opposite to feudal and theological rules, but they should be the people's rights to subsistence and development at first. Those are the new issues concerning human rights raised in the course of post-war fulfilment of human rights, and they should be included in the human



rights theory, of course.

Therefore, when we study the fulfilment of human rights and its evaluation, we should hold a scientific and innovative attitude, summarize in earnest the new experiences and thoughts that the practices of human rights have provided to human rights theories, improve and develop the traditional human rights theory, and make our contributions to the development of human rights in the world.

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HUMAN RIGHTS LAW EDUCATION IN CHINA

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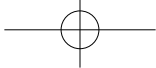
Introduction

“Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”

(Excerpt from the UDHR Preamble, 1948)

2008 marked the 60th anniversary of the Universal Declaration of Human Rights. The Universal Declaration has had widespread influence, and all international human rights legal instruments adopted since then elaborate the principles of the Universal Declaration. All countries in the world have engaged with the Universal Declaration in one way or another. The Preamble of the Universal Declaration encourages the promotion of respect for the rights and freedoms set out in the Universal Declaration through teaching and education. The importance of human rights education has since 1948 been restated again and again by the UN General Assembly, first through the Human Rights Education Decade (1995-2004), and since then through the World Programme for Human Rights Education that started in 2004.

2008 also marked the 30th anniversary of the opening up and reform policy of the Chinese government and 2009 marks the 60th anniversary of the Peoples Republic of China. There has been remarkable development both in the legal system and in the legal education system in China in the last years. Since the beginning of the new Century there has also been a considerable growth in human rights law courses offered in law schools in China's elite universities. The Norwegian Centre for Human Rights (NCHR) has, together with the other Nordic human rights institutes i.e. the Raoul Wallenberg Institute for Human Rights and Humanitarian Law (RWI) and the Danish Institute of Human Rights (DIHR), been involved in providing training courses for human rights law teachers in China. This article



will provide an overview of legal human rights education in China and discuss the possible impact of such education.

The academic China programmes at the NCHR, the RWI and the DIHR became involved in capacity building activities on international human rights law for Chinese legal researchers from the mid nineties. From 1999 to 2003 for example they co-organised annual two-week academic meetings where focus was on capacity building on human rights topics in order to facilitate Chinese research that would take international human rights law into account (NCHR China programme annual report 2003).

The Chinese government has continued to engage with international human rights law since the early 1990's. In addition to participating in human rights dialogues with Western countries, China has now ratified six international UN conventions of international human rights law. In 2004 the National People's Congress amended Article 33 of the Chinese Constitution in order to include the sentence: "the State respects and safeguards human rights" and in 2006 China became a member of the new UN Human Rights Council. China has also recently developed a Human Rights Action plan outlining their human rights priorities for the future and in 2009 they underwent their first review in the Human Rights Council.¹

Courses on international human rights law for law teachers in China

In 2001 the Chinese Ministry of Education (MoE) issued a Notice that human rights law was to be included in the list of approved elective courses for law schools in China. Human rights law was now placed as number 15 in the Ministry of Education list, just after the 14 required law courses (NCHR China programme annual report 2001). Scholars have thus expected that human rights law would be included as a required core course in Chinese law schools in the near future (Sun 2006, pp 68, 77). This has not happened yet, but the notice has opened up space for law schools to offer optional courses in human rights law. In comparison, no other academic disciplines in China can offer human rights as an individual course yet. There was considerable interest in human rights issues among legal scholars in China in 2001, but not many legal institutions had the qualified teachers, teaching capacity or indeed teaching materials to start offering such optional human rights law courses for their students.

In this situation the China programmes at the NCHR, RWI and DIHR saw an opportunity to contribute to the development of legal human rights education in China, and they decided to get involved in capacity building activities for law teachers wishing to teach human rights courses. The Nordic institutions are the only foreign institutions which

¹ http://www.latimes.com/news/nationworld/world/la-fg-rights7-2008nov07_0_2674520.story



have focused systematically on the training of human rights teachers in China. While the Nordic institutes have cooperated on some human rights education projects, they have also developed their own individual human rights education projects that in many ways complement rather than compete with each other. The joint objectives of their human rights education activities in China has been to increase the knowledge of international human rights law standards and teaching methodology among law teachers in China so as to facilitate both the start up of human rights law courses and the incorporation of international human rights law standards into already existing courses on international law, constitutional law or jurisprudence.

From 2001 to 2007 the Nordic institutes have supported seven annual two-week courses in international human rights law for law teachers in China. Interested law teachers from all over China could apply for the courses and approximately 25 participants were selected on a competitive basis to attend each course and many of the teachers attended several annual courses. Many participants in the first courses had never studied international human rights law before. In the beginning well known foreign human rights experts came from abroad to teach in the courses since there were no available teachers in China who had the knowledge or expertise to teach the participants. This situation has changed somewhat. After extensive studies and research both in China and abroad, several Chinese scholars have now become experts on international human rights law or on specific human rights topics. In the last courses many Chinese scholars thus lectured for the Chinese law teachers. The courses were organised into lectures, discussions and group work and focused on both introducing substantial knowledge of international human rights law, on teaching methodologies and on facilitating networking among participants. The first courses were very basic, but as the knowledge of some of the participating law teachers developed progressively, so did the courses. In the last years the courses became very advanced and it was thus necessary to have prior knowledge of international human rights law in order to participate in them (NCHR Annual reports 2001-2008).

In addition to such joint training activities, several of the Nordic institutions organised complimentary individual activities. The NCHR has since 2005 organised an annual two-week international human rights law course in Western China. They saw the need to specifically target law teachers from those regions in order to strengthen human rights education and research at law schools in the Western provinces of China. The joint Nordic sponsored teacher courses had become too advanced and the competition to attend was so fierce that participants from Western China had become underrepresented. Many of the experts providing the training in these international human rights courses in Western China have been Chinese human rights law experts. While the NCHR has focused on reaching law teachers from universities all over China, the RWI has instead decided to concentrate their



efforts on a few institutions in their individual projects. For some years, they have supported a few select universities in Western China in order to enhance their teaching, research and curriculum development¹. The institutions receive both institutional support and help from national and international experts to develop syllabus, collect teaching material and teach courses (Bakke et al 2009, p 4-5). It is safe to say that human rights law is gradually becoming a legitimate field of legal education in China and that a group of committed Chinese human rights teachers have emerged.

Courses in international human rights law for law students in China

A total of more than 200 Chinese law teachers have now been trained in international human rights law by the Nordic institutions, they have come from 76 different institutions in China and from 25 provinces or province level municipalities (Bakke et al 2009, p 11). Many of these teachers are today active in teaching human rights law and the number of law schools where independent human rights law courses are opened is constantly increasing. When the Nordic institutions started training law teachers in 2001 there were no independent courses in international human rights law. In 2003, 13 universities had opened courses (NCHR China programme annual report 2003) and today there are more than 30 universities offering human rights law courses in China. In addition, many more law teachers are now incorporating international human rights law standards into their law classes on constitutional law or jurisprudence or international law (NCHR China programme annual report 2008).

The optional human rights law courses that are offered at Chinese universities vary in focus and in length, but most are organised into 36 hours of lectures. There are optional courses on human rights law on both bachelor and master level, but not all universities offer both types of human rights law courses. Chinese human rights law teachers do not receive any help or funding to open courses from the Nordic human rights institutions. After they have participated in trainings it is up to their own institutions whether they want to open courses and how to organise them. In order to further encourage and strengthen networking and cooperation between Chinese law schools in the field of human rights education and research however, the Nordic institutes have from 2008 sponsored an annual 3-day network meeting of some 60 Chinese human rights teachers providing a forum where scholars who are already teaching human rights courses can exchange and discuss experiences and plans regarding curriculum development and teaching methodology.

There is no common curriculum on human rights law in China as of yet and in the start there was a lack of teaching materials available in Chinese language. The NCHR in

¹ <http://www.rwi.lu.se/coop/asia/china.shtml>



cooperation with the China University of Political Science and Law and the Foreign Affairs College developed and published the first Chinese language textbook on international human rights law in 2002. The NCHR then donated more than 3000 copies of the textbook to university libraries all over China so that it would be available to students and the book is on sale in all major bookstores (Bakke et al 2009, p 7). Since then, at least four more university textbooks on human rights law have been published. Among these, one textbook called “Human Rights Law” has been developed by scholars handpicked by the Ministry of Education and is thus regarded as an ‘official human rights textbook’. Some Chinese scholars see this as a sign that human rights law will soon become a required core course in Chinese law schools (Sun 2006, pp 57, 73-74). Textbooks are important in education, but as Professor Sun has noted it is also extremely important to pay attention to the perspectives on human rights portrayed in such textbooks and the methods used for organising the contents of textbooks (Sun 2006, p 74). Not all textbooks focus on international human rights law, some focus more on the theoretical developments of the human rights concept or on cases. There is therefore not one comprehensive Chinese textbook that cover all the complicated aspects of human rights law and many law teachers thus use several textbooks in their teaching.

In addition to the regular 36 hour optional courses in human rights law offered at some 30 universities, there are some other interesting international human rights law education activities at the law schools at Peking University, at the China University of Political Science and Law and at Changchun University. Supported by the RWI, the Research Centre for Human Rights and Humanitarian Law at the Peking University Law School started a Research Direction in human rights law for Master students in 2004, when the Research Centre got approval to add a research direction of human rights to one of the already existing research directions under the LLM programmes (Sun 2006 p76). The human rights direction is taken over 3 semesters and approximately 20 students have been enrolled each year¹. Eight courses are taken in the first two semesters and in the last semester the students write their thesis. The courses are taught by professors at the Peking University Research Centre for Human Rights and Humanitarian law and by foreign visiting professors and guest researchers (Bakke et al 2009, p 4). The Institute of Human Rights and Humanitarian Law at the Law Faculty of the China University of Political Science and Law in Beijing started a 3-year research direction under the MA programme in Jurisprudence in 2005. In 2007 it became a full degree programme and now offers both a Master degree and a PhD in human rights law. This degree programme is funded solely by Chinese sources and is the only existing full degree programme in human rights law in China (Yeh 2009, p 10). The North-

¹ <http://www.rwi.lu.se/coop/asia/china.shtml>



East Normal University in Changchun is establishing an interdisciplinary, optional and credit-giving course in human rights for third and fourth year students in 2009. The project will be funded by the Royal Dutch Embassy in Beijing, but implemented by DIHR and carried out by a network of universities in Changchun. There will be four 36-hour courses: Introduction to International Human Rights, Human Rights and Development, Business and Human Rights and International Humanitarian Law¹.

Possible impact of human rights law teaching in China

There have been very few general studies on the impact of university human rights law education although there has been a rapid growth of such education all over the world since the middle of the 1990s (Tibbits 2006). In China, where human rights law education emerged even later there has been even less research on such issues.

One very visible effect of all the different legal human rights education activities in China is of course that more and more students receive human rights training, that more and more law teachers are trained in how to teach human rights law, that more and more law teachers actually do teach human rights law and that more and more law schools now offer human rights law courses. These increasing numbers are in themselves a remarkable change from when there was no human rights law teaching in China. Human rights law is gradually becoming a separate field of legal education in China and a group of committed Chinese human rights teachers have emerged.

For the NCHR the rationale behind the focus on training of law teachers instead of directly training students has been one of sustainability. By educating the educators, the dissemination of knowledge about international human rights law may be more stable and effective and thus reach even more students in the long run. The potential these educators have for influencing the education of the future generation of legal workers and legal scholars is unique. If human rights law courses become mandatory core courses then all future law students will receive human rights law training. The Chinese society is changing rapidly and future generations of legal scholars and practitioners will be expected to adapt to these changes.

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CHALLENGES AND STRATEGY CHOICES FOR CHINA'S HUMAN RIGHTS DEVELOPMENT IN THE NEW PERIOD

Chang Jian
China

China's reforms have entered a new historical period. We need to carefully analyze the new challenges posed by the new historical stage to China's human rights development, in that it enables us to have a more clear view of our tasks and problems and make proper adjustment and improvement on China's human rights development strategies in accordance with environment.

1. Challenges to China's human rights in the new historical stage

China has entered a new and unprecedented development stage, which brings about a number of new tasks and problems. China's human rights, therefore, are faced with the following new challenges:

(1) The multilayer demands for and levels of human rights protection

With 30 years of rapid development since reform and opening-up policy was adopted, China has witnessed increased quality of people's life, enriched social and cultural activities and enhanced level of orderly participation in politics. In some areas with rapid development, people are demanding for enhancing the level of human rights protection after their basic living has been rather adequately ensured; while in the areas with relatively slow development, people are demanding for strengthening the fundamental rights protection since their basic living has not been adequately guaranteed. The most typical example is the protection of education rights. In large cities, with the 9-year compulsory education right fully protected, people are demanding for 12-year compulsory education. In rural areas, however, the fundamental education is still plagued with difficulties in school buildings, educational resources and funding, therefore people are in great need for increasing investments in fundamental education.

Even in the same area, market-oriented distribution of income has caused the growing income disparity, and market-oriented employment has made employment situations obviously different. This has led to the multilayer structure of the demands for rights protection. Take the right to housing for instance. People with medium and high incomes have already possessed basic housing and further demand for improvement of their housing



environment, while people with low incomes are still obsessed with the problem of basic housing since they are unable to pay for the increasing housing prices.

Because of the differences in education level, workplace environment and living conditions, there have been significant differences in the level of demands for social, political and cultural rights. The social strata in advantaged situation demand for more social interactive platforms, more opportunities for political participation and more diversified cultural activities, while those in disadvantaged situation demand for more government investments to protect their most fundamental economic, social, political and cultural rights.

The multilayer structure of the demands for rights protection has created a dilemma for China's human rights protection strategies. Specifically, the enhanced level of protection will produce more problems for human rights protection of groups of people in some regions, while lack of enhancing the level of protection will make the level of rights protection in developed areas below the level of economic development and lead to insufficient protection.

(2) The diversification of the contents and categories of human rights protection

With the economic, social, political and cultural developments, significant changes have taken place in people's lifestyle. Thanks to the rapid spread of the Internet, the virtual space has become an important component of people's real life. The well development of traffic and transportation has made migration normally seen in people's living. Because of exponential increase of new knowledge and information, continuous education has become a learning process that cannot afford suspension in people's life. The various methods of business transactions have made it possible that exchanges of materials in any corner of the world can be completed instantly in different ways. Changes of social conditions have diversified the choices of lifestyle, and new ways of spouse selection, wedding, children's education and retirement have become reasonable options.

Because of those new changes in social activities, various demands for new rights have been emerging continuously, including the rights to adequate housing, to sunlight, to tranquility, to privacy, to be informed, to homosexuality, to life-long education, to virtual assets and reputation, and some people have even mentioned the rights of natural landscapes and animals.

Demands for new rights need recognition from social participants and legislative bodies, increasing the difficulty and complexity of human rights protection.

(3) The internationalization of the subject and content of human rights protection

With the development of globalization, China's economic development is closely connected with the development of the world economy, and the life of Chinese people is engaged increasingly closely with that of the world people. More and more Chinese people



travel, study, work, invest and start business abroad. At the same time, more and more foreign academicians, business persons and tourists come into China. Chinese commodities are continuously transported to other countries by land, air or sea, and overseas capitals, equipments, cargos and technologies keep coming into China. Chinese economic conditions stir the nerve of world economy, and the ups and downs of the world economy and politics have growing impact upon China.

China's involvement in the globalization process facilitates the internationalization of the subject and content of human rights protection. New problems have emerged and challenged China's human rights protection, including the protection of the rights of overseas Chinese, foreign citizens staying in China and participants in international businesses, fighting against international piracy, participation in UN peace-keeping operations, drafting international conventions on human rights, supervising and reviewing the implementation of those conventions, and fulfilling the due responsibilities and duties of the conventions.

(4) The multiple channels for rights claims and complaints

With the rapid coverage of mass media, the claims, complaints and remedies for human rights have been increasingly diversified. On the one hand, besides the traditional ways, the Internet, TV and radio have constituted important channels for human rights claims, complaints, supervision and protection. On the other hand, various social forces participate in the development of human rights more initiatively and actively, making rights claims, reflecting problems of rights violations, supervising the rights protection, and putting forward suggestions on measures to protect human rights.

While providing more convenient ways for rights claims, complaints and supervision, new kinds of mass media have brought about challenges for orderly development of human rights. Media reports on unexpected events introduce new policy topics for discussions and impact on planned agenda and schedule. Different media make different voices on one issue and express different opinions. Open and intense debates on these opinions have made it difficult to integrate and unify the opinions. Also, public opinions formed by various kinds of mass media constitute a strong burden for the legal procedures of right protection, influencing to some extent on defining the nature and formulating just solutions of rights-related issues through strict and fair legal procedures. In this sense, it is a must in human rights protection to be aware of the limitations of mass media and exploit the advantages to avoid their negative influence.

Similarly, various social forces have carried out activities of human rights protection. On the one hand, they will play the role as fresh forces in promoting China's human rights protection, such as what the non-governmental organizations have actively done in the relief work after the 5.12 Sichuan Earthquakes; on the other hand, it is a new challenge



for the administration-dominated Chinese government to pave the way for orderly social participation and facilitate harmonious interaction between society and government.

2. Strategy choices for China's human rights development

Four problems need to be solved to meet the new challenges and promote the China's human rights development, namely, the problem of the relationship between equal and special protection of human rights, the problem of relationship between fundamental human rights protection and the enhancement of protection, the problem of relationship between domestic and international protection of human rights, and the problem of relationship between government promotion and social participation. To solve these problems, we must insist, on the one hand, that China's human rights protection has been proved to be successful and effective, adhering to the principle of People First, putting people's rights to subsistence and development prior to all and comprehensively promoting human rights in a healthy interaction among reform, development and stability. Specifically, while we focusing on the principle of People First, we must proceed with stability as the precondition, reform the motivation, development the key, and rule of law the guarantee, so as to accelerate an all-round and harmonized development of civil and political rights as well as economic, social and cultural rights. On the other hand, we must insist the principle of proceeding from and exploring in the actual conditions, learning in open exchanges and tempering ourselves in orderly debates, readjust and improve the contents and methods of the development strategies for China's human rights in accordance with China's reality.

(1) Equal protection of human rights, especially handling the relationship between equal and special protection

Human rights are equal rights, and one of the most fundamental principles of human rights protection is the equal protection of rights. With 60 years of human rights development in the new China, one of the basic experiences is to vigorously promote the equal protection of human rights, aiming at eliminating all the discriminations in enjoyment of rights, including discriminations of sexes, races, geological places, identifications, physical conditions, linguistic cultures and social status. However, during the process of promoting equal protection of human rights, we must deal with the relationship between equal protection of human rights and special protection of vulnerable groups. On the one hand, special protection is necessary for the vulnerable groups in the society, so that they can equally enjoy human rights with other members of society, not only literally, but in reality as well. On the other hand, special protection of vulnerable groups should be limited to their equal enjoyment of fundamental human rights with other groups in society. Equal protection of human rights must serve as the maximum standard of special protection of vulnerable groups, so as not to turn special protection into privilege protection.



(2) The rights to subsistence and development as the priority, promoting balanced protection of all kinds of human rights

Human rights are the most fundamental rights to ensure people's survival and dignity, and one of the most basic principles for human rights protection is to protect the most fundamental rights that everyone is entitled to. China is still a developing country. After 30 years of reform and opening up, although sweeping changes have taken place in Chinese people's basic living conditions and a moderately prosperous society has been built, the gap among living conditions of members of society is obvious. More than 20 million people live in poverty in rural areas, the urban-rural, poor-rich and interregional gaps are still growing and have never been contained completely. Population and employment are faced with heavy pressure, resources and environment are seriously hindering the economic development, and problems are relatively prudent in social security, income distribution, education, health care, housing and safe production. Therefore, in terms of human rights development strategies, the rights to subsistence and development still top the priority of China's human rights protection.

However, the rights to subsistence and development need to be interpreted from the perspective of development. The right to subsistence is to ensure that everybody lives a dignified life, enjoys a quality life and cannot be deprived of life willfully. When economy grows, people will demand for higher level of protection of rights to subsistence and development. At the same time, in different areas and among different social groups, the actual conditions of and demands for rights to subsistence and development are different. Therefore, in the protection of rights to subsistence and development, we must ensure that the relationship is good between the increased demands for protection and the balance among conditions of protection, and give priority to meeting the basic demands and improve the level of protection.

Prioritizing the rights to subsistence and development in the strategies for human rights development does not mean to neglect other kinds of human rights. It is interdependent and mutually promotional between the realization of rights to subsistence and development and the protection of all other kinds of human rights. On the one hand, the protection of the rights to subsistence and development depends on the protection of other economic, political, social and cultural rights. In order to enhance the protection of the rights to subsistence and development, we need to vigorously develop productive forces and restructure economic, political, social and cultural systems, thus creating necessary economic, political, social and cultural conditions for highly efficient development of economy and improvements of people's quality of life and enabling people to enjoy more economic, political, social and cultural rights. On the other hand, the realization of the rights to subsistence and development lays a solid foundation for other economic, political, social and cultural rights.



Therefore, under the precondition of giving priority to promoting the rights to subsistence and development, we should take more proactive measures to accelerate the balanced development of all other human rights. This constitutes the strategic target that must be realized for China's human rights development in the new historical stage.

(3) Assuming the responsibility as a power and participating actively in the international cooperation of human rights

Human rights are the fundamental rights that all members of society are entitled to, and one of the most basic principles of human rights protection is the universal protection of fundamental rights. Chinese citizens, both home and abroad, and foreigners staying in China are entitled to be protected. Meanwhile, human rights are an international cause. It is an international duty for China as a developing power to conduct cooperation with other governments and people and promote the common development of international human rights. China should act as an active participant and builder of the international human rights, not just a stander-by or recipient. China should extensively participate in the UN human rights protection mechanisms and the work of making rules, carry out constructive dialogues, exchanges and cooperation with all other countries in the world, more effectively introduce the actual conditions and policies of China's human rights development, step up efforts to find common points in human rights with other countries, and promote mutual understanding. Through learning from each other, the international community will increase consensus, eliminate differences, overcome one's weaknesses by acquiring others' strong points and seek common development.

(4) Government-society cooperation on promoting orderly development of human rights by rule of law

Usually, human rights protection is promoted through political means, but finally, it will be included into rule of law. Only when human rights are legitimized, a variety of rights demands, claims, complaints and remedies will be carried out in an orderly manner.

The progress in China's human rights protection depends not only on strong acceleration by government, but also on active participation by all social forces. Various education and research organizations, people organizations and non-governmental public organizations play an important and proactive role in promoting China's human rights. During this process, the government should build a platform to cooperate and coordinate with all social forces and provide cooperation opportunities and necessary financial assistance. All social forces committed to promoting China's human rights development should also actively carry out cooperation with the government and vigorously play a role that cannot be played by the government in some important aspects of human rights construction.

In the cooperation between government and social forces to promote human rights



development, different views and opinions will occur on strategies, measures, ways and methods to accelerate China's human rights development. In order to integrate various views and make them work together to promote human rights development, we need further to establish a sound and legitimate procedure including public opinions collection, debates, integration, choices and policy-making, facilitating all different views to be fully and equally expressed and integrated through commonly accepted procedures to promote China's human rights development in an orderly manner.

The realization of human rights depends on the existence of effective remedies, i.e. "no remedies, no rights." The supervision, confirmation and rectification of right violations are important to earnest protection of citizens' human rights. We will further build sound administrative and legal mechanisms on remedies for human rights, establish proper human rights protection organizations to accept complaints, improve the remedial ways and measures for human rights, and timely find out, confirm and rectify human rights violations, thus protecting the human rights of all members of society in real sense.

With the rapid development of new kinds of mass media, the e-media represented by the Internet have been playing an increasingly important role in sharing information of human rights. While new mass media are fast and convenient, they still have such defects as randomness and group thinking. Therefore, relevant legislations have to be improved to give full play to the role of mass media in maintaining human rights and balancing the rights and responsibilities to prevent mass media from becoming a method to violate human rights.

After an arduous course of human rights development, China has explored a correct way of development and scored remarkable achievements in human rights protection. Faced with new challenges in a new historical period, China will hold high the banner of respecting and protecting human rights, abide by the spiritual principle of seeking truth from facts, and join with all social parties to usher in a new phase of China's human rights development, making its due contribution as a responsible power to the development of international human rights.

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LEGISLATIVE PROTECTION FOR WOMEN'S RIGHTS AND INTERESTS SINCE THE FOUNDING OF THE PEOPLE'S REPUBLIC OF CHINA

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The process of legislative protection for women's rights and interests of the new China can be divided into two phases: The first phase is from the establishment of the People's Republic of China to the adoption of the policy of reform and opening up to the outside world, and the second phase is from reform and opening up to present.

I. Historical changes of Chinese women's legal status since the founding of the new China

It is known to all that in old China when men were supposed to be superior to women on the basis of inequality of sex, women's rights were extremely neglected and infringed and were excluded by laws for a long term. Women did not have any political rights and were totally insulated from social life. They had to depend on men economically, since they did not have property right and right of inheritance; they did not have social position and were required to be obedient to their fathers before marriage, their husbands after marriage and their sons after their husbands died; they did not have independent personality or status and were deprived of their rights of education and social activities; they could not decide their marriage and must follow the orders of their parents and matchmakers and were required to be faithful to their husbands to the end; they were ruined both physically and mentally and were oppressed by polygamy and prostitution systems. Even in the Republic of China period, women were not duly liberated owing to the limitation of bourgeois revolution. Inequality between men and women was still the social mainstream at that time and stipulations of discriminating women can be found in various laws.

In order to prevent women from being discriminated in society and family, the new China totally abandoned and nullified the laws and judicial systems that discriminated, oppressed and ruined women handed down from the old China; it also timely made new laws featuring sex equality and protection of women's rights and interests to affirm and protect the rights and interests of women in a legislative manner. The legislation of the new



China greatly changes the legal status of women. The changes include:

The Common Program, which served as the interim Constitution, declared that women enjoyed equal rights with men in the new China. On September 29, 1949, the First Session of the Chinese People's Political Consultative Conference adopted the Common Program of the Chinese People's Political Consultative Conference, which served as the interim Constitution at that time. Article 6 of the Common Program stipulated, "The People's Republic of China shall abolish the feudal system which holds women in bondage. Women shall enjoy equal rights with men in political, economic, cultural, educational and social life. Freedom of marriage for men and women shall be put into effect." Article 48 further stipulated, "National physical culture shall be promoted. Public health and medical work shall be expanded and attentions shall be paid to the protection of the health of mothers, infants and children." These stipulations announced the equality of the legal status of men and women and initiated a new era of women's liberation.

The issuance of the Marriage Law thoroughly overturned the feudal marriage and family system of discriminating and oppressing women. On April 13, 1950, the Seventh Session of the Central People's Government Committee adopted *the Marriage law of the People's Republic of China*. Based on the spirits of abolishing the feudalism marriage system of arbitrary decision made by a third party by force, men being superior to women and neglecting children's rights and implementing the neo-diplomatic marriage system of free choice of partners, monogamy, equality between men and women, protecting the rights and interests of women and children, the new China affirmed the basic principles of equal rights of men and women and protection of women's rights in the form of law, making women the greatest beneficiaries of the implementation of *the Marriage Law*.

Thanks to the implementation of *the Land Reform Law*, women in rural areas also got lands like men and became land owners, fundamentally changing the unequal economic status between men and women. On June 28, 1950, the Eighth Session of the Central People's Government Committee adopted the Land Reform Law of the People's Republic of China, which not only clarified the principle of "distributing lands according to the population," but also showed due concerns to special women groups such as martyrs' wives and widows. Meanwhile, in order to protect women's interests during land reform and their due social rights, Comrade Liu Shaoqi, while explaining the draft of Land Reform Law, specially stressed that "farmers' association should pay attention to absorb women in rural families as members and absorb women actives to participate in leading work. In order to protect women's interests in land reform and their due social rights, and discuss women-related issues, it is necessary to convene women's conferences or congresses in farmers' associations."¹

¹ Report of Liu Shaoqi at the Second Session of the First National Commission of the Chinese People's Political Consultative Conference, originally published on *People's Daily* on June 30, 1950.



New China's first Constitution affirmed the absolute equality between men and women in legal status in the form of the state fundamental law, and stressed on the special protection for women's rights and interests. *The Constitution of the People's Republic of China* was solemnly adopted at the First Session of the First National People's Congress of the People's Republic of China held in the capital Beijing on September 20, 1954. Article 86 of the Constitution stipulated, "All citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status, or length of residence, except persons with mental disease and those deprived of political rights according to law. Women have equal right to vote and stand for election with men." Article 96 further stressed, "Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, and family life; marriage, the family, and mother and child are protected by the state."

The formulation of *Regulations on Administrative Penalties for Public Security* provided legal protection of the rights of person for women. On October 22, 1957, the 81st Session of the Standing Committee of the National People's Congress adopted Regulations of the People's Republic of China on Administrative Penalties for Public Security, stipulating that those who take liberties with women with obscene language or behaviors shall be detained for a maximum of 10 days or given a warning. This stipulation highlighted the protection of the rights of person for women.

A series of laws related to women after the founding of the new China effectively protected women's legal rights and interests, leading to the historical liberation of women in China. After liberation, women extensively participated in the activities in political, economic, cultural and social spheres, becoming a great force of constructing and defending the motherland. However, we must also see that laws related to women during this period, though leading to earth-shaking changes to women's legal status in China, were not systematic themselves with many weak links in legislation and law-enforcement mechanisms. Meanwhile, with the spread of leftism, democracy and the system of ruling by law were destroyed and trampled. Under the circumstance, laws of protecting women's rights and interests were impossible to exert their due roles.

II. Since the reform and opening up to the outside world, China has established the legal system of protecting women's rights and interests

After adopting the policy of reform and opening up to the outside world, China entered a new historical era in its socialism democracy and law-based-governance construction. To comply with the situation, China's woman-related legislation work has taken on a new aspect. In the early stage of the reform and opening up, China issued new *Constitution*



(1982), *Electoral Law* (1979), *Criminal Law* (1979), *Criminal Procedure Law* (1979), *Marriage Law* (1980), *Law of Succession* (1985), *General Principles of the Civil Law* (1979), *Compulsory Education Law* (1986), *Civil Procedure Law* (1991) and the *Decision on Severely Punishing Criminals of Kidnapping, Selling and Abducting Women and Children* (1991) and other important laws, endowing women with the equal rights with men in the fields they are applicable, and corresponding special protection for women. Here I would like to stress a few points. First, the *Constitution* issued in 1982 again affirms the total equality in legal status of women and men in the form of the national fundamental law on the basis of the *Constitution* of 1954 and taking into consideration the reality of the new era, and reiterates the special protection for women's rights and interests. The guiding principles in the Constitution provides legal basis and point out the direction for enacting other laws, regulations, rules and institutions of protecting women's rights and interests; second, the *Criminal Law* of 1979 specially stipulates the crime with women as the aggression objects, such as the crimes of raping a woman or having sexual relations with a girl, with severe criminal punishment. It also stresses that the death penalty shall not be applied to a woman who is pregnant at the time of trial; third, thanks to the spirits that "The marriage system based on freedom, monogamy and equality between man and woman shall be implemented. The lawful rights and interests of women, children and old people shall be protected. Birth control shall be practiced," and the stipulations that "Having gone through the registration procedures, the woman may become a member of the family of the man and the man may also become a member of the family of the woman, whatever is agreed upon by both parties," "Both husband and wife shall be equal in familial status," and "At the time of divorce, both husband and wife shall agree upon the disposal of the jointly owned property; if they fail to come to any agreement, the people's court shall decide the disposal thereof, taking into consideration the actual circumstances of the property and following the principle of favoring the children and the wife" in the *Marriage Law* of 1980, women benefit greatly from the implementation of the law; fourth, the *Decision on Severely Punishing Criminals of Kidnapping, Selling and Abducting Women and Children* in 1991 is playing an important role in cracking down on the criminal activities of selling and kidnapping women and children and protecting their personal safety.

In order to implement related prescriptions of the Constitution, improve the socialism system of ruling by law, perform the obligation of related international conventions China participated in and embody the advantage of the socialism system, China issued *Law of the People's Republic of China on the Protection of Rights and Interests of Women* in 1992. Through affirming various rights and interests of women in an all-round way such as their political rights, rights and interests in culture and education, labor rights and interests, property rights and interests, rights of person and rights and interests in marriage and



family, and stipulating the coordinative, complementary, procedural and punitive clauses, the law has become the basic law to comprehensively and systematically protect women's rights and interests in an all-round way. The first law to comprehensively protect women's rights and interests in Chinese history, the issuance and implementation *Law on the Protection of Rights and Interests of Women* is not only a great event in women's political life, but also a great event in China's socialism democracy and legal construction, indicating that China has established a complete set of laws of protecting women's rights and interests and promoting equality between men and women, which is based on the Constitution, with *the Law on the Protection of Rights and Interests of Women* as the principal part, and include various independent laws, regional regulations, administrative rules of various governmental departments and a series of human rights related to women's rights and interests ratified by China.

After the issuance of *the Law on the Protection of Rights and Interests of Women*, other laws related of protecting women's rights and interests and promoting equality between men and women were improved constantly with the deepening of the reform and opening up to the outside world and the development of socialism with Chinese characteristics. After that, a series of laws which are closely related to women's rights and interests were modified and formulated, such as *Labor Law* (1994), *Law on Maternal and Infant Health Care* (1994), *Law on the Protection of Rights and Interests of the Aged* (1996), *Criminal Procedure Law* (modified 1996), *Criminal Law* (modified 1997), *Marriage Law* (modified 2001), *Law on Population and Family Planning* (2001), *Law on Land Contract in Rural Areas* (2002), *Law on the Protection of Rights and Interests of Women* (modified 2005), *Law on Public Security Administration Punishments* (2005), *Compulsory Education Law* (modified 2006), *Real Rights Law* (2007), *Law on Employment Contracts* (2007), *Employment Promotion Law* (2007), *Law on the Protection of Minors* (modified 2007) and *Law on the Protection of Disabled Persons* (modified 2008). Here, I would like to stress the following points: First, *Law on Maternal and Infant Health Care* of 1994 has detailed prescriptions on pre-marriage health care, health care in pregnancy and confinement period and infant health care to protect the maternal and infant health and improve the population quality; second, *the Criminal Law* modified in 1997 further expands the scope of crime targeting women, such as raping a women, having sexual relations with girls, acting indecently towards or insulting a woman by force, abducting and selling women and children, buying a woman or child who is abducted and trafficked in, obstructing from rescuing a woman or child who has been bought by means of gathering a crowd, luring a girl under the age of 14 to engage in prostitution and whoring with a girl under 14. Meanwhile, it has detailed description of the crimes targeting women, such as gathering crowd to commit licentious activities, luring a minor to join a crowd engaging in licentious activities, illegally conducting an operation



of restoring oviduct or spermatic duct, organizing women into prostitution, forcing women into prostitution, assisting the organization of women into prostitution, luring, sheltering and introducing women into prostitution, spreading venereal diseases, organizing an obscene performance, forcibly interfering into other persons' freedom of marriage, bigamy, maltreatment, forsaking others and so on. These stipulations provide legal weapon for cracking down on the crime of infringing women's legal rights and interests; the third point is the modification of *the Marriage Law* in 2001. The modified *Marriage law* remains the spirits of focusing on the disadvantageous groups and protecting human rights of the marriage laws of 1950 and 1980. Through banning family violence, establishing the system of null marriage and reversible marriage, detailing legal device reasons, setting up device compensation system and the system to claim damages, and increasing remedy measures and legal responsibilities, the modified Marriage Law focuses more on people's needs, better protects the legal rights and interests of women, children and the aged and endows more rights to women to provide legal basis for protecting women's marriage and family rights and interests; fourth, the modified *Law on the Protection of Rights and Interests of Women* in 2005 clearly stipulates that "implementing equality between men and women is the national policy of the state," clarifies the law-enforcement bodies and government's responsibilities, standardizes the functions and responsibilities of women's federation, stipulates more detailed protections on women's political rights, rights and interests in culture and education, rights and interests of labor and social security, property rights and interests, rights of person and rights and interests of marriage and family, further strengthens legal responsibilities, and highlights the characteristics of the law of "clarifying rights while focusing on protection," "being both systematic and target-oriented," and "setting foot on the realities while taking into consideration the necessities and possibilities" so as to provide the legislative contents and legislative technologies of *the Law on the Protection of Rights and Interests of Women* with vivid Chinese characteristics and features of the era.

After reform and opening up to the outside world, China's legislative work for women shows the following features:

1. Sound interaction between national legislation and local legislation in protecting women's rights and interests

In protecting women's rights and interests, sound interaction between national legislation and local legislation has emerged. On the one hand, national legislation clarifies the principles and standards of women's rights and interests protection for local legislation, and provides enough legislative space for local regulations; on the other hand, local legislation strengthens the pertinence of laws and regulations, makes up defects of unspecific stipulations in national laws and regulations and accumulates experience



for improving national legislation. This is extremely prominent in the formulation and modification of *the Law on the Protection of Rights and Interests of Women* and the issue related to family violence. In 1992 when *the Law on the Protection of Rights and Interests of Women* was issued, nearly all the provinces, autonomous regions and municipalities formulated the measures to implement the Law according to their respective realities. These implementation measures, on the basis of considering the local economy, politics, culture and custom, have solved the prominent problems in women's rights and interests in their respective regions, highlighting local characteristics. In 2005 when the law was modified, various provinces, autonomous regions and municipalities also started to amend their implementation measures according to the modified Law. So far, a total of 19 provinces, autonomous regions and municipalities have modified their implementation measures. The modified implementation measures not only exceed the previous ones, but also have made contribution to the implementation of *the Law on the Protection of Rights and Interests of Women*.

Another example is related to family violence. China's laws and regulations on family violation started from local legislation. In March 2000, Hunan Province issued China's first local regulations of combating family violence the Resolution of Hunan Province on the Prevention and Restraint of Family Violence, opening the door for the problem of family violence to enter the legislation area. The Marriage Law of the People's Republic of China in 2001 clearly stipulated the problem of family violence in the form of a national law, and hence, family violence formally became a legislative concept. The Law of the People's Republic of China on the Protection of Rights and Interests of Women modified in August 2005 stipulated the problem of family violence in the form of the national basic law and made a breakthrough compared with the Marriage Law. In return, the prescriptions in the Marriage Law and *the Law on the Protection of Rights and Interests of Women* also provide legal basis for anti-family violence in some localities. The above-mentioned sound interaction between national and local legislations accelerates the construction of China's law system of protecting women's rights and interests.

2. China's legislation work of women's rights and interests protection complies with and promotes the historical trends of protecting women's human rights in the world community

Enjoying full human rights to realize equality between men and women legally and virtually is the lofty goal of the vast women and the human beings for a long term. However, the reality of the world shows that the modern society is far from the ideal of enabling women to enjoy full human rights; women cannot share the rights and interests with men in reality equally and the phenomenon of inequality between men and women still exists in various countries and sectors to some extent. The phenomenon not only



seriously baffles the comprehensive development of women cause, but also hinders the social harmony and progress. Under the circumstance, requiring the protection of women's human rights and promoting equality between men and women have become the irresistible trend worldwide. The world community and various countries in the world adopt measures, especially law-based measures to comply with the trend. In the world community, after the first international instrument on human rights *Universal Declaration of Human Rights* was adopted by the UN Assembly on December 10, 1948, human rights issue has been attracting the world concerns, and women's human rights is its focus. Thus, the world community has adopted a series of pacts and declaration, such as *the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (1949), *Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value* (1951), *Convention on the Political Rights of Women* (1952), *Convention on the Nationality of Married Women* (1957), *the Declaration on the Elimination of Discrimination Against Women* (1967), *Declaration on the Protection of Women and Children in Emergency and Armed Conflict* (1974), *the Convention on the Elimination of All Forms of Discrimination against Women* (1979), *the Nairobi Forward-Looking Strategies for the Advancement of Women to the Year 2000* (1985), *Vienna Declaration and Program of Action* (1993), *Declaration on the Elimination of Violence Against Women* (1993), and *Beijing Declaration and Platform for Action* (1995), etc. The series of international human rights laws for women constitute an important part of the development of the international human rights legislation, making positive contribution to the improvement of women's human rights.

As a state party and signatory of conventions related to women's human rights protection, China has adopted various measures to actively implement related regulations and perform its solemn commitments. China has made great efforts and eye-catching achievements in protecting women's human rights and promoting equality between men and women through legislation and has established a complete set of law system based on the Constitution of the People's Republic of China, with the Law of the People's Republic of China on the Protection of Rights and Interests of Women as the principal part, which also includes various independent laws, regional regulations, and administrative rules of various governmental departments. More importantly, the *Law on the Protection of Rights and Interests of Women* modified in 2005 legalizes the basic policies of equality between men and women, indicating a new progress and a new height of China's law in realizing the requirements of the conventions. As the first law of comprehensively protecting women's rights and promoting equality between men and women in Chinese history, the formulation and modification of the *Law on the Protection of Rights and Interests of Women* initiated a new historical starting point in legislative protection of women's human rights in China and made contribution to the protection of human rights of women worldwide.



3. Consciousness of social gender is gradually included into the legislation process

Originated in the United States in 1960s, the theory of social gender is the core concept system that was developed during the practice of feminism movement and has been playing an important role in guiding the movement. It is gradually developing into an important analysis category of academic researches in the west. Analysis to the social gender means a process that includes the recognition and understanding of the reasons for unequal social genders with a goal of finding out the structural reasons for women's disadvantageous social status in social, political and cultural sectors so as to develop pertinent policies and measures and fundamentally change the situation of inequality between men and women¹. The concept of social gender has been included into major decision-making procedures of various UN organs, which has become the fixed policy of the UN. The UN Economic and Social Council pointed out (1997) that it was a type of strategy and included the affairs of concerns of men and women and their experience into the devise, implementation, supervision and assessment of the policies and guidelines in all areas such as politics, economy and society as a whole to equally benefit men and women and end the phenomenon of inequality so as to finally realize equality of both sexes. The Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women held in Beijing in 1995 reflects the angle of social gender, injecting energy for the researches on women and women's work in China and providing new horizon and methods in this regard.

The legislative manifestations of including social gender consciousness into the major process of decision making are:

1. China formulated and modified the *Law on the Protection of Rights and Interests of Women*, which focuses women as the protection targets. Viewing from the angle of social gender, we can see that the *Law on the Protection of Rights and Interests of Women* is a law embodying advanced social gender culture, and its modification was also based on the advanced social gender culture. The *Law on the Protection of Rights and Interests of Women* comply totally with advanced social gender culture in goals and core values. First, the goal of making the *Law on the Protection of Rights and Interests* is to protect women's rights and interests and promote equality between men and women and the formulation and modification of the Law are the comprehensive embodiments of advanced culture, especially the advanced social gender culture; second, the basic principles established by the *Law on the Protection of Rights and Interests of Women* of equality between men and women, non-discrimination and special protection of women's rights and interests are both the internal requirements of advanced social gender culture and the concentrated

¹ See China project team of "Increasing the Capacity of Promoting the Social Genders into Major Trend Among Members of International Labor Organization": *Manual of Increasing the Capacity of Promoting the Social Genders into Major Trend*, China Social Sciences Press, December 2004, P44.



embodiments of advanced social gender culture; third, the *Law on the Protection of Rights and Interests of Women* protects the equal rights between women and men in various areas such as politics, culture and education, labor and social security, property, personal security and marriage and family, which more concretely reflect the requirements of advanced social gender culture. Meanwhile, through affirming and protecting the connotations and values of advanced social gender culture, the *Law on the Protection of Rights and Interests of Women* further carries forward and develops advanced social culture.

2. The Constitution and many other laws clearly stipulate equality between men and women and make it the basic principle.

3. The basic national policy of promoting equality between men and women is legalized. The modified *Law on the Protection of Rights and Interests of Women* in 2005 clearly stipulates that promoting equality between men and women is the basic national policy. Making the equality between men and women the basic national policy and legalizing it are the comprehensive summarizations of the Communist Party of China and the Government on their understandings and practices of the issue of women development, the steps of complying with the world progress, the solemn commitments made to the world community and the contribution to the international women movement.

4. China's woman organizations, especially women's federations, participate in legislation. All-China Women's Federation focuses on rights maintenance from the fountainhead, deepens investigations and researches, actively and timely follows the processes of the state legislation and government decision making and actively participates in important law making and modification related to women's interests. All-China Women's Federation played important roles in the processes of formulating the second *Marriage Law* in 1980 and the *Law on the Protection of Rights and Interests of Women* in 1992, During the modification of *Marriage Law* in 2001, All-China Women's Federation put forward five important legislative suggestions such as "resolutely banning the practices of bigamy or taking concubines," "banning family violence." All the five suggestions were adopted by the National People's Congress. During the process of modifying the *Law on the Protection of Rights and Interests of Women* in 2005, All-China Women's Federation won high confidence from legislative departments and undertook the basic work of drafting and examination. Meanwhile, the federation also actively participated in legislation and modification of many important laws and regulations such as *Law on the Protection of Minors*, *Law on Population and Family Planning*, *Law on Land Contract*, *Law on Public Security Administration Punishments*, *Law on Employment Contracts*, *Employment Promotion Law*, *Real Rights Law*, *Social Insurance Law* and *Ordinance on the Protection of Women Workers*.

To sum up, the legislative protection of women's rights and interests in China has achieved great progresses since the founding of the People's Republic of China and has



established the law system of protecting women's rights and interests and promoting equality between men and women. The law system not only protects women's legal rights and interests, but also complies with and promotes the historical trend of boosting equality between men and women. However, viewing from the angle of social gender, we must see the insufficiency in China's law system of protecting women's rights and interests and promoting equality between men and women in light with the requirements of building a well-off society in an all-round way and comprehensive development of women cause. We still have a long way to go before we can perfect the legislation work of protecting women's rights and interests, provide more comprehensive and more effective legislative protection to women's human rights, especially turning women's legal rights into realistic interests. We believe that with China's economic and social development, the improvement of the law system of protecting women's human rights and promoting equality between men and women, especially the implementation of the *National Human Rights Action Plan (2009-2010)*, women's human rights will be more effectively protected through legislation and the basic national policy of promoting equality between men and women will be more comprehensively implemented.

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THE DEVELOPMENT AND EVOLVEMENT OF CHINA'S HUMAN RIGHTS POLICIES AND PRACTICES IN 30 YEARS OF REFORM AND OPENING UP

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It is a matter of controversy on how to evaluate the human rights conditions in one country. Personally, I believe that we should perceive from both vertical and horizontal viewpoints and refrain from focusing on one viewpoint while neglecting or denying the other.

To perceive from the vertical viewpoint is to compare the current situation of a country with its past in history, religions, culture and economic development and evaluate its human rights conditions. This is conducive to understanding the history of the human rights development and objectively judging on whether the human rights conditions are in progress or in regress. It prevents from making inappropriate assessment on one country's human rights conditions disregarding its history, economic development and social environment and making inappropriate demand, criticism or accusation on its government's efforts to promote and protect human rights.

The horizontal viewpoint, on the other hand, requires comparison of one country's human rights conditions with those of other countries in the region and the world. Horizontal comparison is conducive to finding out the gaps between one country and other countries in terms of human rights conditions and enabling all the countries to learn from each other and overcome one's weaknesses by acquiring others' strong points. It is worth noting that when making horizontal comparison, we must take into account a number of factors, including different histories, ethnicities, religions, cultures and social conditions of various countries, and refrain from requiring one country to comply with a standard of another country or some countries. Furthermore, we must not politicize human rights issues by mixing ideological factors into the international efforts to promote and protect human rights, or make use of human rights as a tool of implementing one's domestic political goals or diplomatic policies.

This article is aimed to make a brief analysis on the development of the concept, policies and practices of China's human rights, especially on the changes in the field of human rights since reform and opening-up policy was adopted in 1978, and present the developing process of China's human rights conditions through a historical review.



1. The development of the concept of human rights

China has a history of more than 5,000 years, and the Confucianism represented by Confucius has significantly influenced on China's cultural traditions, ideologies and social forms. There are positive aspects in the Confucianism, however, there are also many backward philosophies, including such feudal hierarchical philosophies as looking down upon women and “criminal law not applicable to senior officials and the etiquette not applicable to common people.”

In traditional Chinese philosophies on government, the ideology that people are more important than monarch is commonly seen, however, the word ‘human right’ is imported from outside the country. The concept of human right is the product of the western Bourgeois revolution. In the 17th century, some Bourgeois ideologists and politicians launched the Enlightenment campaign and took the lead to raise the notion of Natural Rights and that all men are created equal and people's life, assets and liberty are inalienable. In 1776, the Natural Rights were written into the *Declaration of Independence* after the American War of Independence, becoming the “first declaration of human rights” in human history. In 1789, *Declaration of the Rights of Man and of the Citizen* was adopted after the French Revolution, stipulating that “men are born and remain free and equal in rights.”

Since Ming and Qing Dynasties, China had increased its contacts and exchanges with the rest of the world. The Qing Government sent students to study abroad the government philosophies of other countries, and a variety of western ideologies and philosophies were gradually spread to China. In the late Qing Dynasty, the government issued the *Outline of Imperial Constitution*, in which provisions of fundamental human rights protection could be found, for example, “people are entitled to freedoms of speech, of writing, of press, of assembly and of association under the law,” and “people cannot be arrested, detained or punished without legal procedures.”

After the People's Republic of China was founded in 1949, Chairman Mao Zedong once said, a fundamental law is needed for governing the state. As a fundamental law, the Constitution sets the principles of people's democracy and socialism and provides a clear-cut guidance for people to advance in a correct direction, raising the enthusiasm of the people across the nation. The first constitution of the new China announces the rights to vote and to be elected, and that Chinese citizens enjoy freedoms of speech, of the press, of assembly, of association, of procession, of demonstration, of religious belief and of person. However, the expression “human rights” were not used in this first draft. In theory researches, experts and scholars rarely involve themselves in the human rights issues.

During the 10-year Cultural Revolution period from 1966 to 1976, China focused on the class struggle and put forward the philosophy of taking class struggle as the central task.



As a result, the humanitarian without class divisions was criticized; the idea that men are equal before the law was discarded; and the Constitution was not fully implemented. The campaign led the entire country into a disaster.

Thanks to the implementation of reform and opening-up policy, sweeping changes have taken place in the concept of human rights in China and new breakthroughs are seen in China's domestic legal construction and attitude towards international cooperation of human rights. With the deepening of reform and opening-up, there have been increasing improvements on China's democratic and legal construction and governments at all levels and citizens have enhanced their awareness of law.

2. Legislative and judicial progresses

More improvements have been made in the practices of China's human rights protection with changes in ideology. For 30 years of reform and opening up, rapid progresses have been scored in strengthening domestic legislation, judicial construction and fundamental human rights protection in China.

Democracy and rule of law vigorously guarantee of human rights. The judiciary promotes human rights protection through judicial activities. Although the international human rights conventions cannot be quoted directly in the judicial decisions, the value, concept and methods of human rights have been extensively spread through absorption and transformation of international human rights standards into domestic laws.

The National People's Congress and its Standing Committee is the state legislative organ and primary organization of China's human rights protection, playing an active role in protecting citizens' rights to be informed, to be heard, to participate and to oversee. In March 2004, the Second Plenary Session of the Tenth National People's Congress made an amendment to the Constitution by adding that "the state respects and protects human rights." The revision has established the human rights principle, improved the democratic and constitutional government, and emphasized on the value and concept of human rights, constituting "a significant breakthrough in China's human rights development."

The Constitution contains provisions on the organization, responsibilities and trial principles and systems of people's court, stressing that the neutrality, independence and fairness of judicial organizations and personnel, requiring just and transparent judicial procedures, and ensuring the principles that everyone is equal before the law, that trials are independent and open, and that the accused has the right to defense, etc. China has promulgated and amended the *Organizational Law of People's Court*, the *Criminal Procedural Law*, the *Civil Procedural Law*, the *Administrative Procedural Law* and the *Law of Lawyers*, established a relatively complete judicial system, set up a series of principles and systems of modern judiciary, such as presumption of innocence, equality of defense



and accusation, litigation with one's own ethnic language, no aggravating punishment on defendants from appeals, the collegial system, the people assessor system and the two-tier trial system, thus ensuring the justice and effectiveness of judicial activities.

3. Government and social endeavors

According to the Constitution, the central and local governments at all levels have responsibility for protecting human rights, which is consistent with the stipulations of relevant UN conventions and declarations. Human rights constitute an important value and benchmark for government's administration and a major component of trainings for civil servants. *A Book on Human Rights Knowledge for Government Officials* is the compulsory textbook for civil servants' learning.

Although no state mechanism for human rights protection has been established in China, there are working mechanisms for special right-holders or issues within governments at all levels, such as the Committee on Protecting Women, Children, the Aged and the Disabled Persons. Having strengthened the legal construction, China has established step by step a government-dominated mechanism for human rights protection on the basis of social organizations and forces, where legislative, administrative and judicial organs all have the responsibility for human rights protection.

China's Public Voice System, evolving from the ancient appealing system, provides an important channel for citizens to voice their dissatisfaction and protect their rights and interests. It is also a remedial method for citizens' rights violations. Public voice departments have been established within most party committees, governments and other organs of state power at all levels, through which citizens, legal persons and other organizations may express their suggestions, opinions or demands by means of letters, emails, facsimiles, telephone calls or visits. Public voice organs investigate and coordinate various problems and provide solutions. As a supplement to the public voice system, organs of state power at all levels have extensively set up diversified and flexible working mechanisms, such as Reception Day of the Responsible Persons, Hotlines, mailboxes, etc. Some local governments have made public the telephone numbers of all responsible persons and established open mail box to receive supervision and report, which is conducive to the rapid and effective settlement of problems. According to regulations by Ministry of Public Security, heads of Public Security Bureaus should publicize their names, positions and contact numbers, sign under their written solutions or working suggestions after receiving letters and calls, and if some problems cannot be solved immediately, they must be solved within a regulated period of time in accordance with relevant procedures and the results must be circulated those who write the letters or pay the visits.

In April 2009, the State Council Information Office issued the *National Human Rights*



Action Plan of China (2009-2010), which was the first national plan China has formulated concerning the subject of human rights. It clearly states the detailed contents of human rights protection, including economic, social and cultural rights protection, civil and political rights protection, protection of the rights of ethnic minorities, women, children, the aged and the disabled persons. The issuance of the plan indicates that China's human rights protection has entered a new historical phase.

In recent years, non-governmental organizations have witnessed rapid development in China and established stable and close relations with relevant government departments. The two are complementary and mutually promotional while not in opposition to each other. Non-governmental organizations may supplement and oversee government operations and bring various social forces into full play. For example, the All-China Women's Federation, the Youth Federation, the Disabled Persons Federation, and the All-China Federation of Trade Unions have been playing a very important and potential role in protecting the rights of special groups. After the major earthquake in Wenchuan, Sichuan Province, domestic and international non-governmental organizations have contributed to donations, environmental protection, medical care, psychological counseling and education, maximizing their unique potential and vigor in providing in-depth and personalized services.

Many non-governmental organizations, including the United Nations Association of China (UNAC), have actively participated in the drafting of reports on China's compliance of human rights conventions and pushed the Chinese government to take practical measures to implement the review conclusions and suggestions by human rights institutions. In 2009, China's human rights record was examined for the first time by the UN Human Rights Council according to its Universal Periodic Review mechanism. The UNAC and some other non-governmental organizations held a consultation meeting in advance, making assessment on Chinese government's efforts to promote and protect human rights, recognizing its achievements and weakness, and rendering proactive and constructive suggestions on how to make improvements. Many of the suggestions were accepted into the conference documents prepared by the Office of UN High Commissioner on Human Rights.

4. The attitude toward international cooperation on human rights

China has always been vigorously participating in UN human rights activities at the international level and supporting UN's efforts to promote and protect human rights. China was restored its lawful seat in the UN in 1971. During the early days after its returning to the UN, China did not participate in the UN Commission on Human Rights and its subordinate bodies. With deeper understanding on the UN and the introduction of the reform and opening-up policy, China has attended UNCHR sessions as an observer since 1979. In 1981, China was elected as member of UNCHR on the UN Economic and Social



Council meeting and has been reelected ever since.

Shortly after joining the UNCHR, China has been actively participating in the discussions on and drafting of international documents of UN on human rights issues, including the *Convention on the Rights of the Child*, the *Convention on the Protection of the Rights of All Migrant Workers and their Families*, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the *Declaration on Enforced or Involuntary Disappearances*, the *Declaration on the Elimination of Violence Against Women*, and the *Declaration on Rights and Duties of Individuals, Groups and Social Organizations on Promoting and Protecting World Recognized Human Rights and Fundamental Freedom*, etc.

China takes an active and discrete attitude toward signing and acceding to the international conventions. Between 1980 and 1987, China signed, approved and acceded to 10 international conventions on human rights. Since 1989, China has acceded to more such conventions, especially signing the *International Covenant on Civil and Political Rights* and ratified the *International Covenant on Economic, Social and Cultural Rights*. So far, China has acceded to 18 international conventions on human rights. With regard to the approved international conventions on human rights, China always deals with them seriously, taking various measures to comply with the duties stated in the conventions, timely submitting reports on the implementation of the conventions in accordance with the regulations of the conventions, and receiving examinations by relevant UN human rights institutions.

Human rights are one of the most controversial issues on UN agenda. During the Cold War, the work of the UN in human rights was greatly impacted by ideologies; the UNCHR was the battle field for the East and the West; and human rights was reduced to the tool which both sides exploited to accuse each other. China, however, took a detached stand to the war on ideologies.

After the Cold War, the battle in the UN between the East and the West in the human rights field was changed to the battle between the South and the North. Some countries exploited the human rights as the tool to reach their domestic political or foreign policy goals, and the developing countries became the major target of accusations and assaults. “Between 1992 and 1996, among the 58 national human rights resolutions adopted by the UNCHR, almost all of them are directed toward the developing countries,” incurring sharp criticism from the developing countries.

China believes that it is normal for all the countries to have divergences on human rights since they have different political systems, cultural traditions and historical backgrounds. In view of different viewpoints on human rights, all the countries need to carry out communications, dialogues and cooperation on the basis of equality and mutual respect, learn from each other’s strong points to overcome one’s own weakness, and achieve



common development. As Chinese representatives have frequently pointed out in UNCHR sessions, it is common for all the countries to have different views on human rights because of respective national conditions, and we should increase mutual understanding and learn from each other to seek common development.

China actively supports discussions on how to promote and protect human rights through dialogues and communications. China has carried out a series of dialogues and exchanges on human rights with the European Union, Canada, the United Kingdom, Norway, Sweden and the United States and organized symposiums and roundtable meetings on human rights and judicial issues. China has conducted exchanges and negotiations with Brazil, Nepal, Cuba, Laos and other developing countries. In 2000, Chinese government and the Office of UN High Commissioner for Human Rights cosponsored the Eighth Symposium on Human Rights in Asian-Pacific Region in Beijing, with representatives from over 40 Asian-Pacific countries attending. President Jiang Zemin wrote a congratulation letter and Vice Premier Qian Qichen attended the symposium and delivered a keynote speech. Madam Mary Robinson, the UNHCHR, paid a special visit to China to attend the symposium.

In September 1998, Madam Robinson visited China at the invitation of the Chinese government. During the trip, she met with President Jiang Zemin and Vice Premier Qian Qichen, held talks with the responsible persons from relevant central government departments, Tibet Autonomous Region government and Shanghai Municipal government, conducted discussions with representatives from academics, religion, education, women and non-governmental organizations, and visited many laid-off workers, farmers and students. The two sides signed the *Memorandum of Intent for Cooperation*, expressing their intent for carrying out cooperation.

In 2000, Madam Robinson visited China again and signed with Chinese government a *Memorandum of Understanding on technological cooperation in human rights*. Both sides agreed to cooperate on such fields as judicial administration, human rights education, legal construction and the realization of the right to develop and economic, social and cultural rights.

During the restructure of UN human rights institutions, the Human Rights Council was established and the Universal Periodic Review Mechanism was created, symbolizing a leap forward in promoting the universality of human rights. However, the international communities must renounce politicization, selectivity and double standard that used to be existing in the field of human rights and genuinely abide by the principles of impersonality and justice. This is conducive to enhancing the prestige of the UN and ensuring that the international communities make continuous achievements in promoting and protecting human rights on the correct track.

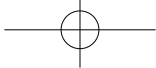


5. Conclusion

In the past 30 years, China has made tremendous achievements in strengthening democratic and legal construction, promoting and protecting human rights and participating in international cooperation on human rights. At the same time, China has candidly recognized that human rights protection is a time-consuming and systematic project and there are no limitations on the improvement of human rights. As a developing and populous country conditioned by various factors, China is fully aware that its human rights still have room for improvement.

Imperfect political and economic systems, unsound democracy and rule of law, lack of awareness of administrating by law and respecting human rights by governments at all levels, economic and social gaps between urban and rural areas and among different regions, difficulties and problems of employment, social security, income distribution, education, medical care, housing and safe production harming people's rights and interests, etc., all of the above prove that it is a long-term and arduous task to promote comprehensive development of human rights. Proceeding from its actual conditions, China is now actively learning from useful experience and cultural achievements of other countries in the world, accelerating development and promoting democracy and rule of law under the premise of maintaining social stability, developing socialist culture and ethics, and continuously advancing the cause of China's human rights. Although there are various problems in China, it is no denying that China is in progress and moving forward in a positive direction.

(The author is Vice-president and Director-general of United Nations Association of China.)



FROM THE PERSPECTIVE OF THE RED CROSS HUMANITARIAN AID: A VIEW ON THE ENHANCEMENT OF HUMAN RIGHTS FOR THE VULNERABLE IN CHINA'S RURAL AREAS IN RECENT YEARS

Eddie Yue Kai WONG
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I. INTRODUCTION

1. Motivation and Purpose

Since the nineties, the Western countries, owing to their strategic needs to restrain China, have criticized and blamed the Chinese government on the issue of human rights year after year. The Central Government has attached great importance to this issue, and organized a large number of experts and scholars to conduct a comprehensive research and innovation on the subject from various angles to keep pace with the times over the years. I will carefully examine this proposition as a member of Macau Red Cross, which has in the past ten years, since the resumption of Chinese sovereignty over Macau, participated in China's Mainland relief work in poverty-stricken regions and reconstruction projects in the disaster areas.

2. Intrinsic links between the Red Cross Movement and Human Rights

Originated in Europe in the mid-19th Century, the Red Cross Movement had benefited from the Renaissance Movement which spreaded in the European Society for several centuries, using science to fight against obscurantism and human rights to counter divine rights. From the 14th to the 16th Century, the Renaissance inspired people's wisdom, advocated people's deep concern and sympathy, and enhanced freedom, values, dignity and liberation to a primary position. This constitutes the main cornerstone of the "humanitarian" object of the Red Cross Movement.

Legally speaking, being an integral part of the international law, International Humanitarian Law and International Human Rights Law complement each other. Although being on different perspectives, however, both are committed to the protection of human's life, health and dignity. Therefore, we can affirm that since its inception, the Red Cross Movement has maintained a closed link with human rights.



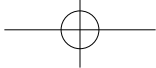
3. A look at the Human Rights situation in China from the perspective of a participant of the Red Cross Movement

After the resumption of Chinese sovereignty over Macau to the People's Republic of China on 20th December, 1999, Macau Red Cross was separated from the Portuguese Red Cross and successfully became a member of the Red Cross Society of China, enjoying a high degree of autonomy. The smooth transfer fully demonstrates the spirit of "One country, two systems." As a member of the administration of Macau Red Cross, I have witnessed this historical process.

After the reunification, with the support and under the coordination of the Red Cross Society of China, with the objective of carrying out the humanitarian mission and inheriting the idea of the Red Cross Movement, Macau Red Cross has over the years mobilized the civil society of Macau, growing from scratch, gradually gaining experience and the ability to develop, year after year, various humanitarian and emergency assistances (disaster relief) to the vulnerable in the natural disasters prone areas and poverty-stricken mountainous regions of the Mainland and engaged in post-disaster reconstruction works, such as the "Construction of Schools in China's Mainland," "Fraternity Village" and "Health Village" programs, amongst others.

As a veteran of the Red Cross Movement, over the past decade, I have the privilege having involved in the organization and participation in the relief works in China's Mainland, having frequently and on countless occasions visited many reconstruction projects in the disaster-affected areas. This has allowed me to obtain an emotional understanding and realization of the complex national situation. For instance, at the present stage, substantial disparity exists between the rural and urban societies and there exists a development gap between the Eastern and Western parts of China. Thus, from the perspective of human rights, through personal experience, I concluded that, since the mid-80s of last century, the Central Government has started to implement across the country a planned, well-organized, large-scale poverty alleviation program. After 20 years of hard work, remarkable achievements have been made. However, we must bear in mind that China has a vast area, a huge inland, large population and uneven distribution of resources between the coastal area and the inland. At present, there is still a considerable number of poor people that needs to get rid of poverty (poor people are mostly located in the Central and Western regions).

Therefore, in order to eradicate poverty and hunger amongst the agricultural population, how to maintain the right to subsistence and development of these vulnerable groups is still one of the most basic contents of human rights in China. Therefore, "human rights requirements differ according to the condition of the each country." Although, logically speaking, the concept of human rights should be universal, we should also consider the particularity of each country, for one cannot *a priori* simply state, based on



the experience of the Western mainstream society, that the concept of human rights, as interpreted by the Western countries, would “fit-all.”

II. A look at the subsistence and development rights in the poverty-stricken areas, from the experience of the “Red Cross Health Village Project.”

1. Background on the Project

Anshun, Bijie, Liupanshui, and other areas in the South-West of Guizhou Province, produce a kind of fluoride and arsenic-rich coal. Due to the lack of knowledge and alertness in environmental protection, the local population use such high-fluoride coal with high arsenic content as fuel replacement for heating, cooking and indoor baking, without appropriate ventilation, for instance, spacious chimneys. Because this kind of combustion emits large amounts of gaseous fluoride and arsenic, it pollutes the air as well as the food stored or grilled indoor. Through the respiratory or digestive tract, the population in those areas intake excessive fluoride and arsenic, resulting in epidemic poisoning. Chronic diseases from accumulated poisoning will mainly damage the teeth and bones. Both children and the elderly may be infected by fluoride poisoning, namely dental and skeletal fluorosis. If the disease is not eradicated in time, the damage of fluoride in the human body will become heavier, eventually leading to deformation of bones and joints, limit of the mobility, and even bent or paralysis and complete loss of labour and self-sufficiency abilities. Common symptoms of arsenic poisoning of the skin, include keratosis of the hands and feet, pigmentation, skin ulceration, skin cancer and other serious diseases.

According to a preliminary research, Guizhou Province identified 620 townships as having fluorosis endemic from coal-burning, representing 40.18% of the Province's 1,543 townships. About 10 million people are infected with dental fluorosis, and 64 million with skeletal fluorosis. The population at risk is as high as 19 million. In addition to the above-mentioned fluoride (arsenic) poisoning, there is also a high incidence of leprosy. Therefore, the place is generally called a “fluoride-arsenic-leprosy” infected area.

2. Objectives of the Project and Initial Investment

This project an important and comprehensive part of the Red Cross Society of China's aid program to prevent and cure diseases associated with “fluoride, arsenic and leprosy,” with an allocated fund of RMB 11.66 million, aims to improve the environment in the affected areas as early as possible and further raise public health awareness, so that the impoverished families in the affected area could get rid of poverty, and more patients with “fluoride, arsenic and arsenic” associated diseases could recover quickly. As part of the program, Macau Red Cross cooperated with Guizhou Red Cross to start a “Red Cross Health Village” comprehensive program, such program coincides also with the government's strategy of promoting the development of a new socialist rural policy. Each project will

receive assistance of up to RMB 30,000. Macau Red Cross will implement the first phase in four municipalities and eight townships. The project officially started in May 2008 and it is estimated that the total investment will eventually reach RMB 5 million. At present, investment amounted to RMB 3 million, including the completion of eight “Red Cross Health Villages” and two “Red Cross Fraternity Medical Centers,” corresponding to 80% of the project, the full completion of which will take place by the end of 2009. The project also includes: a Red Cross Service Centre to meet the needs of a village, a clinic, reconstruction (expansion) of a Fraternity Primary School (equipped with a Red Cross mini-library), construction of a Red Cross Health and Cultural Square, improvement of the road-works and subsidy for the poor masses to change furnace, changing cooking stoves, improving drinking-water supply, upgrading sanitary equipment, etc., according to actual needs.

Red Cross Health Village (Table I)

	Location	Households benefited	No. of Beneficiaries	Beneficiaries' Annual Per capita income	Completion Date
1	Yanyu Village in Mingu Town, of Zhenfeng County, Qianxinan Prefecture	441	2,277	1,100	27.12.2008
2	Halang Village in Yachi Town of Bijie City, Bijie Prefecture	798	3,469	950	31.01.2009
3	Ganhe Village in Santang Town of Zhijin County, Bijie Prefecture	527	2,063	1,766	31.03.2009
4	Aiguo Village in xiehe Country of Qianxi County, Bijie Prefecture	461	1,684	1,660	30.04.2009
5	Hahu Village in Pingshang Country of Puding County, Anshun City	276	1,008	850	28.05.2009
6	Shangan Village in Yangchang Country of Pingba County, Anshun City	338	1,478	1,328	10.12.2008
7	Dishuiyan Village in Lanba Town of Shuicheng County, Liupanshui City	459	1,611	2,980	20.04.2009
8	Yishan Village in Zhongzhai Country of Liuzhi Special Zone, Liupanshui City	447	2,040	1,150	30.06.2009

Source: Projects completion report submitted by Guizhou Red Cross, as adjusted by Macau Red Cross.

3. Project's benefits assessment

From the perspective of benefits, the successful implementation of the first phase of the Red Cross Health Villages program has directly solved the following problems for the 37,000 households, consisting of 160,000 persons in the “fluoride, arsenic and leprosy” inflicted areas:

Improved local villagers' medical treatment conditions: one medical centre in every village, to solve the “medical doctor being far away, consultation is difficult” problem for these eight villages and the villages in the neighbourhood; realization of the objective of not



being “necessary to travel out of the village for minor illnesses;” nurtured the development of “rural public space”: a healthy cultural square in every village, which, while enriching the farmers’ cultural activities, may at the same time disseminate health knowledge, thus contributing to human interpersonal interaction in the “rural public spaces.” In the long run, it will contribute to a harmonious environment in the rural communities. It will also provide a sustainable health condition and lifestyle: the core objective of the project is to subsidize the poor households to change furnaces, cooking stoves, improve the quality of drinking water and sanitary equipment, complemented by improved road-works, so as to elevate the quality of life of the recipient farmers and solve their problems relating to the safety of the drinking water and sanitation. With regards to the concept and lifestyle education, the project aims to enable the recipient farmers to be made fully aware of the purpose, significance and integrated control measures in changing into anti-fluoride cooking stoves, so as to create a good endemic fluorosis prevention and treatment atmosphere, and enhance the participation and broaden the awareness of the villagers.

4. From big to small. Primary human rights of the vulnerable groups in rural areas is the right to subsistence and development

Given that Guizhou is a non-prosperous and under developed province, with large areas of rural poverty, the selection of this project as a human rights case study has special meaning.

As at the end of 2008, 5.54 million of the population of that province had an annual *per capita* net income of RMB 1,067. After the nation increased the poverty aid standard from RMB 1,067 to RMB 1,196, in 2009, the number of poverty-stricken population will reach 5.85 million. From Table I we can see that, with the exception of two villages (which are better located and close to the highways linking the municipalities), the average net *per capita* income in all the remaining villages are below the average levels of that province’s rural areas. If the calculation is made on the basis of the new standard, four of the villages should be considered as absolute poverty-stricken villages.

From the perspectives of the Red Cross Movement, prevention and alleviation of human suffering, protection of human life and health, protection of human dignity and improvement of the plight of the most vulnerable groups, by providing relief to the villagers of the “fluoride, arsenic and leprosy” afflicted areas, to meet their food, water, sanitation, living conditions and medical needs, constitute the minimum relief. The protection of the vulnerable groups so that they could enjoy the right to life and have a reasonable standard of living is a humanitarian principle. It is also the realization of social assistance relief as defined by the Red Cross Movement. This assistance is divided into two categories, namely, physical improvement and mental improvement. The former refers to the improvement of the health and life of the most vulnerable groups, e.g., water, sufficient sunlight, air, food,



housing, clothes, medicines, etc. The latter includes improvement of the spiritual and mental conditions of the most vulnerable groups, namely, home visits, meetings to understand their requirements, teaching them life skills to instill self-help production, joint-participation and the human rights concepts.

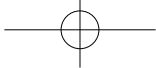
According Maslow's theory, the hierarchy of needs is divided into five layers, as follows: human needs include survival, safety, emotion, social and self-esteem. Therefore, the life objectives of the villagers in the "fluoride, arsenic and leprosy" afflicted areas are still limited to the most basic needs of the first layer, which consists merely of the pursuance of survival.

This is the situation presently prevailing in Central and Western China, where the basic human rights in the rural areas are the right to life. From this case, one can see that, due to poverty and disease, the prime objective of approximately 1.6 million rural population is to solve the problem of survival, by having sufficient food and clothes. In his message in commemoration of the Human Rights' Day, in 2006, former UN Secretary-General Kofi Annan, pointed out: "*Basic human rights, 'the right to a decent standard of living, to food and essential healthcare, to opportunities for education or decent work, or to freedom from discrimination' are precisely what the world's poorest need most....*" However, because of their low status, they encounter most difficulty in exercising or defending these "universal" rights. As a result, anywhere in the world, as long as there is anyone living in extreme poverty, human rights will be affected. From the above figures, in Guizhou Province alone, the population has already exceeded 5.8 million. The data gathered by us only refers to 0.28% of the poverty-stricken population in that province. Therefore, in the vast Central and Western Provinces, the elimination of poverty and disease constitutes an internal demand for survival and development in the rural areas. Efforts to eradicate poverty, so that all people shall have the right to development, is the basic content to improve human rights, and this has become the general consensus in China.

III. Promotion of the grass-root democracy concept, as viewed from the "Assistance in the re-construction of rural housing in the disaster areas of Sichuan Province"

1. Project background and approach

From October 2008 to May 2009, Macau Red Cross cooperated with the local Red Cross Branches of the Mianzhu, Guanji, Wenchuan, Yingxiu townships and respective governments in the reconstruction of the rural houses for the villagers victims of the 5.12 earthquake. Generally speaking, the selection method is to give further assistance to the most vulnerable rural households, on top of the housing assistance provided by the country, province and townships. Before the implementation of the project, Macau Red Cross organized their own management staff and adopted the internationally-recognized



model of site visits to those areas which are of particular concern to the Macau donors. A comprehensive assessment is made, on the basis of the degree of the victim's weaknesses, objective re-construction condition, social situation (relationship between the government and people under its jurisdiction, government's ability, etc.) and prospects for sustainable development. After agreeing on the model and scale of the assistance, letters of agreement are signed, after which the government will organize the earthquake victims, to voluntarily discuss and agree on the design and the formation of the construction teams.

Village assembly: Based on the conclusion of the experience from and lessons learned by Macau Red Cross in reconstruction works in other parts of the country, we carefully organize an assembly of the recipient villagers. Under the principle of justice and transparency, we directly inform all the beneficiaries of the donors' wishes, state Macau Red Cross' philosophy and specific requirements, seek the views of the villagers in order to make appropriate adjustments according to their needs, avoid possible differences and jointly reach a consensus. By promoting the humanitarian spirit of the Red Cross, it is our aim that reconstruction projects will achieve greater social benefits.

Before the meeting, notice of meeting is posted, so that the participants can have adequate preparation and for our verification of identification purpose. During the meeting, the parties may take turns to speak, and the agenda will focus on areas of high concern to the masses, namely, land-use, functional design, construction materials used and construction methods, supervision processes and facilities. As to the form of reconstruction, our staff will answer questions on the spot and make a record of the dissenting opinions. The list and contact telephone numbers of Macau Red Cross and basic members of its staff are announced, as a channel to facilitate the receipt of enquiries or reports on violations. By combining spot checks and report from the public, we effectively mobilize the beneficiaries to participate in the quality management of the projects. By adopting the principle of payment after completion, the risk of uncompleted works will thus be reduced. Transparency is adopted in payment to reduce the possibility of fraud.

2. Project's benefit assessment

By disseminating the humanitarian spirit and the Red Cross Movement's joint participation concept to each recipient, it is our aim that the farmers in the affected areas will fully understand and cooperate with the Macau Red Cross' practices and ideas, thus laying a good foundation for the successful implementation of other projects in the future.

Our objective is to give the farmers in the disaster areas, recipients of our aid, more right to know and to speak, so as to upgrade the self-management democracy process.

We directly inform the villagers of the donors' wishes. This will, on the one hand, respect the donors' intention, while, at the same time, enable the recipients to strongly feel the selfless great love and the power of humanitarian fraternity love of the donors. The



response has been immensely favourable.

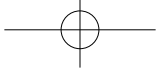
This relatively complete and rigorous independent *modus operandi* of manifestation of democracy received enthusiastic response from the villagers. They can speak freely, give their opinions and leave their contact details, combine government and people's wisdom, to really listen to the opinion of the masses, so that the public, especially the recipients, could supervise on the use of the charitable funds, effectively preventing the breeding of corruption. By promoting the concept of a fair and just society, we arouse public awareness of their participation in social affairs.

By promoting the value of life, we strongly draw the attention of the members of the community to the existence of the vulnerable groups and to improve the value of life of the people in the reconstruction areas. We attach great importance to education, provide general knowledge about housing, emphasize improving the safety and the construction quality of the residential houses. All these will greatly increase the level of human rights and push the governments at all levels to make commitments to all the villagers, mobilize the participation of the masses, monitor the government construction projects, and enlist the participation of non-governmental organizations. As a result, there has been a significant improvement in the level of supervision by the masses and their support to the government's initiative.

Through proper guidance, we introduce fair, open and just operating procedures, as a result of which, some of the grass-roots administrative officials changed their previous antagonism towards the villagers and the relationship between government officials and the masses became closer. While building a series of medical centers (combining the functions of respect for the elderly as practised in the villages with culture and health), we solved the problem of lack of medical care and lack of cultural activities in the rural disaster areas, thus preparing the conditions for the development of an urbanization process for the villages.

3. The issue of grass-root democratization process in the rural disaster areas, as viewed from our case-study

In the above case-study, in addition to addressing the hard-ware needs of the villagers, with regards to housing, basic medical care, cultural life, survival and other development issues, the most meaningful action was, through the housing reconstruction general assemblies, we endeavoured to arrange for a more open, fair and equitable process to enable each recipient to obtain an initial contact with humanitarian ideals and democratic procedures, and gradually come to realize their own rights, and, therefore, express their demands in a rational and orderly manner and, at the same time, learn how to cooperate with others and participate in the rebuilding of their own homes. On the other hand, as far as the basic human right is concerned, including the respect for the villagers' basic right to know and the right to participate, through an open and transparent demonstration of



the procedures, even grassroots level administrative personnel will come to realize that open and transparent information divulged by the government will not necessarily cause trouble and distress for the administration, for as long as fairness and justice are upheld, the villagers will accommodate, understand and listen to reason.

4. Conclusion

Since the reunification of Macau with the Mainland, both the Government of Macau Special Administrative Region and members of the local society, enthusiastic about the Red Cross Movement, have given their strong support and selfless contributions to Macau Red Cross, then in its early stages, hoping that it could promote the Red Cross Movement and play an active role in disaster relief in China's Mainland and abroad. According to incomplete statistics, for the ten-year period since the handover of Macau in 1999, Macau Red cross has donated over RMB 44 million for international disaster relief, and the relief funds allocated to China's Mainland exceeded RMB 97 million (see Table II). This sum does not include approximately RMB 100 million of donations specifically marked for the Wenchuan Earthquake Reconstruction).

Macau Red Cross Disaster Relief Projects in China's Mainland (1999-2008) (Table II)

No.	Item	Unit	Quantity	Amount (RMB)
1	House	Household	793	977.00
2	Primary School	School	38	580.00
3	Water Engineering Works	Construction	4	280.00
4	Emergency Vehicles	Cars	19	204.00
5	Health Centers / Clinics	Buildings	34	2,733.21
6	Emergency Relief	Times	82	1,355.70
7	Education Grant	Persons	371	17.58
8	Disaster Preparedness Centers	Buildings	8	537.00
9	Materials Donated			587.50
Total				7,271.99

Source: Macau Red Cross

Materials Donated over the years mean disaster preparedness materials given to many Red Cross branches of Red Cross Society of China (mainly large quantities of new clothing).

Over the past ten years, under the coordination of the Red Cross Society of China, Macau Red Cross worked closely with Macau Government and was able to raise substantial funds in view of its advantageous position in the Macau society. Such funds have been widely used for humanitarian relief and poverty alleviation in China's Mainland, making up, on many occasions, for the shortage of funds that should be allocated for poverty alleviation by part of the townships in China's Mainland. In accordance with the actual situation of the vulnerable communities (poor people), Macau Red Cross has developed specific assistance



and support programs. In the process of implementing these assistance programs, Macau Red Cross brought to the local grass-root Red Cross branches and the local governments the model used outside China, which essentially focus on procedures, democracy and efficiency, for poverty alleviation. At the same time, when implementing the disaster relief and poverty alleviation programs, Macau Red Cross accumulated the experience gained from disaster relief programs—“led by the government with the involvement of the community”—and fully understands the complex needs of the country, the particularities of each region and fully respects and relies on the local governments and the recipients for development of projects that would satisfy the local reconstruction conditions or the relief programs, for only through this manner, it is possible to play an active role for the vulnerable groups to promote their right to develop. For instance, as early as 2003, Macau Red Cross has promoted, in 30 provinces and autonomous regions in China’s Mainland, the “Construction of Schools in the Mainland” program. Up to the present, there are 48 such schools. With the exclusion of the reconstruction works in the earthquake disaster area of Wenchuan, in recent years, through the “Fraternity New Village” program, Macau Red Cross has built over 2000 homes for the vulnerable, having played a positive role in the promotion of the foremost needs of the rural poor people, which are survival and education.

From the humanitarian relief activities developed by Macau Red Cross in China’s Mainland, over the past decade, since the handover, we can witness that Red Cross is a neutral international organization that is above political, racial, religious or ideological issues. In accordance with the principle of unity, as a member of the Chinese Red Cross family, whether in the country’s disaster relief or humanitarian poverty alleviation programs, we have played an important and positive role, hand in hand with Hong Kong Red Cross and other Red Cross branches throughout China’s Mainland.

Under the auspices of the government to mobilize the whole society to participate in poverty reduction and always adhering to the policy of respecting the wishes of the donors, Macau Red Cross has in recent years developed reconstruction projects in the poverty-stricken mountainous areas in the Mainland, and maintains a good working relationship with the local governments in developing poverty alleviation projects. For instance, we ensure that the medical centers donated by us fully integrate with the new rural cooperative medical system, so as to guarantee the sustainable development of these medical centers. At the same time, the implementation of the new rural cooperative system will systematically guarantee equal rights to health protection for the vulnerable groups.

Finally, we must see that the connotation of the concept of human rights in China have shown a continuously evolving progress, for we cannot simply believe that human rights in China only consist of right to subsistence and development. In this regard, since the publication of the first White Paper on “Human Rights Situation in China,” in 1991,



China's official human rights perspective has constantly developed and been amended to gradually integrate with the international process. During the past 20 years, China's official views on human rights have gone through from class human rights to denial of universal rights, and then basic civil rights to replace natural human rights. Then, the dispute between the universality of human rights and the particularity of human rights. The signing of the United Nations "International Convention on Civil and Political Rights" and "International Covenant on Civil and Political Rights" in 1997 constitute an important landmark. In addition, the Chinese Government has recognized the rights of an individual and the collective human rights.

In April this year, the Chinese government promulgated the "National Human Rights Action Plan (2009-2010)." This is the first time that the Chinese Government officially developed the theme on human rights as a national plan, in order to implement and reflect the constitutional principles "Respects and Safeguards of Human Rights by the State" to the day-to-day administration. This forward-looking program, when compared with several White Papers on Human Rights published in the past, marks China's recent official view on human rights and its intention to align with the international human rights concept. This positive vision clearly shows the self-confidence of the current government of its capacity to build a people-oriented harmonious society.

Reference materials

I - On Human Rights

1. Charter of the United Nations (1945)
2. The Universal Declaration of Human Rights (1948)
3. European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
4. African Freedom Charter (1955)
5. International Convention on the Elimination of all Forms of Racial Discrimination (1969)
6. International Covenant on Civil and Political Rights (1976)
7. International Covenant on Economic, Social and Cultural Rights (1976)
8. International Convention on the Suppression and Punished of the Crimes of Apartheid (1976)
9. Declaration of the Rights of the Child (1979)
10. Convention on the Elimination of all Forms of Discrimination against Women (1979)
11. Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984)
12. International Humanitarian Law (IHL)



II - Websites (including websites in China's Mainland)

1. <http://www.humanrights.cn/cn/index.htm>
2. <http://www.humanrights.cn/zt/tbbd/zt004/index.htm>
3. <http://icrc.org>
4. <http://ifrc.org>
5. <http://redcross.org.cn>
6. <http://www.redcross.org.mo>
7. <http://www.hszyj.net/>
8. <http://www.un.org/chinese/hr/issue/tc.htm>

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THE ROLES OF THE UNIVERSITIES IN HUMAN RIGHTS PROTECTION AND PROMOTION IN CHINA —IN THE CASE OF WUHAN UNIVERSITY LAW SCHOOL

Zhang Wanhong
China

Human rights is a great term, as well as an arduous undertaking, which needs unremitting efforts from various departments and all walks of life. Because of the advantages in resources and human resources, universities boast irreplaceable functions in the innovation, spread and application of human rights knowledge and can make outstanding contribution to the spread and popularization of human rights researches, human rights education, human rights initiation and human rights concepts. Here, I would like to discuss the roles China's universities have played and will play in human rights protection and promotion based on Wuhan University Law School where I am working with.

I. Practices of Wuhan University Law School in human rights protection and promotion

(I) Brief introduction of human rights education and studies in Wuhan University Law School

1. History and main achievements

As one of the important institutes of law education and studies in China, Wuhan University Law School, with a history of more than 80 years, boasts a long and glorious history in human rights education and studies. On October 26, 1979, a commentator's article was published in *Guangming Daily*. Later, a renowned scholar in Constitution studies also published an article, asserting Marx and Engels "held negative attitude" to human rights in principle, and that "very few people...oppose the Four Basic Principles under the name of Human Rights with ulterior motives." Targeting the assertion, late Constitution jurist He Huahui, who was also a professor of Wuhan University Law School, published an article entitled *Also on Human Rights* (which was included into *Collected Work of He Huahui*, Wuhan University Press, 2006), refuting the above-mentioned views diametrically. After that, teachers in Wuhan University Law School published a large number of works and theses on human rights, including some important works, such as *Human Rights Theories*



and International Human Rights (Li Long and Wan Exiang, Wuhan University Press, 1992), *International Human Rights Laws* (Wan Exiang and Guo Keqiang, Wuhan University Press, 1993), *Human Rights Theories and Practices* (Edited by Han Depei, Wuhan University Press, 1994), *Comments on Legal Precedents in European Human Rights Courts* (Edited by Wan Exiang, Hubei People's Press, 1999), and so on.

2. Courses and academic degree theses

Professor Wan Exiang took the lead to launch a master degree course for human rights in Wuhan University Law School, called International Human Rights Laws, which is a required course for master degree of international public law and jurisprudence majors. It is also open to master degree students of other majors. In autumn term of 2009, the elective course of International Laws of Human Rights and Humanitarianism for undergraduate students was established. In terms of degree theses, many doctor degree students wrote doctorate theses on human rights, including *Studies on Human Rights Organizations in Europe* (Yang Chengming, 1999), *Studies on International Supervision Mechanisms of International Covenant on Civil and Political Rights* (Peng Xihua, 2001), *Studies on UN Convention Against Torture* (Wang Guangxian, 2002) and so on. In addition, we also have some doctor degree theses related to human rights, such as *Rights to Development and Contemporary Constitution* (Wang Xigen, 2001), which was selected as the "National Excellent Doctor Degree Theses."

3. Teachers and characteristics of teaching and research

Many teachers in Wuhan University Law School are actively committed to human rights education and research. After attending the workshop on human rights, these teachers would permeate the human rights vision and knowledge into their teaching contents, no matter whether there is human rights course or not. In addition, the teaching and research activities on human rights in Wuhan University Law School are more pragmatic, such as the teaching, researches and practices in the area of combating tortures in inquisition and anti-sexual discrimination area.

(II) Legal clinic

Financed by Beijing Office of Ford Foundation, seven law schools including Wuhan University Law School launched clinical legal education in September 2000, which indicated the beginning of the clinical legal education mode in China. In 2002, the Committee of Chinese Clinical Legal Educators of Legal Education Institute of China Law Society was officially established. So far, nearly 100 law schools of universities and colleges have launched clinical legal education. Clinical legal education calls for placing legal education into specific social background and using interaction theory. Under guidance of teachers, students provide free legal assistances to parties involved in law suits. During the process of providing free legal assistances, students can find out the real living situation of various



stratums, especially the disadvantaged groups, and the difficulties before them, realize the significance of legal protection of citizens' basic rights, experience the contradiction and conflicts between the conditions they should have and those they have in real life, think about institutional solutions and foster their own consciousness of helping others and sense of responsibility that law-related personnel should have during the process.

In general, the important function of clinical legal education is to help students learn the practices of legal operation. Legal education is often denounced because of its insulation from the reality. Without the concrete social background, the people involved in real life and the personal feeling of working on cases, all the rules and principles would become baseless and all the analysis and consequences would become meaningless language. Legal education neglects many basic skills in other areas of legal practices such as meeting, consultation, fact investigation, intermediation, negotiation and file drafting, and thus is very difficult to foster talents of law with comprehensive capacities. What is more, clinical legal education can bring law-related personnel sense of social and professional responsibilities in order to promoter and protect human rights. Reviewing the origination and development process of clinical legal education abroad, we can see that with the expansion of the gap between the rich and the poor and the deepening of polarization, it is increasingly difficult for the poor people to access law service. The poor cannot afford to go to the court and thus they cannot get help when their rights and interests are infringed. Initiated by some people of insight, students of law schools began to offer free legal assistances to the social disadvantaged groups. Such activity has been included into the education system of law school, known as clinical legal education.¹

Wuhan University Law School leads the clinical legal education nationwide. Teachers and students in the law clinic are making efforts to protect human rights and promote social harmonious development through handling cases and maintaining the legal rights and interests of the disadvantaged groups.

(III) Two centers

Wuhan University Law School has two centers for human rights-related researches: Center for Protection of Rights of Disadvantaged Citizens (CPRDC) of Wuhan University and Public Interest and Development Law Institute (PIDLI) of Wuhan University. CPRDC was registered in Hubei Civil Affairs Department as a non-enterprise legal person unit with independent legal status in 2003; PIDLI is a research institute inside the University.

1. Brief introduction on CPRDC

CPRDC, China's first non-governmental legal assistance organization, was established in 1992. In 2003, CPRDC was registered at Hubei Provincial Civil Affair Department,

¹ Li Ao: The commonweal of Clinical Legal Education, *Law Studies*, Issue 6, 2006



becoming the first non-enterprise private entity providing legal assistance registered in Hubei Province.

With one director general and one office director, CPRDC consists of seven departments: Department for Women's Rights and Interests, Department for the Minors' Rights and Interests, Department for the Rights and Interests of the Aged, Department for the Rights and Interests of the Disabled, Department of Environmental Protection, Department of Laborers' Rights and Interests and Department of Administrative Proceedings with a director and an executive director in each department. CPRDC also has a full-time lawyer. Postgraduate students and undergraduate students in Wuhan University Law School can work here as volunteers to provide law service after school.

CPRDC is committed to "providing the best services according to law to those who need help most with the best law talents" from the very day it was established. For more than a decade, the center has been abiding by the principle while providing law services to the social disadvantaged groups. A large number of women, minors, disabled people, the aged, laborers and those who sued government officials, whose personal rights and interests were damaged and could not gain law protection, gained justices thanks to the help of the volunteers and were helped out of desperation and helplessness. So far, the center has received more than 5,200 people for consultation, replied more than 21,000 letters, answered more than 38,000 phone calls, provided more than 1,000 opinions for legal litigations on the website of the center and acted as procurator for more than 2,000 litigation cases, winning 78 percent of them. CPRDC also launched law popularization activities and investigations in rural and urban areas.

The fact that CPRDC was established on the basis of Wuhan University Law School determines that it is not only a legal assistance organization, but also a practice base of legal education. Thanks to the advantages in professional talents in the university, powerful theory research team and abundant human resource, the center combines the public-interest activity of legal assistance closely with teaching and researching. It not only provides a window for students in law schools to practice what they learn, but also has conducive exploration in promoting and protecting rights and interests of disadvantaged groups through legal assistance. It also promotes reforms in law teaching methods, serving as the channel of fostering qualified talents involving in law service.

In order to strengthen theoretical construction, CPRDC constantly summarizes the successful experience in legal assistance and human rights protection so as to more effectively guide the practice of legal assistance. Professors and scholars who have been working in CPRDC for a long term compiled several book collections: *Series of the Theories and Practices of the Protection of the Rights of Social Disadvantaged Group*. Of the series, books such as *On the Rights of the Social Disadvantaged Group*,



General Knowledge on Laws on the Protection of the Minors, Comments on Selected Cases of Human Rights Courts in Europe and Full Collection of Legal Documents have been published; a series of 10 books of *Questions and Answers on Laws for Common People* were available in the market in 2004 and were presented to people involved for free; a series of six books *Reader on the Protection of the Rights and Interests of the Minors* were published by Hubei Children's Press in early 2004; meanwhile, the collection of *Theories and Practices of Right Remedy*, which includes *Theories and Practices of Right Remedy for Minors*, *Theories and Practices of Right Remedy in Administrative Litigations*, *Theories and Practices of Rights Remedy for Victims in Criminal Cases*, *Theories and Practices of Right Remedy for Women* and *Theories and Practices of Right Remedy for Migrant Worker (Farmer-Turned Workers)* have been published by Wuhan University Press in succession.

China's first organization of legal assistance, CPRDC has been attracting attentions from media after it was established, winning high reputation at home and abroad. Many famous media including NHK of Japan and *Washington Post* of the United States came to CPRDC for interview. The center's work and achievements also are affirmed and encouraged by all walks of life, winning various social honors. It was entitled "National Advanced Collective of Supporting the Poor and Helping the Disabled," "the First National Outstanding Collective of Youth Volunteer Services," "National Advanced Collective of Legal Assistance" and "Demonstration Unit of Youth Volunteer Activity of Hubei Province" by the State Council, the Propaganda Department of the CPC Central Committee, the Central Committee of China Communist Youth League, Ministry of Justice and Hubei Provincial Committee of China Communist Youth League respectively. Professors and scholars from countries like the United States, France, Germany, Canada, Japan and Britain also came to the center for exchanges and visits. All the academic papers related to China's legal assistance mention CPRDC.¹ Meanwhile, the White Paper on China's Human Rights also affirmed the work of CPRDC in human rights protection².

So far, CPRDC has been developing for nearly 20 years and has achieved glorious accomplishment. The center plays a leading role in promoting the establishment of China's national legal assistance system, initiation of the volunteer spirits and introduction of clinical legal education with an irreplaceable historical position. However, the volunteers in CPRDC does not stop their step forward. In early 2006, CPRDC formulated new strategic plans: On the

1 Benjamin Liebman, "Legal Aid and Public Interest Law in China," in *Texas International Law Journal*, 1999 (Vol. 34), 211-233; Benjamin Liebman, "Lawyers, Legal Aid, and Legitimacy in China," in *Raising the Bar* (Alford & Miyazawa eds.), East Asian Legal Studies, Harvard Law School 2004; Helen Hershkoff, "Public Law Litigation: Lessons and Questions," in *Human Rights Review*, 2009 (Vol. 10), 157-181.

2 Progress of China's Human Rights Cause in 2004, the State Council Information Office of the People's Republic of China



basis of continuing providing legal assistance, the center would pay more attention to the research of laws and litigations on public interests and actively promote and initiate laws on public interests among students. After formulating the strategic plans, CPRDC was engaged in the case of public security department illegally checking ID cards, giving full play to its role of maintaining human rights through commonweal activities. The success of the case plays an important role in reminding administrative departments to conduct administrative activities strictly according to law, serving as an example in encouraging citizens to protect their personal legal rights and interests according to law. The case also indicates that CPRDC still has a huge potential in public interests litigation and human rights protection.

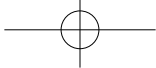
2. Public Interest and Development Law Institute of Wuhan University

Established in September 2007, the Public Interest and Development Law Institute (PIDLI) of Wuhan University is a research department on humanity, culture, society and science of the university level. The inspiration of establishing such an institute was from the movement of laws on public interest¹ and an inspection of the initiator to Philippine in 2006. Based on Wuhan University Law School, the institute operates with supports from CPRDC.

Another reason for us to establish PIDLI is the rise of the movement of law on public interests in China. We need to follow, participate in and lead the movement with a clear banner. As CPRDC is the only non-enterprise unit in Hubei Province providing legal assistance registered in Civil Affairs Department with independent legal position, we decided to establish a research institute inside the University to research human rights on the legal basis, starting from public interests and development. We call for and are involved in interdisciplinary researches based on the reality. Through cooperating with CPRDC, PIDLI and CPRDC complement each other with their respective advantages and jointly follow, participate in and lead the movement of law on public interests through cooperation in publishing books and joint initiation, exploring the tactics of promoting domestic human rights development through movement of laws on public interests.

Since establishment, PIDLI has held several round-table lectures and forums on public interests, development and human rights, and cooperated with Asian Human Rights Commission of Hong Kong to hold the Seminar on Commonweal Litigation and Social Development. Based on its advantages as an education institute, PIDLI also trains grassroots lawyers in rural areas and established law clinics in rural communities, effectively promoting the law researches and knowledge spread related to public interest, development and human rights.

¹ Huang Jinrong: A Rising Law Movement—Observation and Comments on the Practices of China's Contemporary Laws on Public Interest, Litigation on Public Interest (Volume I), China Procuratorial Press, 2006, P.132-141



II. Opportunities and Challenges of China's Universities in Human Rights Protection and Promotion

Chinese Government attaches great importance to human rights issue and promoting the development of human rights cause has become an important undertaking in national construction and social development and a key principle of the Communist Party of China and Chinese Government in governing the country. Various universities have established human rights-related institutes in succession and set up courses of human rights. An increasing number of professors are committed to the work of human rights education and research. The fact that China's universities are extensively and deeply involved in human rights cause vividly demonstrates the assertion that "China's human rights cause has achieved historical progress and China's human rights situation is in its best age in history." Meanwhile, the recognition from the government and the progress of China's human rights cause also provide an excellent opportunity for universities to participate in the cause. However, we also have some challenges to deal with so as to enable China's universities to play greater roles in human rights protection and promotion.

1. Insufficient funds. In recent years, the National Social Science Fund, and assistances to the projects such as Humanities and Social Sciences Research of Ministry of Education and Researches on Law-Based Governance and Law Theories of Ministry of Justice have been greatly increased, but still cannot meet the needs for universities and colleges in human rights researches. Meanwhile, the above-mentioned funds and assistances only support theoretical researches. It is very hard for human rights practices, which need more financial supports, to be subsidized by the above-mentioned funds. Currently, human rights practices are mainly sponsored by foreign funds such as Ford Foundation and Asia Foundation. Under the circumstance where domestic universities cannot get enough funds for human rights projects, it is reasonable for people to doubt on the sustainable development of such financing mode.

2. Minds not fully emancipated. After reform and opening up to the outside world, China broke the "leftism" trammel of regarding human rights as the capitalism slogan and established the important position of human rights concept in China's social and political life. But in real life, many people including university managers and some teachers still list human rights sector into the "forbidden area" or sensitive area wittingly or unwittingly and dare not have further researches. Their practices not only prevent themselves from entering the research and practice area of human rights, but also create great pressures on the pioneers in human rights sector in universities.

3. Limited participation of students. Currently, human rights course is an elective one in all universities. Moreover, some teachers fail to use vivid cases in real life in teaching human rights theory and only give boring lecture on moral and clauses of international



conventions, which cannot arouse students' interests. Meanwhile, students cannot find job opportunities related to human rights. From the angles of employment and application, students do not want to learn human rights course. Meanwhile, the clinical legal education related to human rights can only attract limited students because of the limitation in funds and teachers.

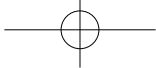
4. Backward researching methods. In 2002, Professor Michael Freeman of Essex University of Britain published his work *Human Rights: An Interdisciplinary Approach*, winning responses from many scholars¹. Professor Anthony Woodiwiss of London Metropolitan University published *The Law Cannot be Enough: Human Rights and the Limits of Legalism* in 2006, directly pointing out the limitation of researching human rights only from the angle of law². In the same year, Professor Todd Landman in Essex University, Freeman's colleague published his book *Studying Human Rights* to systematically explain how to study human rights with social and scientific methods³. Interdisciplinary research on human rights has been shifted from spontaneous studies to conscious studies. Scholars began to study human rights and international human rights laws with approaches of politics, psychology, economics, sociology and anthropology. A batch of groups involving in interdisciplinary researches of human rights were formed and have made outstanding achievements. However, human rights research in China's universities fails to have interdisciplinary approach and we do not have interdisciplinary research groups or research fruits in this regard. We need to change the situation.

(The author is Associate Professor of Jurisprudence of Wuhan University Law School.)

1 Michael Freeman, *Human Rights: An Interdisciplinary Approach*. Oxford: Polity Press. 2002

2 Anthony Woodiwiss, "The Law Cannot be Enough: Human Rights and the Limits of Legalism," in *The Legalization of Human Rights: Multidisciplinary Perspectives on Human Rights and Human Rights Law* (Saladin Meckled-Garcia and Basak Cali eds.), London and NY: Routledge, 2006

3 Todd Landman, *Studying Human Rights*, London and NY: Routledge. 2006



CHINA'S ATTITUDE TO THE UN PEACEKEEPING OPERATIONS: CHANGES & CAUSES

Zhou Qi
China

Though being a later participant in the peacekeeping operations of the UN, China has made an increasing contribution since it changed its position in 1988, which has been fully recognized by the UN and the international community. This article aims to explore and analyze China's stance on the peacekeeping operations of the UN, its changes and the causes over the past 60 years.

I. International background of China's changing its attitude towards the peacekeeping operation of UN

In the 1990s, after the end of the Cold War, international relations were no longer characterized by the division and competition in spheres of influence between two superpowers. Some problems which were neglected during the Cold War, such as terrorism, arms control, drug trafficking, immigration and human rights issues, were increasingly exposed and became the main topics in international relations.

One of the major changes in international human rights politics during the post-Cold War is that some obvious limits in the past, such as the boundaries between political crisis and the humanitarian crisis and the boundaries between domestic political unrest and threats to international peace, became blurred.

The end of the Cold War also unleashed negative tendencies which had previously been suppressed, such as extreme nationalism and religious extremism. But the strife they caused between different ethnic and sectarian, and even the ethnic cleansing, had become a new and serious human rights issue.

The frequent occurrence of such a war led to a remarkable feature of world politics after 1989—international intervention in armed conflict and humanitarian crisis sharply increased, the UN peacekeeping operations had become more and more intertwined with controversial international humanitarian intervention.¹

Accordingly, it was thus created a “second-generation peacekeeping activities.” “the

¹ Rein Mullerson, Rein Mullerson, *Human Rights Diplomacy* (London and New York: Routledge, 1997), p. 7.



first generation of peacekeeping activities” started with sending “UN Truce Supervision Organization” to the Middle East in 1948. The second generation of peacekeeping activities began in the end of the Cold War. The difference in objectives and features of the two generations of peacekeeping activities was that the first generation of peacekeeping activities was military in nature, including monitoring, supervision, confirming the cease-fire and achieving the initial peace agreement. These traditional peacekeeping activities were usually not directly involved in the political process of conflict resolution. However, the nature of the second generation peacekeeping activities, started after the Cold War, has changed. The peacekeeping mission expanded to the fields of not only traditional peacekeeping, but also the nation-building and humanitarian relief, which included supervision or elections of the organization, disarmament assistance, demobilization and arms control, Constitution implementation or judicial reform assistance, restructuring and reforming of the security sector, participating in administration, providing humanitarian assistance, and so on.

These were also referred to as “multi-dimensional peacekeeping operations.” The composition of peacekeeping forces included military and the police and civilian personnel to fully implement the peace agreement.

II. Change of China's attitude to the peacekeeping operation of UN

Due to various reasons, China did not and could not participate in UN peacekeeping activities before the end of the Cold War. However, China sent five military observers to “UN Truce Supervision Organization” for the first time in 1990 when the cold war just ended. As requested by the UN Secretary-General, in April 1992, the Chinese government sent 47 military observers and a peacekeeping engineering brigade which included 400 people to Cambodia to establish the first “blue helmets.” In May 1997, China agreed in principle to participate in UN “peacekeeping standby arrangements.” In January 2000, China sent civilian police to the “UN Transitional Administration in East Timor” to perform a specific task, which was China’s first dispatch of police to involve in UN maintaining activities. In January of the following year, the Chinese civilian police went to Bosnia for peacekeeping mission, which was the first time for China to send peacekeepers and civilian police outside Asia. In December of the same year, China officially established the Office of the Ministry of Defense for Peacekeeping to unify coordination and management of the work of Chinese military and police participating in UN peacekeeping activities. In January 2002, China formally participated in a standby arrangements system of UN peacekeeping activities. In October of the same year, the State Council and the Central Military Commission approved to participate in the program of UN peacekeeping standby units formation. In April 2003, China sent a 175-member engineering company and a 43-member medical team to Congo, which was the



first time for Chinese peacekeeping force to travel to Africa. In July of the same year, China decided to send 550 people to Liberia as peacekeepers. In 2004, China sent 59 peacekeeping police officers in total to East Timor, Liberia, Afghanistan, Serbia and Montenegro, Kosovo and other regions, and of the UN request, China sent the first branch of 125 members of anti-riot police force to the UN Stabilization Mission in Haiti.¹ To the end of July 2007, Chinese engineering detachments to the UN—African Union Mission in Darfur reached 315.

Since 1989, China has taken part in 22 UN peacekeeping operations and sent around 10,000 person-times of peacekeepers. In particular, since 2003, the number of people dispatched was increased rapidly. In 2000, China sent a total of less than 100 peacekeeping staff, while in subsequent years there was an increase of 20 times. By the end of November 2008, a total of 2,146 police officers, soldiers had participated in 11 UN peacekeeping operations and the number of people participating peacekeeping missions was only second to France among the five permanent members in the UN Security Council, and ranked fourth in all 119 contributors.²

Obviously, since the end of the Cold War, China's attitude towards participation in UN peacekeeping operations has shown more enthusiasm. This was closely related to China's perceptions and attitudes of UN peacekeeping operations. In this regard, China experienced a change in the following process:

In the 1950s and 1960s, China was excluded from the UN. At that time, China's view of UN peacekeeping operations was that it was mainly manipulated by the US-led Western bloc, and was a tool used by the U.S. for military intervention in other countries. This was also due to that in the early period of the UN, members of Asian and African countries were only in a very small proportion. In the early and middle 1960s, when the competition of hegemony between the Soviet Union and America was going on all over the world, peacekeeping activities were limited to those regions which of strategic importance to the superpowers, and the UN's role were to put on "legitimacy" as the coat for those activities. When the Chinese believed that the whole UN were subject to the US-led Western countries or became yet another battlefield of Soviet's scramble for hegemony, China's suspicion to the UN peacekeeping activities was naturally inevitable. In 1965, Chinese Foreign Minister Chen Yi's comments represented this kind of view. "For a long time, the UN has been under the control of the United States. Now, it has become a place for carrying out political deal between the two superpowers—the United States and the Soviet Union."³

1 *Construction of Peace—Evolution on China's Diplomatic Behavior to the UN* by Zhao Lei, published by Jiuzhou Press, 2007, Page 199-201.

2 National Crisis Group Asia Report No. 166: "Increasing Contribution By China to UN Peacekeeping," April 17, 2007, pages 1, 5, for more details, please log on www.crisisgroup.org.

3 Words in a press conference by Chen Yi, Minister of Foreign Affairs, *Beijing Review*, Vol. 3, 1965, pp. 11-12.



In 1965, China's criticism to the UN reached a climax. In November 19 that year, *People's Daily* published an article, listing the crimes committed by "UN forces" in Asia: in 1950, under the manipulation of the United States, the UN sent "UN forces" to aggress against North Korea, and later adopted a resolution condemning that North Korea and China were the aggressor; In 1960, the United States, under the approval of the Soviet Union, promoted and passed a resolution to the formation of a "UN forces" in the UN Security Council, and in the name of "to assist the Congo to restore law and order, defend the unity of the Congo," intruded into the Congo, subverted the legitimate government of Lemba stifling the independence of Congo; In 1964, the U.S. manipulated the UN Security Council to send UN peacekeepers to station in Cyprus, known as peacekeeping. It was actually interfering in the internal affairs of Cyprus, and suppressing the just struggle against British imperialism of the Cypriot people.¹ In January 1965, Indonesia announced its withdrawal from the UN, which caused China's further confirmation that the UN was not a international institutions for maintenance of international peace and security and stopping acts of aggression, but "tool for imperialism to oppose the socialist countries to repress Asia, Africa and the national liberation movements in Latin America, to bully small and weak countries, and to help cover the activities of the U.S.'s imperialist aggression and to implement the U.S. neo-colonialism."² In 1967, *People's Daily* cheered for the bankruptcy of the United States and Britain's collusion of using the UN peacekeeping force to fight against South Yemen People's struggle for national liberation. In the same year, on the issue of forming a "UN forces" discussed by UN in special session, the Chinese government criticized that the Soviet Union was doing business with the United States, attempting to establish a international gendarme to suppress the revolutionary struggle of people around the world.³

In 1971, China finally restored the lawful seat in the UN with the support of the Third World countries. However, in the international environment of competition for hegemony between the Soviet and the United States, until 1980, China's attitude towards UN peacekeeping activities basically remained the same, but changed from the firmly opposing to not participating. For UN Security Council's resolution of "UN Emergency Force II" from October 1973 to July 1979, the formation of "UN Disengagement Observer Force" in June 1974 and sending "UN Interim Force in Lebanon" in March 1978, China did not vote and indicated that China did not undertake any financial obligations. In November 1973, China viewed the United Nation's sending of Emergency Force to the Middle East as aiming at "binding the hands of the Arabian countries and peoples, to curb their just struggle

1 The Criminal Record of UN in Asia-Pacific Region, *People's Daily*, Edition 5, Nov. 19, 1965

2 UN must be under Downright Reconstruction, *People's Daily*, Edition 5, June 26, 1965

3 UN is a Tool of America Imperialism and Soviet Revisionism for Oppressing the People's Revolution, *People's Daily*, Edition 6, June, 14, 1967



of anti-aggression and anti-hegemonic,” “changing Arab sovereign state of the Middle East into an international controlled areas” and “attempting to occupy Arabian territory.” China “had always opposed the dispatch of the so-called ‘peacekeeping force,’” because the so-called peace-keeping “only paved road for its superpower background for further international intervention and control.” However, as taking “the repeated requests made by the victim of aggression” into consideration, China indicated that, they did not vote against it, but just did not vote.¹ “No vote” was internationally recognized as the creation of a “fifth ballot” for China to show its position.

From the above analysis, we can see that during the first 10 years of China’s entry into the UN, China questioned the UN peacekeeping activities and kept distance with it mainly because of the concern of making the UN into places of competition for hegemony by the two superpowers—the Soviet Union and the United States and the concern of the UN peacekeeping force being treated as tools for international intervention and control.

The period from 1981 to the end of the Cold War in 1988, was the transition period when China’s attitude towards UN peacekeeping activities fundamentally changed. During this period, there had been a little loose in China’s opposition. The loose sign was that China endorsed the assessments of the existing two UN forces in Middle East on November 27, 1981, and said to pay the assessments from January 1, 1982. When the Chinese Permanent Representative to the UN announced the decision in the day of the Fifth Committee, he said, “out of the sense of responsibility to the UN Organization, the cause of world peace and human progress,” the Chinese government is ready to take a flexible position of treating differently to the UN peacekeeping activities in the future, provided that the peacekeeping force must be strictly established in accordance with the purposes and principles of “UN Charter,” and the UN peacekeeping activities are conducive to the maintenance of international peace and security and the safeguarding of the national sovereignty and independence.²

Shortly thereafter, on December 14, 1981, China voted in favor of Resolution No. 459 of UN Security Council which extended the duration of the UN peacekeeping force stationed in Cyprus. The representative of China announced before the vote, that in view of “the changes of the international environment and the role of UN peacekeeping activities,” “from now on, the Chinese government will actively consider and support a strict compliance with the purposes, principles of the “UN Charter,” and the UN peacekeeping operations which are conducive to the maintenance of international peace and security and the protection of

1 Reference: *Construction of Peace: China’s Diplomacy Transformation Towards UN*, Zhao Lei, Page 196-197

2 *My Standpoint on UN Force Expenditure*, Lin Qing, from “Collections of Chinese Delegate on UN Sessions, 7-12 1981,” World Knowledge Press 1982 Edition, page 130



national sovereignty and independence.¹

On October 15, 1984, China formally expressed support for the peace-keeping operations which was in line with the principles of “the UN Charter,” and considered such action as effective means for UN to maintain international peace and security. And China said that China’s support was the due diligence to maintain “the UN Charter” and strengthen the role of the UN, and was also a positive response to the generally calls for strengthening the capacity of the UN for peacekeeping by the people around the world. In 1988, China started to commend the UN peacekeeping operations, and applied to join the UN Special Committee on Peacekeeping Operations in September 22 of the same year, and praised the “peacekeeping operations have become effective means of the UN in maintaining international peace and security and are helpful to ease the conflict in the region and peaceful settlement of disputes,” “China is willing to contribute to peace activities.”² During this period, China cast its vote in the UN Security Council, although in most cases, China polled an abstention vote. To the end, China’s attitude at this stage was known by some international experts as the “tacit-style cooperation.”

Although at the time before the end of the Cold War, the US-Soviet rivalry in the UN had not yet completely finished, there were several important factors driving changes in China’s view. Firstly, by the end of 1988, China’s domestic reform and opening up had gone through 10 years. With China’s rapid economic development, China joined into the International Monetary Fund and the World Bank and began to consider the negotiation of the restoration of status in GATT parties in 1986, which showed that a solid step had been taken by China to integrate into the international community. Secondly, China gradually and finally fundamentally changed its views on the UN and other international organizations, and regarded UN as a legitimate, most representative international organization. And with the major countries of the Third World joining this organization after gaining independence, the UN was no longer manipulated by the United States and other Western countries, or controlled by the two superpowers, but instead becoming international organizations which played an important role in maintaining peace and promoting development. Thirdly, China recognized that peacekeeping operations had become effective means for UN in maintaining international peace and security, and was helpful to ease the conflict and to have peaceful settlements of disputes. It was the general desire of all the people around the world to strengthen the capacity of the UN peacekeeping. In many cases, this was also requirements by the countries involved.

Since then, as previously described, China began to participate in UN peacekeeping

¹ UN Documents S/PV.2312, Dec. 14, 1981

² *China and UN: Fifty Years of anniversary of UN*, Xie Qimei and Wang Xingfang, World Knowledge Press, 1995 Edition, page 88



operations with unprecedented positive attitude. This indicated that a shift in attitudes contributed to China's change process from opposition, acquiescence to participation. In 2005, the Assistant Minister of Foreign Affairs of China, Shen Guofang addressed the International Peacekeeping Seminar—"We Come for Peace: on Challenges Faced by Peace Operation in the 21st Century, which made the most explicit statement on China's understanding of the UN peacekeeping operations." He said that "when the world entered the 21st century, various global threats and challenges are erupting one after another. While traditional security issues like ethnic conflicts, territorial disputes have yet to be tackled, non-traditional ones including terrorism, cross-border crimes and outbreaks of disease are getting increasingly serious. To realize the peace and development of human beings, we must adhere to multilateralism, strengthen collective actions and promote international cooperation, especially enhancing the role and authority of the United Nations constantly." "To those millions of people who are plagued by conflict, 'blue helmet' is just the symbol of peace, and sometimes even represents their most urgent hope for peace."¹ This was a highly appreciation for the UN peacekeeping operations.

III. China's principle to the UN peacekeeping operations and flexible treatments

Although China has become an active supporter and participant of UN activities, China still adheres to three basic principles to the UN peacekeeping operations: with the consent of the parties, non-use of force if non-self-defense, remain neutral. China believes that these three principles are still the basic consensus for the UN to carry out peacekeeping operations.² China would support the operations which meet the above conditions. For example, the sending of "the UN mission" to Indonesia in 1999, the station of "the UN Stabilization Mission in Haiti" in 2004, (This was actually a transitional government with exercise of the relevant laws and sovereignty of the territory), got the relating governments' acquiescence, which was a prerequisite for China to vote in favour.

On the other hand, when making decisions under the seventh article of the UN Charter on whether the parties' internal conflict constitutes a threat to international peace and security, China attaches great importance to judgments of regional organizations. Three examples can be given here. One was in 2007, China exercised the veto to the UN Security Council's draft resolution on Myanmar, and one of the important reasons was that ASEAN did not support this resolution. And both China and ASEAN did not think that Myanmar

1 *We Come for Peace—Speech at the "Challenges in the 21st Century: International Peacekeeping Seminar"*, Shen Guofang, *International Affairs Research*, No. 1, 2005

2 The Speech at the Special Session 2009 of Peacekeeping, Liu Zhenmin, Ambassador of Chinese Delegate to UN, Feb. 23, 2009. <http://www.fmprc.gov.cn/chn/pds/gjhdq/gjhdqzz/lhg/zwbdt538980.htm>.



posed a threat for international peace and security.¹ Another one is about Zimbabwe. In July 2008, China and Russia vetoed the Security Council's draft resolution on Zimbabwe, which was the result of the thinking that the African Union opposed to the sanctions, as the African Union countries did not consider Zimbabwe posing a threat to international peace and security. A third example was about Sudan. After the approval of the African Union of peacekeeping to Darfur, out of the respect for the position of African countries, China supported the establishment of the Sanctions Committee in Sierra Leone.

The "second generation" or "multi-dimensional" peacekeeping activities actually involved in the domestic affairs of the parties, such as the organization and supervision of elections, assisting in the implementation of the Constitution or judicial reform, restructuring and reform of the security sector etc. All these activities were a part of the post-war state building work of war-torn countries, and were oriented in nature, namely a national reconstruction with democratic orientation. However, China holds that as long as the parties accepted the UN's "multi-dimensional" peacekeeping activities, the prerequisite for its support has been satisfied.

In principle, China held reservations for the peace enforcement of the UN without the consent of the parties. Peace enforcement means that when the Security Council determined that there was a threat to peace and security, they implemented a series of coercive measures, including the use of force to restore peace and stability. In appropriate circumstances, the Council may authorize the regional organizations or countries to impose peace. For example, in the early 1990s, the Security Council sent Implementation Force (IFOR) and Stabilization Force (SFOR) to Bosnia to carry out peacekeeping activities, as well as carrying out the peace enforcement activities in Somalia in 1992. However, although China was opposed to peace enforcement and not in favour of the Gulf War, China did not vote against the resolution 678 of the Security Council, but voted abstention to make the resolution to be adopted. Thus, the United States and other countries got the authorization of the Security Council and took all necessary measures "to restore peace and stability" after the Iraqi's invasion of Kuwait. It means that China's implementation of the principles is not rigid.

With regard to the second article of the three principles: in peacekeeping operations, only in the case of self-defence may force be used. China insisted on the grounds that the use of force would increase the difficulties in reaching a final solution, more harm than good. For this reason, China voted abstention to the seven Security Council resolutions before the year 2000. However, China voted in favour of the other nine Security Council resolutions from the year 1992 to 1996. China explained that "it obtained the consent of the relevant parties," and "requested by the host country," "The situation is more special"

¹ UN Document SC/8939, Jan. 12, 2007.



or “This is a humanitarian aid.”¹ This means that the consent of the host or related parties, as well as humanitarian assistance can constitute exceptions of the term that “only in self-defense may force be used.”

The mandate of the UN Security Council is the principle that China has been always adhered to. This is because that China is still worried that peacekeeping operations would be used by some major countries or groups of countries to achieve their own strategic intentions or actual benefits. Although China also values the international community’s humanitarian concerns, but on balance, China still believes that the expense of arbitrarily carrying out “peacekeeping operations” without regarding of the UN Security Council is greater than the benefits. Hence, the Chinese government was firmly opposed to the US-led NATO’s military action against Yugoslavia and called for a peaceful solution on Kosovo issue through negotiation and supported the UN to play an active role and advocated that any solutions should fully listen to and respect the views of Federal Republic of Yugoslavia.²

The acceptance of the concept of “preventive diplomacy” which was related to the UN peacekeeping operations³ by the Chinese government is another China’s changes in attitude towards UN peacekeeping operations. In August 2008, the Dushanbe Declaration of the Heads of the Member States of the Shanghai Cooperation Organization, pointed out that the member states of the SCO reaffirm their commitment to preventive diplomacy as an important tool for effective settlement of the problems of security protection and development, as well as to strengthening the key role of the UN in the field of crisis prevention.⁴ On July 23, 2009, when attending the ASEAN Regional Forum Ministerial Meeting, Chinese Foreign Minister Yang Jiechi said that the ASEAN Regional Forum “should treat it as main content of preventive diplomacy to deal with terrorism, cross-border crime, the proliferation of mass destructive weapons, maritime security and other non-traditional security challenges,” and the “equal dialogue, consultation and cooperation, mutual benefit and win-win philosophy, etc., should be based on the actual needs of the region so as to effectively promote preventive diplomacy.”⁵

Another new concept related to the UN peacekeeping operations—“responsibility to

1 National Crisis Organization Asian Report No.166, *Increasing Dedication of China’s UN Peacekeeping*, April 17, 2007. www.crisisgroup.org, page 19.

2 Spokesman’s speech on the UN Resolution to Kosovo Issue, Zhang Qiyue, Nov 7, 2000. <http://www.fmprc.gov.cn/chn/gxh/tyb/fyrbt/t5142.htm>.

3 By definition, Preventive diplomacy is an action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur; in involvement of UN peace keep is needed.

4 *Dushanbe Declaration of the Heads of the Member States of the Shanghai Cooperation Organization*, Aug. 28, 2008. <http://www.fmprc.gov.cn/chn/gxh/wzb/zxxx/t509742.htm>.

5 *Introduction to Forum of Association of South East Asian Nations*, July 24, 2009. <http://www.fmprc.gov.cn/chn/pds/wjb/zzjg/yzs/dqzz/dmdq/t534862.htm>.



protect” (R2P) is also seriously considered by the Chinese government. The 2005 World Summit Outcome Document gave a very prudent description on this concept. As to the interpretation and implementation of “R2P,” the Chinese government’s preliminary views on the concept are as follows:

1) The government of a given state bears the primary responsibility for protecting its citizens. The international community can provide assistance, but the protection of the citizens ultimately depends on the government of the state concerned. This is in keeping with the principle of state sovereignty. Therefore, the implementation of “R2P” should not contravene the principle of state sovereignty and the principle of non-interference of internal affairs.

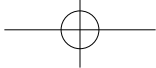
2) The Concept of “R2P” applies only to the four international crimes of “genocide, war crimes, ethnic cleansing, and crimes against humanity.” No state should expand on the concept or make arbitrary interpretations. More importantly, abuse of the concept should be avoided. The relevant actions must respect the views of the government and regional organizations concerned. The crisis must be addressed in the framework of the UN, and all peaceful means must be exhausted.

3) When the occurrence of such a crisis calls for the UN to respond, the Security Council has a role to play. The council must consider “R2P” in the broader context of maintaining international peace and security.

4) In the context of the UN and regional organizations, we should distinguish normal humanitarian assistance and the carrying out of “responsibility to protect” from the international assistance, in order to ensure the neutrality and impartiality of humanitarian assistance.¹

The above expression of China’s stance reflects the fundamental principle of China’s foreign policy that is non-interference in other country’s internal affairs. The Chinese leaders believe that, though the world has experienced complex and profound changes, the status of the UN Charter’s basic purposes and principles has not been changed, and respecting for the principles of sovereignty and non-interference in internal affairs should not be shaken. China’s sensitivity of sovereignty comes from the experience as a Third World country. China has experienced the aggression by major western countries and the history of oppression. The concept of sovereignty was not originated from China’s mainland, but was learnt from the Western powers after the Opium War broke out in 1840. After the Opium War, China was forced to accept a series of unequal treaties in the modern history, and there was a deeply suffering and humiliation in the loss of national sovereignty. As a result, the Chinese people used the concept of sovereignty passed from the West as weapons against the Western powers aggression and division of China. Over the next 100 years, struggle

¹ The Permanent Representative Liu Zhenmin’s Speech on “Protection Responsibility” at the UN General Assembly, July 24, 2009. <http://www.fmprc.gov.cn/chn/pds/wjdt/zwbd/t575180.htm>.



for independence and getting rid of the imperialist's oppression were always the goal for the Chinese people to fight. Until in 1949, under the leadership of the Chinese Communist Party, the People's Republic of China was established.

The motivations for China's increasingly positive attitude towards the UN peacekeeping activities are as follows: 1. With the development of economic globalization, a number of common challenges and threats cannot be effectively dealt with by any single country alone. For instance, economic and social threats, including poverty, infectious disease and environmental pollution; inter-state conflicts; internal conflicts, including civil war, genocidal and large-scale atrocities; the proliferation of weapons of mass destruction; terrorism; cross-border organized crime. It is necessary for all the states to cooperate with each other under the UN framework. 2. Participation in UN peacekeeping operations can establish the image of a big responsible country for China in the international community, and also can refute the "China threat theory." 3. China should contribute to the international peace and stability, which are conducive to acquiring external environment for sustainable economic development. 4. With the expansion of economic cooperation and trade, as well as the increase of personnel exchanges with other countries, it is imperative for China to protect the security of Chinese overseas, to maintain the safety and development environment of overseas companies of China, and to ensure that energy sources are enough and maritime transport routes are open. 5. When participating in UN peacekeeping operations, with the co-ordination in peacekeeping with their counterparts from other countries, the Chinese armed forces can learn advanced scientific and technological knowledge and management strengths, raise the army's capacity to respond, riot control capabilities, command system collaboration capabilities in emergency, as well as the ability to implement domestic non-war military operations. The Chinese military recognizes that "active participation in UN peacekeeping operations is an important channel for the armed force to adapt to the global revolution in military affairs and to enhance the quality of the army."¹

These driving forces will be strengthened in the future, and it can be expected that they will continue to push China to be more active and effective in supporting and participating in UN peacekeeping operations.

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¹ The First PLA Peacekeeping Work Conference Closed, *PLA Daily*, June 22, 2007. http://www.chinamil.com.cn/site1/xwpdxw/2007-06/22/content_855023.htm.